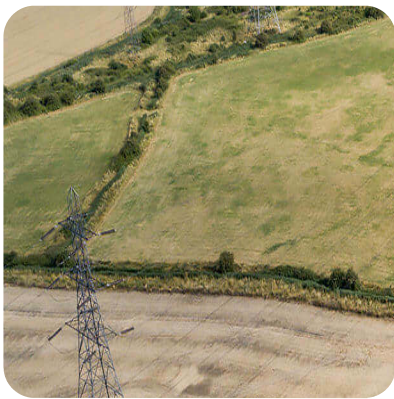


## Thurrock Flexible Generation Plant

Table of amendments to the draft Development Consent Order between version 4 (REP2-014) to version 5 (Deadline 4 submission)



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Article / Paragraph	Amendment	Reason
<b>Article 1 Definitions</b>	New definition inserted: “Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(a) or any successor in function;	Necessary to allow the amendments to the articles requested by Highways England.
<b>Article 1 Definitions</b>	New definition inserted: “Port of Tilbury London Limited” means the statutory harbour authority for and operator of the Port of Tilbury, London.	Necessary to allow the amendments to the articles requested by Port of Tilbury London Limited.
<b>Article 5 Maintenance of authorised development</b>	5.—(1) <del>Subject to sub-paragraphs (2) and (3)</del> , 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. <del>(2)</del> (3) Nothing in this Order authorises the carrying out of maintenance dredging by the undertaker.	Change proposed in response to comments from the PLA and MMO that the order needed to be clearer that maintenance dredging is not authorised. Wording agreed with the PLA.
<b>Article 13 Temporary restriction of use of streets</b>	In paragraph (7), addition of exception for Highways England: (7) <del>Save for any application made to Highways England, if</del> a street authority which receives an application for consent under paragraph...	Requested by Highways England to prevent deemed consent of works to the strategic road network.
<b>Article 15 Traffic regulation</b>	In paragraph (12), addition of exception for Highways England: (12) <del>Save for any application made to Highways England, if</del> the traffic authority fails to notify the undertaker of its decision	Requested by Highways England to prevent deemed consent of works to the strategic road network.
<b>New article 34 Funding</b>	Insertion of new article 34:	Raised by the Examining Authority in the hearings. The wording inserted follows the Cleve Hill 2020 DCO.

## **Funding**

**34** —(1) The undertaker must not 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 for that purpose 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 19 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights);
- (c) article 23 (private rights);
- (d) article 25 (acquisition of subsoil only);
- (e) article 28 (temporary use of land for carrying out the authorised development);
- (f) article 29 (temporary use of land for maintaining the authorised development);  
and
- (g) article 30 (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.

Consequential renumbering of following articles throughout.

<b>Article 37 (previously 36) Works in the river Thames: conditions</b>	<p>New sub-paragraph (12):</p> <p>(12) The PLA must consult the Port of Tilbury London Limited on any application for an approval made to it under this article before issuing an approval.</p>	<b>Requested by the Port of Tilbury London Limited</b>
<b>Article 38 (previously 37) Power to dredge</b>	<p>Amendment to paragraph (4) to specify that exercise of the power is subject to the provisions of the deemed marine licence:</p> <p>(4) The exercise of the powers of this article is subject to the requirements of <a href="#">Schedule 8 (deemed marine licence)</a> and the provisions of Schedule 9 as to the PLA's approval of dredging proposals and the payment of compensation for the sale by the undertaker of any dredged material.</p>	Requested by the MMO.
<b>Schedules</b>		
<b>Schedule 2  Requirement 3 Notice of commencement of authorised development</b>	<p>Deletion of MMO from the requirement:</p> <p>Notice of commencement of the authorised development must be given to the relevant planning authority <del>and the MMO</del> within 7 days of the date on which the authorised development is commenced.</p>	As requested by the MMO who advise this i unnecessary as they will receive notice under the DML.
<b>Schedule 2  Requirement 4 Detailed design</b>	<p>Addition of Port of Tilbury London Limited as a consultee in sub-paragraphs (3) and (6)</p> <p>(3) No works to the tidal defence wall in the vicinity of the proposed causeway can be commenced until the detailed design for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency <a href="#">and Port of Tilbury London Limited</a>.</p> <p><del>(5)</del>(6) No construction of Work no.10 may commence until the detailed design of that work has been submitted to and approved by the MMO in consultation with the PLA <a href="#">and Port of Tilbury London Limited</a>.</p>	As requested by the Port of Tilbury London Limited



