



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**Thurrock Flexible Generation Plant**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Business, Energy and Industrial Strategy

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Examining Authority

**Rory James Cridland, LLB(Hons), PG Dip, Solicitor**

**16 November 2021**

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# OVERVIEW

File Ref: EN010092

The application, dated 20 May 2020, was made under s37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on that date.

The Applicant is Thurrock Power Ltd (Company No. 10917470).

The application was accepted for examination on 20 June 2020. The Examination began on 16 February 2021 and was completed on 16 August 2021.

The Proposed Development comprises the potential construction and operation of:

- up to 48 reciprocating gas engines with rated electrical output totalling 600MW;
- storage batteries with rated electrical output of 150MW (with storage capacity of up to 600MWh);
- gas and electricity connections;
- creation of temporary and permanent private access routes for construction haul and access in operation, including a causeway for barge deliveries;
- designation of exchange Common Land; and
- habitat creation or enhancement for protected species translocation and biodiversity gain.

The application also seeks powers in the Development Consent Order for the compulsory acquisition and/ or temporary possession of land and rights including the compulsory acquisition of common land.

## **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 – Thurrock Flexible Generating Project – Ref. EN010092**

**Examining Authority’s Report to the Secretary of State for the Department for Business, Energy and Industrial Strategy dated 16 November 2021**

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

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
i (‘Over view’)		“The application,..... was received in full by the Planning Inspectorate on that date.”	“The application,..... was received in full by the Planning Inspectorate on 27 May 2020.”
i (‘Over view’)		“The application was accepted for examination on 20 June 2020.”	“The application was accepted for examination on 24 June 2020.”
1	1.1.1	“...was submitted by Thurrock Power Limited (the Applicant) to the Planning Inspectorate on 20 May 2020...”	“...was submitted by Thurrock Power Limited (the Applicant) to the Planning Inspectorate on 27 May 2020...”
26	3.3.1	“EN-2: Fossil Fuel and Electricity Generating Infrastructure”	“EN-2: Fossil Fuel Electricity Generating Infrastructure”
28	Heading	“EN-2: Fossil Fuel and Electricity Generating Infrastructure”	“EN-2: Fossil Fuel Electricity Generating Infrastructure”
36	3.7.2	“Cleve Hill Solar Park Order 2929....”	“Cleve Hill Solar Park Order 2020....”
44	4.4.1	“...specific guidance on Electricity Generating Infrastructure in NPS EN-2...”	“...specific guidance on Fossil Fuel Electricity Generating Infrastructure in NPS EN-2...”
52	5.2.26	“...set in a compound no greater than 50m <sup>2</sup> ...”	“...set in a compound no greater than 2500 square metres...”
86		Unnumbered paragraph under sub-heading “ <b>View of IPs</b> ”	No substitute
88	5.9.35	“...and that trail trench evaluation...”	“...and that trial trench evaluation...”

100	5.12.9	"...will need to confirm to the requirements of..."	"...will need to conform to the requirements of..."
106	5.12.44	"Furthermore, while I acknowledge...."	"Furthermore, I acknowledge...."
114	6.3.6 (end)	"...Ringer Plover..."	"...Ringed Plover..."
121	6.6.3	"...which demonstrated the loss of habitat would be 'de minimis'."	"...which demonstrated the loss of habitat would be 'de minimis'."
124	6.7.15	"...and Ringed Plover features.in response..."	"...and Ringed Plover features. In response..."
127	6.7.27	"...this would lead to an AEOL on the Thames Estuary and Marshes SPA..."	"...this would not lead to an AEOL on the Thames Estuary and Marshes SPA..."
133	7.2.1	"...the Proposed Development would result the loss of agricultural land..."	"...the Proposed Development would result in the loss of agricultural land..."
154	Heading	<b>"Commons Act 2016 Application"</b>	<b>"Commons Act 2006 Application"</b>
168	9.5.16	"...to ensure that if not only should any review be..."	"...to ensure that not only should any review be..."
169	9.5.22 (heading)	"Paragraph 2 – Definition of 'port'"	"Paragraph 2 – Definition of 'the port'"
169	9.5.24	"...to demonstrate that that the Proposed Development..."	"...to demonstrate that the Proposed Development..."
184	Table 10	[Provision] "Schedule 9, Part 11, Paragraph 2 Definition or "RSA""	"Schedule 9, Part 11, Paragraph 2 Definition of "RSA""
184	Table 10	[Reasons] "DMRB in not defined"	"DMRB is not defined"



# 1. INTRODUCTION

## 1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The Application for a flexible generation plant comprising up to 48 gas fired reciprocating engines together with storage batteries with a combined capacity of 750MW on land adjacent to the north of the National Grid Tilbury Substation in Thurrock, off Station Road, near Tilbury, Essex (the Proposed Development) was submitted by Thurrock Power Limited (the Applicant) to the Planning Inspectorate on 20 May 2020 under section 37 of the Planning Act 2008 (PA2008) [[APP-004](#)]. It was accepted for Examination under section 55 of the PA2008 on 24 June 2020 [[PD-001](#)].

1.1.2. In summary, the Proposed Development comprises the potential construction, operation and maintenance of:

- **Work no. 1** - An electricity generating station and battery storage facility with a net rated electrical output of up to 750MW together with associated facilities and comprising:
  - up to 48 gas reciprocating engines, 48 exhaust stacks and up to 48 gas engine exhaust energy recovery systems together with associated systems; and
  - a battery storage facility with a net rated electrical output of up to 150MW for four hours.
- **Work no. 2** – the creation and enhancement of onshore wildlife habitat including topsoil strip, planting, construction of ditches, mounds and banks, and enhancement of retained ditches for ecological benefit; and connection of retained ditches to surface water drainage.
- **Work no. 3** – An electrical connection to Tilbury Substation comprising 275kV high-voltage underground cables for electricity export and lower voltage underground cables for auxiliary power supply together with associated connection equipment.
- **Work no. 4** – An underground high-pressure gas pipeline between Work no. 1 and Work no. 5 and gas pipelines within Work no. 1.
- **Work no. 5** – A connection point to the gas National Transmission System (NTS) consisting of a gas connection compound and connection facility, a high pressure underground gas pipeline between Work no. 5A(a) and the NTS; and an access track and junction from Station Road with drainage and landscaping.
- **Work no. 6** – An access road and junction from Station Road with drainage and landscaping.
- **Work no. 7** – A water supply connection to the water main at Station Road.

- **Work no. 8** – Construction compound(s) and laydown area(s) south of Tilbury Loop railway.
- **Work no. 9** - no longer forms part of the application.
- **Work no. 10** – a gated causeway with crane platforms, extending from above mean high water springs into the River Thames, and a berthing pocket for barges.
- **Work no. 11** – Alteration to the existing sea wall.
- **Work no. 12** – An access road from the A1089 St Andrew’s Road.
- **Work no. 13** – A footbridge, ground works and fencing for a permissive path between Fort Road and Work no. 14.
- **Work no. 14** – Creation of approximately 115,775m<sup>2</sup> of common land with planting and landscaping.
- **Work no. 15** - An access road and junction from Fort Road to the Port of Tilbury access road, comprising engineering works and construction of new road with gates, fencing and alterations to drainage, landscape planting and alteration of services.

1.1.3. A full description of the individual works can be found in Schedule 1 of the final draft Development Consent Order (dCO) (version 8) [[REP7-012](#)].

