



Planning Inspectorate

The Planning Act 2008

Cory Decarbonisation Project

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Energy Security and Net Zero

Examining Authority

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5 August 2025

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OVERVIEW

File Ref: EN010128

The application, dated 20 March 2024, was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 21 March 2024.

The applicant is Cory Environmental Holdings Limited.

The application was accepted for examination on 18 April 2024.

The examination of the application began on 5 November 2024 and was completed on 5 May 2025.

The proposed development comprises the proposed construction, operation, maintenance and decommissioning of a carbon capture facility, comprising up to two carbon capture plants; a proposed new jetty, extending into the River Thames to facilitate the onward transfer of captured carbon dioxide; a Mitigation and Enhancement Area, designed both to enhance biodiversity and to improve public access to outdoor space; three temporary construction compounds; and connections to utilities and provision of site access works.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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ERRATA SHEET – CORY DECARBONISATION PROJECT [Ref. EN010128]

**Examining Authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for the Department of Energy
Security and Net Zero, dated 5 August 2025**

**Corrections agreed by the Examining Authority prior to a decision being
made**

PDF Page No.	Para	Error	Correction
6	1.3.7	“birth”	“berth”
156	6.8.2	Figure “X”	Figure “12”

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application (the application) for the Cory Decarbonisation Project (the proposed development), Planning Inspectorate (the Inspectorate) reference EN010128, was submitted by Cory Environmental Holdings Limited (the applicant) to the Inspectorate on 20 March 2024 under section (s) 35 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 18 April 2024 [[PD-001a](#)].
- 1.1.2. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero. It includes consideration of:
- whether the application complies with relevant legislation, policy and guidance
 - the powers sought by the applicant, including in relation to land rights
 - how the Proposed Development would be controlled
 - the balance of benefits and disbenefits of the proposed development, and
 - whether development consent should be granted
- 1.1.3. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the (then) Secretary of State for Levelling Up, Housing and Communities in its decision to accept the application for examination in accordance with s55 of the PA2008 [[PD-001a](#)].
- 1.1.4. The proposed development is for the construction, operation, maintenance and decommissioning of a Carbon Capture Facility (CCF). The application is a Nationally Significant Infrastructure Project (NSIP) under the PA2008. This is as a consequence of a Direction Letter on behalf of the (then) Secretary of State (SoS) for Business, Energy and Industrial Strategy (SoSBEIS) made under s35(1) of the PA2008 on 6 October 2022, and confirmed on 28 February 2024 (Appendices A and B of the applicant's Planning Statement [[APP-040](#)]). The Direction Letter includes a determination on behalf of the SoSBEIS that the proposed development be treated as development of national significance for which development consent is required under s35(1) and s35ZA(11) of the PA2008.
- 1.1.5. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the examination. The [Examination Library](#) (EL) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number, for example [APP-001]. The reference numbers are used throughout this report, set out in square brackets in the main text, and hyperlinks are included to allow the reader to access them directly. Where a document has been revised, for example to correct typographical errors in earlier versions or due to updates requested and made during the examination, only the most recent version of the document is referenced in this report.
- 1.1.6. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this report.

CONSULTATION

- 1.1.7. Before the application was made the applicants are required by the PA2008 to consult with people and organisations in the area. After the application was submitted, the London Borough of Bexley (LBBC) and other surrounding local authorities confirmed that in their opinion the applicant had complied with the legislative requirements in the PA2008 with regards to the applicant's duties to consult, to consult the local authority and to publicise the application [\[AoC-003\]](#). This informed the decision whether to accept the application [\[PD-002\]](#), [\[PD-001a\]](#).
- 1.1.8. At the preliminary meeting and during the examination Ridgeway Users, an interested party (IP), raised concerns about the adequacy of consultation with Romani communities [\[REP1-069\]](#), [\[ENV3-001\]](#).
- 1.1.9. Part of their concern relates to the planning process for NSIPs. However, any criticism of the legislation and statutory processes lie outside the scope of the examination.
- 1.1.10. In ExA's first written questions [\[PD-007\]](#) at ExQ1.0.2.1 the ExA asked the applicant how they had communicated and engaged with the wider Romani and other traveller communities who may have cultural connections with the Order Land beyond any direct interests as grazing licence holders on the site. In their response [\[REP3-029\]](#) the applicant set out measures that had been taken including in the press, local community venues and public information events, not just information provided to residents through the post. The Applicant sought details from LBBC for a local liaison contact for the traveller communities (although not specifically Romani) with whom the applicant engaged.
- 1.1.11. The applicant's [Consultation Report](#) details the consultation and publicity carried out which included site notices in the vicinity and notices in national and local newspapers.
- 1.1.12. When the application was submitted, and before a decision was taken on whether to accept the application, local authorities, including LBBC, confirmed in their [Adequacy of Consultation Representation](#) that in their opinion the applicant had complied with the legislative requirements for consultation and publicity¹.
- 1.1.13. Furthermore, IPs such as Ridgeway Users and Bexley Civic Society were able to put forward views on the value of the area that includes the site to Romani and other travelling communities' culture and heritage, and these were taken into consideration by the ExA.
- 1.1.14. There remains the possibility that those with memories or cultural connections with the area who no longer live in or have close connections with the vicinity may not have been aware of the consultation and publicity, but that could be the case with any scheme and that does not indicate that there has been any prejudice in that regard.
- 1.1.15. On the basis of the above, the ExA does not consider that it has been demonstrated either that the applicant's consultation and publicity was inadequate, nor that any

¹ As did Sevenoaks District, London Borough of Bromley, Royal Borough of Greenwich and Dartford Borough Councils.

particular communities or persons with protected characteristics were prejudiced as a result of the way the consultation was carried out.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 18 April 2024 Geoff Underwood was appointed as the ExA for the application under s61 and s65 of PA2008 [\[PD001\]](#).

1.2.2. The ExA has used the convention of using the third person throughout this report.

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The location of the proposed development is shown in the Location Plan [\[AAP-135\]](#) (extract shown in Figure 1 below) and the final versions of the Land Plans [\[REP5-003\]](#). The site lies within the London Borough of Bexley administrative area and is wholly in England.

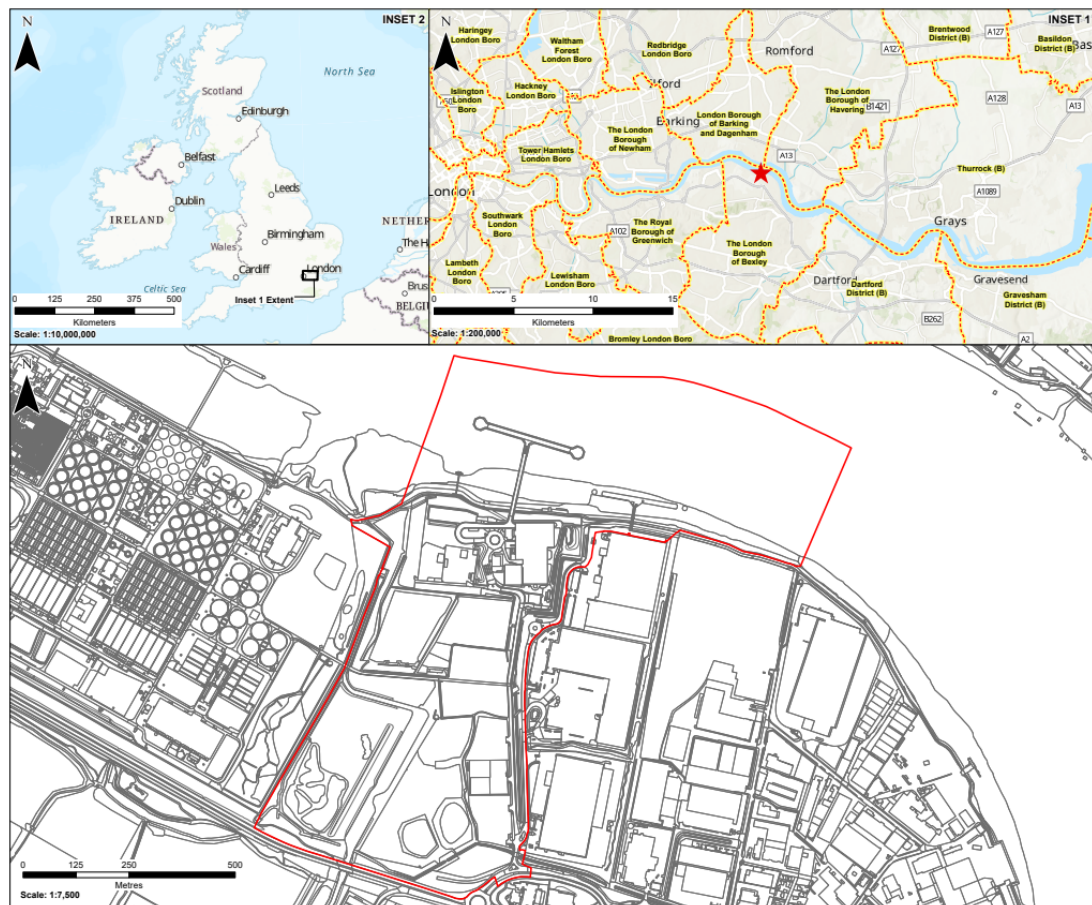


Figure 1: Location Plan [\[AAP-135\]](#)

1.3.2. Chapter 10 – Townscape and Visual, of the Environmental Statement (ES) [\[APP-059\]](#) provides a description of the existing site and surroundings. In summary, and as can be seen in Figure 2 below, the site is characterised by:

- The northern section of the site contains the River Thames and foreshore, alongside which runs the Thames Path, and also includes the active Middleton Jetty and the disused former Belvedere Power Station Jetty (FBPSJ).

- The central section of the site contains Riverside 1 and Riverside 2 energy from waste (EFW) power stations, the former of which is in operation and the latter currently under construction.
- The southeastern part of the site includes a number of land parcels which are currently in use as site compounds for the construction of Riverside 2, the exception being the 'Munster Joinery' site which contains a single commercial building.
- The southwestern section of the site is largely undeveloped, apart from some modest stables, and comprises coastal and floodplain grazing marshes, with multiple ponds and ditches, and areas of grassland used for horse grazing, much of which is designated as part of Crossness Local Nature Reserve (CLNR), shown cross-hatched on figure 2 below.

1.3.3. ES Chapter 10 [\[APP-059\]](#) provides a detailed description of the surrounding area. In summary, the characteristics of the surrounding area are:

- The River Thames lies to the north, part of which is included within the Order Limits, and is bounded by the Thames Path and includes a number of other jetties protruding from the south bank into the river.
- Large scale buildings in the main associated with storage and distribution uses form part of the industrial area to the east of the Order Limits.
- The Crossness Water Treatment Works (CWTW), including an enclosed 'Members' Area' as part of the CLNR, extends to the west.
- Undeveloped open land is situated to the southwest of the Order Limits, adjacent to an industrial estate at Hailey Road and Veridion Park Business Park, on the south side of Eastern Way.
- An area of mixed uses lies to the south east around Clydesdale Way, including commercial, food and drink and residential uses.



Figure 2: Existing Site and surroundings
(ES figure 1-2 [APP-072])

- 1.3.4. The applicant's Environmental Features Plans [APP-013] illustrates public rights of way, Metropolitan Open Land, natural and historic environment conservation sites and features, and other environmental designations on, and in the vicinity of, the site.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- 1.3.5. Carbon capture and storage (CCS) is a technology that enables carbon dioxide (CO₂) that would otherwise be released to the atmosphere to be captured and permanently stored. One of the three types of capture technology is post-combustion capture which uses solvents to effectively 'scrub' CO₂ out of flue gases resulting from burning materials. The captured CO₂ is then released as a concentrated gas stream by a regeneration process and can then be stored and/or transported.
- 1.3.6. The proposed development is for a post-combustion CCF which would capture CO₂ from Riverside 1 and 2 EFW generation stations (The applicant anticipates Riverside 2 will be operational by 2026). The development is expected to capture a minimum of 95% of CO₂ emissions from both Riverside 1 and 2, equating to approximately 1.6Mt CO₂ per year² [APP-040].

² The applicant states that assuming a nominal assumed throughput, emission from Riverside 1 and 2 would be equivalent to approximately 1.3Mt CO₂ per year and the

1.3.7. The proposed development would also provide for a new jetty in the River Thames to provide a birth for vessels to export captured CO₂ in the vicinity of the existing FBPSJ. A Mitigation and Enhancement Area made up of parts of the CLNR and other open land within the Order Limits is intended to provide improved access to open land, habitat mitigation, compensation and enhancement (shown in green on figure 2 above).

1.3.8. The Proposed Development works would comprise:

- **Work No 1** - one or two carbon capture plants, absorber column(s) and stack(s), CO₂ processing plant(s), liquid carbon dioxide (LCO₂) buffer storage and supporting plant and facilities.
- **Work No 2** - modification to, and interconnection with, the existing and under construction generation stations, including process steam and condensate, and heat offtake infrastructure, flue gas supply ductwork and electrical connections.
- **Work No 3** - utilities connections and site access works.
- **Work No 4** - maritime works including building a new jetty with associated dredging and the demolition or modification of the existing FBPSJ.
- **Work No 5** - LCO₂ piping and utilities connections to the proposed Jetty.
- **Work No 6** - temporary construction compounds and laydown areas including contractor facilities.
- **Work No 7** - Mitigation and Enhancement Area and improvements to the existing CLNR (this would include replacing stables used by graziers).
- **Work No 8** – rerouting of CWTW access road.
- **Work No 9**- protective works to land if required.
- Ancillary works.

1.3.9. Further details of the proposal for each Work No can be found in Schedule 1 of the recommended Development Consent Order (rDCO) in Appendix C.



Figure 3: Illustrative sketch aerial view
(from Design Approach Document [[APP-044](#)])

proposed scheme would result in net operational emissions savings of around 1.6Mt CO₂e, annually, relative to a future baseline, paragraph 4.4.34.

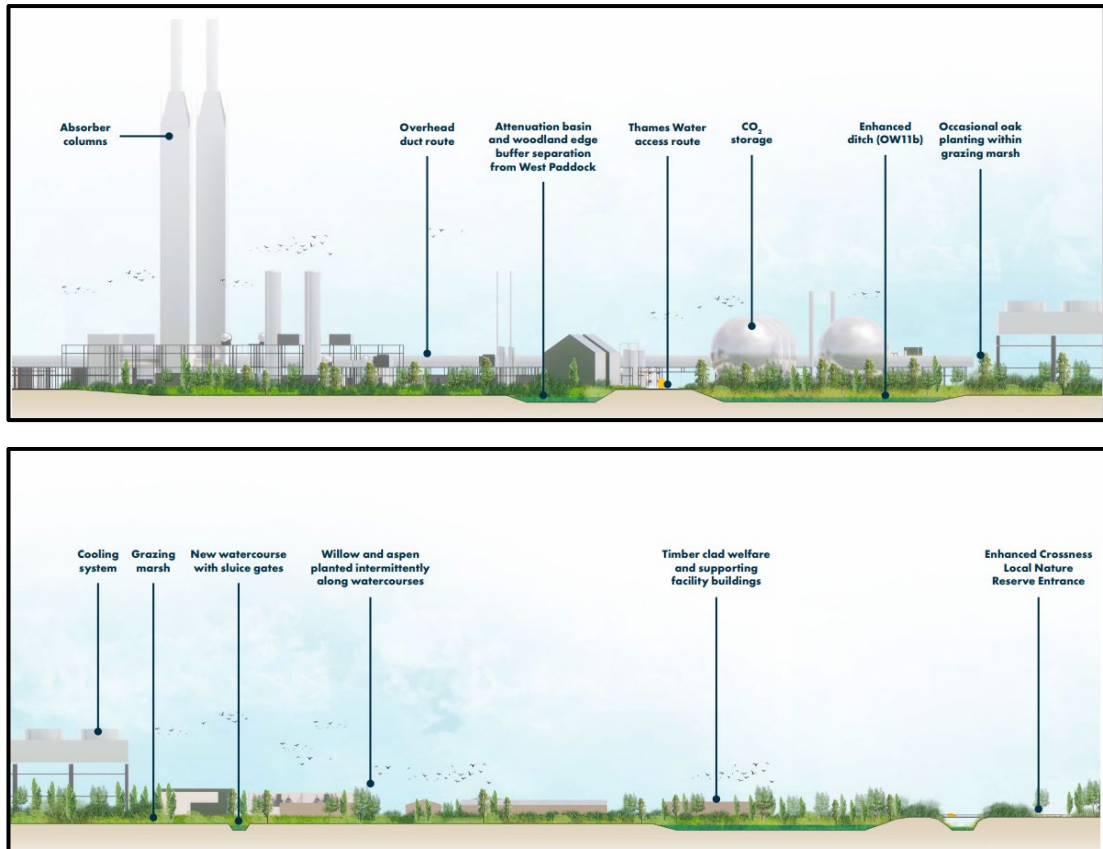


Figure 4: Illustrative sketch west elevation of proposed development, upper image; north part, lower image south part
(from Design Approach Document [[REP6-006](#)])

1.3.10.

The illustrative layout is shown below in Figure 5 (extract from Engineering Plans: Indicative Equipment Layout [[AS-070](#)]). Please note that the numbered key in Figure 5 is for identification of equipment and does not correspond to the work numbers listed above.

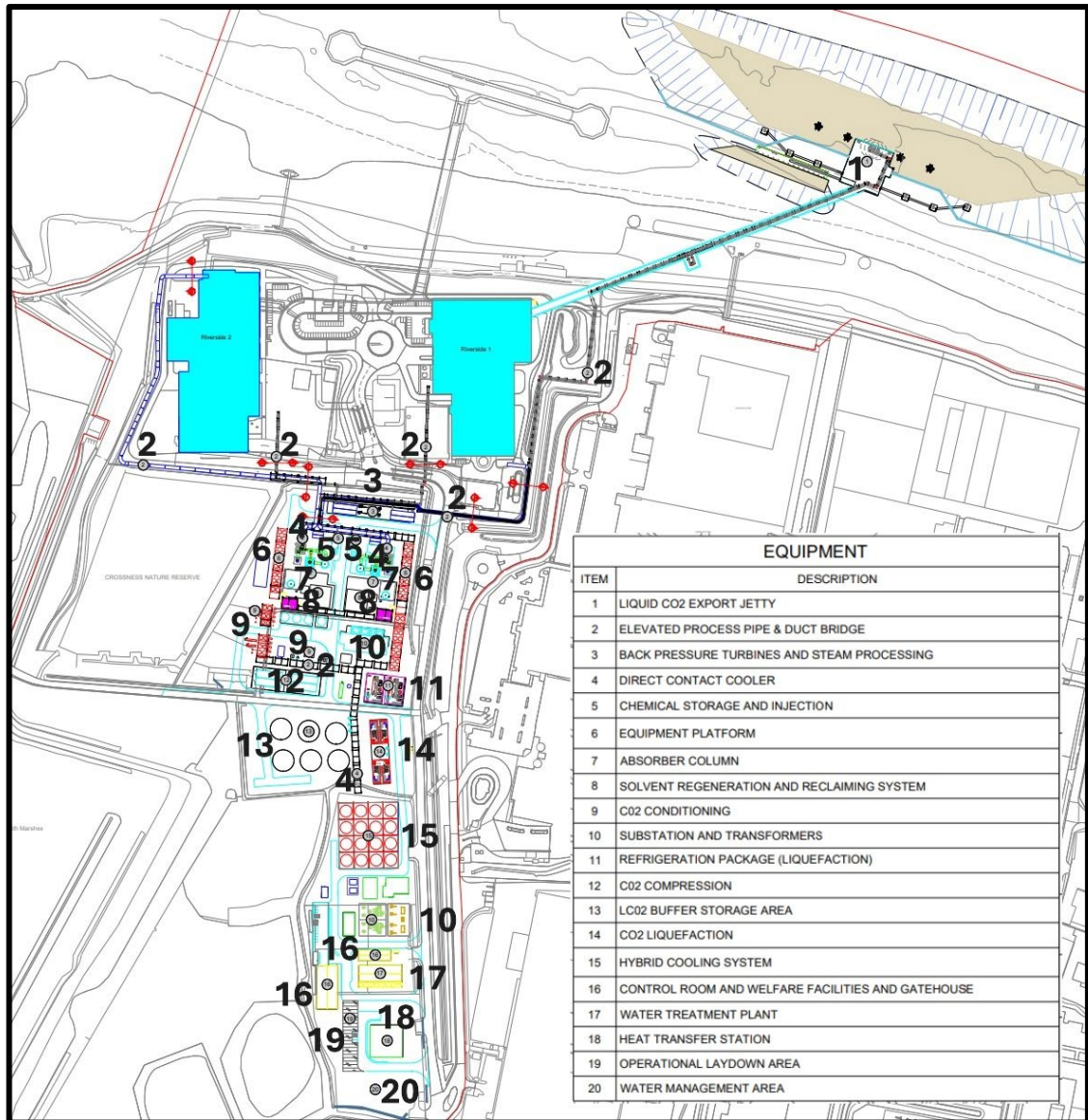


Figure 5: Indicative layout

(from [AS-070], not to scale, larger numerals superimposed over original plan for ease of reference)

BENEFITS OF THE PROPOSED DEVELOPMENT

1.3.11.

The applicant has set out what they consider the social, environmental and economic benefits of the proposed development would be [APP-042]. In summary the key benefits they identify would be:

- The capture of at least 95% of CO₂ emissions from the Riverside facilities, enabling the permanent geological sequestration of 1.6Mt of CO₂ a year, half of which would be biogenic (considered a carbon removal).
- The whole life emissions would represent an overall saving of -85,223,660tCO₂e relative to the future baseline (averaging 1.55Mt CO₂e annually), contributing to a reduction of: 0.8% for the Sixth Carbon Budget; 18% of Power Sector

emissions for the Sixth Carbon Budget; and 17% for the London 2028 to 2032 Carbon Budget³.

- Expansion of the CLNR, improvements to the distinctiveness and condition of existing floodplain grazing marsh and reedbed habitats, and delivering at least 10% off-site biodiversity net gain (BNG).
- An opportunity to use the waste heat generated to optimise the Riverside Heat Network, providing over 100 megawatts (MW) of low carbon additional heat to homes and businesses.
- 27 job contracts.
- Around £1.7 billion likely benefits to wider society from the carbon savings;
- Contributing to the economy through investment, supply chain and employment impacts.
- Contributing towards the UK becoming a first, or early, mover for Carbon Capture, Utilisation and Storage products and services, assisting the UK to position itself to benefit from emerging economic opportunities.

- 1.3.12. The extent of and weight to be given to these benefits have been challenged by a number of IPs. These include whether: the proportion and amount of CO₂, and associated carbon savings, anticipated by the applicant would be achieved; the extent of ecological benefits in light of the loss of part of the CLNR; and how heat export would be delivered. These are dealt with in more detail in Chapter 3.

RELEVANT PLANNING HISTORY

- 1.3.13. The following is a summary of key planning history aspects relevant to the application site. There are also numerous minor planning applications, approval of details and amendments to consents relating to these and other developments on the application site. Appendix C of the applicant's Planning Statement [[APP-040](#)] and Section 3 LBBC's Local Impact Report (LIR) [[REP1-034](#)] set out schedules and more details of relevant planning and associated applications, including approval of details and amendments on and in the vicinity of the application site.
- 1.3.14. The existing Riverside 1 EFW generating station gained consent under section (s)36 of the Electricity Act 1989 in 2006, with various amendments approved since including s36 consent and deemed planning permission (PP) for its current operating capacity of accepting up to 850,000 tonnes per annum (tpa) of residual waste to generate up to 80.5 MW of electricity.
- 1.3.15. The Riverside 2 EFW generating station, which is currently under construction, gained consent through the Riverside Energy Park Order 2020, made in 2020 and subsequently amended⁴. As amended the Order consents a capacity of 805,920 tpa of residual waste with an output of up to 96MW.
- 1.3.16. PP was granted in 2014 for three industrial units on the 'Munster Joinery' site which has been partially implemented providing the current operational Munster Joinery (UK) Ltd warehouse, distribution hub, showroom and offices. The foundations of an adjacent building are in place [[REP1-060](#), annex E]. Outline PP was granted in 2016

³ Although it should be noted that the Overarching National Policy Statement for Energy NPS EN-1 points out that operational emissions will be addressed in an economy-wide manner, to ensure consistency with carbon budgets, net zero and international climate commitments so that the SoS does not need to assess individual applications against operational carbon emissions and their contribution to those targets.

⁴ by the Riverside Energy Park (Correction) Order 2021 and the Riverside Energy Park (Amendment) Order 2023.

for a data centre and associated development on the 'Borax North' and 'Borax South' sites. This was not implemented and the consent has expired.

1.3.17. A sewage sludge incinerator was granted outline PP on the adjacent CWTW in 1994 which was subject to a s106 planning obligation of the Town and Country Planning Act 1990 (TCPA1990). That obligation required the maintenance and enhancement of what is effectively the CLNR on both the application site and the adjacent Members' Area. The CLNR is itself subject to a number of PPs for various works and structures. The 'Norman Road Field' part of the application site was the location for part of ecological works required as part of a s106 agreement to which the Veridion Park development (located south west of the application site) was subject to.

1.3.18. More detail on those s106 obligations is set out in Appendix F to the applicant's Written Summary of the Applicant's Oral Submissions at ISH1: Mitigation and Enhancement Area – Note on Interaction with Existing Consents and Obligations [\[REP1-027\]](#).

1.4. THE EXAMINATION

LOCAL AUTHORITIES

1.4.1. The host local authorities are the London Borough of Bexley Council (LBBC) and the Greater London Authority (GLA).

START OF THE EXAMINATION

1.4.2. The Preliminary Meeting (PM) took place on 5 November 2024 [\[EV3-001\]](#), [\[EV1-003\]](#). The ExA's procedural decisions (PDs) and the examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter of 18 November 2024 [\[PD-006\]](#).

1.4.3. The examination began on 5 November 2024 and concluded on 5 May 2025. The principal components of and events around the examination can be seen in the [Examination Timetable](#) and are summarised below. No party requested to join or leave the examination. 'Events in the Examination' can also be found on the [project website](#).

PROCEDURAL DECISIONS

1.4.4. The PDs taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. All were broadly discharged as intended and no further reference is made to them in this report unless they assist in illustrating a particular point.

1.4.5. The ExA made a PD on 9 April 2025 [\[PD-017\]](#) confirming that a further Compulsory Acquisition Hearing, in addition to those already held, was not necessary in response to a representation by affected persons [\[AS-089\]](#). The ExA's PD letter details the reasoning for this and addresses the points re-iterated in the parties' final submissions [\[REP7-026\]](#), [\[REP7-028\]](#). This matter is considered further in Chapter 6 below.

STATEMENTS OF COMMON GROUND

1.4.6. By the end of the examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the applicant, as detailed in the applicant's Statement of Commonality [\[REP7-016\]](#):

- LBBC [\[AS-096\]](#)
- GLA [\[REP7-011\]](#)
- Environment Agency [\[REP6-034\]](#)
- Port of London Authority [\[AS-097\]](#)
- Natural England [\[REP6-035\]](#)⁵
- Marine Management Organisation [\[REP6-036\]](#)
- Friends of Crossness Nature Reserve [\[REP3-018\]](#)⁶
- Save Crossness Nature Reserve [\[REP3-021\]](#)⁶
- Greater London Archaeology Service [\[AS-041\]](#)
- Historic England [\[AS-032\]](#)
- Iron Mountain (UK) plc [\[REP7-012\]](#)⁷
- Lidl [\[REP4-021\]](#)
- Alaska RE [\[REP4-022\]](#)
- Buglife - The Invertebrate Conservation Trust [\[REP2-012\]](#)⁷
- Kent County Council [\[REP5-020\]](#)
- Dartford Borough Council [\[REP2-013\]](#)
- National Highways [\[REP5-022\]](#)
- Mr Percy Anderson [\[REP3-020\]](#)

1.4.7. The SoCGs with the following bodies remained unsigned at the end of the examination:

- Thames Water Utilities Ltd (TWUL) [\[AS-081\]](#)
- Peabody Trust [\[REP7-013\]](#)
- UK Power Networks [\[PDA-005\]](#)
- Aviva Life & Pensions UK Limited [\[PDA-006\]](#)
- ASDA [\[PDA-003\]](#)

1.4.8. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report. The weight (if any) to be afforded to unsigned SoCGs is considered in the relevant sections of this report.

1.4.9. The ExA also requested [\[PD-005\]](#), [\[PD-006\]](#) that SoCGs were prepared with Landsul Ltd and Munster Joinery (UK) Ltd (LMJ), Seamus Gannon, Creek Side Developments (Kent) Ltd, and the Western Riverside Waste Authority (WRWA), who are affected persons. However, the applicant advised in respect of the first three parties that there has been very limited agreement between the parties or no responses received to initial draft SoCGs, and SoCGs have not been pursued by the applicant with those parties. Although no SoCG has been prepared between the applicant and the WRWA, those parties representations set out matters agreed, not agreed and still under discussion at the end of the examination [\[REP7-001\]](#), [\[REP7-034\]](#).

⁵ Recording an area of disagreement remaining between the parties.

⁶ Recording a number of areas of disagreement remaining between the parties.

⁷ Recording a number of matters still under discussion between the parties.

WRITTEN QUESTIONS, SITE INSPECTIONS AND HEARINGS

- 1.4.10. The ExA asked two rounds of written questions (ExQ1 [\[PD-007\]](#) and ExQ2 [\[PD-014\]](#)) and made 5 requests for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 [\[PD-010\]](#), [\[PD-011\]](#), [\[PD-013\]](#), [\[PD-016\]](#) and [\[PD-018\]](#).
- 1.4.11. The ExA carried out an unaccompanied site inspection before the Examination [\[EV2-001\]](#) on 18 September 2024 and an accompanied site inspection during the examination [\[EV9-001\]](#) on 13 February 2025.
- 1.4.12. An open floor hearing (OFH) [\[EV4-001\]](#) was held on 5 November 2024. Two hearings were held into specific issues (ISHs): ISH1 on 6 November 2024 [\[EV5-001\]](#), [\[EV5-002\]](#), [\[EV5-004\]](#), [\[EV4-006\]](#) and [\[EV4-008\]](#); ISH2 on 12 February 2025 [\[EV8-001\]](#), [\[EV8-002\]](#), [\[EV8-004\]](#) and [\[EV8-006\]](#). Two hearings were held into the compulsory acquisition of land and rights (CAHs): CAH1 on 7 November 2024 [\[EV6-001\]](#), [\[EV6-002\]](#) and [\[EV6-004\]](#); CAH2 on 11 February 2025 [\[EV7-001\]](#), [\[EV7-002\]](#), [\[EV7-004\]](#), [\[EV7-006\]](#) and [\[EV7-008\]](#).

1.5. CHANGES TO THE APPLICATION

- 1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by IPs and the ExA, and to update or provide additional information resulting from changes and discussions that had occurred during the examination.
- 1.5.2. The applicant's changes to the application documents, together with any additional information submitted by the applicant, are detailed in the Application Document Tracker⁸ submitted at Deadline (D) 7 [\[REP7-002\]](#). This provides a record of and guide to all documents submitted by the applicant as part of the application and was updated at each deadline when new or revised documents were submitted.
- 1.5.3. Table A2 in [Appendix A](#) of this report sets out the documents comprising each change request.

FIRST CHANGE REQUEST

- 1.5.4. The applicant submitted a formal change request on 25 October 2024 which was in advance of the examination commencing.
- 1.5.5. The applicant's Change Request and Consultation Report (CRCR) [\[AS-048\]](#) details the proposed changes. The changes involved revising the design of the Proposed Jetty and associated dredging, to facilitate a maximum vessel size of approximately 20,000m³, rather than the maximum 15,000m³ anticipated in the application documentation. This would entail an increase in assumed capital dredging volume, a likely increase of the size of the sheet pile retaining wall either side of the dredge pocket and an increase in the downwards limits of deviation for dredging set out in

⁸ 1) some of the citations of EL references of documents in the applicant's Application Document Tracker - Rev K (ADT), are incorrect; and, 2) some ES documents highlighted as "latest versions" in the ADT have subsequently had revised versions submitted at D6 with typographical errors corrected and these have an updated EL reference. The EL references of the latest and corrected versions are cited in this report, and Table A1 of [Appendix A](#) records these where they form part of the ES.

Article 2 of the dDCO. The applicant carried out a non-statutory consultation exercise in respect of the change.

- 1.5.6. The ExA agreed with the applicant that the proposed change was not so material that it constituted a materially different project. The proposed change was not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for, nor result in any greater extent of compulsory acquisition powers and consequently that it would not engage the prescribed procedures of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regs).
- 1.5.7. The ExA therefore issued a PD [\[PD-006\]](#) on 18 November 2024 to accept the change into the examination.

SECOND CHANGE REQUEST

- 1.5.8. The applicant submitted a formal change request on 17 January 2025. The applicant's CRCR [\[AS-067\]](#) details the proposed changes. The changes involved:
- Change 2.1 - Changes to proposed Works and Design Parameters including the inclusion of electrically driven fans to the cooling system for the proposed Carbon Capture Facility, provision for reconfiguration of the Stack(s) from the top of the Absorber Column(s) to potentially be connected to, but forming a separate stack, or totally separate from, and directly adjacent, to the Absorber Column(s) and provision to increase the maximum height of the 'Regenerator' from 50m to 60m (53m AOD to 63m AOD) in the Design Parameters in Schedule 16 of the dDCO.
 - Change 2.2 - Reduction in Order limits, excluding the Great Breach Pumping Station (removal of plot 1-122).
 - Change 2.3 - Reduction in Order limits within the River Thames (reduction of plot 2-006).
 - Change 2.4 - Clarification in design specified in Works in Schedule 1 of the dDCO including the addition of: the word 'system' into the description of Works No 1A(i) and (v)⁹; the phrase 'and deoxidation' added after liquefaction unit(s) in Work No 1C(iii)¹⁰; and, clause (v), 'chemical storage and distribution handling facilities', in Work No 1C.
- 1.5.9. The ExA agreed with the applicant that the proposed changes were not so material that they constituted a materially different project. The proposed changes were not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for, nor result in any greater extent of compulsory acquisition powers, and that consequently it would not engage the prescribed procedures of the CA Regs.
- 1.5.10. The ExA therefore issued a PD [\[PD-012\]](#) on 28 January 2025 to accept the changes into the examination.

⁹ up to two carbon capture plant(s) including - (i) up to two flue gas pre-treatment system(s) including ... direct contact cooler(s) [and] ... (v) up to two solvent heat exchanger system(s)....

¹⁰ up to two carbon dioxide processing plant(s), including -...(iv) up to two carbon dioxide liquefaction unit(s) and deoxidation....

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.6.1. By the end of the examination no completed deeds of obligation were submitted. Consequently, there are none to be taken into account in the recommendation.
- 1.6.2. The applicant had intended to enter into two Deeds of Obligation. One would have been a Deed of Obligations and Other Covenants under section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 (a draft version is at [\[REP5-027\]](#)), with LBBC and Peabody Trust, providing for BNG delivery and management on land at the former Thamesmead Golf Course as well as an alternative off-site BNG delivery mechanism. The other a Deed of Obligation under TCPA1990 s106 (a draft version is at [\[REP5-029\]](#)), with LBBC, Tilfen Land Limited and TWUL, providing for the management of the CLNR. The applicant has explained the progress that had been made on these by the end of the examination in their Closing Statement [\[REP7-021\]](#).
- 1.6.3. Some parties have confirmed that, during the examination, they have reached private agreements with the applicant regarding protection of their assets or interests. These are referred to, where relevant, in subsequent sections of this report.

1.7. OTHER CONSENTS

- 1.7.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. These are set out in the applicant's Other Consents and Licences Statement [\[APP-043\]](#).

1.8. STRUCTURE OF THIS REPORT

- 1.8.1. The structure of the remainder of this report is as follows:
- [Chapter 2](#) identifies how the application is to be determined and summaries the key legislation and policy context that applies to the decision.
 - [Chapter 3](#) sets out the findings and conclusions in relation to the individual planning issues that arose from the Application and during the examination.
 - [Chapter 4](#) sets out the Habitats Regulations Assessment.
 - [Chapter 5](#) sets out the balance of planning considerations arising from Chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy considerations.
 - [Chapter 6](#) sets out the ExA's examination of land rights and related matters.
 - [Chapter 7](#) considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
 - [Chapter 8](#) summarises all relevant considerations and sets out the ExA's recommendation to the SoS.
- 1.8.2. This report is supported by the following appendices:
- [Appendix A](#) – Reference Tables
 - [Appendix B](#) – List of Abbreviations
 - [Appendix C](#) – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

- 2.1.1. This chapter identifies the key legislation, policy and the local impact report (LIR) that the Examining Authority's (ExA) recommendations have taken into account.
- 2.1.2. As required by s88 of the PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an IAPI arising from the application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted relevant representations (RR). The list of issues relates to all phases of the proposed development.
- 2.1.3. The IAPI was raised at the preliminary meeting [\[EV3-003\]](#) and no other key topics were identified during the examination, albeit it has been expedient to deal with the matter of good design as a separate subsection in this report. The IAPI and the issues it identifies can be found in Annex C of the Rule 6 letter [\[PD-005\]](#), and is summarised in Table A3 of Appendix A. Findings and conclusions are set out in the following chapters, although some chapter titles have been altered slightly to reflect matters raised in the examination.

2.2. LEGISLATION

- 2.2.1. This section identifies the key legislation that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in [Appendix A](#) to this report.

PLANNING ACT 2008

- 2.2.2. As there is a relevant national policy statement (NPS) in effect, and there are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies, the ExA considers that the statutory basis for examination, reporting and decision making must proceed under section (s) 104 of the Planning Act 2008 (PA2008). The reason for this is that the relevant NPS, Overarching National Policy Statement for Energy (EN-1) (NPS EN-1), sets out at paragraphs 3.2.11-12 that where an energy infrastructure project is not covered by s15-21 of the PA2008 the SoS can direct that a development is treated as a Nationally Significant Infrastructure Project (NSIP) (as is the case for the Proposed Development; see 1.1.4 above) and that any application needs to be considered in accordance with NPS EN-1.
- 2.2.3. S104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include:
- any relevant NPS
 - any duly submitted local impact report (LIR)
 - any matters prescribed in relation to the development
 - any other matters the SoS thinks are both important and relevant to the decision
- 2.2.4. S104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations
- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment
- where the adverse impact of the proposed development would outweigh its benefits
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met

2.2.5. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

THE EQUALITY ACT 2010

2.2.6. The Equality Act 2010 includes a public sector equality duty (PSED). This requires public authorities to have due regard in the exercise of their functions to:

- the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010
- advance equality of opportunity between people who share a protected characteristic and those who do not in respect of the protected characteristics of age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion and belief, sex, and sexual orientation
- foster good relations between people who share a protected characteristic and those who do not

2.2.7. The SoS (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

2.2.8. The ExA has had due regard to this duty, including by holding blended meetings and hearings, producing guidance on holding those meetings, and ensuring that participants were provided with hard copy correspondence, where requested. The ExA has not identified any people with a protected characteristic that might be discriminated against if the decision is taken to grant consent to the proposed development.

2.2.9. The ExA is confident that, in making my recommendations, the ExA has paid due regard to the PSED when considering the potential impacts of granting or refusing consent, including the implications of potential interference with land rights (considered at section 6.11 below). The ExA finds no harm to the interests of persons who share a protected characteristic, or any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. The ExA finds no breach of the PSED.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

2.2.10. As evidenced by this report, the ExA has fulfilled the biodiversity duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006 (as amended) by having due regard to conserving and enhancing biodiversity when making recommendations. The SoS will need to have regard to fulfilling the general biodiversity function.

OTHER NATIONAL LEGISLATION

- 2.2.11. A list of relevant primary and secondary legislation, including but not limited to duties arising under the Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Table A5 of [Appendix A](#) of this report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.
- 2.2.12. Pollution from industrial sources is controlled through the Environmental Permitting (England and Wales) Regulations 2016. The planning and pollution control systems are separate but complementary. The planning system controls the development and use of land in the public interest. Pollution control is concerned with preventing pollution and ensures that ambient air, water, and land quality meet standards that guard against impacts to the environment or human health.

2.3. POLICY

- 2.3.1. This section identifies the key policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in [Appendix A](#) to this report. The applicant's Policy Accordance Tracker [\[REP7-010\]](#) details national and local policies.

NATIONAL POLICY STATEMENT: OVERARCHING NATIONAL POLICY STATEMENT FOR ENERGY (NPS EN-1)

- 2.3.2. NPSs set out government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that NPS EN-1 is relevant to the proposed development.
- 2.3.3. This NPS forms the primary policy context for this examination. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008.
- 2.3.4. NPS EN-1 sets out the need for new nationally significant electricity infrastructure and the critical national priority (CNP) for low carbon infrastructure, including new carbon capture and storage (CCS) infrastructure. It sets out general principles and generic impacts to be considered in considering applications for energy NSIPs.
- 2.3.5. NPS EN-1 sets out that the SoS should assess applications for development consent for infrastructure covered by the NPS on the basis that the government has demonstrated that there is an urgent need for those types of infrastructure. It confirms that the SoS has determined that substantial weight should be given to this need when considering applications for development consent under the PA2008 and that the SoS is not required to consider separately the specific contribution of any individual project to satisfying the need established in NPS EN-1 (3.2.6-3.2.8).
- 2.3.6. NPS EN-1 states (section 3.5) there is an urgent need for new CCS infrastructure to support the transition to a net zero economy and points out that the Climate Change Committee states that CCS is a necessity, not an option. To support the urgent need for new CCS infrastructure, it considers CCS technologies, pipelines and storage infrastructure to be CNP infrastructure. Section 4.2 of NPS EN-1 applies a policy presumption that, subject to any legal requirements (including under s104 of the PA2008), the urgent need for CNP Infrastructure, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the

mitigation hierarchy. The Glossary of NPS EN-1 defines the mitigation hierarchy as “a term to incorporate the avoid, reduce, mitigate, compensate process that applicants need to go through to protect the environment and biodiversity”.

- 2.3.7. It points out that the CNP policy does not create an additional or cumulative need case or weighting to that which is already outlined for each type of energy infrastructure. CNP policy applies following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy and as such is relevant during SoS decision making, specifically in reference to any residual impacts that have been identified.
- 2.3.8. It requires applicants to show how applications meets the requirements of NPS EN-1, applying the mitigation hierarchy, as well as any other legal and regulatory requirements making it clear that they must apply the mitigation hierarchy and demonstrate that it has been applied. They should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated and that set out how those residual impacts will be compensated for as far as possible (4.2.10-4.2.12).
- 2.3.9. Paragraph 4.2.16 states “As a result, the [SoS] will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances”.
- 2.3.10. The NPS makes it clear that seeking the compulsory acquisition or rights over land that land required to facilitate the development for mitigation and landscape enhancement may be part of an application (4.1.8).
- 2.3.11. Although the development would not combine power generation with heat capture, NPS EN-1’s approach (section 4.8) to combined heat and power has relevance to the development in recognising the efficiency and environmental benefits of heat capture and export particularly when supplying heat to district heating networks and industrial users.
- 2.3.12. NPS EN-1 includes policies for the planning issues (including the assessment of potential benefits, adverse impacts, and mitigation) and sets out policies for generic impacts. These are addressed in Chapter 3.
- 2.3.13. Further to 2.2.12 above, NPS EN-1 paragraph 4.12.9 states that the SoS should focus on whether the development itself is an acceptable use of the land and the impact of that use, rather than the control of processes, emissions or discharges themselves in relation to pollution control. Paragraph 4.12.10 goes on to confirm that the SoS 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 SoS should act to complement but not seek to duplicate them.
- 2.3.14. NPS EN-1 includes policy on Green Belt. The site is not within Green Belt. However, the site contains Metropolitan Open Land (MOL) and Policy G3 of The London Plan states that MOL is afforded the same status and level of protection as Green Belt. The approach set out in section 5.11 of NPS EN-1 is therefore pertinent to the consideration of this application. This is considered in more detail in section 3.10 below.

- 2.3.15. In relation to Habitats Regulations Assessment, NPS EN-1 includes the approach to the applicant's assessment at paragraphs 5.4.25-31 and SoS decision making at paragraph 5.4.49.

DRAFT REVISIONS TO NPS EN-1

- 2.3.16. On 24 April 2025 the Department for Energy Security and Net Zero published a consultation on revised draft National Policy Statements, including NPS EN-1. The ExA sought views from parties on this draft [\[PD-018\]](#) and any relevant responses have been taken into account in the ExA's considerations as appropriate.
- 2.3.17. An IP [\[REP6-053\]](#) pointed to the draft NPS policies relating to irreplaceable habitats including that energy development should not be allowed on them. However, the NPS EN-1 in force contains policies to avoid harming irreplaceable habitats and in any event no irreplaceable habitats¹¹ have been identified as being affected by the proposed development. Comments received on the simultaneously published draft revisions to NPS EN-3¹² are not relevant as the proposed development does not fall within the scope of the existing or draft NPS.
- 2.3.18. The applicant notes that the draft reinforces national policy support for decarbonisation of heat which supports their case that a Heat Transfer Station is a necessary component of the proposed development in justifying their land acquisition proposals [\[REP7-021\]](#).
- 2.3.19. Having taken all comments received into account, and noting the draft stage and status of the document and that at the time of writing this report the government have not yet published any response to the consultation exercise, the ExA considers that the consultation draft NPS EN-1 carries very limited weight. Its publication does not alter the status of the designated NPS EN-1 as set out in the PA2008.

OTHER NATIONAL POLICY AND GUIDANCE

- 2.3.20. Other important and relevant Government policy has been taken into account by the ExA, including the National Planning Policy Framework (NPPF). The NPPF, and the accompanying Planning Practice Guidance, set out the planning policies for England and how these are to be applied. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs.
- 2.3.21. Other key national policies and guidance are listed in Table A4 of [Appendix A](#).
- 2.3.22. In accordance with s104(2) of the PA2008, the ExA has had regard to compliance with other national policies and guidance considered to be important and relevant to the decision, but only to the extent that they are relevant to the Proposed Development. These policies are discussed as appropriate in more detail in Chapter 3 within 'The Principle of Development'.

¹¹ Those habitats are set out in the schedule to The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024.

¹² National Policy Statement for Renewable Energy Infrastructure.

LOCAL POLICY

- 2.3.23. The Development Plan includes The London Plan, 2021 and the Bexley Local Plan, 2023 (BLP).
- 2.3.24. The site lies within the area covered by the South-East Marine Plan (SEMP), an inshore area that the River Thames has a large influence over. The SEMP provides a policy framework to inform decision-making on what activities take place in the marine environment and how the marine environment is developed, protected and improved over a 20-year period.

2.4. LOCAL IMPACT REPORT

- 2.4.1. LBBC submitted a LIR into the examination at Deadline (D)1. LIR content has been considered through the examination and in this report. It must be considered during the decision by the SoS pursuant to PA2008 s104(2)(b). The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this report. Table A8 of [Appendix A](#) sets out a list of the issues raised in the LIR.
- 2.4.2. Amongst other matters, the LIR identifies local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Table A6 of [Appendix A](#) lists the individual local policies that are relevant to the proposed development. For an application proceeding under s104 of the PA2008, subsection (3) requires that the SoS must decide the application in accordance with any relevant NPS, except to the extent that the SoS is satisfied that one or more of the exceptions set out in subsections (4) to (8) applies (see 2.2.4 above). Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the SoS's decision-making.

2.5. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.5.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regs, the ExA determined that the proposed development was EIA development.
- 2.5.2. On 18 April 2023, the applicant submitted an [Environmental Impact Assessment Scoping Report](#) to the SoS under Regulation 10 of the EIA Regs in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion). On 26 May 2023 the Planning Inspectorate (PINS) provided that [Scoping Opinion](#).
- 2.5.3. Overall, the ExA considers that the ES, as supplemented with additional information during the examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regs.
- 2.5.4. The ExA considered that changes to the documentation, comprising the ES during the examination, together with the change requests (see Section 1.5 above) did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this report will summarise the environmental effects under relevant topic sections.

2.6. HABITATS REGULATIONS ASSESSMENT

- 2.6.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regs). The Habitats Regs were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.6.2. The proposed development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on a European site, namely the Epping Forest Special Area of Conservation (SAC), and hence is subject to a Habitats Regulations Assessment (HRA). The ES submitted with the application included an appendix (7-3) with Information to Inform Habitat Regulations Assessment [\[APP-090\]](#).
- 2.6.3. As is the convention, and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 4 of this report.

2.7. TRANSBOUNDARY EFFECTS

- 2.7.1. A transboundary screening [\[OD-004\]](#) under Regulation 32 of the EIA Regs was undertaken by PINS on behalf of the SoS on 26 May 2023 following the applicant's request for an EIA Scoping Opinion. PINS concluded that the proposed development was unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area (EEA) member state.
- 2.7.2. A second screening was published on 2 August 2024. Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility. In reaching this conclusion it was noted that the disposal of carbon dioxide (CO₂) offshore does not form part of the proposed development and development of offshore elements of the project, including off-site geological storage locations for the captured CO₂, is subject to separate consenting requirements.
- 2.7.3. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination. The ExA is satisfied, on the basis of the information provided by the applicant and Natural England's (NE) agreement that the correct sites had been considered in the HRA [\[REP1-038\]](#), [\[REP3-040\]](#), [\[REP5-045\]](#), that the proposed development would not have an LSE on European sites in any EEA States.

2.8. WATER FRAMEWORK DIRECTIVE ASSESSMENT

- 2.8.1. The Water Framework Regulations¹³ (WFD Regs) place a duty of the SoS to secure compliance with the Water Framework Directive (WFD) through exercise of their relevant functions, of which those under the PA2008 are not 'relevant functions' for this purpose. When deciding NSIP applications, the SoS will need to consider the potential effects of the proposed development on the ability of the UK to comply with the WFD, including (if applicable) the derogation provisions of Article 4.7. The ExA must report on these effects to ensure the SoS has sufficient information to decide

¹³ Water Environment Regulations 2017 (Water Framework Directive) (England and Wales).

whether the proposed development has such implications of the UK's obligations under the WFD.

- 2.8.2. The Applicant submitted a WFD Assessment with the application [\[REP6-027\]](#). Despite initially not considering that it satisfactorily demonstrated WFD compliance, the Environment Agency (EA) subsequently confirmed that compliance with the WFD from a marine water quality perspective was not in doubt, and they no longer had any objection to the grant of a DCO in that regard [\[REP5-043\]](#).

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured firstly to review the initial assessment of principal issues (IAP1) and explains how the issues identified there have been managed. It then examines matters of principle, including need and alternatives. It then addresses individual planning issues, set out in individual sections. The order in which these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA identifies the policy background, followed by a summary of the application as made, then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry little, moderate, great, or very great weight, for or against, the making of the Development Consent Order (DCO), or would carry neutral weight and consequently not affect the planning balance. These are summarised in Table 1 in Section 5.2.

THE PLANNING ISSUES IN THIS REPORT

3.1.3. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the IAP1 and were subject to written and oral questioning during the examination. These are the issues that the ExA has used to structure most of the following sections in this report which address each issue in turn. Bearing in mind matters considered through the examination a section of good design has also been added.

3.1.4. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, the ExA has varied the order of its consideration of issues arising from the IAP1. It should also be noted that the IAP1 is a high-level framework. The ExA has nevertheless had regard to all important relevant matters arising from submissions from IPs and has reported on these, if required, within each chapter below.

3.1.5. The planning issues considered in this report are as follows:

- Section 3.2: The principle of the development
- Section 3.3: Alternatives
- Section 3.4: Air Quality
- Section 3.5: Biodiversity
- Section 3.6: Climate Change
- Section 3.7: Historic Environment and Cultural Heritage
- Section 3.8: Water Environment and Flood Risk
- Section 3.9: Good Design
- Section 3.10: Metropolitan Open Land
- Section 3.11: Socio-economic effects
- Section 3.12: Townscape and Visual effects
- Section 3.13: Other Matters (including: geology, hydrogeology, soils, materials and waste; landside transport; major accidents and disasters; navigation on the River Thames and marine transport; noise and vibration; and cumulative effects)

3.1.6. It is clear from IP's RRs and WRs that there is considerable opposition to the Riverside 1 and Riverside 2 energy from waste (EFW) plants (in operation and

under construction respectively), and EFW as a waste disposal and power generation technology in principle. However, it is important to note that the proposed development is not for an EFW facility, it is for a carbon capture facility (CCF) to treat the emissions from those plants. National and local policy relating to the principle of EFW and waste treatment are therefore much less pertinent to the consideration of the proposed development. Issues relating to the principle of the existing and proposed Riverside EFW plants which have been granted consent are unlikely to be important and relevant to the Secretary of State's (SoS) decision and, unless relevant to the proposed development, it has not been necessary to consider them in this report.

3.2. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

- 3.2.1. For the reasons set out in Chapter 2, the ExA considers that the Overarching National Policy Statement for Energy (NPS EN-1) forms the primary policy context for the examination.
- 3.2.2. In addition to the issues arising from the IAPI, the ExA has also given consideration on an overarching basis to the principle of the development in terms of:
- need
 - conformity with designated National Policy Statement (NPS) policy
 - applicability of other NPS policy
 - applicability of other policy
 - applicability of legislation

Policy and legislative matters relevant to specific matters considered in the examination are considered the relevant sections below.

POLICY BACKGROUND

Need and NPS policy

- 3.2.3. NPS EN-1 states (section 3.5) that there is an urgent need for new Carbon Capture and Storage (CCS) infrastructure to support the transition to a net zero economy. Paragraphs 3.2.6 to 3.2.8 make it clear that the Secretary of State (SoS) should assess all applications for development consent for infrastructure types covered by the NPS on the basis that the government has demonstrated that there is a need which is urgent. Further, the SoS has determined that substantial weight should be given to this need when considering applications for development consent and the SoS is not required to consider separately the specific contribution of any individual project to satisfying the need established in NPS EN-1.
- 3.2.4. As there is no technology specific NPS for carbon capture, other NPSs are not pertinent to the consideration of the principle of the proposed development.
- 3.2.5. As the proposed development is not an energy project covered by PA2008 s15-s21 but is considered to be nationally significant CCS infrastructure, as is the case with the proposed development, NPS EN-1 states that the SoS should give substantial weight to the need established at paragraphs 3.5.1 to 3.5.8 of the NPS. That need includes, amongst other factors: the Net Zero Strategy's aim to use Carbon, Capture, Utilisation and Storage (CCUS) technology to capture and store 20-30MtCO₂ per year by 2030, requiring the timely development and deployment of CCS infrastructure; the UK having one of the largest potential carbon dioxide (CO₂)

storage capacities in Europe; and, the CCUS investor roadmap and CCUS supply chains roadmap setting out how government and industry can work together to harness the power of a strong, industrialised UK CCUS supply chain, while ensuring that the CCUS sector as a whole remains investible, cost effective and focused on delivery.

- 3.2.6. The applicant considers that the proposed development would be critical national priority (CNP) infrastructure as set out in NPS EN-1. However, CNP is dependant on the applicant demonstrating that the mitigation hierarchy has been applied as well as other legal and regulatory requirements. Therefore, an assessment of CNP will need to be carried out after the ExA's conclusions of the biodiversity and environmental effects, including measures adopted by the applicant to avoid, reduce, mitigate or compensate for any harms and what residual impacts remain.

Other policy

- 3.2.7. The relevance of national planning policy to the proposed development is set out at paragraph 2.3.19 above.
- 3.2.8. The London Plan (LP) Policy GG 6 requires those involved in planning and development to “seek to improve energy efficiency and support the move towards a low carbon circular economy, contributing towards London becoming a zero-carbon city by 2050.” LP Policy SI 2 requires major development to be net zero-carbon and LP Policy SI 9 seeks to safeguard existing waste sites and retain them in such a use, amongst other requirements. [\[REP7-010\]](#), [\[REP1-034\]](#)
- 3.2.9. Bexley Local Plan (BLP) Policy SP14 states that the Council will pursue sustainable development, including by supporting developments that achieve zero-carbon and demonstrate a commitment to drive down greenhouse gas emissions to net zero [\[REP7-010\]](#), [\[REP1-034\]](#).

Legislation

- 3.2.10. The Climate Change Act 2008 (as amended) (CCA2008) places a duty on the SoS ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline of net UK emissions of CO₂ for that year (in effect, ‘net zero’). The CCA2008 requires the SoS to set five yearly carbon budgets. The applicant's Planning Statement (section 4.4 provides a summary of the sixth carbon budget and other government strategies that support the CCA2008 target [\[REP6-004\]](#)

ISSUES CONSIDERED DURING THE EXAMINATION

Principle of a CCF

- 3.2.11. On the whole representations against the proposal did not object to the principle of capturing carbon from the existing and proposed EFW facilities; rather to the proposed location, CCF configuration and effects of the location, technology and specifications of the scheme proposed.
- 3.2.12. However, some representations did question the principle and effectiveness of CCS technology, for example referring to the relative performance or failure of existing or previous schemes including those in North America and Oceania and academic research on the subject. Examples included highlighting underperformance of CCS projects [\[REP1-047\]](#), [\[REP1-056\]](#) and reference to a Public Accounts Committee

report¹⁴ [REP-041] which the IP advised included identifying high risks of public investment in CCS and noting downgrading government CCS targets amongst other matters.

- 3.2.13. The applicant summarised their views on the need case in section 2 of their Closing Statement [REP7-021].

ExA's CONSIDERATION AND CONCLUSIONS

- 3.2.14. Neither the existing Riverside 1 or under construction Riverside 2 have or will have the means to capture carbon dioxide (CO₂) they will emit. Notwithstanding particular matters raised by the details of the location, configuration and specifications of the proposed development, there is broad support in national and local policy for the principle of a development that would reduce the carbon emissions from existing (and consented and under construction) development.
- 3.2.15. There is an urgent need for new CCS infrastructure such as that which would be delivered by the proposed development. It would help to de-carbonise the energy system and it would be a necessity, not an option. There is clear support in national legislation and policy for the principle of a CCF to significantly reduce CO₂ emissions from Riverside 1 and 2, for which there is similarly support in development plan policy. In satisfying this urgent need this carries very great weight in support of making the Order.
- 3.2.16. In accordance with paragraph 4.1.3 of NPS EN-1, the starting point is therefore a presumption in favour of granting development consent unless any more specific policies set out in the relevant NPS clearly indicates that consent should be refused and subject to the provisions in the PA2008. These policies and provisions are considered in detail in the following sections of the report.
- 3.2.17. Notwithstanding critiques and criticisms of the principle, performance and effectiveness of CCS projects and technologies in general, national policy is clear in its support for the technology in general and which includes the broad type of technology and approach proposed in the proposed development. Consequently, as set out in PA2008 s87 and s106 the ExA can disregard representations they consider relate to the merits of policy set out in an NPS, as can the SoS when deciding the application. It is therefore not necessary to refer to such matters further in this report unless there are matters pertinent to the particular development proposed and they are important and relevant to the SoS's decision.

3.3. ALTERNATIVES

INTRODUCTION

- 3.3.1. This chapter considers alternatives to the proposed development, including alternatives of location, size and configuration. A particular concern of many IPs was the siting of part of the CCF and associated works on land that is currently part of the CLNR.
- 3.3.2. There is a general requirement under Regulation 14(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs) to consider alternatives as part of the Environmental Impact Assessment (EIA)

¹⁴ Committee of Public Accounts - Eighth Report of Session 2024–25: Carbon Capture, Usage and Storage, HC 351, House of Commons, February 2025.

process. Schedule 4 of the EIA Regs requires an environmental statement (ES) to provide “A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects”.

- 3.3.3. Whether the siting, extent and configuration of the proposed development has been satisfactorily considered in light of the tests for proposed Compulsory Acquisition (CA) and related matters is considered in chapter 6 below.

POLICY BACKGROUND

- 3.3.4. National policy in NPS EN-1 recognises at paragraph 3.5.9 that alternatives to new CCS infrastructure for delivering net zero by 2050 are limited and CCS therefore has an essential role to play.
- 3.3.5. NPS EN-1 states that it “does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective.” (paragraph 4.3.9)
- 3.3.6. However, paragraph 4.3.15 goes on to state that applicants “...are obliged to include in their ES, information about the reasonable alternatives they have studied. This should include an indication of the main reasons for the applicant’s choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.”
- 3.3.7. Nevertheless, paragraph 4.3.24 points out that the SoS “...should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals.”
- 3.3.8. Paragraph 4.3.28 adds that “Alternative proposals which are vague or immature can be excluded on the grounds that they are not important and relevant to the [SoS’s] decision.” Paragraph 4.3.29 goes on to state that “...where an alternative is first put forward by a third party after an application has been made, the [SoS] may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the [SoS] should not necessarily expect the applicant to have assessed it.”

THE APPLICATION

- 3.3.9. The applicant’s assessment of alternatives is contained in ES chapter 3 [\[APP-052\]](#), supported by a Terrestrial Site Alternatives Report (TSAR) [\[REP6-031\]](#) and a Jetty Site Alternatives Report [\[APP-126\]](#). The former was later supplemented by an Addendum [\[AS-062\]](#) (see below).

Principle of a CCF

- 3.3.10. The applicant framed the ‘do nothing scenario’ as the continued operation of Riverside 1 and the under construction Riverside 2 energy from waste (EFW) plants, neither of which have, or would have, carbon capture technology. The

applicant estimates that together they would emit up to 1.5¹⁵ million tonnes (Mt) per annum (pa) of CO₂. They pointed out that this would be contrary to the approach in NPS EN-1 and that scenario was not considered further in the ES.

Development zones

3.3.11. The TSAR sets out the process the applicant carried out setting out project principles (similar to the design principles set out in the applicant's Design Principles and Design Code [\[REP5-009\]](#) and considering nine 'preliminary site parcels' for the siting of the CCF component (shown A to I on Figure 7 below). The TSAR assessed four broad zones for the proposed development (Figures 3-1 and 3-3 [\[APP-072\]](#)). A North Zone within the river to the north east of Riverside 1 and east of Middleton Jetty; an East Zone on an area currently occupied by two large storage and distribution buildings; a West Zone including parts of the CLNR and TWUL's sludge power station and; the preferred South Zone.

3.3.12. The TSAR set out a series of 'optioneering principles' to evaluate the different zones:

- Principle 1: Seek to avoid or minimise adverse impact to locally important biodiversity sites.
- Principle 2: Seek to avoid or minimise adverse impact to protected species.
- Principle 3: Seek to avoid or minimise the level of adverse impact on existing businesses/third party landowners.
- Principle 4: Seek to avoid or minimise land take within the Metropolitan Open Land (MOL) Accessible Open Land, and impacts on public rights of way (PRoW).
- Principle 5: Ease of required connections with the Riverside Campus¹⁶ and the Proposed Jetty.
- Principle 6: Seek to minimise engineering complexity and consequent cost.

Further, the site assessment process reported in the TSAR advised that it sought to maximise the use of land allocated as Strategic Industrial Locations (SIL) in the Bexley Local Plan, 2023 (BLP). It sought to reduce distances of flue gas, high pressure steam and condensate return between Riverside 1 and 2, and the proposed development.

¹⁵ It is noted that the up to 1.5Mt pa figure from ES Chapter 3 differs from the 1.6Mt pa figures larger cited elsewhere, although the ExA notes that these are approximate figures which include an assumption about the input and output of Riverside 2 which is not yet operational.

¹⁶ The name for the combined Riverside 1 and 2 EFW facility sites.

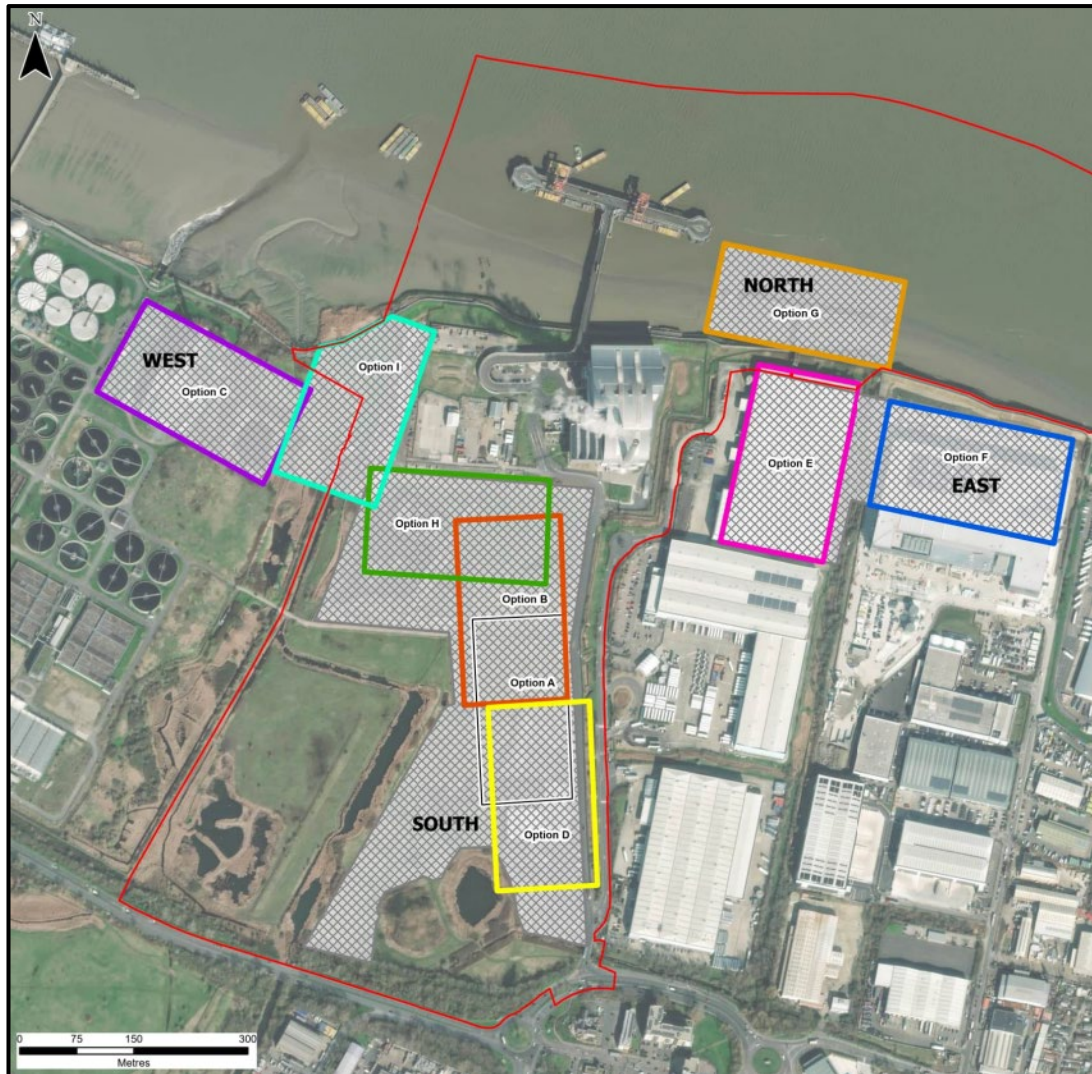


Figure 6: Terrestrial Sites Alternatives

(From Figure 3-1, page 1 [REP6-019])

- 3.3.13. Although avoiding the Erith Marshes Metropolitan Site of Importance for Nature Conservation (MSINC), the CLNR, MOL and existing businesses, the TSAR found the North Zone performed poorly against the optioneering principles. The reasons included extensive pipework over PRow, visibility from England Coastal Path, lack of homogenous area with Riverside Campus (split by PRow), substantial works to create land parcel within river, impact on the proposed and Middleton Jettys, navigational concerns and insufficient space to accommodate storage and ancillary elements.
- 3.3.14. The TSAR states that the East Zone would also avoid the MSINC, CLNR and MOL and its proximity to the proposed jetty would mean that it would have the lowest cost, excluding land. There are existing businesses whose removal would have a substantial adverse impact. It would be separated from the Riverside Campus by a PRow which would have extensive pipework crossing and prevent safe and secure access between the CCF and EFW facilities.
- 3.3.15. The West Zone explored in the TSAR would include land within the Crossness Water Treatment Works (CWTW), would be separated from the EFW facilities by a PRow and result in loss of areas of MSINC, CLNR and MOL. It could adversely affect the statutory undertaker at CWTW and would be unlikely to connect with the

proposed jetty and could entail impacts on drainage and the Great Breach Pumping Station.

- 3.3.16. The TSAR concluded that these zones performed poorly against the optioning principle and five more detailed options for the South Zone were considered. The preferred option was South Zone 1, which equates to the location and configuration with the proposed development. It was considered preferable relative to the other four south options in light of: the relative amounts of MSINC, CLNR and MOL that would be lost; accessibility advantages of its situation next to Norman Road; utilisation of the largest area of SIL; and contiguity with the Riverside sites with flue gas ducts situated along their boundary.

Layouts

- 3.3.17. The ES¹⁷ considered three alternative layouts for a CCF located to the south of the Riverside EFW plants; a diffuse layout, a compressed layout and one avoiding the Landsul Ltd and Munster Joinery (UK) Ltd (LMJ) site on Norman Road.
- 3.3.18. A diffuse layout would see the CCF spread out allowing for the retention of some existing ditches and east-west habitat corridors to be retained within the land for the Carbon Capture Facility. The applicant noted that this would mean that there would be no land available to provide significant buffer planting at the boundaries of the CCF including with the CLNR.
- 3.3.19. The ES considers that omitting LMJ land would lead to supporting plant being separated from the CCF, compromising operational efficiency, security and safety, and that there would have been insufficient space without continuing development into the Norman Road Field area.
- 3.3.20. The compressed layout was the selected option with the applicant noting that it would provide a contiguous plant layout, optimising opportunities for buffer planting and environmental mitigation.
- 3.3.21. The ES¹⁸ set out that design parameters and provisions of the dDCO would enable either a single or two plant design of the CCF. Four options for the routing of gas flues between Riverside 1 and 2 and the proposed CCF were considered in the ES¹⁹ with the preferred one being a route to the southwest around Riverside 2, with a section of the ducting located outside of the operational area of Riverside 2 within CLNR. These are illustrated on ES figure 3-4 [\[REP6-019\]](#). The ES notes that this would be the shortest option, would avoid the location of any infrastructure in the river and would not cross a public right of way with attendant safety concerns.

LCO₂ export

- 3.3.22. The option of transferring captured CO₂ by road was discounted given that the volume of LCO₂ would result in extensive road vehicle movements travelling a large distance to transfer onwards. Rail transfer was discounted in the light of lack of a rail link and the distance from existing rail lines. Transfer via the River Thames was selected as a preferred option.

¹⁷ Paragraphs 3.4.2 to 3.4.4.

¹⁸ Paragraphs 3.4.7 to 3.4.11.

¹⁹ Paragraphs 3.4.16 to 3.4.19.

Jetty

- 3.3.23. The Riverside EFW plants are, or will be, served by the existing Middleton Jetty where waste is unloaded from barges and transferred onto lorries taking the waste ashore. The ES²⁰ notes that a new facility down river of Middleton Jetty would lead to less interference with existing vessels and operations, would not require alteration or extension of Middleton Jetty nor other infrastructure, and could be purpose designed for the transfer of LCO₂ to vessels. ES Figure 3-2 shows options considered [REP6-019].
- 3.3.24. Although a 'jettyless' option was considered, the preferred option is the construction of a new jetty linked to the CCF by pipework to load LCO₂ directly onto vessels for onwards transport to storage locations. The main options are whether or not the existing former Belvedere Power Station Jetty (FBPSJ) would be retained or removed in the construction of a new jetty with both options kept open in the dDCO. ES Figure 3-5 illustrates the options in the vicinity of the FBPSJ [REP6-019].

Technologies

- 3.3.25. The ES [APP-052] states that an amine solvent based option was selected due to the number of successfully operational plants utilising the process, availability and number of established technology providers, and the benefits of reduced utilities consumption because drawing power and steam from the Riverside facilities would reduce the power they generate.

Other options

- 3.3.26. The ES [APP-052] also considered alternatives to water supply and discharge, construction compound locations, mitigation and enhancement, and construction and operational transport routes.

ISSUES CONSIDERED DURING THE EXAMINATION

Technology and performance

- 3.3.27. A number of IP's raised doubts that the proposed development would achieve the rates of carbon capture predicted by the applicant. These included SCNR who contended that the Best Available Techniques (BAT) would not necessarily guarantee the 95% carbon capture proposed and also does not include other emissions that the project would generate from operations such as construction, operation, transport and storage of CO₂, and decommissioning [REP7-032].
- 3.3.28. SCNR point to the applicant's reference to EA guidance in support of the applicant's position that the mechanism for achieving a 95% carbon capture rate would be through the Environmental Permitting system. SCNR state that this is not the same as a guarantee that the scheme would achieve this. [REP2-031]
- 3.3.29. An issue highlighted by an IP was the potential difference between a consistent feedstock in existing projects (for example CCS associated with a power station using single, homogenous fuel type) and that proposed where the feedstock is from the EFW station(s). They went on to point out that other projects referred to in the press are pilot schemes which they consider should indicate that the proposal

²⁰ Paragraphs 3.3.3 to 3.3.5

should be scaled down, albeit that the scheme referred to would appear to be 'sea carbon capture' which would be distinct from that proposed. [\[REP6-054\]](#)

- 3.3.30. Another IP notes that another proposed scheme in Scandinavia²¹ would use Hot Potassium Carbonate rather than amine based products for the process; opining that were that technology adopted at Cory DP it may lessen the amount of land and energy required as well as avoiding potential harm caused by amine use. That scheme would also store CO₂ in tanks on or adjacent to an export pier within a waterway [\[REP6-052\]](#). They also pointed to a scheme in the Netherlands where CO₂ is or would be stored directly on barges, which they contended if adopted at Cory DP might mean space required for onsite CO₂ storage could be avoided.
- 3.3.31. The applicant explained in the ES why an amine based solvent (ABS) had been selected over others [\[APP-052\]](#). Other solvent options considered were a Chilled Ammonia Process (CAP) and a Hot Potassium Carbonate (HPC). CAP was discounted due to an increased risk that it may not achieve the desired levels of CO₂ capture due to it not having been proved at the scale of the proposed scheme or selected for other commercial scale schemes being developed. HPC potentially has fewer emissions and waste streams but had not been proven at commercial scale in post-combustion capture such as that proposed. HPC had previously been used in pre-combustion capture in hydrogen and ammonia production facilities.
- 3.3.32. The applicant advised that the amount of power and steam required to be diverted from Riverside 1 and 2 to run the CCF was a primary requirement in consideration of alternatives as this reduces the power generated in the EFW plants with less steam available. The applicant advised that ABS has lower utilities consumption than HPC and produces spent liquid solvent waste, with amine degradation products emitted within the treated flue gas. Spent solvent waste would be contained, stored on site then disposed off site which is not considered to pose an environmental risk unless there were a loss of containment.
- 3.3.33. ABS was selected as the preferred option due to the reduced utilities consumption, the number of successfully operational plants and that there are multiple, established technology providers for that process.

Development zones

- 3.3.34. Many IPs objected to the proposed development in respect of the proposed option where the CCF would be partly constructed on the East and Stable Paddocks components of the CLNR with ductwork extending onto parts of the West Paddock and Seawall Field also in the CLNR. IPs felt that other options, particularly those where most or all of the proposed development would be constructed on SIL designations were preferable (essentially the East Zone option) and that the applicant had not demonstrated that that could not have been a more preferable option.
- 3.3.35. The ExA asked a series of questions at ISH1 about alternatives particularly in relation to understanding the approach and reasoning leading to the location and configuration of the proposed development and why other options, including particularly the East Zone, were not pursued [\[EV5-001\]](#), [\[EV5-002\]](#), [\[EV5-004\]](#). The applicant responded orally at the event and also afterwards in writing [\[REP1-025\]](#), including detailed information setting out more information about the TSAR

²¹ Stockholm Exergi.

process²², details about the requirements influencing flue gas ducts running between the EFW facilities and the proposed CCF²³, further information about connectivity between the EFW facilities and an East Zone option²⁴ and clarification of the economic considerations taken into account in the optioneering and site selection process²⁵ [\[REP1-026\]](#).

- 3.3.36. An IP referred to information illustrating the relationship of CCS scheme's capacity and land take, concluding that the proposed development's footprint would be excessive compared to other schemes of a similar capacity [\[REP1-065\]](#). Amongst other factors the applicant responded that a comparison with such generic indicative footprints could not be made with the proposed development which was based on detailed surveys and included provision for heat transfer station and a water management area [\[REP2-019\]](#).
- 3.3.37. SCNR contend that the applicant's reliance of following Project Objectives and Optioneering Principles is flawed and that planning policy priorities should have dictated the approach taken which would have indicated that a location in the East Zone would be preferable. They provide a suggested alternative route for the PRoW to illustrate how a contiguous site might be achieved to the east of Riverside 1. [\[REP1-047\]](#), [\[REP2-031\]](#), [\[REP3-047\]](#), [\[REP5-052\]](#), [\[REP7-032\]](#).
- 3.3.38. LBBC confirmed their position that appropriate methods had been used for site optioneering and that all reasonable alternatives had been assessed [\[AS-096\]](#).

