

DATED 12 FEBRUARY 2014

**THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND  
CHELSEA**  
as the Council

**THAMES WATER UTILITIES LIMITED**  
as the Undertaker

**AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 AND SECTION 111 OF THE LOCAL GOVERNMENT ACT 1972**

in relation to the development at Cremorne Wharf Depot and Chelsea Embankment Foreshore



DATED

12 FEBRUARY

2014

## PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX (the "**Council**")
- (2) **THAMES WATER UTILITIES LIMITED**, a company incorporated in England with registered number 02366661 whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (the "**Undertaker**")

## BACKGROUND

- (A) The Council is the relevant planning authority for the purposes of section 106 of the 1990 Act for the area within which the Land is situated.
- (B) The Undertaker has a freehold interest in land under Land Registry Titles BGL3359 and BGL3375 (the "**Existing TWUL Land**").
- (C) The Undertaker will acquire a Qualifying Interest in the DCO Land in accordance with the provisions of paragraph 10 (3) of Schedule 19 of the DCO.
- (D) The Undertaker may acquire a freehold interest in the Future TWUL Land.
- (E) The Undertaker submitted the Application to the Secretary of State on 28 February 2013 and the Application was accepted by the Secretary of State on 27 March 2013.
- (F) The Undertaker has agreed that the Development shall be carried out only in accordance with the DCO and the rights and obligations set out in this Agreement.
- (G) The Council is satisfied that the obligations in this Agreement are compliant with Regulation 122 of the CIL Regulations 2010 and that they met the following tests:
  - they are necessary to make the Development acceptable in planning terms; and
  - they are directly related to the Development; and
  - they are fairly and reasonably related in scale and kind to the Development.
- (H) This Agreement is intended to be enforceable by the Council and subject to Clause 2 (*Land Bound*), Clause 4 (*Conditionality*) and Clause 10 (*Release and Lapse*) to be binding on the Undertaker, and on the Land, and the Undertaker's Successors to that land.

## OPERATIVE PROVISIONS

### 1 STATUTORY POWERS

- 1.1 This Agreement entered into by deed contains planning obligations that are development consent obligations for the purposes of section 106 of the 1990 Act and

is entered into pursuant also to section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other powers so enabling.

- 1.2 It is acknowledged by the parties that the obligations contained within this Agreement are enforceable by the Council as local planning authority against:
  - 1.2.1 The Undertaker In respect of its Qualifying Interest in the Land as bound under Clause 2 (*Land Bound*) of this Agreement; and
  - 1.2.2 the Undertaker's Successors to its Qualifying Interest in the Land as bound under Clause 2 (*Land Bound*) of this Agreement.

## 2 LAND BOUND

- 2.1 Subject to Clause 4 (*Conditionality*), Clause 10 (*Release and Lapse*) and Clause 7 (*Legal Costs*):
  - 2.1.1 The planning obligations in Schedule 1, Part 1 (*Employment and Skills*) of this Agreement bind the Existing TWUL Land;
  - 2.1.2 The planning obligations in Schedule 1, Part 1 (*Employment and Skills*) are intended to bind the DCO Land; and
  - 2.1.3 The planning obligations in Schedule 1, Part 2 (*Permissive Public Realm*) and Schedule 1, Part 3 (*Maintenance of Permissive Public Realm*) and Schedule 3 (*Permissive Public Realm Maintenance Plan*) of this Agreement are intended to bind the Future TWUL Land SAVE THAT this excludes the Development Site at Cremorne Wharf Depot.

### ***Construction Phase***

- 2.2 The Undertaker covenants with the Council not to Implement the Development at the Sites unless and until the Undertaker enters into an agreement ("**Construction Phase Confirmatory Deed**") with the Council for the purposes of ensuring that the DCO Land (or such parts of the DCO Land as has been defined by the Undertaker will form part of the Land for the purposes of the Development) will be bound by the planning obligations set out in Schedule 1, Part 1 (*Employment and Skills*) of this Agreement until the Construction Phase Completion Date.
- 2.3 The Council agrees and acknowledges that it will enter into a further agreement anticipated by Clause 2.2 if and when requested to do so by the Undertaker.

### ***Operation of the Development***

- 2.4 The Undertaker shall notify the Council in writing at least one (1) month in advance of each of the intended Permanent Acquisition Vesting Dates.
- 2.5 Where the Undertaker acquires part or all of the Permanent Works Land the Undertaker covenants to the Council that as soon as practicable following the Permanent Acquisition Vesting Date it will enter into an agreement ("**Operational Confirmatory Deed**") with the Council for the purposes of ensuring that the Future TWUL Land (which will form part of the Land for the purposes of this Agreement) will be bound by the obligations set out in Schedule 1, Part 2 (*Permissive Public Realm*) and Schedule 1, Part 3 (*Maintenance of Permissive Public Realm*) and Schedule 3 (*Permissive Public Realm Maintenance Plan*) of this Agreement.

- 2.6 The Council agrees and acknowledges that it will enter into a further agreement anticipated by Clause 2.5 if and when requested to do so by the Undertaker
- 2.7 The Undertaker covenants with the Council that it shall not dispose of its Qualifying Interests in the DCO Land until it has entered into the Operational Confirmatory Deed in accordance with Clause 2.5 of this Agreement.

### 3 INTERPRETATION

- 3.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**"1990 Act"** means the Town and Country Planning Act 1990 (as amended);

**"2008 Act"** means the Planning Act 2008 (as amended);

**"Application"** means the application for development consent made pursuant to the 2008 Act submitted by Thames Water Utilities Limited to the Secretary of State (application reference number WW010001);

**"Construction Phase"** means the period from Implementation of the Development at each Site until the Construction Phase Completion Date in relation to that Site;

**"Construction Phase Confirmatory Deed"** means a Deed substantially in the form of that set out at Appendix 2;

**"Construction Phase Completion Date"** means the date on which the "completion of construction" (as defined in the DCO) occurs in relation to each of the Sites;

**"Contractor"** means for the purposes of this Agreement the contractor (or contractors) appointed to carry out the works comprising the Development at the Development Sites located at Cremorne Wharf Depot and Chelsea Embankment Foreshore;

**"Council"** means the Royal Borough of Kensington and Chelsea;

**"DCO"** means the development consent order in the form as may ultimately be made by the Secretary of State if he is minded to issue development consent to the Application;

**"DCO Land"** means the land shown hatched and edged in black on the Site and Construction Phase Plans and described in Schedule 4, Part 2 (*DCO Land*);

**"Development"** means the Thames Tideway Tunnel comprising the authorised development and associated development described in Part 1 of Schedule 1 of the DCO and any other development authorised by the DCO which is development within the meaning of Section 32 of the Planning Act 2008;

**"Development Boroughs"** means each of London Borough of Ealing, London Borough of Hammersmith and Fulham, London Borough of Wandsworth, London Borough of Lambeth, City of London Corporation, City of Westminster, Royal Borough of Kensington and Chelsea, London Borough of Newham, London Borough of Greenwich, London Borough of Lewisham, London Borough of Southwark, London Borough of Tower Hamlets, and London Borough of Richmond-upon-Thames;

**"Development Sites"** means each of the worksites at Acton Storm Tanks, Hammersmith Pumping Station, Barn Elms, Putney Embankment Foreshore, Dormay

Street, King George's Park, Carnwath Road Riverside, Falconbrook Pumping Station, Cremorne Wharf Depot, Chelsea Embankment Foreshore, Kirtling Street, Heathwall Pumping Station, Albert Embankment Foreshore, Victoria Embankment Foreshore, Blackfriars Bridge Foreshore, Shad Thames Pumping Station, Chambers Wharf, Earl Pumping Station, Deptford Church Street, Greenwich Pumping Station, King Edward Memorial Park Foreshore, Bekesbourne Street, Abbey Mills Pumping Station, and Beckton Sewage Treatment Works;

**"Existing TWUL Land"** means the land shown hatched and edged in red on the Ownership Plans and described in Schedule 4, Part 1 (*Existing TWUL Land*);

**"Future TWUL Land"** means such part of the Permanent Acquisition Land as shown shaded dark grey and edged in red on the Site and Operational Land Plan and described in Schedule 4, Part 3 (*Future TWUL Land*);

**"Highway Works"** means the laying out and resurfacing of the carriageway and footway within the order limits between the Bull Ring gates and Chelsea Embankment (A3212) as indicated by the zone within which required landscaping would be located on the DCO site works parameter plan (drg ref. DCO-PP-12X-CHEEF-140006);

**"Highway Works Agreement"** means an agreement for the provision of the Highway Works made pursuant to Article 17 of the DCO;

**"Implementation"** means commencement of development pursuant to the DCO by the carrying out of a "material operation" (as defined in section 56(4) of the 1990 Act) save that for the purposes of this Agreement the term shall not include works of demolition, surveys, site clearance, or works of archaeological or ground investigation or remediation (and in this Agreement **"Implement"** and **"Implemented"** shall be construed accordingly);

**"Land"** means the land described in Clause 2 (*Land Bound*) of this Agreement;

**"Local Labour Report"** means a written monitoring report (based on averages over the three (3) months preceding the date of the report) to include the following:

- (a) the percentage of those recruited, employed, engaged and/or hired under the Contractor's construction package and are working at a Main Tunnel Drive Site who are living within the Borough in which the Main Tunnel Drive Site is located;
- (b) the percentage of those recruited, employed, engaged and/or hired under the Contractor's construction package who are living within the Development Boroughs, to include a summary for each Borough;
- (c) the number of apprentices (of minimum 6-month duration) employed as part of the Contractor's construction package (and a cumulative total of all apprentices who have been employed);
- (d) any associated information to inform the relative numbers and percentages being reported to demonstrate that the Contractor (and its sub-contractors) are complying with its obligations for local employment and skills as required by the Undertaker, including information separating information by each Development Borough;
- (e) rates of staff turnover and conversion rates of apprentices into ongoing employment by the Contractor;