1.1.4. The location of the Proposed Development is shown in the Location and Order Limit Plans [[REP7-002](#)] and in the Land Plans and Special Category Land Plans [[REP7-003](#)], final updated versions of which were received at Deadline (D) 7. The site lies within the administrative district of Thurrock Council and is wholly in England.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Department of Communities and Local Government (DCLG) in the decision to accept the Application for Examination in accordance with section 55 of PA2008 [[PD-001](#)].

It was accepted that the Proposed Development is an NSIP as it comprises an onshore gas-fired electricity generating station with a capacity of more than 50MW and falls within s15(2) of the PA2008, and so requires development consent in accordance with s31 of the PA2008. I am similarly satisfied that the Proposed Development meets the definition of an NSIP set out in s14(1)(a) and s15(2) of the PA2008.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

1.2.1. On 24 June 2020, I, Rory James Cridland, was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [[PD-003](#)].

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

1.3.1. The persons involved in the Examination were:

- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.
- Affected Persons (APs) who were affected by a Compulsory Acquisition (CA) and/ or Temporary Possession (TP) proposal made as part of the Application and objected to it at any stage in the Examination.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

1.4.1. The Examination began on 16 February 2021 and concluded on 16 August 2021.

1.4.2. The principal components of, and events around, the Examination are summarised below.

### **The Preliminary Meeting**

1.4.3. On 21 September 2020, I wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) [[PD-005](#)], outlining:

- the purpose, arrangements and agenda for the PM;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- my procedural decisions

1.4.4. The PM was held virtually and took place in two parts.

#### **PM (Part 1)**

1.4.5. PM (Part 1) was held on 20 October 2020. However, a number of matters were identified by IPs prior to the PM, resulting in a request to suspend the Examination or delay its start pending the receipt of further environmental information.

1.4.6. These matters were discussed at the PM (Part 1) where the Applicant and all IPs were provided with an opportunity to comment and make oral representations. A digital recording [[EV-001](#)] and a note of the meeting [[EV-002](#)] were published on the Planning Inspectorate National Infrastructure website<sup>1</sup>.

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<https://infrastructure.planninginspectorate.gov.uk/projects/South%20East/Thurrock-Flexible-Generation-Plant/>

- 1.4.7. The meeting was adjourned, and further opportunities were made available for the Applicant and IPs to make further written representations on the adequacy of the information submitted (see Procedural Deadline B submissions in the [Examination Library](#)).
- 1.4.8. After considering the written submissions made at Procedural Deadline A, the oral submissions made at the PM (Part 1) and the further written submissions received on or before Procedural Deadline B, I took the procedural decision to postpone PM (Part 2) until Tuesday 16 February 2021 to allow for further environmental information to be prepared, submitted, consulted upon and for IPs to be given an opportunity to comment on it.
- 1.4.9. The reasons for my conclusion, the information required as well as the steps the Applicant was requested to take prior to the resumption of the PM (Part 2) were set out in my letter dated Monday 2 November 2020 [[PD-006](#)] and so are not repeated here.

### **Submission of Further Information**

- 1.4.10. Further information was submitted by the Applicant at Procedural Deadline C. This included an updated dDCO, updated drawings, management plans and Environmental Statement (ES) documents. Although some of the updates were made in response to the request for further information, others were included in anticipation of potential future change requests or in response to concerns by IPs in their RR. In the interests of clarity, I sought further information from the Applicant on the purpose of each of the documents [[PD-007](#)] which was provided on 6 January 2021 [[AS-010](#)].
- 1.4.11. Following the submission of this information, the Applicant made a formal change request in their letter dated 14 January 2021 [[AS-011](#)]. In summary, this sought to remove 2.2 hectares (ha) from the Order Limits (being approximately half of plot 01/20) where habitat enhancement had been proposed as part of Work no. 2. An equivalent amount of habitat creation was instead proposed at an alternative location within the existing Order Limits. Furthermore, the Applicant sought to remove Work no. 9 (saltmarsh creation) in response to comments made by IPs in their RRs. No new land was proposed to be subject to powers of CA.
- 1.4.12. Documentation relating to these change requests was submitted by the Applicant at Procedural Deadline C and can be found in the Examination Library [[PDC-003 to PDC-006](#), [PDC-008-PDC-011](#), [PDC-15 to PDC-016](#), [PDC-019 to PDC-024](#), [PDC-027 to PDC-032](#), [PDC-035 to PDC-036](#), [PDC-039 to PDC-045](#), [PDC-047 to PDC-051](#) and [PDC-054 to PDC-057](#)].
- 1.4.13. Having had regard to the proposed changes, I decided that they were not material changes and accepted them into the Examination. Further information on my reasoning can be found in Annex A of my letter dated 20 January 2021 [[PD-008](#)].
- 1.4.14. Following a review of the further information received from the Applicant at Procedural Deadline C, the accepted change request documentation

and the comments made by IPs at Procedural Deadline D, I decided that there were no further procedural matters which needed to be explored orally. As a result, I took the procedural decision to not resume the PM and to instead close the meeting in writing. I notified the Applicant and IPs of this in my Rule 8 letter dated 16 February 2021 [[PD-009](#)], which took full account of all matters raised.

## **Key Procedural Decisions**

- 1.4.15. Most of the procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on my consideration of the planning merits of the Proposed Development. The decisions can be obtained from the Rule 8 Letter [[PD-009](#)] and so they are not repeated here.
- 1.4.16. In addition, I made a number of other procedural decisions during the Examination including:
- the holding of site inspections [[PD-011](#)] and the Applicant's alternative proposals for site inspections [[PD-014](#)];
  - the Applicant's proposed material changes to the application [[PD-012](#)] (for further information see Chapter 2 below);
  - to amend the Examination Timetable [[PD-016](#)];
  - request for further information on the potential removal of the causeway [[PD-019](#)]; and
  - the acceptance of a number of additional (and/ or late) submissions.

## **Site Inspections**

- 1.4.17. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.18. My approach to site inspections was informed by the Government's advice and restrictions in place at the time in respect of the COVID-19 pandemic. With this in mind, where the matters for inspection could be viewed from the public domain and there were no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) was held. Where an inspection required consent to access private land but could otherwise be viewed unaccompanied, an Access Required Inspection (ARI) was held.
- 1.4.19. I carried out an USI on 7 April 2021 and 8 April 2021 to familiarise myself with the site and surrounding area and to support the Examination. I visited a number of locations and viewed the Site from a number of vantage points. Most locations were publicly accessible but a number were visited as ARIs. A site note providing a procedural record of the USI and ARIs can be found in the Examination Library [[EV-010](#)].
- 1.4.20. In view of the restrictions and advice in place at the time, I took the procedural decision to postpone detailed planning of an Accompanied Site Inspection (ASI) and instead invited the Applicant to submit alternative

proposals for viewing those areas which were not publicly accessible and/or could not be viewed or accessed easily [PD-011]. These were provided at D3 [REP3-006] and IPs were given an opportunity to comment and nominate any other areas for inclusion at D4.

1.4.21. Having considered the Applicant's alternative proposals submitted at D3 and noting the limited number of locations involved, as well as the comments received from IPs at D4, I made the procedural decision not to hold an ASI and to instead accept the Applicant's alternative proposals. These involved a combination of conventional and 360° photographs which were provided by the Applicant at D5 [REP5-018]<sup>2</sup>. IPs were provided an opportunity to comment at D6 and no significant issues were raised.