<p><b>Schedule 2</b></p> <p><b>Requirement 4 Detailed design</b></p>	<p>New sub-paragraph (5):</p> <p>(5) In so far as the details submitted under paragraph (1) relate to Work no. 4, the relevant planning authority must consult Highways England on those details prior to issuing any approval under that paragraph.</p>	<p>Highways England requested to be consulted on the details of Work no. 4 (the gas pipeline) which will interact with the LTC project.</p>
<p><b>Schedule 2</b></p> <p><b>Requirement 4 Detailed design</b></p>	<p>(6)(7) The detailed design for Work no 10 submitted under sub-paragraph (5) must be <b>generally-substantially</b> in accordance with the concept causeway design.</p>	<p>The MMO objected to the use of the term 'generally in accordance'. The Applicant notes that this approach to wording is common in DCO requirements where an outline or preliminary design or scheme is to be complied with, and it does not accept that the wording is too imprecise to be enforceable. The Applicant has however amended the wording in an attempt to resolve the concern.</p>
<p><b>Schedule 2</b></p> <p><b>Requirement 4 Detailed design</b></p>	<p>Addition of new line in table 1 to specify that the footbridge to the replacement common land (Work No. 13) must be a clear span structure.</p>	<p>As requested by the Environment Agency.</p>
<p><b>Schedule 2</b></p> <p><b>Requirement 6 Construction Traffic Management Plan</b></p>	<p>6.—(1) No part of the authorised development can be commenced until a Construction Traffic Management Plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority, <a href="#">Highways England</a>, <a href="#">Network Rail</a>, <a href="#">Port of Tilbury London Limited</a> and Royal Mail.</p>	<p>Highways England and Network Rail have requested to be consultees on this plan.</p> <p>Port of Tilbury London Limited requested to approve the plan under this requirement. The Applicant does not agree that is necessary or appropriate and considers that approval should remain with the planning authority only. The Applicant considers that the Port's interests are adequately and more appropriately protected through protective provisions than seeking to allow them to act as a discharging authority. The Applicant has however added the Port as a consultee so</p>

		that they can make their views known to the planning authority.
<b>Schedule 2</b> <b>Requirement 7</b> <b>Construction Worker Travel Plan</b>	7.—(1) No part of the authorised development can be commenced until a Construction Worker Travel Plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority, <a href="#">Highways England, Network Rail and Port of Tilbury London Limited</a> .	Highways England, Network Rail and Port of Tilbury London Limited have requested to be consultees on this plan.
<b>Schedule 2</b> <b>Requirement 11 Flood evacuation plan</b>	11.—(1) The undertaker must, prior to the commencement of the authorised development, put in place a flood evacuation plan for the authorised development. The flood evacuation plan must be maintained and kept up to date throughout the construction and operational life of the authorised development <a href="#">and be made available for inspection by all users of the site and displayed in a visible location all times</a> .	Addition requested by Thurrock Council
<b>Schedule 2</b> <b>Requirement 14</b> <b>Landscaping and Ecological Management Plan</b>	Sub-paragraph (2) which read; “(2) Construction of Work no.10 must not commence until a monitoring programme for saltmarsh colonisation and mudflat habitats has been submitted to and approved by the MMO in consultation with Natural England and the PLA” has been deleted and replaced by condition 17 in the DML.	Inclusion of this programme in the DML conditons was requested by the MMO, in order to prevent duplication this has been moved to the DML and deleted from the requirements.
<b>Schedule 2</b> <b>Requirement 17</b> Navigational risk assessment	<b>Addition to sub-paragraph (3):</b>  (3) Work no. 10 must be constructed, <a href="#">maintained</a> and operated in accordance with the final navigational risk assessment or any update or revision of the navigational risk assessment approved under sub-paragraph (4).	Port of Tilbury London Limited requested that ‘maintained’ and ‘decommissioned’ be added to this requirement. The Applicant considers that the addition of ‘maintained’ is reasonable (noting that no maintenance dredging would be authorised by the Order), but that decommissioning will be controlled through the decommissioning plan and consents which will have to be obtained from the PLA and MMO at the time of proposing to carry out works.

<p><b>Schedule 2</b></p> <p><b>Requirement 18</b> Review of access for abnormal indivisible loads</p>	<p><b>Addition to sub-paragraph (1) and insertion of new sub-paragraph (2):</b></p> <p><b>18.</b>—(1) No later than five years from the commencement of operation of Work no.1A, the undertaker must submit a report of the review of access options for transportation of AILs to or from Work no.1 in writing to the relevant planning authority <a href="#">and send a copy to Highways England</a>.</p> <p>(2) <a href="#">A report submitted under sub-paragraph 1 must set out how the options assessed perform against the tests set out in sub-paragraph (6).</a></p> <p>(3) If, in the opinion of the relevant planning authority, <a href="#">following consultation with Highways England</a>, an environmentally acceptable, permanent...</p>	<p>Highways England requested the additions to sub-paragraphs (1) and (3) to allow them to assess the impact of any change in access on the strategic road network.</p> <p>Port of Tilbury London Limited requested the addition of sub-paragraph (2) which the Applicant considers is a just a clarification.</p>
<p><b>Schedule 2</b></p> <p><b>Requirement 19</b> Causeway decommissioning plan</p>	<p>Addition of Port of Tilbury London Limited as a consultee in sub-paragraphs (1) and (2):</p> <p>(1) Where in accordance with requirement 18, the causeway to be constructed as Work no.10 is to be decommissioned, the undertaker must, within 6 months of the undertaker receiving all of the consents for which applications were made under requirement 18(2), submit a causeway decommissioning plan to the MMO for approval in consultation with the relevant planning authority, the Environment Agency, Natural England <a href="#">Port of Tilbury London Limited</a> and the PLA.</p> <p>(2) Where Work no.1 permanently ceases operation and no causeway decommissioning plan has previously been approved under this requirement, the undertaker must, within 6 months of the operation of Work no.1 ceasing, submit a causeway decommissioning plan to the MMO for approval in consultation with the relevant planning authority, Environment Agency, Natural England, <a href="#">Port of Tilbury London Limited</a> and the PLA.</p>	<p>As requested by the Port of Tilbury London Limited</p>
<p><b>Schedule 2</b></p> <p><b>New requirement 22</b> Carbon capture readiness</p>	<p>Insertion of a new requirement 22 Carbon capture readiness</p> <p>(1) Until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—</p> <p>(a) dispose of any interest in the CCR area; or</p> <p>(b) do anything, or allow anything to be done or to occur,</p>	