- (f) monitoring information in relation to the Contractor's workforce (age/ethnicity/residence/disabilities/previous employment) save that employees would only be expected to provide such details on a voluntary basis;
- (g) information relating to the Contractor's anticipated future employee requirements; and
- (h) such information relating to the procurement of local goods and services as may be agreed in writing with the Undertaker to inform the Summary Local Labour and Services Report;

**"Main Tunnel"** means works nos. 1a to 1d at Schedule 1 to the DCO;

**"Operational Confirmatory Deed"** means a Deed substantially in the form of that set out at Appendix 3;

**"Overall Site Plans"** means the plans at Appendix 1 marked "Overall Site Plans (Parts 1 to 4)" and showing Main Tunnel and sites for information purposes only;

**"Ownership Plan"** means the plans at Appendix 1 marked "Ownership Plan" and showing the extent of the Development Site at Cremorne Wharf Depot and the Existing TWUL Land;

**"Permanent Acquisition Land"** means that part of the DCO Land which is defined for permanent acquisition in the DCO;

**"Permanent Acquisition Vesting Date"** means each date at which the Undertaker acquires all or any part of the Future TWUL Land pursuant to Article 27 of the DCO or otherwise;

**Permissive Public Realm"** means that part of the Land which the Undertaker identifies for public use subject to the provisions of Schedule 1, Part 3 (*Maintenance of Permissive Public Realm*) and Schedule 3 (*Permissive Public Realm Maintenance Plan*);

**"Plans"** means the plans attached to this Agreement and comprising the Overview Site Plan (parts 1 to 4), the Ownership Plan, the Site and Construction Phase Plans and the Site and Operational Land Plan;

**"Project Hubs"** means an allocated space within the Main Drive Sites at Carnwath Road Riverside and Kirtling Street provided for the Contractor which provides space for health and safety basic skills classes and as a base for community liaison and outreach activities and for the SEM and SCEM;

**"Project Website"** means the website established and maintained by the Undertaker in relation to the Development;

**"Qualifying Interest"** means such interest in the land sufficient to meet the requirements of Section 106(1) of the 1990 Act which shall include the Undertaker's status as undertaker for the purposes of the DCO in accordance with the provisions of paragraph 10 (3) of Schedule 19 of the DCO whereby the undertaker is deemed to be a person interested in the DCO Land for the purposes of Section 106(1) of the 1990 Act;

**"SCEM"** means Supply Chain Engagement Manager as described in more detail in paragraph 3(a)(iv) of Schedule 1, Part 1 (*Employment and Skills*);

**"SEM"** means Skills and Employment Manager as described in more detail in paragraph 3(a)(ii) of Schedule 1, Part 1 (*Employment and Skills*);

**"Site"** means each of the Development Sites at Cremorne Wharf Depot and Chelsea Embankment Foreshore and for the purposes of identification only are shown edged dashed in black on the Site and Construction Plans;

**"Site and Construction Plans"** means the plans at Appendix 1 marked "Site and Construction Plans" showing extent of the Development Sites at Cremorne Wharf Depot and Chelsea Embankment Foreshore and the DCO Land;

**"Site and Operational Land Plan"** means the plan at Appendix 1 marked "Site and Operational Land Plan" showing extent of the Development Sites at Chelsea Embankment Foreshore and the Future TWUL Land;

**"Skills Planning Group"** means the group to be established under paragraph 2(a)(i) of Schedule 1 Part 1;

**"Successor"** means any person deriving title from the Undertaker in respect of its Qualifying Interest and for the purposes of Section 106(3)(b) of the 1990 Act shall include any person to whom powers are transferred further to Article 9 of the DCO;

**"Summary Local Labour and Services Report"** means a written monitoring report which:

- (a) summarises the contents of the Local Labour Reports produced over the preceding 6 (six) month period;
- (b) provides summary information regarding local employment figures in relation to the Development as a whole; and
- (c) provides such information on the procurement of local goods and services as may be agreed between the Undertaker and the Council;

**"Target Beneficiary Groups"** includes local residents, unemployed people, other disadvantaged groups including ex-offenders, and groups which are currently underrepresented in the workforce (for example, in terms of age, ethnicity, gender and/or disability);

**"Training and Employment Skills Plan"** means the plan to be prepared by the Contractor under paragraph 3(a)(ii)(A) of Schedule 1 Part 1;

**"Undertaker"** means Thames Water Utilities Limited and any Successors and statutory assignees;

**"Working Day(s)"** means a day other than a Saturday or Sunday or public holiday in England.

- 3.2 References in this Agreement to the "Undertaker" shall include its Successors and its respective successors in respect of its Qualifying Interest in the Land and its statutory assigns.
- 3.3 References to "Work Nos" or to a "Work No" are references to the works forming part of the Development listed in Schedule 1 of the DCO;
- 3.4 References in this Agreement to the "Council" shall include any successor to its functions as local planning authority.

3.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.

3.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.

3.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.

3.8 References to the singular shall include the plural and vice versa.

#### 4 **CONDITIONALITY**

The obligations in this Agreement (save for the covenant in Clause 7 (*Legal Costs*)) are unless otherwise specified conditional upon:

4.1 the grant of the DCO; and

4.2 Implementation of the DCO by the Undertaker or a person authorised by it.

#### 5 **UNDERTAKER'S COVENANTS**

5.1 The Undertaker **COVENANTS** with the Council that it will observe and perform the covenants on its part contained in Schedule 1 (*Undertaker's Covenants*).

5.2 The Undertaker covenants with the Council to serve written notice to the Council:

(a) of confirmation of the appointment of the Contractor within 10 Working days of the appointment having been made;

(b) at least 20 (twenty) Working Days in advance of the proposed date for Implementation at each of the Sites;

(c) at least 20 (twenty) Working Days in advance of the Construction Phase Completion Date at each of the Sites; and

(d) of confirmation of the Construction Phase Completion Date at each of the Sites within 10 (ten) Working Days of each occurrence.

Where the proposed dates of Implementation provided under Clause 5.2(b) do not take place, the Undertaker shall provide written notice to the Council of the revised dates as soon as is reasonably practicable and in any event at least 10 Working Days in advance of the revised date.

#### 6 **COUNCIL'S COVENANTS**

The Council **COVENANTS** with the Undertaker that it will observe and perform the covenants on its part contained in Schedule 2 (*Council's Covenants*).

#### 7 **LEGAL COSTS**

The Undertaker **COVENANTS** with the Council that it will no later than the date of this Agreement pay the Council's reasonable legal costs and, in addition, VAT thereon (except for VAT for which the Council is entitled to credit or repayment from HMRC)



in connection with the preparation and completion of this Agreement, together with a financial contribution in the sum of £500 (five hundred pounds) to be paid to the Council on the date of completion of this Agreement to monitor compliance with the obligations contained in this Deed.

## **8 INTEREST ON LATE PAYMENTS**

Any payment due from the Undertaker under this Agreement which is not paid on the due date shall be payable with interest calculated at the rate of 4% above the base lending rate from time to time of Barclays Bank plc.

## **9 VAT**

9.1 All consideration set out in this Agreement is exclusive of VAT.

9.2 If VAT is, or becomes, properly chargeable on any supply made pursuant to this Agreement, the recipient of that supply shall pay to the supplier an amount equal to such VAT in addition to the consideration for that supply, against receipt of a valid VAT invoice. The recipient of any such supply shall pay to the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:

- (a) the day on which the consideration for the supply is paid or given; and
- (b) production of a proper VAT invoice.

9.3 Where a person (the "payer") has paid an amount to any other person (the "payee") on the basis that the payee was entitled to that amount under Clause 9.2 above, but the payee was not properly entitled to the whole or part of that amount under that Clause, then:

- (a) if the payee has not accounted for such amount (or such part thereof) to HMRC, the payee shall forthwith repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer; or
- (b) if the payee has accounted for such amount (or such part thereof) to HMRC, the payee shall, if, when and to the extent that it receives repayment or credit for such amount from HMRC, repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer.

## **10 RELEASE AND LAPSE**

10.1 Subject to Clause 10.6 the parties agree that the Undertaker shall not be liable for a breach of any of its obligations under this Agreement or obligations relating to any part of the Land after it has parted with all of its interests in the Land (including Qualifying Interests) or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

10.2 It is further agreed that this Agreement shall lapse and be of no further effect if:

10.2.1 the DCO lapses without having been Implemented; or

10.2.2 the DCO is amended or repealed otherwise than with the consent of the Undertaker; or

- 10.2.3 the DCO is quashed following a successful legal challenge (in which case any money paid to the Council pursuant to an obligation in this Agreement shall be returned to the Undertaker- save for any payments made pursuant to clause 7 Legal Costs).
- 10.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission or development consent (other than the DCO) granted (whether or not on appeal) after the date of this Agreement.
- 10.4 Any obligation under the terms of this Agreement which is expressed to be binding on a particular area of land shall be binding on the Undertaker's Successors but only insofar as they are Successors to that area of land or relevant part of it and on the basis that such Successors benefit from Clause 10.1 in (*mutatis mutandis*) the same way as the Undertaker.
- 10.5 No Successor to the Undertaker shall be liable for any breach of any obligation which occurs in relation to any area of the Land which that Successor does not own or control or which is carried out by any person other than that Successor.
- 10.6 Where upon the transfers by the Undertaker of its powers under the DCO to a Successor pursuant to Article 9 of the DCO, the parties agree that the Undertaker may only be released from its obligations under this Agreement upon the Successor entering into a planning agreement pursuant to section 106 of the Act whereby the Successor covenants to observe and perform the obligations in this Agreement.
- 10.7 Upon the performance discharge or other fulfilment of the covenant obligations (or any of them) of the Undertaker, any Successor, or the Council under the terms of this Agreement such covenant obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach.
- 10.8 Upon the Construction Phase Completion Date the Undertaker shall cease to be liable to comply with any of its obligations under this Schedule 1, Part 1 (*Employment and Skills*) shall from that date cease to be liable for any breach of the same save for any antecedent breach relating to these obligations.
- 10.9 The Council agrees that (subject to it first being paid a reasonable administration fee in accordance with the Council's schedule of charges which may change from time to time) it will confirm in writing the extent of the obligations which the Undertaker has discharged at the date of the request as soon as is reasonably practicable after receipt of a written request from the Undertaker or a person on its behalf.