Layouts

- 3.3.39. LMJ contend that the development could proceed with a smaller footprint, providing alternative layouts and expert opinion to support their position. Although their argument focused on such a smaller footprint not requiring the acquisition of their land (considered in Chapter 6 below) they suggested that a smaller footprint could also avoid the need to develop parts of the CLNR and would mean less land take for an option that occupied SIL land to the east of the Riverside Campus. [\[REP1-059\]](#), [\[REP3-045\]](#), [\[REP4-042\]](#), [\[REP5-051\]](#), [\[REP7-028\]](#)
- 3.3.40. The applicant contested this and the matter was primarily raised in respect of justification or otherwise for the compulsory acquisition of the LMJ site, this is considered further in chapter 6 below.

Other options

- 3.3.41. Considerations of note relating to the options of retaining or removing the FBPSJ include the effects of removal on biodiversity and heritage. Effects on those matters are considered in more detail in sections 3.4 and 3.7.

EXA'S FINDINGS

Applicant's description of the reasonable alternatives

- 3.3.42. Notwithstanding the views of IPs and APs on the merits of the various locational and configuration alternatives considered by the applicant, the ExA is satisfied that the

²² Written Summary of the Applicant's Oral Submissions at ISH1, Appendix B: Terrestrial Site Assessment Process Overview.

²³ *Ibid.*, Appendix C: Flue Gas Ductwork Note.

²⁴ *Ibid.*, Appendix D: East Zone Connectivity Note.

²⁵ *Ibid.*, Appendix E - Economics Considerations Approach Note.

ES provides an adequate description of the alternatives studied and sufficient information explaining the reasons the preferred options were selected.

Principle of a CCF

- 3.3.43. Some IPs have objected to the principle of the project in terms of the success, social and economic value, safety and performance of CCS technologies and previous projects, including where they cited examples of large scale CCS that they advise have underperformed or failed. For the reasons set out at 3.2.17 above these do not carry material weight against the development being put forward in this case.
- 3.3.44. As emphasised in NPS EN1, there is an urgent need for new CCS infrastructure. Neither Riverside 1 currently and in the future, nor Riverside 2 when operational, has, or would have, a mechanism nor requirement in place to capture their CO₂ emissions.

Development zones and layouts

- 3.3.45. Given that optioneering principle 1 is to seek to avoid or minimise adverse impact to locally important biodiversity sites it is understandable that many IPs may have preferred an option would result in the loss of parts of the CLNR. Notwithstanding that some discounted options would have had a greater land take of CLNR, those principles are not weighted nor necessarily prioritised, and the applicant has provided an explanation in the ES and in response to questioning about their approach.
- 3.3.46. Whilst there remain some reservations about the applicant's discounting of potential East Zone options in light of whether connectivity issues and potential conflicts with public footpaths could be more straightforward to overcome than they suggest, ultimately it is for the applicant to take all the factors into account in designing the scheme for which development consent has been applied.

Technologies

- 3.3.47. Whilst other approaches were referenced by IPs objecting to the scheme no substantive and persuasive evidence was put forward to suggest that an alternative technology would necessarily be more appropriate and in any event the proposed development has been designed on the basis of the technology solution selected.

CONCLUSIONS

- 3.3.48. During the examination, and in particular at ISH1, the options and alternatives, especially those relating to the location and configuration of the proposed development, were examined in some depth and robustly. Many IPs expressed a preference for alternative siting and configurations that had been considered by the applicant in their assessment of alternatives but were not selected as the option for which the applicant is seeking development consent.
- 3.3.49. It may well be that some aspects of different alternatives may have less or more harmful effects in respect of particular planning matters than that proposed. Some aspects of CCS schemes elsewhere may on the surface appear to offer more favourable alternatives to particular aspects of the scheme. However, it is not the purpose of the examination to determine the suitability of one option over another, nor to recommend or select a particular alternative from a range of those considered, irrespective of whether or not they may have different effects from that

applied for. Rather, the examination is to consider the proposed development sought by the applicant, and the suitability or otherwise of that particular scheme considered through the examination of the respective planning merits of the proposed development put forward.

- 3.3.50. There may be some shortcomings in the rationale behind the applicant selecting certain aspects of locational options over others. However, should the proposed development give rise to negative effects which may in part arise from the choice of location or configuration, the fact that arguably less harmful options were not selected or pursued is not in itself a reason to refuse permission as the proposal needs to be considered on its own planning merits and the effects of the scheme under consideration.
- 3.3.51. Notwithstanding the merits or otherwise of the various locational and configuration alternatives considered by the applicant and the option selected, the ExA considers that the applicant has satisfied section 2 of Schedule 4 of the EIA Regs through the description, indication of main reasons for selecting the chosen option and comparison of environmental effects.
- 3.3.52. Bearing this in mind, NPS EN-1 paragraph 4.3.24 points out that the SoS "...should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals."
- 3.3.53. The ExA considers that the applicant has satisfied the provisions of NPS EN-1 in terms of the description, investigation of alternatives and reasoning for the proposed options.

3.4. AIR QUALITY

INTRODUCTION

- 3.4.1. This section considers air quality effects of the proposed development. Specific issues relating to potential air quality effects, including eutrophication²⁶, on internationally designated sites and Sites of Special Scientific Interest (SSSI) are considered in Chapter 4 and section 3.5 respectively.
- 3.4.2. Some representations from IPs raised concerns about emissions from the existing Riverside 1 and consented and under construction Riverside 2 EFW facilities. However, as either existing or consented operations, any such existing effects are outside the scope of this examination and would, in any event, be subject to their respective environmental permitting controls.

POLICY BACKGROUND

- 3.4.3. Section 5.2 of NPS EN- sets out what applicants should assess and how the SoS should take air quality matters into account in decision making.
- 3.4.4. Section 5.2.5 of NPS EN-1 notes that operational emissions from combustion plants are controlled through the separate process of Environmental Permits (from the EA). It states that the EA will require the exhaust stack height to be optimised in relation to impact on air quality. Consequently it advises that the SoS need not be

²⁶ The gradual increase in concentration of nutrients in an ecosystem.

concerned with the exhaust stack height optimisation process in relation to air emissions.

- 3.4.5. The National Planning Policy Framework (NPPF) notes²⁷ that opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. Similar to NPS EN-1 (see paragraph 2.3.13 above), the NPPF points out²⁸ that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions subject to separate pollution control regimes and that it should be assumed that such regimes will operate effectively.
- 3.4.6. The South-East Inshore Marine Plan (SEMP) Policy SE-AIR-1 requires proposals' direct and indirect impacts on local air quality and GHG emissions be assessed and that any likely increases in air pollution should, in order of preference be avoided, minimised or mitigated [\[REP7-010\]](#).
- 3.4.7. LP Policies GC3 and SI 1 together, and amongst other criteria, require air quality impacts to be assessed, show how proposals will at least be air quality neutral, seek to improve Londoners' health and reduce health inequalities, including seeking to improve London's air quality, reduce public exposure to poor air quality and minimise inequalities to air pollution exposure. BLP Policy DP16 requires major development proposals to assess their health impact and Policy SP10 seeks to maintain and manage the highway network, in particular to improve air quality, amongst other criteria. BLP Policy SP8 seeks, amongst other criteria, opportunities to support the functions and drivers for green infrastructure, such as using good urban design to reduce air pollution and integrating green infrastructure into development where there are opportunities to mitigate poor air quality. [\[REP1-034\]](#), [\[REP7-010\]](#)

THE APPLICATION

- 3.4.8. Chapter 5 of the ES [\[REP6-010\]](#) sets out the applicant's consideration of the effects of the proposed development on air quality. This was supported by an Air Quality Positive Statement in ES Appendix 5-4 [\[REP6-024\]](#) along with Detailed Model Pollutant Results in ES Appendix 5-3 [\[REP6-023\]](#) and Construction and Operational Phase Assessments in ES Appendices 5-1 [\[APP-077\]](#) and 5-2 [\[REP6-022\]](#) respectively. The assessments considered emissions from the operation of the two Riverside EFW plants before and after the CCF plant would be operational along with emissions from marine vessels and backup generators.
- 3.4.1. Broadly, there would be the potential for a worsening of air quality during the construction phase arising from the emissions from construction traffic and plant²⁹, and dust and similar particulate matter from the construction process itself. During operation, any pollutants that would have been emitted from the stacks of Riverside 1 and 2 as a result of waste incineration would pass through the CO₂ capture process. This would have the potential to alter the concentrations of such pollutants when emitted from the proposed stack(s). In addition, there would be the potential for pollutants introduced by the CO₂ capture process, such as amines and aldehydes, to be emitted. Emissions from proposed back-up power generators and

²⁷ Paragraph 199.

²⁸ Paragraph 201.

²⁹ Including Non-Road Mobile Machinery.

from ships providing the onward transport of LCO₂ would also affect air quality.
[\[REP6-010\]](#)

Construction and de-commissioning

- 3.4.2. Amongst the objectives of the Framework Construction Traffic Management Plan (FCTMP) [\[REP5-015\]](#) are to minimise emissions from construction vehicle movements. It also makes provisions for a Construction Workforce Travel Plan (CWTP) that would encourage sustainable travel patterns which in turn may help to reduce emissions from private vehicles.
- 3.4.3. The FCTMP sets out an approach to minimise dust from the site being spread by construction traffic and references the Outline Code of Construction Practice (CoCP), the full version of which is intended to have a dust management plan as an appendix [\[REP5-013\]](#). The Outline CoCP sets out detailed measures to reduce potential adverse effects in air quality on sensitive receptors through management provisions and requirements that would seek to minimise dust, plant and vehicle emissions during construction
- 3.4.4. Requirement (R) 7 of the dDCO [\[REP7-003\]](#) would require the approval of the CoCP (substantially in accordance with the outline version) and specifies its scope. dDCO R 9 would require the approval of a Construction Traffic Management plan substantially according with the FCTMP and including a CWTP. The FCTMP and outline CoCP would be certified documents under Schedule 13 of the dDCO. Condition 9 of the Deemed Marine Licence (DML), in Schedule 11 of the dDCO, would also require all construction licensed activities to be carried out in accordance with the CoCP approved under R7 where applicable.
- 3.4.5. R23 and R24 of the dDCO would require approval of a decommissioning environmental management plan (DEMP) and a decommissioning traffic management plan (DTMP) respectively. They would have the potential to influence activities which could produce emissions from demolition or removal of any plant and traffic necessary to carry it out.
- 3.4.6. Table 5-49 in ES Chapter 5 [\[REP6-010\]](#) notes that all anticipated residual effects, with mitigation in place where appropriate, would be Negligible (Not Significant) for the construction phase.

Operation

- 3.4.7. The intention is that LCO₂ captured by the proposed development would be transported for final storage by boat and these marine vessels would produce emissions primarily arising from their propulsion methods. Diesel-powered backup power generator(s) are proposed although not anticipated to be used for more than 50 hours per annum (pa).
- 3.4.8. The height, size and disposition of the proposed emission stack(s) will influence the dispersion and concentration of emissions. Consequently, the design of those elements will be an important component in minimising any adverse effects on air quality from emissions from the CCF plant. This embedded mitigation [\[REP1-010\]](#) would include:
- a 100m minimum offset distance between the proposed absorber column(s) and stack(s) and Riverside 1 and 2 'housing units'
 - a continuous emissions monitoring system for flue gas from absorber column(s) and stack(s)

- post carbon capture exhaust gases are a minimum 80°C
- LCO₂ transport vessels will meet (mandatory) International Maritime Organisation Tier III requirements for NO_x emissions and
- meeting specified emission limit value for ammonia in flue gases from the CCF.

These measures would be secured by way of the environmental permit, IMO requirements and provisions in the dDCO including design parameters in Schedule 16, dDCO R4 (detailed design) and R14 (operational environmental management plan), both of which specify the above column and stack offset set out in the mitigation schedule (itself a certified document) for which details must be included.

- 3.4.9. In particular the design parameters specified in Schedule 16 of the dDCO specify a maximum number and height of stack(s) as well as include maximum internal diameters of the emission stack(s) and minimum vertical distances between the top of the stack(s) with absorber column(s) and development platform. R4 provides for the approval of the detailed design of elements of the proposed development including Work No 1 which includes the stack(s).
- 3.4.10. Table 5-49 in ES Chapter 5 [\[REP6-010\]](#) notes that changes to emissions of SO₂, nitrosamines, nitramines and aldehydes at the Riverside Campus as a result of the CCF would be Slight Adverse (Not Significant). It concluded all other residual effects, including emission from marine vessels and backup power generators, as being Negligible (Not Significant). Nevertheless, taking the effects of those particular pollutants into account, the ES concluded that the overall 'full proposed scheme air quality impact' would be Slight Adverse (Not Significant).

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.4.11. In response to representations by the Greater London Authority (GLA) [\[RR-077\]](#), [\[REP1-072\]](#) the applicant produced, and subsequently, revised an Air Quality Neutral Statement [\[REP3-032\]](#). The GLA agreed with the applicant that this demonstrated that with regard to both building and transport emissions that the proposed development would meet 'air quality neutral' requirements [\[REP7-011\]](#).
- 3.4.12. Noting that the EA would be the regulator and therefore that their comments were subject to agreement and confirmation with the EA, LBBC note that "... the controls set out within the draft DCO, both articles and requirements, in relation to Air Quality, would be agreed" [\[REP5-019\]](#).
- 3.4.13. Natural England (NE) raised concerns about air quality effects, particularly in respect of the Epping Forest Special Area of Conservation (SAC) and the Inner Thames Marshes SSSI (these aspects of air quality are considered further in Chapter 4 and section 3.5 below).
- 3.4.14. By the close of the examination the applicant and NE had agreed most matters that had been in discussion. However, it remained that NE did not agree with the terminology the applicant had used to define the baseline and future baseline situations [\[REP6-035\]](#). NE did not accept that the impacts of the proposed development should be assessed against a baseline where the Riverside 2 EFW plant would be in operation and considered that the baseline scenario should be the current state of the environment as set out in the EIA Regs; that is with only Riverside 1 in operation [\[REP5-045\]](#). NE considered that the scenario with both Riverside 1 and 2 operational should be considered as an alternative scenario should the proposed development not proceed, and as part of partial in-combination or cumulative assessment.

- 3.4.15. Nevertheless, NE advised [\[REP5-045\]](#) that “despite the difference in opinion, NE recognises that the applicant has undertaken the assessment requested, and considered impacts from the carbon capture, R1 and R2³⁰ separately..., with the “with proposed scheme” information (both CC³¹ stacks and marine combined) ... comprising the PC³² of the proposed development alone.” Consequently, despite this disagreement, NE agreed with the outcomes and findings of ES chapter 5 [\[REP6-035\]](#).

Design parameters of stack(s)

- 3.4.16. The ExA sought clarification (ExQ2.8.6 [\[PD-014\]](#)) from the applicant about how the internal stack diameter(s) would be controlled with the DCO given that the assumptions and findings of the ES were based on particular dimensions. The internal diameter affects the velocity of the emissions plume from the stack(s) and the rate at which it cools, which in turn affects the dispersion of plume. If not specified there could be a risk that an alternative dimension might be approved under detailed design proposals which could mean the effects could be different to that assessed in the ES. In response, the applicant added the maximum internal stack diameters to reflect what had been assessed in the ES to Schedule 16 of the dDCO [\[REP5-033\]](#), [\[REP7-003\]](#). dDCO R14 would require approval of an Operational Environmental Management Plan (OEMP) which would include details of maintenance procedures for particular items set out in the mitigation schedule, [\[REP1-010\]](#), including minimum exhaust temperature, emission limit for ammonia and provisions relating to backup generators.

Amine emissions

- 3.4.17. Some IPs objected on the basis of the potential health effects of emissions, including [\[REP2-033\]](#) which cited articles referring to health effects including predictions that ammonia emissions from amine-based carbon capture systems at a rate typical of current pilot plants would create a significant increase in PM_{2.5} concentrations. However, some of the articles reported related to emissions from EFW plants.
- 3.4.18. Some concerns were raised by IPs about the potential for carcinogenic effects on human health from amine solvents proposed to be used in the process that may be released in emissions, including from LBBC [\[RR-124\]](#).
- 3.4.19. For the avoidance of doubt the ExA sought to clarify what mechanisms would control the use of amine products (ExQ1.0.1.8 [\[PD-007\]](#)). The EA [\[REP3-037\]](#) confirmed that the environmental permit would control emissions of the amine solvent and its degradation products, including specifying relevant emission limits. The EA further explained that the environmental permitting process would include an assessment of the applicant’s emission prevention or minimisation techniques and modelled impacts. The EA confirmed that they will not issue a permit if the proposal could have a significant impact on the environment or human health and that there would be no need to duplicate any controls in the DCO.

³⁰ Riverside 1 and 2.

³¹ Carbon capture.

³² Process contribution, defined by the applicant in [\[REP4-033\]](#) (paragraph 1.2.2) as the contribution of the Riverside Campus to ground level pollutant concentrations and deposition.

Environment Permit

- 3.4.20. In accordance with NPS EN-1, the ExA has assumed that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced.
- 3.4.21. NPS EN-1 paragraph 4.12.8 encourages applicants to submit applications for Environmental Permits and other consents at the same time as applying for development consent, wherever possible. This is supported by advice³³ encouraging such ‘parallel tracking’ with a DCO application and aligned with it where a permit or licence is critical to the operation of the proposed development especially where the proposal would be using novel technology. The EA had advised the ExA that although they had received a pre-application request from the applicant, they had requested further details but had no response at the time the examination commenced [REP1-035].
- 3.4.22. The ExA sought an update from the applicant at ISH2 [ENV8-006]. The applicant advised that they had not yet made an application for a permit as they had not selected a technology provider who would inform the detailed technology specification which would be the information the EA would require. The applicant subsequently advised [REP4-035] that they are confident that an environmental permit will be secured for the proposed development. Nevertheless, there was no indication that an application had been made by the close of the examination.

Emissions from back-up generators

- 3.4.23. LBBC raised the matter of backup power generators, the locations of which had not been specified and which they considered should be situated at least 25m from CLNR to avoid or minimise any adverse effects from exhaust emissions when such generators were in use [REP1-034].
- 3.4.24. Although the applicant advised that the ES concluded effects would not be significant as they were anticipated to be used for less than 50 hours pa [REP2-019], the Design Principles and Design Code (DPDC) were revised³⁴ [REP5-009] following ExQ1.1.0.1 [PD-007] and ExQ2.1.1 [PD-014]. SCNR raised concerns [REP3-047] to the phrasing “...as far as practicable...” in the DPDC such that there would remain a prospect that generators could be situated closer with attendant noise and emissions effects on the CLNR. The applicant confirmed LBBC’s agreement to the approach and that the phrase meant where able to be done or put into action, providing a level of flexibility, adding that the backup generators would be likely to be mobile [REP4-033].

EXA’S FINDINGS AND CONCLUSIONS

Environmental permitting

- 3.4.25. Given the relatively novel nature of the technology proposed and in light of NPS EN-1 and government advice, applying for the environmental permit from the EA in parallel with the DCO was advisable. Nevertheless, the ExA appreciates the applicant’s position that, not having appointed a technical specialist firm at this

³³ [Nationally Significant Infrastructure Projects - Advice on working with public bodies in the infrastructure planning process - Annex D: Environment Agency.](#)

³⁴ “DP_PL 1.11 Provide separation between CCF back-up generators and the [CLNR] boundary to as far as practicable reduce the impact of noise and emissions...” and “DC_CCF 1.9 Allow for a minimum 25m offset between back-up generators and the [CLNR...]”,

stage, a permit application may have been premature if they would have been unable to provide the level of detail on environmental permitting matters that the EA would expect.

3.4.26. Based on representations made at the examination, there is no indication that the absence of this process having commenced has adversely affected the understanding and examination of the planning merits or otherwise of the dDCO. NPS EN-1 points out at paragraph 4.12.16 that the SoS 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. None of the representations have given the ExA reason to believe that the permit would not subsequently be granted.

3.4.27. Therefore, whilst the uncertainty is undesirable, the situation is understandable and does not weigh against the proposed development.

Operational effects

3.4.28. In light of the above, the ExA is satisfied that the combination of appropriate pollution control measures secured through an Environmental Permit, IMO requires regulating emission from shipping and the rDCO specified parameters and requirements, in particular R4 requiring approval of detailed design and R14 requiring an OEMP, would together ensure that adverse effects on air quality would be minimised.

Construction and decommissioning

3.4.29. The approach for controls of dust and traffic emissions in the CoCP and CTMP, secured through R7 and R9 of the rDCO, would be satisfactory to provide a framework for limiting adverse effects and for the planning authority to take action should the plans not be adhered to during the construction phase. The ExA is satisfied that the rDCO would provide an appropriate mechanism to control activities that may affect air quality during the decommissioning phase through rDCO R23 and R24 which require approval of and adherence to a DEMP and DTMP respectively.

Parameters

3.4.30. The ExA is satisfied that the parameters as set out in Schedule 16 of the rDCO would ensure that the stack parameters, including the stack diameters, would reflect those assessed in the ES.

Back-up generators

3.4.31. Notwithstanding SCNR's reservations about the lack of an absolute minimum set back distance in the DPDC, taking a proportionate approach given the back-up nature of the generators and their anticipated likely duration of use, the ExA is satisfied that the principles set out and the securing of an OEMP by rDCO R14 would ensure that adverse air quality effects on the users of the CLNR would be minimised.

Conclusions

3.4.32. The ExA has assumed that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced. The ExA is satisfied that the air quality assessment undertaken by the applicant adequately assesses impacts on air quality.

- 3.4.33. The ExA is satisfied, subject to the imposition of appropriate requirements in the rDCO, that no significant effects on air quality, including on human receptors, are likely to arise in the construction, operation or decommissioning phases. The ExA considers residual impacts related to construction, operation and decommissioning activities, including from road and marine traffic, can be effectively managed through embedded mitigation measures, including the Design Parameters specified in rDCO Schedule 16, condition 9 of the DML in rDCO Schedule 13, and the mitigation measures secured in DCO: R4, detailed design; R7, CoCP; R9, CTMP; R14, OEMP; R23, DEMP; and, R24, DTMP.
- 3.4.34. The ExA considers that the requirements of NPS EN-1 would be met. However, given that there would be some, albeit minor, adverse effects on air quality from some pollutants that would be emitted, this carries little weight against the granting of the DCO.

3.5. BIODIVERSITY

INTRODUCTION

- 3.5.1. This section considers the effects of the proposed development on biodiversity and the natural environment. It includes effects on protected species and consideration of sites of national, regional and local importance. The effects on internationally important sites in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regs) are separately considered in Chapter 4, although there are some linkages with the content of this section. The implications of the proposed development in light of the Water Environment Regulations (Water Framework Directive) (England and Wales) 2017 (WFD Regs) are considered in Section 3.8 below.

POLICY BACKGROUND

NPS EN-1

- 3.5.2. NPS EN-1 sets out that projects should not only avoid, mitigate and compensate environmental and biodiversity harms following the mitigation hierarchy, but also consider opportunities to leave the natural environment in a measurably better state than beforehand (4.6.1-2). Although biodiversity net gain (BNG) is not currently mandatory for NSIPs, it states at paragraph 4.6.10 that “biodiversity net gain should be applied after compliance with the mitigation hierarchy and does not change or replace existing environmental obligations...”, and that it can be delivered on or off-site, in the latter case in a manner that best contributes to the achievement of wider strategic environmental outcomes (4.6.12).
- 3.5.3. Paragraph 5.3.7 states that development should aim to avoid significant harm to biodiversity and geological conservation interests. Paragraph 5.3.8 states that the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
- 3.5.4. Paragraph 5.4.12 sets out that sites of regional and local biodiversity and geological interest (including Local Nature Reserves and Local Wildlife Sites) “are areas of substantive nature conservation value”, contributing to ecological networks and nature’s recovery and providing benefits including public access, climate mitigation and helping to tackle air pollution. Paragraph 5.4.13 goes on to state that national planning policy expects plans to identify and map local wildlife sites (LWSs), and to

include policies that not only secure their protection from harm or loss but also help to enhance them and their connection to wider ecological networks.

- 3.5.5. Paragraph 5.3.4 states that the applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Paragraphs 5.3.15 and 5.3.19 state that the SoS should maximise opportunities for building-in beneficial biodiversity or geological features, using requirements or planning obligations where appropriate.
- 3.5.6. Paragraph 5.4.12 states: “As a general principle, and subject to the specific policies below, development should, in line with the mitigation hierarchy, aim to avoid significant harm to biodiversity and geological conservation interests, including through consideration of reasonable alternatives (as set out in Section 4.3 above). Where significant harm cannot be avoided, impacts should be mitigated and as a last resort, appropriate compensation measures should be sought.”
- 3.5.7. Development which is likely to have an adverse effect on a Site of Special Scientific Interest (SSSI) should not normally be permitted, except where benefits of the development clearly outweigh both its likely impact on the features of the SSSI and any broader impacts on the national network of SSSIs (5.4.8).
- 3.5.8. Paragraph 5.4.52 states that the SoS should give due consideration to regional or local nature conservation designations, but that given the need for new nationally significant infrastructure, these designations should not be used in themselves to refuse development consent.
- 3.5.9. As noted at paragraph 5.4.4, sites identified by international conventions have the highest level of biodiversity protection and implications are considered under the Habitats Regs. This is dealt with in Chapter 4 below.

South East Inshore Marine Plan (SEMP)

- 3.5.10. SEMP policy codes SE-BIO-1, -2 and -3 together support schemes that seek to enhance the distribution of priority habitats and species, native species adaptation, connectivity or migration, and conserve, restore or enhance coastal habitats. Conversely, they require proposals which would have significant adverse impacts to demonstrate adherence to a mitigation hierarchy. [\[REP7-010\]](#)

Development plan

- 3.5.11. Development plan policies seeking to protect and enhance biodiversity and the natural environment include LP Policy G6, section A of which requires that Sites of Importance for Nature Conservation SINC should be protected. Section C states: “Where harm to a SINC is unavoidable, and where the benefits of the development proposal clearly outweigh the impacts on biodiversity, the following mitigation hierarchy should be applied to minimise development impacts: 1) avoid damaging the significant ecological features of the site; 2) minimise the overall spatial impact and mitigate it by improving the quality or management of the rest of the site; 3) deliver off-site compensation of better biodiversity value”. Sections D and E require development to secure net biodiversity gain and that “proposals which reduce deficiencies in access to nature should be considered positively”. [\[REP7-010\]](#), [\[REP1-034\]](#)
- 3.5.12. BLP Policy SP9 seeks to protect and enhance biodiversity by way of nine criteria, including by protecting, conserving, restoring, and enhancing ecological networks,

SINCs and Local Nature Reserves, and strategic and local wildlife corridors [\[REP1-034\]](#).

- 3.5.13. BLP Policy DP20 requires a strict approach to the mitigation hierarchy and justification for unavoidable impacts on biodiversity. Section 2 states that “development proposals that would have a direct or indirect impact on a site designated for its nature conservation or geological interest should protect and enhance the designated site’s value, and will not be permitted unless all of the following criteria are met: a. there are no reasonable, less damaging, alternative solutions, locations or sites; b. ecological buffer zones have been incorporated into the scheme, where appropriate, to protect and enhance the designated site’s intrinsic value; c. the continuity of wildlife habitat within wildlife corridors is maintained; and, d. access to the designated site is not compromised and where possible, access and/or interpretation is improved.” [\[REP7-010\]](#), [\[REP1-034\]](#)
- 3.5.14. Bearing in mind NPS EN-1 paragraphs 5.4.12-13, these development plan policies are an important and relevant consideration.

CLNR

- 3.5.15. The CLNR extends to around 25ha of the Erith Marshes Metropolitan Site of Importance for Nature Conservation (MSINC) and includes both a fenced in section known as the Members’ Area adjacent to the CWTW, and a more extensive, open area to the east. Planning permission for a sewage sludge incinerator at CWTW was subject to a planning obligation that required, amongst other measures, the management and enhancement of what is now known as CLNR for 99 years following approval of a management plan. The obligation also required TWUL to pay for the future objectives, maintenance and enhancement of the CLNR and that TWUL funds a full time manager for the CLNR. TWUL undertake maintenance and management works with support from Friends of Crossness Nature Reserve (FoCNR) and other volunteers when required. [\[REP3-018\]](#)
- 3.5.16. Since designation there have been further works carried out in CLNR, including the Managing the Marshes programme. This funded ditch restoration, wetland creation, the installation of a public footpath, and the installation of interpretation panels and benches. Subsequently there was a ‘Belvedere Green Links’ programme which included funding a stable block. [\[REP3-018\]](#)

THE APPLICATION

- 3.5.17. ES chapters 7 [\[REP6-011\]](#) and 8 [\[REP6-012\]](#) set out the applicant’s consideration of the effects of the proposed development on terrestrial and marine biodiversity respectively. These were supported by a series of surveys and other appendices (references in [Appendix A](#)).
- 3.5.18. The site includes parts of the Erith Marshes MSINC, River Thames and Tidal Tributaries MSINC and the Belvedere Dykes SINC (shown on Figure 7-4 [\[REP6-019\]](#)), as well as the CLNR. Other relevant designations in the vicinity are set out in ES Chapter 7 [\[REP6-011\]](#). The ES noted a number of habitats of principal importance (HPIs) present on the site. These are deciduous woodland HPI (lowland mixed deciduous woodland) – approximately (approx) 1.9% of the site; coastal and floodplain grazing marsh HPI - approx 18.7%; intertidal mudflats HPI - approx 7.8%; reedbeds HPI - approx. 6.4%; and open mosaic habitat HPI – approx 1.3% (Figure 7-5 [\[REP6-019\]](#)). The Inner Thames Marshes SSSI lies 0.9km to the east of the site.

Construction Phase

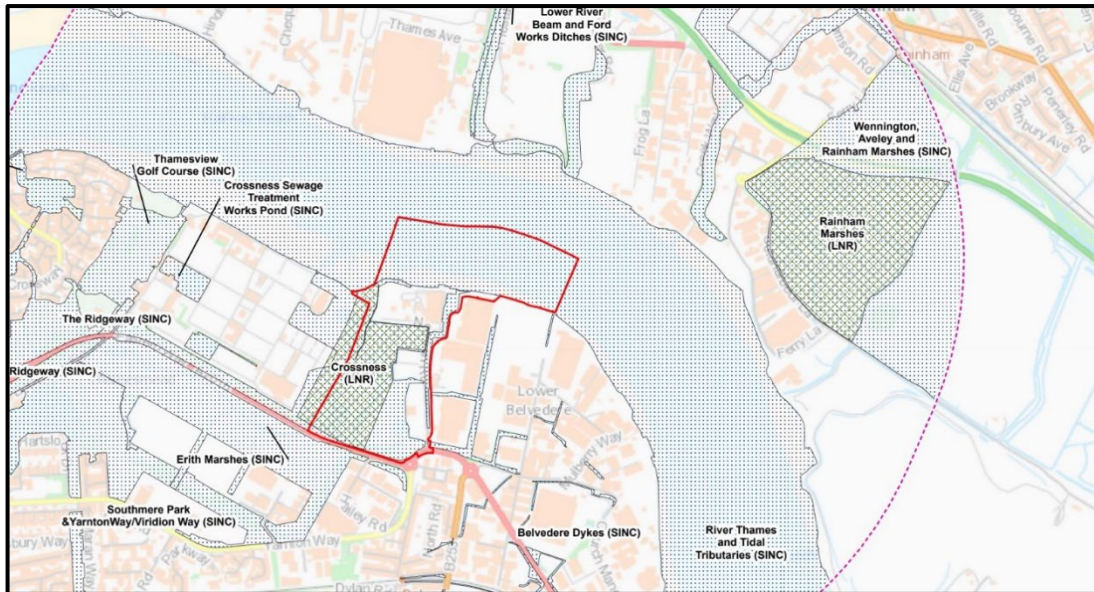


Figure 7 Locally Important Statutory Designated Sites and Non-Statutory Designated Sites³⁵

- 3.5.19. The ES [REP6-011] identifies a Moderate Adverse (Significant) effect by way of habitat loss and fragmentation affecting the CLNR, Erith Marshes MSINC, Belvedere Dykes SINC, River Thames and Tidal Tributaries MSINC, Coastal and floodplain grazing marsh HPI, Intertidal mudflats HPI, open mosaic habitat HPI, reedbed HPI, and breeding and wintering bird species (see Figures 7 and 8). The ES notes a series of enhancements to existing, and creation of new, habitats which it considers would result in a Negligible (Not Significant) residual effect. It also identifies a Moderate Adverse (Significant) effect on those receptors (without the HPIs) from construction noise and vibration, reducing to a residual minor adverse (not significant) effect following measures included in the Outline CoCP.
- 3.5.20. The ES states that habitat loss and fragmentation would also result in Moderate Adverse (Significant) effect on water vole. Habitat creation and capture, breeding and release of water voles into those new habitats would lead to residual effects being Negligible (Not Significant) [REP6-011].

³⁵ (not to scale, extract from Figure 7-4, ES Figures: Part 1 [REP6-019]



Figure 8 Habitats of Principal importance on site
(not to scale, extract from Figure 7-5, ES Figures: Part 1 [REP6-019])



Figure 9 CLNR (not to scale, existing CLNR in green, **site boundary³⁶** in red. From LaBARDS [REP5-017])

- 3.5.21. Changes in air quality are identified as having a Moderate Adverse (Significant) effect on the CLNR, the two MSINCs and SINC, the aforementioned HPIs and coastal saltmarsh HPI, as well as river habitat (River Thames), notable plants and invasive species, freshwater fish (including European eel), and on aquatic macroinvertebrates. With mitigation through measures in the Outline CoCP, the ES calculates residual effects would be Minor Adverse (Not Significant). The ES states other effects would not be Significant.
- 3.5.22. In the marine environment, the ES [\[REP6-012\]](#) identifies changes in water quality and release of contaminants (as a result of dredging) as having a Moderate Adverse (Significant) effect on the Medway Estuary Marine Conservation Zone (MCZ), the River Thames and its Tidal Tributaries MSINC, marine habitats and associated intertidal and subtidal communities and fish. Proposed mitigation measures through the detailed design of proposed dredging operations secured through the DML in the dDCO would lead to residual effects being predicted to be Minor Adverse (Not Significant).

Operational phase

- 3.5.23. Changes in air quality arising from the operation of the development are identified in the ES [\[REP6-011\]](#) as potentially up to Moderate Adverse (Significant) effect, remaining as a residual potentially significant effect on those receptors listed at 3.5.18 above along with 18 further SINCS outside of the Site. The Moderate Adverse (Significant) effects from changes in air quality identified for freshwater fish (including European eel) and aquatic macroinvertebrates would be mitigated by habitat management and improvement to buffer potential vegetation changes, reducing the residual effects to Not Significant.

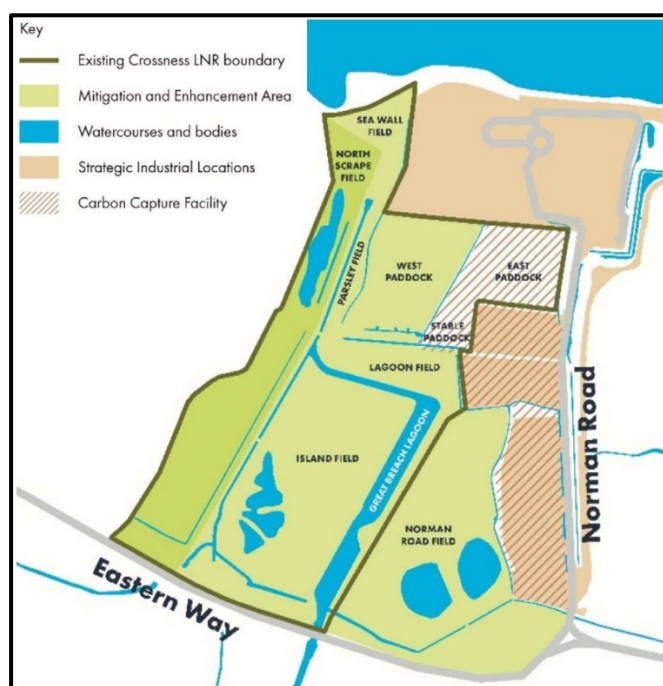


Figure 10 illustration of CLNR and proposed Mitigation and Enhancement Area (Not to scale, diagrammatic and does not indicate proposed flue run within Sea Wall Field and West Paddock, from LaBARDS [\[REP6-019\]](#))

³⁶ Boundary shown is that before the Great Breach Pumping Station was omitted from the order land.

- 3.5.24. Shading arising from the CCF is identified as having a Moderate Adverse (Significant) effect on Reedbed HPI, water voles and aquatic macroinvertebrates with habitat creation, enhancement and management, along with the mitigation licence for water vole, leading to residual effects that would be Not Significant.

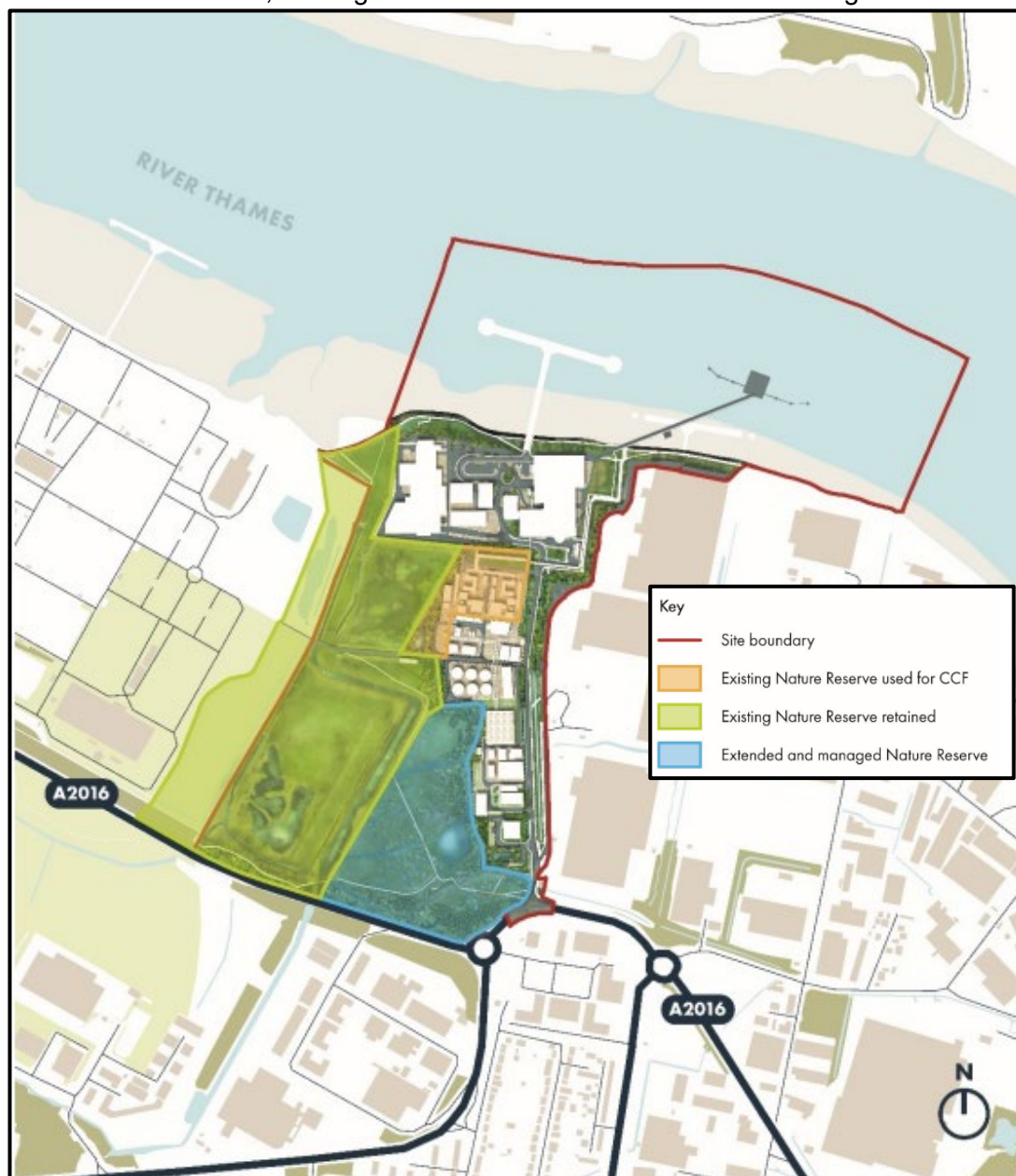


Figure 11 existing and proposed CLNR
(Not to scale, from LaBARDS [\[REP6-019\]](#))

- 3.5.25. The ES identifies the operational phase mitigation referred to above being specified and delivered by way of the Outline Landscape, Biodiversity, Access and Recreation Delivery Strategy (LaBARDS).
- 3.5.26. Water quality and release of contaminants in the marine environment are identified in the ES [\[REP6-012\]](#) as having Moderate Adverse (Significant) effects on the Medway Estuary MCZ, the River Thames and its Tidal Tributaries MSINC and fish. It predicts that the mitigation through specifying times and methods for dredging operations, controlled through the DML in the dDCO, would lead to residual effects being Negligible (Not Significant).

- 3.5.27. Compensatory habitat creation and enhancement in Erith Marshes MSINC is proposed primarily through restoration of ground water levels to reduce drying out of floodplain grazing marsh, as well as ditch creation and improvement. Landscaping within the CCF site would also provide habitat creation. The applicant advises that due to space limitations, reedbed and open mosaic habitat creation would be off site, intended to be the Biodiversity Net Gain Opportunity Area (BNGOA).

[\[REP6-011\]](#)

Outline LaBARDS

- 3.5.28. The Outline LaBARDS [\[REP5-017\]](#) would be a certified document in the dDCO [\[REP7-003\]](#). The applicant intends it as a single point of reference for all elements of their landscape, biodiversity, access and recreation proposals including provision of mitigation and Biodiversity Net Gain (BNG) both on and off-site. dDCO R12 would require a LaBARDS substantially in accordance with the certified, outline version, to be submitted to the relevant local planning authority for approval. A component of the approach includes considering the parts of the site that are currently open and not intended to be built on which would remain undeveloped as a Mitigation and Enhancement Area (MEA) and the redefining of the boundaries of the CLNR to exclude the East and Stable Paddock areas and include the Norman Road Field area.
- 3.5.29. The approach adopted is that, where in the applicant's view loss cannot be avoided or mitigated, the loss of particular habitat types to development would be compensated for by the creation of new habitats or enhancement of existing habitats of the same type in most, but not all cases. This would be both on and off-site. However, there would be no additional land brought into habitat use from another use; all the compensation would be through enhancement or creation on existing land within the Erith Marshes MSINC or off site.
- 3.5.30. The Outline LaBARDS identifies using the former Thamesmead Golf Course situated on the other side of the CWTW from the site as a preferred option for the location of offsite mitigation and BNG, the BNGOA. However, the LaBARDS does not require that the BNGOA has to be delivered. It also allows for alternative proposals to be brought forward to achieve a 10% minimum BNG, stating that this could be all onsite if this is achievable.
- 3.5.31. R12 of the dDCO [\[REP7-003\]](#) would require the approval and implementation of a full or final LaBARDS, specifying that the document will need to demonstrate how it will achieve a 10% minimum BNG in area habitat units and watercourse units for all of the development but is not prescriptive as to the location.
- 3.5.32. Appendix 1 of the Outline LaBARDS contains tables setting out baseline habitats and areas that would be retained, enhanced or lost, both onsite and offsite.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.5.33. As well as the effects of the construction, decommissioning and operational effects of the proposed development on terrestrial and marine biodiversity, a key issue raised by many IPs in RRs and WRs concerned the principle and the effects of the proposed development being sited on parts of the CLNR and Erith Marshes MSINC. Also, whether the compensation and mitigation measures proposed would be sufficient in light of the harm identified. There were concerns about the biodiversity baselines for existing undeveloped land within the site and Erith Marshes MSINC but outside the CLNR (for example Norman Road Field) in relation to nature conservation enhancement and management activities undertaken as a result of

planning obligations relating to previous development elsewhere in the vicinity that relied on using that land.

LBBC

- 3.5.34. Along with effects identified as neutral, LBBC's LIR [\[REP1-034\]](#) noted positive effects of the proposed development in terms of the biodiversity measures to achieve mitigation, compensation and BNG within the remaining CLNR and Erith Marshes MSINC, the incorporation of the Norman Road field into the CLNR increasing its net area and providing off-site compensation and BNG at the former Thamesmead Golf Course.
- 3.5.35. The LIR identified negative effects in terms of a loss of circa 3.3ha of the Erith Marshes MSINC that is also part of the CLNR, the lack of replacement land for the MSINC and impacts on the Strategic Green Wildlife Corridor and Southeast London Green Chain. As biodiversity measures are proposed to be secured for 30 years, in the view of LBBC benefits would be temporary, limited to the medium term and once management concludes, the ecological value of the MSINC in its entirety is likely to be less than if the development were not to take place.
- 3.5.36. They also raised concern over additionality or 'double counting' of enhancement proposals in light of any ongoing or planned conservational activities that are not a part of this application, including those on Norman Field and CLNR, secured by planning obligations on development at Thames Waters Sewerage Sludge incinerator³⁷ and Veridion Park³⁸. It also noted that no completed biodiversity metric calculation tool had been submitted and that baseline conditions and future baselines for marine biodiversity were limited and further expansion of baselines to include addition information is required.
- 3.5.37. Nevertheless, by the close of the examination a SoCG between LBBC and the applicant [\[AS-096\]](#) indicated that there was agreement on all matters related to terrestrial, riparian and marine biodiversity and they confirmed their agreement that the controls set out in Articles and Rs in the dDCO in relation to marine biodiversity and the LaBARDS. LBBC agreed there was no suitable replacement land for the loss of 2.5ha of MSINC habitat, with a consequential reduction in the area of MSINC available for protection, conservation, restoration and enhancement such that mitigation and compensation would be provided by improving the value of habitat in both the Erith marshes MSINC and Thamesmead Golf Course SINC.
- 3.5.38. LBBC further agreed [\[AS-096\]](#) that habitat could be created under the flue gas ductwork where it crossed parts of the MSINC. LBBC also confirmed their view that losses to the MSINC and CLNR should not in themselves be used as a reason to refuse consent. They went on to confirm that they considered that the proposals for the MEA including the current CLNR and Norman Road Field would be additional to mitigation in light of further information since the LIR was published. They confirmed their agreement to the current and future marine biodiversity baselines in light of the EA, MMO and Port of London Authority (PLA) agreement of them.

Marine Management Organisation (MMO)

- 3.5.39. Before the examination opened, in their relevant representation (RR) the MMO raised multiple concerns about the proposed development [\[RR-134\]](#) including

³⁷ Within the CWTW to the west of the site.

³⁸ A business and industrial development to the south west of the site.

effects on marine biodiversity. However, by the close of the examination those with direct implications on marine biodiversity had largely been resolved with the applicant [\[REP6-036\]](#), [\[REP6-46\]](#), although the MMO still have concerns over the detailed wording of the DML and other articles in the dDCO (see Chapter 7 below).

NE

- 3.5.40. As well as commenting on implications for internationally designated sites (covered by Chapter 4 below), NE raised concerns about some implications of air quality effects on the Inner Thames Marshes SSSI and the implications of the proposed scheme on water voles, a European protected species [\[RR-150\]](#), [\[REP1-038\]](#), [\[REP2-027\]](#).
- 3.5.41. The ExA asked questions and sought further information about effects on the SSSI in ExQ1 [\[PD-007\]](#) and a Rule 17 letter [\[PD-016\]](#), and an update regarding water voles at ExQ2 [\[PD-014\]](#). NE responded to ExQ1 [\[REP3-040\]](#), [\[REP5-046\]](#) and ExQ2 [\[REP5-045\]](#).
- 3.5.42. In respect of effects on the Inner Thames Marshes SSSI, the applicant prepared a cumulative impact assessment following NE's response to ExQ2 [\[REP5-045\]](#), the findings of which NE agreed with [\[REP6-039\]](#). In particular, NE agreed with the applicant that no significant effects on the Inner Thames Marshes SSSI are likely to occur as a result of the proposal when considered alongside other committed developments [\[REP6-035\]](#), [\[REP7-021\]](#). The SoCG between NE and the applicant [\[REP6-035\]](#) indicates the majority of issues having been resolved.
- 3.5.43. The exception was that of the terminology used by the applicant to define the baseline and future baseline air quality position. Nevertheless, NE agreed with the applicant's findings in respect of air quality and consequently on the Inner Thames Marshes SSSI. The applicant received a Letter of No Impediment from NE in relation to the licensing for water voles in February 2025. [\[REP6-035\]](#).
- 3.5.44. In response to ExQ1 response [\[REP3-040\]](#), NE advised that the lighting strategy required by dDCO R11 should specifically address potential impact and mitigation in respect of water voles, and R11 should require NE to be consulted on the lighting strategy. However, the applicant considered this unnecessary as effects on water voles requires a licence from NE which would fully consider biodiversity impacts, and did not make any amendments to the wording of dDCO R11.

TWUL

- 3.5.45. TWUL object to the proposed development [\[REP7-033\]](#) including on grounds of the total loss of approximately 3.5ha of the CLNR and the adverse ecological impact on the remainder, which they submit would be significant. This includes loss of HPis and species of principal importance (SPI) (Borrer's Saltmarsh grass) and those classified as vulnerable to extinction (bird's foot trefoil). [\[REP1-057\]](#), [\[REP1-058\]](#). TWUL criticise the applicant's assessment surveys of the part of the CLNR containing these species and habitats as being undertaken by the use of binoculars from the roadside, which they contend is an inadequate approach. TWUL submits that the SoS cannot properly discharge the duty under section 41(3) of the Natural Environment and Rural Communities Act 2006 (NERCA2006) to further the conservation of HPis and SPIs. [\[REP7-033\]](#)
- 3.5.46. In response to the applicant's proposal to acquire the CLNR outside of the Members' Area, TWUL consider that the cleanest and most straightforward way of dealing with the management of the proposed Mitigation and Enhancement Area

(MEA), is for the 1994 planning obligation of which they were a party to be varied to impose an obligation on TWUL to manage and maintain the relevant part of the CLNR in accordance with an approved detailed LaBARDS. The CA implications of this are considered in chapter 6 below.

- 3.5.47. TWUL also raised concerns over the effects on habitat arising from the applicant's proposed separate (from the TWUL access) maintenance and grazier access route. The applicant responded [\[REP7-022\]](#) that the proposed access would be a single track of limited use and would not lead to further effects on SPIs
- 3.5.48. A draft SoCG between the applicant and TWUL [\[AS-081\]](#) was described by the applicant as mutually acceptable [\[REP7-016\]](#) but was not signed and included a number of areas under discussion including those relating to biodiversity matters.

SCNR

- 3.5.49. Among SCNR's objections to the proposed development is that they consider that the applicant has not applied the mitigation hierarchy properly. They consider it perverse to sacrifice nature reserve land and extensive habitat loss to serve some climate objectives, which they contend the CLNR is already serving, along with many more benefits, particularly when they question the amount of carbon that the proposal would actually capture, and they consider that the project could be delivered without requiring any CLNR land (see section 3.3 above).
- 3.5.50. SCNR consider that the: loss and fragmentation of highly valuable and highly designated wildlife habitat, including direct loss of HPI and SPI plant species; noise and vibration; run-off; air pollution from emissions; and light pollution would significantly harm breeding birds, plants, terrestrial invertebrates, water voles, freshwater fish, aquatic macroinvertebrates, small mammals and reptiles [\[REP1-047\]](#), [\[REP4-044\]](#), [\[REP5-062\]](#), [\[REP6-049\]](#), [\[REP7-032\]](#).
- 3.5.51. In support of their position they provided a Botany Report [\[REP1-050\]](#) which indicated a wider variety of species present on the site than the applicant's Botanical Survey Report. The Botany Report also identified HPIs not shown in the applicant's surveys (see figure 7 above) including an area of reedbed along the eastern margin of the East Paddock and that rather than being of an homogenous character the East Paddock contained a variety of features and plant species including stands of Strawberry Clover which the report identifies as being vulnerable to extinction and being one of the few remaining viable populations in London.
- 3.5.52. SCNR consider that proposed ecological mitigation would be insufficient. They cite the reasons for this as:
- that the quantitative loss of habitat is not addressed, including the loss of 3.5ha of nature reserve land with the scheme resulting in a net loss of over 2.83ha of habitat
 - CLNR is already subject to a detailed management regime run by TWUL, secured by planning controls. Norman Road Field is also subject to planning controls that remain extant and that, if enforced, would improve its ecological condition. This improved condition that Norman Road Field should be in, should be taken as the baseline for any assessment of mitigation.
 - as proposed 'improvements' would effectively repeat existing controls, they cannot be considered a benefit or new mitigation, constituting 'double-counting' of environmental benefits

- the quality of proposed improvements to the MEA would be insufficient to address the harm identified
- no mitigation responds to the extensive loss of plant SPIs.
- other than water voles, neither is there mitigation that would respond to harm to animal SPIs; and
- additional ecological harms have been added to the proposed scheme since the impact was first assessed, including the additional access route that will cause further habitat loss and fragmentation, without any additional mitigation proposed.

3.5.53. They continue that:

- much of the mitigation proposed would be “general” and lacks the specificity necessary to demonstrate that the harms would be appropriately and effectively mitigated
- some of the mitigation proposed is inappropriate, for example proposed tree planting both on Norman Road Field and along the eastern boundary of CLNR, the proposed footpath in the north-west corner of the site would cause ecological harm but would be redundant given an existing route serves the same purpose, but would result in inherent ecological harm and that the proposed relocation of grazing land would create potential health and safety risks affecting public access
- there are several other ways in which improvements to Thamesmead Golf Course could be funded in the near future without relying on the proposed development
- in any event there is uncertainty that the proposed off-site mitigation could be delivered on the Thamesmead Golf Course because the obligations are proposed to be secured in planning terms (only under a Deed of Obligation)
- the monitoring and management regime in the Outline LaBARDS would not provide a measurable or enforceable system over time, particularly in what SCNR consider is the doubt cast on applicant’s ability to deliver by what they state is the applicant’s lack of any track record managing ecological sites, its failure to deliver ecological mitigation promised under Riverside 2, and its failure to deliver the promised District Heat Network; and
- the applicant has conflated ecological mitigation with BNG. This is evident both in terms of how the applicant defined the current state of land as being in poor condition (relying on Statutory Metric notion of condition) and also in the applicant pointing to 10+% net gain to demonstrate the quality of mitigation. The applicant has failed to demonstrate how the ecological mitigation would be sufficient without inappropriately relying on these concepts specific to the BNG regime.

3.5.54. The applicant did not disagree with SCNR’s Botany Report. Nevertheless, the applicant contended that [\[REP2-019\]](#) although further species were present and not revealed by the applicant’s botanical survey, the data collected by the applicant was appropriate to identify the habitat types including that of the East and Stable Paddocks as Coastal Floodplain Grazing Marsh, which concurred with SCNR’s Botany Report.

3.5.55. Annex A to the Applicant's Response to Interested Parties' Deadline 4 Submissions [\[REP5-032\]](#) responds to SCNR’s criticisms of the LaBARDS and its approach.

FoCNR

3.5.56. FoCNR object to the principle of developing the CCF on CLNR land [\[RR-069\]](#). A SoCG [\[REP3-018\]](#) records some specific areas of disagreement between FoCNR

and the applicant including the applicant's position on those matters. FoCNR consider that some of the applicant's environmental surveys are not satisfactory, and do not provide an appropriate baseline for the assessment and consequent mitigation and enhancement proposals. As examples they consider that:

- the reptile survey [\[APP-094\]](#) was carried out in the last two weeks of September and not throughout the breeding season which would be standard best practice;
- the reptile survey did not adequately cover the East Paddock and Stable Paddocks where the CCF would be built;
- the bat survey [\[APP-091\]](#) was inadequate in that the only static detector on CLNR was in East Paddock and nowhere else in the CLNR, which is close to the Riverside 2 construction site where disturbance and light pollution would have skewed the data; and
- the botanical surveys [\[APP-093\]](#) were inadequate, missed important key species and appear to have missed parts of the site entirely, with Island Field and Island Field Lagoons not being surveyed.

They consider this provides a poor baseline to assess the impacts of the proposed development and the mitigation required.

- 3.5.57. The FoCNR consider that some proposed mitigation measures would not be beneficial and indeed could be harmful to existing ecology. For example, they cite proposed tree planting in a location where the rare Frog Rush grows³⁹. Further, they refer to proposed flooding where the rare Shrill Carder Bee has been recorded. The necessary road access and hardstanding to support the care for and grazing of horses in the Lagoon Field where relocated stables are proposed would be unacceptable to FoCNR.

Buglife⁴⁰

- 3.5.58. Buglife are concerned about the impact of the proposed loss of CLNR land on the invertebrate populations within their Thames Estuary South Important Invertebrate Area, (one part of which includes land within the application site) and effects on the Erith Marshes MSINC, Belvedere Dykes SINC, River Thames and Tidal Tributaries MSINC [\[RR-029\]](#), [\[REP1-046\]](#). Their SoCG with the applicant [\[REP2-012\]](#) indicates that whilst they are content to work with the applicant to provide a beneficial outcome for invertebrates and will review detailed proposals, areas of concern remain including the principle of the loss of parts of the CNLR and MSINC.
- 3.5.59. Buglife further consider that Norman Road Field is not an appropriate location for the delivery of some of the mitigation and enhancement as it has already been used for this purpose and already provides a good habitat resource for invertebrates. They do not consider that proposed enhancement measures would lead to a genuine uplift in the biodiversity of the area, including invertebrates. They consider that further assessment of the current ecological value of the site to invertebrates would be necessary for any targeted management that could have a meaningful impact on invertebrate populations. [\[REP2-012\]](#)

Other IPs

- 3.5.60. Many IPs, including individuals, have also raised objections. These grounds include the loss of areas of the Erith Marshes MSINC and CLNR to development and the

³⁹ FoCNR report that it is "so rare that it was considered extinct in Kent until its discovery at Crossness in 2019" [\[REP3-018\]](#).

⁴⁰ The Invertebrate Conservation Trust.

effects of the construction and operation of the development on the habitats and ecology of the CLNR and its environs, including the river. Objections also considered that the existing ownership and management arrangements of the CLNR are effective and do not need to be changed, and that the proposed mitigation would be insufficient in light of the anticipated harm.

The applicant

- 3.5.61. The applicant points out that despite disagreements, particularly with SCNR and TWUL, remaining on issues including the nature of effects on ecological features, effectiveness of surveys and evaluation, and mitigation and compensation have been conflated, they have responded to the points and consider their data and assessments robust [\[REP7-021\]](#).
- 3.5.62. In support of this they point to the SoCG with LBBC [\[AS-096\]](#). Amongst other matters, LBBC agree that there was uncertainty regarding the baseline for Norman Road Field at the time the LIR was published and that the proposals in the LaBARDS would be additional to any previously required to be provided on that part of the site. They agreed that there was no available, suitable replacement land for the loss of MSINC land and the mitigation and compensation levels, quantified by the BNG process, that the habitat creation and enhancement would reduce the impact of habitat losses. They agreed the Outline LaBARDS and that a beneficial outcome will be achieved.
- 3.5.63. As reported elsewhere in this report the applicant has proposed two Deeds of Obligation including agreement with LBBC and landowners which seek to provide for the delivery of the BNGOA and for a more collaborative approach with TWUL lesser CA powers for implementation and management of works to parts of the CLNR. However, these are not completed so cannot be taken into account in the ExA's recommendation. However, the applicant and other anticipated signatories remain confident that either or both may be completed in the post recommendation period in which the SoS has to make a decision. Nevertheless it may be that they are unable to agree and in those circumstance the SoS may wish to note Section 7.3 of applicant's closing remarks [\[REP7-021\]](#)⁴¹ with their views on the interaction between dDCO R12 and circumstances with and without an completed planning obligation.

ExA

- 3.5.64. In examination matters concerned with biodiversity, ecology and the natural environment, the ExA asked a series of questions, and sought information, relating to biodiversity matters at ExQ1 [\[PD-007\]](#), including ExQ2 [\[PD-014\]](#) and in a Rule 17 letter [\[PD-017\]](#), as well as at ISH1 [\[EV5-001\]](#), [\[EV5-006\]](#), [\[EV5-008\]](#).
- 3.5.65. In particular ExQ1.3.1.18 [\[PD-007\]](#) sought clarification from the applicant over how they have applied the mitigation hierarchy to the MEA and its relationship with compensatory habitat creation and additional, off-site, net gain creations or enhancement. The applicant's response⁴² [\[REP3-029\]](#) clarified the applicant's approach to compensation for habitat that would be lost and what measures would be additional to this. The applicant advised that off-site compensation would be

⁴¹ Paragraph 7.3.31 advises that the applicant will provide further information and suggestions in the post recommendation period should the anticipated planning obligation not materialise.

⁴² Applicant's Response to Examining Authority's First Written Questions, Table 4-1.

required as without this there would be a concurrent loss of the Coastal Floodplain Grazing Marsh habitat type if new habitat were created on-site in its place.

- 3.5.66. Detailed confirmation of areas of habitat to be lost, created and enhanced were sought at ExQ2.3.5 [\[PD-014\]](#) and the applicant confirmed [\[REP5-033\]](#) the detailed breakdown of the areas⁴³.
- 3.5.67. In response to ExQ2.3.8 LBBC confirmed that there is no on-going management of the Norman Road Field required by way of conditions attached to planning permissions or obligations relating to the Veridion Park development and that any further management plans would be produced once the other phases of the Veridion Park development come forward. These would relate to the wider Veridion Park only and not the Norman Road Field. [\[REP5-042\]](#)

EXA'S FINDINGS AND CONCLUSION

Habitats, species and surveys

- 3.5.68. The more detailed botanic information provided by SCNR was not disputed by the applicant, including that development of the East Paddock would result in the loss of the habitat partly occupied by the vulnerable Strawberry Clover. The species is not explicitly referenced in the Outline LaBARDS [\[REP5-017\]](#) although the applicant's approach of enhancing and creating the coastal floodplain grazing marsh habitat in which it is found within the MEA would mean that a habitat would remain.
- 3.5.69. The ExA agrees with the applicant that the more detailed survey information, whilst illustrating the variety and importance of plant life on parts of the site where habitat would be lost, does not alter the ES findings on effects resulting from the loss of this habitat. R12 in the dDCO [\[REP7-003\]](#) provides for, amongst other things, the full LaBARDS to include further flora, fauna and habitat surveys. That is not to say that what has been carried out to date is insufficient to reach a conclusion on the effects of the proposed development, however more detailed surveys will better inform the detailed compensation, mitigation and enhancement proposals to be developed in a full LaBARDS.
- 3.5.70. The proposals set out in the Outline LaBARDS [\[REP5-017\]](#) would have the potential to improve existing habitat and create alternative habitat to provide an equivalent of that lost. However, this would be intended to be on land already designated as MSINC or SINC (unless some of the off-site provision is ultimately delivered on non-designed sites, not that that is the applicant's preferred option). The proposal would result in the net loss of land area which is presently designated as locally important habitat.

Stables and access

- 3.5.71. Subject to the principles set out in the LaBARDS and DPDC [\[REP5-009\]](#), replacement stables would not be likely to have a harmful effect on biodiversity. Indeed, given the role that grazing horses play in maintaining and managing parts of the habitat in the existing MSINC, and the proposed MEA, their provision will be necessary not just in animal welfare terms but as part and parcel of the proactive management of the coastal floodplain grazing marsh habitat.

⁴³ Applicant's Response to Examining Authority's Second Written Questions, Table 3-3.

- 3.5.72. Whilst the applicant's introduction of a separate access to the stables will have implications for the habitat through which it would run, the ExA agrees that it would be necessary given likely restrictions on any retained emergency access route for TWUL running through the CCF site. The ExA considers that given its purpose it is likely to be of limited width and usage. Any harm by way of impact on habitat would be outweighed by the benefits of ensuring that graziers and users of the CNLR including the Members' Area have suitable accessibility.

Baseline

- 3.5.73. The concern that the baseline of those areas where the applicant proposes biodiversity enhancement have either been enhanced in the past but management has lapsed and their condition deteriorated, or that proposed enhancements did not take place and therefore their condition might be worse than or different to that which it might be expected to be is a legitimate one.
- 3.5.74. The implications should the condition of those areas of land be lower than they should in terms of planning requirements would be that the applicant's proposals would either need to be more ambitious in terms of the target condition or that other enhancement would be necessary in order to attain the levels of enhancement sought.
- 3.5.75. Nevertheless, in light of LBBC's evidence, and noting that they are the local planning authority, the ExA accepts that there does not appear to be any current or proposed scheme to implement such enhancement in the absence of the proposed development. Nor are there management mechanisms in place required by way of planning conditions or obligations on land such as Norman Road Field outside the CLNR. The effects of proposed habitat creation and enhancement would not therefore be lessened. In the absence of an enforceable management regime, the proposed development would have the benefit through the extension of the CLNR to those areas not presently covered by it.

Avoidance, compensation, mitigation and enhancement

- 3.5.76. The project would not avoid environmental and biodiversity harms, particularly in light of the loss to development of some parts of the Erith Marshes MSINC. The proposal would have the potential to meet the NPS EN-1 requirement to consider opportunities to leave the natural environment in a measurably better state than beforehand on those parts of the proposed MEA where enhancements are proposed, and offsite which may include the BNGOA. Indicative illustrations show that there may also be opportunities for smaller area and scale habitat creation within the CCF area on land not currently designated for any conservation importance.
- 3.5.77. The proposals would have the potential to mitigate the harmful effects to terrestrial and marine biodiversity beyond the CCF and associated flue footprint. However, the net loss of locally important nature conservation land would not be compensated for by replacement land. Concerns over whether the spatial loss of parts of the MSINC can demonstrate that the first, avoidance, stage of the mitigation hierarchy has been successfully followed for all aspects and effects of the proposal are understandable and this is returned to later in this section.
- 3.5.78. The use of BNG metrics to qualify both compensatory and additional habitat and the description of the preferred offsite BNGOA has led to a lack of clarity about the roles different elements of mitigation, compensation and additional measures would play.

Nevertheless, following clarification through the examination the ExA is satisfied that the different components and roles have been clearly articulated to the extent that there is not a conflation of compensation and additional provision in how the applicant has illustrated the figures. Furthermore, the applicant's change to dDCO R12 [\[REP7-003\]](#) by including a clause that the LaBARDS must include proposals for the establishment of compensatory open mosaic habitat also seeks to address this.

Offsite compensation, mitigation and enhancement and delivery mechanism

- 3.5.79. The former Thamesmead Golf Course has been identified as the applicant's preferred location for offsite BNG and biodiversity compensation. By the close of the examination no completed planning obligation or other mechanism for delivery of this preferred option had been presented. However, the SoS may be in a position to consider the implications of any completed obligation presented at the time of their decision making.
- 3.5.80. The applicant relies on R12 of the dDCO [\[REP7-003\]](#) which sets out the requirements for the LaBARDS. R12 is not explicit about the location of BNG and compensation but specifies minimum BNG that the submitted LaBARDS will need to demonstrate. Although the outline LaBARDS [\[REP5-017\]](#) provides some detail about how the BNGOA would deliver its requirements, it is also clear that the LaBARDS does not require offsite delivery at that particular location in order to accord with its goals. It advises that an alternative site or an entirely onsite proposal to achieve a 10% minimum is sought. The approval mechanism in dDCO R12 would ensure that any such proposals can be scrutinised by the local planning authority.
- 3.5.81. There is no substantive information to demonstrate that the 10% minimum BNG could definitely be delivered onsite. However, despite the lack of certainty about how the aims will be achieved, the mechanism in rDCO R12 (as recommended to be revised by the EXA – see section 7.5 below) would ensure that development could not commence until a LaBARDS is approved. LBBC would be able to ensure that the final LaBARDS provided sufficiently robust measures to ensure the delivery of necessary offsite enhancement and compensation.
- 3.5.82. Therefore, should the SoS not be presented with a completed planning obligation to secure a particular offsite solution such as the BNGOA, the ExA considers that the requirement to approve a final LaBARDS would provide sufficient controls to ensure that on or offsite BNG put forward as enhancement or compensation could be implemented and enforced.

LaBARDS

- 3.5.83. As drafted in the dDCO [\[REP7-003\]](#) R12 prevents commencement of any part of the development until a LaBARDS has been submitted and approved by the planning authority. However, it is set out in terms that a LaBARDS “for that part” of the development. This could mean that a number of different LaBARDSs or versions of it are submitted relating to parts of the development. In order to achieve the necessary conservation, mitigation, compensation and enhancement provisions this would need to be considered on a development wide basis as that is how the mitigation has been presented.
- 3.5.84. Although the LaBARDS at paragraph 3.2.4 sets out the option of “multiple full LaBARDS(s)”, the ExA has therefore recommended in the rDCO that R12 be revised by deleting the “for that part” qualification in the dDCO version and adding a caveat to paragraph (2) that the full version should not contain an option for multiple

versions for different phases. The LaBARDS to be submitted would be capable of setting out any phased approach within its strategy but be considered as a single strategy so that the planning authority can ensure that the appropriate extent and quality of mitigation, compensation, enhancement and so on is provided at the necessary time.

Compensation

- 3.5.85. As many IPs have indicated, the proposal does not seek to avoid the harm that would be caused by way of loss of an area of the Erith Marshes MSINC, through using an alternative site or configuration that does not use such land. By utilising land designated as employment land, the development does go some way to seek to minimise the use of habitat land. Nevertheless, there would be harm by way of the loss of an area of MSINC.
- 3.5.86. The proposals in the Outline LaBARDS would mean that the CLNR would remain and cover a different area. This would have the benefit of effectively continuing a positive management regime focused on nature conservation over areas not presently covered by such an active regime, albeit tempered by the net loss of MSINC land.
- 3.5.87. However, the evidence does not demonstrate that such interventions would be necessary, even if they may be desirable, on those areas of the existing CLNR that would remain as there is an existing, long term, conservation focused management regime already in place which is overseen by TWUL as landowner and party to the planning obligation that requires it. However, notwithstanding the planning history of how other areas which have had previous interventions, given their current state and the absence of a requirement for a particular standard of ongoing management, there would be a benefit arising from the enhancement of those areas and inclusion in a conservation management regime, including Norman Road Field.
- 3.5.88. Those parts of the Erith Marshes MSINC that would be lost to development would not be compensated for by any replacement land. This would result in a net loss to the area of land in that MSINC and by extension habitat in the Borough and London. This loss would be permanent given that after decommissioning there is no assumption nor requirement that the land would be restored to a particular standard or use that would necessarily merit inclusion in a conservation designation.
- 3.5.89. The ExA is satisfied that the mechanisms in the dDCO and in turn the LaBARDS would be satisfactory in ensuring the implementation of compensation, enhancement and proactive management of habitats. Further the ExA is satisfied that the dDCO provisions for the DML would be adequate to protect marine biodiversity during construction, operation and decommissioning phases.
- 3.5.90. Notwithstanding any improvements in the condition of undeveloped sites both on and off-site, it remains that the development will result in the loss of land that provides a habitat and biodiversity resource. This land is recognised as an LWS. The harm would be permanent and no compensation in terms of providing replacement land is proposed.

Mitigation hierarchy

- 3.5.91. Notwithstanding the caveats set about above in terms of necessity of doing so, the enhancement of the remaining CLNR and other open land within the site would be a benefit in itself, both in terms of biodiversity and improving access to people to enjoy

and understand nature. Similarly off-site improvements at the former Thamesmead Golf Course or elsewhere would be beneficial, particularly as the evidence did not show that there were any current, definite proposals to improve them, even though that might be desirable and given more of an impulse to do so in light of the development proposals. However, these benefits would not be so extensive to outweigh the harm of the loss of on-site nature conservation land.

- 3.5.92. The proposal would result in the loss of an area of Erith Marshes MSINC. Both the proposed MEA and identified offsite BNG Opportunity Area are both designated as SINC (the former being an MSINC). Consequently, although proposals may enhance the condition of parts of the MSINC, the proposal would not compensate for the loss in spatial terms. It would not avoid the loss and as mitigation would not change the principle of the MSINC being reduced in area.
- 3.5.93. Nevertheless, the applicant has applied the mitigation hierarchy and has provided evidence of the process they carried out to avoid, reduce, mitigate and ultimately compensate in respect of biodiversity harms. Bearing in mind the ExA's conclusions on alternatives at Section 3.3 above, that they did not entirely avoid the loss of parts of the Erith Marshes MSINC and CLNR does not in itself indicate that the mitigation hierarchy has not been followed as it is inherent in the approach that it may not be practicable to avoid all harms, hence the other steps in the hierarchy.

Local policy

- 3.5.94. In order to consider whether the proposed development would accord with LP Policy G6's requirements, consideration against criterion C's mitigation hierarchy requires a weighing against the benefits of the development which is carried out in section 5.2.7 below. The provision of BNG would accord with criterion D.
- 3.5.95. Whilst the proposal would improve access and connectivity across the proposed MEA, the evidence does not convincingly show that access to nature on the site or in the vicinity is deficient. As such the proposed development would not benefit from the positive consideration afforded by LP Policy G6 E⁴⁴.

Overall conclusions

- 3.5.96. The ExA considers that it is unfortunate that by seeking to reduce CO₂ emissions the proposed development would involve the net spatial loss of locally important nature conservation land which is clearly greatly valued by the community.
- 3.5.97. Taking all these factors into consideration, including the benefits that would arise on and offsite in terms of habitat enhancement, the effects on biodiversity would be negative and carries moderate weight against making the Order. However, as much of the harm would be to regional or local nature conservation sites, in light of NPS EN-1 paragraph 5.4.52, those designations should not be used in themselves to refuse development consent.
- 3.5.98. Should the SoS decide to grant consent for the proposed development, the ExA is of the view that in relation to any affected HPIs and SPIs, the enhancement provisions in the LaBARDS which the rDCO would require, would satisfy their NERCA2006 duty to further the conservation of those organisms and habitats.

⁴⁴ "Proposals which reduce deficiencies in access to nature should be considered positively."

3.6. CLIMATE CHANGE

INTRODUCTION

- 3.6.1. This section considers the impact of the construction, operation and decommissioning phases of the proposed development on, and from, climate change.
- 3.6.2. In the context of the Environmental Impact Assessment (EIA), climate change can broadly be considered in two parts: the effect of greenhouse gas (GHG) emissions caused directly or indirectly by the Proposed Development, which may have the potential to contribute to climate change; and, the potential effect of changes in climate on the proposed development, which could affect it directly or could modify its other environmental impacts. With regard to the latter, flood risk was the main matter raised during the examination in respect of climate change resilience of the proposed development and is considered in Section 3.8 below.

POLICY BACKGROUND

- 3.6.3. NPS EN-1 sets out the Government's energy policy including the need to meet net zero including by way of decarbonising the energy system to cut out GHG emissions. Section 4.10 sets out policies for climate change resilience and adaptation to ensure that energy infrastructure can remain effective in the light of more extreme weather events.
- 3.6.4. Section 5.3 sets out the assessment principles for applicants and the SoS. These include that the SoS should be satisfied that GHG for all stages of the development have been assessed as far as possible and that all reasonable steps to reduce GHG during construction and decommissioning have been taken. Paragraph 5.3.12 confirms that the SoS does not need to assess individual applications against operational carbon emissions and their contribution to carbon budgets, net zero and international climate commitments as this is addressed in an economy wide manner.
- 3.6.5. Development plan policies are similarly focused on reducing GHG emissions and adapting to, and mitigating the effects of, climate change including extreme weather.