	<p>which may reasonably be expected to diminish the undertaker’s ability, within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so</p>	
<p><b>Schedule 2</b></p> <p><b>New requirement 23</b> <b>Carbon capture readiness monitoring report</b></p>	<p>Insertion of a new requirement 23 Carbon capture readiness monitoring report</p> <p>(1) The undertaker must make a report (‘carbon capture readiness monitoring report’) to the Secretary of State—</p> <ul style="list-style-type: none"> <li>(a) on or before the date on which three months have passed from the date of Work No. 1A full commissioning; and</li> <li>(b) within one month of the third anniversary, and each subsequent three year anniversary, of that date.</li> </ul> <p>(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 22—</p> <ul style="list-style-type: none"> <li>(c) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and</li> <li>(d) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 22 over the next three years.</li> </ul> <p>(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.</p> <p>(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.</p>	
<p><b>Schedule 2</b></p> <p><b>Requirement 26</b> <b>Submissions and approvals</b></p>	<p>Amendments to requirement 26:</p> <p><b>written Submissions and approvals</b></p>	<p>Amendments made to address the requests from Thurrock Council that the requirement specify that all submission for approval must be in writing and that any approval issued by</p>

	<p><b>25.</b> (1) Where, under any requirement, approval of any plans, details, schemes or other documents is required, the plan, details, scheme or other documents submitted for approval must be in writing.</p> <p>(2) Where under any requirement the approval or agreement of the discharging authority or another person is required, that approval or agreement must be provided in writing.</p> <p>(3) A copy of any approval or amendment to an approval issued under these requirements by a discharging authority other than the relevant planning authority must be copied to the relevant planning authority at the same time as it is issued to the undertaker</p>	<p>another authority is copied to them in order to allow them to maintain a full register of approved details and to facilitate their enforcement role.</p>
<p><b>Schedule 2</b> <b>Requirements 27 and 28</b></p>	<p>Amendments to requirements 27 (Applications made under requirements) and 28 (Further information) to increase the period for the making of decisions, for the requesting of further information and for consultees to respond.</p>	<p>Amendments made to address the requests from Thurrock Council to increase these periods, to align with discussion with the MMO on periods and to allow more time for consultees to respond as requested by Highways England. Thurrock Council asked for the period to be increased to 8 weeks whereas the MMO advised that its determination period is 13 weeks so the longer period has been used.</p>
<p><b>Schedule 2</b> <b>Requirement 30</b></p>	<p><b>Deletion of the provision requiring return of the fee for failure to determine within the allowed period.</b></p> <p><b>26.30.</b>—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2012(a) (or any regulations replacing the same) is to be paid by the</p>	<p>Requested by Thurrock Council and agreed by the Applicant.</p>

	<p>undertaker to the discharging authority in accordance with these regulations.</p> <p>(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—</p> <p><del>(a) the application being rejected as invalidly made; or</del></p> <p><del>(b) the discharging authority failing to determine the application within the period determined under paragraph (1), unless within that period the undertaker agrees in writing that the fee is to be retained by the discharging authority and credited in respect of a future application</del></p>	
<b>Schedule 8, Deemed marine licence</b>	Change of defined term, the 'licence holder' has been replaced by 'the undertaker' throughout schedule 8	As requested by the MMO
<b>Schedule 8, Deemed marine licence, Part 1</b> <b>Paragraph 2 Contacts</b>	<p>Insertion of requirement to use the web portal;</p> <p><b>2. All notifications sent by the undertaker to the MMO must be sent using the MMO's Marine Case Management System (MCMS) web portal.</b></p>	As requested by the MMO
<b>Schedule 8, Deemed marine licence, Part 1</b> <b>Paragraph 17 Saltmarsh colonisation and mudflats monitoring programme</b>	<p>Insertion of new condition 17, moved from requirement 14 of schedule 2:</p> <p>Construction of Work no.10 must not commence until a monitoring programme for saltmarsh colonisation and mudflat habitats has been submitted to and approved by the MMO in consultation with Natural England and the PLA.</p>	Inclusion of this programme in the DML conditions was requested by the MMO, in order to prevent duplication this has been moved to the DML and deleted from the requirements.
<b>Schedule 9 Protective provisions, Part 10</b>	Insertion of new part for the Protection of RWE Generation UK limited.	The text of this part is under negotiation between the Applicant and RWE.