## 11 LOCAL LAND CHARGE

- 11.1 This Agreement is a local land charge and shall be registered as such by the Council.
- 11.2 Upon the satisfaction of the terms of this Agreement the Council shall at the request of the Undertaker procure that all entries in the register of local land charges relating to them shall be removed or marked as discharged as soon as is reasonably practicable.

## 12 NOTICES

- 12.1 Any notices required to be served by one party on another under this Agreement shall be served by first class prepaid recorded delivery post or by hand (providing proof of delivery is always obtained) in the following manner:
- (a) on the Council at the address shown above marked "For the attention of The Director of Planning and Borough Development"; and

- (b) on the Undertaker at the address shown at the head of this Agreement, or the registered office of any Successor, and any notice served on the Undertaker (or its successor) shall be marked for the attention of the Company Secretary;

save that any of the parties may by written notice notify the other parties of an alternative address and/or reference for the service of subsequent written notices in which case those details shall be substituted for the details in Clauses 14.1(a) to (b) above.

12.2 Any such notice shall be deemed to have been received as follows:

- (a) If delivered by hand, upon delivery on all relevant addresses;
- (b) If sent by first class post, on the second Working Day after the date of posting.

### 13 **NO FETTER ON DISCRETION**

Nothing in this Agreement shall be taken to be or shall operate so as to fetter or prejudice the statutory rights powers discretions and responsibilities of the Council or Undertaker.

### 14 **SEVERABILITY**

It is agreed that if any part of this Agreement shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provisions will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

### 15 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and for the avoidance of any doubt the terms of the Agreement may be varied by agreement between the parties without the consent of any third party being required.

### 16 **WAIVER**

No waiver (whether express or implied) by the Council of any breach or default by the Undertaker in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms and conditions or from acting upon any subsequent breach or default in respect thereto by the Undertaker.

### 17 **DISPUTE RESOLUTION**

17.1 In the event of any dispute or difference arising between the parties arising out of this Agreement such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.

17.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to Clause 17.1,

or as to the appropriate professional body, within ten Working Days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the expert to be appointed pursuant to Clause 17.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

- 17.3 The expert shall act as an expert and not as an arbitrator.
- 17.4 The expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty six Working Days from the date of his appointment to act.
- 17.5 The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further fifteen Working Days in respect of any such submission and material and the expert's decision shall be given in writing within twenty Working Days from receipt of any counter submissions or in the event that there are no counter submissions within twenty-one Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest material error the expert's decision shall be final and binding on the said parties.
- 17.6 The expert may award the costs of the dispute resolution in such proportions as he see fit but in the absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

18 **JURISDICTION**

This Agreement is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

**This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.**

**Schedule 1**  
**Undertaker's Covenants**

**Part 1**  
**Employment and Skills**

Unless the Council agrees otherwise in writing with the Undertaker and provided always that the Undertaker (and its agents employees contractors and sub-contractors) shall not be required to do or refrain from doing anything that would result in anti-competitive business practices or anything which is not in accordance with any law rule or regulation (whether domestic or otherwise) during the Construction Phase and for the purposes of the Development the Undertaker covenants with the Council:

**1 Local Labour**

- (a) That the Undertaker shall require its Contractors and their sub-contractors to use reasonable endeavours to:
- (i) achieve a cumulative target of 25% of employees working at the Development Sites who are living within the Development Boroughs;
  - (ii) achieve a target of at least 30% of employees working in relation to river transport who are living within Greater London, Kent, or Essex (or any or all of those Counties); and
  - (iii) ensure the employment of at least one apprentice for every 50 employees across the duration of the construction contracts for the Development, with such arrangements being based on the following:
    - (A) apprenticeships to be based on a 6-month minimum period;
    - (B) the total number of apprenticeships to be calculated by the average number of employees estimated for each contract package multiplied by the estimated contract duration against 6-month or 12-month apprenticeship placements; and
    - (C) a minimum of one apprentice to be employed at any time during the period of the construction contract.
- (b) That the Undertaker shall provide the Council with a Summary Labour and Services Report every 6 (six) months or such longer time period as may be agreed in writing between the Undertaker and the Council;

**2 Skills Planning Group**

- (a) That the Undertaker will:
- (i) Prior to Implementation establish a Skills Planning Group, which is to be maintained throughout the Construction Phase and whose purpose will be to identify future training requirements and potential employer interventions, and which is to comprise: (A) a chair who is a senior member of the Undertaker's project executive management team; (B) representatives from the Council;
- and involve as needed at the Undertaker's discretion:
- (A) other representatives of the Undertaker;

- (B) representatives from the Undertaker's contractors;
- (C) representatives from Further Education (FE) colleges and
- (D) representatives from other training organisers (including but not limited to the Tunnelling and Underground Construction Academy (TUCA) and the National Construction College); and
- (E) other delivery and funding agencies such as Construction Skills-CITB and the Skills Funding Agency;

### 3 Contractor obligations

- (a) That the Undertaker shall require its Contractor to:
  - (i) participate in the Skills Planning Group;
  - (ii) to employ a Skills and Employment Manager ("**SEM**") to be based at the Project Hubs located at the Main Drive Sites of Carnwath Road Riverside and Kirtling Street who will:
    - (A) produce and employ a Training and Employments Skills Plan in consultation with the Council's Economic Development Team ("**EDT**") which will have regard to similar plans promoted by Construction Skills-CITB and/or National Skills Academy for Construction and take account of the Council's Employment and Training Code, and shall include targets for:
      - (1) apprenticeships whereby the Contract will work with the EDT to provide apprenticeship opportunities to be filled by residents of the Royal Borough of Kensington and Chelsea; and
      - (2) recruitment of local labour through local advertising of vacancies to assist residents of the Royal Borough of Kensington and Chelsea to apply for positions;
    - (B) work closely with the Council (or their nominated agents or brokers) to identify and recruit suitable local applicants;
    - (C) provide details of all job vacancies in relation to their proposed work on the Development and further provide details on a monthly basis of on-going or new job vacancies throughout the course of their contract with the Undertaker;
    - (D) provide details of tender schedules and packages within the Development to the Council as soon as reasonably practicable and in any event with a minimum of 1 week's prior notice;
  - (iii) provide the Council with the Labour Return Report in relation to its contract package every 6 (six) months (or at such other intervals as may be agreed between the contractor and Council), and deliver a copy to the Undertaker;
  - (iv) to employ a Supply Chain Engagement Manager ("**SCEM**") to be based at the project hubs located at the Main Drive Sites of Carnwath Road Riverside and Kirtling Street who will have responsibility to engage with local businesses to maximise opportunities arising from the Development and who will;

- (A) develop a Local Procurement Plan in consultation with the EDT (and having taken reasonable account of their comments) how opportunities will be provided for local businesses to bid/tender for the provision of goods and services relating to the Development;
- (B) notify the EDT where practicable one month in advance of tendering contracts to clarify how local procurement under the Local Procurement Plan will operate and what actions, if any may be expect from the EDT;

4 **Contract procurement**

- (a) That the Undertaker shall use reasonable endeavours to undertake procurement in relation to the construction works in the Development Boroughs in accordance with the Local Procurement Plan and to use reasonable endeavours to make any opportunities relating to the construction works available to businesses within the Royal Borough of Kensington and Chelsea;
- (b) That the Undertaker shall use and shall require the Contractor to use the online procurement portal *Competefor* to advertise contracts for the Development;

**Part 2**  
**Permissive Public Realm**

Unless otherwise agreed in writing with the Council the Undertaker covenants with the Council as follows:

**1 Status of Sites**

- (a) On or before the Construction Phase Completion Date the Undertaker shall serve a notice to the Council identifying the area of the Land to be made available for public use in accordance with the provisions of this Schedule (the "**Permissive Public Realm**").
- (b) Following the service of the Undertaker's notice pursuant to paragraph 1(a) of this Schedule, the Undertaker shall from the Construction Completion Date and on a permissive basis only permit access to members of the public over the Permissive Public Realm subject to the General Access Conditions set out in paragraph 2.
- (c) No part of the Permissive Public Realm shall be dedicated as public rights of way.