1.4.22. I have had regard to the information and impressions obtained during both my USI, ARI and the additional photography submitted as an alternative to an ASI in all relevant sections of this Report.

## Hearing Processes

1.4.23. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by CA and/ or TP proposals object and request to be heard at a CA Hearing (CAH); and/ or
  - where IPs request to be heard at an Open Floor Hearing (OFH).
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear. These are known as Issue Specific Hearings (ISHs).

1.4.24. I held a number of hearings under s91 and s92 of PA2008 to ensure the thorough examination of the issues raised by the Application. These were held virtually using the Microsoft Teams platform.

1.4.25. The following ISHs were held:

- ISH1, Transportation and Traffic, 27 April 2021, [EV-013 and EV-014].
- ISH2, Cultural Heritage, 28 April 2021, [EV-015].
- ISH3, dDCO, 29 April 2021, [EV-016].
- ISH4, dDCO, 26 July 2021, [EV-028 and EV-029].

1.4.26. I also held the following CAHs where all persons affected by CA and/ or TP proposals were provided with an opportunity to be heard. I also used

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<sup>2</sup> This includes the following link to an interactive map  
<https://oxf.rpsgroup.com/thurrock/map.html>

these hearings to examine the Applicants case for CA and/ or TP in the round.

- CAH1, 28 April 2021, [[EV-024](#)].
- CAH2, 26 July 2021, [[EV-026](#)].

## **Written Processes**

1.4.27. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix A) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions. I have considered all important and relevant matters arising from them.

1.4.28. Key written sources are set out further below.

## **Relevant Representations**

1.4.29. Twenty-four (24) RRs were initially received by the Planning Inspectorate [[RR-001 to RR-024](#)]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs.

1.4.30. Following the acceptance of the Applicant's material change request [[PD-012](#)] and in accordance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010, a further opportunity was provided to enable those affected to make representations on the changes proposed. A further seven (7) RRs were received [[RR-025 to RR-031](#)]. All makers of these additional RRs were already IPs in the Examination.

1.4.31. All RRs have been fully considered. The issues that they raise are considered in Chapters 4-9 of this Report.

## **Written Representations and Other Examination Documents**

1.4.32. The Applicant and IPs were provided with opportunities at the following Deadlines to:

- make written representations (WRs) (D2 and D5A);
- comment on WRs made by the Applicant and other IPs (D3 and D6);
- summarise their oral submissions at hearings in writing (D4 and D7);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
  - a Report on Implications for European Sites (RIES) [[PD-018](#)] published on 19 July 2021; and
  - a schedule of proposed changes to the draft Development Consent Order [[PD-020](#)] published on 2 August 2021.

1.4.33. I have fully considered all WRs and other examination documents. The issues that they raise are considered in Chapters 4 – 9 of this Report.

### **Local Impact Report**

1.4.34. A Local Impact Report (LIR) is a report made under s60 PA2008 by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area).

1.4.35. One LIR was received from Thurrock Council (TC) as host authority [[REP2-076](#) and [REP2-077](#)]. Following my acceptance into the Examination of an additional access route for Abnormal Indivisible Loads (AILs) an addendum to the LIR was submitted at D5 [[REP5-022](#)]. I have taken both the LIR and the addendum into account in all relevant sections of this Report.

### **Statements of Common Ground**

1.4.36. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.

1.4.37. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Anglian Water Services Limited (Anglian Water) [[REP2-064](#)].
- The Environment Agency [[REP6-016](#)].
- Gravesham Borough Council [[REP6-015](#)].
- Highways England [[REP7-033](#)].
- Historic England [[REP6-017](#)].
- Maritime and Coastguard Agency, [[REP2-065](#)].
- National Grid [[APP-148](#)].
- Natural England [[REP7-036](#)].
- Port of London Authority (PLA) [[REP6-018](#)].
- Public Health England [[REP2-063](#)].
- Royal Mail Group Limited [[REP4-010](#)].
- Thurrock Council [[REP7-038](#)].

1.4.38. In addition, joint statements were submitted between the Applicant and the following IPs at D7:

- National Grid (NGET and NGG) [[REP7-040](#)].
- Network Rail Infrastructure Limited [[REP7-041](#)].

1.4.39. I have taken all of the SoCGs and joint statements listed above into account in all relevant Chapters of this Report.

1.4.40. A draft SOCG was submitted between the Applicant and the Marine Management Organisation (MMO) [[REP7-035](#)]. This remained unsigned at the close of the Examination and consequently I have afforded it only limited weight.

### **Written Questions**

1.4.41. I asked three (3) sets of written questions:



- The first set of written questions (ExQ1) [[PD-010](#)] was issued with the Rule 8 letter [[PD-009](#)], dated 16 February 2021.
- The second set of written questions (ExQ2) [[PD-015](#)] was issued on 1 June 2021.
- The third set of written questions (ExQ3) [[PD-017](#)] was issued on 9 July 2021.

1.4.42. The following request(s) for further information and comments under Rule 17 of the EPR were issued:

- 29 March 2021, [[PD-011](#)] where I invited the Applicant to submit alternative proposals for viewing those areas which were not publicly accessible or could not be viewed or accessed easily.
- 21 May 2021, [[PD-014](#)], accepting the Applicant's proposals for conventional and 360-degree photography to be used in place of an ASI and inviting IPs to comment on these at D6.
- 29 July 2021, [[PD-019](#)], requesting the Applicant submit a schedule identifying the amendments to the application documents the Applicant considers necessary to give effect to the removal of the proposed causeway from the application. I consider this matter further in Chapter 9.

1.4.43. All responses to my written questions and Rule 17 requests have been fully considered and taken into account in all relevant Chapters of this Report.

### **Requests to Join and Leave the Examination**

1.4.44. Eastern Power Networks made an application under s102A of the PA2008 to become an IP on 30 October 2020. This request was granted on 10 November 2020.

1.4.45. There were no requests to join the Examination by persons who were not already IPs at or after the PM.

1.4.46. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs/ APs and the Applicant, the following persons wrote informing me that their issues were settled and their representations were withdrawn:

- Anglian Water [[REP6-023](#)] withdrew their representations having agreed protective provisions (PPs) with the Applicant.
- Cogent Land LLP [[REP2-094](#)] withdrew their representation and confirmed that the concerns raised previously in their RR had been addressed.
- Network Rail withdrew their objection having agreed modifications to Requirements 4, 6 and 7 of the dDCO along with PPs for the protection of their assets [[REP8-006](#)].

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

- 1.5.2. In August 2018, the Applicant submitted a Scoping Report to the SoSMHCLG under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2263) (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion).
- 1.5.3. In September 2018, the Planning Inspectorate provided a Scoping Opinion [[APP-134](#)]. Therefore, in accordance with Regulations 4(2)(a) and 8(1)(b) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [[APP-041 to APP-122](#)].
- 1.5.4. On 24 August 2020, the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 16 of the EIA Regulations had been complied with [[OD-004](#), [OD-005](#) and [OD-006](#)].
- 1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapters 4 to 7 of this Report.