THE APPLICATION

- 3.6.6. The CCF will be designed to capture at least 95% of CO₂ emissions from Riverside 1 and 2 EFW facilities.
- 3.6.7. The applicant points out that the context for the proposed development is to respond to climate change and the government's policies for reducing GHG which is what the CCF aims to do. By proposing a non-pipeline transport option for exporting captured CO₂ the applicant considers that the scheme will demonstrate that shipping LCO₂ at scale will be viable and that the scheme's heat recovery component will provide affordable, decentralised, zero carbon energy for Londoners. [\[REP7-021\]](#), [\[REP6-004\]](#)
- 3.6.8. ES chapter 13 sets out effects with regard to GHG [\[APP-062\]](#). This identified that there would be Beneficial (Significant) effects as a result of operation phase GHG emissions on the atmosphere and that, with mitigation measures to minimise emissions in place, construction phase residual effects of emissions would be Minor Adverse (Not Significant). The evaluations in the ES included those for the onward transport by ship and ultimate storage options.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.6.9. A number of IPs challenged whether the proposed development would achieve the 95% minimum CO₂ capture aim (including for example [\[RR-088\]](#), [\[REP1-065\]](#), [\[REP7-032\]](#). This included suggestions that operating at this level would be exceptional in light of existing operational CCS schemes and that comparisons with BAT are based on stripping CO₂ from fossil fuel gasses whereas removal from EFW emissions may not be straightforward and could lead to lower capture rates. The applicant reiterated that the CCF would be designed to capture at least 95% of CO₂ emissions from Riverside 1 and 2, operated and controlled under an Environmental Permit, and that government support for CCS is on the basis that delivering net zero is a necessity, not an option.
- 3.6.10. SCNR challenged the principle of the development in terms of a scheme that involves loss of biodiverse land to achieve a climate benefit [\[REP1-047\]](#). The ExA sought an explanation⁴⁵ [\[PD-007\]](#), [\[PD-014\]](#) of how any existing beneficial role or performance of land that would be lost to development had been factored into the applicant's approach to climate change benefits. The applicant advised this was included within the ES and provided a detailed breakdown⁴⁶ in [\[REP5-033\]](#) and corrected the emissions reported for land use, land use change and forestry from 463 tCO₂e to 563 tCO₂e. The applicant advised that this represented a change of 0.1% to construction phase emissions but that it did not alter the ES findings.
- 3.6.11. The EA [\[RR-065\]](#), [\[REP1-035\]](#) queried whether the carbon cost of the proposed ground raising to avoid the CCF being out of action in particular flood events may be greater than that of unfiltered emissions from the EFW plant in such an event. Following ExQs to the applicant and the EA [\[PD-007\]](#), [\[PD-014\]](#), the applicant confirmed both that less material would be required for any land raising following further work⁴⁷ on the subject and that they assumed that the CCF could be out of action for up to six months following a flood event, leading to a considerable amount of CO₂ being released from the EFWs. The SoCG between the EA and the applicant did not identify any matters outstanding between them [\[REP6-032\]](#).
- 3.6.12. In respect of any potential downstream effects⁴⁸, at ExQ1.19.0.2 [\[PD-007\]](#) the applicant responded that the ES considered both upstream and downstream effects, the latter including the transport of captured CO₂ through the 'CCS chain' and included the end storage implications [\[REP3-029\]](#), [\[APP-062\]](#).

EXA'S FINDINGS AND CONCLUSIONS

- 3.6.13. The ExA is satisfied that the ES has assessed the GHG emissions of all stages of the proposed development. Reasonable steps have been taken, and would be secured through requirements of the rDCO, to reduce GHG during construction and decommissioning, including through the securing of a CoCP (R7) CTMP (R9), a jetty works environmental design scheme (R16), a DEMP (R23) and a DTMP (R24).

⁴⁵ ExQ1.4.0.1 and ExQ2.4.1.

⁴⁶ Table 3-4.

⁴⁷ Appendix C to Applicant's Response to Examining Authority's First Written Questions: Flood Risk Technical Note – Breach Assessment Scenarios [\[REP3-035\]](#).

⁴⁸ In light of the Supreme Court judgement in R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20.

- 3.6.14. The ES has also appropriately assessed the GHG emissions from the operational phase including those arising from the onward transport of LCO₂. The applicant has demonstrated that there would be considerable net benefits arising from the proposed development compared to the current situation of Riverside 1's emissions and the future position where both Riverside 1 and 2 would be emitting CO₂ in the absence of the proposed development.
- 3.6.15. Clearly, were the proposed development to capture considerably less CO₂ than intended, the benefits it would deliver would diminish accordingly. However, whilst IPs have pointed to the relative novelty of the technology amongst other factors, there has not been any convincing, substantive evidence that the proposed development would fail to capture the levels of carbon it aims to. It is clear that the aim of the applicant is that the CCF is being designed to achieve that capture rate, and that the environmental permitting scheme, although separate from this DCO process, would be geared to controlling the capture rate. Furthermore, given that there will be a financial incentive based on quantities of LCO₂ exported, it would appear unlikely to be in the applicant's interest not to endeavour to maximise capture rates.
- 3.6.16. Consequently, it is not necessary for any DCO to require a specific level of capture given that this will be controlled through the environmental permitting regime.
- 3.6.17. The ExA is satisfied that the proposed development has been designed for climate change resilience and adaptation to ensure that the CCF would be likely to remain functional in extreme weather events including in the event of flooding.
- 3.6.18. Including provision for heat transfer technology would ensure that the opportunity for taking advantage of any excess heat would be designed into the proposed development, even if the potential barriers to establishing customers, heat demand or a market highlighted by objectors were to delay or limit its deployment and operation (see also sections 6.5.19 to 6.5.22 below). Inclusion of this potential would therefore be a benefit of the scheme in being future proofed to provide low carbon heat to other developments, particularly in light of NPS EN-1's encouragement for combined heat and power.
- 3.6.19. The contribution the development would make to reducing GHG emissions, along with the opportunities to export low carbon heat carry very great weight in support of making the order.

3.7. CULTURAL HERITAGE AND HISTORIC ENVIRONMENT

INTRODUCTION

- 3.7.1. This section considers the effects of the proposed development in relation to the historic environment and cultural heritage, including both designated and non-designated heritage assets, as well as buried assets the extent and significance of which, as a result of their situation, are unknown, and matters of wider cultural significance.

LEGISLATION AND POLICY

- 3.7.2. The Infrastructure Planning (Decisions) Regulations 2010⁴⁹ require the SoS to have regard to the desirability of preserving, amongst other things, the setting of a listed building (LB).
- 3.7.3. Section 5.8 of NPS EN-1 sets out policies pertaining to the historic environment. Paragraphs of particular note are identified below.
- 3.7.4. Paragraph 5.9.24 states that in considering the impact of a proposed development on any heritage assets, the SoS should consider the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.

THE APPLICATION

- 3.7.5. The applicant's assessment of historic environment matters is primarily contained within ES Chapter 9 [REP6-013]. Figure 9-2 [REP6-020] illustrates historic environment features on and within the vicinity of the site. Details of these are contained in the applicant's Historic Environment Desk-Based Assessment (HEDBA) at ES Appendix 9-1 [APP-100]. In terms of the approach and methodology adopted for the assessment of cultural heritage, Historic England (HE) agreed the scope of the design, mitigation and enhancement measures, the description of potential likely significant effects, and the elements proposed to be scoped in and out of the EIA, with the applicant [AS-032].

Above ground assets

- 3.7.6. Within the site, projecting into the Thames, is the former Belvedere Power Station Jetty (FBPSJ), a non-designated heritage asset. Designated heritage assets outside the site of relevance include the group of LBs at Crossness Pumping Station⁵⁰, which are set within the Crossness Conservation Area (CCA) to the west of the site and, on the opposite side of the river, the Jetty No 4 and Approach at Dagenham Dock LB⁵¹ (Jetty No 4).

Designated heritage assets

- 3.7.7. The ES finds that the settings of the LBs and the CCA do not make a significant contribution to their heritage significance. The Es concluded that there would be a direct, permanent Minor Adverse effect (not significant) on all those designated heritage assets, but that there would be less than substantial harm to their significance. This would be due to parts of the proposed development, including the proposed absorber column(s) and stack(s), and the proposed jetty, being visible in long views to the east, albeit to various degrees interrupted by intervening industrial buildings and chimney stacks, but those taller elements and the jetty would still constitute new built form in the wider landscape.

Non-designated heritage assets

- 3.7.8. The ES dates the concrete and timber FBPSJ to the 1950's or '60's whose significance is derived from its historic interest as the last surviving element of the

⁴⁹ Regulation 3(1).

⁵⁰ Crossness Pumping Station, grade I LB, Workshop Ranges to South West, and South East, of Main Engine House, Crossness Pumping Station, both grade II LBs.

⁵¹ Jetty Number 4 and Approach, Formerly at Samuel Williams and Company, Dagenham Dock, grade II LB.

former Belvedere Power Station and being a good example of a post-war industrial jetty. The ES considers its significance as low. The proposed development includes options for retaining, altering and removing the FBPSJ. Consequently, even though the ES considers that less than substantial harm to the significance the structure derives from its setting would result if retained, the worst case scenario of demolition would result in the total loss of the non-designated heritage asset and its heritage significance, during the construction phase.

- 3.7.9. Justification for the option of removing the FBPSJ is included in the applicant's Jetty Site Alternatives Report [\[APP-126\]](#).
- 3.7.10. The ES identifies this as a direct, permanent, long term, Moderate Adverse effect, prior to implementation of mitigation measures. Mitigation is proposed through historic building recording to an industry standard secured post consent by way of a provision within the CoCP [\[REP5-013\]](#), paragraph 7.2.1, itself which would be secured by way of a DCO requirement (7). The principle and standard of recording were agreed between the Greater London Archaeology Advisory Service (GLAAS) and the applicant as an appropriate mitigation approach [\[AS-041\]](#).

Unknown buried assets

- 3.7.11. The site lies within the Thamesmead and Erith Marshes Archaeological Priority Area where there are areas of archaeological potential within the site, both under land and the river bed and foreshore, which may be affected [\[APP-100\]](#).
- 3.7.12. ES Chapter 9 [\[REP6-013\]](#) identifies that, if present, the significance of remains from different eras would be of the following magnitude: palaeo-environmental – medium; prehistoric – high; Roman – high; medieval associated with reclamation and water management – low; medieval flood defence structural remains – medium; and, post-medieval and modern – low.
- 3.7.13. On those parts of the site where development would occur, previously unrecorded remains of all eras would be affected by activities including the construction of foundations and piles, implementation of terrestrial environmental mitigation works and, within the marine environment, dredging and scour within the riverbed and foreshore. This would affect their heritage significance. The ES records that adverse effects would be significant in the case of Prehistoric and Roman remains prior to the implementation of mitigation. Effects on remains from other eras would be minor adverse and not significant. The effects would be during the construction phase.
- 3.7.14. Mitigation is proposed in the form of post consent additional surveys and investigation to be set out in an archaeological mitigation strategy to be approved, secured through a DCO requirement (R22) [\[REP1-010\]](#), [\[REP6-013\]](#). The general approach to surveying and mitigation secured by dDCO R22 were agreed between the GLAAS and the applicant [\[AS-041\]](#).
- 3.7.15. With the exception of potential submerged archaeological remains in the Thames foreshore where residual effects are predicted to be uncertain, the ES concludes that the residual effects on all other unknown buried heritage assets would be Minor Adverse (Not Significant).

ISSUES CONSIDERED DURING THE EXAMINATION

Designated heritage assets

- 3.7.16. The signed SoCG with HE [\[AS-032\]](#) confirmed agreement of the approach and methodology for cultural heritage assessment as presented in the EIA Scoping Report including the scope of the design, mitigation and enhancement measures, the description of potential likely significant effects and the elements proposed to be scoped-in and scoped out of the EIA [\[REP6-021\]](#).
- 3.7.17. The signed SoCG with GLAAS [\[AS-041\]](#) confirmed agreement of the general approach to survey methodology and mitigation reflected in the ES, to HE Level 2 recording of the FBPSJ in the event it is demolished, and appropriate modelling, and geophysical and geotechnical surveys, that could be resolved post-consent, secured as a DCO requirement.
- 3.7.18. The signed SoCG with LBBC [\[AS-096\]](#) confirmed that there was no requirement to carry out further work in respect of identified designated heritage assets. It confirmed that controls set out in the articles and requirements of the dDCO have been agreed between those parties.

Non-designated heritage asset

- 3.7.19. The ExA questioned the applicant (ExQ1.6.0.1) [\[PD-007\]](#) about how the FBPSJ would be recorded in the event it is to be removed in the absence of an explicit requirement in the dDCO for recording the FBPSJ. The applicant responded that the CoCP provided for recording and that dDCO R7 (requiring submission and approval of the CoCP) had been revised to require the submitted CoCP to be substantially in accordance with the outline version.
- 3.7.20. The ExA further questioned the applicant (ExQ2.8.4) [\[PD-014\]](#) that it would appear more appropriate to require recording as part of a relevant requirement, rather than a provision in the CoCP, and provided potential wording. The applicant contended [\[REP5-033\]](#) that provision in the CoCP would be adequate, albeit updating the document to incorporate the ExA's suggested timescales for the deposit of records required to be made [\[REP5-013\]](#). The applicant's response also referred to altering the scope and provision of dDCO R22 (requiring the archaeological mitigation strategy). However, this is not a provision shown in the final version of the dDCO submitted into the examination.

Unknown buried assets

- 3.7.21. In response to the MMO's view that a marine written scheme of archaeological investigation be included in the Deemed Marine License (DML) [\[REP1-036\]](#), [\[REP5-044\]](#), the applicant [\[REP6-037\]](#) included a condition in the DML in the dDCO [\[REP7-003\]](#) (Schedule 11, Part 2, Article 26) in addition to the provisions of R22.

Cultural heritage associations

- 3.7.22. IPs, in particular Ridgeway Users (including [\[REP1-069\]](#), [\[REP1-070\]](#)) and Bexley Civic Society [\[REP1-071\]](#), [\[REP2-028\]](#), point to the historic use of Erith Marshes by travelling, including Romani, communities as a winter residence location and for horse grazing. Whilst residential use has ceased the historic associations of the area including areas of land that remain open for grazing remain in the memories of people, both settled and travelling communities, giving these associations cultural significance. Also, it is reported that current graziers using parts of the site have family links to grazing the land for three generations.
- 3.7.23. They point to the area of grazing marshland having been much more extensive but has been incrementally reduced, particularly from the mid C20 onwards, such that

they contend that remaining on the application site is one of the last remaining areas. The development of part of the site would contribute further to this incremental reduction, with consequent effects on those cultural associations with open grazing marshland.

- 3.7.24. The applicant [REP4-033]⁵², considers that there are unlikely to be any surviving physical archaeological remains associated with traveller communities within the site, and, if they were to be present, would be ephemeral and of low significance due to the impermanence of traveller activities. However, any significant remains would be covered by a written scheme of investigation secured through dDCO R22. They point to the LaBARDS which would make provision for securing appropriate long-term management of the resulting proposed CLNR for the graziers including access arrangements, utilities and water and replacement stabling⁵³.

CONCLUSIONS

Designated heritage assets

- 3.7.25. The significance of those designated heritage assets rely to varying degrees on their settings within which they can be seen and understood. For the Crossness group of LBs and the CCA considered as a whole, intervening buildings to the west of those LBs, including taller elements and stacks within the wider CWTW estate, means that they are already experienced in a developed environment of an industrial character. Jetty No 4 is partly set with the wide expanse of the Thames and development on the south bank beyond which is in part characterised by the industrial elements of CWTW, and the riverside elements of Belvedere Industrial Area, also with tall elements including the flues of the Riverside EFW sites.
- 3.7.26. The proposed development would affect the settings of those listed buildings and the CCA and hence the heritage significance they derive from those settings. This would be largely as a result of the height, scale, mass and situation of the proposed CCF, particularly those taller elements such as the stacks and absorber columns. Due to their height, they would be noticeable, even at a distance to varying extents from the assets and in views of the assets where the proposed development would form part of their wider townscape and riverscape backdrop, albeit limited to those aspects where the proposed development would be visually perceptible within their settings. This visual intrusion would be harmful, including by way of adding to the vertical elements within the skyline seen from the assets or forming the backdrop to them.
- 3.7.27. However, the distance between these assets and the most noticeable elements of the proposed development, along with the limited significance they derive from those aspects of their settings, would mean that this harm would be very limited. It would be less than significant in the terms of NPS EN-1.
- 3.7.28. NPS EN-1, paragraph 5.9.28, sets out that the SoS should give considerable importance and weight to the desirability of preserving all heritage assets, and, at paragraph 5.9.27, give great weight to a designated heritage asset's conservation, irrespective of whether any potential harm to significance amounts to substantial harm, total loss, or less than substantial harm. Paragraph 5.9.28 goes on to point

⁵² Paragraph 2.8.2.8.

⁵³ Paragraph 2.8.2.9.

out that any harm or loss of significance of a designated heritage asset (including from development within its setting) should require clear and convincing justification.

- 3.7.29. Taking the above matters into account, and the requirements for justification and weighting set out in NPS EN-1, the ExA considers the applicant has adequately assessed the significance of the heritage assets affected by the proposed development and that the extent of the likely impact can be understood. In this regard the ExA considers that the application meets the requirements of NPS EN-1, the NPPF and the Planning Practice Guidance.
- 3.7.30. Noting the views on this matter from LBBC, the ExA has no reason to disagree with the applicant's conclusions in ES Chapter 9 or the HEDBA. The ExA is satisfied that the Proposed Development would not result in significant adverse effects to any of the heritage assets identified in EIA terms.
- 3.7.31. Nevertheless, the proposed development would result in slight adverse effects to the setting of a number of designated assets. In light of Paragraph 3.7.10 above, the ExA agrees with the ES Chapter 9 [\[REP6-013\]](#) findings that there would be a direct, permanent Minor Adverse (Not Significant), effect on those designated heritage assets throughout the operation phase. The ExA agrees with the applicant's assessment that this harm to the following designated heritage assets would be less than substantial:
- Grade I LB Crossness Pumping Station
 - Grade II LB Workshop Range to South East of Main Engine House, Crossness Pumping Station
 - Grade II LB Workshop Range to South West of Main Engine House, Crossness Pumping Station
 - Grade II LB No. 4 Jetty and Approach at Dagenham Dock
 - The CCA
- 3.7.32. In light of paragraph 3.7.7 above, the ExA considers that the significance which each of those designated heritage assets derive from their settings is limited in all cases.
- 3.7.33. The scale, mass and appearance of the development and surrounding landscaping have the potential to reduce the harm by way of ensuring that where the proposed development would feature in part of the settings in which the designated heritage assets would be experienced, that design is of high quality and landscaping effective in going some way to assimilating elements of the proposal into the natural landscape. The ExA notes that LBBC have agreed controls in the dDCO with regard to the historic environment [\[REP5-019\]](#). R4, R11, R12 and R16⁵⁴ of the rDCO would provide a mechanism for approving appropriate details in these respects.
- 3.7.34. Where there is a harm, even if classified as less than substantial, the SoS must give that harm considerable importance and weight. The ExA considers adverse effects to the significance that the listed buildings and CCA derive from their settings would be very limited and therefore even giving that harm considerable importance and weight, would ascribe this little weight against the making of the order.

⁵⁴ (4) Detailed design; (11) lighting strategy; (12) landscape, biodiversity, access and recreation delivery strategy; and (16) jetty works environmental design scheme.

- 3.7.35. Nevertheless, this harm requires clear and convincing justification and is weighed against the public benefits of the proposed development at section 5.3 of this report, in the planning balance.

Non-designated heritage asset

- 3.7.36. NPS EN-1 paragraph 5.9.16 states that the ability to record evidence of an asset should not be a factor in deciding whether such loss should be permitted, and whether or not consent should be given. Paragraph 5.9.17 goes on to state that where the loss of a heritage asset's significance is justified, the SoS will require the applicant to record and advance understanding of the significance of the heritage asset before it is lost.
- 3.7.37. Furthermore, the proposed development would (in the worst case scenario) lead to the total loss of significance of the FBPSJ. The ExA agrees with the ES that, taking into account the recording approach proposed, that residual effects would be Minor Adverse (Not Significant).
- 3.7.38. Nevertheless, given that the SoS should give considerable importance and weight to the desirability of preserving all heritage assets, even if the proposed mitigation were to render the adverse effects as not significant in ES terms, bearing in mind the non-designated status of this asset along with the particular nature of the significance of the asset and the value that it holds for this and future generations, the ExA ascribes this moderate weight against making the Order.
- 3.7.39. As required by NPS EN-1, paragraph 5.9.33, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the non-designated heritage asset, which is also carried out in the planning balance at section 5.3. SEMP Policy Code SE-HER-1 sets out a similar approach where mitigation is not possible to mitigate, requiring public benefits for proceeding with the proposal to outweigh the harm to the significance of heritage assets.
- 3.7.40. In any event, the ExA considers that making the requirement for recording of the FBPSJ an explicit requirement, rather than relying on a component of the CoCP, would provide the necessary clarity and would be commensurate with the significance of the asset and has therefore recommended that R22 be amended accordingly in the rDCO.

Unknown buried assets

- 3.7.41. Although there remains a degree of uncertainty about what remains may exist, requirement 22 and condition 26 of the DML in Schedule 11 of the rDCO would provide a robust mechanism to ensure appropriate surveys, investigation and mitigation would be carried out if consent is granted. The ExA agrees with the applicant's assessment that the residual effects on such unknown buried heritage assets would be Minor Adverse (Not Significant). Consequently, this is a matter that carries neutral weight.

Cultural heritage associations

- 3.7.42. Whilst the ExA agrees with the applicant's assessment in relation to any archaeological evidence of use of land by travelling communities this does not effectively cover the IPs' concern about the cultural associations with the site in light of the diminishing extent of Erith Marshes. To the extent that there are cultural associations with undeveloped grazing marsh it follows that the proposed development where it would build on parts that are currently open would

incrementally reduce the area of open grazing marsh perceptible, and have a consequential incremental effect on that cultural significance and add to a general sense of loss, although given its intangible nature it is not straightforward to quantify that loss.

3.7.43. However, In cultural heritage terms, areas would remain. There is no substantial evidence that the applicant's proposals for the management of grazing in the future would end grazing by those who may have familial associations with past generations who grazed the land when it may have been more extensively used by Romani or other travelling communities. Consequently, and even taking into account the relative extent of areas of grazing now, and that are reported to have been present before the mid C20, the effects would be slight.

3.7.44. Consequently, whilst there would be a slight effect on the cultural significance the site hold due to its associations with the culture and memories associated with historic use by travelling communities, areas of grazed marsh would substantially remain such that this matter would weigh neutrally in the planning balance.

3.8. WATER ENVIRONMENT AND FLOOD RISK

INTRODUCTION

3.8.1. This section considers the effect of the proposed development upon matters of flood risk, hydrology and the water environment.

POLICY BACKGROUND

3.8.2. NPS EN-1 notes that the aim of planning policy on development and flood risk is to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process. This is to avoid inappropriate development in areas at risk of flooding and to steer new development to areas with the lowest risk of flooding (paragraph 5.8.6). NPS EN-1 goes on to state that where new energy infrastructure is, exceptionally, necessary in flood risk areas (for example where there are no reasonably available sites in areas at lower risk) the policy aims to make it safe for its lifetime without increased flood risk elsewhere, and where possible, by reducing flood risk overall. It should also be designed and constructed to remain operational in times of flood.

3.8.3. NPS EN-1 states that a site-specific flood risk assessment should be undertaken for all energy projects in Flood Zones 2 and 3, which should identify and assess the risks of all forms of flooding, to and from the project, and demonstrate how these flood risks will be managed, taking climate change into account. NPS EN-1 sets out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk flood zone area.

3.8.4. Where a project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment. NPS EN-1 states that the SoS should consider whether mitigation measures are needed over and above any which may form part of the application, and that a construction management plan may help codify mitigation.

3.8.5. NPS EN-1 also notes that the SoS will need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the WFD Regs and that they should be satisfied that a proposal has regard to current River Basin

Management Plans and meets the requirements of the WFD Regs (including Regulation 19⁵⁵). The SoS must refuse development consent where a project is likely to cause deterioration of a water body or its failure to achieve good status or good potential, unless the requirements set out in Regulation 19 are met.

- 3.8.6. The Thames River Basin District River Basin Management Plan: updated 2022 sets out the approach to protect and improve the quality of waters in the river basin district.

THE APPLICATION

- 3.8.7. ES chapter 11 [\[REP6-014\]](#) considered the Water Environment and Flood Risk, along with various appendices, including Appendices 11-1 [\[APP-106\]](#) Water Framework Directive Assessment, 11-2 [\[APP-107\]](#) Flood Risk Assessment (FRA), 11-3 [\[APP-108\]](#) Groundwater Impact Assessment and 11-4 [\[REP6-028\]](#) Coastal Modelling Studies. The application was accompanied by an Outline Drainage Strategy [\[APP-122\]](#).
- 3.8.8. Baseline data collection consisted of site walkover surveys (including intertidal areas), surface sediment sampling and desk based collection. The ES considers that for the differing construction options (length of construction, number of stacks, and potential demolition of the FBPSJ) there is no discernible or negligible differences between the options for the purposes of the water environment. The future baseline includes the operation of Riverside 2 and the effects of climate change.
- 3.8.9. The ES notes that there is one Water Framework Directive (WFD) designated surface water body located within the Study Area; the Thames Middle Transitional WFD water body which is designated for its biological, physiochemical and hydromorphological quality elements.
- 3.8.10. The site also lies within Flood Zone 3, within the undefended tidal floor extent of the 1 in 200 year event (0.5% Annual Probability of Exceedance). However, the ES notes that this map excludes the presence of flood defences, but that there are significant flood defences located along the River Thames, which are inspected regularly to ensure appropriate maintenance is carried out to ensure the required standard of protection (1 in 1000 year event present day) is maintained. However, while the defences protect the site from tidal and fluvial flooding from the Thames, it remains at residual risk of flooding from overtopping or a breach of the defences. The Sequential and Exception tests are contained within the FRA.
- 3.8.11. Embedded design, mitigation and enhancement measures include the Outline CoCP [\[APP-124\]](#) which sets out that construction activities will take place in accordance with Construction Industry Research and Information Association (CIRIA) and Environment Agency (EA) good practice, as well as Guidance for Pollution Prevention, work instructions, inspections and audits and the preparation of pollution prevention plans. The ES notes measures to be implemented during construction to avoid and reduce the potential impacts to sensitive receptors from increased sediment loads and from the release of hydrocarbons and oils. Details are also provided of infilling of, and possible creation of new, ditches and water features, and culverting of existing ones where not infilled.

⁵⁵ Requiring provision of information and assistance to the 'appropriate agency', the EA in this case.

- 3.8.12. The WFD Assessment [\[APP-106\]](#) contains various WFD related mitigation measures and Appendix 11-4 Coastal Modelling Studies [\[APP-109\]](#) contains specific mitigation measures to avoid and reduce impacts to coastal processes. The ES also describes measures to be taken to reduce flood risk during construction, including the cessation of works when there is a risk of flood events. Mitigation measures for sensitive receptors during operation are also outlined.
- 3.8.13. Following such mitigation, residual effects of all categories of risk during construction and operation were assessed as slight adverse (Not Significant) or negligible (Not Significant). A design related mitigation measure was the proposal for the whole CCF and associated structures to be situated on a 3m high development platform to protect it in the event of a breach event. Further additional design, mitigation and enhancement measures include: sediment sampling as controlled by the Deemed Marine Licence (DML) within the Draft DCO [\[APP-018\]](#); the detailed design of the proposed development to include a Flood Defence Wall to protect the scheme to a minimum height of 300mm above maximum flood level in the event of a breach of the Thames Estuary between Riverside 1 and 2; and, a ground investigation undertaken prior to construction as secured by the draft DCO [\[APP-018\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.8.14. The LBBC's LIR [\[REP1-034\]](#) notes that a full drainage strategy would be submitted for approval but states that it is unclear when this would be. A revised outline drainage strategy was submitted at D6 [\[REP6-030\]](#). Concerns were also raised that the infilling of some drainage ditches (and their replacement with piped drainage systems or culverts) should demonstrate that there would be no loss of storage and increase in flood risk.

Flood Risk

- 3.8.15. In their written representation, the EA [\[REP1-035\]](#) noted that they were yet to agree various details including; the spatial extent of the Order Land; where easements were to be extinguished; the breach flood and fluvial modelling; offsets relative to the flood defences and watercourses; the adequacy of fluvial flood risk mitigation; proposed land raising; engineering designs; proximity to the Great Breach Pumping Station and its associated access, channels, mains and culvert; sedimentation modelling; and, any necessary mitigation. All such details were required to ensure that there was no increased risk to third parties through: loss of flood storage and flood flow capacity; impact on the flood defences; and the impact on the maintenance and upgrading of, and the discharging from, the Pumping Station.
- 3.8.16. Extensive discussions took place between the applicant and the EA throughout the examination, as evidenced in the completed and signed SocG between the parties [\[REP6-034\]](#). This document confirmed that by the end of the examination all matters were agreed relating to flood risk, including sediment modelling associated with the Great Breach outfall [\[REP3-037\]](#) (see paragraphs 3.8.21 and 3.8.22 below regarding concerns over river sediment modelling), breach modelling based on a Flood Risk Technical Note⁵⁶ prepared by the applicant in response to a question from the ExA [\[REP3-035\]](#), design and details of land raising (as provided for in the Design Principles and Design Code [\[REP5-009\]](#)). In relation to the LIR, the SoCG

⁵⁶ Applicant's Response to Examining Authority's First Written Questions, Appendix C: Flood Risk Technical Note – Breach Assessment Scenarios.

also confirmed that the EA agreed that the Flood Risk Assessment [APP-107] presented a precautionary and likely worst case scenario.

- 3.8.17. An EA response [REP6-045] to a written question from the ExQ R17Q2.5 [PD-016] over any potential redesign of the proposed raised area to make it higher in future noted that the EA do not normally raise a concern over an increased building footprint within the residual risk floodplain in London, as there is typically no opportunity to offset increases in built footprint which would lead to an unsustainable blanket opposition to most developments in the London defended floodplain. However, they noted that the scale of the change created by the proposed development including over 7ha of ground raising, led to their concern over increasing residual flood risk off-site. The EA considered that an advisory statement over re-assessing the flood risk if there was a significant change to the design at detailed design stage was sufficient but, also stated that they would be content with a requirement to cover such matters in the dDCO.
- 3.8.18. Amongst other questions about the townscape and visual implications of the proposed development platform, at ExQ1 [PD-007] the ExA sought clarification⁵⁷ on the need for, and purpose of, the development platform as well as what alternatives had been investigated. The applicant confirmed [REP3-029] that the 3m development platform was devised as a worst case scenario and that it had been intended to review the proposal as part of detailed design, but that review had been brought forward in light of further flood work carried out to inform discussions with the EA.
- 3.8.19. The aforementioned accompanying Technical Note [REP3-035] changed the preferred approach in the event of a flood wall breach by reducing the formation level of the proposed development platform and allowing flood waters to flow across it. The DPDC was also updated [REP-007] to specify that the CCF would have a maximum platform levels of 1.3m AOD to the north of the Thames Water Access Road and 1.5m AOD to the south.

Water quality

- 3.8.20. Ridgeway Users' [REP1-069], [REP7-030] concerns over per- and polyfluoroalkyl substances (PFAS) are covered below in Geology, Hydrogeology, Soils, Materials and Waste below (Section 3.13). Where these overlap with the WFD, this is covered below.

Water Framework Directive (WFD)

- 3.8.21. The application included a WFD Assessment⁵⁸ [APP-106] as an appendix to the ES. The EA [RR-065] considered that the WFD Assessment had not used relevant baseline data such that the EA could not agree with its conclusions, and the EA provided a suggested approach to a revised WFD Assessment. The EA further commented [REP3-037] that they did not consider the current WFD Assessment to be fit for purpose due to uncertainty around contamination levels in sediment as samples had not at the time been taken. They consequently concluded that WFD compliance could not logically be demonstrated at that time.

⁵⁷ ExQ1.9.0.2, ExQ1.9.0.3, Q1.18.0.1, Q1.18.0.2 and Q1.18.0.3.

⁵⁸ Although the full title of the regulations is the Water Environment Regulations (Water Framework Directive) (England and Wales) 2017, it is customary in a National Infrastructure context to refer to the assessment as a WFD assessment.

- 3.8.22. The ExA issued a Rule 17 request for information [PD-013] seeking an update on the situation including the applicant's sampling and reporting⁵⁹. The applicant provided a Sediment Sampling Technical Note [REP5-031] to confirm the findings of the WFD Assessment. This was reviewed by the EA who subsequently confirmed that the proposed scheme would be WFD compliant for water quality [REP6-034]. A final version of the WFD Assessment was submitted at D6 [REP6-027].
- 3.8.23. The WFD Regs require the SoS to consider the potential effects of the proposed development on the environmental objectives and measures within the River Basin Management Plan and any supplementary plans and the ability of the UK to comply with the WFD⁶⁰. The EA confirmed [REP6-045] that they considered the activity to be WFD and WFD Regs compliant under the current regulatory environment in force within this River Basin Management Plan, which ends in December 2027.
- 3.8.24. Ridgeway Users [REP5-054] considered that the Thames was not the only watercourse that should be considered under the WFD, and that the watercourses in the form of ditches and drains within what they referred to as the 'Crossness Marsh site' should have been included within the parameters of the WFD assessment and considerations. Following on from this they considered that the applicant had not 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. Concerns were raised specifically in this context in relation to the potential deterioration of water quality from PFAS, noting that while there is not an Environmental Quality Standard (EQS) for PFAS, the levels of PFOS (a subset of, and marker for, PFAS which is why Ridgeway users considered this measure relevant) in the ditch water that they sampled and analysed exceed the EQS for PFOS by approximately 10 times, and there are likely high levels of PFOS contamination in the soils on site.
- 3.8.25. Ridgeway Users were therefore of the view that the applicant had not demonstrated beyond a reasonable scientific doubt that the development of the scheme would not cause further PFAS/PFOS to be mobilised from contaminated soils causing a deterioration of the water quality WFD status of the ordinary watercourses.
- 3.8.26. The ExA asked a question⁶¹ of the applicant and the ES in relation to this point as to whether the scope and conclusions of the WFD remained acceptable ExQ R17Q2.3 [PD-016]. In response the EA stated that the scope and conclusions of the WFD remained acceptable, stating that the chemicals found have no implications for WFD which relate to the main water body, and that the EQS for PFOS apply to the main water body, not discharges. They also noted that water discharge activities from the site to ground and to water would be regulated by a permit to prevent deterioration of the environment.

CONCLUSIONS

- 3.8.27. The ExA is satisfied that, subject to the mitigation measures identified in the ES, FRA, WFD Assessment and Coastal Modelling Studies secured by these documents and dDCO R4 (Detailed design), R7 (CoCP), R10 (Emergency preparedness and response plan), R13 (Surface and foul water drainage), R17 (River Wall), R18 (Flood Risk mitigation) and R21 (Ground conditions investigations

⁵⁹ EA's and applicant's responses are at [AS-088] and [AS-087] respectively.

⁶⁰ And the derogation provisions under the WFD; however that is not applicable in light of the evidence presented in the examination.

⁶¹ ExQ R17Q2.3.

and assessments strategy) there should be no adverse effects on water quality and resources from the proposed development during construction, operation and maintenance, or decommissioning, and that the ES satisfies the requirements of NPS EN-1. The FRA demonstrates that the Sequential and Exception Tests are passed.

- 3.8.28. R4 (Detailed design) of the dDCO also provides sufficient reassurance and safeguards to ensure that the proposed development would be designed and constructed in accordance with the design parameters and the DPDC, and that any deviation must be agreed with the relevant planning authority; such approval only being given if any deviation would not lead to materially new or different effects which are worse than those identified in the ES.
- 3.8.29. The ExA considers that the SoS has sufficient information to decide whether the development has implications for the UK's obligations under the WFD and to consider effects on The Thames River Basin District River Basin Management Plan's objectives and measures. Based on the evidence submitted, the proposed development is unlikely to cause a deterioration in the status or potential of the water body with respect to water quality during the construction and operational phases, provided that the mitigation measures set out in the CoCP required to be approved by way of rDCO R7 are implemented. In addition, and in line with the views of the EA, the ExA is satisfied that the scope and conclusions of the WFD remained acceptable notwithstanding Ridgeway Users' views. In this way the proposed development would comply with paragraph 5.16.14 of NPS EN-1.
- 3.8.30. Water environment and flood risk effects are consequently neutral and do not weigh for or against the making of the Order.

3.9. GOOD DESIGN

INTRODUCTION

- 3.9.1. Although embedding good design is an approach applicable to all thematic sections, this section examines the approach to good design in the application and the extent to which there can be confidence that any final development will have followed a process to deliver good design in the widest sense.

POLICY BACKGROUND

- 3.9.2. NPS EN-1⁶² makes it clear that good design goes far beyond aesthetic considerations, with functionality and fitness of purpose, and sustainability being equally important.
- 3.9.3. Whilst not making it an absolute requirement, NPS EN-1⁶³ encourages applicants to appoint a board level design champion and use a representative design panel to maximise the value provided by the proposal. It further encourages applicants to consider taking independent design advice, in particular taking advantage of the Design Council design review service and considering published local design guidance.

⁶² Paragraph 4.7.1.

⁶³ Paragraphs 4.7.5 and 4.7.8.

- 3.9.4. NPS EN-1⁶⁴ requires the SoS to be satisfied that developments are sustainable and are as attractive, durable, and adaptable as they can be. In doing so the SoS should be satisfied that the applicant has considered both functionality and aesthetics, taking into account the development's ultimate purpose and bearing in mind operational, safety and security requirements. It notes⁶⁵ that the SoS should consider taking independent professional advice on the design aspects of a proposal and in particular, the Design Council can be asked to provide design review for nationally significant infrastructure projects.
- 3.9.5. NPS EN-1⁶⁶ recognises that high quality design can improve the visual and environmental experience for visitors and the local community in respect of mitigating socio-economic impacts.
- 3.9.6. LP Policy HC1 D3 seeks to optimise site capacity through a design led approach and provides detailed requirements relating to the form, layout, experience, quality and character of development relative to context and LP Policy D4 sets out requirements for delivering good design including making use of the design review process to assess and inform design options early in the planning process. LP Policies D5 and D8 promote inclusive design and well designed public realm respectively. [\[REP7-010\]](#)
- 3.9.7. BLP Policy SP5 sets out the Council's expectations for high quality standards of design in Bexley which should respect existing character and context but need not be constrained by what already exists as local character evolves over time. BLP Policy DP11 requires development in all locations to follow criteria including ensuring that layout, height, scale and massing, façade treatment, and materials are complimentary to the surrounding area and contribute positively to the street scene as well as providing a high standard of appropriate landscaping design, with regard to the character of the surrounding area. [\[REP1-034\]](#)
- 3.9.8. BLP Policy DP18 requires development proposals on or near waterfronts to ensure, amongst other things, that they preserve the heritage character of those waterways, ensuring design and layout enhances visual connections to historically significant features.

THE APPLICATION

- 3.9.9. The engineering plans submitted with the application provide indicative layouts, [\[APP-011\]](#) elevations [\[APP-016\]](#) and jetty details [\[APP-017\]](#). Detailed design would be carried out should development consent be granted.
- 3.9.10. The application was accompanied by a Design Approach Document (DAD) which presented the evolution of the scheme design and the DPDC would be a certified document under the dDCO.
- 3.9.11. The DAD (in three parts) [\[APP-044\]](#), [\[APP-045\]](#), [\[APP-046\]](#) illustrates how some of the DPDC principles and code requirements might influence the design and appearance of the proposed development.
- 3.9.12. The DPDC [\[APP-047\]](#) sets out a series of high level principles under the headings of climate, people, places and value to organise the technical engineering process

⁶⁴ Paragraphs 4.7.10-13.

⁶⁵ Paragraph 4.7.14.

⁶⁶ Paragraph 5.13.8.

and project design into a scheme design. The Design Code provides design control requirements for the infrastructure, buildings and landscape including on a 'campus wide', and a site and component specific basis.

- 3.9.13. Other than references in appendices [\[REP6-007\]](#) to LBBC's Urban Design principles that note the Council's design review panel that can be used at pre-application stage and a reference to the NPS's encouragement to use design review and appoint a board level design champion, the DAD does not indicate that independent design review formed any part of the design development process, nor for that matter did it envisage a role going forward. Neither was there any indication that a design champion would be appointed in the submitted DPDC [\[REP5-009\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.9.14. The ExA asked questions relating to good design in ExQ1 [\[PD-007\]](#) to establish whether the Planning Inspectorate advice⁶⁷ on good design, which reflects NPS EN-1, had been followed. Further questions, particularly in the context of DCO requirements, were posed by the ExA at ISH2 [\[EV8-001\]](#), [\[EV8-002\]](#), [\[EV8-004\]](#), [\[EV8-006\]](#). The applicant's responses to both ExQ1 and ISH1 prompted further questions at ExQ2 [\[PD-014\]](#).
- 3.9.15. In response to ExQ1.0.1.1 the applicant confirmed that there would be a design champion on the project board and provided a named individual [\[REP3-029\]](#). The applicant advised in response to ExQ1.0.1.2 that they did not consider independent design review was necessary, pointing to the design process they had engaged in and set out in the DAD, and that the dDCO provisions would provide measures to implement the DPDC. They also noted that there is no statutory requirement to engage in a design review process. The applicant set out which national and industry design guidance had been taken into account in the preparation of the scheme and the DPDC in response to ExQ1.0.1.3.
- 3.9.16. The ExA followed these responses up to establish what mechanisms would specify the design champion's brief and ensure the role was fulfilled should the named board member change. Views were also sought on an appropriate mechanism to require independent design reviews to be carried out (by way of specification in the DPDC or a DCO requirement) should they be deemed necessary. In response to ExQ2.0.1 [\[REP5-033\]](#) the applicant revised the DPDC [\[REP5-009\]](#) setting out a brief and that the role be maintained if personnel change, an approach agreed by LBBC [\[REP5-42\]](#).
- 3.9.17. The applicant disagreed with the ExA's view at ExQ2.0.2 that the value of independent design review would appear to have been underestimated, considering that their experienced design consultants had been able to perform the role of peer review including challenging emerging configurations, albeit they were part of the design team. LBBC concurred with this view [\[REP5-42\]](#). Nevertheless, the applicant revised the DPDC [\[REP5-009\]](#) to include a provision for the appointment of a third party master planning design consultancy to provide independent review. It specifies their role as including ensuring that the DPDC would be incorporated into the detailed design the results of which would be provided with the compliance statement requirements of R4 (detailed design) and R12 (LaBARDS). Those Rs were revised too.

⁶⁷ [Nationally Significant Infrastructure Projects: Advice on Good Design - GOV.UK](#)

- 3.9.18. The latest version of the DAD was provided at D6 [\[REP6-005\]](#), [\[REP6-006\]](#), [\[REP6-007\]](#) which included minor corrections identified earlier [\[REP6-001\]](#), [\[AS-042\]](#). Indicative drawings were updated during the examination in relation to the changes that were accepted including the equipment layout [\[AS-070\]](#), elevations [\[AS-072\]](#) and jetty [\[AS-055\]](#).

EXA'S FINDINGS

- 3.9.19. Providing a DAD follows good practice and the Planning Inspectorate's advice on design. The DAD provided a comprehensive explanation of the approach taken so far in design and provided an insight into how the DPDC might influence detailed design.
- 3.9.20. The DPDC provides some very specific requirements which deal with particular issues but on the whole the principles and code items are relatively general. They provide a sound and relatively comprehensive set of factors which detailed design can be developed and assessed against. However, by their nature and the stage of design development at the examination stage they cannot in themselves guarantee good design will necessarily result.
- 3.9.21. Given the early stage of design and the broad parameters and principles there is consequently a wide scope for not only the detailed appearance and design of the facility but also the quality of its architecture, engineering and landscape design. Such broad parameters could mean that the design solution is one of beauty, elegance and simplicity with carefully considered, integrated landscaping but also one that could err on being basic, utilitarian, clumsy with scant and tokenistic perimeter planting, or somewhere in between. Particularly in light of the townscapes and visual effects set out in section 3.12, it is important therefore that the dDCO and the documents it would certify provides the appropriate framework to ensure that the final design and appearance of the scheme is as good as it can be.
- 3.9.22. Whilst requirements will enable the LPA to consider the quality of design amongst other factors when determining the details of works and the LaBARDS, this is a control function. Whilst the LPA can exercise such control and if necessary reject designs of insufficient quality should they be put forward, this will cause delay and is likely only to raise quality through an iterative process.
- 3.9.23. The ExA welcomes the applicant's approach to address concerns, particularly through the confirmation that a board level design champion has been appointed (or rather a board member given the explicit role), along with measures in the DPDC to ensure the role is retained. Furthermore, the proposal for third party designers to ensure compliance with the DPDC is a positive step towards ensuring good quality design. Whilst the role will need to be fleshed out, a semi-independent team who can engage with the design team, potentially on a much more regular and interactive basis than a design review process would, should pay dividends in ensuring quality in the detailed design.
- 3.9.24. Nevertheless, such a role would be complementary rather than an alternative to a peer design review by professionals with no involvement in the project and whose independence would enable a more effective evaluation, endorsement, and where appropriate challenge, of the emerging design at key stages. Furthermore, given the stage of design development, the value of master planning expertise will reduce as the broader elements of the detailed design are fixed, and the importance of the appearance and detailed architectural treatment of elements will come to the fore. The ExA questions whether the identification of that particular skillset and expertise

for carrying out the role intended is comprehensive enough particularly to deal with the detailed and aesthetic considerations identified in the DAD and DPDC.

- 3.9.25. Although the DAD occasionally mentions architecture and architectural design, there is no reference to architects being part of the design team up to this stage nor what roles particular design professions may play in detailed design, albeit that the role of LDA in design so far and influencing the master planning, landscape and urban design has been clearly articulated. Just because the technical nature of much of the plant will doubtless require extensive engineering design input does not mean that architects and other built design professions should not have an important role to play in developing the detailed design.
- 3.9.26. Very little detail of the proposed jetty has been provided beyond an indicative drawing [\[AS-055\]](#). Whilst it will need to be designed to be fit for purpose, it has the potential to be both functional but also possess quality design and aesthetic qualities itself and make a positive contribution to the character of the riverscape. Interaction with the existing FBPSJ if retained could lead to an interesting and imaginative design solution but would require a suitably high quality design to do so. The dDCO approaches its design through R16 requiring a jetty works environmental design scheme to be approved. However, the DPDC does not contain specific principles of code items for the proposed jetty albeit that some of the general principles could be applicable. It would not be appropriate to add a clause to require a statement of compliance with the DPDC nor is there an alternative document available that could fit the role.
- 3.9.27. All this leads the ExA to consider that some form of independent peer review of the design process at key stages as a complementary function, not an alternative, to the design quality and control measures that the dDCO has in place would be preferable. The ExA notes that neither the applicant nor LBBC consider such a review necessary, and it is noted that it is not a requirement of legislation or policy, rather NPS EN-1 sets their use as a consideration for applicants. The applicant has fulfilled this requirement and given it consideration. Nevertheless, given the relatively immature stage of design and the generous parameters, the ExA consider that in order to ensure good quality design of the implemented scheme independent design review should be included as part of the package of design measures.
- 3.9.28. The ExA has therefore added a requirement to demonstrate that such a review or reviews have been carried out in respect of the scheme, the landscape and biodiversity design in the LaBARDS and the proposed jetty, and a demonstration of how any advice or feedback has been taken into account provided. Should the SoS not consider this appropriate, the option exists for the SoS to direct the applicant to revise the DPDC to include an explicit provision for independent design review although given how that document is structure and its scope, extending that requirement to the jetty design may appear contrived.
- 3.9.29. The applicant should take comfort that an independent design review should not be seen as a barrier to progressing design but rather a complementary exercise, which whilst including challenge, would be focused on getting the best design for the scheme.
- 3.9.30. The ExA therefore recommends R4(3) be amended to read “The authorised development must be designed and constructed in accordance with the design principles and design code and the details submitted under sub-paragraph (1) must include a statement to confirm *both* how the design principles and design code have been complied with, *and how the advice and recommendations of an independent*

design review process have been taken into account, in the details that have been submitted.” (insertion in italics)

- 3.9.31. The ExA recommends that R12(3)(l) be amended to include “a statement to confirm *both* how the design principles and design code, have been complied with, *and how the advice and recommendations of an independent design review process have been taken into account, in the details that have been submitted*; and”
- 3.9.32. The ExA recommends that a new paragraph (2) be inserted into R16 (with other paragraphs re-numbered accordingly) to read “*The jetty works environmental design scheme to submitted under sub-paragraph (1) shall include a statement to confirm how the advice and recommendations of an independent design review process have been taken into account in the details that have been submitted.*”
- 3.9.33. The wording does not require that all advice is incorporated rather that proper account is taken of it. the wording is not prescriptive of which design review panel or service designs should be reviewed by, at which stages review(s) takes place, nor how this would interact with the LPA. However good practice dictates that the LPA should be involved in a design review throughout the process especially given their ultimate role in discharging the recommendations.

CONCLUSIONS

- 3.9.34. The changes to the dDCO and DPDC during the examination have provided a more robust approach to ensuring that design matters are scrutinised, assessed and challenged through the detailed design process and will help ensure that the detailed design is of good quality.
- 3.9.35. However, given the particular circumstances of the case, the nature of the proposal and the stage of design the scheme is at examination stage, the ExA recommends that Rs in the rDCO include a requirement for the scheme to take advantage of an independent design review process.
- 3.9.36. Taking all the above into account, the ExA considers that matters of good design based on the dDCO [\[REP7-003\]](#) have a little negative effect in terms of the planning balance. However, conversely, with the additions to Rs noted above and included in the ExA's rDCO, this would have the potential to improve design of the proposed development in accordance with the aspirations of NPS EN-1, to such an extent that on matters of good design there would be a little positive effect in the planning balance.

3.10. METROPOLITAN OPEN LAND

INTRODUCTION

- 3.10.1. The application site includes land designated as Metropolitan Open Land (MOL). The land that would form the proposed MEA is MOL. The proposed development would also include built elements of the CCF and flues, which would be sited on MOL This section considers the effects of the proposed development on MOL.

POLICY BACKGROUND

- 3.10.2. LP Policy G3 A states that MOL is afforded the same status and level of protection as Green Belt and that: it should be protected from inappropriate development in accordance with national Green Belt planning policy tests; and, that boroughs should work with partners to enhance the quality and range of uses of MOL. The LP

sets out that MOL protects and enhances the open environment and improves Londoners' quality of life by providing localities which offer sporting and leisure use, heritage value, biodiversity, food growing, and health benefits through encouraging walking, running and other physical activity. Amongst other criteria LP Policy GG2 seeks to protect and enhance London's open spaces, including MOL.

- 3.10.3. As MOL is a local designation, NPS EN-1 does not contain specific policies relating to the designation. Nevertheless, as a consequence of LP Policy G3 A, Green Belt policies in NPS EN-1 are important and relevant to the proposed development.
- 3.10.4. NPS EN-1 states⁶⁸ that inappropriate development is by definition harmful to the Green Belt and that there is a general presumption against inappropriate development in Green Belt. It requires that inappropriate development should only be approved in very special circumstances. The applicant notes that as a result of development plan policies MOL is afforded the same status and level of protection as Green Belt [\[REP7-010\]](#) and have set out their approach to MOL in these terms.
- 3.10.5. NPS EN-1 points out⁶⁹ that "very special circumstances" are not defined in national planning policy, and it is for the decision maker to assess each case on its merits and give relevant circumstances their due weight. However, it goes on to state that the SoS should ensure that substantial weight is given to any harm to the Green Belt when considering any application for development.
- 3.10.6. The NPPF⁷⁰ sets out policies to protect Green Belt land, and similar to NPS EN-1, sets out that "... inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations." It goes on⁷¹ to note that elements of many renewable energy projects will comprise inappropriate development and developers will need to demonstrate very special circumstances if projects are to proceed.
- 3.10.7. If the proposed development is considered CNP infrastructure, NPS EN-1 states that the SoS will take as a starting point that CNP infrastructure will meet the very special circumstances test required to justify inappropriate development in a Green Belt.
- 3.10.8. BLP Policy SP8 seeks to create a multi-functional green infrastructure network including by protecting MOL.

THE APPLICATION

- 3.10.9. The extent of MOL in relation to the application site is shown in ES Figure 10-2 [\[REP6-020\]](#). The applicant calculates that there would be a net loss of 3.5ha of MOL.
- 3.10.10. The applicant has confirmed that the development would be considered as inappropriate development in MOL policy terms [\[REP6-004\]](#).

⁶⁸ Paragraph 5.11.36.

⁶⁹ Paragraph 5.11.37.

⁷⁰ Paragraph 153.

⁷¹ Paragraph 160.

- 3.10.11. The applicant further considers that the development would be CNP infrastructure such that, in applying NPS EN-1, it should be treated as having met planning policy tests including very special circumstances [\[REP6-004\]](#). The applicant further considers that the proposed development can demonstrate very special circumstances in any event in that the benefits of the proposal would outweigh MOL and other harm (including at [\[REP5-032\]](#)).
- 3.10.12. There is no proposal for exchange land to compensate for the loss of MOL. However, the applicant points to the proposed improvements within MOL both on the MEA, and offsite at the applicant's preferred BNG Opportunity Area, which would include improved accessibility to MOL.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.13. There is no dispute that the proposed development would be inappropriate development. However, whilst the applicant contends that very special circumstances would exist this, and the weight to be given to any harm to MOL, are areas of contention between the applicant and IPs objecting on MOL grounds.
- 3.10.14. LBBC agreed with the applicant that only part of the proposed development would not comply with BLP policy; that part of the CCF that would be sited in MOL. LBBC confirmed that in their view very special circumstances would outweigh the harm to MOL resulting from the Proposed Scheme. [\[REP5-019\]](#).
- 3.10.15. Many IP's in their RRs and WRs object to the proposal as a result of the principle of development on, and effective loss of, MOL. SCNR [\[REP4-044\]](#), [\[REP6-049\]](#), [\[REP7-032\]](#) consider that the applicant has failed to apply the mitigation hierarchy such that CNP presumptions do not apply and that the application has failed to evidence a clear outweighing of harm and that very special circumstances have not been demonstrated.
- 3.10.16. They criticise the applicant for focusing on there being no loss of 'Accessible Open Land', as accessibility is only one of many factors that gives MOL its value; this ignores other existing benefits from biodiversity, nature conservation, health, landscape, and scientific interest which they contend would be lost. SCNR disputes the applicant's assessment of impact being limited and consider that the applicant's analysis ignores many functions of the MOL beyond any role it has in retaining "a break in the built-up environment". [\[REP1-047\]](#)
- 3.10.17. SCNR further considered the applicant's interpretation of BLP policy to be flawed, particularly that the expression "a break in the built up area" is just a function, not a primary function [\[REP3-047\]](#). They contend that, contrary to the applicant's approach, proposals on the remaining MOL would not constitute enhancement but would be to minimise harm.
- 3.10.18. TWUL [\[REP7-033\]](#) consider that the mitigation hierarchy has not been adequately applied and that the development does not benefit from CNP Presumption does not apply. In line with NPPF paragraph 153, very special circumstances will not exist unless the potential harm to the MOL and any other harm resulting from the Project, is clearly outweighed by other considerations. TWUL contend that the harm is not clearly outweighed by other considerations and the SoS should therefore ensure that substantial weight is given to any harm to the MOL in accordance with section 5.11.36 of NPS EN-1.

- 3.10.19. The applicant maintained that they considered the benefits of the proposal, including the contribution that would be made to climate change by the CO₂ capture proposed, would be such that very special circumstances could be demonstrated aside from any CNP presumption [REP5-032]. Further, that measures set out in the LaBARDS would enhance the remaining open land including MOL.
- 3.10.20. The ExA sought further information from the applicant in relation to the issues of accessibility improvements in relation of development plan policies (ExQ1.13.0.1) and on the MOL tests (ExQ1.13.0.1). The ExA also asked a specific question about how the proposed replacement stables might be considered in light of national policy (ExQ1.13.0.3) [PD-007], [REP3-029].
- 3.10.21. The applicant confirmed [REP3-029] that they expected the replacement stables to be on a like-for-like basis, the same size and shape as its current formation and that the LaBARDS was amended to reflect this. Consequently, they considered that that part of the proposal would not constitute inappropriate development⁷².

EXA'S FINDINGS

- 3.10.22. The ExA agrees that the proposed development would constitute inappropriate development in the MOL, which would be harmful. There would be harm as a result of loss of openness and the erosion of undeveloped land between existing buildings and those under construction, and sites where local policy allocates employment led development could be located. There would be a spatial loss and this loss would be perceptible from accessible areas within remaining MOL, from Norman Road and the wider area, such that the harm would have a visual component as well.
- 3.10.23. As NPS EN-1 recognises, in the case of most energy infrastructure there may be little that can be done to mitigate the direct effects of a project on the existing use of the proposed site and that includes as Green Belt and by extension MOL. The proposed development is no exception.
- 3.10.24. The applicant's arguments that the development would only equate to the loss of 0.022% of MOL across Greater London⁷³ [REP6-004] cannot carry any material weight as a factor that would reduce the harm. The extent of loss or incursion, either on its own or in comparison to any wider area, is not a policy test. The effects of development within MOL would be felt not just on a metropolitan scale but also a local one in the context of the particular area of MOL that would be affected. Similarly, the retention of openness on the part of the MOL within the site that would not be developed could not be a limiting factor on any harm.
- 3.10.25. Although the applicant considers that the development would mean that the aim and function of MOL would be to maintain a 'break within a built up area' which they consider the proposed development would retain, this is not a purpose of Green Belt⁷⁴ nor MOL. It is of note that LP Policy G3 B provides for the contribution potential MOL may make to the physical structure of London by being clearly distinguishable from the built-up area. Whilst the area of MOL that would be occupied by the flue duct may result in that distinguishment being maintained to a degree as a result of its relatively narrow footprint and proximity to the site of Riverside 2, the development of the East and Stable Paddock areas would reduce

⁷² NPPF paragraph 154 d) "the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces".

⁷³ Paragraph 5.4.1.

⁷⁴ NPPF paragraph 143.

the degree to which it were distinguished from the built-up area by losing the salient of MOL extending to Norman Road which currently exists between the Riverside campus to the north and the allocated employment land to the south.

- 3.10.26. Whilst accessibility is a function of MOL it is not its only characteristic and the current lack of public access to those areas that would be developed again would not limit the harm. Although the applicant considers that the harm would be mitigated by an improvement in the amenity experience of the remaining MOL, including improved access, again it would not reduce the harm that would be caused as a result of inappropriateness.
- 3.10.27. The ExA does not, therefore, consider that the harm by virtue of inappropriateness and failure to preserve openness would be limited or mitigated by those factors set out by the applicant.

CONCLUSIONS

- 3.10.28. In line with NPS EN-1 giving substantial weight to such harm, that harm the development would cause to MOL carries great weight against the granting of the order. If the conditions do not exist for CNP, then a recommendation on whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposed development, is assessed following consideration of all the planning benefits and harm in section 5 below.
- 3.10.29. However, if the conditions exist for the development to be considered to be CNP infrastructure, then the harm by reason of inappropriateness, and any other harm, would be outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposed development as set out in NPS EN-1. Such circumstances would mean that the harm would only carry little weight against making the order.
- 3.10.30. Notwithstanding the MOL harm, there would be some benefit in light of the accessibility improvements and enhancement proposed in the MEA which would accord in part with LP Policy GG2's aim to enhance MOL and BLP Policy SP8's aim to create a multi-functional green infrastructure network, albeit that includes by the protection of MOL which the proposed development would not do overall.
- 3.10.31. The proposals within the MEA and BNG Opportunity Area would therefore be a separate benefit of the scheme, albeit one that would carry little weight in support of making the DCO, and not one that would affect the weight given to the harm as a result of inappropriate development.

3.11. SOCIO-ECONOMIC EFFECTS

INTRODUCTION

- 3.11.1. This section considers the socio-economic effects of the proposed development at a strategic level.

POLICY BACKGROUND

- 3.11.2. Section 5.13 of NPS EN-1 sets out the approach that applicant's assessments of socio-economic impacts should take as part of the ES. At paragraphs 5.13.10 and 5.13.12 respectively, it points out that assertions of socio-economic impacts not supported by evidence may be given limited weight by the SoS and that the SoS

may include a requirement for the approval of an employment and skills plan by the LPA.

- 3.11.3. The applicant's assessment should consider all relevant socio-economic impacts, including the creation of jobs and training opportunities, the contribution to the development of low carbon industries at the local and regional level as well as nationally, and the provision of additional local services and local infrastructure (paragraph 5.13.4). The SoS should have regard to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources that the SoS considers to be both relevant and important to its decision (paragraph 5.13.9).

THE APPLICATION

- 3.11.4. ES Chapter 15 (Socio-economics) [APP-064] considered the assessment of the likely significant effects of the proposed development during construction and operation. An accompanying Appendix 15-1 [APP-112] particularly focuses on Munster Joinery (UK) Ltd (MJUK) who are the only business, other than those associated with Riverside 1 and 2, who are presently operating from a building and compound in situ on SIL designated land within the Order land. This used evidence from a 2014 planning application, a site usage appraisal and observations of vehicle movements to produce an estimate of the number of workers employed by MJUK at this location.
- 3.11.5. For the purposes of the assessment, construction option 1⁷⁵ was chosen (5 years) as this presents the worst case, in that fewer employment opportunities pa would be generated via this option. The chapter considers that the further options for two stacks and the potential demolition of the Belvedere Power Station Jetty would not be large enough to change the outcomes or significance of the assessment.
- 3.11.6. The methodology used in the assessment considered the gross employment generated by the construction phases; with leakage, displacement and multiplier effects used. This resulted in an estimate of the number of jobs and Gross Value Added (GVA)⁷⁶ that would be generated by the operation and maintenance of the proposed development, as well as an estimate of the potential job losses at Munster Joinery. Embedded design, mitigation and enhancement measures include seeking to recruit locally wherever possible, site security arrangements as controlled though the Outline CoCP [APP-124] and a skills and employment plan to be prepared prior to operation, secured by R15 of the dDCO [REP7-003].
- 3.11.7. The assessment considers that there are likely to be a total of 914.9 full time equivalent (FTE) gross construction employees pa during the construction phase, with 686.1 of these jobs created within Greater London and 228.7 outside. When combined with leakage, displacement and multiplier effects this figure increases to 1,166.4 jobs pa (874.8 within Greater London and 291.6 outside). In the context of the London Borough of Bexley (LBB) and Greater London labour pools, and the high rates of economic activity and employment in the area, such job increases are considered to have a temporary, short term minor beneficial (Not Significant effect)

⁷⁵ Of two construction options considered in the Environmental Statement - Chapter 2: Site and Proposed Scheme Description [REP6-008].

⁷⁶ Commonly considered to be the measure of the value of goods and services produced in an area, industry or economic sector.

on the LBB and Greater London economy. Effect on GVA is also considered to be temporary, short term and minor beneficial (Not Significant).

3.11.8. For the operation the ES assumed a worst case scenario of MJUK premises being demolished and, as no relocation site has been identified or secured, it considers that the proposed development would result in the loss of 50 jobs at MJUK. This figure is based upon the existing building floorspace. When factoring in displacement and indirect and induced employment deriving from MJUK this figure rises to 63.9 FTE posts.

3.11.9. The proposed scheme, when considering the same factors, would generate some 34.4 FTE posts, meaning that the proposed development would result in a loss of 29.5 FTE posts overall. Were MJUK to be relocated then the figure of 34.4 new posts would apply. When considering the high local rates of economic activity and employment the assessment considers the impact of the 29.5 FTE job losses to be negligible (Not Significant). In GVA terms the net loss is calculated also to be negligible (Not Significant).

ISSUES CONSIDERED DURING THE EXAMINATION

Munster Joinery

3.11.10. LBBC in their LIR [\[REP1-034\]](#) note the positive impact of the construction jobs involved in the proposed development but also note the effect upon MJUK, stating that some 50-54 highly skilled jobs would be lost and replaced with around 27 jobs which are not considered to be skilled.

3.11.11. A consistent theme throughout the examination was based on disagreements between the applicant and LMJ over the socio-economic effects of the scheme. LMJs submissions on this point include (but are not limited to) [\[REP1-059\]](#), [\[REP3-045\]](#), [\[REP5-051\]](#), and [\[REP7-026\]](#). At D1 [\[REP1-059\]](#) LMJ submitted a report compiled by Lichfields which, amongst other conclusions, considered that:

- the loss of MJUK would occur during the construction phase, rather than the operational phase;
- combining the operational employment of the proposed development with the loss of employment at MJUK to estimate the 'net' employment impact incorrectly assumes that substitution between employment across the two uses is possible;
- use of imprecise receptors has led to the applicant failing to assess the effect of business disruption on MJUK arising from the scheme;
- not acknowledging the planned expansion of LMJ in the future baseline and therefore underestimating the effects of displacement on employment;
- inaccurate estimation of existing employment levels at MJUK (estimated to be 69, with the possibility of 92, and 232 once indirect and induced jobs are taken into account); and
- failing to estimate impacts at a Local Study Area level.

3.11.12. The report carried out an alternative socio-economic analysis which concluded that there would be Moderate Adverse (Significant) effects on the labour market, and on businesses and commercial activity in the Local Study Area, as well as within the Regional Study Area, and substantial adverse (Significant) effects on businesses and commercial activity within the site boundary. Suitable mitigation was outlined as re-drawing the site boundaries to avoid adverse effects on MJUK.

3.11.13. In response to a question from the ExA, at D5 [\[REP5-051\]](#) MJUK confirmed that their site on Norman Road employed 67 people, and that the roles are not just as

warehouse staff but as highly skilled window and door fitting crews as well as aftercare technicians providing post-installation services across London and the South East. They also note that as part of MJUK's expansion plans, the site would employ over 120 people by the end of 2025 and that the site houses a showroom used by sales coordinators throughout the region as a base for engaging with customers.

- 3.11.14. In their closing statement [\[REP7-026\]](#), LMJ note that the economic impacts of the loss of the Norman Road site are significant and very real, stating that it is the sole major distribution centre for the business in London and the South East, and that in total MJUK employs 856 people across the UK, and continues to invest seeking to increase job numbers to 1,500 by 2028. A significant proportion of this employment would be dependent on the site at Norman Road continuing to maintain its operation, and the loss of the site would critically undermine MJUK's ability to serve its core customer base, jeopardising business viability and resulting in significant revenue loss, and having knock on effects across the business. The position of LMJ ties into their view, considered in Section 3.3, Alternatives, and Chapter 6, Land Rights, that there is no need for the proposed development to require the LMJ Norman Road site.
- 3.11.15. For their part the applicant [\[REP6-038\]](#) considered that the roles/jobs listed at the Norman Road site were not location dependent, considering that fitting and maintenance crews will be heading out to jobs across the region and do not rely on being on site, and that an alternative premises in LBB (or other outer London Borough) would offer the same functionality in terms of warehouse and delivery operatives, aftercare service technicians and fitting crews undertaking their roles, as well as a showroom for the firm's products. They also stated that they had always been willing to assist MJUK in relocating, including within Belvedere to avoid any loss of jobs but that that offer had not been taken up. the applicant noted that given their position that the use of the LMJ land by the proposed development could not be avoided, that relocation assistance was the only appropriate mitigation measures which could be offered.

Other socio-economic matters

- 3.11.16. SCNR considered [\[REP7-032\]](#) that the applicant has understated the impact on users of CLNR. This includes the loss and fragmentation of designated wildlife habitat, loss of amenity space, noise and vibration, run-off, air pollution, visual impact, light pollution and reduction of, and interference with, public recreation. Those particular effects on users are considered in the relevant sections above and below. SCNR challenged the principle of the development in terms of a scheme that involves destruction of biodiverse land to achieve a climate benefit [\[REP1-047\]](#).
- 3.11.17. Some IP's expressed their support for the proposed development, including Business LDN [\[RR-030\]](#), Harbour Energy [\[REP7-025\]](#) and Maritime UK [\[REP7-027\]](#) who state that the proposed development represents an investment of around £1billion in the UK's low carbon infrastructure.
- 3.11.18. LBBC in their SoCG [\[REP5-019\]](#) with the applicant stated that employment at MJUK's Norman Road site are limited to distribution, office and showroom jobs; and consider them to be no different in skill level to those available at Iron Mountain, Lidl and ASDA nearby within the SIL. They agreed with the applicant that the proposed scheme would not lead to a downgrading in skills level and that the outline Skills and Employment Plan (SEP) had been agreed. LBBC confirmed that it was not necessary for the ES to include a separate tourism economy assessment as they

considered that any impact on tourist sectors is likely to be negligible. The controls set out within the dDCO, both articles and requirements in relation to skills and employment are agreed between the parties, including the final version of dDCO R15.

- 3.11.19. The ExA queried aspects of dDCO R15 including why it did not include the construction phase and why the outline SEP could not seek to target construction jobs as well as jobs through the operation of the proposed development. Following this trigger for the submission and approval of the SEP was changed to prior to commencement of Work 1 which would enable the targeting of employment and skills development at one of the main construction stages and that the outline CoCP [\[REP5-013\]](#) had been revised to incorporate skills and employment measures at that stage as well.
- 3.11.20. In support of their response the outline SEP was also provided at D2 [\[REP2-022\]](#). This is largely set out in terms of skills, employment and recruitment principle that the applicant or operator will follow, however it also states that the selected construction contractor(s) will be required to mirror those commitments and principles in their own employment strategies.

EXA'S FINDINGS

- 3.11.21. The economic benefits of the proposed development in terms of jobs created during the construction and operation phase are largely not disputed and are agreed by the ExA. In particular this would lead to a substantial number of jobs during the construction phase, but it is noted that these would be largely temporary, and the number of jobs created by the operational phase is reasonably small and would have a minor beneficial effect on their own.

Munster Joinery

- 3.11.22. It seems largely self-evident to the ExA that negative effects on MJUK from the proposed development would extend to the construction phase, as well as to the operation phase. Equally, the ExA has no reason to dispute the number of jobs currently at MJUK's Norman Road site of 67 (as opposed to 50 in the ES) or the plans of LMJ to have 120 employees on site by the end of 2025 as a result of their expansion proposals. The loss of such jobs would counteract and outweigh the permanent benefits of the jobs created by the proposed development during the operational phase of the development.
- 3.11.23. The ExA notes and agrees that many of the roles outlined by LMJ are not location dependent and could be hosted at other locations within LBB or neighbouring boroughs. However, there is no guarantee that suitable alternative locations will be or could be found close by. While it is reasonable to assume that a profitable business will find premises elsewhere, the jobs that the Norman Road site currently hold could well be lost to the local area. Such an impact may also affect the number of indirect and induced jobs maintained by the business in the local area. The proposed development would therefore have a negative impact in socio-economic terms in this respect.

Other socio-economic matters

- 3.11.24. Effects on the CLNR are largely considered elsewhere in this report. However, in purely socio-economic terms the ExA considers that the benefits of accessibility and improvements to the CLNR would be balanced against the harm to the social experience of users using local footpaths in the vicinity of the proposed

development in terms of increased exposure to more heavily industrialised land and any overbearing effects of the proposed development, such that on balance a neutral effect would be caused.

- 3.11.25. In light of the revised trigger in dDCO R15 [\[REP7-003\]](#) concerns a Skills and Employment Plan. This requirement states that no part of Work No 1 (the CCF) may commence until such a plan has been submitted to and approved by the relevant planning authority in writing, and that the plan must be substantially in accordance with the outline plan. The Outline Skills and Employment Plan was submitted at D2 [\[REP2-022\]](#) aims to optimise the opportunities for local workforce current and future and seeks to deliver a “highly skilled infrastructure workforce”, work to promote the construction, decarbonisation, energy and waste infrastructure sectors, support more people to improve their skills and secure employment, increase the diversity of the relevant workforce and encourage local recruitment wherever practicable.
- 3.11.26. The SEP, as secured by R15, would have a beneficial effect and would help to maximise and optimise the local economic benefits of the scheme in terms of jobs and opportunities. This would include those identified in the local employment and skills development initiatives highlighted in the outline SEP, some of which also focus on underrepresentation in the workforce of a range of people.
- 3.11.27. Noting the views of some of those IPs expressing support for the proposed development, and bearing in mind national policy supporting the transitioning to a net zero economy, the ExA also considers that there would be wider benefits to the national low carbon and CCS economy through the investment into the scheme, the role in developing and demonstrating CCS technologies as well as the transport and storage markets for LCO₂. However, given that the proposed development would only be one sachem nationally and that the evidence does not easily quantify the proposed scheme contribution, this can only provide limited support to the proposed development.
- 3.11.28. The ExA has taken into account the social effects on users of footpaths and enjoyment of the spaces in the Erith Marshes MSINC and CLNR in terms of both the adverse effects the development would have on the experience of using and enjoying those routes and spaces (including at 3.12.20 and 3.12.24 below) and also the beneficial effects of improved accessibility through the MEA.

CONCLUSIONS

- 3.11.29. The applicant’s approach to socio-economics accords with NPS EN-1 and the ExA considers that the applicant has adequately assessed the effects of the proposed development and has provided sufficient evidence to support its conclusions on these effects. While the ExA prefers the evidence of LMJ with regards to impacts on MJUK, the circumstances of the case means that it would not have been fully possible for the applicant to ascertain the full effect of the proposals upon MJUK, without the detailed information relating to job numbers provided at D5.
- 3.11.30. The ExA accepts therefore that the proposed development would have more of a significant effect on MJUK than envisaged within the ES, and that these effects would extend to the construction phase as well as the operation. Having gained more of an understanding of, and insight into, MJUK’s operations, requirements and aspirations, including at CAH2 and at the Accompanied Site Inspection, it also seems to the ExA that it could well be feasible that MJUK could find alternative premises to cater for the existing and anticipated future business needs if they had

to vacate the site, if not within LBB, then close by in surrounding London districts. In such a way knock on effects on the wider MJUK business could be avoided.

- 3.11.31. Taking all the above into account, and balancing the adverse effects on the economy on the assumption that MJUK would no longer operate in the area, against positive effects that the SEP would deliver in terms of employment and skills development locally, and the wider positive effects on the low carbon economy nationally, the ExA accords a little positive effect in the planning balance on matters relating to socio-economics.

3.12. TOWNSCAPE AND VISUAL

INTRODUCTION

- 3.12.1. This section considers the townscape and visual effects of the proposed development, relating to the construction, operation and maintenance, and decommissioning works.
- 3.12.2. Although national policy refers to effects in the terms of landscape, given the urban situation and context of the proposed development the applicant has understandably and appropriately set out the effects in terms of 'townscape'. The ExA considers that these terms are effectively interchangeable in the interpretation of national and local policy for the purposes of this report and both terms are used below.

POLICY BACKGROUND

- 3.12.3. Section 5.10 of NPS EN-1 sets out landscape and visual assessment considerations. It acknowledges that the scale of energy projects means that they will often be visible across a very wide area such that the SoS needs to judge if adverse effects would be so damaging as to outweigh the scheme's benefits.
- 3.12.4. The NPS EN-1 policies encouraging good design referenced in sections 3.9.2 to 3.9.5 above are also relevant.

THE APPLICATION

- 3.12.5. The application was accompanied by ES Chapter 10, Townscape and Visual [\[APP-059\]](#), supported by an Assessment Methodology [\[APP-102\]](#). The proposed works were illustrated on indicative engineering drawings showing layouts, [\[APP-011\]](#) elevations [\[APP-016\]](#) and jetty details [\[APP-017\]](#) along with the DAD [\[APP-044\]](#), [\[APP-045\]](#), [\[APP-046\]](#) and DPDC [\[APP-047\]](#) described in section 3.9. An illustration of visual effects was presented in a series of Photomontages [\[APP-104\]](#), the locations of views in which were set out on a Visual Assessment Plan at ES Figure 10-3 [\[APP-073\]](#). This Figure also illustrated theoretical areas where different height elements of the scheme would be likely to be visible from. Reference photographs taken in daylight and at nighttime were presented in [\[AP-101\]](#) and [\[APP-105\]](#) respectively.
- 3.12.6. As part of the applicant's response to potential flood risk from a breach in flood defences, the proposal included provision for the whole CCF to be constructed on top of a development platform raised up to 3m above ground level. This was reflected in the maximum height parameters of key components specified in Schedule 16 of the dDCO [\[APP-018\]](#).

- 3.12.7. The ES identifies that the effects on townscape character and vegetation cover, and visual amenity, from within the site in both the construction and operation phases would be Significant, the former being at a Moderate-Large Adverse extent (changing to Moderate adverse after year 1), and the latter Moderate Adverse during construction and to Large Adverse (changing to Moderate-large Adverse after year 1). It considered other effects to be Not Significant, although all would be adverse to a degree⁷⁷.
- 3.12.8. The ES identified that embedded mitigation through the detailed design of structures would be governed by way of the DPDC [APP-047] and also through the implementation of landscaping in the outline LaBARDS, both of which would be certified documents of which full or final versions would be required by DCO Rs. The DPDC included code items to minimise the extent of development platforms and limit embankments to a maximum 1:3 gradient. The outline CoCP [REP5-013] details construction phase mitigation measures, including the phasing of works to minimise times between clearance and construction keeping the construction site tidy, siting temporary storage away from public areas, keeping lighting to a minimum and providing appropriate hoardings.
- 3.12.9. Nevertheless, the ES acknowledges that even with those aspects that can mitigated, and not all can be, this would not change the extent and significance of the residual effects.
- 3.12.10. Even though the proposed development would see flue gas diverted from them, there is no suggestion in the application that the stacks at Riverside 1 and 2 would no longer be required and therefore removed. The taller elements of the proposed development would consequently be seen in addition to, and in the context of, existing notable vertical features.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.12.11. A number of IPs expressed concern in RRs and WRs about the impact of the height, extent, scale, massing and appearance of the proposed development. In particular there was concern about how these adverse effects would harm the experience and enjoyment of users and visitors to the MSINC and CLNR.
- 3.12.12. Amongst other questions about the development platform, at ExQ1 [PD-007] the ExA sought clarification⁷⁸ on the need for, and purpose of, the development platform as well as what alternatives had been investigated. The ExA also sought further information on how the development platform had been taken into account in the DPDC, how the platform would work practically with retaining the TWUL access through the site as well as accesses into the CCF compound itself, as well as how the potential for using sheet piling for retaining would be treated in terms of appearance.
- 3.12.13. The applicant advised [REP3-029] that the 3m development platform was devised as a worst case scenario and that it had been intended to review the proposal as part of detailed design, but that review had been brought forward in light of further flood work carried out to inform discussions with the EA. The accompanying Technical Note⁷⁹ [REP3-035] changed the preferred approach in the event of a

⁷⁷ A summary of all townscape and visual residual effects are set out in is in ES table 10-8.