**2 General Access Conditions**

- (a) The Undertaker may suspend access to the all or any part of the Permissive Public Realm on the occurrence of any of the circumstances described in paragraph 2(a)(i) to paragraph 2(a)(viii) in accordance with the provisions set out at paragraph 2(b):
  - (i) where in the reasonable opinion of the Undertaker it is necessary to enable maintenance, repair or renewal of the whole or any part or parts of the Development;
  - (ii) where in the reasonable opinion of the Undertaker it is necessary to enable the development, renewal, redevelopment, modification or demolition of the whole or part or parts of the Development;
  - (iii) where in the reasonable opinion of the Undertaker the manner or nature of use of the Permissive Public Realm by the public represents:
    - (A) a threat to the operational integrity or security of the Development or its ability to meet its duties as a statutory sewerage and water undertaker or an unacceptable risk to the health and safety of individuals within those areas; or
    - (B) a nuisance that is causing the Undertaker to alter the way it maintains the Development as a result of the nature or manner of the use of that area of the Foreshore Site;
  - (iv) where in the reasonable opinion of the Undertaker there would be a risk to the health and safety of the general public using or intending to use the Permissive Public Realm;
  - (v) where in the reasonable opinion of the Undertaker, it is necessary to protect ecological features or to protect or maintain flood defences or for the purposes of navigation and for the avoidance of doubt if the Undertaker is required by any competent authority (including Natural England, the Environment Agency, the Marine Management Organisation and the Port of London Authority) to suspend access then the opinion of the Undertaker shall be deemed reasonable;



- (vi) where in the reasonable opinion of the Undertaker it is necessary in order to protect the Undertaker's property or the property of a third party;
  - (vii) where in the reasonable opinion of the Undertaker it is necessary in order to undertake essential maintenance, repair, cleaning or renewal and resurfacing works on the Site;
  - (viii) for one day per year to assert rights of proprietorship preventing public rights from coming into being by means of prescription or other process of law.
- (b) Subject to paragraph 2(c) and paragraph 2(d) where the Undertaker intends to suspend access to the Permissive Public Realm for any of the reasons listed in paragraph 2(a) the following provisions shall apply:
- (i) The Undertaker shall use reasonable endeavours to provide notice of the suspension of access to the Permissive Public Realm (and where suspension applies to part only of the Permissive Public Realm such notice to include identification of that part) to the Council seven Working Days in advance of the first day of suspension or in the case of urgency as soon as practicable thereafter specifying:
    - (A) why access is being suspended by reference to the reasons set out at paragraph 2(a); and
    - (B) the expected duration of the suspension and date of reopening.
  - (ii) The Undertaker shall use all reasonable endeavours to post notice of the suspension of access at the entrance and exit to the suspended area of Permissive Public Realm seven (7) Working Days in advance of the first day on which access will be suspended or in the case of urgency as soon as practicable thereafter specifying the details set out in paragraph 2(b)(i)(A) and paragraph 2(b)(i)(B) and shall maintain those notices for the duration of the suspension of access to the Permissive Public Realm
- (c) Where access to the Permissive Public Realm or any part of it is suspended for any reason set out in paragraph 2(a) the Undertaker shall re-open the Permissive Public Realm or the relevant part of it as soon as it is reasonably safe and practicable to do so following the resolution of the issue and/or works identified in the Undertaker's notice served pursuant to paragraph 2(b)(i) and shall serve notice of the same on the Council.
- (d) If a Permissive Public Realm is closed to the public for more than 20 days or 10 occasions during any 12 month period and the Council so requests in writing the Undertaker shall:
- (i) within 30 days (or such other period as may be agreed) of a request pursuant to this paragraph 2(d) submit a feasibility study to the Council reporting options that may secure public access to the Permissive Public Realm on a more consistent basis and avoiding the need for such frequent suspension of public access;
  - (ii) within 14 days (or such other period as may be agreed) of the receipt of the feasibility study by the Council hold a meeting with them in order to discuss the options set out in the feasibility study;

- (iii) within 6 weeks (or such other period as may be agreed) of the meeting referred to at paragraph 2(d)(ii) the actions identified at the meeting shall be undertaken.

### **Part 3**

#### **Highway Works**

The Undertaker will enter into the Highways Works Agreement with the Council prior to the Construction Phase Completion Date of the Development Site at Chelsea Embankment Foreshore.

### **Part 4**

#### **Maintenance of Permissive Public Realm**

##### **1 Maintenance of the Permissive Public Realm**

- (a) On or before the Construction Phase Completion Date in relation to the Development Site at Chelsea Embankment Foreshore the Undertaker shall submit to the Council a strategy for the long term maintenance and care of the Permissive Public Realm in accordance with the requirements in Schedule 3 (*Permissive Public Realm Maintenance Plan*) ("**PPR Maintenance Plan**")
- (b) The Undertaker shall ensure that the Permissive Public Realm is maintained to the standard agreed in the PPR Maintenance Plan.
- (c) The Undertaker may delegate its responsibilities for the PPR Maintenance Plan to a third party (the identity of which shall be notified in writing to the Council) **SAVE THAT** the Undertaker shall remain liable for ensuring that the Permissive Public Realm is maintained to the standard agreed in the PPR Maintenance Plan.
- (d) The Undertaker acknowledges that the that the Council may at any time serve written notice on the Undertaker requiring it to delegate the responsibilities for the PPR Maintenance Plan to the Council subject to an agreement to be entered into between the Undertaker and the Council ("**Delegation Agreement**").
- (e) Upon receipt of the notice from the Council under paragraph 1(d) the Parties shall use reasonable endeavours to agree the Delegation Agreement which may include for the following terms:
  - (i) Provisions for termination of any existing arrangements or contract relating to the delegation of the Undertaker's responsibilities for the PPR Maintenance Plan;
  - (ii) Such financial arrangements generally as may be agreed;
  - (iii) Specific obligations upon the Council to maintain in accordance with the PPR Maintenance Plan and otherwise to protect the interests of the Undertaker; and
  - (iv) Provisions for the Council to release the Undertaker in respect of its obligations pursuant to paragraph 1(b) and paragraph 1(c) of this Schedule 1, Part 3 (*Maintenance of Permissive Public Realm*).

**Schedule 2  
Council's Covenants**

The Council covenants with the Undertaker as follows:

**1 Acting Reasonably**

It will at all times act reasonably and in particular (without prejudice to generality) where any approval or expression of satisfaction is required by this Agreement it will not be unreasonably withheld or delayed.

**Schedule 3**  
**Permissive Public Realm Maintenance Plan**

**1 Definitions**

**"Building Elements"** means such structures which are located within the Permissive Public Realm and where agreed that they are included within the scope of the PPR Maintenance Plan, and including electrical and control kiosks, other amenity kiosks, undercroft areas, boundary walls, stone flood defence parapet walls, permanent site hoardings

**"Ecological Elements"** means dedicated areas for nesting birds within the Permissive Public Realm, including constructed bird houses and bat boxes

**"Lighting Elements"** to include lampstands, wall or surface mounted lamps located within the Permissive Public Realm

**"Paving Elements"** means such hard surfacing forming pathways, steps or other publically accessible areas within the Permissive Public Realm and comprising individual paving units, resin bound surfaces, or timber decking

**"Perimeter Fencing"** means such fencing or enclosures surrounding the Permissive Public Realm or parts of the Permissive Public Realm and including gates and gateways, railings and balustrades

**"regular"** for the purposes of this Schedule means at such seasonal or periodic intervals as are required in relation to the specific operation

**"routine"** for the purposes of this Schedule means as often as reasonably necessary and may be as often as daily or weekly

**"Street Furniture"** to include benches or other forms of seating, litter bins, bird baths, bollards, metal pergolas located within the Permissive Public Realm

**"Ventilation Columns"** means the ventilation structures forming part of the Development located within the Permissive Public Realm

**2 General routine maintenance and cleaning**

(a) To maintain in a safe sound and clean condition at all times:

(i) All Paving Elements, including:

- (A) Routine cleaning (sweeping and/or jet wash cleaning as appropriate), removal of litter and gum removal;
- (B) Routine surface cleaning and clearance of associated drainage channels and gullies;
- (C) Regular leaf clearance;
- (D) Surface clearance of snow from pathways and application of surface gritting

(ii) All Street Furniture, including:

- (A) Routine cleaning (including checking and cleaning of fixings), removal of bird faeces, sanding of splinters caused by vandalism damage or wear and tear, removal of graffiti;
- (B) Regular deep cleaning with water jets and detergent;
- (iii) All Building Elements, including:
  - (A) Routine cleaning of surfaces and removal of graffiti from areas accessible by the public;
  - (B) Regular cleaning with water jets from ground level;
- (iv) All Perimeter Fencing, including:
  - (A) Routine removal of litter, relevant surface cleaning and removal of graffiti;
- (v) All Ventilation Columns, including:
  - (A) Routine cleaning of surfaces and removal of graffiti from areas accessible by the public;

### 3 **Landscaping maintenance and reinstatement**

- (a) To maintain the planted and landscaped areas of the Permissive Public Realm in good condition at all times, including:

***Planted terraces, ornamental shrubbery beds and ornamental hedges.  
Raised and in-ground planters, planted pergolas***

- (i) Routine inspection and clearing of weeds, non-required and litter;
- (ii) Routine pruning to maintain groups of planting within the original scheme layout;
- (iii) Pruning of ornamental hedges no less than 2 times per year or after flowering;

***Bulb features***

- (iv) Application of selective weedkiller for the purposes of weed control to be applied only after vegetative stems have been allowed to die back after the flowering season;
- (v) Once bulbs have died back, cutting and removal of stems and application of slow release fertiliser;

***Inter-tidal planting***

- (vi) Routine pruning and thinning of planting;
- (vii) Routine weeding and removal of litter and clearance of drains;

***Trees (including new and existing trees, street trees, ornamental or feature trees***

- (viii) Regular removal of litter from within tree canopies;

- (ix) Regular lifting and cleaning of tree grilles, securing of guards and adjusting tree ties and/or guys;
- (x) Routine weeding and removal of debris from around the base of trees and tree pits;
- (xi) Where trees overhang footpaths or vehicular access routes, regular trimming of the canopy to ensure clear sight lines and suitable clearance for pedestrians and vehicles;
- (xii) To carry out pruning of mature trees no less than every 5 years;

***Turfed or grassed areas (including reinforced turf)***

- (xiii) Routine turf cutting (by ride on or pedestrian mower as appropriate) (with arisings removed) to ensure maximum grass height of 50mm (and to include edgings as required);
- (xiv) Routine strimmer cleaning of edgings around objects within the turfed area;
- (xv) Bi-annual (spring and autumn) application of fertiliser;
- (xvi) Aeration to a depth of 75-100 mm, and scarification to be carried out at least 4 times per year;
- (xvii) Regular spot treatments of broad-leafed weeds by selective weedkiller;
- (xviii) Regular topdressing and overseeding of bare areas.