## **1.6. HABITATS REGULATIONS ASSESSMENT**

- 1.6.1. The Proposed Development is development for which a Habitats Assessment Regulations (HRA) Report has been provided.
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

## **1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.7.1. By the end of the Examination, there were no matters subject to any separate undertakings, obligations and/ or agreements that are important or relevant considerations for the SoS for Business Energy and Industrial Strategy (SoSBEIS). All relevant considerations are addressed in this Report in so far as they have a bearing on the dDCO.
- 1.7.2. Nevertheless, at the close of the Examination, discussions were continuing between the Applicant, RWE Generation (UK) Plc and Port of Tilbury London Limited with a view to reaching agreements which would enable the removal of the causeway, and associated CA powers, from the application.
- 1.7.3. The Applicant confirmed at ISH4 that this was its preferred outcome and that if such agreements are reached in the period following the close of the Examination but before a decision is taken on the application by the SoSBEIS, it intends to make an application to remove the causeway direct to the SoSBEIS.
- 1.7.4. The SoSBEIS may therefore wish to seek an update from the Applicant on its intentions in this respect before making any decision on the Application.

1.7.5. Further details can be found in Chapters 8 and 9 of this Report.

## 1.8. OTHER CONSENTS

1.8.1. The Application was accompanied by a list of the other consents and licences [[APP-129](#)] that the Proposed Development has obtained or must obtain, in addition to Development Consent under PA2008. This was kept updated during the Examination and a final version submitted at D7 [[REP7-021](#)]. The latest position is recorded below.

- **An Electricity Generation Licence** under the Electricity Act 1989. Consenting Authority: The Office of Gas and Electricity Markets (OFGEM).  
Position: The Applicant has obtained this licence.
- **A Greenhouse Gas Emissions Permit** under the Greenhouse Gas Emissions Trading Scheme Order 2020 will be required for the emission of Carbon Dioxide (CO<sub>2</sub>) from the proposed power station. Consenting Authority: The Environment Agency (EA).  
Position: Application to be progressed in parallel with the Environmental Permit application.
- **An Environmental Permit** under the Environmental Permitting (England and Wales) Regulations 2016 is required to operate the proposed power station.  
Consenting Authority: The EA.  
Position: The Applicant intends to make an application for an Environmental Permit following the grant of any DCO.
- **A Bilateral Connection Agreement** with NGET.  
Position: The Applicant has secured a connection agreement and construction agreement with NGET for a grid connection to the 275kV network at Tilbury.
- **A Planning and Advanced Reservation of Capacity Agreement** from NGG for the reservation of gas from the National Transmission System ('NTS') may be required.  
Position: To be progressed following the grant of any DCO.
- **A Network Exit Agreement** with NGET encompassing technical and operational conditions for the connection point to the NTS.
- **Safety notification under the Pipeline Safety Regulations 1996** will be required in connection with the Gas Connection.  
Consenting Authority: The Health and Safety Executive (HSE).  
Position: An application will be made by the contractor before the construction of the pipeline commences.
- **Consent for the Deregistration and Exchange of Common Land** under Section 16 of the Commons Act 2006. An application has been made to the Planning Inspectorate. The Applicant has requested that this be placed on hold pending the outcome of this DCO application.
- **Health and Safety related consents** will be required under the Health and Safety at Work Act 1974 and subsidiary legislation (including the Pressure Systems Safety Regulations 2000 and the Dangerous Substances and Explosive Atmospheres Regulations 2002).  
Regulator: HSE.  
Position: Applications to be made by the nominated contractor or operator, as applicable, prior to commencement of operation. Gas

Pipeline inventory would be below the threshold for the Control of Major Accident Hazards Regulations 2015.

- **A Gas Safety Case** as required by Regulation 3 of the Gas Safety (Management) Regulations 1996 in connection with the Gas Connection must be prepared and submitted to HSE for approval prior to gas being conveyed.
- **A Waste Recovery Permit** may be required under the Environmental permitting (England and Wales) Regulations 2016 where the excavation or removal/ disposal of material from the former Tilbury B Power Station site may be required.  
Consenting Authority: The EA
- **A Notification of Construction Works** under the Construction (Design and Management) Regulations 2015 must be provided to HSE prior to the start of construction.
- **Construction Noise Consent** under s61 of the Control of Pollution Act 1974 may be required from Thurrock Council (TC). If necessary, this would be applied for before construction commences.
- **A Permit of Transport of Abnormal Loads** under the Road Vehicles (Authorisation of Special Types) (General) Order 2003 or the Road Traffic Act 1988 will be sought from the Vehicle Certification Agency and relevant highway authorities prior to commencement.
- **Building Regulations Approval** under the Building Regulations 2010 will be required from TC in respect of buildings and structures forming part of the Proposed Development. This would be sought following the grant of any DCO.
- **A Water Vole Conservation Licence** under the Wildlife and Countryside Act 1981 may be required for the translocation of water voles.  
Regulator: Natural England.  
Position: Requirement for licence to translocate water voles will depend on their presence in affected ditches. This will be confirmed by the Applicant undertaking an updated survey prior to commencement.
- **Great Crested Newts (GCN) Mitigation Licence** under the Conservation of Habitats and Species Regulations 2017 may be required to erect fencing and exclude GCN from the Zones C and D.  
Consenting Authority: Natural England.  
Position: Licences will be applied for following the grant of any DCO.
- **Section 38 of the Highways Act 1980** consent for a connection to the public highway.  
Consenting Authority: TC  
Position: Application to be made by nominated contractor prior to commencement of construction where required.
- Request for Non-Domestic Water Supply under the **Water Industry Act 1991**.  
Consenting Authority: Essex and Suffolk Water.  
Position: Application to be made following the grant of any DCO and prior to construction of water supply connection.
- **Engineering Approval** for plans for habitat works and footbridge in the Tilbury Flood Storage Area under the **Reservoirs Act 1975 (as amended by the Water Storage Act 2003)** may be required due to its designation as a Reservoir.

In relation to the outstanding consents recorded above, I have considered the available information and, without prejudice to the exercise of discretion by future decision-makers, have concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoSBEIS grant the Application.

## **1.9. STRUCTURE OF THIS REPORT**

1.9.1. The structure of this Report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** identifies the main planning issues that arose from the application and during the Examination.
- **Chapter 5** sets out my findings in relation to the planning issues identified in Chapter 4.
- **Chapter 6** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out my examination of CA and TP proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the dDCO.
- **Chapter 10** summarises all relevant considerations and sets out my recommendation to the SoSBEIS.

1.9.2. This Report is supported by the following Appendices:

- **Appendix A** – the Examination Library.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – the Recommended dDCO

## 2. THE PROPOSAL AND THE SITE

### 2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted an application for development consent under the PA2008 for the construction and operation of up to 48 reciprocating gas engines with rated electrical output totalling 600MW together with batteries with rated electrical output of 150MW and storage capacity of up to 600MWh along with associated development at land adjacent to the north of National Grid Tilbury Substation in Thurrock, off Station Road, near Tilbury, Essex. The location of the Site is shown on the Location and Order Limit Plan [[REP7-002](#)].

2.1.2. The application proposes (ES Chapter 2: Project Description [[REP7-019](#)]) that the Proposed Development would be designed to operate for up to 35 years and not run continuously but intermittently, during periods of low electricity supply or high demand up to a maximum of 4000 hours. This is secured in Requirement 21 (Operational hours) of the dDCO [[REP7-012](#)].

#### **The Proposed Development**

2.1.3. Schedule 1 of the dDCO sets out the formal description of the various elements that comprise the project [[REP7-012](#)]. These are summarised in paragraph 1.1.2 above and their locations shown on the Works Plans [[REP7-004](#)]. Further detail can be found in ES Chapter 2 (Project Description) [[REP7-019](#)].