⁷⁸ ExQ1.9.0.2, ExQ1.9.0.3, Q1.18.0.1, Q1.18.0.2 and Q1.18.0.3.

⁷⁹ Applicant's Response to Examining Authority's First Written Questions, Appendix C: Flood Risk Technical Note – Breach Assessment Scenarios.

flood wall breach by reducing the formation level of the proposed development platform and allowing flood waters to flow across it.

- 3.12.14. The DPDC was also updated [\[REP-007\]](#) to limit the height of above ground flue gas and LCO₂ pipelines to no higher than the necessary minimum and subsequently again [\[REP5-009\]](#) to specify that the CCF would have a maximum platform levels of 1.3m AOD to the north of the Thames Water Access Road and 1.5m AOD to the south.
- 3.12.15. The second change accepted into the examination included, amongst other changes, the provision for reconfiguration of the Stack(s) from be cohousing on the top of the Absorber Column(s) to either be connected to them but forming a forming a separate stack(s), or totally separate from the Absorber Column(s), as well as an increase in the maximum height of the 'Regenerator' from 50m to 60m (53m AOD to 63m AOD) in the Design Parameters in Schedule 16 of the dDCO. The indicative drawings were updated accordingly: layout [\[AS-070\]](#) and elevations [\[AS-072\]](#).
- 3.12.16. SCNR [\[REP4-044\]](#) requested an additional photomontage from a viewpoint in the vicinity of the CLNR Members' Area, although the applicant advised that locations for the viewpoints had been agreed with LBBC and an additional photomontage would not alter the assessment of effects [\[REP5-033\]](#).
- 3.12.17. The latest version of the DAD was provided at D6 [\[REP6-005\]](#), [\[REP6-006\]](#), [\[REP6-007\]](#) which included minor corrections identified earlier [\[REP6-001\]](#), [\[AS-042\]](#).

EXA'S FINDINGS

- 3.12.18. Riverside 1 and the under construction Riverside 2, along with the relatively nearby sludge incinerator and its neighbour to the west at the CWTW, have created a context of buildings of considerable size, each with tall vertical flues or stacks. Even though the potential worst case scenario of two sets of separate stacks and absorber columns, with a maximum height of 113m, would be a significant intrusion into the skyline, they would be seen and experienced within this existing industrial context which would avoid them appearing as starkly isolated features. The approach of siting the taller elements of the proposed CCF adjacent to Riverside 1 with heights stepping down to the south would contribute to consolidating the taller and more massive elements of the proposed CCF in the vicinity of existing large scale structures which would go some way to assisting the proposed CCF to visually relate to its built context.
- 3.12.19. Although in relatively close proximity to the Riverside facilities, the linear footprint of the proposed CCF would however create a perpendicular form in contrast to the established arrangements where large infrastructure is situated adject to the riverside with their stacks and flues on that side. This would create an uncomfortable relationship between existing and proposed large scale facilities in the area.
- 3.12.20. Despite the large scale and mass of the Riverside EFW plants, the comparatively low level of development on the SIL and CWTW means that users of the CNLR and other spaces in this part of the Erith Marshes MSINC enjoy a relatively open aspect even with these neighbours. Whilst this experience would not be entirely curtailed, the extensive built form and height between the remaining CLNR and MSINC would result in a considerable reduction in this feeling and appearance of spaciousness. Areas adjacent to the proposed development would be visually dominated by the

new facility and the height of the taller elements of the CCF would be intrusively prominent from the whole of what is proposed to become the MEA. Even with aspects and prospects to the south west and north west unencumbered, the area would feel and appear considerably more industrialised in harmful contrast to the natural appearance of that part of the MSINC.

- 3.12.21. The addition of above ground pipelines for flue gas and LCO₂ would add an industrial complexity to the exterior of Riverside 1, and particularly Riverside 2, facilities. Depending on how these elements are handled in detailed design these interventions could create an intrusive, utilitarian and clumsy visual effect, or could be treated in a way to add visual interest which could assist in a more positive assimilation into what architectural character there is in the vicinity.
- 3.12.22. In the absence of a suggestion to the contrary, and in light of the illustrative material provided, unlike the Riverside facilities or indeed the Sludge Incinerator, the design approach does not appear to be one of containment of the components of the CCF or parts of it within a substantive shell. Based on the indicative illustrations, the effect would be that the variety of heights, sizes and shapes of the different components within the CCF would be likely to visually emphasise its extent and size, even with the DPDC approach seeking a consistent aesthetic of buildings and structures across the development. Acknowledging that technical and other requirements may necessitate the approach taken, this would nevertheless be in harmful contrast to the prevailing character of building on the SIL and the two EFW plants.
- 3.12.23. Landscaping proposed both within the CCF complex and the adjoining MEA, particularly tree planting where compatible with biodiversity objectives, has the potential to visually filter and break views of the various elements, an effect that would increase as planting matures over time. If complementary to the good quality design explored at 3.9 above, this could go some way to mitigating some of the harmful effects, particularly when viewed at close quarters. However, the ExA agrees with the findings of the ES there would be relatively limited mitigation possible overall to the harmful residual effects of the overall height, size and extent that the proposal would have on visual amenity and the townscape of the area.
- 3.12.24. In views from farther along the Thames Path and from the north side of the river, the presence and situation of only the tallest elements are likely to be glimpsed between or in the background of existing buildings and intervening natural features. The maximum stack height would mean those features would however be conspicuous from a considerable distance in all directions. Although this would change the visual experience, the proposed development would form part of the industrial backdrop to the walkway and the change would not be harmful. However, at close quarters the mass and extent of the CCF occupying presently open areas of the Riverside Campus would consolidate the built mass and significantly increase the claustrophobic experience of using public footpath FP4 and moving along Norman Road for some distance from the riverside.
- 3.12.25. The reduced maximum development platform levels confirmed during the examination, and the potential for a more granular approach to the need for land raising within the CCF, is welcomed by the ExA. Along with DPDC requirements to minimise the extent of ground raising and limiting the steepness of embankment gradients, the effects of the development platform would be considerably less marked particularly at close quarters, where the originally proposed 3m high platform would have been very likely to have appeared as an overwhelming and dominant form adjacent to public spaces and routes, even with landscaping.

- 3.12.26. Setting an appropriate and effective framework to ensure a genuinely high quality detailed design could mean that some of the adverse effects could be reduced much further through the creation of a complex of buildings, structures with integrated landscaping displaying visual interest, imagination and refined detailing amongst other positive qualities. As anticipated in the DAD, there is potential for some of the elements to have a sculptural impact including the LCO₂ storage tanks, stacks and absorber columns. However, as detailed design is not being considered at this stage, and notwithstanding the robustness of processes and approaches that DCO Rs and the DPDC could reinforce, there clearly remains a degree of uncertainty in the extent to which the final design will be able to ameliorate those adverse effects.
- 3.12.27. At night the necessary security and safety lighting associated with such an extensive facility would be visually intrusive into the darker parts of the adjoining MSINC, even combined with that which would arise from Riverside 1 and from Riverside 2 as a result of the extensive form of the proposed CCF running alongside Norman Road. Elsewhere, the established nighttime character of the wider area, including the SIL to the east of Norman Road and the well-lit road infrastructure to the south of the site, would mean that these nighttime effects would be less intrusive. Whilst noticeable after dark, the context of this prevailing lighting environment in its built up, urban context would mean that the effects of lighting at night on other areas would avoid being harmful in terms of townscape and visual effects.
- 3.12.28. Visual and townscape effects at the decommissioning stage were not considered in the EA. The effect of rDCO R23 which requires a DEMP to be agreed including details of timescale and restoration works, would ensure that excessively harmful visual effects from works and temporary storage of materials as the plant is dismantled and adverse effects from undue delays in restoration, could be avoided.
- 3.12.29. Notwithstanding that some aspects would give rise to limited adverse effects, considered overall the proposed development when built and operational would result in considerable harm to the townscape and to visual amenity, even with essential mitigation in the form of good quality design, appearance and landscaping.
- 3.12.30. Nevertheless, in light of the above, in respect of NPS EN-1 paragraph 5.10.37, the ExA considers that the project has so far been designed with some care, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by appropriate mitigation, as far as can be demonstrated given the stage of design.
- 3.12.31. Furthermore, the ExA considers that the SoS can be satisfied that the provisions in the rDCO will ensure that taking the level of detail the design of the project is at the end of examination, that the LPA will have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives as required by NPS EN-1 paragraphs 5.10.29 and 5.10.30. In making a recommendation to inform the SoS's judgement of whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project in light of paragraph 5.10.35, that needs to be done in light of an understanding of all the benefits and is therefore carried out in section 5.3 below.
- 3.12.32. However, accordance with national policy in these regards (with the exception of NPS EN-1 paragraph 5.10.35) does not reduce the level of harm that would result.

- 3.12.33. Adverse effects during construction would be temporary. Those associated with construction plant, materials storage, earth movements and so on are inevitable during such a phase. The ExA is satisfied that the approval of a CoCP required by rDCO R7 should ensure that adverse effects on townscape and the appearance of the area would be minimised as far as reasonable, but visual and townscape harm would still occur during the construction phase.
- 3.12.34. Jetties and similar structures are part of the established character of this section of the south bank of Thames, and the proposed jetty, with or without the existing FBPSJ would not appear out of place in principle. In contrast to effects to the east, west and south of the existing Riverside Campus buildings, the oversailing LCO₂ pipeline has the potential to add to the drama and interest of the experience of using the Thames Path through this industrialised area. Similar to other features of the proposed scheme, the potential for a good quality design could ensure that the structure is both functional and visually attractive as those two aspirations are not mutually incompatible. However, this element would not materially reduce the overall harm that would result from the proposed development.
- 3.12.35. Although of a different purpose and nature the ExA noted that the illustration of the west elevation of CCF included in the DAD [\[REP6-006\]](#) would give a reasonable impression of the appearance and scale of the development from the CLNR Members' Area. The ExA notes that the viewpoints were selected in agreement with LBBC and are intended to be representative. The ExA considers that they provide an acceptable level of information to be included in an overall consideration of the townscape and visual effects of the proposed development. Consequently the ExA does not consider that the interests of any party will have been prejudiced by the absence of an additional photomontage from that location.

CONCLUSIONS

- 3.12.36. Even with the mitigation measure that would be secured through the DCO and that some aspects of visual amenity and townscape would not be adversely affected, overall the proposed development would result in harm to the townscape and visual amenity. This carries moderate weight against granting of development consent for the proposed development.
- 3.12.37. However, the foundations set through the DPDC and rDCO relating to design avoid that harm weighing greater against the development. Whilst the potential exists for the quality of detailed design to reduce this harm farther, as cannot be considered at this stage it is not possible to weigh that in anticipation given that delivering high quality design would still rely on as yet unexecuted processes.

3.13. OTHER MATTERS

INTRODUCTION

- 3.13.1. Other matters where no significant issues were identified or matters were largely resolved during the examination are discussed in this section, including potential changes in the amount or mix of waste materials that may be incinerated at the existing and proposed EFW plants [\[REP1-065\]](#).
- 3.13.2. A particular matter relating to the access road linking Norman Road to the CWTW is considered in section 6.6 below rather than the landside transport sub-section.

GEOLOGY, HYDROGEOLOGY, SOILS, MATERIALS AND WASTE

Policy

- 3.13.3. Paragraph 5.11.4 of NPS EN-1 states that development of land will affect soil resources through land contamination and structural damage, with indirect impacts potentially arising through changes in the local water regime, organic matter content, soil biodiversity and soil process. Paragraph 5.11.5 goes on to state that where pre-existing land contamination is being considered within a development, the objective is to ensure that the site is suitable for its intended use.
- 3.13.4. Applicants are encouraged to develop and implement a Soil Management Plan which could help minimise potential land contamination and ensure the sustainable reuse of soils.
- 3.13.5. Section 5.15 of NPS EN-1 concerns resource and waste management and states that Government policy on waste is intended to protect human health and the environment by producing less waste and using it as a resource where possible. Sustainable waste management is implemented through the waste hierarchy and disposal of waste should only be considered where other waste management options are not available or where it is the best environmental outcome.
- 3.13.6. The applicant should set out the arrangements that are proposed for the managing of any waste produced and prepare a report that sets out the sustainable management of waste and use of resources. If the applicant's assessment includes dredged material, the assessment should also include other uses of such material before disposal to sea, for example through re-use in the construction process.
- 3.13.7. Applicants should ensure that a site is suitable for its proposed use, and for developments on previously developed land that they have considered the risk posed by land contamination, considering opportunities for remediation where possible.
- 3.13.8. While in the case of most energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of a site, applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design.

The Application

- 3.13.9. The applicant's assessment of geology and soils is contained within ES Chapter 17 (Ground Conditions and Soils) [\[APP-066\]](#) and the assessment of materials and waste can largely be found in ES Chapter 16 (Materials and Waste) [\[ES-065\]](#).

Geology, hydrogeology and soils

- 3.13.10. Baseline data collection took place in the form of a Phase 1 Preliminary Risk Assessment [\[APP-113\]](#), assessment of relevant sources of information and a site walkover. Option 1 for the construction programme (5 years) along with the demolition of the FBPSJ was chosen as the worst case option for soils. Study areas were chosen for human health (250m), controlled waters (1km), below ground services and building structures (250m), and ecological receptors (1km).
- 3.13.11. Embedded design, mitigation and enhancement measures include the DPDC [\[APP-047\]](#), the Outline CoCP [\[APP-124\]](#), Materials Management Plan (as part of the CoCP), and ground investigation as controlled in the dDCO. All identified residual

effects are considered to be neutral (not significant) with no further mitigation required.

Materials and waste

- 3.13.12. Option 1 for the construction programme, the option for two stacks at the CCF and the demolition of the FBPSJ was chosen as the worst case scenario for materials and waste. Study areas of the site boundary and an expansive area extending the availability of construction materials and capacity of waste management stations in London and the South East and the UK was chosen.
- 3.13.13. The chapter notes the materials used during the operation at Riverside 1 and considers the construction material availability across London & the South East and the UK, as well as the availability of waste management facilities in the region.
- 3.13.14. Embedded design, mitigation and enhancement measures include the Design Principles and Design Code [\[APP-047\]](#), the Outline CoCP [\[APP-124\]](#), and Materials Management Plan and Outline Site Waste Management Plan [\[REP6-032\]](#) (as part of the CoCP). All identified residual effects (consumption of material resources; disposal and recovery of waste; consumption of anime based solvents; and disposal and recovery of waste) are considered to be slight adverse (Not Significant) and neutral or slight adverse (Not Significant) with no further mitigation required.

Examination and conclusions

- 3.13.15. LBBC in their LIR [\[REP1-034\]](#) note that there are major and moderate negative effects identified with ground gases and asbestos in soils during the construction and operational phases of the development, potentially affecting site users, construction workers and buildings, but that the proposed mitigation measures are stated by the applicant to reduce these impacts to negligible. This is not refuted by the Council.
- 3.13.16. Ridgeway Users conducted three tests for per- and polyfluoroalkyl substances (PFAS) over the course of the examination at D1, D3 and D6. They noted [\[REP1-069\]](#) concerns over PFAS contamination of the site and considered that this should be considered as part of the baseline, tested for, and decontaminated if necessary. In response the applicant stated [\[REP2-019\]](#) that they did not believe that PFAS originated from the Riverside campus, noting that Riverside 1 is operated in compliance with its environmental permit. They noted that testing and analysis of PFAS will be included within the design of a future ground investigation, as described within the Outline CoCP and stated that PFAS would not be released by the proposed development in either construction or operation stages.
- 3.13.17. Discussions continued throughout the examination – at D7 Ridgeway Users submitted their closing statement [\[REP7-030\]](#). This details the tests they carried out for PFAS and the locations of them. They stated that while there are some PFAS pollutants present due to pre-existing litter and industrial pollution, PFOS (a subset of, and a marker for, PFAS) appeared to be originating from the applicant's discharge and note that the emission of PFAS has been linked to EFW plants in other studies. They considered that promises of future testing was not adequate to relieve the applicant of their obligations during the planning process to test and put the information up for examination. If the proposed development is granted, they are of the view that controls for PFAS should be placed within the environmental permit for flue emissions and discharges.

- 3.13.18. The applicant stated [\[REP7-022\]](#) that PFAS will be tested as a requirement of the dDCO, within testing soil, groundwater and surface water and that 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, noting that should these substances and an unacceptable risk to identified receptors be identified then a Remediation Strategy will be produced and provided to the EA and other relevant stakeholders, as secured by the dDCO. They also disputed the results of some of the testing carried out by Ridgeway Users.
- 3.13.19. R7 of the dDCO [\[REP7-003\]](#) concerns the CoCP and includes a material management plan, pollution prevention plan, site waste management plan and a surface water management plan. R21 of the dDCO states that no part of the authorised development may commence until a ground conditions investigations and assessments strategy for that part has been submitted to and approved by the local planning authority, in consultation with the EA.
- 3.13.20. The ExA largely considers that with such controls, residual effects on geology, hydrogeology, soils, materials and waste would be negligible. The one exception to this is the lack of reference to a remediation strategy within R21⁸⁰. The Applicant states [\[REP7-022\]](#) that such a strategy will be carried out if required. Whilst this could be considered to be included within the overall ground conditions investigations and assessments strategy, the ExA considers this should be codified explicitly within R21, to ensure that such a strategy is carried out if deemed necessary. Such a requirement would include PFAS investigation, assessment and remediation if required. This is included within the ExA's rDCO and described in Chapter 7 of this report.
- 3.13.21. With such an amendment, geology, hydrogeology, soils, materials and waste effects are neutral and do not weigh for or against the making of the Order.

LANDSIDE TRANSPORT

Policy

- 3.13.22. NPS EN-1 notes that the transport of materials, good and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure. If a project is likely to have significant transport implications, the applicant's ES should include a transport appraisal. A travel plan should be prepared including demand management and monitoring measures to mitigate transport impacts, with proposed measures to improve access by active, public and shared transport.
- 3.13.23. All stages of the project should support and encourage a modal shift of freight from road to more environmentally sustainable alternatives, such as rail, cargo bike, maritime and inland waterways.

The Application

- 3.13.24. The applicant's assessment of transport was primarily contained within ES Chapter 18 (Landside Transport) [\[APP-067\]](#), with the Transport Assessment forming Appendix 18-1 to the ES [\[APP-114\]](#).

⁸⁰ Notwithstanding the details in the definition of the proposed 'ground conditions investigations and assessments strategy' in Schedule 2, article 1.

- 3.13.25. Baseline desk-based data was collected using census journey to work data, the Transport Assessment from the Riverside Energy Park⁸¹ ES and Personal Injury Accident data from Kent County Council (KCC) and Transport for London. Traffic surveys were undertaken, following consultation with the Local Highways Authorities, with 19 locations for Automatic Traffic Counts on a 24 hour basis over 12 days and Manual Classified Counts at 6 locations over 24 hours on two days.
- 3.13.26. Option 2 of the construction programme (42 months) and the demolition of the FBPSJ were chosen for assessment as these options represent the worst-case scenario in transport terms. A peak construction year of 2028 with operation in 2030 was chosen and TEMPro⁸² growth factors were applied to baseline flows to include committed development based on approved local plans.

Methodology and embedded design, mitigation and enhancement

- 3.13.27. Construction traffic for the landside elements of the scheme would be primarily road based as it is not practicable to use Middleton Jetty for the delivery of construction plant and materials without compromising existing operations, while construction traffic for the proposed jetty would be primarily via the Thames. 25 heavy goods vehicle (HGV) deliveries are projected per day (50 two-way movements), with up to 1,000 construction workers on site per day at peak. It is projected that 48% of these workers will arrive by private vehicle, resulting in 960 two-way trips per day. Distribution of all such trips on the local road network is assumed to be as for the construction of Riverside 1 and 2.
- 3.13.28. For the operation phase 24 HGV movements are assumed as a worst case scenario, together with 13 staff movements (48% of 27 full time staff) resulting in 26 daily movements.
- 3.13.29. A FCTMP which would inform a CWTP was submitted with the application [APP-127]. The project has been designed to ensure that where practicable, routes used by walkers and cyclists, including Public Rights of Way (PRoW) would remain open and accessible during construction. During operation the proposed development would be included within the existing Workforce Travel Plan for Riverside 1 and 2.

Assessment of likely impacts and effects

- 3.13.30. All effects during construction to pedestrians and cyclists (severance, delay, amenity, fear and intimidation), driver delay, and accidents and safety are assessed to be negligible (Not Significant). Effects on the public transport network are assessed to be minor adverse (Not Significant). All effects during operation are assessed as negligible (Not Significant). No additional design, mitigation or enhancement measures are proposed.

Examination and conclusions

- 3.13.31. LBBC's LIR [REP1-034] identified concerns over the impact of construction traffic on the local network, impacts on Norman Road through poor management of deliveries and on pedestrians, cyclists and public transport users, and the potential for overspill into the surrounding highway from private workforce vehicles (considering that parking stress on the surrounding highways should be monitored by the traffic plan co-ordinator). They also welcomed the fact that footpaths would be retained

⁸¹ As it was called at the time of the DCO application, now Riverside 2.

⁸² Trip End Model Presentation Program.

(albeit re-routed) but stated that they wished to have more powers over the process for re-routing such footpaths.

- 3.13.32. KCC raised various transport concerns, including issues over the transportation of materials via river, the details of traffic surveys undertaken, the distribution and assignment of construction vehicles and impacts on certain specific roads and the CTMP.
- 3.13.33. Concerns were also raised by National Highways (NH) [\[REP1-037\]](#) over insufficient information and any impacts on the M25 J1a, details over the CTMP/CWTP and requested a wording change to R9 of the dDCO. However, following discussions between the parties, by D5 all matters had been agreed between the applicant and NH [\[REP5-022\]](#). This was due in part to revisions to the final FCTMP [\[REP5-015\]](#).
- 3.13.34. Following discussions during the examination between the applicant and LBBC, a SoCG was submitted at D5 [\[REP5-019\]](#). This confirmed that the FCTMP, and that the controls contained in the dDCO relating to construction traffic and footpaths, were agreed, and that no cycling improvements were required as part of the scheme. A SoCG with KCC was also submitted at D5 [\[REP5-020\]](#) confirming that all matters were agreed.
- 3.13.35. Concerns raised by Dartford Borough Council (DBC) in their RR [\[RR-046\]](#) largely around construction movements were confirmed to be resolved in a SocG submitted at D2 [\[REP2-013\]](#).
- 3.13.36. Finally, Royal Mail Group Limited (RMGL) requested that the CTMP included specific measures to notify them in advance of any road closures and diversions and to be invited to any stakeholder group set up [\[REP7-031\]](#).
- 3.13.37. The ExA is satisfied, on the basis of the information provided by NH, LBB, KCC and DBC that the transport and traffic assessment set out in the ES meets the requirements of NPS EN-1. The ExA is also satisfied that no significant traffic or transportation effects are likely to arise from the proposed development.
- 3.13.38. There is no evidence to suggest that the usual measures for alerting users and operators to any road works or closures would not be sufficient to ensure RMGL can effectively plan and manage their operations such that the ExA does not consider that R9 needs to specify either that the CMTP provides specific measures in respect of RMGL or that they are cited as a consult for the purposes of discharging the requirement. This will not of course prevent the applicant liaising with them as part of any construction good practice.
- 3.13.39. While the proposed development would lead to an increase in traffic movements, effects would be negligible and would reduce further after construction was complete. The controls included in the rDCO would provide suitable mitigation, in particular R9 (CTMP), R12 (LaBARDS – to include details of permissive paths and PRoW (12(2)(i))), R24 (DTMP), and the certification of the FCTMP [\[REP5-015\]](#).
- 3.13.40. Landside transport effects are consequently neutral and do not weigh for or against the making of the Order.

MAJOR ACCIDENTS AND DISASTERS

Policy

- 3.13.41. There are no direct principles for the assessment of major accidents and disasters (MA&D) in NPS EN-1 but it does refer to the need to prevent, control and mitigate major accidents (paragraph 4.13.7) and notes that some energy infrastructure will be subject to the Control of Major Accident Hazards (COMAH) Regulations 2015 (COMAH Regs) (paragraph 4.13.3), which aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur.

The Application

- 3.13.42. The applicant's assessment of MA&D is largely contained within Chapter 20 of the ES [\[APP-069\]](#). Supporting appendices consist of a long list of MA&D [\[APP-116\]](#) and an ES Risk Record [\[APP-117\]](#). The chapter and its appendices consider the vulnerability of the proposed development to MA&D during construction and operation.
- 3.13.43. MA&D types within and outside the site were assessed, including manmade features (such as airports, COMAH facilities, transmission lines and rail infrastructure) and natural features (such as flood risk and seismic activity). The baseline in this instance contains four existing COMAH sites within 5km of the proposed development. The baseline is not anticipated to differ significantly from this current baseline.
- 3.13.44. Embedded design, mitigation and enhancement measures include constructing and managing the proposed development with various measures (paragraph 20.7.2 of ES Chapter 20) including environmental, health and safety management systems, CDM Health and Safety Plan, risk management systems, the Outline CoCP [\[APP-124\]](#), outline Emergency Preparedness and Response Plan (EPRP) [\[APP-131\]](#) and a preliminary navigational risk assessment (pNRA) [\[APP-115\]](#).
- 3.13.45. Three MA&D events were identified to which the Proposed Development may be vulnerable during the construction phase; a collision between a construction material carrying marine vessel with the proposed jetty or other jetties in the site, the striking of underground services/utilities, and the dropping/collapse of equipment onto the England Coast Path. Based on the embedded mitigation measures, the ES concludes that the potential MA&D would all be managed to As Low As Reasonably Practicable (ALARP) levels.
- 3.13.46. During the operation phases sixteen MA&D events have been identified. These are categorised into various different events such as industrial and urban accidents (such as major fires, release of CO₂), transport accidents (waterways), and pollution accidents on land or/and water. Based on the embedded mitigation measures, the ES concludes that the potential MA&D would all be managed to be ALARP.

Examination and conclusions

- 3.13.47. Safety implications from potential CO₂ leaks were raised as a concern by some IPs, including [\[REP2-033\]](#) referring to an article reporting an incident in North America.
- 3.13.48. The Health and Safety Executive [\[RR-196\]](#) noted that since they had been consulted on the ES, that a further site has received hazardous substances consent in the vicinity of the proposed development, and that this site should be considered

as part of any MA&D assessment. The applicant noted that [\[AS-043\]](#) the HSE's initial view was that this is unlikely to be a concern, given the nature of the proposed development but stated that they would undertake the "Planning Advice for Developments near Hazardous Installations" process, based on HSE's standing advice, and liaise with the HSE.

- 3.13.49. Other than in their RR, the HSE did not engage in the Examination, and it is noted that no specific comments were made by the HSE in relation to the assessment of MA&D, other than that stated above. There were no other substantive concerns raised by IPs during the examination and the ExA did not consider any written questions were required. The final outline CoCP [\[REP5-013\]](#), outline EPRP [\[REP6-033\]](#) and pNRACLGcommunities [\[AS-092\]](#) are all secured as certified documents in the dDCO.
- 3.13.50. The ExA is satisfied that all relevant legislation and policy requirements are satisfied within the Proposed Development and that MA&D mitigation matters are provided for and secured in the dDCO. The effect in the planning balance is neutral and does not weigh for or against the making of the Order.

NAVIGATION ON THE RIVER THAMES AND MARINE TRANSPORT

Policy

- 3.13.51. The NPS for Ports seeks to encourage sustainable port development. The proposed jetty for the scheme would not have capacity above those set out in the NPS. The only reference to marine navigation in NPS EN-1 relates to CNP infrastructure, where it is stated that residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation are exceptions to the presumption in favour of CNP projects.

The Application

- 3.13.52. The Applicant's case is largely contained within ES Chapter 19, Marine Navigation [\[REP6-016\]](#), along with the accompanying Appendix 19-1, pNRA [\[AS-092\]](#). The chapter reports the findings of the hazards related to the Proposed Development on marine navigation based on the pNRA.
- 3.13.53. Potential significant effects associated with the construction and operation phases on marine navigation include issues such as collisions, contact, grounding and breakout. Vessel traffic analysis was used to assess the type, number, speed and frequency of vessels passing through the section of the River Thames surrounding the proposed jetty, based upon a traffic survey conducted over a four-week period. Models of the Thames, the proposed jetty and a range of atmospheric and weather conditions were used to carry out simulations of real-world marine navigation and vessel berthing, and passing vessel mooring analysis was also carried out.
- 3.13.54. Embedded design, mitigation and enhancement measures are detailed in paragraph 19.7.3 of the Chapter and include the alignment of the jetty to mitigate as far as possible effects on the ebb tide, to ensure suitable sight lines and that the location of the jetty has been optimised to minimise effects on the existing Middleton Jetty which serves the Riverside 1 and 2 plants and on third party vessels transiting the channel. The ES notes that marine vessel traffic in the area is highly controlled and regulated and that the proposed development will be fully compliant with these risk controls during both construction and operation phases.

- 3.13.55. It is not proposed to transport landside construction materials on the Thames and the possible demolition of the FBPSJ has not been included in the assessment. Effects during the construction and operation phases are deemed to be broadly acceptable or tolerable and ALARP, and therefore not significant.
- 3.13.56. Additional mitigation measures are identified for the construction and operation phases. These are detailed in paragraphs 19.9.2 and 19.9.3 of ES Chapter 19 respectively.

Examination and conclusions

- 3.13.57. A consistent theme in the examination on this subject matter concerned discussion between the applicant and the PLA. The PLA raised significant concerns within their written representation [\[REP1-039\]](#) regarding the fact that the Order limit extended into the authorised channel, given the need for it to remain unimpeded for vessels exercising the public right of navigation. The PLA wished to see order limits altered, further assessment work and clarification on a number of matters relating to the marine environment. Discussions were also ongoing concerning relevant provisions in the dDCO.
- 3.13.58. Discussions continued throughout the examination, both through written questions and representations, and at CAH1. A completed and signed SoCG was submitted on 16 April in advance of D6 [\[AS-097\]](#). This confirmed that all matters were agreed between the parties, with the PLA supporting the proposed development, in principle, and confirming their agreement to revised Articles 7 and 8, R7 and relevant protective provisions within the dDCO. The PLA confirmed separately [\[REP6-044\]](#) that the latest (and final) version of the pNRA was satisfactory [\[AS-092\]](#).
- 3.13.59. The ExA is satisfied, on the basis of the information provided by PLA, that the information relating to navigation within the ES and as refined throughout the examination meets the requirements of NPS EN-1. Together with Articles 7 and 8 in the dDCO [\[REP7-003\]](#), controls in the form of R7, Protective Provision 5 for the protection of the PLA and the certification of the pNRA would provide suitable mitigation and protection to ensure that there would be no residual impacts from the proposed development which would present an unacceptable risk to, or unacceptable interference offshore to navigation.
- 3.13.60. Navigation effects are consequently neutral and do not weigh for or against the making of the Order.

NOISE AND VIBRATION

Policy

- 3.13.61. Section 5.12 of NPS EN-1 concerns noise and vibration and notes that excessive noise can have wide ranging impacts on the quality of human life and health, as well as on the environment and the use and enjoyment of areas of environmental value. It notes that the Government's policy on noise is set out in the Noise Policy Statement for England, which promotes good health and good quality of life through effective noise management. Paragraph 5.12.4 notes that noise can also have adverse impacts on wildlife and biodiversity and that underwater noise should be considered for marine developments.
- 3.13.62. NSP EN-1 notes that the Secretary of State should not grant development consent unless they are satisfied that the proposals will effectively manage and control noise to avoid significant adverse impacts on health and quality of life from noise, mitigate

and minimise other adverse impacts on health and quality of life from noise and, where possible, contribute to improvements to health and quality of life through the effective management and control of noise

The Application

- 3.13.63. The Applicant's case is largely contained within ES Chapter 6, Noise and Vibration [\[APP-055\]](#), along with the accompanying Appendices 6-1 to 6-7 [\[APP-081\]](#) to [\[APP-087\]](#) covering terminology, monitoring, legislation, an underwater noise assessment, operational noise modelling assumptions, construction noise, and an uncertainty matrix. The chapter reports the assessment of the likely significant effects of the proposed development noise and vibration on receptors during construction and operation.
- 3.13.64. During the construction phase noise and vibration effects were assessed relating to landside works, underwater noise and vibration arising from the potential demolition of the FBPSJ and the construction of the proposed development, as well as noise from construction vehicles on the surrounding road network. For operational effects noise was assessed from the proposed landside operations, with underwater noise and vibration effects arising from dredging assessed in ES Chapter 8, Marine Biodiversity [\[APP-057\]](#).
- 3.13.65. To assess the baseline three noise measurement locations were used at the closest noise sensitive receptors, and construction programme 2 was assessed as the worst-case scenario (being the shorter so more concentrated). Embedded design, mitigation and enhancement measures for the construction phase include the adoption of Best Practicable Means, as defined in the Control of Pollution Act 1974 which is incorporated into the Outline CoCP. This includes restrictions on hours of operation landside (Monday to Friday 07:00 to 19:00, Saturday 07:00 to 13:00, no working Sunday or Bank Holidays). There are no proposed restrictions on marine construction activities but no percussive piling in construction of supporting plant in Work No 1(E).
- 3.13.66. Principal construction activities were divided into key activities and noise levels were predicted for the following sensitive receptors:
- Residential properties on:
 - Clydesdale Way
 - North Road
 - Little Brights Road
 - Travellers' site off Jenningsree Way
 - Travelodge hotel, Clydesdale Way
- 3.13.67. The ES concludes that the construction of the sub and superstructure is likely to have a direct, temporary, short term Moderate Adverse (Significant) effect on receptors on Clydesdale Way, including the Travelodge. All other effects are predicted to be negligible to minor adverse (Not Significant). Road traffic noise from construction traffic is predicted to have negligible effects.
- 3.13.68. Operational noise effects are predicted to have minor adverse (Not Significant) effects during the day and night time on residents of Clydesdale Way, with negligible effects on the Travelodge during the day but Moderate Adverse (Significant) at night time. The ES considers that due to a range of contextual considerations, such as the frequency of exposure, the established use of the site,

sensitivity of the site (with existing acoustic façade mitigation and air conditioning), the character of the noise and the level of the residual sound that this effect can be reduced to Minor adverse (not significant).

- 3.13.69. Additional design, mitigation and enhancement measures are proposed in the form of details within the Outline CoCP. Construction noise may be considered a significant adverse effect where it is exceeded at a noise sensitive receptor for 10 or more days of nights in any 15 consecutive days or nights, or a total number of days exceeding 40 in any six consecutive months. The Outline CoCP restricts development works within 180m of the receptors on Clydesdale Way to less than these totals, and a full CoCP will be regulated by a requirement in the dDCO.
- 3.13.70. For operational noise a Noise Mitigation Plan will form part of an Environmental Management Plan, secured by requirement in the dDCO. This sets limits on operational sound levels at the receptors on Clydesdale Way.

Examination and conclusions

- 3.13.71. The LBB LIR [\[REP1-034\]](#) outlined concerns with the potential for noise impacts for local residents, particularly given the 24 hours of operation, the potential additional road traffic to cause negative impacts but negative impacts during construction are acknowledged to be temporary. The LIR also noted that the LBBC's limitations for 'noisy works' are 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on a Saturday.
- 3.13.72. The signed SoCG between the Applicant and LBB [\[AS-096\]](#) notes that all matters related to noise and vibration are agreed, including the Outline CoCP, the controls within the dDCO, including the provision of a full CoCP and control of noise at Clydesdale Way and that the construction hours within R8 of the dDCO are agreed (07:00 to 19:00 Monday to Friday, 07:00 to 13:00 Saturday). In this respect the ExA notes the statement from LBB that the construction hours would be the same as for the construction of Riverside 2 and that they have received no noise complaints or any other relevant complaints over the construction of that project [\[REP3-038\]](#).
- 3.13.73. The Peabody Trust [\[RR-197\]](#) raised concerns over noise and lorry movement impacts on local people during construction and wished to be involved in discussions regarding the CoCP. The Trust did not raise such issues again and a draft SoCG was submitted at D7 [\[REP7-013\]](#) between the Applicant and the Peabody Trust which did not mention noise or vibration; neither did a joint closing statement between the two parties [\[REP7-029\]](#).
- 3.13.74. The ExA is satisfied, on the basis of the information provided by LBBC that the noise and vibration assessment set out in the ES meets the requirements of NPS EN-1. The ExA is also satisfied that, following mitigation, no significant noise or vibration effects are likely to arise from the proposed development. The contextual reasons for the downgrading of effects during operation at the Travelodge are noted and considered reasonable, due to the local environment and the existing acoustic insulation and use of air conditioning at these premises, and the effects of noise from lorry movement during construction are agreed to be negligible. The agreement of LBBC on these matters is also noted.
- 3.13.75. While the Proposed Development would lead to an increase in noise and vibration impacts, the controls included in the rDCO [\[REP7-003\]](#) would provide suitable mitigation, in particular R7 (CoCP), R8 (Construction Hours), R20 (Control of

Construction Noise during operation) and the certification of the Outline CoCP
[\[REP5-013\]](#)

- 3.13.76. Noise and vibration effects are consequently neutral and do not weigh for or against the making of the Order.

CUMULATIVE EFFECTS

Policy

- 3.13.77. The EIA Regulations require an ES to include a project-level assessment of potentially significant effects of a proposed development, including cumulative effects at all stages of the project. NPS EN-1 states that in considering any proposed development, in particular when weighing its adverse impacts against its benefits, the SoS should take into account its potential adverse impacts including any cumulative adverse impacts.

The Application

- 3.13.78. The applicant's assessment of cumulative and combined effects is primarily contained within ES Chapter 21 [\[APP-070\]](#) (superseded by [\[REP6-017\]](#)). Supporting appendices provide assessments of inter-project effects [\[APP-118\]](#) and intra-project effects [\[APP-119\]](#). The ES examined the cumulative and combined effects of the proposed development. It defined both as follows:
- Inter-project cumulative effects are the combined residual environmental effects of the proposed development with a committed project (or projects) affecting the same receptor
 - Intra-project combined effects are the interaction and combination of different environmental effects of the proposed development affecting the same receptor.
- 3.13.79. For inter-project effects, other developments for consideration were taken from eight local planning authorities surrounding the proposed development site and categorised into tiers based on the PINS Planning Advice Note 17⁸³. From this long list of developments a short list was defined based on similarities or potential for interaction/inter-project effects, and this was refined further. Intra-project effects was based on assessments of the individual chapters of the ES.
- 3.13.80. For inter-project effect in the construction phase a total of 23 projects were assessed as having a minor adverse effect cumulatively (primarily for marine biodiversity), with two projects having a minor beneficial effect for socio-economic purposes (one of which also has minor adverse effects). During the operation phase one project is considered to have a cumulative minor adverse effect on townscape and visual. Intra-project effects are all considered to be minor adverse (not significant) or negligible for construction and operation phases – apart from for users of accessible open land which are considered to have Moderate Adverse (Significant) effects for both phases.
- 3.13.81. No additional practicable mitigation measures for the Moderate Adverse (Significant) effects have been identified as the ES states that all practicable measures have been considered in the respective chapters that assess the

⁸³ Since September 2024 [Nationally Significant Infrastructure Projects: Advice on Cumulative Effects Assessment - GOV.UK](#).

individual effects (Air Quality, Townscape and Visual, and Population, Health and Land Use).

Examination and conclusions

- 3.13.82. Cumulative effects are not raised in the LBBC's LIR [\[REP1-034\]](#). The ExA in their first written questions (ExQ1) [\[PD-007\]](#) asked the MMO, NE and LBBC whether they were content with that all development, plans and projects with the potential to result in cumulative or in-combination effects had been identified and appropriately assessed.
- 3.13.83. LBBC raised concerns [\[REP3-038\]](#) that the proposed development could delay the aspiration of the planned Riverside District Heat Network (which would derive its heat from Riverside 1 and 2). The MMO stated that they were content [\[REP3-039\]](#), and NE [\[REP3-040\]](#) raised no comments other than on the Habitats Regulations Assessment (HRA). Such matters are dealt with in Chapter 4 below. In response to ExQ2, LBBC stated [\[REP5-042\]](#) that the submission of a Heat Note by the Applicant (Appendix H to [\[REP4-034\]](#)) had resolved their concerns.
- 3.13.84. The ExA notes that the ES concludes that moderate significant effects would be caused due to intra-project effects, and that these cannot be mitigated over and above the mitigation already identified for Air Quality, Townscape and Visual and Population, Health and Land Use. While such effects would be mitigated to a certain extent by the individually targeted mitigations the cumulative effects would not. As such the ExA consider cumulative effects to be a negative consideration in the planning balance and affords this little negative weight in the planning balance.

4. HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This Chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS), as the Competent Authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regs).

4.1.2. This chapter is structured as follows:

- section 4.2: Stage 1: Findings in relation to Likely Significant Effects (LSE)
- section 4.3: Conservation objectives
- section 4.4: Stage 2: Findings in relation to Adverse Effects on Integrity (AEoI)
- section 4.5: HRA conclusions

4.1.3. Under regulation 63 of the Habitats Regs, the competent authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test (Stage 1) is to identify the need for an appropriate assessment (AA) and the activities, sites or plans and projects to be included for further consideration in the AA (Stage 2). In accordance with the precautionary principle embedded in the Habitats Regs, consent for the proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains⁸⁴.

4.1.4. For the purpose of the Report, in line with the Habitats Regs and relevant government policy, the term European sites includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. The UK National Site Network (NSN) refers to the network of European sites within the UK.

4.1.5. Policy considerations and the legal obligations under the Habitats Regs are described in Chapter 2 of this Report.

4.1.6. The ExA has been mindful throughout the Examination of the need to ensure that the SoS has the information reasonably required to carry out their duties as the Competent Authority. It has sought evidence from the Applicant and relevant Interested Parties (IPs), including from Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), including through written questions.

The applicant's assessment

4.1.7. The applicant submitted a HRA Report with its Development Consent Order (DCO) application which comprised Environmental Statement (ES): 6.3 Appendix 7-3: Information to inform a Habitat Regulations Assessment [[APP-090](#)] (the HRA Report).

⁸⁴ CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*.

- 4.1.8. The HRA Report is supported and informed by ES Chapter 5: Air Quality [\[REP6-010\]](#), and ES Appendices 5-1 [\[APP-077\]](#), 5-2 [\[REP6-022\]](#) and 5-3 [\[REP6-023\]](#).
- 4.1.9. The applicant submitted two change requests, as described in Section 1.5 of this Report. These changes were accepted by the ExA.
- 4.1.10. In relation to Change Request 1, the applicant stated [\[AS-048\]](#) that the increase in vessel capacity, and subsequent increase in size, would not require additional land take or significantly vary the operational emissions. As a result, no changes were predicted to the assessment of effects in the HRA Report [\[APP-090\]](#). In relation to Change Request 2, the applicant stated [\[AS-067\]](#) that the changes would not affect the emissions from the proposed development as assessed in the HRA Report [\[APP-090\]](#). The applicant concluded [\[AS-048\]](#) [\[AS-067\]](#) that the findings of and assessment presented within the HRA Report [\[APP-090\]](#) remained as reported.
- 4.1.11. The applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) States in its HRA Report [\[APP-090\]](#) or within its ES [\[REP6-009\]](#). No such impacts were raised for discussion by any interested party (IP) during the examination. Only sites within the UK NSN are addressed in this Report.

RIES and consultation

- 4.1.12. The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-015\]](#) which compiled, documented, and signposted HRA-relevant information provided in the DCO application and examination representations up to Deadline (D) 5 (25 March 2025). The RIES was issued to set out the ExA's understanding of HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time. Consultation on the RIES took place between 25 March 2025 and 29 April 2025. No comments on the RIES were received from the applicant, NE or any IP.
- 4.1.13. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoSENZ to fulfil their duties of consultation under regulation 63(3) of The Habitats Regs, should the SoSENZ wish to do so.

4.2. STAGE 1: FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

Relevant UK European sites

- 4.2.1. The proposed development is not directly connected with, or necessary to, the management of a European site. The HRA Report [\[APP-090\]](#) identified one European site within the UK NSN, and all of its qualifying features, for inclusion within the assessment.

European site	Qualifying features
Epping Forest SAC	Atlantic acidophilous beech forests with <i>Ilex</i> and sometimes also <i>Taxus</i> in the shrub layer

	Stag beetle
	Northern Atlantic wet heaths with <i>Erica tetralix</i>
	European dry heaths

4.2.2. Epping Forest SAC is located approximately 11.8km to the north of the proposed development, as depicted on Figure 3 of the HRA Report [\[APP-090\]](#).

4.2.3. NE agreed [\[RR-150\]](#) that the Epping Forest SAC was the only European site that could be affected by the proposed development. No additional European sites were identified by IPs for inclusion within the screening assessment.

Potential impact pathways

4.2.4. Annex A, section 5 of the HRA Report [\[APP-090\]](#) identified potential impacts from the proposed development considered to have the potential to result in LSE alone. The only impact considered by the applicant to have the potential to result in LSE was:

- 1) changes in air quality, resulting from changes to the emissions arising from the Riverside Campus as a result of the proposed development (operation phase)

4.2.5. The applicant considered in annex A, section 5 of the HRA Report [\[APP-090\]](#) whether other impact pathways could potentially result in significant effects (changes in air quality from road traffic or vessel movements; habitat loss and fragmentation; noise and vibration; dust; surface water run-off; and lighting). It explained that these impacts would be localised and/ or would not be transmitted over the 11.8km distance between the proposed development and the Epping Forest SAC. It further stated that the large area of urban Greater London in the intervening landscape and lack of hydrological or other connections between the proposed development and the SAC would act as a barrier to effects. These impacts were scoped out of the assessment on the basis that there was no pathway for LSE.

4.2.6. NE agreed with the scope of the screening assessment [\[RR-150\]](#). The applicant's approach was not disputed by any IP.

The applicant's assessment of LSE

4.2.7. The applicant's screening assessment is presented in annex A of the HRA Report [\[APP-090\]](#). The applicant concluded LSE on all qualifying features of Epping Forest SAC from the proposed development alone, as a result of changes in air quality [\[APP-090\]](#).

4.2.8. In combination effects were not considered at screening stage. Potential in combination effects were considered in the applicant's assessment of AEol, as detailed in Section 4.4 below.

4.2.9. NE agreed with the conclusions of the screening assessment [\[RR-150\]](#), [\[REP6-035\]](#). The applicant's screening conclusions were not disputed by any IP.

LSE assessment conclusions

- 4.2.10. The ExA is satisfied that all relevant European sites, qualifying features and impact pathways have been identified and assessed by the applicant.
- 4.2.11. The ExA concludes that the proposed development alone is likely to have a significant effect on the qualifying features of the Epping Forest SAC from changes in air quality.

4.3. CONSERVATION OBJECTIVES

- 4.3.1. The conservation objectives for Epping Forest SAC are listed in annex A, section 4.3 of the HRA Report [\[APP-090\]](#). Supplementary advice on the conservation objectives is set out in annex A, section 4.4 of the HRA Report [\[APP-090\]](#).
- 4.3.2. In response to ExQ1.3.2.2, [\[PD-007\]](#), the applicant provided confirmation of the condition of the 37 units making up the SAC. The applicant concluded that most units of the Epping Forest SAC are in an unfavourable condition (78%), but that the majority are recovering [\[REP3-029\]](#).

4.4. STAGE 2: FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

- 4.4.1. The Epping Forest SAC and its qualifying features were assessed by the applicant to determine if they could be subject to AEoI from changes in air quality from the proposed development, either alone or in combination with other plans or projects. The assessment of AEoI was made in light of the conservation objectives for the Epping Forest SAC.
- 4.4.2. The applicant's assessment of AEoI was presented in sections 3 and 4 of the HRA Report [\[APP-090\]](#). It considered changes in air quality, resulting from changes to the emissions arising from the Riverside Campus as a result of the proposed development (operation phase) for five pollutants - airborne ammonia, nitrogen oxides, sulphur dioxides, and the deposition of nitrogen and acid.
- 4.4.3. The applicant concluded that the proposed development would not result in AEoI of the Epping Forest SAC and its qualifying features, either alone or in combination with other plans or projects [\[APP-090\]](#).

Mitigation

- 4.4.4. Sections 5.7 and 5.9 of ES Chapter 5: Air Quality [\[REP6-010\]](#) describe embedded and additional mitigation measures relevant to air quality and how these are secured through the dDCO. It is also noted that the environmental permit required for operation of the proposed development would consider detailed operation processes.
- 4.4.5. The applicant confirmed (Q1.3.2.1) [\[REP3-029\]](#) that the conclusion of no AEoI of Epping Forest SAC had been reached without the need to apply mitigation (ie that the percentage changes in concentration of airborne ammonia, nitrogen oxides, sulphur dioxides, and deposition of nitrogen and acid are all less than 1.0% (rounded to 1 decimal place) and considered negligible regardless of their measured concentration). The applicant signposted to the embedded and additional mitigation measures which it stated would further improve the situation with regards air quality (which include a reduction in the ammonia emission limit value (ELV), as

described below) but confirmed that the conclusion of no AEol remained the same regardless [\[REP3-029\]](#).

Overestimation of amine deposition

- 4.4.6. The applicant's Errata Schedule [\[AS-042\]](#) identified an erroneous overestimation of amine deposition for the Epping Forest SAC and Site of Special Scientific Interest (SSSI), stating that this had resulted in an overestimation of annual nitrogen and acid deposition. As a result, the applicant provided updated tables relevant to annual nitrogen and acid deposition for ES Chapter 5: Air Quality; ES Appendix 5-2: Operational Phase Assessment; and ES Appendix 5-3: Detailed Model Pollutant Results in appendix B of [\[AS-044\]](#) as part of its response to Relevant Representations [\[AS-043\]](#).
- 4.4.7. The applicant confirmed (Q1.1.0.2 and Q1.3.2.3), [\[REP3-029\]](#) that the updated tables (appendix B), [\[AS-044\]](#) did not change the conclusions of the HRA Report [\[APP-090\]](#).
- 4.4.8. ES Chapter 5: Air Quality and ES Appendices 5-2 and 5-3 were later amended to correct the errata with the final versions being [\[REP6-010\]](#), [\[REP6-022\]](#) and [\[REP6-023\]](#) respectively.

Ammonia Emission Limit Value

- 4.4.9. The applicant provided an Ammonia Emissions Limits Technical Note [appendix B, [REP2-019](#)] with additional air quality modelling for ammonia, undertaken by reducing the ELV for ammonia. The revised impacts with the reduced ELV for ammonia (10mg/Nm³) were presented in Tables A2 and A4 of [appendix B, [REP2-019](#)]. The applicant described the revised impacts as "markedly lower" than presented within ES Chapter 5: Air Quality (then [\[APP-054\]](#), later superseded by [\[REP6-010\]](#)) and stated that these would reduce to negligible or beneficial over all sites designated at national and international levels including Epping Forest SAC [appendix B, [REP2-019](#)].
- 4.4.10. The applicant confirmed that the reduced ELV for ammonia was an embedded mitigation measure relating to SSSI impacts, not introduced for the purposes of reducing effects to the Epping Forest SAC [\[REP4-033\]](#).
- 4.4.11. NE [\[REP5-045\]](#) accepted that defined ELVs can be considered as embedded mitigation (operating parameters) and stated that ELVs must be incorporated in the environmental permit/ DCO. The reduced ELV for ammonia is incorporated at item 1.12 of the Mitigation Schedule [\[REP1-010\]](#). The design, construction and operation of the proposed development in accordance with item 1.12 of the Mitigation Schedule is secured via requirements 4 and 14 of the applicant's draft DCO (dDCO) [\[REP7-003\]](#). The Mitigation Schedule is a certified document under Schedule 13 of the dDCO [\[REP7-003\]](#).

In combination effects

- 4.4.12. Section 3 of the HRA Report [\[APP-090\]](#) detailed the applicant's approach to considering potential in combination effects. It stated that modelling effects of the emissions of other plans or projects is neither practicable nor necessary given the extent of the study area (approximately 76,600ha) and the distance between the proposed development and Epping Forest SAC. The HRA Report described the modelled impact of the proposed development at this distance as "...imperceptible (<1% of any relevant critical load or critical level)". It stated that, taking into account

the conservatism inherent in the dispersion modelling, these impacts can robustly be considered to be so small that the proposed development could not reasonably be considered likely to act in combination with other plans or projects to have an AEol of Epping Forest SAC [\[APP-090\]](#).

- 4.4.13. The applicant's approach to considering potential in combination effects was considered during the examination, as described in paragraphs 3.3.11 to 3.2.22 of the RIES [\[PD-015\]](#). The applicant maintained throughout the examination that there was no scientific rationale for an in combination assessment for Epping Forest SAC and that to undertake such an assessment at significant distance from the proposed development was impractical and unproportionate [\[REP4-033\]](#), [\[REP5-033\]](#).
- 4.4.14. The applicant [appendix A, [REP4-033](#)] responded to comments and questions from NE (later submitted by NE in [\[REP5-046\]](#)) regarding air quality and in combination matters. [\[REP4-033\]](#) included tables relevant to nitrogen deposition, ammonia and nitrogen dioxide at Epping Forest SAC/ SSSI and Inner Thames Marshes SSSI (whilst SSSIs are not European sites, this is noted here for completeness) [Tables 4, 5 and 6, [REP4-033](#)]. Values shown in bold in Tables 4, 5 and 6 of [\[REP4-033\]](#) had previously been presented in Tables A2 and A4 of [appendix B, [REP2-019](#)] and Table 23 of ES Appendix 5-3 (then [\[APP-079\]](#), later superseded by [\[REP6-023\]](#)). Tables 4, 5 and 6 included a breakdown of the contribution of Riverside 1 and Riverside 2 when emitting via the existing stacks or via the stack(s) of the proposed Carbon Capture Facility.
- 4.4.15. The applicant stated that the beneficial impacts of the proposed development over Epping Forest SAC/ SSSI and Inner Thames Marshes SSSI could clearly be seen for nitrogen deposition and ammonia concentrations, with both being driven by the impact of the embedded mitigation of reducing the consented emissions of ammonia from the Riverside Campus [\[REP4-033\]](#). The applicant also highlighted the decreasing Air Pollution Information System trend in background nitrogen deposition over Epping Forest since 2003 [Figure 2, [REP4-033](#)].
- 4.4.16. NE reviewed the additional information and subsequently confirmed [\[REP5-045\]](#) that it agreed with the applicant's conclusion that an AEol, either alone or in combination with other plans or projects, could be ruled out for Epping Forest SAC.
- 4.4.17. NE stated [\[REP5-045\]](#) that although its standard advice dictates that an in combination assessment should be carried out to assess whether in combination an increase of more than 1% is experienced alongside impacts from other plans and projects, it recognised the distance of the proposed development from the Epping Forest SAC makes modelling difficult. NE considered that the proposed development would have a low risk of undermining the integrity of the site in combination with other plans or projects (including those much closer to the SAC, such as adjacent vehicle emissions). NE acknowledged that the key issue at the Epping Forest SAC is the impact from vehicle emissions on roads close to the site [\[REP5-045\]](#). Overall, NE considered the risk at Epping Forest SAC from the proposed development to be low and it recognised that any mitigation would likely be more effectively achieved by reductions in traffic emissions close to Epping Forest rather than point sources several km distant. NE therefore advised that no further assessment of the impact at Epping Forest SAC was required for the proposed development [\[REP5-045\]](#).
- 4.4.18. The Statement of Common Ground between the applicant and NE [\[REP6-035\]](#) confirms the agreement between the parties that an in combination assessment for

Epping Forest SAC is not required. No comments were received from other IPs on this matter.

AEol assessment conclusions

- 4.4.19. The applicant's HRA Report concluded that the proposed development would not result in AEol of the Epping Forest SAC and its qualifying features, either alone or in combination with other plans or projects [\[APP-090\]](#). This conclusion was agreed with NE by the close of examination [\[REP5-045\]](#), [\[REP6-035\]](#). No other IPs raised concerns in relation to the conclusions of the applicant's assessment of AEol.
- 4.4.20. The ExA is satisfied that the correct impact pathway, site and features have been assessed by the applicant. The ExA is also satisfied, based on the findings of the examination, with the applicant's approach to the assessment of AEol and that an assessment of AEol from the proposed development in combination is not required.
- 4.4.21. The ExA is satisfied that the applicant has committed to mitigation measures which would minimise the likely impacts from changes in air quality and that these are adequately secured through the rDCO.
- 4.4.22. The ExA concludes that on the basis of the information provided, an AEol of the Epping Forest SAC and its qualifying features can be excluded, from the proposed development alone and in combination with other plans or projects. The ExA notes its conclusion that an AEol can be excluded is shared by NE [\[REP5-045\]](#), [\[REP6-035\]](#).

4.5. HRA CONCLUSIONS

- 4.5.1. The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS must make an AA of the implications of the proposed development on potentially affected European sites in light of their conservation objectives.
- 4.5.2. One European site, Epping Forest SAC and its qualifying features were considered in the applicant's assessment of LSE. The applicant identified LSE for this site as a result of changes in air quality from the proposed development alone. The ExA has concluded that LSE from the proposed development alone would arise for Epping Forest SAC and its qualifying features from changes in air quality.
- 4.5.3. Epping Forest SAC and its qualifying features were considered in the applicant's assessment of AEol, to ascertain whether changes in air quality could result in an AEol. The applicant concluded that the proposed development would not result in AEol of the Epping Forest SAC and its qualifying features, either alone or in combination with other plans or projects [\[APP-090\]](#). The methodology and outcomes of the applicant's assessment of AEol from changes in air quality were subject to some discussion and scrutiny during the examination but were agreed with NE by the close of examination [\[REP5-045\]](#) [\[REP6-035\]](#).
- 4.5.4. The ExA's findings are that an AEol of the Epping Forest SAC and its qualifying features can be excluded, from the proposed development alone and in combination with other plans or projects.
- 4.5.5. The ExA considers that there is sufficient information before the SoS to enable them to undertake an AA in order to fulfil their duties under The Habitats Regs.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Chapter sets out the Examining Authority's (ExA) overall assessment of the planning merits of the Proposed Development.
- 5.1.2. The ExA is content that the Environmental Statement (ES) and other information submitted by the applicant during the examination has provided an adequate assessment of the environmental effects of the proposed development and meets the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs).
- 5.1.3. The ExA is satisfied that the applicant's approach to the assessment of alternatives as described in the ES is comprehensive and complies with the EIA Regs. The ExA is also satisfied that during examination the proposed development has been through sufficient scrutiny to ensure that the applicant studied reasonable alternatives before determining the chosen options for specific reasons and taking into account the effects of the options on the environment. In that regard, the ExA is also satisfied that the requirements of Section 4.4 of NPS EN-1 are met.
- 5.1.4. The ExA is also satisfied with the applicant's methodology for assessing cumulative effects. The ExA has taken full account of all environmental information in the consideration of the application.
- 5.1.5. The Overarching National Policy Statement for Energy (NPS EN-1) provides the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for carbon capture and storage (CCS) Nationally Significant Infrastructure Projects (NSIPs). The ExA's conclusions on the case for development consent are therefore reached within the context of the policies contained in NPS EN-1. In arriving at the conclusions set out in this Chapter, the ExA has taken all other relevant law and policy into account.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

- 5.2.1. The ExA's findings in relation to the effects of the proposed development and its compliance against the relevant policy and legislation can be found in the relevant sections of Chapters 3 and 4 above and are summarised in Table 1 below. In reaching its findings, the ExA has given full consideration to the Local Impact Report (LIR) submitted by London Borough of Bexley Council (LBBC) [\[REP1-034\]](#). The planning matters and potential effects raised are considered in the relevant sections of this report.
- 5.2.2. A Habitats Regulations Assessment Report has been provided for the proposed development, and in light of the findings and conclusions in Chapter 4 above the ExA is satisfied, subject to the mitigation measures secured in the rDCO, that an adverse effect on integrity from the proposed development alone or in combination with other plans and projects can be excluded for all European sites within the UK National Sites Network.
- 5.2.3. The SoS is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment. The ExA considers that there is sufficient information before the SoS

to understand the potential for adverse effects on European sites from the proposed development alone or in combination.

5.2.4. In light of the findings and conclusions in Section 3.8 above, the ExA is satisfied, subject to the mitigation measures secured in the rDCO, that the proposed development is unlikely to cause a deterioration in the status or potential of the water body with respect to water quality during the construction and operational phases.

5.2.5. The SoS has a duty to exercise their relevant functions so as to secure compliance with the requirements of the Water Framework Directive in light of the provisions of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The ExA considers that there is sufficient information before the SoS to decide whether the development has implications for the UK's obligations under the WFD.

Table 1 – Summary of findings on main planning issues

Issue	Finding	Weighting	Section
Need	Positive	Very great	3.2
Climate Change	Positive	Very great	3.6
Good Design (with measures in rDCO)	Positive	little	3.9
Accessibility improvements within the MEA and BNG Opportunity Area	Positive	little	3.10
Socio-economic effects	Positive	little	3.11
Buried heritage assets	Neutral	Does not affect the balance	3.7
Cultural heritage	Neutral	Does not affect the balance	3.7
Flood Risk and Hydrology	Neutral	Does not affect the balance	3.8
Geology, hydrogeology, soils, materials and waste	Neutral	Does not affect the balance	3.13
Landside transport	Neutral	Does not affect the balance	3.13
Major accidents and disasters	Neutral	Does not affect the balance	3.13
Navigation on the River Thames and marine transport	Neutral	Does not affect the balance	3.13

Noise and vibration	Neutral	Does not affect the balance	3.13
Air Quality	Negative	A little	3.4
Designated Heritage assets	Negative	A little	3.7
Good Design (with measures in dDCO)	Negative	A little	3.9
Cumulative effects	Negative	A Little	3.13
Biodiversity	Negative	Moderate	3.5
Non-designated heritage assets	Negative	Moderate	3.7
Townscape and Visual effects	Negative	Moderate	3.12
Metropolitan Open Land	Negative	Great	3.10

5.3. THE OVERALL PLANNING BALANCE

- 5.3.1. This Section weighs the benefits and disbenefits of the proposed development to reach a recommendation as to whether or not the case is made for granting development consent.

Legal framework and policy background

- 5.3.2. S104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision and S104(3) requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, unless a relevant consideration arising from s104(4) to (8) applies (as set out at paragraphs 2.2.3 and 2.2.4 above).
- 5.3.3. NPS EN-1 makes it clear at paragraph 4.1.3 that given the level and urgency of need for infrastructure of the types covered by the energy NPSs, including new carbon capture and storage (CCS) infrastructure to support the transition to a net zero economy, that the SoS will start with a presumption in favour of granting consent to applications for energy Nationally Significant Infrastructure Projects (NSIPs).
- 5.3.4. The ExA considers that the Proposed Development meets the need as established in NPS EN-1 and satisfies the tests of s104(2) and s104(3) of the PA2008 and accordingly should be determined as such.
- 5.3.5. In accordance with the duties under PA2008, the ExA has had regard to the submitted LIR, to prescribed matters and to all other important and relevant policies (including but not limited to the South-East Marine Plan and development plan policies). The ExA has also considered whether the determination of this application in accordance with the NPS would lead to the UK being in breach of any of its international obligations, be in breach of any statutory duty, be unlawful, or be

contrary to regulations about how decisions are to be taken. The ExA is satisfied that in all respects this would not be the case.

5.3.6. The ExA is also obliged to consider whether the adverse impacts of the proposed development would outweigh its benefits. Paragraph 4.1.6 of NPS EN-1 states that when weighing the adverse impacts against its benefits, the SoS should take into account environmental, social and economic benefits and adverse impacts at national, regional and local levels.

5.3.7. It goes on to say that where the NPSs require an applicant to mitigate a particular impact as far as possible, but there would still be residual adverse effects after the implementation of such mitigation measures, those residual effects should be weighed against the benefits of the proposed development. For projects which qualify as Critical National Priority (CNP) Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. This presumption, however, does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.

Matters weighing in favour of the DCO being made

Very great positive weight

5.3.8. The proposed development would make a contribution towards the provision of new CCS infrastructure for which there is an urgent need such as that which would be delivered by the proposed development. The SoS has determined that substantial weight should be given to this established need when considering applications for development consent and the SoS is not required to consider separately the specific contribution of the proposed development to satisfying this need. The proposed development would help to de-carbonise the energy system and in particular significantly reduce CO₂ emissions from the Riverside 1 and 2 facilities, contributing to decarbonising the power sector to combat climate change. Therefore, the ExA considers that the overall need argument and its positive effects on decarbonising energy weigh heavily in favour of making the Order and has attributed very great positive weight in the planning balance.

Great positive weight

5.3.9. The ExA found there were no matters that attracted great weight in favour of the Order being made.

Moderate positive weight

5.3.10. The ExA found there were no matters that attracted moderate weight in favour of the Order being made

Little positive weight

5.3.11. The ExA has attributed a little positive weight to the beneficial socio-economic effects as a result of employment and skills development opportunities during the construction and operational phases and the wider positive effects of the investment and deployment of decarbonising technology on the low carbon economy nationally. The ExA has also attributed a little positive weight to the public accessibility enhancements to natural spaces. Furthermore, with the additions included in the

ExA's rDCO, this would have the potential to improve design of the proposed development in accordance with the aspirations of NPS EN-1, such that matters of good design would have a little positive weight in the planning balance.

Matters weighing against the DCO being made

Very great negative weight

- 5.3.12. The ExA found there were no matters that attracted very great weight against the Order being made.

Great negative weight

- 5.3.13. In line with NPS EN-1 giving substantial weight to Green Belt harm, given its equivalence in local policy to Green Belt status that harm caused by the loss of an area of Metropolitan Open Land is harm that the ExA has attributed great negative weight to.

Moderate negative weight

- 5.3.14. Notwithstanding that there would be some beneficial effects as a result of the enhancement of some habitats, the ExA has attributed overall moderate negative weight to the biodiversity effects of the proposed development in light of the harmful effect that would arise. The worst case scenario of the total loss of the former Belvedere Power Station Jetty, a non-designated heritage asset the desirability of the preserving of which attracts considerable importance and weight, and overall would also carry moderate weight against the Order being made.
- 5.3.15. Even with the mitigation measures to avoid some adverse effects, overall the proposed development would result in harm to townscape and visual amenity which carries moderate weight against making the Order.

Little negative weight

- 5.3.16. To a lesser degree the proposed development would have some, albeit minor, adverse effects on air quality from some pollutants that would be emitted, and in terms of the cumulative effects of the scheme. There would be less than substantial harm to the significance that listed buildings and a conservation area derive from their settings, and although as this harm carries considerable importance and weight, it would be very limited. Further, the approach to design matters in the final dDCO means that in terms of ensuring good design based on the dDCO have a negative effect. Each of these matters attract a little weight against the making of the Order.

Other matters

- 5.3.17. The ExA finds that the remaining matters considered in this Report do not weigh for or against the Order being made.

The planning balance

Benefits

- 5.3.18. In accordance with section 3.2.6 to 3.2.8 of NPS EN-1 and the substantial weight that should be given to the overarching need case for the proposed development, the ExA has attributed very great positive weight to need. That is the starting point for the assessment of the proposed development. The ExA has also given very great weight to the contribution the development would make to combating climate

change through decarbonising energy. Added to this the ExA found socio-economic effects and accessibility improvements would weigh a little in favour of the development. All these factors in favour would deliver public benefits.

- 5.3.19. Having established aspects of the proposed development that carry weight in favour and would be public benefits those national and local policies that require a balancing exercise of specific harms against benefits can be carried out.

Heritage balance

- 5.3.20. There would be less than substantial harm to the significance that the grade I listed Crossness Pumping Station, the grade II listed Workshop Ranges to South West, and South East, of Main Engine House, Crossness Pumping Station, the grade II listed Jetty Number 4 and Approach, Formerly at Samuel Williams and Company, Dagenham Dock, and the Crossness Conservation Area, derive from their settings. The SoS is required to give considerable importance and weight to the desirability of preserving all heritage assets, although the harm to all these designated heritage assets would be very limited. Therefore, in weighing this harm against the public benefits of the proposal, the benefits which have been attributed positive weight set out above would outweigh the harm to their significance.
- 5.3.21. Having regard to the scale of loss of the non-designated Belvedere Power Station Jetty, which would be total, even giving considerable importance and weight to the desirability of preserving assets, in taking a balanced judgement the beneficial aspects of the proposed development would outweigh that harm.

Biodiversity

- 5.3.22. There would be harm in terms of biodiversity, particular through the loss of an area of the Erith Metropolitan Site of Importance for Nature Conservation which would not be replaced in special terms. The ExA has found that overall the biodiversity harm would weigh moderately against the proposal. Nevertheless, the benefits would be substantial. These are circumstances where London Plan Policy G6 C requires its mitigation hierarchy to minimise impacts. For the reasons set out in section 3.5 overall the development would avoid damaging significant ecological features, minimise the overall spatial impact and mitigate it by improving the quality and management of the rest of the site and deliver off-site compensation of better value. Consequently, the proposed development would accord with that part of the development plan policy.
- 5.3.23. Furthermore, in terms of the biodiversity harm, much of it would be to local or regional nature conservation sites, designations that NPS EN-1 notes that should not be used in themselves to refuse development consent.

Metropolitan Open Land (MOL)

- 5.3.24. Although NPS EN-1 does not contain policies relating to MOL, given the applicant's approach of evaluating effects in light of national Green Belt policy as directed by the important and relevant consideration of the development plan, it is necessary to consider whether the harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.
- 5.3.25. The ExA has found harm in respect of effects on air quality, heritage assets, cumulative effects, biodiversity and townscape and visual effects. In addition there would be harm to MOL as a result of inappropriateness and a failure to preserve

openness of MOL. NPS EN-1 states that the SoS should ensure that substantial weight is given to Green Belt harm and an equivalent weight should be given to the MOL harm the proposed development would cause. Nevertheless, the positive aspects of the proposed development including in terms of the substantial weight that should be given to the overarching need case and the very great weight that this and the benefits to decarbonising energy carry are of an extent that the harm by reason of inappropriateness and any other harm, would be clearly outweighed by these other considerations so as to amount to the very special circumstances required to justify the proposal.

The mitigation hierarchy and CNP

- 5.3.26. The ExA concludes that the proposed development constitutes nationally significant low carbon infrastructure, for which the Government has identified that there is a critical national priority (CNP). Nonetheless, in assessing all nationally significant energy infrastructure, the starting point is the overarching need case which should be given substantial weight as set out in paragraphs 3.2.6 to 3.2.8 of EN-1. The CNP policy does not create an additional need in this regard, it should be applied following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy.
- 5.3.27. Whilst it is necessary to establish that the mitigation hierarchy has been applied to establish what residual impacts remain, NPS EN-1 points out⁸⁵ that such residual impacts are unlikely to outweigh the urgent need for the infrastructure.
- 5.3.28. NPS EN-1 states⁸⁶ that 4.2.10 “applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS and the relevant technology specific NPS, applying the mitigation hierarchy” and⁸⁷ that “applicants must apply the mitigation hierarchy and demonstrate that it has been applied.”
- 5.3.29. IPs contend that the application has not demonstrated compliance with the mitigation hierarchy of the “avoid, reduce, mitigate, compensate process” to protect the environment and biodiversity.
- 5.3.30. However, application of the mitigation hierarchy as required by NPS EN-1 does not necessarily mean that avoidance (that is the first level) of all adverse effects is the only way to comply with the hierarchy. Rather, that as the first level of the mitigation hierarchy process, such effects should be avoided and if they cannot then the next stage of the process is considered, and so on.
- 5.3.31. Bearing in mind NPS EN-1’s approach to the consideration of alternatives include alternative sites and configurations, given that those evaluated by the applicant have been discounted by them through the iterations of the applicant’s site selection and CCF optioneering processes, even though these choices remain controversial with objectors, the applicant has still demonstrated that they have applied the mitigation hierarchy to the proposed development.
- 5.3.32. In light of this, and reading NPS EN-1 as a whole, and its approach to locational alternatives and CNP in particular, the fact that the applicant has not avoided the biodiversity and MOL harm that would arise as a result of the chosen location and

⁸⁵ Paragraph 4.2.15.

⁸⁶ Paragraph 4.2.10.

⁸⁷ Paragraph 4.2.11.

footprint does not in itself convincingly demonstrate that the mitigation hierarchy has not been followed in this regard.

5.3.33. Therefore, although residual non-HRA or non-MCZ⁸⁸ impacts remain after the mitigation hierarchy has been applied, NPS EN-1 states that these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure and that it is unlikely that consent will be refused in all but the exceptional circumstances. None of the exceptional circumstances highlighted in paragraph 4.2.15 are present with the proposed development.

5.3.34. Although the ExA considers that very special circumstances exist to outweigh MOL and other harms, NPS EN1 states that the SoS will take as a starting point that CNP Infrastructure will meet the very special circumstances test to justify development in the Green Belt, which for the purposes of this proposal would equate to MOL, in any event.

Final planning balance

5.3.35. Taking all of the above into account, the ExA concludes that all the harms, even when taken cumulatively, would not be capable of outweighing the very great benefits arising from the need for the proposed development as set out in NPS EN-1.

5.3.36. Furthermore, the Proposed Development would therefore benefit from the presumption of consent as set out in NPS EN-1 paragraph 4.2.15 and the adverse effects that would arise as a result of the proposed development, even taken cumulatively, would be outweighed by the urgent need for CNP infrastructure.

5.4. CONCLUSION

5.4.1. On the basis of all of the above considerations, the ExA concludes that there is a convincing case for development consent to be granted.

5.4.2. The ExA goes on to consider land rights matters in Chapter 6 of this Report and matters relating to the drafting of the DCO in Chapter 7.

⁸⁸ No Habitats Regulations Assessment or Marine Conservation Zone residual effects have been identified.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application includes proposals for the compulsory acquisition (CA) of land outright, of new rights on land, the extinguishment and/or suspension of rights on land, the imposition of restrictive covenants and temporary possession (TP) of land. This chapter discusses whether the evidence before the examination justifies the granting of those powers, and considers human rights and the Public Sector Equality Duty (PSED), having regard to all relevant legislation and guidance, followed by conclusions and recommendations.

6.1.2. Principal issues including, but not limited to, the following were identified in the Examining Authority's (ExA) Rule 6 letter [\[PD-005\]](#):

- the need for and the amount of land, rights and powers proposed to be subject to CA and/or TP;
- whether there is a compelling case in the public interest for the compulsory acquisition of the land, rights and powers sought and justify interference with Human Rights and would accord with the Equality Act 2010;
- whether all reasonable alternatives to compulsory acquisition and temporary possession have been fully explored;
- the position and/ or effects of Statutory Undertakers and Protective Provisions and whether the tests of s127(2), (3), (5) and (6) and s138(4) of the Planning Act 2008 (PA2008) are satisfied;
- the adequacy and security of funding for compensation; and,
- Whether the proposals meet the requirements of the Planning Act 2008 (PA2008) in all other respects.

Land Rights Tracker

6.1.3. At the request of the ExA in Appendix F of its Rule 6 letter [\[PD-005\]](#), the applicant provided regular updates with regard to the progress of negotiations with Affected Persons (AP) by means of a Land Rights Tracker (LRT) as an alternative to their Schedule of Negotiations and Powers Sought document [\[APP-023\]](#) submitted with the application.

6.1.4. The LRT was provided in advance of the examination at Procedural Deadline A [\[PDA-012\]](#) updated at subsequent Deadlines⁸⁹ (Ds): Revision (Rev) B at D1 [\[REP1-023\]](#); Rev C at D2 [\[REP2-017\]](#); Rev D at D3 [\[REP3-025\]](#); Rev E at D4 [\[REP4-025\]](#); Rev F at D5 [\[REP5-040\]](#); and a final version, Rev G at D7 [\[REP7-017\]](#). It should be considered in conjunction with the final version of the Book of Reference (BoR) [\[REP7-008\]](#).

LEGISLATIVE REQUIREMENTS

6.1.5. The source of the CA and TP powers requested in the application is contained in the applicant's preferred draft Development Consent Order (dDCO) submitted at the end of the examination [\[REP7-003\]](#). All further references to the draft dDCO in this Chapter relate to this version, unless otherwise stated.