**4 Non-cyclical repairs and renewals**

- (a) To carry out repairs and to repaint and/or renew finishes (including re-painting) to Street Furniture, Lighting Elements, Perimeter Fencing, Ventilation Elements at such reasonable intervals as considered necessary to ensure the Permissive Public Realm is in good and clean condition;
- (b) To regularly inspect the condition of the Paving Elements, and to make such repairs and/or renewal (including removal and disposal of existing materials) against a programme of cyclic renewal.

**Schedule 4  
Land**

**Part 1  
Existing TWUL Land**

The land hatched and edged red on the Ownership Plan

**Part 2  
DCO Land**

The land hatched and edged in black on the Site and Construction Phase Plans SAVE THAT the extent of the DCO Land to be bound by the obligations at Schedule 1, Part 1 (*Employment and Skills*) of this Agreement is to be confirmed within the Construction Phase Confirmatory Deed to be entered into between the Undertaker and the Council pursuant to Clause 2.2 of this Agreement.

**Part 3  
Future TWUL Land**

Such parts of the Permanent Acquisition Land as shaded dark grey and edged in red on the Site and Operational Land Plan SAVE THAT the extent of the Future TWUL Land to be bound by the obligations at Schedule 1, Part 2 (*Permissive Public Realm*), and Schedule 1, Part 3 (*Maintenance of Permissive Public Realm*) and Schedule 3 (*Permissive Public Realm Maintenance Plan*) of this Agreement is to be confirmed with the Operational Confirmatory Deed to be entered into between the Undertaker and the Council pursuant to Clause 2.5 of this Agreement.

**EXECUTION PAGE**

**THE COMMON SEAL** of the **MAYOR AND BURGESSES OF THE ROYAL BOROUGH of KENSINGTON AND CHELSEA** was hereunto affixed in the presence of:-

*[Handwritten signature]*

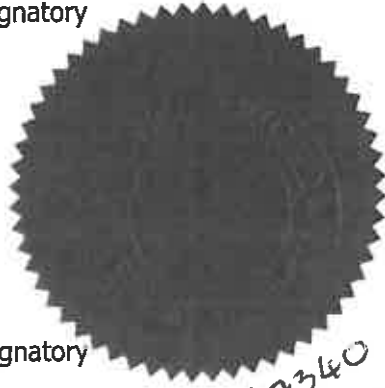
Authorised Signatory

**BUSINESS MANAGER**

Executed as a deed by **THAMES WATER UTILITIES LIMITED** by the affixing of its Common Seal in the presence of:

*[Handwritten signature]*

Authorised Signatory



*247340*



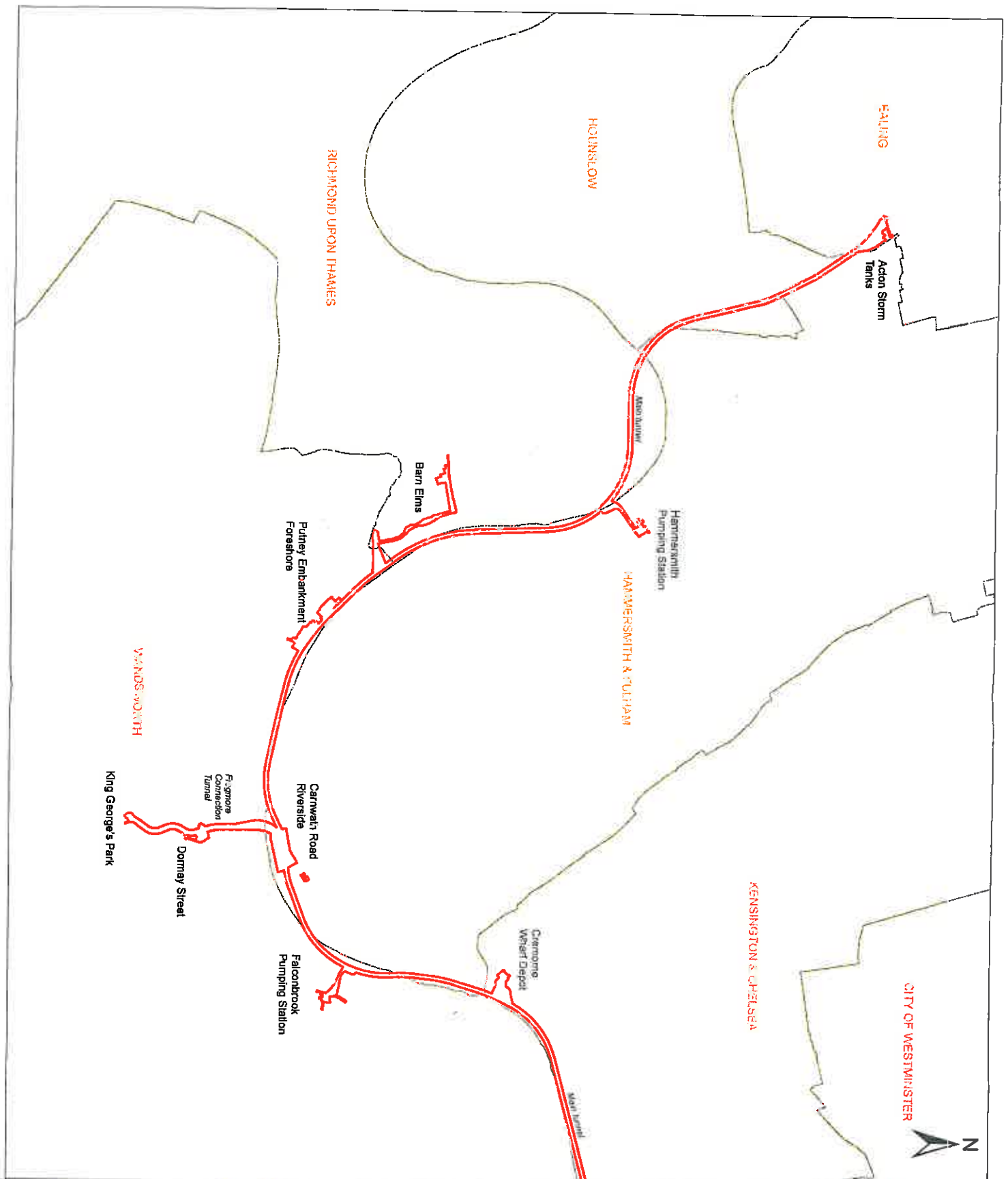
## **Appendix 1 Plans**

**Overall Site Plan (Parts 1 to 4) - Plans showing Main Tunnel and sites for information purposes only.**

**Ownership Plan – plans showing the extent of the Development Site at Cremorne Wharf Depot and the Existing TWUL Land.**

**Site and Construction Plans – plan showing extent of the Development Sites at Cremorne Wharf Depot and Chelsea Embankment Foreshore and the DCO Land.**

**Site and Operational Land Plan – plan showing extent of the Development Site at Chelsea Embankment Foreshore and the Future TWUL Land.**



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Keyplan:

Key:

- Order Limits
- Local Authority Boundary

*BM*

*213302*

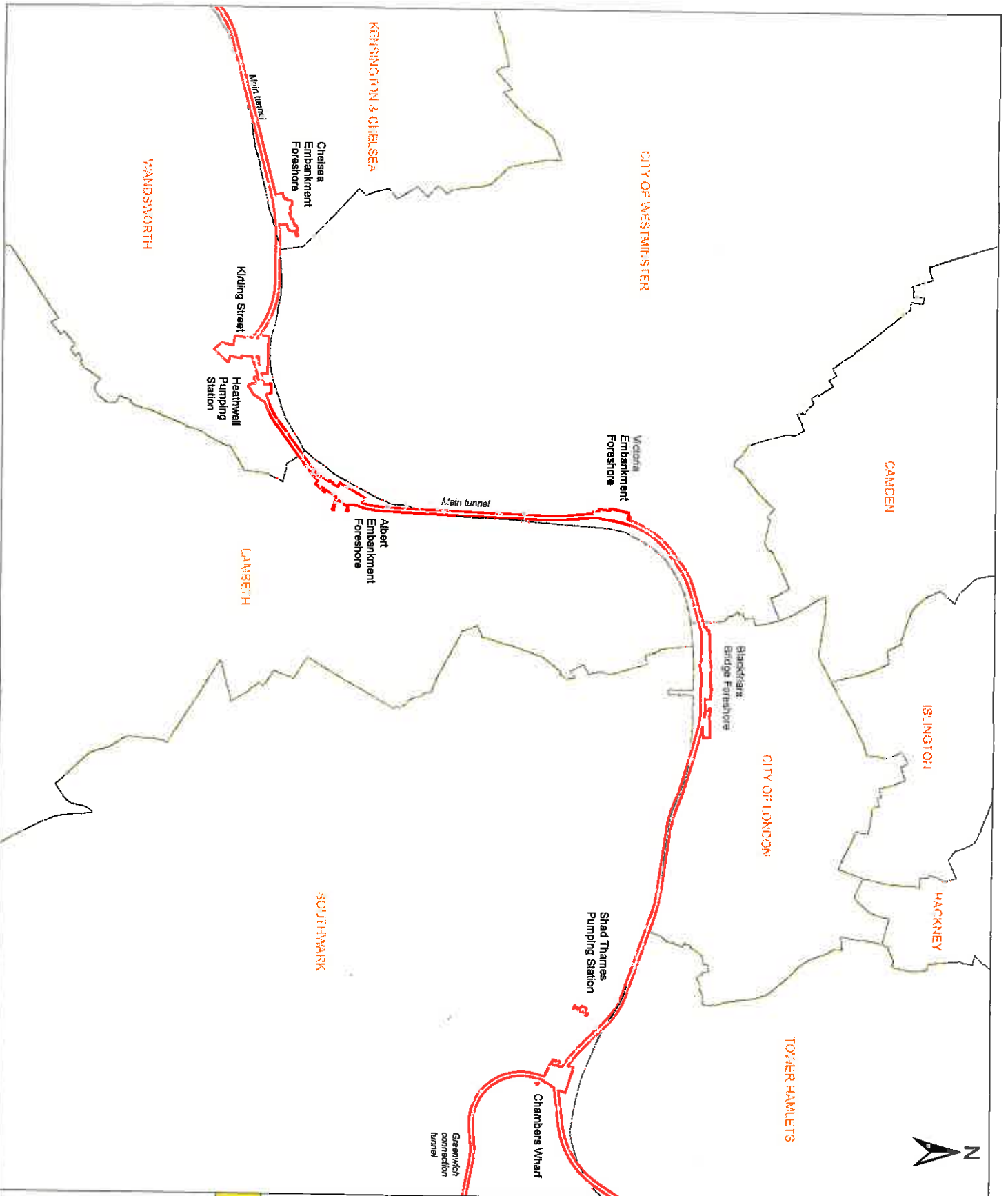
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Location  
Project wide