2.1.4. In summary, the Proposed Development comprises the construction and operation of:

- up to 48 reciprocating gas engines with rated electrical output totalling 600MW;
- batteries with rated electrical output of 150MW (with storage capacity of up to 600MWh);
- gas and electricity connections;
- creation of temporary and permanent private access routes for construction haul and access in operation, including a causeway for barge deliveries; and
- replacement Common Land and habitat creation or enhancement for protected species translocation and biodiversity gain.

2.1.5. For the purposes of this Report the application has been treated as a single integrated station with a total electrical output of up to 750MW generating capacity.

2.1.6. Not all aspects of the design have been determined and the Applicant seeks flexibility in the DCO for the design of a number of elements of the development. This includes the number and size of gas engines and batteries which would vary depending on the technology provider and equipment models selected (paragraph 1.2.3 of ES Chapter 2 [[REP7-019](#)]). Flexibility in options for construction access and haul routes and

the gas pipeline route and micro-siting of the gas above-ground installation (AGI) for connection to the NTS is also required.

2.1.7. ES Chapter 2 (Project Description) [[REP7-019](#)] explains that the Proposed Development may be constructed as a whole in either a single phase of work (taking around 12-24 months) or may be split into three phases (with each phase lasting around 18 months but with gaps of up to 9 months between phases). However, the DCO does not require any or all parts of the battery storage to be constructed in either scenario.

2.1.8. In the 3-phase scenario, the reciprocating gas engines (300MW), causeway, access roads, gas pipeline, electrical cables and all ancillary works other than battery storage and its associated development would be constructed in phase 1. A further 300MW of reciprocating gas engines would then be constructed in phase 2 with the remaining 150MW of battery storage capacity being constructed in phase 3. The Applicant explains that the decision on phasing will be made as part of its final investment decision.

### **Rochdale Envelope Approach**

2.1.9. In order to ensure a robust assessment of the likely significant environmental effects of the Proposed Development, the application presents a worst-case assessment of potential environmental effects. Paragraph 1.2.4 of ES Chapter 2 (Project Description) [[REP7-019](#)] explains that:

*"A 'Rochdale envelope' approach has been taken to the assessment of the Environmental effects whereby maximum design parameters are defined for assessment. These maximum parameters would not be exceeded by the proposed development's final design, in terms of its physical dimensions, nature of construction and operational activities, or significance of environmental effects".*

2.1.10. Wherever an element of flexibility is maintained, alternatives have been assessed and the worst-case impacts have been reported in the ES. Further details can be found in ES Chapter 2 [[REP7-019](#)] which includes details of the maximum building and fixed design parameters. These are secured by Requirement 4 (Detailed design) and Schedule 8 (Deemed Marine Licence) of the dDCO.

### **Reciprocating Gas Engines**

2.1.11. Up to 48 reciprocating gas engines would be used in the main generation plant, and would be located in buildings or structures collectively occupying a space up to 135m wide, 265m long and 20m high. Exhaust stacks would reach a maximum height of 43m Above Ordnance Datum (AOD).

2.1.12. The Applicant explains in ES Chapter 2 (Project Description) [[REP7-019](#)] that:

*"The engine exhausts may be laid out as individual stacks for each engine or clustered into groups, in either case up to 40m in height. Individual stacks (in pairs, due to the twin rows of gas engines expected in the illustrative site layout), clusters of four stacks and clusters of six stacks have been assessed as an envelope of design options for the EIA".*

- 2.1.13. Illustrative layouts are shown in the Illustrative Site Layout Plan [[PDC-044](#)].
- 2.1.14. ES Chapter 2 (Project Description) [[REP7-019](#)] explains that the engines will be used intermittently, with individual or multiple engines firing up when necessary, up to the maximum 4000 hours secured in Requirement 21 (Operational hours) of the dDCO<sup>3</sup>. Compared with conventional baseload generation, the Applicant claims the proposal will help provide the necessary flexibility needed to manage the increasing levels of intermittent renewable energy generation entering the system.
- 2.1.15. The Applicant states that this will help provide National Grid and the UK energy system with the necessary flexibility it needs to manage the transition to net zero.

### **Battery Storage Facility**

- 2.1.16. The battery storage facility is intended to provide electricity balancing and frequency management services for the grid. It would consist of storage battery houses or containers, storage inverter containers, a cooling system, facilities to serve these and associated development. In total, batteries with a net rated electrical output of 150MW for four hours (600MWh) would be installed, either within a purpose-built building or buildings, or as freestanding pre-fabricated units similar in appearance to shipping containers, which could be stacked up to two high.
- 2.1.17. The batteries would be charged from electricity generated from the main reciprocating gas engines.

### **2.1.18. Associated Development**

#### **Gas Connection**

- 2.1.19. The Gas Connection (Work nos. 4 and 5) is associated development and would comprise a new gas pipeline connection to the existing high-pressure National Grid NTS at Feeder 18. Feeder 18 is approximately 2 kilometres (km) away from the main development site to the north east. The Order Limits include a corridor for routing the gas pipeline from the main development site through agricultural land as far as Station Road, after which it would skirt Low Street Pit local wildlife site to the south and cross under public footpath 200. It would then make two crossings of Station Road before connecting to Feeder 18.

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<sup>3</sup> And subject to any maximum imposed as part of the EP.



- 2.1.20. The connection itself would comprise an Above Ground Installation (AGI) for the junction point with instrumentation and control kiosks set in a compound no greater than 50m<sup>2</sup> and with structures no more than 5m in height. These dimensions are secured in Table 1 of Requirement 4 (Detailed design) of the dDCO [[REP7-012](#)].
- 2.1.21. The Applicant requires flexibility in the DCO for the final location of the NTS connection point, as land along the route of Feeder 18 is subject to a third-party residential development option being agreed with the landowner. It is also in proximity to the proposed Lower Thames Crossing project. The Order Limits allow flexibility for the AGI location along the south-eastern side of the field in which it would be located.
- 2.1.22. The Works Plans [[REP7-004](#)] and the Gas Connection Concept Design Report [[APP-126](#)] show two potential routes for the Gas Connection and the connection locations. Further details can also be found in the Grid and Gas Connection Statement [[APP-124](#)].

### **Electrical Connection**

- 2.1.23. The Proposed Development includes a connection to the existing National Grid Tilbury 275kV substation ("the Tilbury Substation"), located immediately adjacent to the southern boundary of the main development site. No changes are proposed to the existing high-voltage overhead lines crossing the main development site and the existing pylons will remain in place. The indicative development layouts shown in the Illustrative Site Layout Plans [[PDC-044](#)] take account of safe clearance zones around the existing electricity pylons and overhead wires on the main development site.
- 2.1.24. The Works Plans [[REP7-004](#)] show the route for the cables (Work no. 3) and the connection locations. Further details can also be found in the Grid and Gas Connection Statement submitted with the application [[APP-124](#)] and ES Chapter 2 (Project Description) [[REP7-019](#)].