⁸⁹ Each accompanied by a tracked changes version illustrating the changes made since the last revision: Rev B, D1 [\[REP1-023\]](#); Rev C, D2 [\[REP2-017\]](#); Rev D, D3 [\[REP3-026\]](#); Rev E, D4 [\[REP4-026\]](#); Rev F, D5 [\[REP5-041\]](#); and Rev G, D7 [\[REP7-017\]](#).

Planning Act 2008

- 6.1.6. CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met.
- 6.1.7. S122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.
- 6.1.8. Further, s122(3) states that there must be a compelling case in the public interest to acquire the land. This means that the public benefit to be derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 6.1.9. S123 requires that one of three procedural conditions in subsections (2) to (4) must be met, namely:
- (2) the application included a request for CA of the land to be authorised;
 - (3) all persons with an interest in the land consent to the inclusion of the provision; and
 - (4) the prescribed procedure is followed in relation to the land.
- 6.1.10. In addition to the legislative requirements, the [Planning Act 2008: guidance related to procedures for the compulsory acquisition of land](#)⁹⁰ (CA Guidance) sets out a number of general considerations to be addressed when CA powers are sought. These are that:
- all reasonable alternatives to CA have been explored;
 - the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
 - the applicant has a clear idea of how it intends to use the land;
 - the applicant must be able to demonstrate that there is a reasonable prospect of the requisite funds becoming available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - the decision-maker must be satisfied that the purposes for which the CA of land are included in the application are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.
- 6.1.11. Furthermore, paragraph 25 of the CA Guidance states that applicants should seek to acquire land by negotiation wherever practicable. It adds that, as a general rule, authority to acquire land compulsorily should only be sought as part of an Order granting development consent if attempts to acquire by agreement fail.
- 6.1.12. PA2008 s127 applies to Statutory Undertakers' (SU) land. s127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or, if

⁹⁰ The former Department for Communities and Local Government, September 2013.

purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

- 6.1.13. Similarly, s127(5) and (6) provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order Limits. These are set out in the BoR [\[REP7-008\]](#).
- 6.1.14. S131 of PA2008 applies to the CA of special categories of land including, open space, and s132 applies to the CA of rights over such land. Such land is defined as 'special category land' under Regulation 2 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 6.1.15. S132(12) of PA2008 defines 'open space' as having the same meaning as s19 of the Acquisition of Land Act 1981: "...any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground".
- 6.1.16. S131 and s132 of PA2008 make provision for special parliamentary procedure to apply where a DCO authorises the CA of, or rights over, special category land unless the SoS is satisfied that one of the relevant subsections applies and that fact is recorded in the Order. Special parliamentary procedure requires that powers of CA relating to the special category land be subject to further scrutiny by Parliament, before the DCO covering the CA can come into effect.
- 6.1.17. PA2008 s131(3) sets out exceptions to the special parliamentary procedure in particular defined circumstances. This includes at s131(4A) that if the Order land is, or part of, open space and none of the Order land includes other special categories of land. In those circumstances, if either "i) there is no suitable land available to be given in exchange for the order land, or (ii) any suitable land available to be given in exchange is available only at prohibitive cost", then in addition it must be "strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure".
- 6.1.18. S138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the proposed development, this is relevant to SUs with land and equipment interests within the Order Limits.
- 6.1.19. The PA2008 also provides for TP of Order land. Part 1 of Schedule 5 to PA2008 establishes that TP powers are capable of being within the scope of a DCO. PA2008 and the CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as for CA powers because, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. However, they must be justifiable and compatible with human rights tests as discussed below. Further, such powers tend to be ancillary and contingent to the application proposal as a whole and only capable of proceeding if the primary development is justified.
- 6.1.20. Based on the PA2008 and CA Guidance, TP requires:

- justification that the TP powers are needed to enable the construction of the proposed development;
- demonstration that the TP powers are compatible with human rights tests; and
- that there are suitable compensation provisions for interference with a relevant right or interest.

NEIGHBOURHOOD PLANNING ACT 2017

- 6.1.21. The Neighbourhood Planning Act 2017 (NPA2017) includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the NPA2017.
- 6.1.22. Article 7(h) of the dDCO seeks to disapply the provisions of the NPA2017 insofar as they relate to TP of land under dDCO Articles 37 (TP of land for carrying out the authorised development) and 38 (TP of land for maintaining the authorised development) to protect the applicant's position should the provisions be brought into force after any consent is granted.

HUMAN RIGHTS ACT 1998

- 6.1.23. Schedule 1 of the Human Rights act 1988 (HRA1988) sets out the articles of European Convention on Human Rights (ECHR). Human rights have been considered by the ExA with reference to the ECHR and in particular:
- Article 6 (right to fair and public hearing);
 - Article 8 (right to respect for private and family life, home and correspondence); and
 - Article 1 of the First Protocol to the ECHR (protection of property through the right to peaceful enjoyment of possessions, except in the public interest and subject to the conditions provided for by law).

EQUALITY ACT 2010

- 6.1.24. The Equality Act 2010 established the public sector equality duty (PSED) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

6.2. THE REQUEST FOR CA AND TP POWERS

Powers sought

- 6.2.1. Articles in the application dDCO [[APP-018](#)] and all subsequent versions included both permanent and temporary powers to construct, operate and maintain the proposed development.
- 6.2.2. No Crown Land or Crown interests were identified within the Order limits [[APP-020](#)]. Seven plots of special category land were identified, all being open space. In those cases, no land which would be subject to Special Parliamentary Procedure (subject to satisfying the provisions of PA2008 s 131) or Replacement Land was identified.
- 6.2.3. The Order Limits of the dDCO establish the extent of the land that would be affected by the CA and TP powers sought.
- 6.2.4. The application was accompanied by:

- A Statement of Reasons (SoR) [\[APP-020\]](#);
- A Funding Statement [\[APP-021\]](#);
- A Book of Reference (BoR) [\[APP-022\]](#);
- Land Plans [\[APP-008\]](#);
- A Special Category Land Plan [\[APP-014\]](#); and
- An Access and Rights of Way Plan [\[APP-010\]](#); and
- dDCO [\[APP-018\]](#).

6.2.5. Taken together, these documents set out the land and rights sought by the applicant at the time of submission, together with the reasons for its requirement and the basis under which compensation would be funded. As a result of the applicant's change requests, as well as where the examination and due diligence processes required changes to this documentation, new versions and additional plans were submitted. By the close of the examination the most up to date⁹¹ versions of documents were as follows:

- SoR [\[APP-020\]](#) (unchanged);
- Funding Statement, Revision (Rev) B [\[APP-141\]](#);
- Final BoR, Rev H [\[REP7-008\]](#);
- Schedule of Changes to the BoR, Rev F [\[REP7-014\]](#);
- Land Plans, Revs P05 [\[REP4-003\]](#) (and P05A [\[REP5-003\]](#)⁹²);
- Special Category Land Plan, Rev P03 [\[AS-011\]](#); and
- Access and Rights of Way Plan, Rev P03 [\[AS-008\]](#); and
- Final, preferred version of the dDCO [\[REP7-003\]](#).

6.2.6. The ExA was kept updated by the applicant throughout the examination on the progress of negotiations with Affected Persons (APs) by means of the LRT as mentioned at paragraph 6.1.3 above.

6.2.7. These documents, taken together, form the basis for the analysis in this Chapter. References to the documents and plans in this Chapter from this point onwards should be read as references to the latest revisions cited above, unless otherwise stated.

6.2.8. Neither of the proposed changes to the application which the ExA accepted as set out in section 1.5 above engaged the procedures in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

6.2.9. The final dDCO sought powers to compulsorily acquire land and new rights (both temporary and permanent) for the purposes of the construction, operation and maintenance of the Proposed Development. A summary of the DCO Articles that would convey those powers are provided in section 4 of the SoR.

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The purposes for which the CA and TP powers are required are set out in the SoR and the Final BoR. In summary, the applicant advises that this is to enable the

⁹¹ The Schedule of Changes to the BoR only recorded changes made since the previous version of the document rather than a cumulative record. For changes made at earlier stages see revisions B [\[REP1-019\]](#), C [\[REP2-014\]](#) and D [\[AS-076\]](#).

⁹² Revision P05A indicates seven plots of land owned by TWUL as CA of new rights only as opposed to those seven plots being CA of freehold and leasehold on Revision P05, in light of the potential for a completed deed of obligation securing the management of the CLNR being received by the SoS. It was accompanied by a without prejudice Rev G.2 of the BoR [\[REP5-034\]](#).

construction, operation, maintenance and decommissioning of the proposed scheme, and that without the powers to acquire the rights and interests in land proposed there would be insufficient certainty about the applicant's ability to deliver the proposed scheme within the necessary timescales.

6.3.2. The land would be for the key development zones for the proposed Carbon Capture Facility (CCF), proposed Jetty and associated works and the proposed Mitigation and Enhancement Area (MEA). This land includes elements of the Crossness Local Nature Reserve (CLNR) and the employment land to the west of Norman Road. It also includes an area of riverbed and foreshore to the northeast of the existing Riverside 1 and under construction Riverside 2 facilities.

6.3.3. The applicant is also seeking powers to compulsorily acquire rights and impose restrictive covenants. In summary these would be:

- access rights to facilitate access to the CCF from Norman Road, and the protection of those accesses;
- utilities rights to undertake works to utilities (both existing and creating new) within Norman Road and to protect them;
- connection rights to facilitate the various connections between the CCF and Riverside 1 and Riverside 2, which the applicant advises are critical to the operation of the proposed scheme and the protection of those connections;
- Liquid Carbon Dioxide (LCO₂) pipeline rights to facilitate the construction, maintenance and protection of those pipelines;
- maintenance access rights, to enable the applicant to utilise the private access road adjacent to Norman Road to access the land adjacent to the proposed Jetty and to maintain it in the future; and
- maintenance rights, over the land adjacent to the proposed Jetty, to enable those maintenance activities to take place.

6.3.4. TP powers are sought to provide working spaces in the River Thames to construct the proposed Jetty and enhancements to the England Coast Path (Thames Path), a temporary construction compound for the Jetty and protective works to land if required as a result of the proposed development. The applicant advises that this land is required to ensure that there is sufficient space to build the proposed scheme and mitigate its impacts during the construction phase only, without necessitating CA of land.

6.3.5. The BoR identifies all the plots of land affected and these are also shown on the Land Plans. The Land Plans submitted by the applicant were revised and amended as the examination proceeded to accommodate the changes referred to below.

Special Category land

6.3.6. Six plots of special category land have been identified are set out in Part 5 of the BoR. These include grazing marsh, public footpaths, access tracks, board walks, shrubbery and a drain in Crossness Local Nature Reserve (CLNR) and at Norman Road Field. Consequently, PA2008 s131 and s132 apply which require the SoS will need to be satisfied that particular circumstances exist or special parliamentary procedure would apply. This is considered at Section 6.9 below.

6.4. EXAMINATION OF THE CA AND TP CASE

THE EXAMINATION PROCESS

- 6.4.1. The ExA's approach to the question of whether CA powers should be granted and if so what it should recommend to the SoS to grant has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance and the Human Rights Act 1998. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against any private loss.

Written process

- 6.4.2. APs or potentially affected persons by CA or TP, including SUs who made Relevant Representations, are listed in the LRT. The LRT also lists subsequent Written Representations and other submissions made by APs and where the applicant responded, citing Examination Library (EL) references.
- 6.4.3. In examining the application, the ExA considered all written material in respect of CA and TP and asked written questions regarding justification of the need for the CA and TP in the ExA's First Written Questions (ExQ1)⁹³ [PD-007] with the applicant's response in [REP3-029], and Second Written Questions (ExQ2)⁹⁴ [PD-014] with the applicant's response in [REP5-033].

Hearings

- 6.4.4. In addition to written submissions these were supplemented by hearings where these issues were explored in further detail including Compulsory Acquisition Hearing (CAH) 1 [EV6-001], [EV6-002], [EV6-004] and CAH2 [EV7-001], [EV7-002], [EV7-004], [EV7-006], [EV7-008]. Issue Specific Hearing (SH1) [EV5-001], [EV5-002], [EV5-004], [EV4-006] also covered matters including alternative locations and configurations of the proposed development which has implications for CA. The applicant provided a summary of their oral submissions to the hearings at CAH1 [REP1-028], CAH2 [REP4-048], [REP4-034], and ISH1 [REP1-025], [REP1-026], [REP1-027]. Post hearing representations from APs and IPs are listed in the EL.

Site inspections

- 6.4.5. An Unaccompanied Site Inspection (USI) [EV2-001] enabled the ExA to view much of the land subject to CA and TP proposals from public highways and public rights of way. During the USI, the ExA was also able to gain an appreciation of the general extent of land being sought to be acquired permanently and temporarily. In addition, the Accompanied Site Inspection (ASI) [EV9-001] on 13 February 2025 enabled the ExA to view more of the land subject to CA and TP proposals.

General Consideration

- 6.4.6. The application included a request for CA of the land to be authorised. As such, the ExA is satisfied that the condition set out in s123(2) of the PA2008 has been met.

⁹³ ExQ1.5.0.1 to ExQ1.5.0.12.

⁹⁴ ExQ2.5.1 to ExQ2.5.3.

- 6.4.7. The Applicant's general case for CA is set out in Sections 5 (Purpose for which the CA and TP powers are sought), 6 (Justification for powers of CA), 8 (Special considerations) and 9 (Human rights) of the SoR.
- 6.4.8. The need for, and perceived benefits of, the proposed development are identified in SoR Section 6. It highlights where the case for need was established by legislation, international obligations on climate change and by the Overarching National Policy Statement for Energy (EN-1) (NPS EN-1) and other policy. The applicant sets out why it considered that national and local planning policy supports the proposed development in SoR Section 6.5.
- 6.4.9. As required by paragraph 4.1.5 of NPS EN-1 the SoR, referencing the Project Benefits Report [[APP-042](#)], explains the reasoning for its conclusion that the proposed development would deliver significant benefits in respect of: reducing emission of greenhouse gasses; carbon savings equivalent to £1.7billion; economic and environmental benefits from using marine transport for LCO₂; job creation; along with biodiversity and other socio-economic benefits.
- 6.4.10. The Applicant's principal justification for the use of powers of CA to deliver the proposed development arises from the following:
- the carbon capture element of the scheme 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 de-carbonised district heating network that crosses local authority areas;
 - it would contribute to addressing the urgent need for significant, large-scale energy infrastructure to meet the Government's objectives for both energy security and net zero;
 - it would minimise or mitigate adverse landscape and amenity impacts to an acceptable degree;
 - it would minimise or mitigate adverse environmental impacts to an acceptable degree;
 - it intends to enhance the local environmental, amenity, and ecological landscape; and
 - it would be compliant with the NPS EN-1 and has been developed to take account of the other decision making factors specified in s104 of the PA2008.

The Acquisition of Land Interests by Agreement

Requested CA powers to which no objection was received

- 6.4.11. A number of other landowners whose land or interests would be subject to CA and/or TP did not raise objections in the examination to the proposed development. Notwithstanding the lack of representation from those landowners or occupiers who would be affected, the ExA has considered whether or not the land required for the proposed development, to facilitate or is incidental to that development and there is a compelling case in the public interest for the rights to be acquired compulsorily. The same considerations apply to land sought to be acquired for TP, whether or not with permanent rights thereafter.
- 6.4.12. The LRT sets out the position with APs at the final examination deadline. The ExA is satisfied that they have had every opportunity to engage with the examination and that the rights sought for the CA of land, CA of rights and TP of land are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would

outweigh any private loss. Where those parties were also SUs, this is also considered in Section 6.8 below.

6.5. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

- 6.5.1. This section sets out the ExA's consideration of unresolved objections raised by APs, IPs, and SUs in respect of CA and/or TP powers that the applicant seeks and the applicant's response to those. Consideration is given to whether these objections are sufficient to outweigh the ExA's finding on the applicant's general case for CA and TP powers.
- 6.5.2. Some of the issues raised by APs and IPs, as considered relevant and necessary, have been addressed in earlier chapters of this Report in respect of the planning issues arising from the proposed development. The objections considered in this Chapter relate only to the Applicant's request for CA and TP powers.
- 6.5.3. A number of AP's objected or raised concerns specifically regarding the CA and/or TP of the land, or the impact on the use of the land, and these are considered below. Details of the applicant's dialogue with all owners is set out in the LRT [\[REP7-017\]](#) and in respect of those objecting, positions at the time of ExQ1 are contained in the applicant's Objection Schedule⁹⁵ [\[REP3-030\]](#).
- 6.5.4. In addition, some Interested parties (IPs) who did not have an interest in the land and consequently were not APs, specifically objected to the CA of land that comprises the Crossness Local Nature Reserve (CLNR) and Erith Marshes Metropolitan Site of Importance for Nature Conservation (MSINC) including, but not limited to, Save Crossness Nature Reserve (SCNR).
- 6.5.5. The applicant entered into Statements of Common Ground (SoCG) with a number of APs. The ExA also requested SoCG with other APs which were not pursued. These are set out at paragraphs 1.4.6 to 1.4.9 above.
- 6.5.6. Table 2 below sets out those objections from APs outstanding, or where not objecting significant outstanding matters, at the close of the examination.

Table 2 : Objections to CA and TP and other issues outstanding at the close of the examination

AP	Plot(s) affected	Representation(s)
Creek Side Developments (Kent) Limited [^]	1-012, 1-014, 1-017, 1-025, 1-026	[REP4-041] *
Mr Seamus Gannon [^]	1-009, 1-011, 1-012, 1-014, 1-016, 1-017, 1-019, 1-022, 1-025, 1-026, 1-032	[RR-180] , [REP4-040] *
Landsul Limited ^{^^}	1-012, 1-014, 1-017, 1-022,	[RR-101] , [AS-084] , [AS-089] , [PDA-016] ** , [REP1-059] , [REP1-060] ,

⁹⁵ Applicant's Response to Examining Authority's First Written Questions, Appendix B: Compulsory Acquisition and Temporary Possession Objection Schedule.

AP	Plot(s) affected	Representation(s)
		[REP1-061] , [REP3-045] , [REP4-042] ***, [REP5-051] , [REP7-026]
Munster Joinery (UK) Limited^^	1-022	[RR-101] , [AS-084] , [AS-089] , [PDA-018]** , [REP1-059] , [REP1-060] , [REP1-061] , [REP3-046] , [REP4-043] ***, [REP5-051] , [REP7-026]
Peabody land Limited^^^	1-001, 1-002, 1-003	[RE-197] , [REP1-062] , [REP5-053] , [RE6-047] , [REP7-013] , [REP7-029]
Save Crossness Nature Reserve	Plots in CNR	[REP1-047] , [REP2-032] , [REP3-047] , [REP4-044] , [REP5-052] , [REP6-049] , [REP7-032]
Thames Water Utilities Limited	1-002, 1-005, 1-006, 1-007, 1-020, 1-021, 1-023, 1-024, 1-027, 1-028, 1-028A, 1-028B, 1-033, 1-036, 1-037, 1-038, 1-039, 1-040, 1-041, 1-042, 1-044, 1-046, 1-047, 1-049, 1-050, 1-051, 1-054, 1-054A, 1-054B, 1-044, 1-057, 1-059, 1-060, 1-061, 1-063, 1-064, 1-067, 1-068, 1-070, 1-071, 1-075, 1-085, 1-088, 1-090, 1-093, 1-099, 1-102, 1-106, 1-108, 1-112, 1-114	[RR-195] , [REP1-057] , [REP1-058] , [REP3-043] , [REP3-048] , [REP4-045] , [REP5-055] , [REP6-051] , [REP7-033]
Tilfen Land Limited^^^	1-004, 1-006, 1-013, 1-015, 1-018, 1-029, 1-031	[RE-197] , [REP1-062] , [REP5-053] , [RE6-047] , [REP7-013] , [REP7-029]
Western Riverside Waste Authority	1-052, 1-054, 1-054A, 1-056, 1-058, 1-059, 1-060, 1-061, 1-062, 1-063, 1-064, 1-065, 1-066, 1-067, 1-068, 1-069, 1-070, 1-071, 1-073, 1-074, 1-076, 1-077, 1-078, 1-079, 1-080, 1-081, 1-084, 1-085, 1-086, 1-087, 1-091, 1-096, 1-105, 1-109 and 1-112	[RR-204] , [REP1-043] , [REP1-044] , [REP1-045] , [REP3-049] , [REP5-049] , [REP7-034]

AP	Plot(s) affected	Representation(s)
Λ, ΛΛ, ΛΛΛ	Represented jointly and presented joint evidence.	*, **, *** Although these representations were made separately and have separate Examination Library references, they are the same.

- 6.5.7. One main objection raised by a number of parties was that the proposed land take for the siting of the CCF and associated infrastructure was excessive and that it could be delivered on a smaller footprint. By consequence, this would mean that there would not be a justification for the acquisition of all the plots proposed. Which plots might or might not be excluded from such a notional reduced footprint would be a moot point as if it was not convincingly demonstrated that all the land proposed for CA were necessary, in the absence of an alternative scheme from the applicant (as opposed to those advanced by objectors) it would not be possible to select plots which may or may not be necessary. This is considered in more detail in individual objections below.
- 6.5.8. Given the applicant's current ownership of land, if it is accepted that the proposed development would have to occur outside the Riverside Campus, irrespective of size, it would be necessary to acquire land not in their control. Further in order to pursue the applicant's proposed approach to landscape and biodiversity compensation and mitigation, that would require carrying out work and managing land in a particular manner beyond land currently in their control.

INDIVIDUAL OBJECTIONS AND OUTSTANDING ISSUES

Landsul Limited and Munster Joinery (UK) Limited (LMJ)

Plots 1-012, 1-014, 1-017 and 1-022

- 6.5.9. Landsul Limited is the owner, developer and manager of the land at Plot 1-022 described in the BoR as 7,838m² of hardstanding, building and shrubbery at Norman Road. It has been developed for industrial and warehousing purposes with offices and a display area. Part of the land (plot 1-022) is occupied by Munster Joinery (UK) Limited (MJL), from where it operates a distribution function for its UK operations (see also 3.11.10 to 3.11.15 above). Landsul also have certain rights over plots 1-012, 1-014, 1-017, however their principal objection is to the acquisition of the site which those plots serve. Although their interests differ, both APs have made joint representations and their cases are the same. It is expedient to consider these jointly in this report.

Matters considered in the examination

- 6.5.10. LMJ contend that their land is not required and that their uncontested expert evidence shows that it is possible to build a CCF and related infrastructure without requiring their land. Further, they contend that the applicant provided no expert evidence on this issue, and they consider that the applicant's evidence shows that it has not considered whether it is possible to build a CCF and related infrastructure without requiring LMJ's land.
- 6.5.11. As the examination progressed and evidence from LMJ and the applicant was provided and considered, LMJ focused on two particular elements of the proposed development which they considered could either be considerably smaller or omitted, thereby reducing the land necessary for the proposed development sufficiently to omit an area of the same size or larger than LMJ's Land. In doing so they

contended that the CCF could all be constructed on land to the north of LMJ's land or if required with a further area to the south but still not requiring LMJ's land.

6.5.12. Two pieces of plant or components of the proposed scheme remained in dispute between the applicant and LMJ by the close of the examination. One is the requirement and necessity or otherwise of a 132kV substation and the other the provision of a heat transfer station. Both elements are contained in dDCO Work No 1E, albeit the substation voltage is not specified.

6.5.13. LMJ's overall point is that "the applicant's evidence shows that it did not ask the question: is it possible to build a carbon capture plant and related infrastructure without taking Landsul and Munster Joinery's land? Since it has never asked that question, it has not made out the case for compulsory acquisition." [\[REP7-026\]](#)

6.5.14. LMJ also contend that a DCO cannot be made with the inclusion of CA powers in respect of their land as they consider that they have not been afforded a proper opportunity for their objection to be heard [\[REP7-026\]](#).

Substation size

6.5.15. An alternative to that proposed would be an 11kV substation and it is not a matter in dispute between the parties that such an arrangement would require less space to implement. Notwithstanding that the applicant acknowledged that an 11kV substation would be lower cost and have some advantages, the applicant advised that the 132kV design would provide flexibility as once detailed design has been carried out it may be required in light of technical implications including the connections between the Riverside facilities and the proposed development. [\[REP5-051\]](#)

6.5.16. LMJ acknowledge that providing electrical connections, especially in order to avoid a 132kV substation, would be challenging but they claim their expert evidence shows they are not infeasible. They consider that the applicant has not demonstrated that the suggestions that Blake Clough, one of LMJ's experts, for achieving an 11kV could not be achieved. Consequently, LMJ advise that the applicant cannot CA land which they consider may be needed; the applicant must demonstrate that the land is required. Blake Clough point out that an option of altering the design or Riverside 2 could impact the schedule for its development, albeit that such an option would require further detailed study and that changes can be accommodated into an ongoing project development process. [\[REP7-026\]](#)

6.5.17. In support of their case LMJ have produced alternative layouts which they assert would meet the applicant's requirements, including at D7 a layout that includes a 132kV substation and a heat transfer station (considered further below) without requiring their land to be used [\[REP7-026\]](#).

6.5.18. LMJ also point to the applicant advising that they could have made provision in Riverside 2 for an 11kV connection, but that that facility's design is now too far advanced to change the provision. Indeed, the applicant advises that they acknowledge that an 11kV substation would be a cheaper option [\[REP6-038\]](#) but that a 132kV substation is unavoidable given physical and technical constraints of the existing and proposed 11kV installations on the Riverside 1 and 2 such that the proposed electrical infrastructure within the CCF, including 132kV switchgear and transformers to step down the 132kV to voltages appropriate for distribution and supply around the site, would be essential.

Heat Transfer Station and heat demand

- 6.5.19. LMJ argue that there is no viable and deliverable solution to connect any heat demand in the area with any heat generated by the proposed development. Consequently, they argue that it has not been demonstrated that the land take necessary to accommodate the heat transfer station element is required. Notwithstanding their position, as mentioned above LMJ have also provided an alternative layout that shows the substantive part of a CCF to the north of their land and with a non-contiguous Heat Transfer Station to the south of their plot.
- 6.5.20. They point to technical and economic challenges in exporting heat to a network and note that despite a planning requirement that both Riverside 1 and 2 facilities make provision for exporting heat, no heat network has yet been created to take it. LMJ argue that the applicant's exploration of how heat may be exported in future is not the same as showing that there is compelling case for the acquisition of LMJ's land now to provide heat transfer to a network that is not yet in place. They also point out that whilst the applicant may have funding to deliver the heat transfer station, there is no evidence that funding is available or likely to be available to deliver connections to a heat network or to meet a demand many miles away including on the other side of the River Thames.
- 6.5.21. LMJ's contention is that if the heat transfer element cannot be shown to be financially viable, then there can be no compelling CA case. Even if a Heat Transfer station were to be necessary, their case is that the proposed development could be implemented with a reduced footprint which could include a split, non-contiguous, site if necessary.
- 6.5.22. The applicant points out provision of heat distribution pipework and a Heat Transfer Station within the footprint of the CCF is driven by local and national policy for decarbonisation of heat obliging energy developers to pursue district heating opportunities where practicable. They consider that they have demonstrated that there is sufficient and immediate demand for supply of heat from a CCF in addition to that from Riverside 1 and 2 and that it is both a practicable and commercially viable proposition such that heat recovery and transfer infrastructure is an essential part of the CCF [\[REP7-021\]](#).

Other land take and footprint matters

- 6.5.23. LMJ refer [\[REP5-051\]](#) to an 2022 AECOM Report⁹⁶ for the government which aimed to develop the evidence base that is used to define the requirements for demonstrating decarbonisation readiness and inform guidance. It included an objective to update the land footprint estimates for addition of a carbon capture site to a power station or other relevant location taking into consideration the expanded scope. LMJ advise their alternative layout is closer to the AECOM benchmark but still conservative and larger but, because of its extent and scale, that the proposed development is out of line with the report's benchmark footprint.
- 6.5.24. The applicant maintains that LMJ's alternative layouts do not represent a valid, like-for-like alternative arrangement of the equipment items, buildings and supporting infrastructure necessary for the safe and efficient operation of the CCF and that those alternative layouts do not demonstrate that the land requirement is excessive. The more detailed, project specific information and data relied on by the applicant

⁹⁶ Decarbonisation Readiness – Technical Studies: Carbon Capture Readiness, Department for Business, Energy and Industrial Strategy, June 2002.

means that LMJ's benchmarking exercise [REP5-051] could not be considered directly comparable to the proposed scheme and its land requirements [REP7-021].

- 6.5.25. The applicant advises that they have sought to minimise the development footprint and consider that their Indicative Equipment Layout [AS-070] represents the minimum overall development footprint required for the CCF whilst retaining what they consider to be necessary flexibility for the detailed design of the scheme.

Alternative site

- 6.5.26. LMJ highlighted that with the reduced footprint that their alternative scheme would require, that only part of the land in the East Zone alternative considered by the application would be necessary to accommodate the development. This could mean that only the building and site currently occupied by Iron Mountain would be required and the socio-economic effects might be less as employment numbers were higher at MJUK than the applicant had estimated those at Iron Mountain to be. They pointed out that this has recently been sold and that the lease was only until 2031 and so potentially available for the scheme [REP1-059].⁹⁷
- 6.5.27. The applicant noted [REP2-021] that since the Iron Mountain Site (owned by Reality Income) was sold it had not been marketed again and they consider that the tenant (Iron Mountain) could seek a statutory renewal of its leasehold interest until 2046.

- 6.5.28. *Socio-economic impact*

- 6.5.29. LMJ's evidence [REP7-021] including a report and subsequent submissions by Lichfields [REP1-059]⁹⁸, [REP3-045]⁹⁹, [REP5-051]¹⁰⁰, [REP7-021]¹⁰¹ about the economic and associated effects should the land be acquired and a worst case scenario of MJUK's Norman Road operation not being able to relocate with the associated job losses is considered in Section 3.11 above in terms of the planning case for the proposed development. LMJ contend that both MJUK and Cory's CCF development could co-exist and therefore avoid the adverse economic effects of MJUK closing and benefit from those that the CCF would bring. This, they argue, demonstrates that there is not a compelling case in the public interest to support CA on a simple planning balance.

- 6.5.30. The applicant disagrees with LMJ's Lichfields report and concluded that in light of the economic and other benefits the compelling case in the public interest for the Proposed Scheme outweighs the worst case loss of LMJ land and MJUK operations.

Other CA matters

- 6.5.31. LMJ consider that although the applicant's CA case for their land case must be rejected, development consent could still be granted. Although the applicant may need to seek new rights over their land in the future for pipes or utilities, a CCF could still be built in accordance with the consent sought, but only if the LMJ is excluded from the land to be compulsorily acquired.

⁹⁷ Including Annexes D and E.

⁹⁸ Annex E.

⁹⁹ Annex J.

¹⁰⁰ Annex F.

¹⁰¹ Appendix D.

ExA's consideration and findings

Procedural fairness

- 6.5.32. The ExA disagrees with the APs' assertion that they were not afforded a proper opportunity for their objection to be heard for reasons which are set out in the ExA's letter of 9 April 2025 [\[PD-017\]](#). The timing of the APs' request for a further hearing could not have been accommodated given how close to the end of the examination period it was received and the ExA reminded LMJ that the examination is primarily and predominantly a written process.
- 6.5.33. The PA2008 and supporting statutory instruments establish that it is for the ExA to decide how hearings are conducted. In particular the ExA reminded LMJ at CAH2 that whilst the ExA did not rule out a further hearing it should not waste examination time by going over matters already explored in writing and that any request would need to be very precise in a number of respects. Such precision and clarity was not received. The ExA considers the examination followed procedures that are designed to be inherently fair and that the APs have not been prejudiced as a result.

Substation size

- 6.5.34. LMJ's expert evidence shows that an 11kV substation would occupy a smaller area and that was not disputed by the applicant. Nevertheless, the applicant is clear that the technical consideration included the stage of construction and design at Riverside 2 means that they do not consider it a feasible option and LMJ's evidence acknowledges that further work would be required to further investigate the feasibility of a smaller sub-station option. LMJ's alternative layout also shows a larger substation and they have also evaluated that layout with their advisors confirming that there would be sufficient area for complementary access, landscaping and separation distances.
- 6.5.35. Putting aside the merits or otherwise of the two different sub-station approaches, it remains that the applicant is proposing an 132kV substation and has allowed space to accommodate that infrastructure in its proposals. The expert evidence of LMJ in writing and orally demonstrated that a lower voltage substation within the CCF would require less land than that proposed and even that an alternative voltage arrangement may be possible with more intervention into the Riverside 2 design development. Whilst there may be a theoretical possibility that under particular circumstances the applicant may be able to provide a substation with a smaller land take, that is not what is proposed nor importantly what consent has been sought for. The applicant acknowledges that an 11kV arrangement would be cheaper and it stands to reason that they would opt for the cheaper option if they considered it to be a feasible one. It is legitimate for the applicant to specify a scheme that they have confidence to deliver, as opposed to the one that LMJ acknowledge would be challenging to deliver, and seek the land necessary for that.
- 6.5.36. The situation remains that it has been demonstrated that the scheme proposed would require a 132kV substation and the layout which has informed the applicant's land requirements show it at a particular indicative size. It is not shown in isolation but as part of the overall complex of the CCF and associated facilities. Although it, and other buildings, are shown with spaces around them, the overall design approach illustrated on the indicative plans is not an expansive or sprawling layout with significant segregation between functions.

Heat Transfer Station and heat demand

- 6.5.37. Without appropriate provision for heat transfer the proposed development would be likely to have been found lacking in terms of national and local policy encouraging and requiring de-carbonised heat and power. LMJ's argument that a heat transfer Station is unnecessary or could be proposed independently has little justification in this context. Similarly, just because the network into which it would connect may not yet be available or there remain questions over the feasibility and market for heat exports does not mean that proper provision should not be made at the time the CCF is being put forward. Although a separate operator may well manage any Heat Transfer Station, this in itself would not justify its omission from the scheme and consequently land requirements.

Overall land take

- 6.5.38. The extent of land sought is an important consideration as the SoS will need to be satisfied that all reasonable alternatives to CA have been explored. The applicant had considered more compact layouts and different configurations of site extent in its optioneering process and so has considered alternatives, although for the reasons set out above given the lack of land in the applicant's ownership alternatives to the principle of CA of some surrounding or nearby land are very limited if non-existent in this case.
- 6.5.39. As the proposed development has been designed for the particular situation and with the applicant's requirements in mind, it would not be reasonable to assess the applicant's land requirements in light of a design and management approach they are not seeking to implement. Nor would it be reasonable to consider that only a fragmented or non-contiguous site should have to be pursued against the applicant's reasonable requirements to demonstrate that no more land that it necessary is being sought to be acquired.
- 6.5.40. Were an overly restricted area of land to be acquired and subsequent detailed design found it insufficient that will have wasted significant resources and time for a development that national policy identifies as urgent. Whilst in theory the land sought for the footprint of a piece of infrastructure could be so generous as to raise doubts that it would be used for the purposes sought such that it would not be necessary nor proportionate. However, in the case of the proposed development, the indicative layout and the approach set out in the Design Approach Document does not indicate a scheme that is profligate with the land it seeks to be built on.
- 6.5.41. Therefore, whilst there may be a range of footprints or areas that could theoretically support a CCF and associated facilities for its intended purpose, that proposed does not stand out as one that would unacceptably exceed a reasonable range even if it is greater than that anticipated in the AECOM Report referred to by the APs and the APs' own layout, noting that LMJ's own footprint exceeded it too.
- 6.5.42. The indicative arrangement put forward by the applicant is not an overly dispersed arrangement when considering the relatively immature stage of detailed design (see also sections 3.9 and 3.12 above) and also that the footprint will need to accommodate landscaping and habitat creation in order to accord with the applicant's approach for biodiversity and visual mitigation.
- 6.5.43. The applicant did consider options of both a footprint to the north of the LMJ site and a non-contiguous arrangement [\[REP6-031\]](#) so it is not that they had not considered these options, although they may not have been developed in great detail.

- 6.5.44. As considered in section 3.3 above, that a development of a similar capacity or function to that proposed could be designed in a different manner so as to require a smaller footprint, or a non-contiguous footprint, does not mean that there is a clear demonstration that there is not a requirement for the land necessary to implement the proposed development for which development consent has been applied for. The ExA considers that it has been adequately demonstrated that this would accommodate the applicant's indicative layout and range of facilities and that this requires the amount of land sought (including that owned and occupied by LMJ).
- 6.5.45. Furthermore, and notwithstanding the planning rationale for doing so, there is an incentive to maximise the use of land allocated as Strategic Industrial Land.
- 6.5.46. The evidence shows that it would appear technically feasible to configure a non-contiguous site provided utilities connections could be provided and other technical matters satisfied. However, the proposal put forward by the applicant relies on a contiguous site for management and maintenance purpose amongst others, and that remains the proposal for which the land is sought.
- 6.5.47. The ExA does not agree that seeking CA for a scheme which at Order application stage contains a reasonable degree of flexibility on a variety of factors that could influence the final footprint and configuration of the proposed development is a failure to demonstrate that the land would be required for the scheme.

Conclusion

- 6.5.48. For the above reasons, the ExA considers that LMJ and MJUK land has been demonstrated to be required to the proposed CCF and associated development. The ExA is satisfied that the land is required for a legitimate purpose, that the rights sought in the land would be necessary and proportionate, and that there is a compelling case in the public interest for these powers to be granted, which would outweigh the private loss.

Creek Side Development (Kent) Limited (CSDK) and Mr Seamus Gannon

Plots 1-009, 1-011, 1-012, 1 014, 1-016, 1-017, 1 019, 1-022, 1-025, 1 026, 1-032

- 6.5.49. The BoR notes the proposed permanent acquisition of Plot 1-025 described as 8,316m² of land being temporary car park and access splay, hardstanding and portacabin on Norman Road although it is understood to be currently in use for materials storage associated with the construction of Riverside 2. CSDK are identified as freehold owners and Mr Gannon with interests. Surrounding areas of hardstanding, embankments and other plots are variously owned by CSDK and Mr Gannon with the other party entitled to rights and vice versa.
- 6.5.50. Mr Gannon advises that the land was acquired to relocate one of his businesses that has had to move as the result of another project in nearby Charlton, but leased it for the Riverside 2 project as they would otherwise be faced with CA. The proposal would permanently frustrate this aspiration. That business has had to lease expensive alternative sites whilst waiting for the site to become available.
- 6.5.51. Mr Gannon's relevant representation (RR) [\[RR-180\]](#) contends that there is not a compelling case in the public interest for the CA of the land. The reasons given are that: there are alternative (unspecified) areas where development, compounds and ecological mitigation could be delivered, that there has not been what they describe as a 'proper disaggregation of the elements' of the proposed development, and

consequently there is no justification for permanent CA rather than TP of the plot. They advise that if the land is genuinely required it should be by way of a lease for a defined period rather than freehold acquisition. They also note that the constraints of adjacent Metropolitans Open Land (MOL) and nature conservation interests and proposed development on land identified for ecological mitigation militate against the proposed development.

- 6.5.52. The subsequent objection [\[REP4-040\]](#), [\[REP4-041\]](#) considered the proposed development to pose significant risks and uncertainties, both financially and environmentally and that examples of other failed CCS projects, their contention that insufficient funds were being made available for land acquisition, and the lack of consideration for alternatives led them to conclude that a thorough reassessment of the project was needed. In particular they considered that the applicant had not adequately explored both alternative sites for the proposed development and alternative designs that could reduce the scheme's footprint, including by splitting the Site and co-locating the CCF with the existing facilities

ExA's consideration and findings

- 6.5.53. The APs' did not present any detailed evidence about alternative site size, configuration or location was presented but the APs' objection was aware of the detailed case put forward by other AP's including that considered above.
- 6.5.54. The applicant had considered more compact layouts and different configurations of site extent in its optioneering process and so has considered alternatives, although for the reasons set out above given the lack of land in the applicant's ownership alternatives to the principle of CA of some surrounding or nearby land are very limited if non-existent in order to accommodate a CCF adjacent to the existing facilities.
- 6.5.55. As considered above it would appear technically feasible to configure a non-contiguous site or provide a more condensed footprint. However, it would not be reasonable to conclude that only a condensed or non-contiguous site should have been pursued by the applicant if that would not have satisfied their reasonable technical and operational requirements. The applicant's indicative layout does not appear to rely on an overly generous land take with excessive extraneous space. The applicant did consider options including a split site (albeit omitting a different plot of land that that in contention) as well as alternative locations in the vicinity [\[REP6-031\]](#), so it not that the applicant did not undertake an exploration of alternative options.
- 6.5.56. As considered in Section 3.3 above, ultimately that a development of a similar capacity or function to that proposed has the potential to be designed in such a fashion that it may require a smaller footprint, or locate a different site entirely, does not equate to that being a clear demonstration that there is not a requirement for the land necessary to implement the proposed development for which development consent has been applied for and for which an urgent need has been identified. Notwithstanding the planning rationale for doing so, there is an incentive to maximise the use of land allocated as Strategic Industrial Land such as the APs' land.
- 6.5.57. The APs' concerns about the sufficiency of finance are considered in section 6.10 below. To the extent that the APs' objection relates to the planning merits of the proposed development, these have been addressed in the considerations in relevant sections in Chapter 3 above.

- 6.5.58. The ExA is satisfied that it is required for a legitimate purpose, that the rights sought in the land would be necessary and proportionate, and that there is a compelling case in the public interest for these powers to be granted, which would outweigh private loss.

Peabody Trust and Tilfen Land Limited (TLL)

Plots (TLL) 1-004, 1-006, 1-013, 1 015, 1-018, 1-029, 1 031

Plots (Peabody Trust) 1-001, 1-002, 1-003

- 6.5.59. Peabody Trust owns TLL and together they have interests in both the land at Norman Road field which the applicant proposes would form part of the proposed Mitigation and Enhancement Area MEA and be incorporated into the redrawn boundaries of the CLNR. They also own land at the former Thamesmead Golf Course, which whilst not included in any CA proposals, is the applicant's preferred offsite BNG Opportunity Area (BNGOA). The APs have not objected to CA but although have been engaging with the application throughout the examination outstanding matters remain.
- 6.5.60. A joint position statement between TLL with the applicant [\[REP7-029\]](#), [\[REP7-013\]](#) refers to the two draft deeds of obligation submitted into the examination. TLL note that agreement is still to be reached on critical commercial terms such that neither obligation has been completed.
- 6.5.61. One, Obligation A [\[REP5-027\]](#), would be between Peabody Trust, LBBC and the applicant relating to the delivery of the offsite BNGOA, and consequently does not directly relate to CA matters. However, TLL have advised that this must be entered into together with Obligation B [\[REP5-029\]](#) between TLL, LBBC, the applicant and TWUL which aims to deliver the enhancement and management of the MEA, including that TLL and the applicant would manage the Norman Road field part of the MEA (with a similar provision for TWUL in respect of parts of the CLNR). The joint position statement notes that whilst terms of acquisition need to be agreed, it is the intention of both parties that the applicant acquire the land in any event, either by agreement or CA.
- 6.5.62. Discussions are continuing, but both parties advise they remain committed to reaching agreement albeit that it has not been reached by the close of the examination. Notwithstanding this confidence, the circumstances are such that there is no certainty that the SoS will be presented with a completed Obligation B at the time of their decision.
- 6.5.63. At the close of the examination, Obligation B is not being presented as an alternative to freehold CA as it is for some TWUL land that would comprise the MEA. In any event the dDCO includes powers of CA of the land. Even though the APs have not objected, for the avoidance of doubt the ExA considers that the land is required to deliver the MEA as provided for in the LaBARDS and therefore necessary to provide the compensation, mitigation and enhancement which contribute to making the proposed development acceptable in planning terms. Therefore, should voluntary agreement not be reached, the ExA is satisfied that the land is required for a legitimate purpose, that the rights sought in the land would be necessary and proportionate, and that there is a compelling case in the public interest for these powers to be granted, which would outweigh private loss.

Thames Water Utilities Limited (TWUL)

Plots 1-002, 1-005, 1-006, 1-007, 1-020, 1-021, 1-023, 1-024, 1-027, 1-028, 1-028A, 1-028B, 1-033, 1-036, 1-037, 1-038, 1-039, 1-040, 1-041, 1-042, 1-044, 1-046, 1-047, 1-049, 1-050, 1-051, 1-054, 1-054A, 1-054B, 1-044, 1-057, 1-059, 1-060, 1-061, 1-063, 1-064, 1-067, 1-068, 1-070, 1-071, 1-075, 1-085, 1-088, 1-090, 1-093, 1-099, 1-102, 1-106, 1-108, 1-112, 1-114

Plots parts of CLNR shown in blue on Land Plans Rev P05A (1-020, 1-021, 1-047, 1-050, 1-090, 1-093 and 1-099)

- 6.5.64. TWUL own the land on which the CLNR is situated. Along with land at Norman Road the applicant proposes that the area of CLNR outside an enclosed, secure Members' Area to the west, would form the MEA providing part of the ecological, landscape and accessibility compensation, mitigation and enhancement necessitated by the proposed development. When the application was made the applicant identified all this land for freehold CA.
- 6.5.65. An issue considered during the examination was whether there were alternatives to freehold CA especially given that TWUL already managed the land as a nature reserve. The ExA sought further information from the applicant at ExQ1 and ExQ2¹⁰² about the reasons why the applicant contended that there was no alternative to CA of the MEA land and why they considered that an alternative mechanism could not deliver the same objectives, including by way of a planning obligation.
- 6.5.66. The existing planning obligation between LBBC and TWUL that established and provides for the long term management of the whole of the current CLNR was entered into alongside the planning permission for the 'sludge power station' in the Cross Water Treatment Works (CWTW). The applicant contended that this instrument could not be varied for the purposes of including the MEA and LaBARDS proposals as it would not be appropriate for a DCO to impose new obligations on a party that would replicate the effect of a positive covenant in property terms [\[REP7-033\]](#).
- 6.5.67. During the Examination, in response to TWUL's submissions, the applicant confirmed that it might be appropriate to change the Land Plans (and associated documents) to change the TWUL CLNR plots to blue, that is CA of rights/restrictive covenants rather than the freehold originally sought, if a Deed of Obligation (Obligation B) [\[REP5-029\]](#) were to be entered into, providing an alternative version of the Land Plan illustrating this, Rev05A [\[REP5-003\]](#). Amongst other obligations, Obligation B would make provision for the applicant to manage TWUL's land in the CLNR in accordance with the LaBARDS and employ the CLNR manager as well as requiring TWUL to manage the Members' Area in accordance with the LaBARDS as well. However, by the close of the examination no completed deed was presented and the applicant confirms that as drafted it is not acceptable to any of the four parties (TWUL, LBBC, TLL and the applicant) [\[REP7-021\]](#).
- 6.5.68. At the close of the examination TWUL [\[REP7-033\]](#) continue to object to any CA of their land as they contend that the proposed development is capable of proceeding without the CA powers the applicant seeks for part of the CLNR. TWUL consider

¹⁰² ExQ1.5.0.8 and ExQ2.5.3.

that should development consent be granted, that the application for freehold CA powers over the CLNR should be withheld.

- 6.5.69. Nevertheless, TWUL advise that they are optimistic that agreement to the Obligation B will be reached, which would accompany the applicant's option of seeking CA powers for just rights and not freehold possession of the CLNR land. However, in the absence of a satisfactory and completed Deed TWUL maintains that the case of freehold CA over the CLNR land is not justified irrespective of whether the Deed is completed or not [\[REP7-033\]](#).
- 6.5.70. As there is no legal mechanism before the ExA that would manage that part of TWUL's land comprising the CLNR within the order land, the proposed development needs to be considered in light of Land Plan P05 [\[REP4-003\]](#) and the dDCO [\[REP7-003\]](#) which indicates the TWUL's freehold interests in the CLNR would be intended to be acquired. The ExA therefore considers that Land Plan p05A is illustrative only unless the SoS is presented with an acceptable completed version of Obligation B.
- 6.5.71. The key issue is whether the ability to and willingness of the applicant and TWUL to enter into a planning obligation that might mean that rights only may need to be acquired over parts of TWUL's CLNR land demonstrates that a lesser interference in land rights could achieve the delivery of the proposed development and that full freehold CA of that land and would be disproportionate (notwithstanding the other considerations that the proposed CA need to be assessed against).
- 6.5.72. TWUL consider that these circumstances demonstrate that freehold acquisition has been shown to be excessive and that acquisition of rights would be sufficient to deliver and maintain the required mitigation package and also that they disagree with the applicant that the existing planning obligation could not be modified accordingly [\[REP7-033\]](#). Section 7.3 of the Applicant's Closing Statement [\[REP7-021\]](#) sets out their view that modification would not be appropriate and sets out their reasoning why, in the absence of a suitable obligation, full CA powers would accord with the considerations.
- 6.5.73. The ExA observes that the fact that the option of lesser interference is being considered is encouraging and this helps to demonstrate that alternatives to at least freehold CA have been explored. However, in order for the proposed development to be acceptable in planning terms, the compensation, mitigation and enhancement proposed on the MEA would need to be secured under the terms of the LaBARDS.
- 6.5.74. Implementation of the LaBARDS would be secured by dDCO Requirement (R) 12. This is not prescriptive about the land ownership arrangements necessary to deliver it. However, in order for the proposed development to be acceptable in planning terms and to be able to proceed there needs to be certainty that the necessary compensation, mitigation and enhancement will be implemented. Whilst there appears the potential that a lesser interference in rights may be possible, without any certainty that this arrangement is in place, the ExA accepts the applicant's position that to guarantee delivery of the LaBARDS and thus the development they would need the ability to have freehold ownership of the MEA in order to do so.
- 6.5.75. One of the reasons the applicant states for this is that without being in control of licencing, the requirement to ensure that the graziers are able to use the land could not be guaranteed and the grazing is an integral part of the management proposals for the conservation of grazing marsh habitat. Whilst there is no suggestion that TWUL would change their existing arrangements with graziers, this is an aspect that

would need to be maintained. Both parties have put forward views on alternative ways in which graziers use could be ensured through the DCO.

- 6.5.76. Ultimately the evidence at the relatively late stage of the examination is not convincing that were any recommendation to be contingent on an agreement, then it could not be certain that the LaBARDs could be satisfactorily delivered.
- 6.5.77. Therefore, the ExA accepts that the applicant would need to be able to utilise the CA powers in the dDCO to ensure that the LaBARDs can be implemented and that it has not been demonstrated that the alternative of acquiring rights only, which cannot be certain in the absence of a satisfactory mechanism such as a deed of obligation to ensure implementation, should be a reason for withholding acquisition powers.
- 6.5.78. The ExA notes that the applicant and TWUL reached an agreed position on the TWUL access road between Norman Road and the CWTW with the protective provisions for TWUL ultimately prevent the applicant or undertaker from acquiring any interest in the access road without agreement with TWUL.

Conclusion

- 6.5.79. For the above reasons, the ExA considers that it has been demonstrated that the CA of TWUL's land would be required to enable the delivery of the proposed development. The ExA is satisfied that the land is required for a legitimate purpose, that the rights sought in the land would be necessary and proportionate, and that there is a compelling case in the public interest for these powers to be granted, which would outweigh the private loss.

Western Riverside Waste Authority (WRWA)

Plots 1-052, 1-054, 1-054A, 1-056, 1-058, 1-059, 1-060, 1-061, 1-062, 1-063, 1-064, 1-065, 1-066, 1-067, 1-068, 1 069, 1-070, 1-071, 1-073, 1-074, 1-076, 1-077, 1-078, 1-079, 1-080, 1-081, 1-084, 1-085, 1-086, 1-087, 1 091, 1-096, 1-105, 1-109 and 1-112

- 6.5.80. WRWA is the statutory body responsible for the treatment of waste from four London Boroughs, and has contractual arrangements in place with Cory's associated companies including Riverside Resource Recovery Limited (RRRL) for the waste treatment carried out at the Riverside 1 EFW facility. They advise that these contractual and financial arrangements could mean that they would be required to take the freehold of the site in certain circumstances and pay significant compensation. WRWA object to CA and consider that CA would lead to prejudice treatment routes for future waste generated by four London Boroughs. [\[RR-204\]](#)
- 6.5.81. The applicant considered that WRWA's position was essentially seeking to protect its commercial position which they considered could be more appropriately managed by way of private negotiations and a voluntary agreement rather than through the examination. The applicant and WRWA made representations during the examination [\[REP2-020\]](#), [\[REP3-049\]](#) with the applicants considering that the protective provisions for RRRL would effectively protect WRWA's interests should they find themselves in the position that they were successors in title to the Riverside site. In any event, by D5 [\[REP5-049\]](#) WRWA were largely satisfied with changes that the applicant had made to the articles and the protective provisions in Schedule 12, Part 9 in respect of RRRL, albeit they requested other changes. Further details of the particular provisions are provided in Section 7.4 of Chapter 7 (DCO) below.

- 6.5.82. By the close of the examination they advised that they would not reach agreement with the applicant and whilst they would continue discussions they maintained their objection and considered their requested changes to the dDCO are still required [\[REP7-034\]](#). They advised that they hope to report further progress so the SoS may receive an update on this matter at the time they make their decision.
- 6.5.83. On the basis of the representations, whilst the ExA understands the need to ensure that WRWA are not put in a worse position as a result of any acquisition of rights, the ExA considers that the WRWA's objection is largely a commercial contractual one, albeit that given that they are a statutory body dealing with waste from local authority areas, there may be a degree of public interest should they find themselves in a position where they are at a financial disadvantage should the proposed CA of rights over the Riverside campus lead to that.
- 6.5.84. The applicant had hoped that a joint position statement could be provided but in the event the WRWA issued one maintaining their position [\[REP7-034\]](#). The applicant consequently [\[REP7-001\]](#) noted that it was clear that they would not reach agreement albeit that they made some further changes to the dDCO. The parties recognise that the ExA will need to make a recommendation either way on this point and the parties will continue their discussions during the Recommendation Period and will seek to provide an update to the SoS in the meantime.
- 6.5.85. Given the complex nature of the discussions that have been taking place, as evidenced from the parties' representations on the matter, had time allowed the ExA would have sought further information from the parties to better inform a decision as to whether to recommend that the articles and protective provisions in the relevant respects should be amended as WRWA have suggested or left as in the applicants final dDCO.
- 6.5.86. However, on balance and in light of the evidence presented, it appears to the ExA that despite the WRWA delivering a function that serves the public interest, the changes they are seeking to the articles and protective provisions would effectively be to protect their contractual and associated interests which is not the function of provisions in the dDCO. Consequently, the ExA has not recommended changes in these regards in the rDCO. However, should the SoS be presented with either the joint position statement the parties aspire to provide, or further information that may indicate that changes may be appropriate, the SoS may wish to review those particular parts of the rDCO in deciding whether to accept the ExA's recommendation in this regard.

Non-APs objections

Plots (those comprising CLNR and parts of the Erith Marshes Metropolitan Site of Importance for Nature Conservation)

- 6.5.87. A number of IP's who are not landowners or have legal interest in the Order land have objected to the applicant's CA proposals. These are exemplified by SCNR who have made representations in writing and at hearings on CA grounds. Although they do not represent other parties, the ExA notes that their representations capture the majority of other IPs' concerns on land matters. These primarily relate to the CA of part of the CLNR that would accommodate the CCF and associated development and the CA of other parts of the CLNR and Erith Marshes MSINC which they contend in any event do not need to be acquired due in part to the existing satisfactory ecological management arrangements in place.

6.5.88. SNCR [\[REP1-047\]](#), [\[REP2-032\]](#), [\[REP3-047\]](#), [\[REP4-044\]](#), [\[REP5-052\]](#), [\[REP6-049\]](#), [\[REP7-032\]](#) contend that the applicant has not demonstrated that they have met the statutory tests in the PA2008 as they have not demonstrated that the land would be required for the proposed development nor that they have demonstrated that there is a compelling case in the public interest for the CA proposed.

6.5.89. They contend that:

- the Mitigation and Enhancement Area (MEA) can be delivered without needing to be acquired;
- that the ‘desirability’ of acquisition, as opposed to entering into s106¹⁰³ agreements or amending existing s106 agreements that exist on the land, does not meet the necessity test, taking into account the legal meaning of the term ‘required’ in the PA2008;
- contrary to the applicant’s position, a s106 agreement would not need to be accompanied by a restrictive covenant to ensure delivery of the scheme and could give the applicant sufficient rights as an alternative to CA;
- it is in the public interest that TWUL retains ownership of CLNR given their experience of ecological management which the applicant does not have;
- the land sought to be acquired exceeds what is necessary to construct the proposal, citing LMJ’s alternative scheme showing many opportunities for footprint reduction and that proposed tree planting is unnecessary;
- the applicant’s reliance on their optioneering principles as opposed to planning policy priorities is flawed and they have failed to consider more appropriate alternative sites;
- The reasons for the applicant not selecting the East Zone option that would avoid or minimise any development of CLNR can be overcome by SNCR’s suggestions;
- the grazier’s and local residents’ particular circumstances mean CA is unjustified due to the adverse impacts on their functionality as a grazier, the grazier’s and residents’ ability to enjoy the land and on the on the health (including mental) and welfare of those impacted; and,
- the lack of detailed design to retain flexibility cannot be used to justify the test for CA powers.

ExA’s consideration and findings

6.5.90. For the reasons already set out in Section 3.3, and above in relation to APs’ views on whether alternatives to CA have been appropriately considered, the ExA does not agree that more land than would be reasonably required or would be reasonably necessary for the purposes of the development would be proposed to be subject to proposed CA powers and that the ExA considers these proportionate.

6.5.91. The ExA agrees that relying on a later detailed design exercise cannot in itself meet the CA tests if there were insufficient evidence and detail to support a position that land is required. However, as already mentioned the indicative equipment layout has provided a reasonable level of detail to understand the land requirements and indeed contained enough information for other APs to set out a very detailed critique of its proposals and assumptions.

6.5.92. Further, the applicant has demonstrated through the Design Approach Document [\[APP-044\]](#), [\[APP-045\]](#), [\[APP-046\]](#), and other documentation that although a degree of flexibility has been retained and will be feasible within the dDCO’s parameters,

¹⁰³ Of the Town and Country planning Act 1990.

that the approach is not a wholly speculative but one where technical, operational and environmental objectives have been considered in some detail to inform the land required for the proposed development and what it would be required for.

- 6.5.93. PA2008 s122 includes conditions that land is required for the development or is required to facilitate, or is incidental to, that development and the ExA does not consider that the term 'require' has been misinterpreted in the applicant's justification nor indeed in the ExA's understanding and consideration of the application for CA powers.
- 6.5.94. Matters relating to TWUL's ownership of the CLNR and the applicants MEA proposal are considered above. The applicant acknowledges that horse grazing should continue to play an important role in the ecological management of the MEA and the effects on those licence holders is considered in Section 6.12 below. The effects of the overall reduction in MSINC and MOL which will affect users to varying degrees, has been evaluated in Sections 3.5 and 3.10 above.

6.6. SUMMARY OF CONCLUSIONS FOR THE CASE FOR CA AND TP

Land to which authorisation of CA can relate (s123(2) of PA2008)

- 6.6.1. The application for the Order included a request for the CA and TP to be authorised as set out in the applicant's submission dDCO [[APP-018](#)].
- 6.6.2. In accordance with the requirement in the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, the applicant has included and updated through the Examination as required, a SoR, a Funding Statement, Land Plans and a BoR.

Compliance with PA2008 s122(2) and DCLG Guidance

- 6.6.3. The ExA is satisfied that the land subject to CA and TP is required for the development to which the development consent relates, or is required to facilitate or be incidental to the development, and that the land and rights to be taken are no more than is reasonably required for the purposes of the development, is no more than is reasonably necessary and is proportionate and thus complies with s122(2) of the PA2008 and the CA Guidance.

The acquisition of land interests by agreement

- 6.6.4. PA2008 s122(3) requires there to be a compelling case in the public interest for the CA of land. Paragraph 25 of the CA Guidance requires applicants to acquire land by negotiation wherever practicable. Taking the land or rights of an individual person or a company is an intrusive power, which can infringe human rights. It is one that government over many years has wrapped around with clear policies and special controls, to ensure that land or rights are not taken capriciously and without clearly demonstrated public benefit, especially where such powers are provided to other private companies.
- 6.6.5. The ExA challenged the applicant at CAH2 about progress with their negotiations since the application was made and the time that had subsequently elapsed as

indicated in the iterations of the LRT and in the objections schedule¹⁰⁴ requested at ExQ1 [REP3-030], and in light of some AP's comments. Subsequent updates of the LRT detailed the measures the applicant had taken to negotiate with landowners. Also some APs made it clear to ExA during the examination that they did not wish to enter into or continue negotiations with the applicant given their objections to the proposed acquisition of their land and/or interests.

- 6.6.6. Having considered individual objections and issues as set out above, on the basis of the evidence of engagement with land interests provided by the LRT, and notwithstanding the position at the close of the examination, the ExA is satisfied that the applicant has demonstrated that it has taken reasonable steps to acquire all of the land and rights included in the Order by agreement in accordance with the CA Guidance.

PA2008 s122(3) – whether there is a compelling case in the public interest

- 6.6.7. The ExA has had regard to all the objections raised by APs. Notwithstanding the objections, the ExA concludes that the public benefits associated with the proposed development would strongly outweigh the private loss that would be suffered by those whose land would be affected by the CA and TP powers sought.
- 6.6.8. The ExA has also taken account of the particular points made by objectors in relation to alternatives. The ExA is, however, satisfied that the applicant has explored all reasonable alternatives to CA and TP, including modifications to the proposed development. In particular, given the extent of land currently in the applicant's control and the situation of the Riverside 1 and 2 facilities it is clear that acquiring some additional land would be inevitable even if the location and extent of that land remains a matter of contention for many APs and IPs. The objections raised do not dissuade the ExA from the conclusion that there are no alternatives to the CA and TP powers sought for the development for which consent has been sought that would be preferred.
- 6.6.9. The ExA considers that:
- the development for which the land is sought would be in accordance with national policy as set out in NPS EN-1;
 - NPS EN-1 states that there is an urgent need for new carbon capture and storage infrastructure to support the transition to a net zero economy.
 - NPS EN-1 advises that the government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure and that energy infrastructure which is directed into the NSIP regime under s35 of the PA 2008, and fit within the normal definition of "low carbon", is low carbon infrastructure for the purposes of CNP policy. Should the SoS be satisfied that the NPS EN-1 CNP requirements, including the application of the mitigation hierarchy, have been met, then the presumption that the urgent need for CNP infrastructure is unlikely to be outweighed by any residual impacts will apply;
 - the applicant has demonstrated a clear idea of how it intends to use the land;
 - the need to secure the land and to construct the proposed development within a reasonable timeframe represents a significant public benefit to weigh in the balance;

¹⁰⁴ Compulsory Acquisition and Temporary Possession Objections Schedule based on the template set out in Annex A of ExQ1 [PD-007].

- the applicant has taken reasonable steps to acquire all of the land and rights included in the Order by agreement;
- the private loss to those affected has been mitigated through the selection of the application land and the extent of the land, and the private loss would be outweighed by the public benefit derived from the CA and TP powers sought; and
- the applicant has explored all reasonable alternatives to CA and TP, and there are no alternatives which ought to be preferred.

6.6.10. Taking these various factors together, the ExA concludes that there is a compelling case in the public interest for the CA and TP powers sought in respect of the CA and TP land shown on the final Land Plans and BoR. The proposal would thus comply with s122(3) of PA2008.

6.7. STATUTORY UNDERTAKERS' (SU) LAND, RIGHTS AND APPARATUS

6.7.1. The LRT identifies a number of SUs with interests in plots that the applicant is seeking CA or TP powers on. The LRT sets out their interests in plots including whether it is operational land or not and if their interest in plots is in respect of apparatus or access only. The use of CA powers in relation to land and apparatus owned by SUs would be limited by protective provisions in Schedule 12 of the dDCO. The applicant included these provisions to ensure that the SUs would not suffer serious detriment as a consequence of the use of CA powers.

6.7.2. Schedule 12 of the final dDCO contains generic protective provisions for electricity, gas, water and sewerage undertakers in Part 1 and operators of electronic communications code networks in Part 2 which would apply to National Grid Electricity Transmissions plc and Openreach Limited. Schedule 12 contains specific protect provisions for the Environment Agency (EA) (Part 3), TWUL (Part 4), Port of London Authority (PLA) (Part 5), UK Power Networks Limited, London Power Networks plc and South Eastern Power Networks plc (Part 6) and Southern Gas Networks plc (Part 7).

6.7.3. The Statement of Commonality (SoCom) [\[REP7-016\]](#) advises that the applicant has agreed those protective provisions with Southern Gas Networks plc and the parties have agreed a side agreement between them [\[REP6-050\]](#). The SoCom advises that UK Power Networks (Operations) Limited has not put forward any amendments to its protective provisions and the parties are progressing discussions on a side agreement.

6.7.4. The ExA is satisfied that the powers sought by the applicant in respect of land and interests held by UK Power Networks Limited, South Eastern Power Networks plc, Southern Gas Networks plc, National Grid Electricity Transmissions plc and Openreach Limited are necessary for the carrying out of the proposed development and consistent with s138 of PA2008 and the ExA is satisfied the generic and specific protective provisions within the dDCO would safeguard all those SU's undertakings and interests.

6.7.5. At the end of the examination the final LRT identified the EA, London Power Networks plc, the PLA and TWUL as having objections outstanding. In the case of some APs there appears to be some inconsistency in how the LRT has reported outstanding objections as to whether these are all genuinely an objection to the CA or TP powers proposed that has not been withdrawn, especially in circumstances where there is no direct representation submitted into the examination from the SU

explicitly objecting to the proposed powers, or that particular matters between the applicant and the AP remained outstanding. However, in the interests of fairness and taking a precautionary approach these have been considered as objections below.

- 6.7.6. Where objections or representations have not been withdrawn and the land is used for the SU's undertaking or held for that purpose, the provision of PA2008 s127 require that, in order the CA of that land to be included in the DCO, the SoS must be satisfied either that (a) the land or interest can be purchased and not replaced without or (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

EA

- 6.7.7. The applicant is seeking powers to acquire all interests and rights on some plots and acquire new rights over others. Some of the plots are the AP's operational land and on others it has an interest in respect of apparatus of access only.
- 6.7.8. At the close of the examination a completed and signed Statement of Common Ground (SoCG) [\[REP6-034\]](#) between the EA and the applicant confirmed that there were no matters outstanding or not agreed between the parties and that protective provisions have been agreed, with the EA having provided their provided standard protective provisions [\[REP3-036\]](#).
- 6.7.9. However, for the avoidance of doubt should the provisions of PA2008 s127 apply, the ExA considers that the powers to acquire new rights and acquisition proposed in relation to their operational land and interests there would not be a serious detriment to the carrying on of the undertaking in light of the protections provided by the specific protective provisions in the dDCO.

London Power Networks plc

- 6.7.10. The applicant is seeking powers to acquire all interests and rights on some plots and acquire new rights over others. Some of the plots are the AP's operational land and on others it has an interest in respect of apparatus of access only.
- 6.7.11. There is no record of London Power Networks plc submitting a representation into the examination. The LRT notes that the AP requested that the applicant enter into a side agreement and put forward no amendments to nor objected to the proposed protective provisions which the applicant considers are well precedented, including having been used in respect of the Riverside 2 DCO. The applicant considers that the SoS can determine the DCO irrespective of whether those side agreements are completed.
- 6.7.12. However, for the avoidance of doubt should the provisions of PA2008 s127 apply, the ExA considers that the powers to acquire new rights and acquisition proposed in relation to their operational land and interests there would not be a serious detriment to the carrying on of the undertaking in light of the protections provided by the specific protective provisions in the dDCO.

PLA

- 6.7.13. In its Relevant Representation (RR) [\[RR-162\]](#) the Port of London Authority (PLA) objected to the CA of its freehold interests.

- 6.7.14. The PLA has been engaged in discussions with applicant throughout the examination on a variety of matters including protective provisions. At the close of the examination a completed and signed SoCG between the PLA and the applicant [\[AS-097\]](#) confirmed that there were no matters that were not agreed between the parties and that the PLA were content with the protections in the protective provisions in the dDCO. Although they noted that discussions between the parties were ongoing to reach a voluntary agreement, the PLA confirmed that there was no need for those to be concluded before the close of the examination to consider that the PLA would be adequately protected.
- 6.7.15. Nevertheless, as there does not appear to have been an explicit withdrawal of their initial objection, these are circumstances where the provisions of PA2008 s127 apply. The ExA considers that the powers for CA and TP proposed in relation to their operational land would not be a serious detriment to the carrying on of the undertaking in light of the protections provided by the specific protective provisions in the dDCO.

TWUL

- 6.7.16. As well as objecting to land that TWUL owns that forms part of CLNR, they also have the status of a SU. There was debate about whether the CLNR was part of the operational land as a SU given its use as a nature reserve. A matter of contention throughout the examination has been the proposed CA and possible diversion of TWUL's access track which joins the CWTW with Norman Road, however as noted at paragraph 6.6.73 above, an agreed position on this matter has been reached between the applicant and TWUL.
- 6.7.17. Bearing in mind the ExA's findings in respect of TWUL's land that the dDCO seeks CA powers over to deliver the MEA, the ExA considers that the powers for CA proposed in relation to their land would not be a serious detriment to the carrying on of their undertaking as an SU in light of the protections provided by the specific protective provisions in the dDCO, including in respect of the access road.

6.8. SPECIAL CATEGORY LAND

Plots 1-018, 1-021, 1-029, 1-036, 1-093 and 1-099¹⁰⁵

- 6.8.1. The SOR explains that the applicant intends that those plots would be used as part of the proposed Mitigation and Enhancement Area (MEA), part of Work No 7 in the dDCO, for mitigation and enhancement of habitat, biodiversity and access and associated works, and that they would remain part of the CLNR or be added to it.
- 6.8.2. The plots are illustrated on the applicant's Special Category Land Plan [\[AS-011\]](#), an extract of which is provided in Figure X below.
- 6.8.3. The applicant considers that special parliamentary procedure can be avoided on the basis of PA2008 s131(4)(a) and (d) as there would be no suitable exchange land available, and they contend it would be strongly in the public interest for the development to be capable of being begun sooner than is likely were the Order to

¹⁰⁵ Plots 1-021, 1-093 and 1-099 have been identified by the applicant as ones where, subjects to a planning obligation with the owner, they would only seek to acquire rights rather than freehold ownership.

be subject to special parliamentary procedure. This is set out in the preamble to the dDCO.

- 6.8.4. The applicant contends that no other suitable land would be available for a number of reasons. Some of the plots are bisected by public footpaths and perform a role as part of the end of the Southeast London Green Chain such that they have a function specific to their particular location and the places they connect. The applicant proposes that the plots would remain open to the public and would therefore continue to perform their role as public open space. The applicant advises that an analysis of the surrounding area confirms that there is no suitable alternative land for open space of any kind of the size, higher quality or value necessary and within 1.2km of the special category land and the nearest residents to it.
- 6.8.5. In establishing whether parts of the Order land would be Special Category Land the applicant considered which areas were accessible to the public and which were not to inform which it considered to be open space for the purposes of the provisions of the PA2008. As the land that is proposed to be used as the MEA includes both areas which are accessible to the public and also areas that are fenced off and enclosed they used the terms “Accessible Open Land” and “Non-accessible Open Land” to differentiate the parts which are open space and those which are not.

Issues Considered in the Examination

Extent of Special Category Land

(see next page)



- 6.8.6. SCNR contend [\[REP1-047\]](#) that more extensive areas of land within the Crossness Local Nature Reserve (CLNR) should have been identified as open space and therefore special category land, including that which would be lost to development.
- 6.8.7. PA2008 s131(12) and s132(12) define the use of “open space” in those sections as having the same meaning as in section 19 of the Acquisition of Land Act 1981¹⁰⁶. SCNR point out that the definition includes land used for the purposes of public recreation. They contend that this definition does not include any requirement that the land be publicly accessible in a physical sense and that land may have restricted physical access but still considered to have recreational value. They cite the example of the bird hides and viewing screens within CLNR and bird watching where people can enjoy access to wildlife by watching birds without accessing the areas being viewed, which are in effect inaccessible to avoid disturbing wildlife. This, they argue illustrates that the applicant’s approach that the land must accessible is incorrect.
- 6.8.8. TWUL have a similar position [\[REP1-058\]](#), [\[REP3-048\]](#), albeit that they did not explicitly state that as a consequence they considered that more of the Order land should be considered as special category land.
- 6.8.9. In support of their position, SCNR refer to the London Plan definition of open space as “all land in London that is predominantly undeveloped... the definition covers the broad range of types of open space within London, whether in public or private ownership and whether public access is unrestricted, limited or restricted”. They also point to NPS EN-1 which adopts a wider definition of open space which it states “...should be taken to mean all open space of public value, including not just land, but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.”
- 6.8.10. In response [\[REP2-019\]](#) the applicant maintained that it is relevant whether open space is actually accessible by the public or not in order to establish whether it can be used for public recreation. They note that none of the East, Stable nor West Paddocks are accessible by the general public, a position not disputed by the land owners, Thames Water. The applicant does not dispute that those areas have public value and can provide an essential amenity in various ways, in their case principally privately by the grazier and by being visible by the general public, but that is the extent of their role as open land. They go on to point out that Thames Water’s Written Representation [\[REP1-058\]](#) makes clear that access to those areas is restricted. Given the potential significance of the matter, the ExA further investigated the applicant’s position at ExQ1¹⁰⁷ [\[PD-007\]](#) to which the applicant responded in [\[REP3-029\]](#).

ExA’s consideration

Extent of Special Category Land

- 6.8.11. The ExA notes that the definitions and allocations in different documents allow for a wide interpretation of what might constitute or be designated as open space. However, it is necessary to look at the statutory definition in respect of the powers available under the PA2008. There has been no suggestion that the land in question

¹⁰⁶ S19(4) “...“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.”

¹⁰⁷ ExQ1.5.0.9.

is disused burial ground nor been laid out as a public garden. A key qualification of whether land would be open space for the purposes of considering it as special category land under the PA2008 is its use for the purposes of public recreation. It is also of note that although one of the planning designations of the land in question is Metropolitan Open Land (whose designation serves different purposes) it does not include a designation of Urban Open Space, even if it may well fit the London Plan's wide classification of open space for land use planning purposes.

- 6.8.12. The ExA agrees with the applicant that such public recreation is distinct from the public enjoyment that people may benefit from by way of views over land or enjoying watching wildlife. The SCNR's example of birdwatching is something that could be enjoyed in a variety of places, including observing birds and wildlife in or over a private garden which would not reasonably be considered to be in use for public recreation. The ExA is therefore not convinced that the ability to view wildlife, even if an intentional viewpoint has been created for that purpose, over a particular area of land would necessarily render it as being used for public recreation.
- 6.8.13. The ExA considers that, irrespective of the terms it has used to differentiate different areas, the applicant has made a reasonable assessment of what areas of the CLNR and Norman Road Field could be considered as being used for public recreation purposes and therefore open space for the purposes of the PA 2008. The ExA does not consider that there is convincing evidence that there are additional plots within the Order land which should be considered as special category land that have not been identified in the application documentation.

ExA's overall findings and conclusion on Special Category Land

- 6.8.14. The ExA is content that the land included within the Special Category Land Plan [REP7-006] is open space for the purposes of s132(1) of PA2008. As the Applicant is seeking the CA of rights over land to which s132 of PA2008 applies, the SoS must be satisfied that one of the subsections (3) to (5) applies.
- 6.8.15. Subsection (4A) applies if the land is open space and none of the Order land is part of a common, or fuel or field garden allotment, both of which requirements the land would satisfy. The ExA accepts the applicant's explanation and demonstration that given the location of the Order land within a built-up urban area where undeveloped land is largely allocated for development or designated as open space, sport, nature conservation or similar uses that there would be no land of a size and character that could be considered suitable. The use of LBBC's Green Infrastructure Study catchment area for district level open space of 1.2km was a reasonable approach to define a search area. The applicant has demonstrated that there is no suitable land available to be given in exchange for the order land.
- 6.8.16. In light of there being an urgent need for new carbon capture and storage infrastructure as identified in NPS EN-1, it can be considered that it would be strongly in the public interest for the proposed development be capable of being begun sooner than is likely to be possible if the Order were to be subject to special parliamentary procedure.
- 6.8.17. Accordingly, on the basis of PA2008 s132(2)(a) an exemption to special parliamentary procedure is merited in respect of the proposed CA of rights over these plots of land.