Document Information  
Section 106 Agreement  
Overview Site Plan  
Part 1 of 4

1PL04-PN-0078  
December 2013



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- key**
- Order Limits
  - Local Authority Boundary

*DMF*

*Electric*

*DFE*

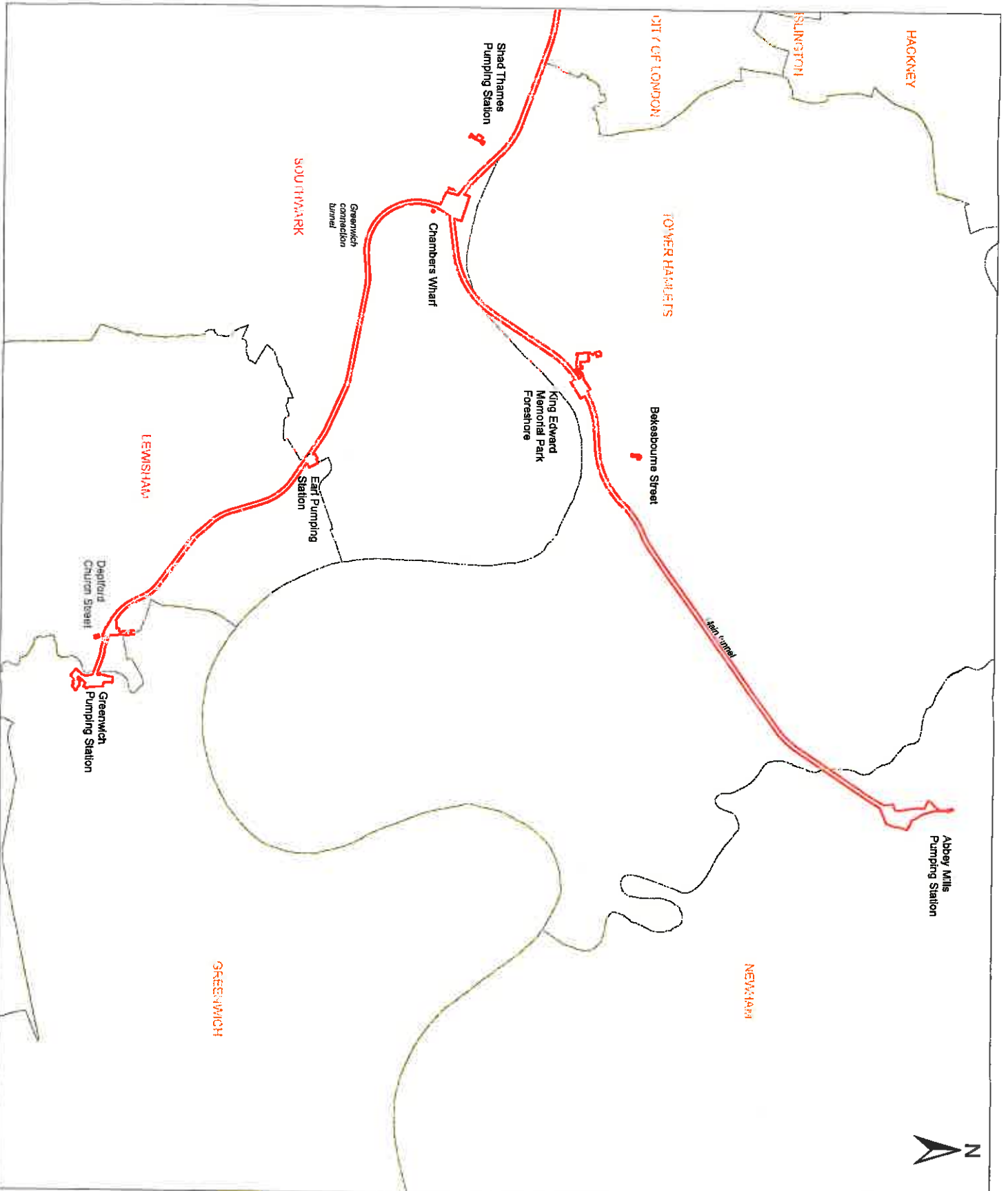


**Location**  
Project wide

**Document Information**  
Section 106 Agreement  
Overview Site Plan  
Part 2 of 4

1P104-PN-201177  
December 2013





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- Key
- Order Limits
  - Local Authority Boundary

*DM*

*22/04/13*

*FTI*



Location  
Project wide

Document Information  
Section 106 Agreement  
Overview Site Plan  
Part 3 of 4

1P104-PN-00173  
December 2013



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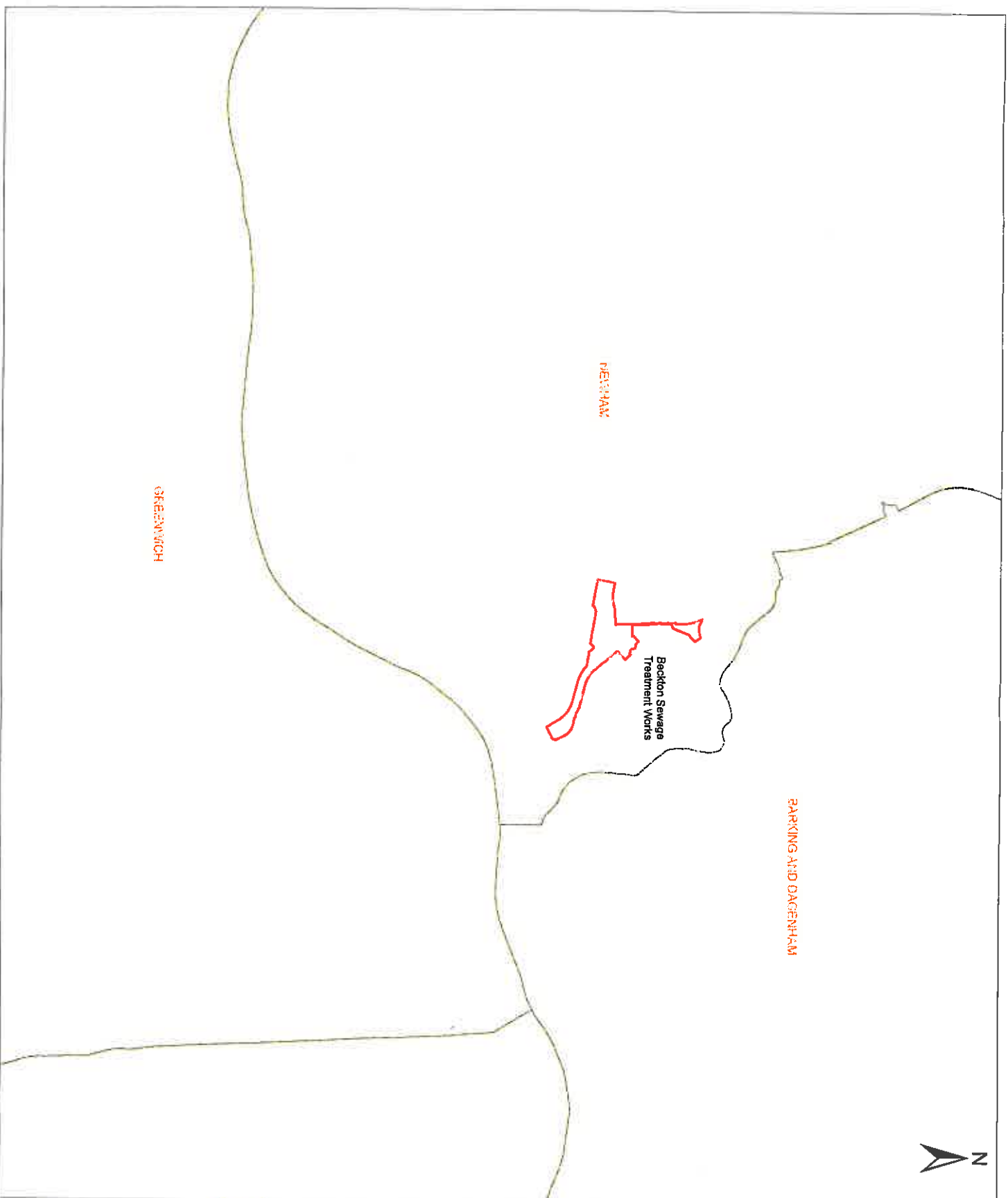
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- Key**
-  Order Limits
  -  Local Authority Boundary