### **Access**

#### **Road Access**

- 2.1.25. Two permanent new road accesses are proposed. The first, Work no. 6, would involve the creation of a new junction along Station Road with drainage and landscaping and would be within the corridor for the proposed gas pipeline (Work no. 4). The final route would be established as part of the detailed design.
- 2.1.26. The second route, intended to act as the primary access route for construction traffic (excluding AILs), would be along an existing access road from the A1089 St Andrew's Road. Vehicles would proceed from the A1089 along private roads within the Tilbury 2 development before joining an existing private road immediately south of Tilbury Substation and continuing along one of two possible routes along the eastern section Work no. 12. Provision is made in the dDCO to ensure that only one of the routes along the eastern section of Work no. 12 may be taken

forward to detailed design. This is discussed further in Chapters 8 and 9 below.

### **AIL Access**

2.1.27. Two alternative AIL access routes are included in the application.

#### **i. The causeway**

2.1.28. The application proposes the creation of a 195m long by 12.5m wide causeway and berthing pocket to enable delivery by barge of AILs which are too large to transport on the highway network. Full details of the proposed causeway can be found in paragraphs 2.9.6 to 2.9.12 of ES Chapter 2 (Project Description) [[REP7-019](#)].

2.1.29. An illustrative design for the causeway is shown in the Concept Design of Causeway for Delivery of AILs [[APP-130](#)]. The design envelope dimensions used for the assessment of impacts are detailed in Table 2.2 of ES Chapter 2 (Project Description) [[REP7-019](#)] and conform to the maximum parameters set out in Schedule 8 of the dDCO (Deemed Marine Licence).

2.1.30. The causeway will remain in place as a permanent structure during the Proposed Development's operating lifetime, unless and until a viable alternative is found. However, the Applicant explains that the causeway would not be in routine use after the construction stage. Instead, it would be retained for use only in exceptional circumstances for so long as an alternative route for AIL delivery is not available.

2.1.31. Access from the causeway would proceed along a combination of existing private roads through the former Tilbury B Power Station, the new Tilbury 2 development and new sections of private road to be constructed as part of Work no. 12.

#### **ii. Alternative AIL access**

2.1.32. Following my acceptance of the Applicant's material change request [[AS-012](#)] (see paragraphs 2.4.5 – 2.4.9 below), consent is also sought for an alternative AIL access route ("the Alternative AIL Access"). This would utilise the Port of Tilbury docks for delivery by ship before passing through the port and proceeding along a short section of Fort Road. A new access road and gated junction would be created (Work no. 15) connecting Fort Road to the private roads within the Tilbury 2 development, thereafter, utilising a similar route as described in paragraph 2.1.25 above.

2.1.33. This work (and associated CA powers) was included in response to concerns raised by IPs during the Examination. However, the Applicant has made clear that it does not consider the Alternative AIL Access provides a complete solution for AIL delivery at this time. As such, works to enable both routes to be constructed are sought as part of the application.

- 2.1.34. In order to ensure any additional environmental effects were assessed, the Applicant provided an Alternative AIL Access ES Addendum [[AS-035](#)] which considers the additional environmental effects associated with the construction and use of the proposed Alternative AIL Access. As with the causeway, the Alternative AIL Access would not be in routine use during operation of the Proposed Development and so the assessment focuses on the potential impacts arising from a maximum of 60 AIL deliveries during construction.
- 2.1.35. Further discussion on the proposals for AIL access can be found in Chapters 5, 8 and 9 of this report.

### **Other Associated Development**

- 2.1.36. In addition to the works set out above, the application includes a water supply connection to the water main located on Station Road (Work no. 7), onshore habitat creation (Work no. 2), construction compound and laydown areas (Work no. 8), the creation of around 115, 775m<sup>2</sup> of replacement common land (Work no. 14) and a footbridge to facilitate access from Fort Road to the proposed new area of common land (Work no. 13).

## **2.2. THE SITE AND SURROUNDING AREA**

- 2.2.1. The application site is shown on the Location and Order Limits Plans [[REP7-002](#)] and is located entirely within the boundary of the administrative area of Thurrock Council, a unitary authority.
- 2.2.2. The main development site is located on land to the south west of Station Road, Tilbury and comprises around 20ha of open fields crossed by drainage ditches and three overhead power lines with steel lattice electricity pylons. It lies within the metropolitan Green Belt and around half of the main development site is also registered common land, forming part of a larger area known as The Green, Hall Hill, Fort Road, Parsonage, Walton and Tilbury Fort Commons (CL228). Immediately to the south is the existing Tilbury Substation and the site of the now decommissioned Tilbury B power station. Further south is the River Thames while to the north is a section of the London, Tilbury and Southend Railway (also known as the Tilbury Loop).
- 2.2.3. The eastern edge of Tilbury is around 720m from the edge of the main development site, the village of West Tilbury around 1km to the north and East Tilbury village is approximately 2km to the east. There are a number of individual or small groups of houses within around 800m of the main development site.
- 2.2.4. The nearest European designated site is the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site, approximately 2.4 km east of the main development site. The nearest Scheduled Monuments are Tilbury Fort (970 m to the south west) and 'Earthworks near church, West Tilbury' (730 m to the north).

2.2.5. For descriptive purposes, land within the Order Limits has been divided into zones, labelled A-J. Table 1 below provides a summary of the different zones together with a breakdown of the works proposed within each zone. Further details of these individual zones can be found in paragraphs 1.2.7 to 1.2.16 of ES Chapter 2 (Project Description) [[REP7-019](#)].

**Table 1: Development Zones**

<b>Zone</b>	<b>Description</b>	<b>Works No.</b>
A	Main development site	1, 2, 3, 4, 8
B	Existing NGET substation	3
C	Access road and gas pipeline	4, 6, 7, 8
D	Gas pipeline and AGI	4
E	Proposed exchange land	13, 14
F	Habitat creation	2
G	Causeway, berthing pocket, modification to existing sea defences, and haul road to Zone A.	9, 10, 11, 12
H	Private roads through former Tilbury Power Station and Tilbury 2.	12
I	Section of highway at Station Road which is subject to weight restriction	n/a
J	New, temporary public right of way to accommodate the temporary closure of a section of Footpath (FP) 200	n/a

2.2.6. Figure 1 below shows the location of the various Development Zones within the Order Limits (Source: Figure 1.5 ES Chapter 2 [[REP7-019](#)]).

**Figure 1: Development Zones**



## 2.3. OTHER DEVELOPMENTS

2.3.1. The site is located near to an existing industrial area in close proximity to the former Tilbury B power station. There are a number of NSIPs located nearby which have either been completed or are planned, details of which are summarised below. Full details of permitted and planned developments nearby can be found in Tables 1.1 and 2.1 of ES Chapter 18 [[APP-067](#)].

### The Port of Tilbury (Expansion) Order 2019

2.3.2. The Port of Tilbury (Expansion) Order 2019 (“the Tilbury 2 Order”) was made by the SoS for Transport on 20 February 2019 and came into force on 13 March 2019 authorising the construction and operation of a new port terminal with associated development (to be known as Tilbury 2) on land formerly comprising part of the Tilbury B Power Station site.

2.3.3. There are areas of overlap between the Order Limits of the Tilbury 2 Order and the one applied for in this application. In particular, the Applicant is seeking rights to use access roads constructed under the Tilbury 2 Order to access the main development site. These roads have been constructed and are already in use and, as such, there would be no interaction between the implementation of the Tilbury 2 DCO and the powers contained in the order currently being sought.

### Lower Thames Crossing DCO

2.3.4. The proposed Lower Thames Crossing (LTC) project, also a NSIP, would be located to the north east of the main application site and there is likely to be some interaction between the Order Limits of this application and that currently envisaged for the LTC project.