6.9. AVAILABILITY AND ADEQUACY OF FUNDS

- 6.9.1. The applicant's Funding Statement [APP-141] indicates that the applicant has the ability to procure the financial resources required for the proposed development, including the cost of acquiring any rights, the payment of compensation and acquiring rights in the event of any blight claims, as applicable.
- 6.9.2. At CAH1 (item 5) [EV6-001], [EV6-004] the ExA sought an update from the applicant regarding funding. At CAH2 (item3) [EV7-001], [EV7-002] the ExA sought further information from the applicant regarding certainty and sufficiency of funding, whether aggregate liability could exceed available funding and a commentary on any reliance on government funding. The applicant's post hearing summary notes provide further information of these points [REP1-028]¹⁰⁸, [REP4-048]¹⁰⁹
- 6.9.3. CSDK and Mr Gannon [REP4-041] contended that the level of available funding would be insufficient, stating that London land prices and a high risk that there would be a cost overrun, leading to delays, increased borrowing costs and lower investor confidence. Notwithstanding that these assertions were not supported by any substantive evidence, the applicant [RE5-032] advised that acquisition costs were a minor element of the overall scheme cost. They pointed to their track record advising that Riverside 1 was completed on time and in budget, and that they raised £896m in 2022 for Riverside 2, which remains under budget and on schedule, with the projected proceeding during inflationary events including the Covid pandemic and Ukraine war.
- 6.9.4. The Applicant confirms [RE5-032] that it anticipates covering land acquisition costs from cash reserves it holds, either as generated through its operating businesses, or via an equity injection from its current shareholders.
- 6.9.5. Article 11 of the dDCO requires the applicant (as the "undertaker "in the dDCO's terms) to put in place financial security before exercising any powers of CA or TP. This stipulates that the undertaker must provide a guarantee, with the amount subject to approval by the SoS, to ensure compensation liabilities are met. The ExA considers that, notwithstanding the common uncertainties that land and construction costs may give rise to, this provides a clear mechanism whereby the necessary funding for CA and TP can be guaranteed.
- 6.9.6. Based on the evidence submitted along with oral submissions and answers given at hearings, the ExA is satisfied that the necessary funds would be available to the applicant to cover the likely costs of CA and TP.

6.10. HUMAN RIGHTS ACT 1998

- 6.10.1. The applicant considered human rights, compliance with the relevant provisions of the ECHR and fair compensation in Section 9 of the SoR [REP7-012]. The rDCO, if made, would have the potential to infringe on the rights of APs. The SoR noted that no residential properties would be acquired for the proposed development and, as such, the ExA has no reason to believe that Article 8 (right to respect for private and family life) would be engaged.

¹⁰⁸ Written Summary of the Applicant's Oral Submissions at CAH1, including pages 20-21.

¹⁰⁹ Written Summary of the Applicant's Oral Submissions at CAH2, Pages 5-7.

- 6.10.2. In outlining its case for CA and TP at CAH1 at Item 2.2 [\[EV6-001\]](#), [\[EV6-002\]](#), the applicant was asked about, and outlined, human rights considerations [\[REP1-028\]](#).
- 6.10.3. The Human Rights Act 1988 (HRA1998) places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not European Union (EU) institutions and are unaffected by the decision to leave the EU.
- 6.10.4. Schedule 1 of the HRA1998 sets out the articles. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged.

ExA's findings

- 6.10.5. Chapter 9 of the SoR addresses the compliance with the relevant provisions of the ECHR and fair compensation. The applicant concludes that any infringement of the ECHR of those whose interests are affected by the inclusion in the DCO of powers of CA, would be proportionate and legitimate, would be in accordance with national and European law and that there is a compelling case in the public interest to do so.
- 6.10.6. The ExA considers that appropriate consultation took place before and during the process and that there has been an opportunity to make representations (see also Section 1.1 above). The CAHs provided an opportunity for all APs to be heard. Furthermore, should the Order be made, there are further opportunities for APs to challenge the Order in the High Court. The ExA considers this sufficient to meet the obligations set out in Article 6.
- 6.10.7. In particular the ExA does not consider that LMJ were denied their rights to a fair hearing; and their case was heard at multiple hearings and they also had the opportunity to follow these up with written submissions. As well as the ExA's points made at 6.5.34 and 6.5.35 above, the ExA explained in the agenda for CAH2 [\[EV6-001\]](#) that the PA2008 makes no provision for cross-examination at events as requested by LMJ and set out further information about the conduct and procedure expected in anticipation of the hearing. The ExA further explained the situation in a letter on 9 April 2025 [\[PD-017\]](#) confirming that a further CAH, in addition to those already held, was not necessary in response to LMJ's representation [\[AS-089\]](#). The ExA's 9 April 2025 letter effectively addresses the points re-iterated in the LMJ's final submissions [\[REP7-026\]](#), [\[REP7-028\]](#).
- 6.10.8. Paragraphs 1.1.7 to 1.1.15 above confirm that the ExA was satisfied that the applicant's consultation and publicity was adequate, and as a consequence there was no unfairness in terms of parties not having the opportunity to make their views known or be heard under the provisions of the PA2008.
- 6.10.9. Consequently, in respect of human rights matters the ExA is satisfied that:
- the examination has ensured a fair and public hearing for all;
 - any interference with human rights arising from implementation of the proposed development would be proportionate and strike a fair balance between the rights of the individual and the public interest; and
 - compensation would be available in respect of any quantifiable loss.

Therefore, the proposed development would not conflict with the provisions of the HRA1998.

6.11. EQUALITY ACT 2010

- 6.11.1. It is understood that the graziers who currently hold licences from TWUL and Peabody Trust to graze horses on part of the Order land possess protected characteristics as at least one of whom identified themselves as such to the applicant [\[REP1-028\]](#). They graze horses on parts of Erith Marshes as part of their traditional way of life which is an activity that their families have carried out in a similar manner in a similar location [\[RR-092\]](#), [\[REP1-069\]](#), [\[REP1-070\]](#).
- 6.11.2. The ExA explored the current and proposed arrangements for licencing graziers CAH1 at Item 2.2 [\[EV6-001\]](#), [\[EV6-002\]](#). At the hearing and in writing after the applicant [\[REP3-020\]](#) confirmed that both the East and Stable Paddocks would be permanently lost to the development and grazing on these field would no longer be available. However, the remaining fields used from grazing the CLNR would be available to the grazier who currently has a grazing licence from TWUL and they would still have approximately 16 acres available with the proposed development in situ. Norman Road Field would not be permanently lost and will be available to the grazier who has currently has a grazing licence from Peabody Trust.
- 6.11.3. The applicant has made arrangements, to be secured through the LaBARDS to provide an alternative means of access to grazing plots as a result of the current TWUL access not being available to graziers with the proposed development in place and Peabody Trust would also maintain access. Appropriate access would also be provided for the Peabody grazier as part of the Proposed Scheme. The applicant advises that it would be seeking to improve the facilities for both graziers including providing water and power, with a replacement stable for the grazier currently using TWUL land. There was no suggestion that should the applicant become their landlord as a result of CA of land that they would not be provided with licences to continue to graze on the land.
- 6.11.4. Furthermore, paragraphs 1.1.7 to 1.1.15 above confirm that the ExA was satisfied that there was no unfairness in terms of parties, including those sharing protected characteristics, in not having the opportunity to make their views known or be heard under the provisions of the PA2008 as a result of the applicant's consultation and publicity arrangements before the examination.
- 6.11.5. Consequently, overall the ExA finds that the proposed development would not harm the interests of any persons who share a protected characteristic, and in particular those persons identified above, or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, the ExA has found no breach of the Public Sector Equality Duty.

6.12. CONCLUSIONS AND RELATED MATTERS

- 6.12.1. Having considered all the material submitted to the examination, the ExA has reached the following conclusions:
- the application site has been appropriately selected;
 - all reasonable alternatives to CA have been explored;
 - the land to be taken is no more than is reasonably required and is proportionate;
 - the applicant would have access to the necessary funds and the dDCO provides a clear mechanism whereby the funding can be guaranteed;
 - there is a need to secure the land and rights required to construct, operate, and maintain the proposed development within a reasonable timeframe, and the

proposed development represents a significant public benefit to weigh in the balance;

- that in all cases relating to individual objections and issues, CA and TP are justified in order to enable implementation of the proposed development;
- the powers sought satisfy the conditions set out in Sections 122, 123, 127 and 138 of PA2008 and the CA Guidance;
- the Order land is, or forms part of, open space, none of the Order land is land consisting of any of the descriptions in PA2008 s132(1), there is no suitable land available to be given in exchange for the order land, and(d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the Order were to be subject (to any extent) to special parliamentary procedure. Accordingly on the basis of PA2008 s123 subsection(4A)(a), (b), (c)(i) and (d) an exemption to special parliamentary procedure is merited in respect of the proposed CA of rights over this land as set out in the preamble to the applicant's final dDCO;
- The Order land does not comprise any further special category land that has not been appropriately identified by the applicant to which PA2008 S131 and 132 would apply; and,
- CA and TP for the Proposed Development can be delivered in a manner in full accord with all relevant human rights and PSED considerations

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. As part of the application for development consent, the applicant submitted a draft Development Consent Order (dDCO) [\[APP-018\]](#) and draft Explanatory Memorandum (dEM) [\[APP-019\]](#). Both the dDCO and dEM were updated throughout the examination with the latest version of the dDCO being [\[REP7-003\]](#) and the EM [\[REP7-006\]](#).
- 7.1.2. The EM explains the purpose and effect of each Article and Schedule of the dDCO. It also identifies and explains departures from the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. The dEM makes reference to where the drafting has been taken from wording for other orders made under the Planning Act 2008 (PA2008). The original application dDCO and subsequent iterations are in the form of a statutory instrument as required by section (s) 117(4) of the PA2008.
- 7.1.3. During both pre-examination and the examination, several further drafts of the dDCO were submitted by the applicant incorporating progressive changes arising from the Examining Authority's (ExA) written questions, submissions made by Interested Parties (IP) and from the proceedings at Issue Specific Hearings (ISH) 1 and 2, held on 6 November 2024 [\[EV5-001\]](#), [\[EV5-002\]](#), [\[EV5-004\]](#), [\[EV4-006\]](#) and [\[EV4-008\]](#), and 12 February 2025 respectively [\[EV8-001\]](#), [\[EV8-002\]](#), [\[EV8-004\]](#) and [\[EV8-006\]](#).
- 7.1.4. This chapter provides an overview of the examination of the DCO including notable changes made to the dDCO during the examination and considers changes made to the final dDCO in order to arrive at the recommended DCO (rDCO) in Appendix C of this Report. Changes as a result of typographical or grammatical errors, or minor changes in the interests of clarity, consistency or updates to lists following discussion between the applicant and relevant IPs, or as a result of written questions or comments made by the ExA, are not reported. Unless otherwise stated, all references to the dDCO and EM in this chapter are to the applicant's final dDCO [\[REP7-003\]](#) and the EM [\[REP7-006\]](#).

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. This section records the structure of the dDCO. It is based on the applicant's final dDCO, Revision I, and is as follows:

- Part 1: Preliminary
 - Article 1 sets out the name of the Order and when it comes into force.
 - Article 2 sets out the definitions of various terms used in the Order.
 - Article 3 confirms the scope of, and conditions that must be satisfied for electronic communications, and arrangements for alternatives.

- Part 2: Work Provisions

Principal powers

- Articles 4, 5 and 6 provide the principal powers to construct, maintain and operate the Proposed Development.

- Article 7 provides for the disapplication of certain requirements which would otherwise apply under public general legislation, as well as local legislation.
- Article 8 sets out detailed provisions of how the order interacts with the Port of London Act 1968.
- Articles 9 and 10 set out who has the benefit of the powers of the Order and how those powers can be transferred.
- Article 11 requires that guarantees or other security is put in place before compulsory acquisition is carried out.

Streets

- Articles 12 to 20 provide the ability to carry out works to and within streets, to alter, divert or stop up streets, to create or improve accesses; to temporarily or permanently close, divert or create public rights of way; implement traffic regulation measures; sets out arrangements with street authorities, and deals with the relationship between the Order and local permit schemes.

Supplementary powers

- Articles 21 to 27 set out seven supplemental powers relating to discharge of water, authority to survey land, protective works to buildings, tree works, works in the River Thames, oversailing rights and dredging.
- Part 3: Powers of Acquisition and Possession of Land

Powers of acquisition

- Articles 28 to 36 provide powers to acquire land, rights over land and subsoil or airspace only along with the time limits within such acquisition must be made. They provide the power to extinguish private rights, override easements and other rights and to use land in streets without having to acquire it. The powers also apply the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 enabling the vesting declaration procedure to be used which allows titles to pass more quickly and several parcels to be acquired together. They also modify Part 1 of the Compulsory Purchase Act 1965 to ensure consistency of procedures.

Temporary possession of land

- Articles 37 and 38 provide powers to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development

Supplementary

- Articles 39 to 40 provide powers in relation to statutory undertakers and recovery of costs of new connections.
- Part 4: Miscellaneous and General
 - Article 42 constitutes a deemed consent under section 65 of the Marine and Coastal Access Act 2008 and provides a mechanism under the Marine Licensing (Licence Application Appeals) Regulations 2011 for the developer to appeal decisions made by the Marine Management Organisation under conditions in the Deemed Marine Licence (DML).
 - Article 43 provides a mechanism to override the application of landlord and tenant law where it might prejudice the operations of any agreements relating to the proposed development.

- Article 44 provides a defence to proceedings in respect of any statutory nuisance proceedings under the Environmental Protection Act 1990.
- Article 45 provides for Schedule 12 which protects the interests of particular statutory undertakers through protective provisions.
- Article 46 provides for plans and documents to be certified (listed in Schedule 13).
- Articles 47 to 49 sets out arrangements for the service of notices under the Order, sets out the procedure in Schedule 14 in relation to certain approvals, and sets out an arbitration procedure unless there is a means within the Order itself to settle disputes.
- Article 50 sets out the Crossness Local Nature Reserve (CLNR) will be extended to incorporate all of the Mitigation and Enhancement Area (MEA) and provides for the abrogation of clauses in the planning obligation which required Thames Water Utilities Limited (TWUL) to establish and manage (presently extent of) the CLNR
- Article 51 deals with any inconsistencies between the Order development and any planning permissions on the Order land.
- Article 52 sets out that any compensation payable under the provisions of the Order cannot also be claimed under other mechanisms.
- Articles 53 and 54 allows the London Borough of Bexley Council (LBBC) to make byelaws for CNLR and issue fixed penalty notices relating to them.

7.2.2. The dDCO has sixteen schedules:

- Schedule 1 described the development that the order would authorise.
- Schedule 2 sets out the requirements (R) to which it would be subject.
- Schedule 3 lists legislation to be disapplied.
- Schedule 4 lists streets subject to street works.
- Schedules 5 to 7 relate to matters in relation to streets, accesses and rights of way.
- Schedule 8 concerns land in which only new rights may be acquired.
- Schedule 9 concerns modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants.
- Schedule 10 concerns land of which temporary possession may be taken.
- Schedule 11 sets out the DML.
- Schedule 12 provides Protective provisions for statutory undertakers.
- Schedule 13 lists the documents and plans to be certified under article 46.
- Schedule 14 sets out the procedure in relation to the discharge of Rs and other aals necessary under the Order.
- Schedule 15 provides arbitration rules
- Schedule 16 specifies the design parameters of various components of the proposed development.

7.2.3. The structure of the dDCO is set out in the Contents and is listed on its face. The ExA is content that the structure is fit for purpose and does not recommend any changes.

7.3. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER

Evolution of the dDCO

7.3.1. The applicant updated the dDCO several times before and throughout the examination, responding to issues raised in written questions, hearings and written submissions. At each revision, the applicant supplied a clean copy of the updated dDCO, a copy showing changes from the previous version as tracked changes and

where necessary, an updated clean and tracked version of the dEM. These are detailed in the applicant's Application Document Tracker [\[REP7-002\]](#) The applicant also submitted an all changes tracked DCO at D7 and at the close of the Examination [\[REP7-004\]](#).

- 7.3.2. Full details of the changes made to the dDCO and the reasons for these changes can be found in schedules of changes (SoC) submitted at deadlines (D)1, D2, D3, D4, D5 and D7, and as an additional submission before the examination opened. These are detailed in Table 3 below.

Table 3: dDCO documentation submitted into the examination

dDCO version	deadline	Examination Library (EL) reference
A	(application)	[APP-18] – dDCO [APP-019] - dEM
B	(pre-examination)	[AS-014] - dDCO (clean) [AS-013] - dDCO (tracked) [AS-046] - SoC
C	(change request)	[AS-056] - dDCO (clean) [AS-057] - dDCO (tracked)
D	D1	[REP1-002] - dDCO (clean) [REP1-003] - dDCO (tracked) [REP1-020] - SoC
E	D2	[REP2-004] - dDCO (clean) [REP2-005] - dDCO (tracked) [REP2-015] - SoC
F	D3	[REP3-003] - dDCO (clean) [REP3-004] - dDCO (tracked) [REP3-023] - SoC
G	D4	[REP4-004] - dDCO (clean) [REP4-005] - dDCO (tracked) [REP4-023] - SoC
H	D5	[REP5-005] - dDCO (clean) [REP5-006] - dDCO (tracked) [REP5-038] - SoC
I	D7	[REP7-003] - dDCO (clean [REP7-005] - dDCO (tracked)

dDCO version	deadline	Examination Library (EL) reference
		[REP7-004] - dDCO (tracked against Rev A) [REP7-006] - dEM (clean) [REP7-007] - dEM (tracked) [REP7-015] – SoC

Notable changes to the dDCO during Examination

- 7.3.3. It is not necessary to report on every change made to the dDCO during the Examination, as some were minor changes resulting from typographical or grammatical errors, corrections, detailed points in protective provisions and consequential changes to Articles or Schedules or made to improve clarity or consistency (full details are scheduled in [\[REP7-015\]](#)). In the interests of conciseness, only notable changes made to the dDCO are shown in Table 4 below.

Table 4: DCO Provisions Not Recommended to be Changed

Version and D	Notable changes made
Rev D, D1	▪ Definitions added of: a 2005 planning obligation; electronic communication; Middleton Jetty; and, Bexley's permit parking scheme to Article 2. ▪ New Article 3 inserted to set out arrangements for electronic communication. ▪ Added wording, changed order and modified sub-paragraphs (5), (10) and (11) of Article 8, providing detail on applications for river or dredging licences, when licences would come into effect and exceptions to exclusion zones for vessels. ▪ New Article 12 setting out how the development and the permit parking scheme will operate and interact. ▪ Article 17 revised to allow motor vehicles to use a current footpath between specified points. ▪ New sub-paragraph inserted into Article 50 to refer to the 2005 planning obligation and references added to the obligation and relevant planning permissions. ▪ TWUL added as a consultee for the Landscape, Biodiversity, Access and Recreation Delivery Strategy (LaBARDS) in R12 (Schedule 2). ▪ Port of London Authority (PLA) added as a consultee for investigations and assessments in the River Thames in R21 (Schedule 2). ▪ Amendments and insertions to Schedule 12 (Protective provisions) relating to licencing of works in the River Thames and consultation with the PLA. ▪ Document version and revision numbers updated in Schedule 13.
Rev E, D2	▪ Definition of working day replaced by business day in Article 2. ▪ Changes to Article 8 to allow the PLA to maintain the appropriate work licencing regime in respect of Work No 4.

Version and D	Notable changes made
	▪ TWUL added to Article 53 as a consultee for when making byelaws. ▪ Western Riverside waste Authority (WRWA) included as consultee in R7, R9 and R21 (Schedule 2). ▪ R 15 (Schedule 2) amended to require employment plan to be substantially in accordance with the outline version. ▪ Changes to Heat Strategy implementation clause of R25 (Schedule 2) ▪ Document version and revision numbers updated in Schedule 13.
Rev F, D3	▪ Creation and enhancement of ditches and vegetation clearance added to definition of permitted preliminary works in Article 2. ▪ Changes to Article 8 and Schedule 12 detailing circumstances PLA's reasonable costs are payable. ▪ Adding Work 5 to works which require details to be approved by the local planning authority (LPA). ▪ Adding requirement for work No 1 to be in accordance with element of mitigation schedule to R 4 (Schedule 2). ▪ Change to R8 (Schedule 2) so that the whole authorised development is subject to controlled construction hours. ▪ Change to R18 (Schedule 2) specifying which paragraphs of the Flood Risk Assessment the development needs to accord with. ▪ Change to R23 (Schedule 2) including a requirement to provide details of restoration of watercourses lost during development and a requirement to demonstrate following the waste hierarchy details which must be included in the decommissioning environmental management plan (DEMP). ▪ Changes to various Rs (Schedule 2) to be explicit that approval of details must be in writing. ▪ Document version and revision numbers updated in Schedule 13.
Ref G, D4	▪ Definitions added of: WRWA Underlease; WRWA Lease; pre- and post-2032 WRWA Underlease Determination Events; and, Riverside Resource Recovery Limited (RRRL) Entity to Article 2. ▪ Change to Article 18 to include approval of the highway authority. ▪ Article 32 amended to add to circumstances in which contractual and private rights, and restrictive covenants owned by parties do not apply to the article. ▪ Article 53 amended so the undertaker is a consultee alongside TWUL rather than able to make byelaws alongside London Borough of Bexley Council (LBBC). ▪ Following acceptance of changes, new works divided into work No 1A, 1B and 1C, addition of retaining walls and sheet piles to Work Nos 1A and 1E, clarification of ancillary works and removing retaining walls and sheet pile walls, and gatehouses and control rooms from the ancillary works section in Schedule 1.

Version and D	Notable changes made
	▪ Dartford Borough and Kent County Councils added as consultees to R9 (Schedule 2). ▪ Changes to R12 requiring that the LaBARDS needs to demonstrate how biodiversity net gain (BNG) will be achieved for thirty years from commissioning, that the LaBARDS must set out what engagement activities have been carried out and how feedback received from them has fed into the submitted document. ▪ New condition added to the DML (Schedule 11) relating to the Marine Noise Registry. ▪ Document version and revision numbers updated in Schedule 13. ▪ Changes in specification and dimensions in light of the approval of the second change request relating to potential for separate absorber columns and stacks in Schedule 16.
Rev H, D6	▪ Article 8 amended to refer to specific provisions of the PLA General Directions. ▪ Change to R4 (Schedule 2) that a statement of compliance with the Design Principles and Design Code is required. ▪ Change to R12 (Schedule 2) providing more specific reference to flora, fauna and habitat scope of surveys, inclusion of requirement to specify management measures and inclusion of details of graziers' access. ▪ Change to R23 (Schedule 2) to provide more detail on requirements proposals in the DEMP. ▪ Amendments to Schedule 12 in respect of Protective provisions for TWUL. ▪ Document version and revision numbers updated in Schedule 13. ▪ Changes in diameter dimensions of stacks to cater for single and two stack options in Schedule 16.
Rev I, D7	▪ Definition added of Port of London Harbour Revision Order to, and definition amended to RRRL Entity in, Article 2. ▪ Article 8 amended to refer to implications of the London Harbour Revision Order being made. ▪ Article 50 amended to refer to the entire authorised development on the CLNR not being a breach of the existing planning obligations. ▪ R4 (Schedule 2) amended so that the entire authorised development must accord with Schedule 16 design parameters and an item in the mitigation schedule. ▪ Changes to R12 requiring that the LaBARDS must include proposals for the establishment of compensatory open mosaic habitat. ▪ New condition in the DML requiring adherence to a marine written scheme of archaeological investigation and definitions of percussive piling, seabed and vessel added to Schedule 11. ▪ Removal of the reference to a 3m development platform height in the dimensions specified in Schedule 16.

7.4. MATTERS RAISED DURING THE EXAMINATION

- 7.4.1. The applicant largely sought to address the matters raised by the ExA and IPs at hearings, in written representations and ExQs in relation to the provisions of the dDCO through drafting amendments, including those summarised above, during the examination. The applicant explained the reasons and/or provided further clarification or justification within the dEM, or the relevant documents where changes were not made to the provisions of the dDCO as well as providing a commentary in their responses to parties' submissions at each deadline and ExQs.
- 7.4.2. The applicant continued to engage with certain IPs throughout the examination and made amendments to the dDCO in response to their representations including to protective provisions. Many of the questions or issues which related to the dDCO's provisions were addressed by the applicant during the course of the examination such that there were limited outstanding matters by the close of the examination.
- 7.4.3. This section of the report considers the main issues arising in the examination relating to the dDCO, primarily those provisions which were not agreed between specific IPs and the applicant or that the ExA consider notable to report. Where matters arose regarding provisions in the dDCO which were material to the consideration of specific planning issues, these have been considered in the relevant sections of this Report and are not repeated here.

Marine Management Organisation (MMO)

- 7.4.4. The Statement of Common Ground (SoCG) between the MMO and applicant [\[REP6-036\]](#) noted that whilst the applicant had made some changes to the dDCO, and the Deemed Marine Licence (DML) in schedule 11 of it, they had not made all of them and advise that they are content to let the SoS determine if the MMO's changes should be made.

Article 10 and Schedule 11, Part1, article 1 – transfer of deemed marine licence

- 7.4.5. Article 10 of the dDCO makes provision for the Order to be transferred or leased to other parties including the DML with the consent of the SoS. The applicant advises that this has a precedent in other DCOs made¹¹⁰. The MMO [\[REP5-044\]](#), [\[REP6-046\]](#) contend that the Planning Act 2008 (PA2008) does not make a provision to transfer the benefit of the DML in the way that is proposed. They propose adding an additional paragraph 12 to Article 10 to this end and to amend the definitions at the start of the DML to omit reference to any transferee being included in that of licence holder (subsequently undertaker)¹¹¹.
- 7.4.6. They are also concerned that the provision would be an unnecessary duplication of the existing statutory regime set out in s72 of the Marine and Coastal Access Act 2009 (MCAA2009) This, they argue, would result in significant enforcement difficulties for the MMO, the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development and consider that the proposed procedure would be cumbersome, more administratively burdensome,

¹¹⁰ in the River Thames: The Silvertown Tunnel Order 2018 and The Port of Tilbury (Expansion) Order 2019, and as an example elsewhere the Hornsea Four Offshore Wind Farm Order 2023.

¹¹¹ The dDCO was revised by relacing the definition of "licence holder" with "undertaker". Although the contentious definition was deleted, the inclusion of transferee in the undertaker definition means that the MMO's objection would not have been overcome by the change.

slower and less reliable than the existing statutory regime in the MCAA2009, adverse effects which could be avoided by retaining the existing regime in full.

- 7.4.7. The applicant advises [\[REP3-033\]](#), [\[REP6-037\]](#) that the dDCO is intended to provide a 'one stop shop' for both the consenting of the proposed scheme and for transferring the benefit to another party, provided for in the DML and the provisions of Article 10. They point to provisions in Article 10 that require the consent of SoS for any transfer and that SoS must consult the MMO before doing so.

Article 42 – DML and ability to appeal MMO's decision

- 7.4.8. Article 29 of the DML in dDCO Schedule 11, part 3, sets out that in determining any application for approval of a method statement or plans required under the terms of the DML, the MMO can grant the application subject to conditions or refuse to grant the application. Article 42(2) of the dDCO provides that any such decisions by the MMO can be appealed under the Marine Licensing (Licence Application Appeals) Regulations 2011 (LLA Regs).

- 7.4.9. The MMO consider [\[REP5-044\]](#), [\[REP6-046\]](#) that this provision would apply a statutory appeal process that ordinarily only applies to MMO decisions to refuse to grant a licence of attach conditions to a grant. They advise this is not required as the existing provision of being able to seek a judicial review of a decision is available. The applicant [\[REP6-037\]](#) points out that the dDCO Article 49 and Schedule 15 mean that arbitration would not apply to the MMO so there needs to be a clearly defined route to appeal and that the LLA Regs provide a means of doing so with which the MMO will be familiar. They consider that judicial review is not appropriate because it focuses on process rather than merits.

ExA's consideration

Transfer of DML

- 7.4.10. Section(s) 149A of the PA2008 provides for a DCO to include a DML and s120 establishes what can be included in a DCO with reference to schedule 5 which includes provisions for a DML at articles 30A and 30B. Although the MMO contend [\[REP6-046\]](#) that these provisions are not sufficiently broad to provide for the transfer of the DML in the way proposed in the dDCO, nor has anything explicit been drawn to the ExA's attention that such an arrangement cannot be provided for under the provisions of the PA2008.
- 7.4.11. Article 7 of the dDCO does not seek to disapply any part of the MCAA2009 and the ExA can appreciate the potential situation that the MMO highlight where both a DML may have been transferred but that under the requirements of the MCAA2009 a transferred DML must be varied leading to potential confusion or the need to suspend a DML to ensure adequate enforcement in the meantime.
- 7.4.12. However, one of the features of the PA2008 development consenting system is that it can cover a number of necessary consents. The removal of the ability to transfer the DML would reduce its effectiveness in this respect. The provisions of Article 10 require that the MMO needs to be consulted by the SoS before the SoS gives consent for such a transfer. This would provide sufficient opportunity for the MMO to alert the SoS of any particular issues relevant to both the proposed development and transferee. This would have the advantage that they could do so in the light of the specific circumstances at that time, and that could include any concerns or risks in relation to enforceability.

- 7.4.13. Consequently, the ExA does not consider that Article 10 or Schedule 11, Part 1, Article 1 should be revised to omit or amend the transfer provisions for the DML.

Ability to appeal

- 7.4.14. As Article 49 of the dDCO states that any MMO decision is not subject to arbitration, if Article 42 were to be removed then should the MMO refuse to approve details submitted under the DML there would be no mechanism within the DCO to challenge that. The ExA agrees with the applicant that relying on the judicial review process would be inappropriate and excessive for these circumstances and the removal of article 42 could lead to unfairness. The inclusion of an appeals process with which the MMO are used to dealing with would be a practical way in which to ensure that an appeal could be dealt with. The ExA does not therefore agree that article 42 should be omitted from the DCO and recommends it is retained.

Western Riverside Waste Authority (WRWA)

- 7.4.15. As set out in paragraphs 6.5.80 and 6.5.86 above, although discussions continued during the examination the WRWA and applicant did not reach an agreement on the form of the dDCO [\[REP7-034\]](#), [\[REP5-049\]](#). At the end of the examination WRWA considered that changes were required to the definition of the RRRL Entity in Article 2 and to private rights in Article 32, as well as parts 9 of Schedule 12 which sets out protective provisions. However, the applicant [\[REP6-001\]](#) made some of the requested changes to their final dDCO submitted at D7 [\[REP7-003\]](#), but matters remained outstanding. The timing of D7 meant that WRWA could not have had the opportunity to comment on the changes and the dEM states that “the scope of the exception to the interests of WRWA is still a matter of discussion at the end of examination. The parties are still discussing this, and will provide an update prior to the decision on the Order.” [\[REP7-006\]](#)
- 7.4.16. The main outstanding matter relates to WRWA’s request that Article 32 be amended. Paragraph 1 of the Article provides for the extinguishment of all private rights and covenants over land which would be compulsorily acquired. Paragraph 2 provides for the extinguishments of all rights or restrictive covenants on land where there would be compulsory acquisition of rights. Sub-paragraph 6(b) of the Article provides exceptions where Paragraph 1 does not apply to any contractual rights, private rights and restrictive covenants owned or held by parties, including by WRWA. WRWA consider that the exception should also include that paragraph 2 should not apply in those circumstances either, that is for land where only rights are proposed to be acquired and extinguished.
- 7.4.17. WRWA are concerned that Article 32 could ‘out-flank’ their existing contractual agreements with the applicant and that without including an exception that rights covered where rights only are to be acquired, this would not provide the requisite reassurance to WRWA [\[REP5-049\]](#). However, the applicant’s position is that CA powers would be constrained by Article 28 and should CA of rights be exercised over the land in which WRWA has an interest these are limited to particular purposes set out in Schedule 8 of the dDCO.
- 7.4.18. Paragraph 1.4.15 of the applicant’s response to WRWA’s D1 submission [\[REP2-020\]](#) refers to exclusions built into article 32 which ensure WRWA’s private rights are not extinguished, but does not differentiate between those relating to full CA or CA of rights only. For those plots which effectively comprise the Riverside 1 and 2 facilities, these are specified as connection rights and in some cases liquid carbon dioxide (LCO₂) pipeline rights. However, it remains unclear from the

applicant's representations whether extending the exception under Article 32 to acquisition of rights only would be prejudicial to the implementation of the proposed development.

ExA's consideration

- 7.4.19. In light of the ExA's conclusions on this matter in relation to WRWA's objection on CA grounds, the ExA is of the view that had time allowed the ExA would have sought further information from the parties to inform a decision as to whether to recommend that the articles and protective provisions in the relevant respects should be amended as WRWA have suggested or left as in the applicants final dDCO.
- 7.4.20. However, in light of the evidence available to the ExA, on balance it appears that despite the WRWA delivering a function that serves the public interest, the changes they are seeking to the articles and protective provisions would effectively be to protect their contractual and associated interests which is not the function of provisions in the dDCO. Consequently, the ExA has not recommended changes in these regards in the rDCO. However, as mentioned at 6.5.86 above, should the SoS be presented with either the joint position statement the parties aspire to provide, or further information that may indicate that changes may be appropriate, the SoS may wish to review those particular parts of the rDCO in deciding whether to accept the ExA's recommendation in this regard.

TWUL

- 7.4.21. Notwithstanding TWUL's objections to the proposed development, a main issue considered in the examination relating to provisions in the dDCO was the implications of the proposed development on the access road which serves TWUL's land and links the Crossness Water Treatment Works (CWTW) with Norman Road across the Order Land.
- 7.4.22. Paragraph (3) of Article 37 of protective provisions for TWUL (Part 4 of Schedule 12) of the dDCO [\[REP7-003\]](#), was amended by the applicant to state that "regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any interest in the [TWUL] access road otherwise than by agreement." TWUL's closing submission [\[REP7-033\]](#) noted and accepted this position.
- 7.4.23. The applicant's final SoC [\[REP7-015\]](#) notes that there are two matters where agreement on the wording of TWUL's protective provisions had not been achieved, concluding that it would be for the SoS to ultimately determine between the parties.

Schedule 12, Part 4, Articles 36(2) and 42(3) - notice period for access and inspection

- 7.4.24. TWUL consider [\[REP6-051\]](#) that in Schedule 12, Part 4, paragraphs 36(2) and 42(3)¹¹², no notice should be given for TWUL to take access over land in which the applicant is constructing or operating the proposed scheme or to watch and inspect the execution of works to retained apparatus, as opposed to the "at least three weeks' notice ... unless in an emergency". The applicant in the SoC considers that

¹¹² The reference in the SoC is to paragraphs 35(2) and 41(3) however this was prior to renumbering of paragraphs and the relevant paragraphs are 36(2) and 42(3) in the final dDCO.

these are reasonable as no conditions are imposed and that TWUL just needs to give notice so that the applicant can plan its construction, including health and safety requirements, accordingly.

Schedule 12, Part 4, Article 39 - acquisition of land

- 7.4.25. Article 39¹¹³ of the protective provisions sets out that TWUL's apparatus (as a statutory undertaker) cannot be acquired otherwise than by agreement. TWUL are seeking [\[REP6-051\]](#) that this provision should be expanded to include any of their land in the Order limits, not just apparatus. The applicant, in the SoC and elsewhere, considers that the TWUL's land that comprises the Crossness Local Nature Reserve (CLNR) is not statutory undertakers' land and consequently does not need to be protected by a protective provision. The applicant considers that there is no reason that TWUL's consent should be required to acquire the land should a voluntary agreement not be reached. This is because this is what the DCO's land powers are for, and protective provisions should be used for this purpose.

ExA's consideration

Notice period for access and inspection

- 7.4.26. The term "emergency" is not defined in TWUL's protective provisions (unlike the EA's protective provisions). The ExA agrees with the applicant that it is reasonable that notice be given by TWUL so that the applicant can prepare or plan for such events. Notwithstanding that the applicant revised its previous drafting requiring six weeks' notice, whether three weeks' notice is reasonable or not would depend on a variety of factors and could potentially mean that for a limited access event that would not be an emergency could be onerous on TWUL just as a more extensive or involved access requirement by TWUL could cause disruption beyond mere inconvenience if there is insufficient warning for the applicant's contractors to prepare for it.
- 7.4.27. Recognising that when construction is underway and during operation that a degree of pragmatism will be necessary on both parties' parts in terms of on the ground day to day arrangements it would be appropriate if the protective provisions enabled alternative notice periods to be agreed as appropriate, depending on the circumstances. This would be without being prescriptive as to how the parties chose to do so, for example on a case by case basis or setting out a schedule of anticipated requires and so on that would be unnecessarily detailed to attempt to include in protective provisions.
- 7.4.28. For the works catered for by Article 42, the provisions include that a plan of the works such that TWUL will be aware of them and the timing such that planning for any observation and inspection may be more straightforward. However, such observation and inspection may well be less disruptive and onerous on the developer or contractor such that similarly to the access, it would be reasonable for a provision to allow alternative periods to be agreed with a default of three weeks' notice retained.
- 7.4.29. The ExA therefore recommends that "or such other notice time period as is agreed beforehand between the undertaker and TWUL, such agreement must not to be

¹¹³ The reference in the SoC is to paragraph 38 however this was prior to renumbering of paragraphs and the relevant paragraph is 39 in the final dDCO.

unreasonably withheld or delayed,” is inserted into the last sentences of Articles 36(2) and 42(3), of Part 4 of Schedule 12.

Acquisition of land

- 7.4.30. TWUL’s suggested amendment to paragraph 39 would effectively mean that this would mean that the CA powers in the dDCO which would enable the acquisition of TWUL’s land should a voluntary agreement not be reached would not have effect and essential provide that the land could only be acquired by agreement. As set out at paragraph 6.5.79 above in respect of the requested CA powers the ExA confirmed that CA of TWUL’s land would be required to enable the delivery of the proposed development and its CA would meet the necessary tests. It would therefore be appropriate to include a caveat in protective provisions to effectively negate the CA powers. The ExA considers that paragraph 39 would provide sufficient protection for TWUL as a statutory undertaker irrespective of the status of the CLNR in that regard.

Other matters

- 7.4.31. As set out in Chapter 6 above, there is the prospect that a completed planning obligation may be presented to the SoS in respect of the management of the proposed Mitigation and Enhancement Area. If set out in satisfactory terms this could mean that the applicant no longer needs to acquire full freehold title to parts of the CLNR as they do in terms of the present situation. In such circumstances the SoS may wish to consider whether any consequential changes to the DCO would be required, including adding the relevant land plots to Scheule 8 (land in which only new rights etc. may be acquired) and substituting the revision version of any revised land plans specified in Schedule 13.

7.5. ExA’s PROPOSED CHANGES TO THE DCO

Table 5: DCO Provisions Recommended to be Changed

Provision	Examination issue and recommendation	Proposed change
Article 2	Article 8 makes provision for interaction with the Port of London Act 1968. Sub-paragraphs make reference to the ‘BPSJ licence’ which is the licence that the provision would make necessary for the works that are intended to be carried out on the belvedere power station jetty. However, whilst Article 2 contains a definition of the belvedere power station jetty for the purposes of interpretation of the DCO this does not include either the abbreviation of	Add to Article 2: <i>“”BPSJ licence” means the licence required to carry out the works that are intended to be carried out to the belvedere power station jetty and any other existing structures that are the subject of the licence;”</i>

Provision	Examination issue and recommendation	Proposed change
	BPSJ or the BPSJ licence. The dEM does not provide an explanation for this. In the interests of clarity it is recommended that such a definition is added to Article 2.	
Schedule 2, R4(3)	See paragraph 3.9.31	Amend R4(3) to include requirement for design review and evidence of how feedback taken into account: The authorised development must be designed and constructed in accordance with the design principles and design code and the details submitted under sub-paragraph (1) must include a statement to confirm both how the design principles and design code have been complied with, and how the advice and recommendations of an independent design review process have been taken into account, in the details that have been submitted.
Schedule 2, R12(1) (2) and (3)	See paragraphs 3.5.80 and 3.5.81	Amend R12 (1) to delete option for LaBARDS to be submitted in stages for each part of the development: (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

Provision	Examination issue and recommendation	Proposed change
		writing, in consultation with TWUL. Add a caveat to R12(2) to make it explicit that the full LaBARDS to be submitted should not include the provision for multiple versions in paragraph 3.2.4 of the outline LABARDS by adding: ..., except insofar as it provides for the provision of multiple full versions in paragraph 3.2.4 of the outline landscape, biodiversity, access and recreation delivery strategy. (3) The landscape, biodiversity, access and recreation delivery strategy must include details of all proposed hard and soft landscaping works and ecological mitigation and enhancement measures (as applicable for the relevant numbered work) ~~for that part~~ and where applicable include ~~for that part~~
Schedule 2, R12 (3)	See paragraph 3.9.32	Amend R12(3)(l) by adding to include “a statement to confirm both how the design principles and design code, have been complied with, and how the advice and recommendations of an independent design review process have been taken into account ; and”
Schedule 2, R16	See paragraph 3.9.33	Insert new sub-paragraph (2) into R16 to include requirement for design

Provision	Examination issue and recommendation	Proposed change
		review and evidence of how feedback taken into account, and consequential re-numbering of other sub-paragraphs: <i>(2) The jetty works environmental design scheme to submitted under sub-paragraph (1) shall include a statement to confirm how the advice and recommendations of an independent design review process have been taken into account in the details that have been submitted.</i>
Schedule 2, R21	See paragraphs 3.13.18 to 3.13.20	Insert new addition to the end of sub-paragraph (1) to codify explicitly the need to include a specific remediation strategy within the overall ground conditions investigations and assessments strategy, if deemed necessary: <i>Such a strategy shall include a specific remediation strategy, if necessary.</i>
Schedule 2, R22	See paragraph 3.7.41	Insert new subparagraph into R22(2) to explicitly require the building recording of the former Belvedere Power Station Jetty should it be proposed to alter or demolish it, and re-number the following sub-paragraph: (b) details of any updated geoarchaeological deposit model; and

Provision	Examination issue and recommendation	Proposed change
		<i>(c) should the authorised development include proposals to alter or demolish, in full or in part, the belvedere power station jetty, details of the building recording of the belvedere power station jetty; and</i>
Schedule 12, Part 4, Article 36 (2)	See paragraphs 7.4.26 to 7.4.29	Amend Article 36(2) of Part 4 of Schedule 12 by inserting the following: ...upon giving at least three weeks' notice of such intended entry, <i>or such other notice time period as is agreed beforehand between the undertaker and TWUL, with such agreement not being unreasonably withheld or delayed,</i> unless in an emergency.
Schedule 12, Part 4, Articles 42(3)	See paragraphs 7.4.26 to 7.4.29	Amend Article 42(3) of Part 4 of Schedule 12 by inserting the following: ...upon giving at least three weeks' notice of such intended entry to watch and inspect, <i>or such other notice time period as is agreed beforehand between the undertaker and TWUL, with such agreement not being unreasonably withheld or delayed,</i> unless in an emergency.

7.6. CONCLUSIONS

- 7.6.1. The ExA has considered all iterations of the dDCO as set out in Table 5 above and the degree to which the applicant's final version has addressed matters arising during the examination. A number of matters are the subject of recommendations in this Chapter and are included in the rDCO in Appendix C of this Recommendation.

- 7.6.2. Taking all matters raised in this Chapter and all matters relevant to the dDCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended that the DCO should be made in the form set out in the rDCO (Appendix C).

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This Chapter summarises the Examining Authority's (ExA) conclusions and sets out its recommendation to the Secretary of State Energy Security and Net Zero (SoSESNZ).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 8.2.1. As the ExA has noted in Chapter 3 above, the urgent need for low carbon energy and carbon capture and storage is established through the Overarching National Policy Statement for energy (NPS EN-1). In relation to section (s) 104 of the Planning Act 2008 (PA2008), the ExA concludes that making the recommended Development Consent Order (rDCO) would be in accordance with NPS EN-1.
- 8.2.2. In reaching its conclusions, the ExA has also had regard to the Local Impact Report produced by the London Borough of Bexley Council (LBBC) and notes that by the close of the examination LBBC had no objections to the proposed development.
- 8.2.3. Whilst the SoSESNZ is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, the ExA concludes that subject to mitigation secured in the rDCO, an adverse effect on integrity from the proposed development alone or in combination with other plans or projects can be excluded for the Epping Forest Special Area of Conservation, a site which is part of the UK National Site Network.
- 8.2.4. The SoS will need to have regard to fulfilling the general biodiversity function under the Natural Environment and Rural Communities Act 2006 (as amended). The ExA considers that the enhancement provisions in the Landscape, Biodiversity and Recreation Strategy Delivery which the rDCO would require, would satisfy the duty to further the conservation of any Habitats and Species of Principal Importance.
- 8.2.5. Regarding designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regs) the ExA has found the proposed development would result in less than substantial harm to designated heritage assets. However, those harms would be outweighed by the substantial public benefits from the provision of new carbon capture and storage infrastructure to meet the urgent need identified in NPS EN-1, and by the other benefits of the application as summarised in Chapters 3 and 5.
- 8.2.6. In terms of biodiversity and bearing in mind Regulation 7 of the Decisions Regs, the ExA is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of NPS EN-1 are met. The ExA has had due regard to conserving and enhancing biodiversity when making recommendations, and considers that the SoSESNZ has the information to support their consideration of fulfilling the general biodiversity function under the Natural Environment and Rural Communities Act 2006 (as amended).
- 8.2.7. The ExA has considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the proposed development. The ExA is satisfied that the legal interests in all plots of land included in the final Book of Reference [\[REP7-008\]](#) and indicated on the final Land Plans

[REP4-003] would be required for the proposed development with regard to both CA and TP powers. In relation to land subject to CA, the ExA is satisfied that the land to be taken is no more than is reasonably required and is proportionate. The applicant has a clear idea of how it intends to use the land and funds are available for the implementation of the proposed development.

- 8.2.8. The ExA has had regard to the provisions of the Human Rights Act 1998, in particular Article 6 (Acts of public authorities), Article 8 (Judicial remedies) and Article 1 of the First Protocol (Protection of property). The ExA considers that the examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the proposed development would be proportionate and would strike a fair balance between the rights of the individual and the public interest. The ExA is satisfied that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
- 8.2.9. The ExA has had regard to the Public Sector Equality Duty (PSED) throughout the examination and in producing this report. The proposed development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.
- 8.2.10. Taking account of the mitigation and compensation secured through the rDCO in Appendix C of this Report, the ExA finds there would be no adverse impacts arising from the proposed development that would outweigh its benefits. In respect of all other matters and representations received, the ExA is satisfied that there are no important or relevant matters that would individually or collectively lead to a different recommendation from that set out below. The ExA is satisfied that the proposed development meets the tests in s104 of PA2008.

8.3. CONCLUSION AND RECOMMENDATION

- 8.3.1. For all of the above reasons, the ExA considers the proposed development meets the tests of s104 of the PA2008. On that basis, for all of the above reasons, and in light of the ExA's findings and conclusions on important and relevant matters set out in this Report, the ExA concludes that the case for the development has been made and recommends that the SoSES NZ makes the Cory Decarbonisation Project Order in the form attached at Appendix C to this Report

APPENDICES

APPENDIX A: REFERENCE TABLES	II
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APPENDIX A: REFERENCE TABLES

Table A1 – The Environmental Statement (ES)

ES Chapter/Appendix/Figures	Examination Library (EL) reference
ES Non-Technical Summary	REP6-029
Chapter 1 - Introduction	APP-050 , APP-072
Chapter 2 - Site and Proposed Scheme Description	REP6-008
Appendix	REP4-006
Chapter 3 - Consideration of Alternatives	APP-052 , APP-072
Chapter 4 - Environmental Impact Assessment Methodology	REP6-009
Appendices	APP-075 , REP6-021
Chapter 5 - Air Quality	REP6-010 , REP6-019
Appendices	APP-077 , REP6-022 , REP6-023 , REP6-024 , (Appendix B of) AS-044
Chapter 6 - Noise and Vibration	APP-055 , REP6-019
Appendices	APP-082 , APP-083 , APP-083 , APP-084 , APP-085 , APP-086
Chapter 7 - Terrestrial Biodiversity	REP6-011 , REP6-019
Appendices	APP-088 , APP-089 , APP-090 , APP-091 , APP-092 , APP-093 , APP-094 , REP6-025 , REP6-026 , APP-097 , APP-098
Chapter 8 - Marine Biodiversity	REP6-012 , REP6-020
Appendix	APP-099
Chapter 9 - Historic Environment	REP6-013 , REP6-020

ES Chapter/Appendix/Figures	Examination Library (EL) reference
Appendix	APP-100
Chapter 10 - Townscape and Visual	APP-059 , REP6-020
Appendices	APP-101 , APP-102 , APP-103 , APP-104 , APP-105 , AS-075
Chapter 11 - Water Environment and Flood Risk	REP6-014 , REP6-020
Appendices	REP6-027 , AS-023 , APP-108 , REP6-028
Chapter 12 - Climate Resilience	APP-061 , REP6-020
Appendix	APP-110
Chapter 13 - Greenhouse Gases	APP-062
Chapter 14 - Population, Health and Land Use	REP6-015 , REP6-020
Appendix	APP-111
Chapter 15 - Socio-economics	APP-064 , REP6-020
Appendix	APP-112
Chapter 16 - Materials and Waste	APP-065
Chapter 17 - Ground Conditions and Soils	APP-066 , REP6-020
Appendix	APP-113
Chapter 18 - Landside Transport	APP-067 , REP6-020
Appendix	APP-114
Chapter 19 - Marine Navigation	REP6-016 , REP6-020
Appendix	REP3-011
Chapter 20 - Major Accidents and Disasters	APP-069

ES Chapter/Appendix/Figures	Examination Library (EL) reference
Appendices	APP-116 , APP-117
Chapter 21 - Cumulative Effects	REP6-017 , REP6-020
Appendices	APP-118 , APP-119
Chapter 22 - Summary of Effects	REP6-018
Figures	REP6-019 , REP6-020

Table A2 – Change Request Documents

Document	EL reference
Applicant's first change request dated 25 October 2024	
Change Request Cover Letter	AS-047
Change Request and Consultation Report and Appendices	AS-048 , AS-049
Updated Application Documents Following Acceptance of Change Request	AS-050 , AS-051 , AS-052 , AS-053 , AS-054 , AS-055 , AS-056 , AS-057 , AS-058 , AS-059 , AS-060 , AS-060
Applicant's second change request dated 17 January 2025	
Change Request Cover Letter	AS-066
Change Request and Consultation Report and schedule of changes to the Book of Reference	AS-067 , AS-076
Updated Application Documents Following Acceptance of Change Request	AS-068 , AS-069 , AS-069 , AS-071 , AS-072 , AS-073 , AS-074 , AS-074 , AS-075

Table A3 – Summary of Initial Assessment of Principal Issues

No	Issue	Report chapter/section
1	Air Quality	Section 3.4
2	Alternative locations and layouts considered for the proposed scheme and scope of development	Section 3.3
3	Biodiversity Habitats Regulation Assessment	Section 3.5 Chapter 4
4	Climate Change	Section 3.6
5	Compulsory Acquisition and Temporary Possession	Chapter 6
6	Cultural Heritage (reported as Historic Environment and Cultural Heritage in the Report)	Section 3.7
7	Cumulative Effects	Section 3.13
8	Draft Development Consent Order	Chapter 7
9	Flood Risk and Hydrology (reported as Water Environment and flood Risk in the Report)	Section 3.8
10	Geology, hydrogeology, soils, materials and waste	Section 3.13
11	Land transport and public rights of way (reported as Landside Transport in the Report)	Section 3.13
12	Major Accidents and Disasters	Section 3.13
13	Metropolitan Open Land	Section 3.9
14	Navigation on the River Thames and marine transport	Section 3.13
15	Noise and vibration	Section 3.13
16	Planning Obligations	Section 1.6, Chapter 6, and considered as part of other chapters/sections where relevant
17	Social and Economic Effects	Section 3.10

18	Townscape and Visual Impact (reported as Townscape and Visual Effects in the Report)	Section 3.11

Table A4 – Summary of other Relevant National Policies for the Proposed Development

Relevant Policies	
▪	Overarching National Planning Statement for Energy (EN-1)
▪	National Planning Policy Framework
▪	Planning Practice Guidance
▪	The UK Marine Policy Statement
▪	South East Inshore Marine Plan
▪	Net Zero Strategy: Build Back Greener
▪	- Air Quality Strategy (2023) - British Energy Security Strategy (2022) - Clean Air Strategy (2019) - Clean Growth Strategy: Leading the way to a low carbon future (2018) - Clean Power 2030 Action Plan (13 December 2024) - Energy White Paper: Powering our Net Zero Future (2020) - Environmental Improvement Plan (2023) - The Glasgow Pact (2021) - A Green Future: Our 25 Year Plan to Improve the Environment (2018) and Environmental Improvement Plan (2023) - Industrial Decarbonisation Strategy (2021) - The Kyoto Protocol (1997) - National Infrastructure Strategy (2020) - Net Zero Strategy: Build Back Greener (2022) - Noise Policy Statement for England (2010) - The Paris Agreement (2015) - Powering Up Britain – Energy Security Plan (2023)

Table A5 – Summary of Relevant Legislation for the Proposed Development

Relevant legislation
▪ Equality Act 2010: Section 149 of the Equality Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this examination and reporting and to the SoS in decision making. The ExA had particular regard to the PSED in terms of holding blended in-person/ virtual meetings, producing guidance on holding those meetings, ensuring participants were provided with hard copy correspondence, where requested, and in our conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics. ▪ Human Rights Act 1998 The Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998. The implications of this are considered in Chapter 6 of this report. ▪ Climate Change Act 2008 (as amended) The Climate Change Act 2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019) established the world's first long-term, legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets GHG emission reductions in the UK of at least 100% by 2050 ("Net Zero", increased from 80% by the June 2019 amendment order). ▪ The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 ▪ Environment Act 2021 ▪ Water Act 2014 ▪ The Health and Social Care Act 2012 ▪ Localism Act 2011 ▪ Natural Environment and Rural Communities Act 2006 ▪ The Countryside and Rights of Way Act 2000 ▪ Pollution Prevention and Control Act 1999 ▪ Part IV of the Environment Act 1995 ▪ The Environment Act 1995 ▪ Protection of Badgers Act 1992 (as amended) ▪ Land Drainage Act 1991 ▪ Water Industry Act 1991 ▪ Water Resources Act 1991 (as amended) ▪ Town and Country Planning Act 1990 (as amended) ▪ Planning (Listed Buildings and Conservation Areas) Act 1990 ▪ Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A) ▪ European Commission Circular Economy Package Environmental Protection Act 1990 ▪ Building Act 1984 ▪ Wildlife and Countryside Act (WCA) 1981 (as amended) ▪ Highways Act 1980 ▪ Ancient Monuments and Archaeological Areas Act 1979

- Salmon and Freshwater Fisheries Act 1975 (as amended)
- Control of Pollution Act 1974 (as amended)
- The Commons Registration Act 1965
- National Parks and Access to the Countryside Act 1949 (as amended)
- Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879
- The Water Resources (Abstraction and Impounding) Regulations 2006
- Environmental Permitting (England and Wales) Regulations 2016
- Air Quality (England) Regulations 2000
- Air Quality Standards Regulations 2010 (as amended)
- Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019
- Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- The Conservation of Habitats and Species Regulations 2017 (as amended)
- Hedgerow Regulations 1997
- Water Framework Directive (2000/60/EC) (as amended)
- Eels (England and Wales) Regulations 2009
- The Kyoto Protocol
- The Paris Agreement
- Climate Change Act 2008 (2050 Target Amendment) Order
- Carbon Budget Order 2009
- Carbon Budget Order 2011
- Carbon Budget Order 2016
- Carbon Budget Order 2021
- Climate Change Act 2008 (Credit Limit) Order 2021
- Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations')
- the Building Regulations 2010 (as amended)
- Water Act 2003 (as amended) Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154
- Water Framework Directive (2000/60/EC) (as amended)
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- European Landscape Convention (Council of Europe, 2016)
- Waste Framework Directive (2000/60/EC (as amended)
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- Waste (England and Wales) Regulations 2011 (as amended)
- Waste Electrical and Electronic Equipment ('WEEE') Regulations 2013
- Environmental Permitting Regulations 2016
- Environmental Noise (England) Regulations 2006 (as amended)
- Noise Insulation Regulations 1975
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environmental Permitting (England and Wales) Regulations 2016
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Flood Risk Regulations 2009
- Water Supply (Water Quality) Regulations 2018
- Flood and Water Management Act 2010 Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Groundwater (Water Framework Directive) (England) Direction 2016

Table A6 – Relevant Local Policies and Strategies for the Proposed Development

Plan/strategy	Relevant policies
Bexley Local Plan 2023	▪ Policy SP1 –Achieving sustainable development – the spatial strategy ▪ Policy SP3 – Employment growth, innovation and enterprise ▪ Policy DP7 – Appropriate use within designated industrial areas ▪ Policy SP5 – Placemaking through good design ▪ Policy DP11 – Achieving high-quality design ▪ Policy DP13 – Protecting local views ▪ Policy SP6 – Managing Bexley’s heritage assets ▪ Policy DP14 – Development affecting a heritage asset ▪ Policy DP17 – Publicly accessible open space ▪ Policy SP8 – Green Infrastructure including designated Green Belt ▪ Policy DP18 – Waterfront development and Policy DP19 – The River Thames and the Thames Policy Area development including, or close to, flood defences ▪ Policy SP9 – Protecting and enhancing biodiversity and geological assets ▪ Policy DP20 – Biodiversity and geodiversity in developments ▪ Policy DP21 – Greening of development sites ▪ Policy SP10 – Bexley’s transport network ▪ Policy SP11 – Safeguarding land for transport schemes ▪ Policy DP22 – Sustainable transport ▪ Policy DP24 – Impact of development on the transport network ▪ Policy DP28 –Contaminated land and development and storage of hazardous substances ▪ Policy SP13 – Protecting and enhancing water supply and wastewater infrastructure ▪ Policy DP29 – Water quality, supply and treatment ▪ Policy SP14 – Mitigating and adapting to climate change ▪ Policy DP31 – Energy Infrastructure ▪ Policy DP32 – Flood Risk Management ▪ Policy DP33 – Sustainable drainage systems

The London Plan 2021	▪ Policy D3 – Optimising site capacity through the design-led approach ▪ Policy D11 – Safety, security and resilience to emergency ▪ Policy D13 – Agent of Change ▪ Policy D14 – Noise ▪ Policy E4 – Land for industry, logistics and services to support London’s economic function ▪ Policy E5 – Strategic Industrial Locations (SIL) ▪ Policy E11 – Skills and opportunities for all ▪ Policy HC1 – Heritage conservation and growth ▪ Policy HC3 – Strategic and Local Views ▪ Policy G1 – Green Infrastructure ▪ Policy G4 – Open Space ▪ Policy G5 – Urban Greening ▪ Policy G6 – Biodiversity and access to nature ▪ Policy SI 1 – Improving Air Quality ▪ Policy SI 2 – Minimising greenhouse gas emissions ▪ Policy SI 3 – Energy Infrastructure ▪ Policy SI 5 – Water Infrastructure ▪ Policy SI 8 – Waste capacity and net waste self-sufficiency ▪ Policy SI 9 – Safeguarded waste sites ▪ Policy SI 12 – Flood risk management ▪ Policy SI 13 – Sustainable drainage ▪ Policy SI 16 – Waterways – use and enjoyment ▪ Policy T1 – Strategic approach to transport ▪ Policy T2 – Healthy Streets ▪ Policy T4 – Assessing and mitigating transport impacts ▪ Policy T5 – Cycling
	▪ The London Environment Strategy
	▪ Mayor’s Transport Strategy
	▪ Mayor’s Skills for Londoners Strategy
	▪ Bexley Local Flood Risk Management Strategy
	▪ Bexley Integrated Water Management Strategy

Table A7 – Made Development Consent Orders (DCO)

Other made DCOs identified by the Applicant
▪ Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 ▪ North London Heat and Power Generating Station Order 2017 ▪ M20 Junction 10a Development Consent Order 2017 ▪ Wrexham Gas Fired Generating Station Order 2017 ▪ Silvertown Tunnel Order 2018 ▪ Eggborough Gas Fired Generating Station Order 2018 ▪ A19/A184 Testo's Junction Alteration Development Consent Order 2018 ▪ The Silvertown Tunnel Order 2018 ▪ Port of Tilbury (Expansion) Order 2019 ▪ Millbrook Gas Fired Generating Station Order 2019 ▪ Drax Power (Generating Stations) Order 2019 ▪ Riverside Energy Park Order 2020 ▪ Cleve Hill Solar Park Order 2020 ▪ Great Yarmouth Third River Crossing Development Consent Order 2020 ▪ Lake Lothing (Lowestoft) Third Crossing Order 2020 ▪ Immingham Open Cycle Gas Turbine Order 2020 ▪ A30 Chiverton to Carland Cross Development Consent Order 2020 ▪ Sizewell C (Nuclear Generating Station) Order 2022 ▪ Longfield Solar Farm Order 2023 ▪ Riverside Energy Park (Amendment) Order 2023 ▪ A303 (Amesbury to Berwick Down) Development Consent Order 2023 ▪ Hornsea Four Offshore Wind Farm Order 2023 ▪ Boston Alternative Energy Facility Order 2023 ▪ Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 ▪ A66 Northern Trans-Pennine Development Consent Order 2024 ▪ Net Zero Teesside Order 2024

Table A8 – Summary of issues raised in Local Impact Report

Issues
▪ Air Quality ▪ Noise and Vibration ▪ Terrestrial, Riparian and Marine Biodiversity ▪ Historic Environment ▪ Townscape and Visual (including Arboriculture) ▪ Water Environment and Flood Risk ▪ Climate Resilience ▪ Greenhouse Gases ▪ Socioeconomics ▪ Ground Conditions and Soils ▪ Landside Transport ▪ Land Use and Consideration of Alternatives

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Term
AA	appropriate assessment
ABS	amine based solvent
AEol	adverse effect(s) on integrity
ADT	Application Document Tracker
ALARP	As Low As Reasonably Practicable
ANCB	appropriate nature conservation body
AOD	above ordnance datum
AP(s)	affected person(s)
approx	approximately
BAT	Best Available Techniques
BLP	Bexley Local Plan, 2023
BNG	biodiversity net gain
BNGOA	Biodiversity Net Gain Opportunity Area
BoR	Book of Reference
CA	compulsory acquisition
C20	twentieth century
CA Guidance	Planning Act 2008: guidance related to procedures for the compulsory acquisition of land
CAH	compulsory acquisition hearing
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAP	Chilled Ammonia Process (solvent option)
CCA	Crossness Conservation Area
CCC	Climate Change Committee
CCF	carbon capture facility
CCS	Carbon Capture and Storage
CCUS	Carbon, Capture, Utilisation and Storage
CHP	combined heat and power
CLNR	Crossness Local Nature Reserve
CNP	critical national priority (as set out in NPS EN-1)
CO ₂	carbon dioxide
CO ₂ e	carbon dioxide equivalent
CoCP	Code of Construction Practice
COMAH	Control of Major Accident Hazards
COMAH Regs	the Control of Major Accident Hazards Regulations 2015
CRCR	change request and consultation report
CSS	carbon capture and storage
CTMP	Construction Traffic Management Plan
CWTP	Construction Workforce Travel Plan
CWTW	Crossness Water Treatment Works
D(s)	examination deadline(s)
DAD	Design Approach Document
DBC	Dartford Borough Council

Abbreviation	Term
DCO	Development Consent Order
dDCO	draft Development Consent Order
Decisions Regs	Infrastructure Planning (Decisions) Regulations 2010
dEM	draft Explanatory Memorandum
DEMP	Decommissioning Environmental Management Plan
DML	Deemed Marine Licence
DPDC	Design Principles and Design Code
DTMP	Decommissioning Traffic Management Plan
EA	Environment Agency
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	environmental impact assessment
EIA Regs	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EFW	energy from waste
EL	examination library
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPRP	Emergency Preparedness and Response Plan
ES	environmental statement
ExA	Examining Authority
ExQ	Examining Authority's questions and requests for information
FBPSJ	Former Belvedere Power Station Jetty
FCMTP	Framework Construction Traffic Management Plan
FoCNR	Friends of Crossness Nature Reserve
FRA	Flood Risk Assessment
FTA	full time equivalent (employees)
GHG	greenhouse gas
GLA	Greater London Authority
GLAAS	Greater London Archaeology Advisory Service
GVA	gross value added
ha	hectare(s)
Habitats Regs	Conservation of Habitats and Species Regulations 2017
HE	Historic England
HEDBA	Historic Environment Desk-Based Assessment
HGV	heavy goods vehicle
HPC	Hot Potassium Carbonate (solvent option)
HPI	habitats of principal importance
HRA	Habitats Regulation Assessment
HRA1988	Human Rights Act 1998
IAPI	initial assessment of principal issues
IP(s)	interested party (parties)
ISH	issue specific hearing
KCC	Kent County Council

Abbreviation	Term
kV	kilovolt
LaBARDS	(Outline) Landscape, Biodiversity, Access and Recreation Delivery Strategy
LB	Listed building
LBB	London Borough of Bexley
LBBC	London Borough of Bexley Council
LCO ₂	liquid carbon dioxide
LIR	local impact report
LLA Regs	Marine Licensing (Licence Application Appeals) Regulations 2011
LMJ	Landsul Ltd and Munster Joinery (UK) Ltd (jointly represented APs)
LRT	Land Rights Tracker
PLA	local planning authority
LRT	Land Rights Tracker
LSE	likely significant effect(s)
LWS	local wildlife site(s)
MA&D	major accidents and disasters
MCAA2009	Marine and Coastal Access Act 2009
MCZ	Marine Conservation Zone
MEA	Mitigation and Enhancement Area
MJUK	Munster Joinery (UK) Ltd (a business)
MMO	Marine Management Organisation
MOL	Metropolitan Open Land
MSINC	Metropolitan Site of Importance for Nature Conservation
Mt	megatonne (one million tonnes)
MW	megawatt (one million watts of power)
NE	Natural England
NERCA2006	Natural Environment and Rural Communities Act 2006
NH	National Highways
NPA2017	The Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	national policy statement
NPS EN-1	Overarching National Policy Statement for Energy
NSIP	Nationally Significant Infrastructure Project
OEMP	Operational Environmental Management Plan
pa	per annum
PA2008	Planning Act 2008
PD	procedural decision
PINS	The Planning Inspectorate
PLA	Port of London Authority
PM	preliminary meeting
PM _{2.5}	particulate matter with particles smaller than 2.5 micrometres in diameter
pNRA	Preliminary Navigational Risk Assessment
PP	planning permission
PSED	public sector equality duty

Abbreviation	Term
PRoW	public rights(s) of way
R	(DCO) requirement
rDCO	(the ExA's) recommended Development Consent Order
Rev	Revision version of a document
RIES	Report on the Implications for European Sites
RMGL	Royal Mail Group Limited
RR	relevant representation(s)
s	section of an Act
SAC	special area(s) of conservation
SCNR	Save Crossness Nature Reserve
SEMP	South-East Marine Plan
SEP	Skills and Employment Plan
SIL	Strategic Industrial Location (allocation in Bexley Local Plan, 2023)
SINC	Site(s) of Importance for Nature Conservation
SM	scheduled monument
SO ₂	sulphur dioxide
SoC	Schedule of Changes (to the dDCO)
SoCG	statement of common ground
SoCom	Statement of Commonality
SoR	Statement of Reasons
SoS	secretary of state
SoSBEIS	Secretary of State for Business, Energy and Industrial Strategy
	Secretary of State for Energy Security and Net Zero
SPA	special protection area(s)
SPI	species of principal importance
SSSI	Site(s) of special scientific interest
SU	statutory undertaker
t	tonne(s)
tCO ₂ e	tonnes of carbon dioxide equivalent
TCPA1990	Town and Country Planning Act 1990 (as amended)
TP	temporary possession
tpa	tonnes per annum
TSAR	Terrestrial Site Alternatives Report
TLL	Tilfen Land Limited
TWUL	Thames Water Utilities Limited
WFD	Water Framework Directive
WFD Regs	Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
WRWA	Western Riverside Waste Authority

APPENDIX C: THE RECOMMENDED DCO

202[*] No.

INFRASTRUCTURE PLANNING

Cory Decarbonisation Project Order 202[*]

Made - - - -

Coming into force - -

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An application under section 37(a) (applications for orders granting development consent) of the Planning Act 2008 (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 (deciding applications for orders granting development consent) of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 (deciding applications for orders granting development consent) of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83(c) (single appointed person to examine and report on application) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and has had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement have effect) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127(e) (statutory undertakers’ land) of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

In accordance with section 131(4A) (commons, open spaces etc: compulsory acquisition of land) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Examining Authority, that there is no suitable land available to be given in exchange for the parcels of open space comprised within the Order land and that it is strongly in the public interest for the development for which this Order grants consent to be capable of being begun sooner than is likely to be possible if the Order were to be subject (to any extent) to special parliamentary procedure.

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- (a) 2008 c. 29. The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.
 - (b) S.I. 2010/103, amended by S.I. 2012/635.
 - (c) 2008 c. 29. Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c. 20).
 - (d) S.I. 2017/572.
 - (e) 2008 c. 29. Section 127 was amended by sections 23, (2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c. 27) and by paragraphs 64(1) and (2) of Schedule 13(1) and paragraph 1 of Schedule 25 to the Localism Act 2011 (c. 20).

The Secretary of State, in exercise of the powers conferred by sections 114(a), 115(b), 120(c), 122(d), and 123(e) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Cory Decarbonisation Project Order and comes into force on [*] 202[*].

Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961(f);

“the 1965 Act” means the Compulsory Purchase Act 1965(g);

“the 1968 Act” means the Port of London Act 1968(h);

“the 1980 Act” means the Highways Act 1980(i);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(j);

“the 1984 Act” means the Road Traffic Regulation Act 1984(k);

“the 1990 Act” means the Town and Country Planning Act 1990(l);

“the 1991 Act” means the New Roads and Street Works Act 1991(m);

“the 1994 agreement” means the agreement made under section 106 (planning obligations) of the 1990 Act between the Mayor and Burgesses of the London Borough of Bexley and TWUL dated 21 July 1994;

“the 2005 Agreement” means the agreement made under section 106 (planning obligations) of the 1990 Act between the Mayor and Burgesses of the London Borough of Bexley, Tilfen Land Limited and Gallions Housing Association Limited dated 24 January 2005;

“the 2008 Act” means the Planning Act 2008(n);

“the 2009 Act” means the Marine and Coastal Access Act 2009(o);

“access and rights of way plan” means the plan of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the access and rights of way plan for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

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- (a) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(b) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(c) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(d) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(e) Ibid.
(f) 1961 c. 33.
(g) 1965 c. 56.
(h) 1968 c.xxxii.
(i) 1980 c. 66.
(j) 1981 c. 66.
(k) 1984 c. 27.
(l) 1990 c. 8.
(m) 1991 c. 22.
(n) 2008 c. 29.
(o) 2009 c. 23.

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), heat pipework, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“associated company” has the same meaning as in section 256 (associated bodies corporate) of the Companies Act 2006(a);

“authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of “development”) of the 2008 Act authorised by this Order;

“authorised navigational channel of the river Thames” means the authorised navigational channel of the river Thames located within the boundaries of the authorised navigational channel shown on the works plans;

“authorised person” means an employee, agent, contractor or subcontractor of the London Borough of Bexley;

“book of reference” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

“belvedere power station jetty” means the existing jetty, conveyor bridge, intake shaft (but not the intake tunnel) and associated piles, dolphins and supports contained within plots 1-107, 1-110, 1-111 and 1-118 on the land plans, and the associated barge berth located within plot 1-113;

“BPSJ licence” means the licence required to carry out the works that are intended to be carried out to the belvedere power station jetty and any other existing structures that are the subject of the licence;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means any day apart from Saturday, Sunday or any statutory bank or public holiday;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means beginning to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development other than the permitted preliminary works and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

“crossness local nature reserve as extended” means the land marked on the extended crossness local nature reserve plan as ‘crossness local nature reserve (as extended)’;

“date of final commissioning” means the date on which the commissioning of the authorised development (or any part of the authorised development as the context requires) is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 6 (notice of date of final commissioning);

“deemed marine licence” means the marine licence set out in Schedule 11 (deemed marine licence);

(a) 2006 c. 46.

“design principles and design code” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the design principles and design code for the purposes of this Order;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in an electronic form;

“environmental statement” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the environmental statement for the purposes of this Order;

“extended crossness local nature reserve plan” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the extended crossness local nature reserve plan for the purposes of this Order;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(a);

“flood risk assessment” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework construction traffic management plan” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the framework construction traffic management plan for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“holding company” has the same meaning as in section 1159 of the Companies Act 2006(b);

“land plans” means the plans of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the land plans for the purposes of this Order;

“lead local flood authority” has the meaning in section 6(7) (other definitions) of the Flood and Water Management Act 2010(c);

“limits of deviation” means—

- (a) the limits of deviation shown for each numbered work on the works plans; and
- (b) in the case of Work No. 4C, dredging to a depth of – 11.00m chart datum and within the dredging co-ordinates shown on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of the authorised development, but only insofar as such activities do not give rise to any materially new or materially different environmental effects which are worse than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“Middleton Jetty” means the structures labelled as forming the Middleton Jetty as shown on the works plans;

“MMO” means the Marine Management Organisation;

“Order land” means the land which is required for, or is incidental to, or is affected by, the authorised development as shown on the land plans, which is described in the book of reference;

(a) S.I. 2016/1154.
(b) 2006 c. 46.
(c) 2010 c. 29.

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans, may be carried out;

“outline landscape, biodiversity, access and recreation delivery strategy” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the outline landscape, biodiversity, access and recreation delivery strategy for the purposes of this Order;

“outline code of construction practice” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

“outline drainage strategy” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

“outline emergency preparedness and response plan” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the outline emergency preparedness and response plan for the purposes of this Order;

“outline lighting strategy” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

“outline site waste management plan” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the outline site waste management plan for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“permit scheme” means the permit scheme contained in the Schedule to the Traffic Management (London Borough of Bexley) Permit Scheme 2012(b) or any replacement permit scheme which applies to streets within the Order limits that is made under Part 3 (Permit Schemes) of the Traffic Management Act 2004(c);

“permitted preliminary works” means environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), archaeological surveys and investigations, the creation of new ditches and the enhancement of existing ditches, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, establishment of laydown areas and welfare facilities, erection of construction fencing, diversion and laying of underground apparatus, site clearance including vegetation clearance, and Work No. 3;

“the PLA” means the Port of London Authority;

“PLA General Directions” means the general directions made under section 111 of the 1968 Act and under the provisions of the Pilotage Act 1987(d) which came into force on 1 November 2024;

“Port of London Harbour Revision Order” means any harbour revision order made pursuant to the application for the harbour revision order under section 14 of the Harbours Act 1964(d) submitted by the PLA to the Marine Management Organisation on 7 April 2020;

“Pre-2032 WRWA Underlease Determination Event” means, during the period prior to (and including) 4 October 2032, the termination of the WRWA Underlease (otherwise than in circumstances where the WRWA Lease is terminated at the same time as the WRWA Underlease);

(a) 1981 c. 67. Section 7 was amended by paragraph 9 of Schedule 15(I) to the Planning and Compensation Act 1991 (c. 34). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2012/3102.

(c) 2004 c. 18.

(d) 1987 c. 21.

“preliminary navigation risk assessment” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the preliminary navigation risk assessment for the purposes of this Order;

“Post-2032 WRWA Underlease Determination Event” means, during the period from (and including) 5 October 2032, the termination of the WRWA Underlease (otherwise than in circumstances where the WRWA Lease is terminated at the same time as the WRWA Underlease);

“relevant planning authority” means the London Borough of Bexley;

“relevant highway authority” means the London Borough of Bexley;

“Riverside 1” means the energy from waste facility that is operated by RRRL;

“Riverside 2” means the energy from waste facility to be constructed and operated pursuant to Work No. 1 of the REP Order;

“REPL” means Riverside Energy Park Limited (company number 11536739) whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF, together with its successors in title from time to time of the freehold of any part of the REPL land (as defined in Schedule 12 Part 8 paragraph 108) save to the extent that any such successor in title is the undertaker;

“REP Order” means the Riverside Energy Park Order 2020(a);

“requirements” means those matters set out in Schedule 2 (requirements);

“RRRL” means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF, together with its successors in title from time to time of the freehold of any part of the RRRL land (as defined in Schedule 12 Part 9 paragraph 120) save to the extent that any such successor in title is the undertaker;

“RRRL Entity” means (on a several basis) each of RRRL, and—

- (a) prior to the earlier to occur of a Pre-2032 WRWA Underlease Determination Event and 5 October 2032, WRWA (for the purposes of paragraphs 122(a) and 130 of Part 9 of Schedule 12 only);
- (b) where a Pre-2032 WRWA Underlease Determination Event has occurred, WRWA (for any period in which WRWA (or WRWA’s nominee) is not a successor in title to RRRL in respect of the freehold of all the RRRL land which is held by RRRL immediately prior to the Pre-2032 WRWA Underlease Determination Event);
- (c) where a Pre-2032 WRWA Underlease Determination Event has occurred, WRWA (or its nominee) (for any period in which WRWA (or WRWA’s nominee) has ownership of RRRL or is a successor in title to RRRL in respect of the freehold of RRRL land); and
- (d) where a Post-2032 WRWA Underlease Determination Event has occurred, WRWA (for the duration of the WRWA Lease) unless and until the WRWA Underlease is restored;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the Communications Act 2003(b);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any public right of way and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006(c);

(a) 2020 c. 419, which was amended by the Riverside Energy Park (Correction) Order 2021 (c. 273) and the Riverside Energy Park (Amendment) Order 2023 (c. 165).