*DM*

*21/2/2014*

*2014*



Location  
Project wide

Document Information  
Section 108 Agreement  
Overview Site Plan  
Part 4 of 4

1P104-PN-00178  
December 2013





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Keyplan:



Key

Local Authority Boundary

Limits of Land to be Acquired or Used

TWUL Owned Land

Book of Reference - Plots

1 - 325

*SMP*

*plots*

*SP1*



**Location**

Cremorne Wharf Depot  
 Royal Borough of Kensington and Chelsea  
 Document Information  
 Section 106 Agreement  
 Ownership Plan

1P.L.A./P.N./00/185  
 December 2013



KENSINGTON & CHELSEA



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Keyplan:



- Key**
- Local Authority Boundary
  - Limits of Land
  - to be Acquired or Used
  - Existing TWUL Land
  - DCO Land

*DWP*

*21/2/2010*

*John*

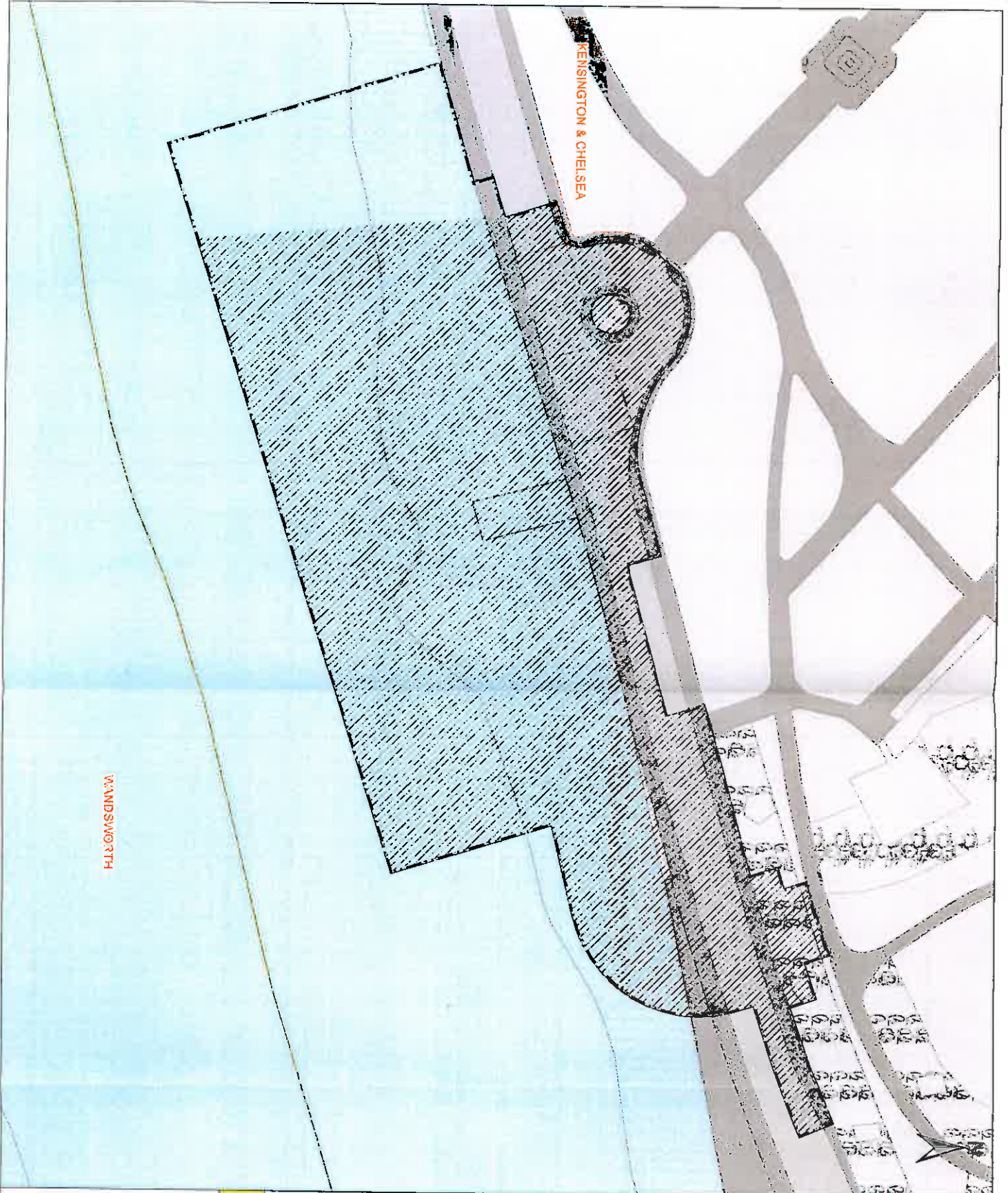


**Location**  
 Cromome Wharf Depot  
 Royal Borough of Kensington and Chelsea

**Document Information**  
 Section 106 Agreement  
 Site and Construction Phase Plan

1P1\_04-PH-0208  
December 2013








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Keyplan:



Key

-  Local Authority Boundary
-  Limits of Land to be Acquired or Used
-  DCO Land

*DWP*

*24.7.2013*

*RT-104*



Scale 1:1000 at A3

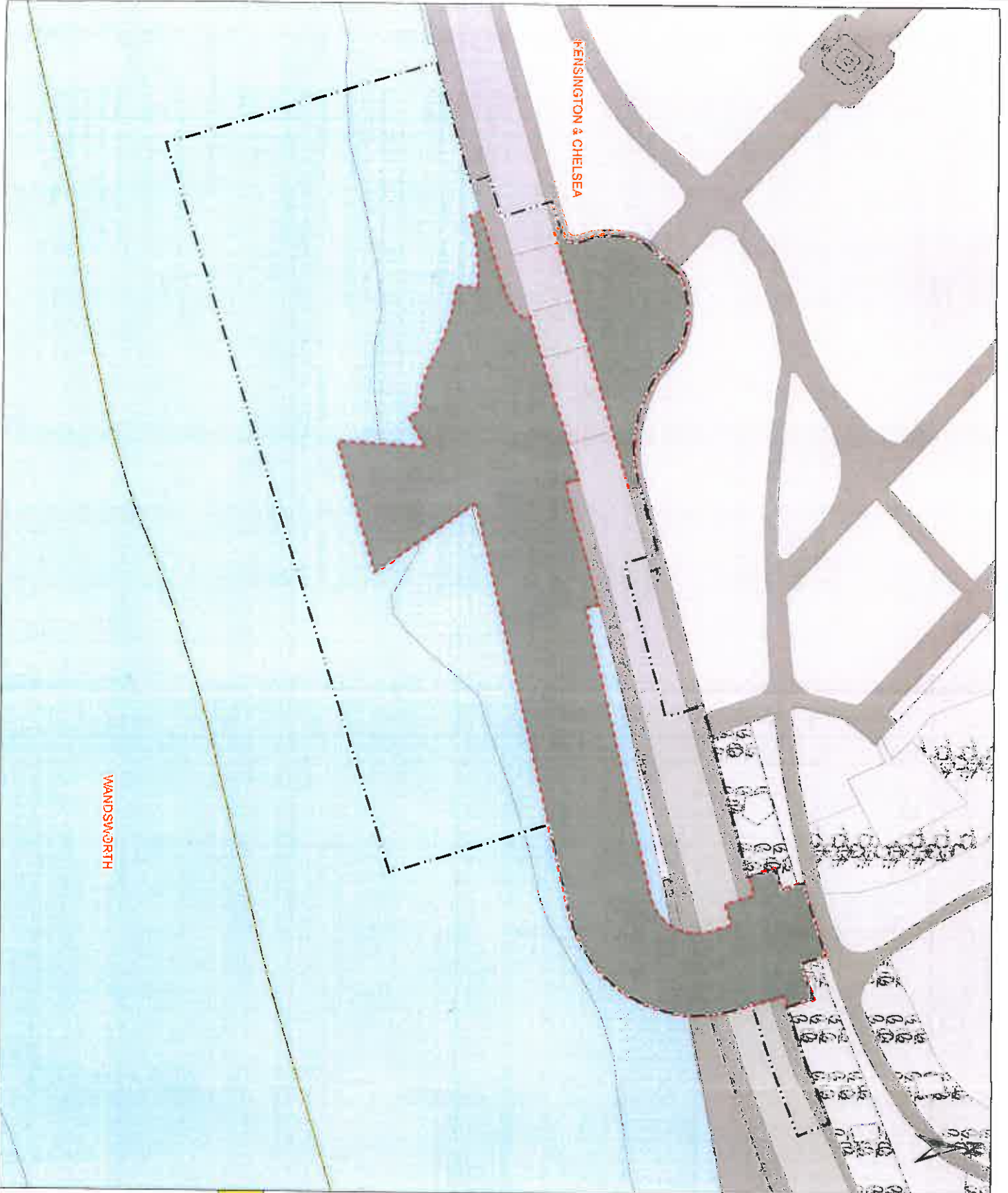
**Location:**  
Chelsea Embankment Foreshore  
Royal Borough of Kensington and Chelsea

**Document Information:**  
Section 106 Agreement  
Site and Construction Phase Plan

1P104-PA00309  
December 2013







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Keyplan:

- Local Authority Boundary
- Limits of Land to be Acquired or Used
- Future TWUL Land