- 2.3.5. The Applicant is in discussions with Highways England (HiE) on agreeing an interface agreement setting out how the two projects (if granted consent) would manage their interfaces. This includes matters relating to construction traffic volumes, management, access and the construction of the proposed gas pipeline [[REP7-033](#)]. PPs have also been included in Schedule 9, Part 9 of the dDCO [[REP7-012](#)] which require the undertaker to, amongst other things, use reasonable endeavours to avoid any conflict arising between the Proposed Development and the Lower Thames Crossing project.

### **Tilbury Energy Centre**

- 2.3.6. To the south of the main development site, on the former Tilbury B site, is the site of the previously proposed Tilbury Energy Centre – a Combined Cycle Gas Turbine (CCGT) power station with peaking plant and battery storage. However, the promoters of that project decided in 2018 not to proceed with the Tilbury Energy Centre.

### **Thames Freeport**

- 2.3.7. The site lies in close proximity to the land included in the Thames Freeport proposals. At the time of writing, these proposals are at an early stage of development. Interaction between the Proposed Development and the Thames Freeport are considered further in Chapters 5, 8 and 9 below.

### **The London Resort**

- 2.3.8. The London Resort project, also an NSIP which has been accepted for Examination, would be located on the nearby Swanscombe peninsula. There is no interaction between the Proposed Development and the Order Limits proposed for that project.

## **2.4. THE APPLICATION AS EXAMINED**

- 2.4.1. As noted in section 1.4 above, further information was requested from the Applicant following the PM (Part 1) and was submitted by the Applicant at Procedural Deadline C. IPs were given an opportunity to comment on it at Procedural Deadline D. This information was subsequently accepted and formed part of the application documents at the start of the Examination.

### **Change Request 1 (non-material)**

- 2.4.2. A non-material change request was made by the Applicant in its letter dated 14 January 2021 [[AS-011](#)]. In summary, the changes sought were for:
- the removal of 2.2ha from the Order Limits (being approximately half of plot 01/20) where habitat enhancement had been proposed as part of Work no. 2. An equivalent amount of habitat creation was instead proposed at an alternative location within the existing Order Limits; and

- the removal of Work no. 9 – saltmarsh creation. Document APP-146 (Outline Saltmarsh Enhancement and Maintenance Plan) was also withdrawn.

2.4.3. Updated documentation relating to this change request had already been submitted by the Applicant at Procedural Deadline C [[PDC-003 to PDC-006](#), [PDC-008-PDC-011](#), [PDC-015 to PDC-016](#), [PDC-019 to PDC-024](#), [PDC-027 to PDC-032](#), [PDC-035 to PDC-036](#), [PDC-039 to PDC-045](#), [PDC-047 to PDC-051](#) and [PDC-054 to PDC-057](#)] and included updates to the ES, the dDCO, Plans (including Works Plans, Land Plans and Illustrative Layout Plans), the Book of Reference (BoR) and the Habitats Regulation Assessment Report.

2.4.4. Having had regard to the nature of the proposed changes, I decided that neither were material changes and I accepted them into the Examination on that basis. Further details on my reasoning can be found in my Procedural Decision letter dated 20 January 2021 [[PD-008](#)].

### **Change Request 2 (material)**

2.4.5. A second change request was made by the Applicant following the start of the Examination [[AS-012](#)]. This sought the addition of the Alternative AIL Access which required a new work and a new sub-work to be added. Furthermore, as a result of the proposed changes, the Applicant sought to include additional land affected by the CA powers being sought. As a result, the Applicant made a request under Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (“the CA Regulations”) to add this additional land to the application.

2.4.6. In summary, the changes sought were for:

- the permanent acquisition of 557.46m<sup>2</sup> of land being grassland, east of Fort Road, Tilbury. This land has been identified as registered Common Land;
- new rights over 8926.38m<sup>2</sup> of land being public road (Fort Road), private road (Power Station Approach Road, Fort Road), north of Tilbury Power Station, Tilbury;
- new rights over 174.52m<sup>2</sup> of land being hardstanding at Tilbury Power Substation, Tilbury;
- new rights over 70.20m<sup>2</sup> of land being grassland, trees and shrubbery at Tilbury Power Substation, Tilbury;
- new rights over 370.98m<sup>2</sup> of land being hardstanding and overhead transmission lines, at Tilbury Power Substation, Tilbury;
- new rights over 229.15m<sup>2</sup> of land being hardstanding, drain and overhead transmission lines, south of Tilbury Power Substation, Tilbury;
- new rights over 3127.85m<sup>2</sup> of land being grassland, hardstanding, trees, shrubbery, drain and overhead transmission lines, south of Tilbury Power Substation, Tilbury;
- new rights over 856.34m<sup>2</sup> of land being hardstanding and grassland, east of Fort Road, West Tilbury;

- temporary rights over 364.79m<sup>2</sup> of land being grassland and highway verge, east of Fort Road, West Tilbury; and
- temporary rights over 1994.24m<sup>2</sup> of land being public highway (Fort Road) and highway verge, West Tilbury.

2.4.7. Full details of the changes are set out in the Applicant's request [[AS-012](#)] and supporting documentation [[AS-013 to AS-037](#)].

2.4.8. Having had regard to the proposed changes, the DCLG Guidance on the examination of applications for development consent, as well as the Planning Inspectorate's Advice Note 16: Requesting Changes (AN16), I decided that the changes proposed were material. However, I accepted that it did not substantially alter the substance of the scheme applied for and that accepting them would not result in a materially different project. I was also satisfied that there was sufficient time remaining for the proposed changes to be properly and fairly examined.

2.4.9. Consequently, I accepted the changes in accordance with Regulation 6 of the CA Regulations and alterations were made to the Examination Timetable in order to ensure they were fully and robustly examined.

2.4.10. All of the above changes were accepted into the Examination, were fully examined and are reported upon in this Report.

## **2.5. RELEVANT PLANNING HISTORY**

2.5.1. There is no relevant planning history for the main application site itself. A detailed list of relevant planning applications in and around the Proposed Development site is set out in section 5.0 of Thurrock Council's LIR [[REP2-077](#)].

2.5.2. I have had regard to this in my consideration of the application.



## **3. LEGAL AND POLICY CONTEXT**

### **3.1. INTRODUCTION**

- 3.1.1. The Applicant's Statement of Case and Green Belt Statement [[APP-135](#), [APP-136](#), [APP-137](#), [APP-138](#) and [APP-139](#)] provides an overview of the legislative and policy context for the Proposed Development and aims to demonstrate how the Applicant has taken this into account and the extent to which the Proposed Development complies with it. Additional information on local planning policies is provided by TC in its LIR [[REP2-076](#) and [REP2-077](#)] and the LIR Addendum [[REP5-022](#)].