(b) 2003 c. 21.

(c) 2006 c. 46.

“TWUL” means Thames Water Utilities Limited (company number 02366661) whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB;

“traffic regulation measures plan” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

“undertaker” means, subject to articles 9 (benefit of this Order) and 10 (consent to transfer benefit of this Order), Cory Environmental Holdings Limited (company number 05360864) whose registered office is at Level 5, 10 Dominion Street, London, England, EC2M 2EF;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“WRWA” means the Western Riverside Waste Authority of Smugglers Way Transfer Station, Smugglers Way, Wandsworth, London, SW18 1JS;

“WRWA Lease” means the lease between RRRL and WRWA dated 31 July 2008, as amended from time to time;

“WRWA Underlease” means the underlease between WRWA and RRRL dated 31 July 2008, as amended from time to time; and

“works plans” means the plans of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the works plans for the purposes of this Order.

(2) The definitions in paragraph (1) do not apply to the deemed marine licence except where expressly provided for in the deemed marine licence.

(3) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(5) All areas described in square metres in the book of reference are approximate.

(6) References in this Order to numbered works are references to the works numbered in Schedule 1 (authorised development).

(7) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(8) References to “land” include land under water and on the riverbed.

(9) The expression “includes” is to be construed without limitation.

(10) References to any statutory body include any body’s successor in respect of functions which are relevant to this Order.

(11) References in this Order to “part of the authorised development” means all or part of any numbered work.

Electronic communications

3.—(1) In this Order—

- (a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form; and
- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (2) and “written” and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission; and
- (b) the communication is—
 - (i) capable of being assessed by the recipient;
 - (ii) legible in all material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.

(3) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than seven days after the date on which the notice is given.

PART 2

WORK PROVISIONS

Principal powers

Development consent granted by the Order

4.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out and to be decommissioned within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

Maintenance of authorised development

5.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of the authorised development

6.—(1) The undertaker is authorised to operate the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of the authorised development.

Disapplication of legislative provisions

7.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

- (a) Part V(b) (control of works and dredging) of the 1968 Act;

- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (c) section 32 (variation of awards) of the Land Drainage Act 1991(b);
- (d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(c);
- (e) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(d);
- (f) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(e) in respect of a flood risk activity only;
- (g) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- (h) the provisions of the Neighbourhood Planning Act 2017(f) insofar as they relate to temporary possession of land under articles 37 (temporary use of land for carrying out the authorised development) and 38 (temporary use of land for maintaining the authorised development) of this Order.

(2) The disapplication of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 by Schedule 3 (legislation to be disapplied) does not affect the Environment Agency's ability to use the powers vested in it under the Act against any person, other than the undertaker and any other person exercising a power under this Order, provided that the use of those powers vested in the Agency does not interfere with the construction or operation of the authorised development.

Interaction with the 1968 Act

8.—(1) Any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act which includes within its scope the belvedere power station jetty and still having effect immediately before this Order comes into force shall be varied so that from the date of commencement of Work No. 4A, such a licence shall no longer apply to the belvedere power station jetty.

(2) Not later than 30 business days prior to the proposed commencement of Work No. 4A, the undertaker must notify the holder of the BPSJ licence of the works that are intended to be carried out on the belvedere power station jetty and any other existing structures that are the subject of the BPSJ licence and the undertaker must provide a copy of such notice to the PLA.

(3) Not later than 30 business days following the commencement of Work No. 4A, the undertaker must notify the PLA of the date of the commencement of those works.

(4) On each anniversary of the notice given pursuant to paragraph (3), the undertaker must provide an update on the programme for Work No. 4, which must include confirmation of whether any other existing structures that are not the belvedere power station jetty are to be affected by Work No. 4 in the forthcoming year.

(5) Not later than 30 business days following the earlier of—

- (a) the completion of Work No. 4; or

(a) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

(b) Section 32 was amended by S.I. 2013/755.

(c) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).

(d) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(e) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(f) 2017 c. 20.

- (b) a notification being provided under paragraph (4) which indicates that no further works are intended to be undertaken to any other existing structures that are not the belvedere power station jetty,

the undertaker must provide the PLA with such information as the PLA may reasonably require to confirm any changed physical extent or entire removal of those existing structures which are not the belvedere power station jetty and are the subject of the BPSJ licence.

(6) Any works carried out to existing structures which are not the belvedere power station jetty and are the subject of the BPSJ licence shall not constitute a breach of the BPSJ licence.

(7) Within 30 business days of the PLA being notified under paragraph (3), the PLA must issue a new licence to the holder of the BPSJ licence to reflect—

- (a) that the belvedere power station jetty shall no longer form part of the licence;
- (b) any changes to the conditions of the works licence that the PLA considers necessary to meet the requirements of the 1968 Act;
- (c) the PLA's duties under the 1968 Act; and
- (d) sub-paragraphs (9)(e) and (9)(f) shall apply in respect of the new licence.

(8) If a notification under paragraph (5) provides that there has, as a result of Work No. 4, been a change to the physical extent or the entire removal of those existing structures which are not the belvedere power station jetty and are the subject of the BPSJ licence, the PLA must, within 30 business days of the PLA receiving that notification, issue a variation to the licence issued under paragraph (7) to reflect the changes to those structures.

(9) To the extent any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act, other than the BPSJ licence, and still having effect immediately before this Order comes into force includes within its scope existing structures within the limits of deviation of Work No. 4 and which are required to be removed or altered as a result of the carrying out of Work No. 4—

- (a) such works shall not constitute a breach of that works licence;
- (b) the undertaker must notify the holder of that works licence of the works that are intended to be carried out on the existing structures, at least 30 business days before the works on an existing structure are carried out and provide a copy of such notice to the PLA;
- (c) within 30 business days following the completion of the works that are notified to the holder of that works licence under sub-paragraph (b), the undertaker must provide the PLA with such information as the PLA may reasonably require as to the changed physical extent of the existing structures or to confirm the entire removal of those existing structures;
- (d) where existing structures which are the subject of the works licence are not removed in their entirety, whether within or outside the limits of deviation of Work No 4, the PLA must within 30 business days of receipt of the information referred to in sub-paragraph (c) issue a new licence to the holder of the works licence under this paragraph (9) to reflect:
 - (i) the physical changes to the existing structures (including any removals of the entirety of existing structures) that are the subject of the works licence; and
 - (ii) any changes to the conditions of the works licence the PLA considers necessary to reflect the physical changes and to meet the requirements of the 1968 Act and the PLA's duties under it;
- (e) the holder of the works licence for the existing structures in questions shall have the right to appeal the conditions of any new licence issued by the PLA under sub-paragraph (1)(b) of section 69 (appeal to board of trade) of the 1968 Act;
- (f) if within 28 days of the issue of the new licence no appeal has been made to the Department for Transport or, where an appeal has been made from the date that the appeal has been determined —

- (i) the new licence (with any amendments directed by the Department for Transport) shall apply to the changed extent of the remaining existing structures;
- (ii) the existing works licence shall be revoked;
- (iii) the holder of the licence must comply with the conditions of the new licence; and
- (iv) the 1968 Act shall apply to the existing structures and works authorised by the new licence; and
- (g) the undertaker must compensate the holder of the works licence for any reasonable increase to the costs of that licence holder of complying with the conditions of the new works licence, compared to the costs of complying with the works licence that previously applied.

(10) The undertaker must pay the reasonable costs of the PLA in complying with sub-paragraph (7), (8) and (9)(d) and in connection with the PLA's reasonable costs in participating in any appeal under sub-paragraph (1)(b) of section 69 (appeal to board of trade) of the 1968 Act made in connection with a varied or new works licence issued under sub-paragraph (8) or (9), but not sub-paragraph (7).

(11) To the extent that any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act and still having effect immediately before this Order comes into force only includes within its scope existing structures within the limits of deviation of Work No. 4 which are required to be removed in their entirety as a result of the carrying out of Work No. 4—

- (a) sub-paragraphs (9)(a) to (9)(c) shall apply in respect of those existing structures; and
- (b) following the completion of the works to remove those existing structures in their entirety, the relevant works licence shall be extinguished so that such a licence shall no longer apply to those structures and the PLA must within 30 business days of receipt of the information referred to in sub-paragraph (9)(c) issue to the holder of the works licence notice of such extinguishment.

(12) Any existing structure within the limits of deviation for Work No. 4 and for which a works licence no longer subsists as a consequence of paragraph (1) may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 (licensing of works) of the 1968 Act does not apply to the structure.

(13) The PLA must not grant or vary—

- (a) a river works licence under section 66 (licensing of works) of the 1968 Act; or
- (b) a dredging licence under section 73 (licensing of dredging, etc.) of the 1968 Act, or
- (c) if the Port of London Harbour Revision Order is made, a permit to moor under section 66A (permitting or mooring) of the 1968 Act,

licensing any works or dredging or permitting of mooring within—

- (d) at any time, the limits of deviation for Work Nos. 4A or 4B; and
- (e) within the area of dredging within the limits of deviation of Work No. 4C that is approved by the PLA under Part 5 of Schedule 12 from the date that such approval is given by the PLA;

without the consent of the undertaker such consent not to be unreasonably withheld or delayed and in any event such consent or refusal must be issued to the PLA no longer than 65 days from the date of the PLA notifying the undertaker that it has received an application for a river works licence under section 66 (licensing of works) of the 1968 Act, a dredging licence under section 73 (licensing of dredging, etc.) of the 1968 Act, or if the Port of London Harbour Revision Order is made, a mooring permit under section 66A (permitting of mooring) of the 1968 Act, to which this sub-paragraph applies.

(14) Paragraph (13) does not apply to the authorised navigational channel of the river Thames.

(15) Despite the provisions of section 66(1)(b) of the 1968 Act, the grant or variation by the PLA of a river works licence in relation to any part of the river Thames situated within the limits of deviation for Work No. 4 belonging to the PLA and in respect of which the undertaker has a

proprietary interest is not, without the consent of the undertaker, to be deemed to confer on the holder of the licence such rights in, under or over the land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.

(16) The undertaker must not unreasonably withhold or delay its consent under paragraph (13) or paragraph (15) but may require reasonable modifications to the proposed works or dredging or mooring or impose reasonable conditions on them, and in considering whether to grant consent, require modifications or impose conditions the undertaker must have regard only to the matters mentioned in paragraph (17).

(17) The matters referred to in paragraph (16) are the prevention of significant interference with—

- (a) the works comprising the authorised development within the limits of deviation for Work Nos. 4A or 4B or dredging within those limits of deviation;
- (b) the area of dredging within the limits of deviation of Work No. 4C that is approved by the PLA under Part 5 of Schedule 12;
- (c) access to and egress from those works or area of dredging; or
- (d) the use of and access to and egress from any other existing structures within the Order limits.

(18) If the undertaker—

- (a) in refusing consent under paragraph (13) necessitates the PLA having to refuse a licence application from a third party; or
- (b) requires modification or imposes conditions under paragraph (16), which the PLA then places onto a licence granted to a third party;

section 69 of the 1968 Act (appeal to board of trade) does not apply to that refusal, modification or imposition of conditions.

(19) Any exclusion zone established pursuant to paragraph 17.1(a) of the PLA General Directions (or any equivalent provision in any replacement of those directions) within the Order limits, or established pursuant to paragraph 17.1(b) of PLA General Directions (or any equivalent provision in any replacement of those directions) in respect of an applicable vessel berthed at the jetty constructed as part of Work No. 4B, shall not apply to vessels, tugs or barges transiting to or from the Middleton Jetty or any structures constructed as part of Work No. 4B for—

- (a) operational reasons to transit to or from vessels, mooring or berths within that exclusion zone;
- (b) to undertake works or dredging consented by the PLA under the 1968 Act; or
- (c) for navigational safety or emergency reasons.

(20) In this article “BPJS licence” means the licence referred to by paragraph (1).

Benefit of this Order

9.—(1) Subject to paragraphs (2) and (3) and article 10 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) In respect of Work No. 2, the provisions of the Order have effect for the benefit of the undertaker and REPL and RRRL.

(3) In respect of Work Nos. 1E(iv) to (vi), 2A(i) to (ii), and 3(b), the provisions of this Order have effect for the benefit of the undertaker and a company operating a relevant heat network as defined by section 216 (relevant heat network) of the Energy Act 2023(a).

(a) 2023 c. 52.

Consent to transfer benefit of the Order

10.—(1) Except where paragraph (6) applies, the undertaker or, where relevant, the other parties listed in article 9 (benefit of this Order) may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) all or any part of the benefit of the provisions of this Order (including any part of the authorised development but excluding the deemed marine licence referred to in paragraph (2) below) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”), for a period agreed between the undertaker and the lessee, all or any part of the benefit of the provisions of this Order (including any part of the authorised development, but excluding the deemed marine licence referred to in paragraph (2) below) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) The undertaker may with the consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph 10(1)(a), transfer to the transferee the whole of the deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph 10(1)(b), grant to the lessee the whole of the deemed marine licence and such related statutory rights as may be so agreed.

(3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or any part of the benefit of the provisions of a deemed marine licence and must consult the PLA before giving consent to the transfer or grant to another person of the whole or any part of the benefit of Work No. 4.

(4) Where an agreement has been made in accordance with paragraph (1), (2) or (6) references in this Order to the undertaker, except paragraph (5), include references to the transferee or the lessee.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) This paragraph applies where—

- (a) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989(a);
- (b) in respect of Work Nos. 1D and 4B only, the transferee or lessee holds a licence under section 7 (power to grant licences) of the Energy Act 2023(b);
- (c) the transferee or lessee is a holding company, associated company or subsidiary of the undertaker;
- (d) in relation to a transfer or lease of any works within a highway, the transferee or lessee is a highway authority responsible for the highways within the Order limits; or
- (e) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any claims made;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(a) 1989, c. 29.

(b) 2023, c. 52.

(7) Where paragraph (6) applies, the undertaker, or, where relevant, the other parties listed in article 9, must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1) but such transfer does not require the Secretary of State's consent.

(8) The notification referred to in paragraph (7) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (9), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (5), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of five business days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(11) The undertaker must, within 10 business days after entering into an agreement under paragraph (1), (2) or (6) in relation to which any of the benefit of the deemed marine licence or Work No. 4 is to be transferred to another party, notify the Environment Agency, the PLA, and the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1), (2) or (6) and details of the extent, nature and scope of the functions to be transferred or otherwise dealt with which relate to the functions of any of those bodies.

Guarantees in respect of payment of compensation

11.—(1) The undertaker must not begin to exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 28 (compulsory acquisition of land);
- (b) article 30 (compulsory acquisition of rights);
- (c) article 32 (private rights);
- (d) article 37 (temporary use of land for carrying out the authorised development);
- (e) article 38 (temporary use of land for maintaining the authorised development); and
- (f) article 39 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

(5) The guarantee or alternative form of security to be provided pursuant to paragraph (1) does not apply to the exercise of the provisions referred to in paragraph (2) in, on or under any street.

Application of the permit scheme

12.—(1) The permit scheme must, in relation to streets which are subject to the permit scheme, be used by the undertaker in connection with works sought to be undertaken pursuant to the exercise of the following powers, or in the exercise of such powers—

- (a) article 13 (street works);
- (b) article 14 (power to alter layout, etc., of streets);
- (c) article 18(1)(b) (access to the authorised development); and
- (d) article 20 (traffic regulation measures).

(2) Where sub-paragraph (1) applies—

- (a) a permit application in relation to those works may not be refused or granted under the permit scheme subject to conditions which relate to the imposition of moratoria; and
- (b) a permit in relation to those works may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order, the terms of any consent, agreement or approval granted under the terms of this Order, or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(3) References to moratoria in paragraph (2) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(4) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit scheme, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Schedule 14 of this Order.

Street works

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the street specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraph (a), (b), (c) or (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

14.—(1) The undertaker may, for the purposes of the authorised development, temporarily or permanently alter the layout of or construct any works in the street as specified in column (2) of Part 1 (permanent or temporary alteration of layout) of Schedule 5 (streets subject to permanent or temporary alteration of layout) in the manner specified in relation to that street in column (3) of that Part of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of the authorised development alter the layout of any street and, without limiting the scope of this paragraph—

- (a) temporarily or permanently alter the layout of or construct any works in the street as specified in column (2) of Part 2 (permanent or temporary alteration of layout) of Schedule 5 (streets subject to permanent or temporary alteration of layout) in the manner specified in relation to that street in column (3) of that Part of that Schedule;
- (b) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (c) alter, remove, modify and restore street furniture;
- (d) trim vegetation in the street; and
- (e) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraphs (1) and (2) must not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Permanent stopping up of specified street and private means of access

15.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, permanently stop up—

- (a) the street shown on the access and rights of way plan and specified in column (3) of Part 1 (street to be permanently stopped up for which a substitute is to be provided) of Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access); and
- (b) the private means of access shown on the access and rights of way plan and specified in column (3) of Part 2 (private means of access to be permanently stopped up for which a substitute is to be provided) of Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access).

(2) The street in column (3) of Part 1 (street to be permanently stopped up for which a substitute is to be provided) of Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access) must not be permanently stopped up unless the new street to be constructed and substituted for it, which is specified in column (4) of Part 1 (street to be permanently stopped up for which a substitute is to be provided) of Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access) is open for use.

(3) The private means of access shown on the access and rights of way plan and specified in column (3) of Part 2 (private means of access to be permanently stopped up for which a substitute is to be provided) of Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access) must not be permanently stopped up unless the new private means of access to be constructed and substituted for it, which is specified in column (4) of Part 2 (private means of access to be permanently stopped up for which a substitute is to be provided) of Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access) is open for use.

(4) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the side of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(5) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article is subject to article 40 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way

16.—(1) The undertaker may for the purposes of the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons or traffic from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may—

- (a) temporarily alter, divert, prohibit the use of or restrict the use of the streets or public rights of way specified in columns (1) and (2) of Part 1 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way) of Schedule 7 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way) to the extent specified in column (3) of that Schedule; and
- (b) authorise the temporary use of motor vehicles on the public rights of way specified in column (2) of the table in Part 2 (temporary use of motor vehicles on public right of way) of Schedule 7 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way) to the extent specified in column 3 of that table.

(5) Paragraph (4)(b), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the Road Traffic Act 1988(a).

(6) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any public right of way specified in paragraph (4) without—
 - (i) in relation to the construction of the authorised development only, a code of construction practice for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 7 (code of construction practice); and
 - (ii) in relation to the decommissioning of the authorised development only, a decommissioning environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 23 (decommissioning environmental management plan); and
- (b) any other street without the consent of the street authority.

(a) 1988 c. 52.

(7) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) In this article expressions used in this article and in the 1984 Act have the same meaning.

Permanent closure and diversion of, and creation of new public rights of way and authorising vehicular use on public rights of way

17.—(1) Subject to paragraph (2) the undertaker may, for the purposes of the authorised development, permanently stop up public footpath 2 within the London Borough of Bexley between the points L and H on the access and rights of way plan.

(2) The undertaker must not permanently stop up the public right of way referred to in paragraph (1) until—

- (a) the relevant highway authority has agreed the route for a substitute footpath between points H and L on the access and rights of way plan;
- (b) the landscape, biodiversity, access and recreation delivery strategy which relates to the land on which the substitute public rights of way is to be provided has been approved under requirement 12 (landscape, biodiversity, access and recreation delivery strategy); and
- (c) the undertaker has provided a substitute public right of way along the route agreed by the relevant highway authority under sub-paragraph (a).

(3) The undertaker may, in connection with the authorised development, construct new public footpaths—

- (a) between points B and D on the access and rights of way plan; and
- (b) between points L and M on the access and rights of way plan.

(4) The undertaker must not exercise the powers in paragraph (3) until the landscape, biodiversity, access and recreation delivery strategy which relates to the land on which the substitute public rights of way is to be provided has been approved under requirement 12 (landscape, biodiversity, access and recreation delivery strategy).

(5) The undertaker may authorise the use of motor vehicles on—

- (a) the current route of footpath 2 between points H and L on the access and rights of way plan;
- (b) the diverted route of footpath 2 between points H and L on the access and rights of way plan created under paragraph (2);
- (c) any public footpath created under paragraph (3);
- (d) footpath 1 in the London Borough of Bexley between points M and S on the access and rights of way plan;
- (e) footpath 2 in the London Borough of Bexley between points H and S and between points R and H on the access and rights of way plan;
- (f) footpath 3 in the London Borough of Bexley between points A and T on the access and rights of way plan; and
- (g) footpath 4 in the London Borough of Bexley between points C and F on the access and rights of way plan.

(6) Paragraph (5), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the Road Traffic Act 1988.

(7) Following the opening for public use of a public right of way that has been constructed, permanently altered or permanently diverted under the powers conferred by this Order, the undertaker must supply the surveying authority with plans showing that public right of way as constructed, permanently altered or permanently diverted together with a statement of the modifications required to the definitive map and statement.

(8) The plans and statement of modifications to the definitive statement referred to in paragraph (7) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981.

(9) In this article—

- (a) “definitive map and statement” has the meaning given to it by section 53(1) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981; and
- (b) “surveying authority” has the meaning given to it by section 66(1) (interpretation of Part III)(b) of the Wildlife and Countryside Act 1981.

Access to the authorised development

18.—(1) The undertaker may for the purposes of the authorised development—

- (a) with the approval of the highway authority, form and layout temporary and permanent means of access from Norman Road in the London Borough of Bexley between the points E and K on the access and rights of way plan; and
- (b) with the approval of the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations as the undertaker reasonably requires for the purposes of the authorised development, including from Norman Road in the London Borough of Bexley between points K and O on the access and rights of way plan.

(2) The undertaker may for the purposes of the authorised development—

- (a) utilise the temporary or permanent means of access from the public highway constructed under the REP Order; and
- (b) utilise the temporary means of access from the public highway constructed under the REP Order as permanent means of access for the authorised development.

(3) Prior to the commissioning of Work No. 1, the undertaker must notify the relevant planning authority and the relevant highway authority if it intends to utilise the power in paragraph (2)(b).

(4) Where paragraph (2) applies, the REP Order undertaker shall not be required to—

- (a) remove temporary accesses from the public highway created under the REP Order that are being utilised during the construction of the authorised development or, after construction, are to be used as permanent means of access by the undertaker; or
- (b) restore any alterations to the layout to streets that were undertaken to facilitate the creation of temporary access from the public highway under the REP Order that are being utilised during the construction of the authorised development or, after construction are to be used as permanent means of access by the undertaker; and
- (c) it shall not be considered to be a breach of the terms of the REP Order if such temporary accesses are not removed and alterations to streets are not restored.

(5) For the purposes of this article “the REP Order undertaker” means the undertaker as defined by article 2 (interpretation) of the REP Order.

Agreements with street authorities

19.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;

(a) Section 53 was amended by Schedule 5 to the Countryside and Rights of Way Act 2000 (c. 37) and by section 70(1) of the Natural Environment and Rural Communities Act 2006 (c. 16).

(b) Section 66 was amended by sections 1, 2 and 7 of, and paragraph 7(6) of Schedule 3 to, the Local Government Act 1985. There are other amendments to this section that are not relevant to this Order.

- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
 - (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order;
 - (e) the construction in the street of any of the authorised development; or
 - (f) any such works as the parties may agree.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

20.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of the authorised development, or in connection with the authorised development—

- (a) make provision in respect of the length of Norman Road in the London Borough of Bexley hatched red and black between points A and B on the traffic regulation measures plan, and the length of the A2016 Picardy Manorway in the London Borough of Bexley hatched red and black between points B and C on the traffic regulation measures plan, imposing a temporary speed limit of 10 miles per hour;
- (b) make provision in respect of the length of Norman Road in the London Borough of Bexley hatched red and black between points A and B on the traffic regulation measures plan, and the length of A2016 Picardy Manorway in the London Borough of Bexley hatched red and black between points B and D on the traffic regulation measures plan temporarily closing the road;
- (c) put in place temporary pedestrian crossings at any point on the length of Norman Road in the London Borough of Bexley hatched red and black between points A and B on the traffic regulation measures plan, and the length of A2016 Picardy Manorway in the London Borough of Bexley hatched red and black between points B and D on the traffic regulation measures plan; and
- (d) temporarily place traffic signs and signals in and adjacent to the extents of Norman Road in the London Borough of Bexley hatched red and black between points A and B on the traffic regulation measures plan, and the extents of A2016 Picardy Manorway in the London Borough of Bexley hatched red and black between points B and D on the traffic regulation measures plan, and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a), including, notwithstanding article 4 (development consent granted by the Order), locations outside of the Order limits.

(2) Subject to the provisions of this article and without limitation to the exercise of the power conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;

(a) S.I. 2016/362.

- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road;
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act; and
- (f) temporarily place traffic signs and signals in or adjacent to a street and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a), including, notwithstanding article 4 (development consent granted by the Order), locations outside of the Order limits.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(b) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers in paragraph (1) or (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the traffic authority in whose area the road is situated;
- (b) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated; and
- (c) either—
 - (i) in relation to the construction of the authorised development only, have first obtained approval under requirement 9 (construction traffic management plan) for a construction traffic management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised; or
 - (ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 24 (decommissioning environmental management plan) for a decommissioning environmental management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraph (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraph (1) or (2)—

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004^(c).

^(a) S.I. 2016/362.

^(b) S.I. 2011/935.

^(c) 2004 c. 18. There are amendments to this Act not relevant to this Order.

(8) In this article—

- (a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

Supplementary powers

Discharge of water

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

(a) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c. 37).

(b) 1964 c. 40.

(c) 1991 c. 57 as amended by S.I. 2009/3104.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act^(a).

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Protective works to buildings

23.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or
- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage.

(a) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(4) For the purpose of carrying out protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building or structure and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works under this article to a building or structure;
- (b) a power under paragraph (3) to enter a building or structure and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter and take possession of land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building, structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 7 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 49 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out to a building or structure under this article; and
- (b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building or structure for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development.

Felling or lopping of trees

24.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Works in the river Thames: conditions

25.—(1) Subject to the provisions of this article, during the construction of the authorised development the public right of navigation over any part of the river Thames that is situated within the Order limits may be temporarily suspended by the undertaker with the written approval of the PLA.

(2) Not later than 28 business days prior to the proposed commencement date of any suspension of the public right of navigation, the undertaker must apply to the PLA for approval under paragraph (1) for such suspension (except in the case of an emergency when the undertaker must give such notice as is reasonably practicable).

(3) An application for approval under paragraph (2) must provide details of the proposed suspension, including particulars of—

- (a) its commencement date;
- (b) its duration; and
- (c) the affected area,

and must include an explanation of the need for the proposed suspension.

(4) The PLA may in relation to any application for approval made under paragraph (2) impose reasonable conditions for any purpose described in paragraph (5).

(5) Conditions imposed under paragraph (4) may include conditions as to—

- (a) the limits of any area subject to a temporary suspension of the public right of navigation;
- (b) the duration of any temporary suspension;
- (c) the means of marking or otherwise providing warning in the river Thames of any area affected by a temporary suspension of the public right of navigation; and
- (d) the use by the undertaker of the area subject to any temporary suspension so as not to interfere with any other part of the river Thames or affect its use.

(6) Following an approval of any suspension given by the PLA under this article or determined in accordance with article 49 (arbitration), the PLA must issue a notice to mariners within 12 business days of the approval, giving the commencement date and other particulars of the suspension to which the approval relates, and that suspension will take effect on the date specified and as otherwise described in the notice.

(7) Subject to paragraph (8), an application for approval under this article is deemed to have been refused if it is neither given nor refused within 28 business days of the PLA receiving the application under paragraph (2).

(8) An approval of the PLA under this article is not deemed to have been unreasonably withheld or delayed, if approval within the time limited by paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(9) Notwithstanding sub-paragraphs (1) to (8), construction of the authorised development must be carried out so that—

- (a) the suspension of the public right of navigation applies to no more of the river than is necessary in the circumstances;
- (b) all reasonable steps are taken to secure that the period of suspension is kept to a minimum; and
- (c) that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part where the public right of navigation is so suspended.

(10) Except in the case of an emergency, the undertaker must notify the owner of any mooring and the owner or master of any vessel or structure likely to be materially affected by any proposal to exercise the powers conferred by this Order at least 35 days before the exercise of those powers.

(11) If—

- (a) by reason of the exercise of the powers conferred by this Order it is reasonably necessary for the owner of any mooring to incur costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating that mooring, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the owner of the mooring in question gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and acting reasonably takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the owner of that mooring.

(12) A person may not without the consent in writing of the undertaker (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, any work constructed or used in connection with the authorised development; or
- (b) remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the authorised development.

Oversailing rights

26.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction, operation, maintenance or decommissioning of the authorised development, oversail any booms, cranes and similar or associated plant or machinery over land within, or adjacent to, the Order limits (whether or not such adjacent land is inside or outside the Order limits).

(2) At least 14 days before oversailing any land that is not within the Order limits, the undertaker must serve notice of the intended oversailing on the owners and occupiers of the land and such notice must set out—

- (a) the proposed duration of the oversailing;
- (b) the proposed hours of use of the equipment that is intended to oversail the land; and
- (c) a map of the location of the works which require the oversail, including the area of oversail.

(3) No oversailing of any land that is within the highway may take place until—

- (a) in relation to the construction of the authorised development only, a code of construction practice for the part of the authorised development for which the oversailing is required first having been approved under requirement 7 (code of construction practice); and
- (b) in relation to the decommissioning of the authorised development only, a decommissioning environmental management plan for the phase of the authorised development for which the oversailing is required first having been approved under requirement 23 (decommissioning environmental management plan).

(4) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

Power to dredge

27.—(1) The undertaker may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the limits of deviation for Work No. 4 as may be required for the purpose of maintaining and operating the authorised development.

(2) All materials dredged up or removed by the undertaker in exercise of the powers of paragraph (1) of this article or under Schedule 1 (authorised development) to this Order (other than wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995^(a)) are to be the property of the undertaker and may be used, sold, deposited or otherwise disposed of as the undertaker thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from—

- (a) the MMO under any the deemed marine licence in Schedule 11 (deemed marine licence); and
- (b) the PLA under Part 5 of Schedule 12 (protective provisions) where such disposal is on the bed of the river Thames.

(4) The exercise of the powers of this article is subject to the requirements of Part 5 of Schedule 12 (protective provisions) as to the PLA's approval of dredging proposals and the payment of compensation for dredged material.

(5) In respect of any activities falling within paragraph (1), this Order is deemed to be legislation falling within section 75(3) (exemptions for certain dredging etc. activities) of the 2009 Act.

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

28.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents (including restrictive covenants) to which it was previously subject.

(3) This article is subject to article 30 (compulsory acquisition of rights), article 31 (acquisition of subsoil or airspace only) and article 37 (temporary use of land for carrying out the authorised development).

(a) 1995 c. 21.

Time limit for exercise of authority to acquire land compulsorily

29.—(1) After the end of the period of seven years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 34 (application of the 1981 Act).

(2) The authority conferred by article 37 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

30.—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 28 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over land and the creation and acquisition of such new rights and the imposition of such new restrictive covenants as are specified in column (2) of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) and section 12 (divided land) of the 1981 Act, where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant, under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) The Secretary of State's consent under paragraph (5) is not required for those statutory undertakers referenced in article 9 (benefit of this Order).

(8) Subject to the modifications set out in Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 28 (compulsory acquisition of land) and paragraphs (1) and (2) of article 30 (compulsory acquisition of rights) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

Private rights

32.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are suspended and unenforceable or, where the owner of such rights or the person have the benefit of such restrictive covenants is notified by the undertaker, extinguished, in so far as the continuance of the right or the burden of the restrictive covenant would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) as from the date of acquisition of the right or imposition of the restriction by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or the imposition of a restrictive covenant under this Order is entitled to compensation to be determined,

in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Regardless of any other provision in this Order or anything shown on the land plans or contained in the book of reference—

- (a) this article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 39 (statutory undertakers) applies; and
- (b) paragraph (1) of this article does not apply to any contractual rights, private rights and restrictive covenants owned or held by the undertaker, REPL, RRRL or WRWA unless otherwise agreed by those parties, such agreement not to be unreasonably withheld or delayed by those parties, acting in good faith and having regard to the ability of the undertaker to construct the authorised development in a timely and cost-effective manner.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,

stating that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

33.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
 - (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.
- (5) Where a person deriving title under the undertaker by whom the land in question was acquired—
- (a) is liable to pay compensation by virtue of paragraph (4); and
 - (b) fails to discharge that liability,
- the liability is enforceable against the undertaker.
- (6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Application of the 1981 Act

- 34.—**(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(a) (time limit for general vesting declaration).
- (6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the seven year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the Cory Decarbonisation Project Order”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 31 (acquisition of subsoil or airspace only) of the Cory Decarbonisation Project Order, which excludes the acquisition of subsoil or airspace only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 35 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

(a) Inserted by section 182(2) of The Housing and Planning Act 2016.

(b) Inserted by section 202(2) of The Housing and Planning Act 2016.

(c) Inserted by paragraph 6 of Schedule 18 of The Housing and Planning Act 2016.

Modification of Part 1 of the 1965 Act

35.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the seven year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the Cory Decarbonisation Project Order”.

(3) In section 11A(b) (powers of entry: further notices of entry)—

(a) in subsection (1)(a) after “land” insert “under that provision”; and

(b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 29 (time limit for exercise of authority to acquire land compulsorily) of the Cory Decarbonisation Project Order”.

(5) In Schedule 2A(c) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Cory Decarbonisation Project Order, which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 23 (protective works to buildings) or article 37 (temporary use of land for carrying out the authorised development) or article 38 (temporary use of land for maintaining the authorised development) of the Cory Decarbonisation Project Order.”.

Rights under or over streets

36.—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(a) Inserted by section 202(1) of the Housing and Planning Act 2016.

(b) Inserted by section 186(3) of the Housing and Planning Act 2016.

(c) Inserted by schedule 17(1) paragraph 3 of the Housing and Planning Act 2016.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for carrying out the authorised development

37.—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in columns (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purposes specified in relation to that land in column (2) of the table in that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works, including the provision of means of access, and buildings on that land; and
- (d) construct any works, including mitigation works, as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building or any debris removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate the authorised development; or

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired) under article 30 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil or the airspace of any part of the Order land under article 31 (acquisition of subsoil or airspace only) or the subsoil of any part of the Order limits under article 36 (rights under or over streets).

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10 (land of which temporary possession may be taken).

Temporary use of land for maintaining the authorised development

38.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning.

Supplementary

Statutory undertakers

39. Subject to the provisions of article 30(2) (compulsory acquisition of rights) and Schedule 12 (protective provisions), the undertaker may—

- (a) exercise the powers conferred by article 28 (compulsory acquisition of land) and article 31 (acquisition of subsoil or airspace only) in relation to so much of the Order land as belongs to statutory undertakers;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

40. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 13 (street works), article 14 (power to alter layout, etc., of streets), or article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

41.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 39 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 39 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 40 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 4

MISCELLANEOUS AND GENERAL

Deemed marine licence

42.—(1) The marine licence set out in Schedule 11 (deemed marine licence) is deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 2, and subject to the condition set out in Part 3, of the licence.

(2) Any decision made by the MMO under conditions 29(2)(b) and 29(2)(c) of Schedule 11 (deemed marine licence) is deemed to be a decision able to be appealed under the Marine Licensing (Licence Application Appeals) Regulations 2011(b).

Application of landlord and tenant law

43.—(1) This article applies to any agreement entered into by the undertaker under article 10 (consent to transfer benefit of the Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

(a) 2003 c. 21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210.

(b) S.I. 2011/934.

Defence to proceedings in respect of statutory nuisance

44.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974^(b) or a code of construction practice approved under requirement 7 (code of construction practice); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

45. Schedule 12 (protective provisions) has effect.

Certification of plans etc.

46.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 13 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

47.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

^(a) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

^(b) 1974 c. 40.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedures in relation to certain approvals etc.

48.—(1) Subject to paragraph (2), Schedule 14 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals required or contemplated by any provisions of this Order, including:

- (a) consent, agreement or approval in respect of part of a requirement;
- (b) any consent, agreement or approval required by any of the documents listed in Schedule 13 (documents and plans to be certified);
- (c) documents approved pursuant to a requirement; or

(a) 1978 c. 30.

- (d) consent sought under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974.

(2) Schedule 14 (procedure in relation to certain approvals etc.) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 12 (protective provisions), any approvals required under the deemed marine licence contained in Schedule 11 (deemed marine licence) or any dispute under article 23(6) (protective works to buildings) or article 32(6)(b) (private rights).

(3) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

Arbitration

49.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 15 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not subject to arbitration.

Crossness Local Nature Reserve

50.—(1) The undertaker must notify the relevant planning authority when it has completed the carrying out of Work No. 7 no later than 20 business days after that Work is completed.

(2) From the date of the notice given under paragraph (1)—

- (a) all of the crossness local nature reserve as extended shall be a nature reserve for the purposes of section 21 (establishment of nature reserves by local authorities) of the National Parks and Access to the Countryside Act 1949(a);
- (b) any existing nature reserve designation and associated bylaws applying at that time to any of the crossness local nature reserve as extended shall no longer apply to that land;
- (c) clause 4 of the 1994 agreement shall be abrogated in its entirety; and
- (d) clause 24 of the 2005 agreement shall be abrogated in its entirety.

(3) The carrying out of the authorised development on the crossness local nature reserve as extended shall not constitute a breach of—

- (a) the 1994 agreement;
- (b) the 2005 agreement; or
- (c) planning permission numbers 91/1318U, 02/03373/OUTEA, 07/08166/FULM, 08/01834/FUL, 10/00063/OUTEA and 10/00063/OUTEA13 granted by the London Borough of Bexley.

Planning permission, etc.

51.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a development for which development consent is required under the 2008 Act or part of such a development; or
- (b) required to complete or enable the maintenance, use or operation of any part of the development authorised by this Order,

(a) 1949, c. 97.

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(2) Development consent granted by this Order is to be deemed as specific planning permission for the purposes of section 264(3) (cases in which land is not to be treated as operational land for the purposes of that Act) of the 1990 Act.

(3) To the extent that any development carried out or used—

- (a) pursuant to a planning permission granted under section 57 (requirement of planning permission) or section 73 (determination of applications to develop land without compliance with conditions previously attached) of the 1990 Act, including if changed by a determination by the local planning authority under section 96A (power to make non-material changes to planning permission or permission in principles) of the 1990 Act, or compliance with any conditions of that permission; or
- (b) pursuant to any development consent order granted under section 114 (grant or refusal of development consent) of the 2008 Act, including any corrections or amendments to that development order made under section 119 (correction of errors in development consent decisions) or section 153 (changes to, and revocation of, orders granting development consent) of the 2008 Act, or compliance with the terms of that development consent order; or
- (c) pursuant to a consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the 1989 Act, including any variation to that consent made under section 36C (variation of consents under section 36) of that Act,

is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

- (d) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission or development consent order is capable of physical implementation; and
- (e) in respect of that inconsistency, no enforcement action under the 1989 Act, 1990 Act or the 2008 Act may be taken, whether that inconsistency relates to land inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of any permission falling under paragraphs (1) or (3) is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Any works carried out under this Order are deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act for the purposes of section 9(a) (requirement of licence for felling) of the Forestry Act 1967.

(6) Any works carried out this Order are deemed to be work requiring development consent under section 31 of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010(b).

(7) In paragraph (3), “enforcement action” means any enforcing action under Part 7 (enforcement) of the 1990 Act or Part 8 of the 2008 Act, as relevant.

No double recovery

52. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

(a) 1967 c. 10. Relevant amendments to section 9 have been made by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(b) 2010 c. 219.

Byelaws relating to the Crossness Nature Reserve

53.—(1) Following the discharge of requirement 12 (Landscape Biodiversity Access and Recreation Delivery Strategy) in Schedule 2 (requirements) and following consultation with the undertaker and TWUL, London Borough of Bexley may make byelaws regulating—

- (a) the maintenance of order in the Crossness Nature Reserve; and
- (b) the conduct of persons in the Crossness Nature Reserve.

(2) Byelaws made under paragraph (1) must not prevent, prohibit or restrict the construction, maintenance, operation or decommissioning of the authorised development.

(3) London Borough of Bexley may vary or revoke any byelaws made by the undertaker under paragraph (1).

(4) Subject to paragraph (5), the provisions of subsection 236(3) to (8), and (11) (procedure, etc., for byelaws) of the Local Government Act 1972 apply in relation to byelaws made by London Borough of Bexley under paragraph (1).

(5) London Borough of Bexley may make byelaws under paragraph (1) in accordance with the procedure in the Byelaws (Alternative Procedure) (England) Regulations 2016 as if those regulations applied to the making and revoking of byelaws under this article.

(6) Byelaws made under this article are enforceable by the London Borough of Bexley and any authorised person.

(7) A person who breaches a byelaw made under this article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Fixed penalty notices relating to byelaws

54.—(1) This article applies where it appears to an authorised person that a person has committed an offence under byelaws made under article 53 (byelaws relating to the Crossness Nature Reserve).

(2) The authorised person may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and
- (b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

- (a) the amount of the fixed penalty;
- (b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;
- (c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and
- (d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.

(5) The amount of the fixed penalty is—

- (a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or
- (b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.

(6) An authorised person may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the

standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.

(7) Payment of the deposit must be paid by such means as the undertaker may specify on its website as being acceptable.

(8) London Borough of Bexley must apply the deposit towards payment of the fixed penalty.

(9) In any proceedings a certificate which—

(a) purports to be signed on behalf of an officer of the undertaker; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

Signed by the authority of the Secretary of State for Energy Security and Net Zero

Address

Date

Signature

Title

Department for Energy Security and Net Zero

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the London Borough of Bexley a project of national significance as defined in sections 14(1)(a) and 15, and development which is to be treated as development for which development consent is required by direction under sections 35(1) and 35ZA of the 2008 Act, and associated development under section 115(1)(b) of that Act, comprising—

Work No. 1 – a carbon capture facility, including—

- (a) Work No. 1A – up to two carbon capture plant(s) including—
 - (i) up to two flue gas pre-treatment system(s) including direct contact cooler(s);
 - (ii) up to two filtration and reclamation system(s);
 - (iii) up to two back pressure turbine(s) and generator(s);
 - (iv) up to two solvent regeneration system(s);
 - (v) up to two solvent heat exchanger system(s);
 - (vi) solvent storage;
 - (vii) up to two continuous emissions monitoring system(s);
 - (viii) up to two regenerator column(s); and
 - (ix) retaining walls and sheet pile walls.
- (b) Work No. 1B – up to two combined absorber column(s) and stack(s) or a maximum of two absorber column(s) and two stack(s), including—
 - (i) up to two flue gas treatment plant(s);
- (c) Work No. 1C – up to two carbon dioxide processing plant(s), including—
 - (i) up to two carbon dioxide compression unit(s);
 - (ii) up to two carbon dioxide dehydration unit(s);
 - (iii) up to two carbon dioxide liquefaction unit(s) and deoxidation;
 - (iv) up to two carbon dioxide vent(s); and
 - (v) chemical storage and distribution handling facilities.
- (d) Work No. 1D – liquid carbon dioxide (LCO₂) buffer storage area, including—
 - (i) modular storage vessels;
 - (ii) boil-off gas processing; and
 - (iii) carbon dioxide vent(s).
- (e) Work No. 1E – supporting plant relating to the operation of the carbon capture facility, including—
 - (i) heat transfer system;
 - (ii) combined cooling system;
 - (iii) flue gas supply ductwork;
 - (iv) heat offtake infrastructure;
 - (v) heat transfer station;
 - (vi) heat pipework;
 - (vii) process steam and condensate pipework;

- (viii) chemical storage and distribution handling facilities;
- (ix) water treatment plant with process water supply;
- (x) wastewater treatment plant;
- (xi) gatehouse, control room, welfare, stores and workshop;
- (xii) hardstanding for car parking;
- (xiii) stream extraction and stream processing;
- (xiv) electrical substations and transformers;
- (xv) water supply storage tank(s);
- (xvi) operational laydown area;
- (xvii) drainage infrastructure; and
- (xviii) retaining walls and sheet pile walls.

Work No. 2 – modification to, and interconnection with, existing generation stations, including—

- (a) Work No. 2A – process steam and condensate connections, and heat offtake infrastructure, including—
 - (i) heat recovery equipment;
 - (ii) insulated heat pipework including connections;
 - (iii) internal and external modification to existing plant, equipment and apparatus; and
 - (iv) modification and diversion of watercourses.
- (b) Work No. 2B – flue gas supply ductwork, including—
 - (i) flues for existing generation station via new ducting;
 - (ii) dampers shut-off valve for flue gas manipulation;
 - (iii) internal and external modification to existing plant, equipment and apparatus; and
 - (iv) modification and diversion of watercourses.
- (c) Work No. 2C – electrical connections including—
 - (i) internal and external modification to existing plant, equipment and apparatus; and
 - (ii) modification and diversion of watercourses.

Work No. 3 – utilities connections and site access works, including—

- (a) water supply pipework;
- (b) foul sewer pipework;
- (c) heat pipework;
- (d) condensate pipework;
- (e) access points from Norman Road to the authorised development;
- (f) electrical, data, optical fibre and telecommunications cables; and
- (g) modification and diversion of watercourses.

Work No. 4 – maritime works, including—

- (a) Work No. 4A – modifications to or removal of the belvedere power station jetty and improvements to the England Coast Path.
- (b) Work No. 4B – a new jetty, including—
 - (i) loading platforms;
 - (ii) piles and fenders;
 - (iii) breasting dolphins;
 - (iv) mooring dolphins;
 - (v) access trestle;

- (vi) access catwalks;
- (vii) staircasing;
- (viii) power supply infrastructure;
- (ix) temporary moorings;
- (x) LCO₂ pipelines including pipelines and supporting infrastructure and equipment, pipe racks, pipe bridges and vapour return arm;
- (xi) topside infrastructure and equipment; and
- (xii) internal and external modifications to existing generating station.
- (c) Work No. 4C – related dredging works within the river Thames for Works No. 4A and 4B including a retaining sheet pile wall and the creation of slopes.

Work No. 5 – above ground LCO₂ Pipelines to Work No. 4, including—

- (a) pipelines and supporting infrastructure and equipment;
- (b) pipe racks and pipe bridges; and
- (c) vapour return arm.

Work No. 6 – temporary construction compounds and laydown areas including contractor facilities, including—

- (a) Work No. 6A – core temporary construction compound including—
 - (i) site offices and staff welfare facilities;
 - (ii) warehouses;
 - (iii) workshops;
 - (iv) laydown areas for storage including materials and plant storage;
 - (v) vehicle parking facilities;
 - (vi) crane mats;
 - (vii) fabrication facilities including site compound and working spaces; and
 - (viii) electrical connections.
- (b) Work No. 6B – western temporary construction compound including—
 - (i) site offices and staff welfare facilities;
 - (ii) warehouses;
 - (iii) workshops;
 - (iv) laydown areas for storage including materials and plant storage;
 - (v) vehicle parking facilities;
 - (vi) crane mats;
 - (vii) fabrication facilities including site compound and working spaces;
 - (viii) facilities to cross watercourse; and
 - (ix) electrical connections.
- (c) Work No. 6C – jetty temporary construction compound including—
 - (i) site offices and staff welfare facilities;
 - (ii) workshops;
 - (iii) laydown areas for storage including materials and plant storage;
 - (iv) vehicle parking facilities;
 - (v) crane mats;
 - (vi) fabrication facilities including site compound and working spaces; and
 - (vii) electrical connections.

Work No. 7 –mitigation and enhancement area and improvements to the existing crossness local nature reserve including—

- (a) raised walkways, footpaths and permissive paths;
- (b) landscape works;
- (c) habitat creation and enhancement;
- (d) planting;
- (e) fencing and gates;
- (f) attenuation ponds, ditches and sluice gates;
- (g) car park and associated pedestrian access;
- (h) creation of new watercourses and crossings;
- (i) improvement, diversion and crossings of existing watercourses;
- (j) signage;
- (k) amenity and education facilities; and
- (l) stable blocks.

Work No. 8 – rerouting of Thames water access road including any associated apparatus or services.

Work No. 9 – protective works to land if required as a result of the authorised development.

Ancillary Works

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any materially new or materially different effects which are worse than those assessed in the environmental statement, consisting of—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including runoff outfalls, SuDs features, channelling, culverting and works to existing drainage systems;
- (b) electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables, flue gas pipework, condensate pipework, water supply pipework, foul water pipework, drains, sewers, heat pipes, LCO₂ pipework, and other apparatus and services, and associated works including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (c) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- (d) relocation or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
- (e) works to install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain street furniture or apparatus (including statutory undertakers' apparatus) and services in, under or above a street, including lights, fencing and other boundary treatments;
- (f) works to facilitate traffic management;
- (g) hardstanding and hard landscaping;
- (h) soft landscaping and habitat creation, including embankments and planting;
- (i) bunds, embankments, trenching and swales;
- (j) biodiversity mitigation, compensation and enhancement measures;
- (k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (l) fencing, gates, boundary treatment and other means of enclosure;

- (m) temporary footpath diversions;
 - (n) external lighting, including lighting columns;
 - (o) closed circuit television cameras and columns and other security measures;
 - (p) site establishment and preparation works, including—
 - (i) site clearance (including vegetation removal, demolition of existing buildings and structures);
 - (ii) earthworks (including soil stripping and storage and site levelling) and excavations;
 - (iii) remediation works;
 - (iv) the creation of temporary construction access points;
 - (v) the alteration of the position of services and utilities; and
 - (vi) works for the protection of buildings and land;
 - (q) temporary construction laydown areas and contractor facilities, including—
 - (i) materials and plant storage and laydown areas;
 - (ii) vehicle and cycle parking facilities;
 - (iii) pedestrian and cycle routes and facilities;
 - (iv) offices and staff welfare facilities;
 - (v) security fencing and gates;
 - (vi) external lighting;
 - (vii) roadways and haul routes;
 - (viii) wheel wash facilities; and
 - (ix) signage;
 - (r) vehicle parking and cycle storage facilities;
 - (s) accesses, roads, ramps and pedestrian and cycle routes and associated signage and information boards;
 - (t) ground investigation works and remedial work in respect of any contamination or other adverse ground conditions, including the installation and monitoring of associated apparatus;
 - (u) works for the benefit or protection of the authorised development;
 - (v) tunnelling, boring, piling and drilling works and management of arisings; and
 - (w) works within the river Thames situated within the Order limits to—
 - (i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);
 - (ii) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
 - (iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
 - (iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
 - (v) remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river;
 - (vi) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams; and
 - (vii) provide lighting, signage and aids to navigation,
- and further ancillary or related development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and

maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

1. In this Schedule—

“ground conditions investigations and assessments strategy” means a strategy setting out the undertaker’s proposals for investigating, assessing, and where necessary, remediating ground conditions, contamination and ground stability matters as they pertain to the part of the authorised development to which the strategy relates, including in respect of—

- (a) unexploded ordnance assessment;
- (b) ground investigations;
- (c) remediation strategies and verification reports;
- (d) piling risk assessment; and
- (e) earthworks and demolition specifications;

“jetty works environmental design scheme” means a scheme setting out—

- (a) the details of the undertaker’s proposals for the carrying out and maintenance of Work No. 4A, including whether the belvedere power station jetty is to be removed or retained with modifications;
- (b) the environmental design measures proposed for Work No. 4A and Work No. 4B, including details of—
 - (i) if the belvedere power station jetty is to be retained, any proposals to make improvements to the belvedere power station jetty to improve its use as an ornithological feature;
 - (ii) if the belvedere power station jetty is to be removed, any proposals for how the piles for the jetty will be cut to enable ecological outcomes; and
 - (iii) in respect of Work No. 4B, the measures proposed at item 4.19 (k) of the mitigation schedule; and
- (c) details of the undertaker’s proposals for environmental measures in the intertidal environment (which may include measures outside of the Order limits or the payment of credits (as appropriate)), and how they will, alongside the measures set out in landscape, biodiversity, access and recreation delivery strategy approved under requirement 12(2) (landscape, biodiversity, access and recreation delivery strategy), contribute to the achievement of a minimum of 10% biodiversity net gain in area habitat units for all of the authorised development;

“mitigation schedule” means the document of that description referred to in Schedule 13 (documents and plans to be certified) certified by the Secretary of State as the mitigation schedule for the purposes of this Order; and

“National Highways” means National Highways Limited (company number 09346363) whose registered office is Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ or any such successor or replacement body that may from time to time be primarily responsible for the functions, duties and responsibilities currently exercised by that statutory body.

Time limit

2. The authorised development must not begin after the expiry of seven years from the date on which this Order comes into force.

Approved details and amendments to them

3.—(1) Subject to sub-paragraph (2), with respect to the documents certified under article 46 (certification of plans etc.), any plans, details or schemes which have been approved pursuant to any requirement and the percentage of any biodiversity net gain units referred to in requirement 12(3)(e) (together the “Approved Documents, Plans, Details or Schemes”), the undertaker may submit to the relevant approving body for approval in writing any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant approving body, the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant approving body that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement.

(3) Sub-paragraph (1) does not apply to the book of reference and the land plans.

(4) For the purposes of this paragraph “the relevant approving body” means—

- (a) for the purposes of all requirements except requirements 17-19;
- (b) for the purposes of requirements 17 (river wall) and 18 (flood risk mitigation), the Environment Agency; and
- (c) for the purpose of requirement 19 (navigation risk assessment), the PLA.

Detailed design

4.—(1) No part of Work No. 1, Work No. 2 (except for internal modifications to existing plant, equipment and apparatus under Work No. 2A(iii), 2B(iii) and 2C(i)) or Work No. 5 may commence until details of the layout, scale and external appearance for those Work Nos. have been submitted to and approved by the relevant planning authority in writing.

(2) Subject to sub-paragraph (4), the authorised development must be designed and constructed in accordance with the design parameters in Schedule 16 (design parameters) and item 1.12(a) of the mitigation schedule.

(3) The authorised development must be designed and constructed in accordance with the design principles and design code and the details submitted under sub-paragraph (1) must include a statement to confirm both how the design principles and design code have been complied with, and how the advice and recommendations of an independent design review process have been taken into account, in the details that have been submitted.

(4) Any part of the authorised development may be designed and constructed to deviate from the design parameters set out in Schedule 16 (design parameters) if the undertaker has first sought and obtained approval for such deviations from the relevant planning authority prior to the commencement of that part of the authorised development.

(5) The relevant planning authority—

- (a) may only give approval under sub-paragraph (4) if the undertaker has demonstrated to the relevant planning authority’s satisfaction that that the proposed deviation from the design parameters set out in Schedule 16 (design parameters) will not lead to materially new or materially different effects which are worse than those identified in the environmental statement;
- (b) must, as part of its approval under sub-paragraph (4), certify that it agrees with the undertaker that the proposed deviation from the design parameters set out in Schedule 16 (design parameters) will not lead to materially new or materially different effects which are worse than those identified in the environmental statement; and
- (c) must, in relation to any submission by the undertaker under sub-paragraph (4) which relates to works within the river Thames, consult with the PLA before giving any approval.

(6) The detailed design of the authorised development must take into account the climate variables considered in the environmental statement.

Permitted preliminary works

5. The permitted preliminary works must be carried out in accordance with the measures set out in appendix 2.1 of the environmental statement.

Notice of date of final commissioning

6. Within seven days of the completion of the commissioning of Work No. 1, the undertaker must provide the relevant planning authority, the PLA and the Environment Agency with notice of the date of final commissioning.

Code of construction practice

7.—(1) No part of the authorised development may commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority in writing, in consultation with the WRWA and, where the code of construction practice submitted relates to construction activities in the river Thames, emergency planning or opportunities to use the river Thames to transport equipment or materials during construction, the PLA. The code of construction practice submitted for approval must be substantially in accordance with the outline code of construction practice to the extent that it is applicable to that part and must be accompanied by, or include, the following—

- (a) construction lighting measures;
- (b) a community engagement plan;
- (c) a biosecurity management plan;
- (d) a community engagement plan;
- (e) a dust management plan;
- (f) a materials management plan;
- (g) a pollution prevention plan;
- (h) a site waste management plan (to be substantially in accordance with the outline site waste management plan); and
- (i) a surface water management plan.

(2) The documents listed in sub-paragraph (1) must include the measures required to be contained within them set out in the outline code of construction practice.

(3) The construction of each part of the authorised development must be undertaken in accordance with the approved code of construction practice for that part.

Construction Hours

8.—(1) The construction of the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction works for the authorised development where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) are carried out with the prior approval of the relevant planning authority;
- (c) are associated with an emergency; or

(d) are associated with slip form working.

(3) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be) of taking that action.

Construction traffic management plan

9.—(1) No part of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the framework construction traffic management plan) for that part has been submitted to and approved by the relevant planning authority in writing, in consultation with the relevant highways authority, Dartford Borough Council, Kent County Council, National Highways and WRWA.

(2) Any construction traffic management plan submitted under sub-paragraph (1) must include a construction worker travel plan (which must be substantially in accordance with the construction worker management measures included in the framework construction traffic management plan).

(3) The construction of each part of the authorised development must be undertaken in accordance with the approved construction traffic management plan for that part.

Emergency preparedness and response plan

10.—(1) Work Nos. 1 and 4 must not be fully commissioned until an emergency preparedness and response plan has been submitted to and approved by the relevant planning authority in writing, in consultation with the Environment Agency, lead local flood authority, the London Fire Brigade and, in respect of Work No. 4 only, the PLA.

(2) For the purposes of sub-paragraph (1), the undertaker may submit one emergency preparedness and response plan for both Work Nos. 1 and 4 or one for each of Work No. 1 and Work No. 4.

(3) The emergency preparedness and response plan or plans submitted under sub-paragraphs (1) and (2) must be substantially in accordance with the outline emergency preparedness and response plan.

(4) The emergency preparedness and response plan must be implemented as approved under sub-paragraph (1) and maintained throughout the operation of the relevant part of Work Nos. 1 or 4 to which the plan or plans relate.

Lighting strategy

11.—(1) No part of the authorised development may commence until lighting strategy has been submitted to and approved by the relevant planning authority in writing, in consultation with the PLA.

(2) The lighting strategy must be substantially in accordance with the outline lighting strategy.

(3) The lighting strategy must be implemented as approved under sub-paragraph (1) and maintained throughout the operation of the relevant part of the authorised development to which the strategy relates.

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 has been submitted to and approved by the relevant planning authority in writing, in consultation with TWUL.

(2) The landscape, biodiversity, access and recreation delivery strategy submitted for approval must be substantially in accordance with the outline landscape, biodiversity, access and recreation delivery strategy, except insofar as it provides for multiple full versions in paragraph 3.2.4 of the outline landscape, biodiversity, access and recreation delivery strategy.

(3) The landscape, biodiversity, access and recreation delivery strategy must include details of all proposed hard and soft landscaping works and ecological mitigation and enhancement measures (as applicable for the relevant numbered work) and where applicable include—

- (a) the location, number, species, size and planting density of any proposed planting including the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained;
- (d) an implementation timetable;
- (e) how the plan proposals for that part will, with the exception of the intertidal environment, contribute to the achievement of a minimum of 10% biodiversity net gain in area habitat units, and a minimum of 10% biodiversity net gain in watercourse units for all of the authorised development for thirty years from the date of commissioning of the authorised development and the metric that has been used to calculate that those percentages will be reached;
- (f) how the landscaping and ecological measures proposed in the plan will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 23 (decommissioning environmental management plan);
- (g) the flora, fauna and habitat surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of, or inform, the mitigation, management and monitoring measures to be taken forward following those initial surveys;
- (h) the proposals for the establishment of compensatory open mosaic habitat;
- (i) the final routing, specification and maintenance regime for permissive paths and the public rights of way referred to in article 15(1) and article 15(3);
- (j) provision for graziers, including details of accesses and access routes (including their surfacing);
- (k) the final routing, specification and maintenance regime for the diversion and improvement of existing watercourses and the creation of new watercourses;
- (l) a statement to confirm both how the design principles and design code have been complied with, and how the advice and recommendations of an independent design review process have been taken into account; and
- (m) the undertaker's proposals for a management plan for the crossness local nature reserve as extended.

(4) The landscape, biodiversity, access and recreation delivery strategy submitted for approval under sub-paragraph (1) is not required to set out proposals for the intertidal environment.

(5) Any landscape, biodiversity, access and recreation delivery strategy submitted for approval under sub-paragraph (1) must be accompanied by a report setting out—

- (a) the engagement activities that the undertaker has undertaken to inform the development of the landscape, biodiversity, access and recreation delivery strategy which must be in accordance with the engagement commitments set out in the outline landscape, biodiversity, access and recreation delivery strategy unless otherwise agreed by the relevant planning authority; and
- (b) how the undertaker has had regard to the feedback received during that engagement in the landscape, biodiversity, access and recreation delivery strategy that is submitted for approval.

(6) The landscape, biodiversity, access and recreation delivery strategy submitted for approval may include measures or mechanisms for the creation, improvement or management of habitats outside of the Order limits, or the payment of credits.

(7) Any hedgerow, shrub or tree planted as part of the approved strategy that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning

authority (as applicable), seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(8) Any landscape, biodiversity, access and recreation delivery strategy approved under sub-paragraph (1) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the strategy relates.

Surface and foul water drainage

13.—(1) No part of the authorised development may commence until written details of the surface and foul water drainage strategy for that part have been submitted to and approved by the relevant planning authority in writing, in consultation with the lead local flood authority.

(2) The written details submitted for approval must be substantially in accordance with the outline drainage strategy and must be consistent with the proposals submitted for approval under requirement 12 (landscape, biodiversity, access and recreation delivery strategy).

(3) The surface and foul water drainage strategy must be implemented as approved under sub-paragraph (1) and maintained throughout the operation of the relevant part of the authorised development to which the strategy relates.

Operational environmental management plan

14.—(1) No part of Work No. 1 may be fully commissioned until a written operational environmental management plan has been submitted to and approved by the relevant planning authority in writing.

(2) The operational environmental management plan must include details of proposed operational maintenance procedures, security arrangements and the following items set out in the mitigation schedule—

- (a) paragraphs (c), (e) and the matters listed under additional mitigation of item 1.12;
- (b) items 3.17 (b) and (e);
- (c) item 4.19 (f);
- (d) the first paragraph of item 7.9;
- (e) item 12.3; and
- (f) item 14.8.

(3) The operational environmental management plan must be implemented as approved and maintained throughout the operation of the relevant part of Work No. 1 to which the plan relates.

Skills and employment plan

15.—(1) No part of Work No. 1 may commence until a skills and employment plan has been submitted to and approved by the relevant planning authority in writing.

(2) The skills and employment plan must be substantially in accordance with the outline skills and employment plan.

(3) The skills and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Jetty works environmental design scheme

16.—(1) Work No. 4 must not commence until a jetty works environmental design scheme has been submitted to and approved by the relevant planning authority in writing, in consultation with the Environment Agency and the PLA.

(2) The jetty works environmental design scheme to submitted under sub-paragraph (1) shall include a statement to confirm how the advice and recommendations of an independent design review process have been taken into account in the details that have been submitted.

(3) In approving a jetty works environmental design scheme submitted under sub-paragraph (1)—

- (a) if a submitted jetty works environmental design scheme proposes not to remove the belvedere power station jetty, the relevant planning authority must not require the undertaker to remove it; or
- (b) if a submitted jetty works environmental design scheme proposes to remove the belvedere power station jetty, the relevant planning authority must not require the undertaker to retain it.

(4) The relevant planning authority must not refuse an application for approval of a jetty works environmental design because it disagrees with the undertaker's choice as to whether or not to remove the belvedere power station jetty.

(5) The undertaker must carry out and maintain Work No. 4 in accordance with the approved jetty works environmental design scheme.

River wall

17.—(1) Subject to sub-paragraph (4), no part of Work No. 4 may commence until a river wall condition survey on those parts of the river wall within the order limits has been submitted to and approved by the Environment Agency in writing, in consultation with the relevant planning authority.

(2) The river wall condition survey submitted pursuant to sub-paragraph (1) must, where appropriate, identify any remedial works required to bring the tidal flood defence up to a good standard considering a design life of 100 years.

(3) The remedial works required to bring the defence up to a good standard identified pursuant to sub-paragraph (2) must be carried out within two years of the date that the condition survey is approved under sub-paragraph (1), or such other time period as is agreed by the Environment Agency.

(4) No river wall condition survey is required to be undertaken under sub-paragraph (1) to the extent that any parts of the river wall have already been assessed as part of any survey undertaken pursuant to requirement 20 (river wall) in Schedule 2 (requirements) to the REP Order.

Flood risk mitigation

18.—(1) The authorised development must be carried out and operated in accordance with paragraphs 8.3.20 to 8.3.33 and 8.6.9 of the flood risk assessment.

(2) No later than 45 years following the date of final commissioning, the undertaker must notify the relevant planning authority and the Environment Agency whether it anticipates that the operation of Work No. 1 will continue past the 50th anniversary of the date of final commissioning.

(3) If a notification under sub-paragraph (2) indicates that the undertaker anticipates that the operation of Work No. 1 will continue past the 50th anniversary date of final commissioning, it must, unless otherwise agreed by the Environment Agency, submit for written approval to the Environment Agency—

- (a) an updated flood risk assessment of the flood risk arising from the continued operation of Work No. 1 past the 50th anniversary of the date of final commissioning;
- (b) the details of any mitigation or compensation measures that the flood risk assessment under sub-paragraph (a) suggests are necessary;
- (c) the implementation timetable (including identifying the need for (but not requiring a specific programme for the obtaining of) any consents) for any measures identified under sub-paragraph (b); and
- (d) retention proposals for any measures identified under sub-paragraph (b).

(4) The undertaker must share the details approved by the Environment Agency under sub-paragraph (3) with the relevant planning authority within 5 days of such approval being given.

(5) The undertaker must implement the measures approved under sub-paragraph (3)(b) in accordance with the implementation timetable approved under sub-paragraph (3)(c) no later than the 50th anniversary of the date of final commissioning of Work No. 1 or such other time period as is agreed with the Environment Agency and must retain them for the lifetime of Work No. 1 in accordance with the retention proposals approved under sub-paragraph (3)(d).

(6) The undertaker must not continue operation of Work No. 1 beyond the 50th anniversary of the date of final commissioning unless the Environment Agency has given its approval under sub-paragraph (3) and the undertaker has complied with sub-paragraph (4), unless otherwise agreed in writing by the Environment Agency.

Navigation risk assessment

19.—(1) Prior to commencement of construction of Work No. 4, the undertaker must update the preliminary navigation risk assessment to take account of the detailed design and construction methodology of Work No. 4 and submit the updated navigation risk assessment to the PLA for its written approval, which must not be unreasonably withheld or delayed.

(2) The construction and operation of the authorised development must be carried out in accordance with the updated navigation risk assessment approved under sub-paragraph (1).

Control of noise during operation

20.—(1) Prior to commissioning of any part of Work No. 1, a written noise mitigation plan must be submitted to and approved by the relevant planning authority in writing which demonstrates how the maximum permitted limit set out in columns (2) and (3) of the below table will be achieved at the locations set out in column (1) of the below table, during operation of Work No. 1.

(1) <i>Location</i>	(2) <i>Day-time Operational Noise Limit</i> <i>$L_{Ar, Tr}$ dB</i>	(3) <i>Night-time Operational Noise Limit</i> <i>$L_{Ar, Tr}$ dB</i>
Clydesdale Way	54	49
Travelodge London Belvedere Hotel	54	49

(2) The undertaker must operate the authorised development in accordance with the approved noise mitigation plan, except—

- (a) in the case of an emergency (as defined in the noise mitigation plan); or
- (b) with the prior approval of the relevant planning authority.

(3) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in sub-paragraph (1) because of an emergency—

- (a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—
 - (i) the nature of the emergency;
 - (ii) why it is necessary for the level of noise to have exceeded the maximum permitted level; and
- (b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—
 - (i) the reasons for the emergency; and
 - (ii) how long it expects the emergency to last.

Ground conditions investigations and assessments strategy

21.—(1) No part of the authorised development may commence until a ground conditions investigations and assessments strategy for that part has been submitted to and approved by the relevant planning authority in writing, in consultation with the Environment Agency, the WRWA, and where the ground conditions investigations and assessments strategy submitted covers investigations and assessments to be carried out in the river Thames, the PLA. Such a strategy shall include a specific remediation strategy, if necessary.

(2) Each part of the authorised development must be carried out in accordance with the approved ground conditions investigations and assessments strategy for that part.

(3) For the purposes of this paragraph, “commence” includes investigations for the purpose of assessing ground conditions (including the making of trial boreholes) and archaeological surveys and investigations.

Archaeological mitigation strategy

22.—(1) No part of the authorised development may commence until an archaeological mitigation strategy, including any required written scheme of archaeological investigation (or multiple written schemes of archaeological investigation) for that part has been submitted to and approved by the relevant planning authority in writing, in consultation with the PLA and the MMO.

(2) Any archaeological mitigation strategy submitted under sub-paragraph (1), to the extent that it is applicable to that part of the authorised development, must include the following—

- (a) details of any proposed archaeological surveys of the river bed and foreshore, intertidal environment and marine environment;
- (b) details of any updated geoarchaeological deposit model;
- (c) should the authorised development include proposals to alter or demolish, in full or in part, the belvedere power station jetty, details of the building recording of the belvedere power station jetty; and
- (d) proposals for how any further mitigation required as a result of the survey work undertaken will be taken forward in a written scheme of investigation or multiple written schemes of investigation.

(3) For the purposes of this paragraph, “commence” includes archaeological surveys and investigations.

Decommissioning environmental management plan

23.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its written approval, after consultation with the Environment Agency and if the decommissioning environmental management plan to be submitted relates to decommissioning works within the river Thames, the PLA and the MMO, a decommissioning environmental management plan for that part.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must—

- (a) include details of—
 - (i) the buildings to be demolished;
 - (ii) the means of removal of the materials resulting from the decommissioning works;
 - (iii) the phasing of the demolition and removal works;
 - (iv) any restoration works (including the proposed finished levels of the land following those works and any proposals for the restoration of habitats and watercourses lost as a result of the construction of the authorised development) to restore the land within

the limits of deviation of Work No. 1 to a condition (including ecological outcomes) agreed with the relevant planning authority;

(v) the phasing of any restoration works; and

(vi) a timetable for the implementation of the plan; and

(b) be accompanied by, or include, a site waste management plan which demonstrates how the waste hierarchy will be followed in respect of the decommissioning works.

(4) The plan must be implemented as approved for the duration of the decommissioning of the authorised development.

(5) The date that the undertaker decides to decommission any part of the authorised development must be notified to the relevant planning authority no later than one month following that decision being made.

Decommissioning traffic management plan

24.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its written approval, after consultation with the relevant highway authority and National Highways, a decommissioning traffic management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

(a) route diversions; and

(b) routing of abnormal loads and HGVs.

(4) The plan must be implemented as approved for the duration of the decommissioning of the authorised development.

(5) The date that the undertaker decides to decommission any part of the authorised development must be notified to the relevant planning authority no later than one month following that decision being made.

Heat Strategy

25.—(1) No part of the authorised development may be commenced until the undertaker has submitted a heat strategy to the relevant planning authority for its written approval.

(2) The heat strategy submitted under sub-paragraph (1) must—

(a) provide an explanation of how the heat to be produced as a result of the authorised development, Riverside 1 and Riverside 2 could be captured and exported off-site;

(b) set out the appropriate infrastructure that could be brought forward within the Order limits to enable the capture and export of heat from the site;

(c) identify potential connection points for export of heat produced as a result of the authorised development, Riverside 1 and Riverside 2; and

(d) provide an update on discussions with potential heat network providers.

(3) The heat strategy submitted, and the relevant planning authority approval under sub-paragraph (1) must not require the undertaker to repeat actions already undertaken pursuant to—

(a) requirement 24 (combined heat and power) of the REP Order;

(b) any document produced pursuant to requirement 24 of the REP Order;

(c) condition 31 of planning permission 16/02167/FUL relating to Riverside 1 issued by the London Borough of Bexley;

(d) condition 31 of the consent issued under section 36C of the Electricity Act 1989 in respect of Riverside 1 dated 17 December 2021;

(e) any condition of planning permission 22/00728/FUL issued by the London Borough of Bexley; and

(f) any document produced pursuant to the requirements and conditions referred to in sub-paragraphs (a) to (e).

(4) The heat strategy must be implemented as approved and such implementation does not constitute a breach of the documents, conditions and requirements referred to in sub-paragraphs (3)(a) to (3)(f).

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

- (a) Dagenham (Thames) Dock Act 1855(a);
- (b) Dagenham (Thames) Dock Act 1866(b);
- (c) Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879(c);
- (d) Thames Deep Water Dock Act 1881(d);
- (e) Thames Deep Water Dock Act 1891(e);
- (f) Thames Deep Water Dock Act 1901(f);
- (g) London County Council (General Powers) Act 1957(g);
- (h) London County Council (General Powers) Act 1961(h);
- (i) London County Council (General Powers) Act 1962(i);
- (j) General London Council (General Powers) Act 1970(j);
- (k) Thames Barrier and Flood Prevention Act 1972(k);
- (l) General London Council (General Powers) Act 1986(l);
- (m) Thames Water Authority Land Drainage Byelaws 1981; and
- (n) Section 6 of the London Local Authorities and Transport for London Act 2013(m).

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- (a) 1855 c. clxii.
 - (b) 1866 c. xlvi.
 - (c) 1879 c. cxcviii.
 - (d) 1881 c. cxlii.
 - (e) 1891 c. lxxiv.
 - (f) 1901 c. xvii.
 - (g) 1957 c. xxxv.
 - (h) 1961 c. xliii.
 - (i) 1962 c. xlv.
 - (j) 1970 c. lxxvi.
 - (k) 1972 c. xlv. Section 3(1) and section 25(5)(a) were amended by The Thames Barrier and Flood Prevention Act 1972 (Amendment) Order 1986.
 - (l) 1986 c. iv.
 - (m) 2013 c. v.

SCHEDULE 4

Article 11

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

“utility works” means works to install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain underground electrical cables, earthing cable, optical fibre cable, data cable, telecommunications cable, flue gas pipework, condensate pipework, water supply pipework, foul water pipework, drains, sewers, heat pipes, LCO₂ pipework, and other apparatus and services, and associated works including bays, ducts, protection and safety measures and equipment, and other apparatus and structures.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
London Borough of Bexley	Norman Road	Utility works beneath the width of the highway shown by a blue and black dashed line on the access and rights of way plan, from point E to point L.
London Borough of Bexley	Norman Road	Utility works beneath the width of the highway shown by a blue and black dashed line on the access and rights of way plan, from point L to point O.
London Borough of Bexley	Norman Road	Utility works beneath the width of the highway shown by a blue and black dashed line on the access and rights of way plan, from point L to point P.
London Borough of Bexley	A2016 Picardy Manorway	Utility works beneath the width of the highway shown by a blue and black dashed line on the access and rights of way plan, from point O to point N.
London Borough of Bexley	A2016 Picardy Manorway	Utility works beneath the width of the highway shown by a blue and black dashed line on the access and rights of way plan, from point P to point Q.

SCHEDULE 5

Articles 12 and 16

STREETS SUBJECT TO PERMANENT OR TEMPORARY ALTERATION OF LAYOUT

PART 1

PERMANENT OR TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
London Borough of Bexley	Norman Road	Works for the provision of one or multiple means of access to the authorised development at any location on the street between points E to K shown on the access and rights of way plan.

PART 2

PERMANENT OR TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
London Borough of Bexley	Norman Road	Works for the provision of one or multiple means of access to the authorised development at any location on the street between points K to O shown on the access and rights of way plan.

SCHEDULE 6

Article 13

PERMANENT STOPPING UP OF STREET AND PRIVATE MEANS OF ACCESS AND PROVISION OF NEW STREET AND PRIVATE MEANS OF ACCESS

PART 1

STREET TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
London Borough of Bexley	Thames Water Access Road	The street shown by a blue and black line on the access and rights of way plan, from point H to point I.	To be substituted by a length of street to be provided to commence at point H and terminate at a junction with Norman Road at any location between points G and J on the access and rights of way plan.

PART 2

PRIVATE MEANS OF ACCESS TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access to be substituted</i>
London Borough of Bexley	Thames Water Access Road	The private means of access from Norman Road shown at point I on the access and rights of way plan.	To be substituted by a new private means of access to be provided at a location on Norman Road between points G and J on the access and rights of way plan.