*DMP*

*21x7x10*

*2016*



**Location**  
Chelsea Embankment Foreshore  
Royal Borough of Kensington and Chelsea

**Document Information**  
Section 108 Agreement  
Site and Operational Land Plan

IP104-PA-0236  
December 2013



**Appendix 2**  
**Construction Phase Confirmatory Deed**

**DATE:**

**PARTIES**

- (1) **THAMES WATER UTILITIES LIMITED**, a company incorporated in England with registered number 02366661 whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (the "**Undertaker**") and for the purposes of this Confirmatory Deed the "**Covenantor**") [and]
- (2) **ROYAL BOROUGH OF KENSINGTON & CHELSEA** of Town Hall, Hornton Street, London, W8 7NX (the "**Council**")

**BACKGROUND**

- (A) This Confirmatory Deed is supplemental to a planning agreement made under section 106 of the 1990 Act between the Undertaker (1) and the Council (2) (the "**Principal Deed**") on [•] and is itself made under (inter alia) the said section 106 of the 1990 Act.
- (B) This Confirmatory Deed is supplemental to the Principal Deed.
- (C) Words and phrases used in this Confirmatory Deed bear the same meaning in this Confirmatory Deed as under the Principal Deed.
- (D) Clause 2.1 of the Principal Deed provides that the planning obligations set out in the Principal Deed are intended to bind the Undertaker in its capacity as the owner of the Existing TWUL Land and are intended (subject to the provisions of Clauses 4, 7 and 12 of the Principal Deed) to be binding on the DCO Land and the Future TWUL Land and on the Undertaker's Successors to the Existing TWUL Land, the DCO Land and Future TWUL Land.
- (E) Clause 2.2 of the Principal Deed provides that the Undertaker shall not implement the Development unless and until the Undertaker has executed a deed in favour of the Council so as to bind such parts of the DCO Land with the planning obligations in Schedule 1, Part 1 of the Principal Deed.
- (F) This Confirmatory Deed is entered into by the Undertaker [and [the other owners of freehold or leasehold interests in such parts of the Existing as may be necessary to enable effective enforcement of the terms of the Principal Deed]] in favour of the Council in order to bind the Qualifying Interests in such parts of the DCO Land as are vested in them with the obligations set out in Schedule 1, Part 1 of the Principal Deed.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Confirmatory Deed: [add any definitions if required]
- 1.2 Where in this Confirmatory Deed there are defined terms not included in clause 1.1 above then they shall have the same meaning as in clause 3.1 of the Principal Deed and clauses 3.2 to 3.9 of the Principal Deed shall apply to the interpretation of this Confirmatory Deed. Terms defined in this Confirmatory Deed shall have the same meaning as in Clause 3.1 of the Principal Deed unless expressly stated otherwise.

1.3 Where provisions of the Principal Deed are deemed to be incorporated in this Confirmatory Deed reference to the Undertaker in the Principal Deed shall be deemed to be reference to the Covenantor.

## 2 **DECLARATION AND COVENANT**

2.1 The Covenantor declares and covenants with the Council that all its Qualifying Interests in the DCO Land as set out in the Schedule to this Agreement are bound by and subject to the obligations of the Undertaker in the Principal Deed until the Construction Phase Completion Date.

2.2 The Covenantor declares and covenants with the Council to comply with the obligations of the Undertaker in relation to the DCO Land contained in Schedule 1, Part 1 of the Principal Deed (which shall be deemed to be incorporated in this Confirmatory Deed) as if the same were set out in full in this Confirmatory Deed provided that the Covenantor shall have no liability in relation to any breaches of obligations in the Principal Deed committed by others before the date of this Confirmatory Deed.

2.3 The Council declares and covenants with the Covenantor to comply with the obligations of the Council pursuant to Clause 6 of the Principal Deed (which shall be deemed to be incorporated in this Operational Confirmatory Deed) as if the same were set out in full in this Confirmatory Deed.

2.4 The parties to this Confirmatory Deed declare and acknowledge that the Principal Deed continues in full force and effect notwithstanding the execution of this Confirmatory Deed.

2.5 The obligations on the part of the Covenantor contained in clause 2 (Declaration and Covenant) of this Confirmatory Deed are planning obligations for the purpose of section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Covenantor and so as to bind the Covenantor's interest in the DCO Land with the obligations of the Undertaker in Schedule 1, Part 1 of the Principal Deed until the Construction Phase Completion Date.

## 3 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Confirmatory Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**This Confirmatory Deed has been entered into on the date stated at the beginning of this Confirmatory Deed.**

[execution blocks to add]

### **Schedule – DCO Land**

The land marked [●] on the [●] plan and comprising [●]

**Appendix 3**  
**Operational Confirmatory Deed**

**DATE:**

**PARTIES**

- (1) **THAMES WATER UTILITIES LIMITED**, a company incorporated in England with registered number 02366661 whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (the "**Undertaker**" and for the purposes of this Confirmatory Deed the "**Covenantor**") [and]
- (2) **ROYAL BOROUGH OF KENSINGTON & CHELSEA** of Town Hall, Hornton Street, London, W8 7NX (the "**Council**")

**BACKGROUND**

- (A) This Operational Confirmatory Deed is supplemental to a planning agreement made under section 106 of the 1990 Act between the Undertaker (1) and the Council (2) [and [•] (3)] (the "**Principal Deed**") on [•] and is itself made under (inter alia) the said section 106 of the 1990 Act and any Construction Phase Confirmatory Deeds entered into between the Undertaker (1) and the Council (2) [and [•] (3)]
- (B) This Operational Confirmatory Deed is supplemental to the Principal Deed.
- (C) Words and phrases used in this Operational Confirmatory Deed bear the same meaning in this Operational Confirmatory Deed as under the Principal Deed.
- (D) Clause 2.1 of the Principal Deed provides that the planning obligations set out in the Principal Deed are intended to bind the Undertaker in its capacity as the owner of the Existing TWUL Land and are intended (subject to the provisions of Clauses 3, 4 and 11 of the Principal Deed) to be binding on the DCO Land and Future TWUL Land and on the Undertaker's Successors to the Existing TWUL, the DCO Land and Future TWUL Land.
- (E) Clause 2.4 of the Principal Deed provides that the Undertaker serves notice in writing to the Council at least one (1) month prior to each of the Permanent Acquisition Vesting Dates.
- (F) Clause 2.5 of the Principal Deed provides that where the Undertaker is to acquire part or all of the DCO Land (the "**Future TWUL Land**") the Undertaker covenants to the Council that as soon as practicable after each of the Permanent Acquisition Vesting Dates it shall execute a deed in favour of the Council so as to bind such parts of the Future TWUL Land with the planning obligations in Schedule 1, Part 2 and Schedule 1, Part 3 and Schedule 3 of the Principal Agreement.
- (G) The Undertaker has confirmed the Permanent Acquisition Vesting Date as [•] and has acquired the freehold/long leasehold interest in the Future TWUL Land details of which are set out in Part 1 of the Schedule.
- (H) This Operational Confirmatory Deed is entered into by the Undertaker [and [the other owners of freehold or leasehold interests in such parts of the Existing and Future TWUL Land as may be necessary to enable effective enforcement of the terms of the Principal Deed]] in favour of the Council in order to bind such parts of the Future

TWUL Land as are vested in them with the obligations set out in Schedule 1, Part 2 and Schedule 1, Part 3 and Schedule 3 of the Principal Deed.

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Operational Confirmatory Deed:
- 1.2 Where in this Operational Confirmatory Deed there are defined terms not included in clause 1.1 above then they shall have the same meaning as in clause 3.1 of the Principal Deed and clauses 3.2 to 3.9 of the Principal Deed shall apply to the interpretation of this Operational Confirmatory Deed. Terms defined in this Operational Confirmatory Deed shall have the same meaning as in Clause 3.1 of the Principal Deed unless expressly stated otherwise.
- 1.3 Where provisions of the Principal Deed are deemed to be incorporated in this Operational Confirmatory Deed reference to the Undertaker in the Principal Deed shall be deemed to be reference to the Covenantor.

### **2 DECLARATION AND COVENANT**

- 2.1 The Covenantor declares and covenants with the Council that all its interests in the Future TWUL Land as set out in the Part 1 of the Schedule to this Agreement are bound by and subject to the obligations of the Undertaker in Schedule 1, Part 2 and Schedule 1, Part 3 and Schedule 3 of the Principal Deed.
- 2.2 The Covenantor declares and covenants with the Council to comply with the obligations of the Undertaker in relation to the Future TWUL Land contained in Schedule 1, Part 2 and Schedule 1, Part 3 and Schedule 3 of the Principal Deed (which shall be deemed to be incorporated in this Operational Confirmatory Deed) as if the same were set out in full in this Operational Confirmatory Deed provided that the Covenantor shall have no liability in relation to any breaches of obligations in the Principal Deed committed by others before the date of this Operational Confirmatory Deed.
- 2.3 The Council declares and covenants with the Covenantor to comply with the obligations of the Council pursuant to Clause 6 of the Principal Deed (which shall be deemed to be incorporated in this Operational Confirmatory Deed) as if the same were set out in full in this Operational Confirmatory Deed.
- 2.4 The parties to this Operational Confirmatory Deed declare and acknowledge that the Principal Deed continues in full force and effect notwithstanding the execution of this Confirmatory Deed save that: [•]
- 2.5 The obligations on the part of the Covenantor contained in this clause 2 (Declaration and Covenant) of this Operational Confirmatory Deed are planning obligations for the purpose of section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Covenantor and so as to bind the Covenantor's interest in the Future TWUL Land with the obligations of the Undertaker in Schedule 1, Part 2 and Schedule 1, Part 3 and Schedule 3 of the Principal Deed.

### **3 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Operational Confirmatory Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**This Operational Confirmatory Deed has been entered into on the date stated at the beginning of this Operational Confirmatory Deed.**

[execution blocks to add]

## **SCHEDULE**

### **Part 1**

#### **FUTURE TWUL LAND**

Such parts of the DCO Land as marked [●] on the [●] plan and comprising [●]

### **Part 2**

[Set out details of Undertaker's ownership]