SCHEDULE 7

Article 14

TEMPORARY ALTERATION, PROHIBITION, DIVERSION OR RESTRICTION OF THE USE OF STREETS AND PUBLIC RIGHTS OF WAY AND AUTHORISING VEHICULAR USE ON PUBLIC RIGHTS OF WAY

PART 1

TEMPORARY ALTERATION, PROHIBITION, DIVERSION OR RESTRICTION OF THE USE OF STREETS AND PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or public right of way subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary alteration, prohibition, diversion or restriction of use of streets</i>
London Borough of Bexley	Footpath 2	Public right of way to be temporarily altered, restricted, diverted or use prohibited between the points marked R and H and between the points H and L on the access and rights of way plan shown with a purple dashed line.
London Borough of Bexley	Footpath 3	Public right of way to be temporarily altered, restricted, diverted or use prohibited between the points marked A and T on the access and rights of way plan shown with an orange dashed line.
London Borough of Bexley	Footpath 4	Public right of way to be temporarily altered, restricted, diverted or use prohibited between the points marked C and F on the access and rights of way plan shown with a green dashed line.
London Borough of Bexley	Thames Water Access Road	Street to be temporarily altered, restricted, diverted or use prohibited between the points marked H and I on the access and rights of way plan shown with a blue and black dashed line.

PART 2

AUTHORISING TEMPORARY USE OF VEHICULAR USE ON PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measures</i>
London Borough of Bexley	Footpath 1	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way between the points marked M and S on the access and rights of way plan shown with a yellow dashed line

London Borough of Bexley	Footpath 2	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way between the points marked R and H, between the points H and L and between the points marked R and S on the access and rights of way plan shown with a purple dashed line.
London Borough of Bexley	Footpath 3	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way between the points marked A and T on the access and rights of way plan shown with an orange dashed line.
London Borough of Bexley	Footpath 4	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way between the points marked C and F on the access and rights of way plan shown with a green dashed line.

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation**1. In this Schedule—**

“access rights” means, rights over land to, for the purposes of the authorised development, and in connection with the authorised development—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery) and remove means of access to the authorised development including visibility splays and to remove and traverse impediments to such access; and
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development

“connection rights” means, right over land to, for the purposes of the authorised development, and in connection with the authorised development—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cable, optical fibre cable, data cable, telecommunications cable, flue gas pipework, condensate pipework, water supply pipework, foul water pipework, drains, sewers, heat pipes, LCO₂ pipework, and other apparatus and services, and associated works including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (b) connect the services, apparatus, equipment, buildings and structures set out in subparagraph (a) to existing services, apparatus, equipment, buildings and structures;
- (c) modify existing buildings structures;
- (d) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and

“LCO₂ pipework rights” means, right over land to, for the purposes of the authorised development, and in connection with the authorised development—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain LCO₂ pipework and associated works including supports, protection and safety measures and other apparatus and structures;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

“maintenance access rights” means, rights over land to, for the purposes of the authorised development, and in connection with the authorised development, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) and restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights;

“maintenance rights” means, rights over land to, for the purposes of the authorised development, and in connection with the authorised development, undertake construction, maintenance and decommissioning activities for Work No. 4, including laydown areas, compounds and welfare facilities and restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights;

“utilities rights” means - rights over land to, for the purposes of the authorised development, and in connection with the authorised development—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain underground electrical cables, earthing cable, optical fibre cable, data cable, telecommunications cable, flue gas pipework, condensate pipework, water supply pipework, foul water pipework, drains, sewers, heat pipes, LCO₂ pipework, and other apparatus and services, and associated works including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

<i>(1)</i> <i>Number of plot shown on the Land Plans</i>	<i>(2)</i> <i>Purposes for which rights over land may be acquired and restrictive covenants imposed</i>
1-002, 1-005, 1-007, 1-008, 1-023, 1-024, 1-030, 1-034, 1-040, 1-043, 1-048	Utilities rights and access rights
1-028	Maintenance access rights
1-028a	Utilities rights and maintenance access rights
1-051, 1-052, 1-055, 1-056, 1-058, 1-062, 1-074, 1-086, 1-087	Connection rights and LCO ₂ pipework rights
1-053	Maintenance access rights
1-054	Connection rights
1-054b	Access rights
1-059, 1-060, 1-061, 1-063, 1-064, 1-065, 1-066, 1-067, 1-068, 1-069, 1-070, 1-071, 1-073, 1-075, 1-076, 1-077, 1-078, 1-079, 1-080, 1-081, 1-082, 1-084, 1-085, 1-088, 1-091	Connection rights
1-083	Maintenance access rights and maintenance rights
1-089	LCO ₂ pipework rights

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in paragraph 2(2).

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the Cory Decarbonisation Project Order);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the Cory Decarbonisation Project Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,
the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 35 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 28 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 30 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 28 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 35(3) (modification of Part 1 of the 1965 Act) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 34 (application of the 1981 Act) of the Cory Decarbonisation Project Order in respect of the land to which the notice to treat relates.

(2) But see article 31 (acquisition of subsoil or airspace only) of the Cory Decarbonisation Project Order which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 2, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 5, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 10

Articles 35 and 36

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot reference number shown on the land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
1-024a, 1-027, 1-072	Temporary use of land to undertake protective works if required as a result of the impacts of the authorised development
1-072a, 1-092, 1-094, 1-097, 1-098, 1-100b, 1-100c	Temporary use of land to undertake Work No. 4 and Work No. 6C
1-095, 1-104, 01-117, 1-119, 1-120, 02-006	Temporary use of land to undertake Work No. 4 including temporary moorings.
1-102, 1-108, 1-109, 1-112, 1-114, 01-115, 1-117a, 2-001, 2-002	Temporary use of land to undertake Work No. 4A
1-116, 1-121, 2-003, 2-005	Temporary use of land to provide working space to undertake Work No. 4

SCHEDULE 11

DEEMED MARINE LICENCE

Article 40

PART 1

GENERAL

1. In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the authorised development” has the meaning given in paragraph 3(2);

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(a);

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” are to be construed accordingly;

“construction licensed activity” means any licensed activity which does not constitute maintenance activities or maintenance dredging;

“condition” means a condition in Part 2 and Part 3 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“code of construction practice” means the document of that description approved under requirement 7 (code of construction practice) of the Order;

“environmental statement” means the document of that description in Schedule 13 (documents and plans to be certified) to the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

“licensable area” means the grid coordinates within the UK Marine Area within which the undertaker may carry out a licensed activity, as set out in paragraph 3(3) of Part 1 of this Schedule and as shown on the works plans;

“licensed activity” means any of the activities specified in Part 1 of this licence;

“limits of deviation” has the same meaning as in the Order;

“maintenance activities” means activities carried out by the undertaker pursuant to article 5 (maintenance of authorised development) of the Order;

“maintenance dredging” means dredging carried out by the undertaker after the final construction licensed activity;

“the MMO” means the Marine Management Organisation;

“the Order” means the Cory Decarbonisation Project Order 202[*];

“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;

“the River” means so much of the river Thames and the Thames estuary, as is within the UK marine area;

“seabed” means the ground under the sea;

(a) 1971 c. 80.

“the undertaker” means Cory Environmental Holdings Limited (company number 05360864) and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order;

“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; and

“the works plans” has the same meaning as in the Order.

Contacts

2.—(1) Except where otherwise indicated, the main points of contact with the MMO and the addresses for email and postal returns and correspondence are as follows—

- (a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH; Tel – 0300 123 1032; Fax – 0191 376 2681; Email – marine.consents@marinemangement.org.uk; and
- (b) Marine Management Organisation, Muriel Matters House, Breeds Place, Hastings, Kent TN34 2EZ; Tel – 0208 026 9180; Email – hastings@marinemangement.org.uk.

(2) The contact details for the MMO Marine Pollution Response Team are—

Tel (during office hours) – 0300 200 2024;

Tel (outside office hours) – 07770 977 825 or 0345 051 8486;

Email – dispersants@marinemangement.org.uk,

or such replacement contact details notified to the undertaker in writing by the MMO.

(3) Except where otherwise indicated or otherwise agreed in writing by the MMO, all applications or notifications required under this licence must be sent by the undertaker to the MMO using the MMO’s marine case management system.

Details of such licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker (and any agent, contractor or subcontractor acting on their behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act within the licensable area which—

- (a) form part of, or are related to, the authorised development, including works required pursuant to documents certified under Schedule 13 (documents and plans to be certified) or approved under Schedule 2; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemptions specified by order) of the 2009 Act.

(2) In this paragraph “the authorised development” means—

- (a) Work No. 4 of the Order;
- (b) works within the River to—
 - (i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);
 - (ii) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
 - (iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
 - (iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);

- (v) remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river;
- (vi) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams; and
- (vii) provide lighting, signage and aids to navigation;
- (c) maintenance activities within the River;
- (d) maintenance dredging within the River; and
- (e) any other element of the authorised development as defined by article 2 (interpretation) of the Order.

(3) The coordinates for the licensable area for the purposes of this paragraph 3 are specified in the table below.

<i>ID number as shown on the works plans</i>	<i>Northing</i>	<i>Easting</i>
P1	180739	549856
P2	180754	549737
P3	180837	549835
P4	180985	549804
P5	181045	549833
P6	180974	550085
P7	180877	550350
P8	180775	550324
P9	180734	550243
P10	180720	550057

PART 2

CONDITIONS APPLYING TO LICENSABLE ACTIVITIES

Notifications regarding licensed activities

4.—(1) The undertaker must inform the MMO in writing—

- (a) at least 5 business days prior to the commencement of the first construction licensed activity;
- (b) within 5 business days following the completion of the final construction licensed activity, of the completion;
- (c) at least 5 business days prior to the commencement of a maintenance activity or maintenance dredging; and
- (d) within 5 business days following the completion of the maintenance activity or maintenance dredging.

5.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in any licensed activity within seven days of appointment; and
- (b) details of any vessel being used to carry on any licensed activity listed on behalf of the undertaker, together with details of the vessel owner or operating company not less than 24 hours before the commencement of the licensed activity in question.

(2) Any changes to details supplied under sub-paragraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

6. The undertaker must ensure that a copy of this licence has been read and understood by any agents and contractors that will be carrying out any licensed activity on behalf of the undertaker, together with any masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the undertaker.

7. Copies of this licence must be available for inspection at the following locations—

- (a) the undertaker's registered office; and
- (b) during the construction of the authorised development only, at any site office which is adjacent to or near the River and which has been provided for the purposes of the construction of the authorised development.

8. The masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under condition 5 must make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.

Code of construction practice

9. All construction licensed activities must be carried out in accordance with the code of construction practice approved under requirement 7 (code of construction practice) of Schedule 2 of the Order where applicable.

Method statement

10.—(1) Following consultation with the Environment Agency, and in respect of maintenance dredging only, the Port London Authority, the undertaker must submit a method statement, together with a report on the consultation carried out, for approval by the MMO, at least 6 weeks prior to the commencement of any licensed activity.

(2) The method statement must include the following details—

- (a) the detailed methodology to be employed by the undertaker in carrying out the licensed activity;
- (b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works; and
- (c) for construction licensed activities only, if relevant, the results of further sediment sampling undertaken in accordance with a sampling plan approved under condition 11.

(3) The undertaker must not commence the licensed activity until the MMO has approved in writing the submitted method statement.

(4) The licensed activity must be carried out in accordance with the approved method statement, unless otherwise agreed in writing by the MMO.

Sediment sampling

11.—(1) If the undertaker considers that sediment sampling is required to demonstrate the appropriateness of a methodology to be included in a method statement relating to construction licensed activities or maintenance dredging submitted to the MMO for approval under condition 10, prior to submitting that construction method statement to the MMO, the undertaker must submit a sediment sampling plan for approval by the MMO.

(2) Any sediment sampling required under sub-paragraph (1) must be carried out in accordance with the approved sediment sampling plan, unless otherwise agreed in writing by the MMO.

Marine Noise Registry

12.—(1) Only when impact driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation, the undertaker must provide the following information to the Marine Noise Registry (MNR)—

- (a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements; and
 - (b) within 12 weeks of completion of impact pile driving/detonation of explosives, information on the exact locations and specific dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements.
- (2) The undertaker must notify the MMO of the successful submission of Forward Look requirements.

Piling

13.—(1) Where a licensed activity involves percussive piling the undertaker must commence piling activities using soft-start techniques for at least 20 minutes to ensure an incremental increase in pile power until full operational power is achieved. Should piling cease for at least 20 minutes the soft-start procedures must be repeated.

Dredging

14. Water injection dredging which is a licensed activity must not be undertaken in the period 1st June to 30th August.

Concrete and cement

15.—(1) The undertaker must not discharge waste concrete slurry or wash water from concrete, or cement into the River.

(2) The undertaker must site concrete and cement mixing and washing areas at least 10 metres away from the River and any surface water drain to minimise the risk of run off entering the River.

Coatings and treatments

16. The undertaker must ensure that any coatings and any treatments are suitable for use in the River and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

Pollution and spills

17. The undertaker must—

- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent the release of fuel, oils and chemicals associated with plan, refuelling and construction equipment into the marine environment, including bunding with a capacity of no less than 110% of the total volume of all reservoirs' and containers' storage capacity;
- (b) report any spill of oil, fuel or chemicals into the marine environment to the MMO Marine Pollution Response Team pursuant to paragraph 2(2) of this licence, as soon as reasonably practicable, but in any event within 12 hours of the spill being identified; and
- (c) store all waste in designated areas that are isolated from surface water drains and open water and are banded.

Post activities

18.—(1) The undertaker must remove any temporary structures, waste and debris associated with the construction licensable activities or maintenance activities within six weeks following completion of the final construction licensable activity or maintenance activity as applicable.

(2) Within five business days following the completion of the removal activities referred to in sub-paragraph (1), the undertaker must notify the MMO in writing that such activities have been completed.

Disposal

19. The undertaker must inform the MMO of the location and quantities of material disposed of each month under this licence. This information must be submitted to the MMO by 15th February each year for the months August to January inclusive, and by 15th August each year for the months February to July inclusive.

20. The undertaker shall ensure that only inert material of natural origin, produced during dredging shall be disposed of within the disposal site TH070 South Falls (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal at this site.

21. The material to be disposed of within the disposal site referred to in condition 20 (or any other disposal site approved in writing by the MMO) must be placed evenly within the boundaries of that site.

Agents, contractors and subcontractors

22.—(1) The undertaker must notify the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity under this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or subcontractors that will carry on any licensed activity.

Dropped Objects

23.—(1) The undertaker must report all dropped objects to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the Dropped Object Procedure Form, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys. The undertaker must carry out surveys in accordance with the MMO's reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the seabed. The undertaker must carry out removals of the specific obstructions from the seabed in accordance with the MMO's reasonable requirements and its own expense.

Time periods

24. This licence remains in force until Work No. 4B of this Order is decommissioned.

Variations of approvals of Part 2 Conditions

25.—(1) With respect to any condition under Part 2 which requires a licensed activity to be carried out in accordance with any plans, protocols or statements approved under this licence, the approved details, plan or scheme are to be taken to include any amendments that may subsequently be approved in writing by the MMO.

(2) Subsequent to the first approval of those plans, protocols or statements, any amendments will only be approved by the MMO if the undertaker has demonstrated to the reasonable satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any

materially new or materially different environmental effects that are worse than those identified in the environmental statement.

Marine written scheme of archaeological investigation

26. All licensed activities must be carried out in accordance with the archaeological mitigation strategy approved under requirement 22 (archaeological mitigation strategy) of Schedule 2 of the Order where applicable.

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of “application”

27. In this Part, “application” means a submission by the undertaker for approval by the MMO of any method statement or plan under conditions 10 and 11.

Further information regarding application

28. The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider the application.

Determination of application

29.—(1) In determining the application the MMO may have regard to—

- (a) the application and any supporting information or documentation;
- (b) any further information provided by the undertaker in accordance with condition 28; and
- (c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

- (a) grant the application unconditionally;
- (b) grant the application subject to the conditions as the MMO thinks fit; or
- (c) refuse the application.

(3) If the MMO is unable to determine the application in accordance with sub-paragraph (2), this shall not constitute a breach of this condition nor be an offence under the Marine and Coastal Access Act 2009.

Notice of determination

30.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under condition 28, the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991^(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

- (e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 16 of this Schedule;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

(a) 1989 c. 29.

(b) 1991 c. 56.

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(a);
- (c) water undertaker within the meaning of the Water Industry Act 1991;
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991; and
- (e) an owner or operator of apparatus within sub-paragraph (e) of the definition of that term, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such 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 prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and

having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

14. The exercise of the powers of article 39 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any

(a) 2003 c. 21.

other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 49 (arbitration).

16. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

17. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

18. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

Interpretation

19. In this Part of this Schedule—

“Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides flood storage capacity; or any other land which is expected to provide flood storage capacity as a result of the authorised development pursuant to the details approved in compliance with requirement 18(1); or any land which provides flood storage for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“emergency” means an occurrence which presents a risk of—

- (a) serious flooding;
- (b) serious detrimental impact on drainage;
- (c) serious harm to the environment;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements, protocols for emergency access and descriptions;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“sea defence” means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means so much of any work or operation authorised by this Order, including works required pursuant to documents certified under Schedule 13 or approved under Schedule 2, as is in, on, under, over or within:

- (a) 16 metres of the base of a sea defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence, or
 - (ii) interfere with the Agency’s access to or along that sea defence or the Agency’s ability to undertake works to ensure the efficacy of that sea defence;
- (b) 8 metres of the base of a remote defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or
 - (ii) interfere with the Agency’s access to or along that remote defence;
- (c) 16 metres of a drainage work involving a tidal main river,
- (d) 8 metres of a drainage work involving a non-tidal main river;
- (e) any distance of a drainage work and is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any main river or other surface waters;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity;or which involves
- (f) an activity to which paragraph 21(3) of this Part of this Schedule applies; and
- (g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and

“Thames Flood Acts” means the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 and Thames Barrier and Flood Prevention Act 1972 and amending legislation;

“tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

20.—(1) Before the beginning to construct any specified work, the undertaker must submit to the Agency for approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 32.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within two months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it will not be taken into account in the calculation of the two months for the purposes of this sub-paragraph (b);
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

Dredging

21.—(1) Before carrying out an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic, dredging or desilting, the undertaker must submit details of the activity to the Agency.

(2) Within 14 days of receipt of the details submitted by the undertaker under sub-paragraph (1), the Agency must confirm whether the activity requires consent under paragraph 20.

(3) This sub-paragraph applies in the event that, pursuant to sub-paragraph (2), the Agency confirms that the proposed activity requires consent under paragraph 20.

Construction of protective works

22. Without limiting paragraph 20, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

23.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 22, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than fourteen days' notice in writing of its intention to begin construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Part of this Schedule

24.—(1) Where the undertaker fails to obtain consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule and the Agency, acting reasonably, considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

- (a) risk of flooding;
- (b) risk of harm to the environment;
- (c) risk of detrimental impact on drainage;
- (d) damage to the fishery;
- (e) risk to the integrity or condition of any drainage work.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph 24(3) is served upon the undertaker except in an emergency when a shorter period can be given, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph 24(3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with sub-paragraph 24(3).

Maintenance of works

25.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove

the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 32.

(5) This paragraph does not apply to—

- (a) drainage works which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable if removal is required.

Remediating impaired drainage work

26. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

27.—(1) If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency as soon as reasonably practicable and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access in accordance with protocols for emergency access approved under paragraph 20.

(2) For the purposes of paragraph (1), the Great Breach Pumping Station is considered to be equipment maintained for flood defence purposes.

(3) Nothing in sub-paragraph (1) prevents the Agency from utilising its statutory powers.

Free passage of fish

28.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be

reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If the undertaker fails to take such steps as are described in the notice served under subparagraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

The Thames Flood Acts works

29. Nothing in Article 7 prevents the Agency serving a notice on the undertaker under the Thames Flood Acts requiring works to, or financial contributions towards, raising the crest levels of flood defences or reinforcement to flood defences to improve the standard of flood protection and the undertaker being required to comply with any such notice pursuant to the Thames Flood Acts.

Costs and indemnity

30. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

31.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs;

“losses” includes physical damage;

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of this sub-paragraph (2)) incurred in connection with any claim or demand; and
- (b) any interest element of sums claimed or demanded; and

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty; and

- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
- (3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.
- (4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
- (6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

32. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 49 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for the department of Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF THAMES WATER UTILITIES LIMITED

Application

33. The provisions of this Part of the Schedule, unless otherwise agreed in writing between the undertaker and TWUL, have effect.

Interpretation

34. In this Part of this Schedule—

“access road” means the existing access road connecting Norman Road to the existing Crossness Sewage Treatment Works;

“alternative apparatus” means alternative apparatus adequate to enable TWUL to fulfil its statutory functions in a manner no less efficient and effective than previously;

“apparatus” means—

- (a) any drain, disposal works or sewer vested in TWUL under the Water Industry Act 1991; and
- (b) any sewer, drain or disposal works which are the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of the Water Industry Act 1991) or sewer outfall and any manholes, ventilating shafts, pumps, inspection chambers or other accessories (as defined in section 219 (general interpretation) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

35.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and TWUL are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets and public rights of way

36.—(1) Except where paragraph 40 applies, where any street is stopped up under article 15 (permanent stopping up of specified street and private means of access) or any public right of way is stopped up under article 17 (permanent closure and diversion of, and creation of new public rights of way and authorising vehicular use on public rights of way), TWUL has the same powers and rights in respect of any apparatus in the land in which the street or public right of way subsists as it enjoyed immediately before the stopping up and the undertaker must grant to TWUL legal easements reasonably satisfactory to TWUL in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of TWUL to require the removal of that apparatus, or provision of alternative apparatus under paragraph 39 or the power of the undertaker to carry out works under paragraph 41.

(2) Regardless of the temporary alteration, diversion or restriction of any street under the powers conferred by article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way), 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 three weeks’ notice of such intended entry, or such other notice time period as is agreed beforehand between the undertaker and TWUL, with such agreement not being unreasonably withheld or delayed, unless in an emergency.

Access Road

37.—(1) The undertaker must not stop up in whole or in part the access road under article 15 (permanent stopping up of specified street and private means of access) or extinguish in whole or in part any right of TWUL along the access road unless and until—

- (a) the undertaker has submitted plans for Work No. 8 and its connection to Norman Road to TWUL and TWUL has approved them;
- (b) the undertaker has provided TWUL with a new right to use, keep, inspect, renew and maintain the new access road created under Work No. 8 that is reasonably convenient and on terms agreed by TWUL; and
- (c) TWUL’s agreement and approvals under sub-paragraphs (a) and (b) must not to be unreasonably withheld or delayed but may be given in accordance with such reasonable requirements as may be made by TWUL in respect of ensuring continued operational and emergency access to the existing Crossness Sewage Treatment Works from Norman Road.

(2) The works in sub-paragraph (1)(a) must be executed only in accordance with the plans approved under that sub-paragraph.

(3) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any interest in the access road otherwise than by agreement.

Protective works to buildings

38. The undertaker, in the case of the powers conferred by article 23 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land or interests

39. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus of TWUL otherwise than by agreement.

Removal of apparatus

40.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that TWUL's apparatus is removed, relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of TWUL to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of TWUL in accordance with sub-paragraphs 40(2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to TWUL 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed for approval by TWUL and in that case (or if in consequence of the exercise of any of the powers conferred by this Order TWUL reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to TWUL the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed TWUL must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for TWUL to use its compulsory purchase powers to this end unless it elects (in its absolute discretion) to so do.

(4) Any default of agreement or approval of TWUL under sub-paragraph (1) or (2) must be settled by arbitration in accordance with article 49 (arbitration).

(5) TWUL must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to TWUL of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), and subject to sub-paragraph (7), if the undertaker gives notice in writing to TWUL that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, and TWUL gives its consent in writing (which shall not be unreasonably withheld or delayed and shall be subject to the provisions of sub-paragraph (7)), that work, instead of being executed by TWUL, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of TWUL.

(7) If by the end of the period of 56 days from the submission of the details relating to required removal works under sub-paragraph (1), the confirmation of the reasonable satisfaction of the construction and operation of alternative apparatus under sub-paragraph (2) or the carrying out of works pursuant to sub-paragraph (6) TWUL has not intimated their disapproval of those details and the grounds of such disapproval, the undertaker may give TWUL written notice requiring

TWUL to intimate approval or disapproval within a further period of 28 days beginning with the date upon which TWUL receives written notice from the undertaker and if by the expiry of the further 28 days TWUL has not intimated approval or disapproval, TWUL shall be deemed to have approved the details as submitted provided that such notification has been made in accordance with paragraph 56 (notices and applications).

(8) Any deemed approval under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of TWUL or its contractors.

Facilities and rights for alternative apparatus

41.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to TWUL facilities and rights for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and TWUL or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted; and
- (c) give effect to the statutory obligations of TWUL and the undertaker.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to TWUL than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to TWUL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

42.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are within 5 metres of the outside face of any apparatus the removal of which has not been required by the undertaker under paragraph 40(2), the undertaker must submit to TWUL a plan of the works to be executed.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until TWUL has given written approval of the plan so submitted and such approval may be given subject to reasonable requirements for the purposes mentioned in sub-paragraph (3).

(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 three weeks' notice of such intended entry to watch and inspect, or such other notice time period as is agreed beforehand between the undertaker and TWUL, with such agreement not being unreasonably withheld or delayed, unless in an emergency.

(4) Any requirements made by TWUL as a condition of the approval under sub-paragraph (2) must be notified to the undertaker within a period of 35 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If by the end of the period of 35 days from the submission of the details relating to required works under sub-paragraph (1) TWUL has not intimated their disapproval of those details and the grounds of such disapproval, the undertaker may give TWUL written notice requiring TWUL to intimate approval or disapproval within a further period of 28 days beginning with the date upon which TWUL receives written notice from the undertaker and if by the expiry of the further 28 days TWUL has not intimated approval or disapproval, TWUL shall be deemed to have approved the details as submitted provided that such notification has been made in accordance with paragraph 56 (notices and applications).

(6) If TWUL in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 34 to 36 and 40 to 42 apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works (unless otherwise agreed with TWUL), a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works but in that case must:

- (a) give TWUL notice in accordance with paragraph 56 (notices and applications) as soon as is reasonably practicable;
- (b) provide TWUL with a plan of those works as soon as reasonably practicable subsequently;
- (c) carry out the works in accordance with industry best practice and guidelines on safe working near utilities;
- (d) comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances; and
- (e) keep the impact of those emergency works on TWUL's apparatus to a minimum.

(9) In this Part of this Schedule "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent which are likely to cause danger to persons or serious damage to property. Where works comprise items some of which fall within this definition, the expression "emergency works" shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do.

Expenses and costs

43.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to TWUL all expenses reasonably incurred and any compensation properly paid by TWUL in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraphs 40(2) or 42(2) or 42(3).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be

necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to TWUL by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to TWUL in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on TWUL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

44.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 42(2), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or there is any interruption in the service provided by such apparatus or alternative apparatus, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by TWUL in making good such damage or restoring the service; and
- (b) indemnify TWUL against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which are made or taken against or recovered from, or reasonably and properly incurred by TWUL, by reason or in direct consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by TWUL on behalf of the undertaker or in accordance with a plan approved by TWUL or in accordance with any requirement of TWUL or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless TWUL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of TWUL, its officers, servants, contractors or agents.

(4) TWUL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

45. Where in consequence of the proposed construction of any of the authorised development, the undertaker or TWUL requires the removal of apparatus under paragraph 40(2) or TWUL makes requirements for the protection or alteration of apparatus under paragraph 42, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of TWUL's undertaking and TWUL must use its best endeavours to co-operate with the undertaker for that purpose.

46. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and TWUL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

47. At all times the undertaker shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in exercise of powers conferred by this Order to ensure that as little damage, obstruction or interference is caused to TWUL's undertaking as is reasonably practicable save that this obligation shall not prevent the construction or operation of the authorised development.

48. In this Part of this Schedule, where the agreement or approval of TWUL is required, such agreement or approval must not be unreasonably withheld or delayed.

Use of statutory powers

49. In the event that TWUL carries out any works involving apparatus, including under its own statutory powers, at the express written request of the undertaker then—

- (a) this Part of this Schedule shall apply to such works and TWUL covenants to observe and comply with this Part of this Schedule irrespective of whether it is carrying out the works under its own statutory powers or in reliance on the powers conferred by the Order; and
- (b) TWUL covenants to comply with the terms of the Order.

Ground works and surveys

50. The undertaker must provide written notice to TWUL as soon as reasonably practicable in the event they determine to alter the ground level more than 300mm within 5 metres laterally of the outside face of any apparatus. Upon receiving such notice, TWUL will determine if works under paragraphs 40(2) or 42(2) are necessary and the timescales in paragraphs 42(4) and 42(5) shall apply to such determination from the date of receipt of the notice.

51. The undertaker must provide written notice to TWUL as soon as reasonably practicable if they intend to survey using ground intrusive methods within 5 metres laterally of the outside face of any apparatus. Upon receiving such notice, TWUL will determine if works under paragraphs 40(2) or 42(2) are necessary and the timescales in paragraphs 42(4) and 42(5) shall apply to such determination from the date of receipt of the notice.

Consultation

52. The undertaker must consult with TWUL on draft documentation prior to the submission of any plan, scheme or strategy under requirements 7 (code of construction practice), 9 (construction traffic management plan), 10 (emergency preparedness and response plan), 12 (landscape, biodiversity, access and recreation delivery strategy) and 13 (surface and foul water drainage), to the relevant planning authority.

53. At least 56 days prior to the submission of the landscape, biodiversity, access and recreation delivery strategy ("LaBARDS") to the relevant planning authority in accordance with requirement 12, the undertaker must invite TWUL (in accordance with paragraph 56) to review and input into the LaBARDS proposed to be submitted to the relevant planning authority and the undertaker must include such reasonable suggestions made by TWUL in relation to the part of the Crossness Nature Reserve owned by TWUL.

54. If TWUL does not respond to the invitation to which paragraph 53 refers within the 56 day period, TWUL shall be deemed to have rejected the invitation and the undertaker may proceed to submitting the LaBARDS to the relevant planning authority without any input from TWUL.

55. Any dispute as to the reasonableness of any suggestions made by TWUL in accordance with paragraph 53 shall be referred to arbitration in accordance with article 49 (arbitration) and the undertaker may not submit the LaBARDS to the relevant planning authority for approval if a matter referred to arbitration remains undetermined.

Notices and applications

56. Notwithstanding any other provision of this Order, any:

- (a) written notice to TWUL provided for in this Order; or
- (b) application for the approval of TWUL made pursuant to article 21 (discharge of water),

must be made by email to devcon.team@thameswater or developer.services@thameswater.co.uk or such other contact details as may be provided by TWUL to the undertaker from time to time. In the case of emergencies, notice must also be given via the Thames Water website or such other contact details as may be provided by TWUL to the undertaker from time to time.

PART 5

FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

57. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the PLA, for the protection of the PLA in relation to the construction, maintenance, operation and decommissioning of the authorised development.

Interpretation

58. In this Part of this Schedule—

“construction” includes execution, placing, altering, removing, replacing, maintaining, relaying and renewal and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation and “construct” and “constructed” have corresponding meanings;

“core information” means the information (including information comprised in plans) regarding specified works or specified functions that the PLA may from time to time prescribe as being required to accompany any submission of plans for approval under paragraph 59, such information being that which the PLA publishes on its website from time to time as being required to accompany an application for a works licence under section 66 (licensing of works) or, as the case may be, an application for a licence to dredge under section 73 (licensing of dredging, etc.) of the 1968 Act;

“the PLA Harbour Master” means the means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

“maintaining” does not include the activities listed in section 66(4) of the 1968 Act;

“plans” includes navigational risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions including, where applicable, such relevant hydraulic information about the river Thames as may be reasonably requested by the PLA and details of where the undertaker considers that paragraph 59(8), paragraph 59(10), article 8(2) or article 8(4) should apply to existing structures;

“specified function” means any function of the undertaker under this Order (except any function under articles 28 (compulsory acquisition of land), 30 (compulsory acquisition of rights) and 31 (acquisition of subsoil or airspace only), the exercise of which may affect the river Thames or any function of the PLA; and

“specified work” means—

- (a) any part of the authorised development (which for this purpose includes the removal of any part of the authorised development or any decommissioning works), which—
 - (i) is, may be, or takes place in, on, under or over the surface of land below mean high water level forming part of the river Thames; or
 - (ii) may affect the river Thames or any function of the PLA; and

- (b) any projection over the river Thames (whether inside or outside the Order limits) by any authorised work or any plant or machinery.

Approval of detailed design

59.—(1) The undertaker must not commence the construction of any specified work or the exercise of any specified function until plans of the work or function have been approved in writing by the PLA.

(2) The undertaker must submit to the PLA plans of the specified work or specified function together with all relevant core information and must thereafter provide such further particulars as the PLA may, within 20 business days starting with the day on which plans are submitted under this sub-paragraph, reasonably require, and the particulars so supplied are to provide all information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed.

(3) Any approval of the PLA required under this paragraph must not be unreasonably withheld or delayed but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river Thames;
- (b) the use of its land, or the river Thames, for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(4) Requirements made under sub-paragraph (3) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions or the location where the specified function is proposed to be exercised;
- (b) the programming of temporary works or the exercise of the specified function including the timing and management of giving up temporary possession;
- (c) the removal of any temporary work and the undertaking by the undertaker of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (d) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the specified work or specified function; and
- (e) the expiry of the approval if the undertaker does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.

(5) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused—

- (a) in the case of an application for approval under article 27 (power to dredge), within 40 business days of the paragraph 59 specified day; and
- (b) in any other case, within 30 business days of the paragraph 59 specified day.

(6) An approval of the PLA under this paragraph is not deemed to have been unreasonably withheld or delayed if approval within the time limited by sub-paragraph (5) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(7) The undertaker must carry out all operations for the construction of any specified work or the specified function without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the river Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable. The PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and the undertaker must provide all reasonable facilities to enable that inspection and survey to take place.

(8) To the extent that the PLA approves under sub-paragraph (1) the carrying out of any specific works or the exercising of any specified functions outside of the limits of deviation of Work No.4, and the physical extent of any existing structures that are authorised by a works licence granted by

the PLA under section 66 (licensing of works) of the 1968 Act is changed or any of the existing structures are removed in their entirety as a result of the carrying out of that specified work or exercise of that specific function—

- (a) such works shall not constitute a breach of that works licence;
 - (b) the undertaker must notify the holder of that works licence of the specified works or specified functions that are intended to be carried out on the existing structures, at least 30 business days before the specified works or specified functions are carried out;
 - (c) within 30 business days following the completion of that specified work or exercise of that specific function, the undertaker must provide the PLA with such information as the PLA may reasonably require as to the changed physical extent or to confirm the entire removal of those existing structures;
 - (d) unless sub-paragraph (10) applies, the PLA must within 30 business days of receipt of the information referred to in sub-paragraph (c) issue to the holder of the works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act in respect of the existing structures in question a new licence to reflect—
 - (i) the physical changes to the existing structures; and
 - (ii) any changes to the conditions of the works licence it considers necessary to reflect the physical changes and to meet the requirements of the 1968 Act and the PLA's duties under it;
 - (e) from the date of its issue that new licence shall apply to the changed extent of the remaining existing structures in question, the existing works licence shall be revoked, the holder of the licence must comply with the conditions of the new licence and the 1968 Act shall apply to the remaining existing structures and works authorised by the new licence; and
 - (f) the holder of the works licence for the existing structures in questions shall have the right to appeal the conditions of any new works licence issued by the PLA under sub-paragraph (1)(b) of section 69 (appeal to board of trade) of the 1968 Act.
- (9) Where sub-paragraph (8) applies, the undertaker must—
- (a) compensate the holder of the works licence for any reasonable increase to the costs of that licence holder of complying with the conditions of the new works licence, compared to the costs of complying with the works licence that previously applied; and
 - (b) pay the reasonable costs of the PLA in complying with sub-paragraph (8)(d) and in connection with the reasonable costs of the PLA's participation in any appeal made under sub-paragraph (1)(b) of section 69 (appeal to board of trade) of the 1968 Act in connection with a new works licence issued under sub-paragraph (8)(f).
- (10) To the extent that the PLA approves under sub-paragraph (1) the carrying out of any specific works or the exercising of any specified functions outside of the limits of deviation of Work No.4 and all existing structures that are authorised by a works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act are removed in their entirety as a result of the carrying out of that specified work or exercise of that specific function, and article 8 does not apply—
- (a) following the completion of that specified work or exercise of that specific function, the undertaker must provide the PLA with information to demonstrate that the existing structures have been removed in their entirety; and
 - (b) upon the PLA being satisfied that the existing structures have been removed in their entirety it must—
 - (i) notify the undertaker that it is so satisfied; and
 - (ii) write to the holder of the works licence to confirm that that works licence is terminated.
- (11) Where sub-paragraph (10) applies, the undertaker must pay the reasonable costs of the PLA in complying with sub-paragraph (10)(b).

(12) In this paragraph—

- (a) “commence” includes the permitted preliminary works where they take place in the river Thames,
- (b) “plans” shall, in respect of the exercising of article 27, only mean such information which the PLA publishes on its website from time to time as being required to accompany an application for a licence to dredge under section 73 (licensing of dredging, etc.) of the 1968 Act and any documents required by the PLA pertaining to sampling, but not any other document listed under the definition of plans in paragraph 58, in respect of the exercising of article 27, and
- (c) “the paragraph 59 specified day” means, in relation to any specified work or specified function—
 - (i) the day on which plans and sections of that work or function are submitted to the PLA under sub-paragraph (1); or
 - (ii) the day on which the undertaker provides the PLA with all further particulars of the work or function that have been requested by the PLA under that sub-paragraph,

whichever is the later.

As built drawings

60. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the PLA as built drawings of any specified works in a form and scale to be agreed between the undertaker and the PLA to show the position of those works in relation to the river Thames.

Discharges, etc.

61.—(1) The undertaker must not without the consent of the PLA exercise the powers conferred by article 21 (discharge of water) so as to—

- (a) deposit in or allow to fall or be washed into the river Thames any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the river Thames any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the river Thames.

(2) Any consent of the PLA under this paragraph must not be unreasonably withheld or delayed but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any consent under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

62. The undertaker must not, in exercise of the powers conferred by article 21 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river Thames unless such damage or interference is approved as a specified work under this Order or otherwise forms part of the authorised development and is otherwise approved by the PLA.

Navigational lights, buoys, etc.

63.—(1) The undertaker must, at or near a specified work, a structure which remains in the river Thames by virtue of article 8 (interaction with the 1968 Act) or a location where a specified function is being exercised, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

(2) The PLA must give the undertaker not less than 20 business days’ written notice of a requirement under sub-paragraph (1) except in the case of emergency when the PLA must give such notice as is reasonably practicable.

Directions as to lights

64. The undertaker must comply with any reasonable directions issued from time to time by the PLA Harbour Master with regard to the lighting of—

- (a) a specified work or a structure which remains in the river Thames by virtue of article 8 (interaction with the 1968 Act); or
- (b) the carrying out of a specified function or the use of apparatus for the purposes of such a function,

or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

Permanent lights on tidal works

65. After the completion of a specified work the undertaker must at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the PLA may from time to time direct.

Removal, etc. of the PLA's moorings and buoys

66.—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or the exercise of any specified function it is reasonably necessary for the PLA to incur the cost of—

- (a) temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA;
- (b) laying down and removing substituted moorings or buoys; or
- (c) carrying out dredging operations for any such purpose,

not being costs which it would have incurred for any other reason, the undertaker must pay the costs reasonably so incurred by the PLA.

(2) The PLA must give to the undertaker not less than 20 business days' notice of its intention to incur such costs, and take into account any representations which the undertaker may make in response to the notice within 10 business days of the receipt of the notice.

Sedimentation, etc. remedial action

67.—(1) This paragraph applies if any part of the river Thames has become or is likely to become subject to sedimentation, scouring or other changes in the flow or regime of the river Thames which—

- (a) is wholly or partly caused by a specified work or the carrying out of a specified function during the period beginning with the commencement of construction of the work or function and (subject to sub-paragraph (4)) ending with the expiration of six years after the date of completion of all the specified works comprised in the authorised development; and
- (b) for the safety of navigation or for the protection of any works in the river Thames, should in the reasonable opinion of the PLA be removed or made good.

(2) Subject to sub-paragraph (3) the undertaker must either—

- (a) pay to the PLA any additional expense to which the PLA may reasonably be put in dredging the river Thames to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to either or both the specified work and the specified function; or
- (b) carry out the necessary dredging or work to make good the scouring at its own expense and subject to the prior approval of the PLA which may be subject to reasonable conditions but which may not be unreasonably withheld or delayed;

and the expenses payable by the undertaker under this sub-paragraph include any additional expenses accrued or incurred by the PLA in carrying out surveys or studies which may be agreed with the undertaker in connection with the implementation of this paragraph.

(3) If it is established that the sedimentation, scouring or other changes in the flow or regime of the river was partly caused by a specified work or a specified function and partly by another factor, the undertaker's liability under sub-paragraph (2) is apportioned accordingly.

(4) At any time before the expiry of the period of six years after the date of completion of Work No. 4 ("the completion date") the PLA may serve notice on the undertaker stating that in the opinion of the PLA the river Thames or any part of it may, after the expiry of that period, become subject to sedimentation, scouring or other changes in its flow or regime wholly or partly caused by a specified work or specified function. Any such notice must specify—

- (a) the additional period (not exceeding 10 years after the completion date) during which the provisions of sub-paragraphs (1) and (2) ought to apply; and
- (b) the PLA's reasons for reaching that opinion.

(5) On receipt of any such notice the undertaker may serve a counter-notice within 30 business days beginning on the day the notice was received, such notice to include details of the undertaker's objection to the PLA's notice or any conditions it may wish to impose on compliance by the undertaker with the PLA's notice.

(6) In the event that the PLA and the undertaker cannot agree the matters raised in the PLA's notice and the undertaker's counter-notice within two months from the service of the undertaker's counter-notice, either party may refer the matter to arbitration under paragraph 78.

(7) If the undertaker fails to serve a counter-notice or if it serves a counter-notice and the matter is either agreed between the PLA and the undertaker or determined pursuant to sub-paragraph (6), then the provisions of sub-paragraphs (1) and (2) will apply during such additional period as is specified in the PLA's notice or as may be so agreed or determined.

Removal of temporary works

68.—(1) On completion of the construction of the whole or any part of a permanent specified work, the undertaker must—

- (a) as soon as reasonably practicable after such completion seek approval under paragraph 59 for the removal required by sub-paragraph (b); and
- (b) as soon as reasonably practicable after the grant of that approval under paragraph 59 remove—
 - (i) in the case of completion of part of a permanent specified work, any temporary tidal work (other than a residual structure) carried out only for the purposes of that part of the permanent specified work;
 - (ii) on completion of all the specified works, any remaining temporary tidal work (other than a residual structure); and
 - (iii) in either case, any materials, plant and equipment used for such construction,

and make good the site to the reasonable satisfaction of the PLA.

(2) For the purposes of the undertaker making good the site in accordance with sub-paragraph (1)(b), the PLA may require that—

- (a) any residual structure is cut off by the undertaker at such level below the bed of the river Thames as the PLA may reasonably direct; and
- (b) the undertaker takes such other steps to make the residual structure safe as the PLA may reasonably direct.

(3) As soon as reasonably practicable after the undertaker has complied with the PLA's requirements under sub-paragraphs (1) and (2) in relation to any residual structure, the PLA will grant the undertaker a works licence for that structure under section 66 (licensing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 8 (interaction with the 1968 Act) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 of the 1968 Act.

(5) In this article—

“residual structure” means any part of a temporary tidal work that the PLA agrees cannot reasonably be removed by the undertaker on completion of the construction of the permanent specified works; and

“tidal work” means any specified work any part of which is, or may be, or, in, under or over the surface of land below mean high water level forming part of the river Thames.

Protective action

69.—(1) If any specified work or the exercise of any specified function—

- (a) is constructed or carried out otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given under paragraph 59(4); or
- (b) during construction or carrying out gives rise to sedimentation, scouring, currents, wave action, or worsening of the condition of the river bed, which would be materially detrimental to traffic in, or the flow or regime of, the river Thames,

then the PLA may by notice in writing require the undertaker at the undertaker’s own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a specified work or specified function to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Part of this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents, wave action, or material worsening of the condition of the river bed, so far as required by the needs of traffic in, or the flow or regime of, the river Thames.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require the undertaker to—

- (a) remove, alter or pull down the specified work, and where the specified work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
- (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a specified work gives rise to materially new or materially different environmental effects than those identified in any environmental document, the undertaker must, in compliance with its duties under any enactment, take such action as is necessary to prevent or mitigate adverse environmental impacts and in so doing must consult and seek to agree the necessary measures with the PLA.

(5) If the PLA becomes aware that any specified work is causing materially new or materially different environmental effects than those identified in any environmental document, the PLA must notify the undertaker of that environmental impact, the reasons why the PLA believes that an adverse environmental impact is being caused by the specified work and of measures that the PLA reasonably believes are necessary to counter or mitigate that adverse environmental impact. The undertaker must implement either the measures that the PLA has notified to the undertaker or such other measures as the undertaker believes are necessary to counter the adverse environmental impact identified, giving reasons to the PLA as to why it has implemented such other measures.

(6) In this paragraph “environmental document” means-

- (a) the environmental statement; and
- (b) any other document containing environmental information provided by the undertaker to the PLA for the purposes of any approval under paragraph 59.

Abandoned or decayed works

70.—(1) If a specified work or a structure which remains in the river Thames by virtue of article 8 (interaction with the 1968 Act) is abandoned or falls into decay, the PLA may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the specified work or structure, or any part of it, or to remove the specified work or structure and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of the specified work or structure.

(2) If any specified work or structure which remains in the river Thames by virtue of article 8 (interaction with the 1968 Act) is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river Thames, the PLA may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or structure or part of it; or
- (b) if the undertaker so elects, to remove the specified work or structure and (to such extent as the PLA reasonably requires) to restore the work or structure to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from the undertaker.

Facilities for navigation

71.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river Thames without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work or the exercise of any specified function.

(2) The undertaker must provide at any specified work, or must afford reasonable facilities at such work (including an electricity supply) for the PLA to provide at the undertaker's cost, from time to time such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the undertaker or the PLA may deem necessary by reason of the construction and presence of the specified work and must ensure access remains available to such facilities during and following construction of the specified work.

Survey of riverbed

72.—(1) The PLA may, at the undertaker's expense (such expense to be that which is reasonably incurred), carry out a survey (or externally procure the carrying out of a survey) for the purpose of establishing the condition of the river Thames—

- (a) before the commencement of construction of the first specified work below mean high water level to be constructed following approval under paragraph 59;
- (b) before the commencement of construction of any other specified work, or the carrying out of any other specified function, approved under paragraph 59;
- (c) during the construction of any specified work, or the carrying out of any specified function, as is reasonably required, and
- (d) after completion of, respectively—
 - (i) any specified work and the exercise of all related specified functions; and
 - (ii) all the specified works constructed and specified functions carried out under this Order in relation to such construction,

of such parts of the river Thames as might be affected by sedimentation, scouring, currents, wave action or material worsening of the condition of the river bed that might result from the construction of the relevant specified work, or the carrying out of a specified function as would, if it were to be constructed or carried out, constitute specified works, or give rise to operations, below mean high water level.

(2) Except where it relates to the authorised navigational channel of the river Thames or in an emergency, the PLA may only carry out surveys under sub-paragraph (1)(c)—

- (a) if it has given at least 14 days' notice of its intention to do so to the undertaker (unless otherwise agreed by the undertaker);
- (b) if the timing of the survey has been agreed in advance of the surveys by the undertaker; and
- (c) subject to the undertaker's ability to refuse access for surveys if the undertaker considers that the carrying out of surveys at that time would lead to safety concerns in the construction of the specified work or the carrying out of the specified function.

(3) The PLA must make available to the undertaker the results of any survey carried out under this paragraph.

(4) The PLA must not under this paragraph carry out a survey of any part of the river Thames in respect of which the undertaker has provided to the PLA survey material which the PLA is satisfied establishes the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(b), the effect of the specified works and the specified functions.

(5) A survey carried out under this paragraph is the property of the PLA.

Consideration for dredged material

73.—(1) The undertaker must pay to the PLA for material dredged by the undertaker under this Order from so much of the river Thames of which the freehold is vested in the PLA, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The consideration due under sub-paragraph (1) applies only in respect to material dredged in the course of the construction of the authorised development based on the quantity of such material that—

- (a) is not used for the construction of the authorised development; and
- (b) is sold by the undertaker or by any other person exercising any powers under this Order.

Restriction on powers contained in Part 3 of this Order

74.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order—

- (a) nothing contained in Part 3 of this Order nor article 39 (statutory undertakers) authorises the acquisition of any interest in, or the acquisition, appropriation, interference, overriding or extinguishment of any right in, on or over, or the imposing of restrictive covenants in any Order land (including airspace and subsoil) if the interest or right or the land to be affected by the restrictive covenant is (at the time of the proposed acquisition, appropriation, interference, overriding, extinguishment or the imposition of the restrictive covenant) land, airspace, subsoil or a right is vested in the PLA; and
- (b) nothing contained in article 37 (temporary use of land for carrying out the authorised development) or article 38 (temporary use of land for maintaining the authorised development) authorises the entering on and taking temporary possession or the entering of land (including airspace and subsoil) to gain access for maintenance in any Order land if the land at the time of the proposed entry the land, airspace or subsoil is vested in the PLA.

Protection for the PLA's functions

75.—(1) Subject to article 8 (interaction with the 1968 Act) the exercise in, under or over the river Thames by the undertaker of any of its functions under this Order is subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or the PLA Harbour Master under any enactment; and
- (c) any other exercise by the PLA or the PLA Harbour Master of any function conferred by or under any enactment.

(2) The undertaker must not take any action in the river Thames in relation to the removal from the Order limits of any vessel or other thing except with the consent of the PLA Harbour Master, which must not be unreasonably withheld or delayed.

Indemnity

76.—(1) The undertaker is responsible for and must make good to the PLA all financial costs, charges, damages, losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—

- (a) the construction or operation of a specified work or its failure;
- (b) the exercise of any specified function; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or exercise of a specified function dealing with any failure of a specified work,

and the undertaker must indemnify the PLA from and against all claims and demands arising out of or in connection with the specified works or specified functions or any such failure, act or omission.

(2) The undertaker will pay to the PLA its proper and reasonable legal costs, professional fees and disbursements incurred in connection with reviewing detailed design information, construction information and any other information submitted to the PLA in respect of a specified work or a specified function.

(3) The undertaker will pay to the PLA the proper and reasonable costs of any notice to mariners that are required to be issued as a result of article 25(6) (works in the River Thames: conditions).

(4) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(5) The PLA must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise of it is to be made without the prior consent of the undertaker.

Consultation

77.—(1) The undertaker must consult with the PLA on draft documentation, prior to the submission of any plan, scheme or strategy under requirements 7 (code of construction practice), 10 (emergency preparedness and response plan), 11 (lighting strategy), 16 (jetty works environmental design scheme) and 23 (decommissioning environmental management plan) which relate to Work No. 4, to the relevant planning authority.

(2) The undertaker must consult with the PLA on any updates to a plan, scheme or strategy approved under requirements 7 (code of construction practice), 10 (emergency preparedness and response plan), 11 (lighting strategy), 16 (jetty works environmental design scheme) and 23 (decommissioning environmental management plan) which relate to Work No. 4, prior to submission to the relevant planning authority under requirement 3 (approved details and amendments to them).

Disputes

78. Subject to any protocol agreed in writing by the parties, any dispute arising between the undertaker and the PLA under this Part of this Schedule is to be determined by arbitration as provided in article 49 (arbitration).

PART 6

FOR THE PROTECTION OF UK POWER NETWORKS LIMITED, LONDON POWER NETWORKS PLC AND SOUTH EASTERN POWER NETWORKS PLC

79. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

80.—(1) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) UK Power Networks Limited, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (b) London Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (c) South Eastern Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (d) for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

81. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

82. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such 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 prohibition or restriction was in that street.

83. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than with the prior written agreement of the utility undertaker.

84.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the removal of apparatus or construction of alternative apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay and only in accordance with plans approved by the utility undertaker, such approval may be subject to such reasonable conditions including but not limited to the undertaker entering into an assets protection agreement with the utility undertaker as the utility undertaker deems necessary. The undertaker must carry out the works under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker subject to the utility undertaker's reasonable specification.

85.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

86.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 85, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 79 to 85 apply as if the removal of the apparatus had been required by the undertaker under paragraph 84(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

87.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 84(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this

Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 84(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

88.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 84(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph 84(2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

89. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 84(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 86, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

90. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 7

FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

Application

91. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

Interpretation

92. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 (interpretation) and commencement is to be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms “commence” and “commencement” include the permitted preliminary works;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to SGN and which shall have been approved by SGN acting reasonably;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 97(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 97(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 (interpretation) of this Order.

On Street Apparatus

93.—(1) Except for paragraphs 94 (apparatus of SGN in stopped up streets), 97 (removal of apparatus) in so far as sub-paragraph 94(2) applies, 98 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) below applies, 99 (retained apparatus: protection of SGN), 100 (expenses) and 101 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraphs 97 and 98 of this Part of this Schedule apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

Apparatus of SGN in stopped up streets

94.—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 15 (permanent stopping up of specified street and private means of access) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of SGN to require the removal of that apparatus under paragraph 97.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

95.—(1) The undertaker, in the case of the powers conferred by article 23 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to SGN for any loss sustained by it; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen; and SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

96.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement.

(2) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(3) Any agreement or consent granted by SGN under paragraph 99 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(4) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such decommissioned apparatus from the date of such surrender.

(5) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 97 do not apply, the undertaker must—

- (a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 business days of receipt of such up to date official entry copies.

Removal of apparatus

97.—(1) If, in the exercise of the agreement reached in accordance with paragraph 91 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation to the reasonable satisfaction of SGN and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 98(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

98.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter are

referred to arbitration in accordance with paragraph 105 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SGN

99.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must where reasonably required by SGN submit to SGN a plan and, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (a) ten metres measured in any direction of any apparatus, or (b) involve embankment works within ten metres of any apparatus, the plan to be submitted where reasonably required to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SGN has given written approval of the plan so submitted.

(4) Any approval of SGN required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and SGN must give 45 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 91 to 93 and 96 to 98 apply as if the removal of the apparatus had been required by the undertaker under paragraph 97(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event which is known to or may have affected apparatus attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 100.

Expenses

100.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 97(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to paragraph 99(6).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this

Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

Indemnity

101.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and SGN.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 10 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 101(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 101.

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) SGN must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 101 applies. If requested to do so by the undertaker, SGN must provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 101 for claims reasonably incurred by SGN.

Enactments and agreements

102. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

103.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under paragraph 97(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 99, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SGN's undertaking and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement or approval is required in relation to plans, documents or other information submitted by SGN or the taking of action by SGN, it must not be unreasonably withheld or delayed.

Access

104. If in consequence of the agreement reached in accordance with paragraph 96(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

105. Save for differences or disputes arising under paragraphs 97(2), 97(4), 98(1) and 99, any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 49 (arbitration).

Notices

106. The plans submitted to SGN by the undertaker pursuant to paragraph 99(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.

PART 8

FOR THE PROTECTION OF REPL

107. For the protection of REPL as referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and REPL.

108. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable REPL to fulfil its functions in a manner no less efficient than previously;

“apparatus” means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by REPL and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the REPL facility and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“internal street” means any roads that service the REPL facility and which are located within the REPL facility perimeter;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“REPL facility” means the energy from waste facility and associated infrastructure known as Riverside 2 at Norman Road, Belvedere, Bexley, Kent;

“REPL facility perimeter” means that part of the Order land identified as plots 1-048, 1-049, 1-051, 1-054, 1-055, 1-059, 1-060, 1-061, 1-064, 1-065, 1-066, 1-068, 1-070, 1-071, 1-075, 1-081, 1-082, 1-085, 1-088 and 1-115 on the land plans; and

“REPL land” means that part of the Order land in the freehold ownership of REPL which, as at the date upon which this Order comes into force pursuant to article 1 (citation and commencement), are those plots identified as being in the freehold ownership of REPL in the book of reference.

109. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus within the REPL land otherwise than by agreement.

110. The undertaker must ensure that REPL is at liberty at all times to, except in the case of where to do so would, in the undertaker’s discretion, lead to adverse safety impacts—

- (a) take all necessary access across any street used to access the REPL facility (including any internal street), including in cases where that street has been temporarily stopped up under article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way) or is subject to any traffic regulation measure pursuant to article 20 (traffic regulation measures); and
- (b) execute and do all such works and things in, upon or under any such street (including any internal street) used to access the REPL facility, including in cases where that street has been temporarily stopped up under article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way), or is subject any traffic regulation measure pursuant to article 20 (traffic regulation measures), as may be reasonably necessary or desirable to enable it to maintain any apparatus which is in that street (including any internal street) used to access the REPL facility.

111.—(1) If, in the exercise of the powers conferred by this Order, the undertaker—

- (a) acquires any interest in the REPL land in which any apparatus is placed or over which access to any apparatus is enjoyed; or
- (b) requires that REPL's apparatus within the REPL land is relocated, diverted or removed, any right of REPL to any part of the REPL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until equivalent rights have been granted to REPL for alternative apparatus and equivalent alternative apparatus has vested in REPL and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided. The location of equivalent alternative apparatus and rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and REPL before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(2) If, for the purpose of executing any works in, on or under the REPL land, the undertaker requires the relocation, diversion or removal of any apparatus placed in the REPL land, the undertaker must give to REPL for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or constructed by the undertaker.

(3) The approval of REPL under sub-paragraph (2) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the notice, plan, section and timetable have been supplied to REPL, REPL has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, REPL is deemed to have approved the said notice, plan, section and timetable as submitted.

(4) When giving its approval under sub-paragraph (2), REPL may specify such reasonable requirements that are necessary in the provision or construction of the alternative apparatus.

(5) In the event that REPL issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article 49 (arbitration).

(6) Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with REPL or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(7) Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant REPL the necessary rights to access and maintain the alternative apparatus on that land.

(8) If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of 28 days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, REPL gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker, (acting reasonably) REPL, after the grant to REPL of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(9) Where REPL is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant REPL the necessary rights to provide or construct the alternative apparatus on that land and grant REPL the necessary rights to access and maintain the alternative apparatus on that land.

112.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to REPL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions as may be agreed between the undertaker and REPL or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those rights are to be granted, are in the opinion of the arbitrator materially less favourable on the whole to REPL than the rights enjoyed by it in respect

of the apparatus to be removed and the terms and conditions to which those rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to REPL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

113.—(1) Not less than 28 days before starting the execution of any works in, on or under the REPL land that may materially affect the operation of the REPL facility, the undertaker must submit to REPL for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

(2) The approval of REPL under sub-paragraph (1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the plan, section, description and timetable have been supplied to REPL, REPL has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, REPL is deemed to have approved the said plan, section description and timetable as submitted.

(3) When giving its approval under sub-paragraph (1), REPL may specify such reasonable requirements which in REPL's opinion are necessary in the execution of the works.

(4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by REPL. Where REPL reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to REPL's reasonable satisfaction prior to the works described in sub-paragraph (1).

(5) In the event that REPL issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 49 (arbitration).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works (as defined in the 1991 Act) but in that case it must give to REPL notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraphs (3) and (4) in so far as is reasonably practicable in the circumstances.

114.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to REPL the reasonable expenses incurred by REPL in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the REPL land or the provision or construction of any alternative apparatus which REPL elects to carry out itself as referred to in paragraph 111(8).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration)

to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to REPL by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 111(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.
- (c) an amount which apart from this sub-paragraph would be payable to REPL in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on REPL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

115. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and REPL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

116. Where in consequence of the proposed construction or maintenance of any part of the authorised development, the undertaker or REPL requires the removal of apparatus or REPL makes requirements for the protection or alteration of apparatus, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of REPL's undertaking and REPL shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

117. If in consequence of any agreement reached or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable REPL to maintain or use the apparatus no less effectively than was possible before such obstruction.

118.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, use or maintenance, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of REPL, or there is any interruption in any service provided, or in the supply of any goods, by REPL, or REPL becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by REPL in making good such damage or restoring the supply; and
- (b) indemnify REPL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from REPL, by reason or in consequence of any such damage or interruption or REPL becoming liable to any third party as aforesaid other than arising from any default of REPL.

(2) The fact that any act or thing may have been done by REPL on behalf of the undertaker or in accordance with a plan approved by REPL or in accordance with any requirement of REPL or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless REPL fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and REPL.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of REPL, its officers, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by REPL, whether pursuant to article 9 (benefit of this Order) or as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 10 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any part of the authorised development yet to be executed and not falling within this sub-section 118(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 117.

(4) REPL must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) REPL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 118 applies. If requested to do so by the undertaker, REPL shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 118 for claims reasonably incurred by REPL.

PART 9

FOR THE PROTECTION OF EACH RRRL ENTITY

119. For the protection of each RRRL Entity as referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and the applicable RRRL Entity.

120. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable each RRRL Entity to fulfil its functions in a manner no less efficient than previously;

“apparatus” means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by any RRRL Entity and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the RRRL facility and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“internal street” means any roads that service the RRRL facility and which are located within the RRRL facility perimeter;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“RRRL facility” means the energy from waste facility and associated infrastructure known operated at the date of this Order by RRRL at Norman Road, Belvedere, Bexley, Kent;

“RRRL facility perimeter” means that part of the Order land identified as plots 1-008, 1-009, 1-019, 1-032, 1-034, 1-035, 1-037, 1-039, 1-040, 1-043, 1-045, 1-048, 1-049, 1-051, 1-052, 1-054, 1-055, 1-056, 1-058, 1-059, 1-060, 1-061, 1-062, 1-063, 1-064, 1-065, 1-066, 1-067, 1-069, 1-071, 1-073, 1-074, 1-075, 1-076, 1-077, 1-078, 1-079, 1-080, 1-084, 1-086, 1-087, 1-091, 1-096, 1-105, 1-109 and 1-112 on the land plans; and

“RRRL land” means that part of the Order land in the freehold ownership of RRRL which, as at the date upon which this Order comes into force pursuant to article 1 (citation and commencement), are those plots identified as being in the freehold ownership of RRRL in the book of reference.

121. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus within the RRRL land otherwise than by agreement.

122. The undertaker must ensure that each RRRL Entity is at liberty at all times to, except in the case of where to do so would, in the undertaker’s discretion, lead to adverse safety impacts—

- (a) take all necessary access across any street used to access the RRRL facility (including any internal street), including in cases where that street has been temporarily stopped up under article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way) or is subject any traffic regulation measure pursuant to article 20 (traffic regulation measures); and
- (b) execute and do all such works and things in, upon or under any such street (including any internal street) used to access the RRRL facility, including in cases where that street has been temporarily stopped up under article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way), or is subject any traffic regulation measure pursuant to article 20, as may be reasonably necessary or desirable to enable it to maintain any apparatus which is in that street (including any internal street) used to access the RRRL facility.

123.—(1) If, in the exercise of the powers conferred by this Order, the undertaker—

- (a) acquires any interest in the RRRL land in which any apparatus is placed or over which access to any apparatus is enjoyed; or
- (b) requires that any RRRL Entity’s apparatus within the RRRL land is relocated, diverted or removed, any right of a RRRL Entity to any part of the RRRL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until equivalent rights have been granted to each RRRL Entity for alternative apparatus and equivalent alternative apparatus has vested in the applicable RRRL Entity and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided to each RRRL Entity. The location of equivalent alternative apparatus and rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and each RRRL Entity before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(2) If, for the purpose of executing any works in, on or under the RRRL land, the undertaker requires the relocation, diversion or removal of any apparatus placed in the RRRL land, the undertaker must give to each RRRL Entity for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or constructed by the undertaker.

(3) The approval of each RRRL Entity under sub-paragraph (2) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which

the notice, plan, section and timetable have been supplied to each RRRL Entity, a RRRL Entity has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, such RRRL Entity is deemed to have approved the said notice, plan, section and timetable as submitted.

(4) When giving its approval under sub-paragraph (2), each RRRL Entity may specify such reasonable requirements that are necessary in the provision or construction of the alternative apparatus.

(5) In the event that any RRRL Entity issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article 49 (arbitration).

(6) Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with each RRRL Entity or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(7) Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant each RRRL Entity the necessary rights to access and maintain the alternative apparatus on that land.

(8) If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of 28 days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, a RRRL Entity gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker, (acting reasonably) such RRRL Entity, after the grant to such RRRL Entity of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(9) Where a RRRL Entity is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant such RRRL Entity the necessary rights to provide or construct the alternative apparatus on that land and grant each RRRL Entity the necessary rights to access and maintain the alternative apparatus on that land.

124.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to RRRL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions as may be agreed between the undertaker and each RRRL Entity or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those rights are to be granted, are in the opinion of the arbitrator materially less favourable on the whole to a RRRL Entity than the rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to such RRRL Entity as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

125.—(1) Not less than 28 days before starting the execution of any works in, on or under the RRRL land that may materially affect the operation of the RRRL facility, the undertaker must submit to each RRRL Entity for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

(2) The approval of each RRRL Entity under sub-paragraph (1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the plan, section, description and timetable have been supplied to a RRRL Entity, such RRRL Entity has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, such RRRL Entity is deemed to have approved the said plan, section description and timetable as submitted.

(3) When giving its approval under sub-paragraph (1), a RRRL Entity may specify such reasonable requirements which in such RRRL Entity's opinion are necessary in the execution of the works.

(4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by the RRRL Entity. Where a RRRL Entity reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to such RRRL Entity's reasonable satisfaction prior to the works described in sub-paragraph (1).

(5) In the event that a RRRL Entity issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 49 (arbitration).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works (as defined in the 1991 Act) but in that case it must give to each RRRL Entity notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraphs (3) and (4) in so far as is reasonably practicable in the circumstances.

126.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to each RRRL Entity the reasonable expenses incurred by such RRRL Entity in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the RRRL land or the provision or construction of any alternative apparatus which such RRRL Entity elects to carry out itself as referred to in paragraph 123(8).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to a RRRL Entity by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 123(2); and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a RRRL Entity in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on a RRRL Entity any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

127. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and any RRRL Entity in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

128. Where in consequence of the proposed construction or maintenance of any part of the authorised development, the undertaker or any RRRL Entity requires the removal of apparatus or any RRRL Entity makes requirements for the protection or alteration of apparatus, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of each RRRL Entity's undertaking and each RRRL Entity shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

129. If in consequence of any agreement reached or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable each RRRL Entity to maintain or use the apparatus no less effectively than was possible before such obstruction.

130.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, use or maintenance, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of any RRRL Entity, or there is any interruption in any service provided, or in the supply of any goods, by any RRRL Entity, or any RRRL Entity becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by such RRRL Entity in making good such damage or restoring the supply; and
- (b) indemnify such RRRL Entity for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from such RRRL Entity, by reason or in consequence of any such damage or interruption or such RRRL Entity becoming liable to any third party as aforesaid other than arising from any default of such RRRL Entity.

(2) The fact that any act or thing may have been done by a RRRL Entity on behalf of the undertaker or in accordance with a plan approved by such RRRL Entity or in accordance with any requirement of such RRRL Entity or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless such RRRL Entity fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and such RRRL Entity.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of such RRRL Entity, its officers, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by such RRRL Entity whether pursuant to article 9 (benefit of this Order) or as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 10 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any part of the authorised development yet to be executed and not falling within this sub-section 130(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 130.

(4) Each RRRL Entity must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) Each RRRL Entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 130 applies. If requested to do so by the undertaker, the applicable RRRL Entity shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 130 for claims reasonably incurred by a RRRL Entity.

SCHEDULE 13

Article 44

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and rights of way plan	2.4	P03	September 2024
book of reference	4.3	Rev H	May 2025
design principles and design code	5.7	Rev E	March 2025
environmental statement	environmental statement 6.1 (excluding chapters 2, 4, 5, 7, 8, 9, 11, 14, 19, 21 and 22)	Rev A	March 2024
	environmental statement 6.1 Chapter 2	Rev B	April 2025
	environmental statement 6.1 Chapter 4	Rev B	April 2025
	environmental statement 6.1 Chapter 5	Rev B	April 2025
	environmental statement 6.1 Chapter 7	Rev B	April 2025
	environmental statement 6.1 Chapter 8	Rev B	April 2025
	environmental statement 6.1 Chapter 9	Rev B	April 2025
	environmental statement 6.1 Chapter 11	Rev B	April 2025
	environmental statement 6.1 Chapter 14	Rev B	April 2025
	environmental statement 6.1 Chapter 19	Rev B	April 2025
	environmental statement 6.1 Chapter 21	Rev B	April 2025
	environmental statement 6.1 Chapter 22	Rev B	April 2025
	environmental statement 6.2 (excluding figures	Rev A	March 2024

	3.3, 7.4, 7.10 and 11.2)		
	environmental statement 6.2 (figure 3.3)	Rev B	September 2024
	environmental statement 6.2 (figure 7.4)	Rev B	April 2025
	environmental statement 6.2 (figure 7.10)	Rev B	April 2025
	environmental statement 6.2 (figure 11.2)	Rev B	April 2025
	environmental statement 6.3 (excluding appendices 2.1, 4.2, 5.2, 5.3, 5.4, 7.8, 7.9, 10.4, 11.1, 11.2, 11.4 and 19.1)	Rev A	March 2024
	environmental statement 6.3 (appendix 2.1)	Rev C	February 2025
	environmental statement 6.3 (appendix 4.2)	Rev B	April 2025
	environmental statement 6.3 (appendix 5.2)	Rev B	April 2025
	environmental statement 6.3 (appendix 5.3)	Rev B	April 2025
	environmental statement 6.3 (appendix 5.4)	Rev B	April 2025
	environmental statement 6.3 (appendix 7.8)	Rev B	April 2025
	environmental statement 6.3 (appendix 7.9)	Rev B	April 2025
	environmental statement 6.3 (appendix 11.1)	Rev B	April 2025
	environmental statement 6.3 (appendix 11.2)	Rev B	September 2024
	environmental statement 6.3 (appendix 11.4)	Rev B	April 2025
	environmental statement 6.3 (appendix 19.1)	Rev E	April 2025
	environmental	Rev B	January 2025

	statement 6.3 (appendix 10.4)		
extended crossness local nature reserve plan	2.9	P04	January 2025
flood risk assessment	6.3 Appendix 11.2	Rev B	September 2024
framework construction traffic management plan	7.7	Rev E	March 2025
land plans	2.2	P05	February 2025
mitigation schedule	7.8	Rev B	November 2024
outline landscape, biodiversity, access and recreation delivery strategy	7.9	Rev F	April 2025
outline code of construction practice	7.4	Rev E	March 2025
outline drainage strategy	7.2	Rev C	April 2025
outline emergency preparedness and response plan	7.11	Rev C	April 2025
outline lighting strategy	7.3	Rev B	March 2025
outline site waste management plan	7.10	Rev B	April 2025
outline skills and employment plan	9.15	Rev A	December 2024
preliminary navigation risk assessment	6.3 Appendix 19.1	Rev E	April 2025
traffic regulation measures plan	2.6	P03	September 2024
works plans	2.3	P08	April 2025

PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.

Interpretation**1. In this Schedule—**

“the appeal parties” means the relevant authority, the undertaker and any requirement consultees;

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means the relevant planning authority, relevant highway authority, relevant traffic authority, relevant street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

Applications made for consent, agreement or approval

2.—(1) Subject to article 48(2) (procedures in relation to certain approvals etc.), where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any provisions of this Order, including—

- (a) consent, agreement or approval in respect of part of a requirement;
- (b) any consent, agreement or approval required by any of the documents listed in Schedule 13 (documents and plans to be certified);
- (c) documents approved pursuant to a requirement; or
- (d) consent sought under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974,

the relevant authority must give notice to the undertaker of its decision on the application within a period of nine weeks beginning with—

- (i) the day immediately following that on which the application is received by the relevant authority;
- (ii) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (iii) such longer period as may be agreed in writing by the undertaker and the relevant authority.

(2) Subject to sub-paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where an application is made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, it must be accompanied by a report which states whether the subject matter of the application will give rise to any materially new or materially different environmental effects which are worse than those identified in the environmental statement.

(a) 1971 c. 80.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects which are worse than those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects which are worse than those in the environmental statement,

the application is to be taken to have been refused by the relevant authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision of the Order governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision of the Order governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within ten business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Anticipatory steps towards compliance with any requirement

4. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Schedule 2, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Appeals

5.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4)) an application for any consent, agreement or approval referred to in paragraph 2 of this Schedule 14 or grants it subject to conditions;
- (b) the relevant authority refuses an application for a permit under a permit scheme, or grants such a permit subject to conditions;
- (c) the relevant authority issues a notice to the undertaker under section 60 (control of noise on construction sites) of the Control of Pollution Act 1974;

- (d) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (e) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination or request, or (where paragraph 2(4) applies) expiry of the decision period as determined under paragraph 2(1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the appeal parties;
- (c) as soon as is practicable following receipt of the appeal documentation, the Secretary of State is to appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention must be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (d) the relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d); and
- (f) the appointed person must decide the appeal and notify the appeal parties of the decision, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required, the appeal part from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person, under this paragraph.

(8) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of Schedule 2 (requirements) as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years' experience.

(12) Save where a direction is given pursuant to sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014), published by the Ministry of Housing, Communities & Local Government, or any circular or guidance which may from time to time replace it.

Application to protective provisions

6. Nothing in this Schedule applies to any consent, agreement or approval required or contemplated by Schedule 12 (protective provisions) or article 23(6) (protective works to buildings).

SCHEDULE 15

Article 47

ARBITRATION RULES

Commencing an arbitration

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 49 of this Order (arbitration).

(2) The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim or the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence consisting of a response to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any elements of the claimant’s claim and its contentions as to those elements of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (c) any objection it wishes to make to the claimant’s statements, comments on the claimant’s expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

- (b) all statements of evidence and copies of documents in response to the respondent's submissions;
- (c) any expert report in response to the respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator must make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;
- (b) if more than one expert is called, they must jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996^(a), save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders are to be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it is to be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

^(a) 1996 c. 23.

SCHEDULE 16

DESIGN PARAMETERS

Requirement 4

<i>(1)</i> <i>Component/Building/Area</i>	<i>(2)</i> <i>Works Area</i>	<i>(3)</i> <i>Maximum Number</i>	<i>(4)</i> <i>Maximum Height (m) of Component/ Building/ Area</i>	<i>(5)</i> <i>Maximum Height (m)</i>	<i>(6)</i> <i>Further Parameters</i>
Direct Contact Cooler	1A	2	30	33 Above Ordnance Datum	-
Absorber Column(s) and Stack(s)	1B	2 combined Absorber Column(s) and Stack(s) or a maximum of 2 Absorber Column(s) and 2 Stack(s)	110	113 Above Ordnance Datum	Minimum vertical distance between top of Absorber Column(s) and top of Stack(s) whether combined or separate – 30m Minimum height of the top of Stack(s) – 100m from development platform as built Where there are 2 Stacks: Maximum internal diameter of Stack associated with Riverside 1: 3.1m Maximum internal diameter of Stack associated with Riverside 2: 2.5m Where there is 1 Stack: Maximum internal diameter of

					Stack: 4.0m
Regenerator	1A	2	60	63 Above Ordnance Datum	-
Compression Plant	1C	2	45	48 Above Ordnance Datum	-
CO2 Dehydration	1C	2	25	28 Above Ordnance Datum	-
CO2 Liquefaction	1C	2	30	33 Above Ordnance Datum	-
CO2 Vents	1C	2	45	48 Above Ordnance Datum	-
LCO ₂ Buffer Storage Area	1D	16	45	48 Above Ordnance Datum	-
Hybrid or Dry Cooling Tower	1E	2	32	35 Above Ordnance Datum	-
Water Treatment Plant and Wastewater Treatment Plant	1E	2	20	23 Above Ordnance Datum	-
Back Pressure Turbine and Generator	1A	2	35	38 Above Ordnance Datum	-
Insulated heat pipework and flue gas ducting	2A(ii) and 2b(i)	-	30	33 Above Ordnance Datum	-
Loading platform (not including topside infrastructure and equipment)	4C	1	-	11.5 Above Chart Datum	Maximum length of 40 metres Maximum width of 50 metres
Breasting Dolphins	4B	4	-	11.5 Above Chart Datum	-
Mooring Dolphins	4B	6	-	11.5 Above Chart Datum	Maximum length of 7 metres Maximum width of 7 metres
Access Trestle Start Point (not including topside infrastructure and equipment)	4B	1	-	20 Above Ordnance Datum	Maximum length of 335 metres Maximum width of 10 metres
LCO ₂ pipelines, piperacks and pipe bridges	5	-	30	33 Above Ordnance Datum	-

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Cory Environmental Holdings Limited as notified to the relevant planning authority pursuant to the provisions of this Order (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a carbon capture facility and associated development.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 46 of this Order (certification of plans etc.) may be inspected free of charge during working hours at London Borough of Bexley, Civic Offices, 2 Watling Street, Bexleyheath, Kent DA6 7AT.