### **3.2. THE PLANNING ACT 2008**

- 3.2.1. The application is for a DCO under the PA2008 for a flexible generation plant with an electrical output of up to 750MW, 600MW of which would be from reciprocating gas engines and 150MW from battery storage. The components of the Proposed Development are set out in Chapter 1 of this Report.
- 3.2.2. This application is for an NSIP as it falls within s14(1)(a) of the PA2008 and includes "the construction or extension of a generating station" with a gross electrical output in excess of 50MW, that meets the provisions set out in s15(2) of the PA2008.
- 3.2.3. As noted in paragraph 2.1.5 above, for the purposes of this Report the application has been treated as a single integrated station with a total electrical output of up to 750MW generating capacity.
- 3.2.4. Section 104 of the PA2008 applies:
- "[...]in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates."*
- 3.2.5. Section 104(3) requires the SoS to decide the application in accordance with any relevant National Policy Statements (NPS) that have effect in relation to this application, subject to certain exceptions as specified in subsections 104(4) to (8). Details of the specific NPS that apply to this project are set out in section 3.3 below.
- 3.2.6. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) are any relevant NPS, any LIRs, any appropriate marine policy documents, any matters prescribed in relation to the development, and any other matters the SoS considers are both relevant and important to the decision.
- 3.2.7. Section 104(3) requires the SoS to decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions in subsections (4) to (8) applies. The exceptions are that SoS is satisfied that:

- deciding the application in accordance with any relevant NPS would lead to the United Kingdom being in breach of any of its international obligations;
- deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her/ him by or under any enactment;
- deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- the adverse impact of the Proposed Development would outweigh its benefits; and/ or
- any condition prescribed for deciding an application otherwise than in accordance with the NPS is met.

3.2.8. This Report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of the PA2008.

### **3.3. NATIONAL POLICY STATEMENTS**

3.3.1. The NPS set out Government policy on different types of national infrastructure development. The NPS relevant to this application are:

- [EN-1](#): Overarching National Policy Statement for Energy;
- [EN-2](#): Fossil Fuel and Electricity Generating Infrastructure;
- [EN-4](#): Gas Supply Infrastructure and Gas and Oil Pipelines; and
- [EN-5](#): Electricity Networks Infrastructure.

3.3.2. These were produced by the Department for Energy and Climate Change (DECC), which is now the Department for Business, Energy and Industrial Strategy (BEIS). The NPS were designated by the SoS for Energy and Climate Change on 19 July 2011.

3.3.3. These four NPS form the primary policy context for the Examination. The purpose and broad content of these NPS is summarised here. However, particular and subject specific consideration of policy arising from them is provided where necessary in the remainder of this Report below, particularly in Chapters 5 to 7.

3.3.4. In addition, the NPS for Ports (NPSP) has a bearing in so far as the Proposed Development would affect the Port of Tilbury. This is discussed further in Chapter 5 (section 5.12) of this report.

3.3.5. The Energy White Paper, "Powering our Net Zero Future", was published on 14 December 2020. The White Paper announced a review of the suite of energy NPS but confirmed that the current NPS were not being suspended in the meantime. The relevant energy NPS therefore remain the basis for the consideration of the Application.

3.3.6. The review of the energy NPS is currently underway and draft versions of the documents are being consulted on. Although the NPS are in draft form and have not been designated, they are relevant and important for the purpose of Section 104 of the PA2008. As such, I have had regard to them in deciding the Application. However, I do not consider there is

anything contained within the drafts of the relevant NPS documents that would have a material bearing on my overall recommendation.

### **NPS EN-1: Overarching National Policy Statement for Energy**

- 3.3.7. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects and provides the primary basis for decision making by the SoS. In particular, it states that "*the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions*"<sup>4</sup>.
- 3.3.8. Fossil fuel generation is recognised as playing a vital role in providing reliable energy supplies and flexibility in respect to changes in supply and demand as well as diversity in the energy mix. This includes fossil fuel electricity generating plants such as the Proposed Development.
- 3.3.9. Furthermore, NPS EN-1 recognises that there are likely to be advantages to the UK of maintaining a diverse range of energy sources so it is not reliant on any one type of technology and encourages the development of new, low carbon developments. It acknowledges the need for more electricity capacity to support an increased supply from renewables, recognising that there are a number of other technologies which can be used to compensate for the intermittency of renewable generation, including electricity storage<sup>5</sup>. In addition, it notes that demand side response, storage and interconnection, will play important roles in a low carbon electricity system, but still envisages back up capacity being necessary to ensure security of supply until other storage technologies reach maturity.
- 3.3.10. It states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure'<sup>6</sup>. In light of this, I do not consider that the choice of technology is an issue that I should address in the Examination.
- 3.3.11. NPS EN-1 also recognises<sup>7</sup> that fossil fuel plants produce CO<sub>2</sub>, with coal producing about twice as much as gas, per unit of electricity generated. It sets a requirement that new plant with a generating capacity of over 300MW should be constructed carbon capture ready (CCR) so that carbon capture and storage (CCS) can be retrofitted to the plant at a later date if required<sup>8</sup>. As the Proposed Development seeks a maximum gross generating capacity of up to 750MW CCR is required. This is discussed further in Chapter 5 of this Report.

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<sup>4</sup> Paragraph 3.1.1.

<sup>5</sup> Paragraph 3.3.12.

<sup>6</sup> Paragraph 3.1.3.

<sup>7</sup> Paragraph 3.6.3.

<sup>8</sup> Paragraph 3.6.6.

3.3.12. Likewise, NPS EN-1 recognises the contribution that combined heat and power (CHP) can make to reducing emissions<sup>9</sup>. It requires applicants to either include CHP in the project or present evidence in the application that the possibilities for CHP have been fully explored<sup>10</sup>. Where a proposal is for thermal generation without CHP, an applicant should explain why CHP is not economically or practically feasible, provide details of any potential future heat requirements in the area that the station could meet and detail the provisions in the proposed scheme for ensuring that any potential heat demand in the future can be exploited<sup>11</sup>.

3.3.13. It also sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, flood risk, biodiversity, historic environment, landscape and visual amenity, land use including Green Belt and common land, noise and vibration, traffic and transport, waste management, water quality and resources, environmental, social and economic benefits as well as adverse impacts at national, regional and local levels.

3.3.14. NPS EN-1<sup>12</sup> also requires account to be taken of:

- the potential benefits of the Proposed Development to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
- potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.

#### **NPS EN-2: Fossil Fuel and Electricity Generating Infrastructure**

3.3.15. NPS EN-2 sets out the factors which influence the development of sites for fossil fuel power stations and the criteria which the Government expects applications to meet when applying for them. These include explanations of the Government's approach to subject matters raised by this application, including the selection of gas combustion technology, CHP, climate change adaptation and consideration of good design.

3.3.16. In terms of the impacts of gas generating stations, NPS EN-2 reiterates the policy in NPS EN-1 and further emphasises the need to consider impacts of air emissions, landscape and visual amenity, noise and vibration and water quality and resources.

#### **NPS EN-4: Gas supply infrastructure and gas and oil pipelines**

3.3.17. NPS EN-4 provides guidance on the assessment of applications for new gas and oil pipelines. The Proposed Development includes a new gas pipeline connection to the NGG Feeder No 18, part of the NTS for gas.

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<sup>9</sup> Paragraph 4.6.3.

<sup>10</sup> Paragraph 4.6.6.

<sup>11</sup> Paragraph 4.6.8.

<sup>12</sup> Paragraph 4.1.3.

The new gas connection does not represent a NSIP in its own right, but it is included as 'associated development'.

- 3.3.18. Technology specific considerations for gas pipelines include proximity to sensitive land uses (e.g. residential development); pipeline safety; noise and vibration; biodiversity; landscape and visual amenity; water quality and resources; and soils and geology.

#### **NPS EN-5: Electricity networks infrastructure**

- 3.3.19. NPS EN-5 outlines the principles which should be applied to applications for new electricity transmission lines as well as associated infrastructure. The Proposed Development would involve an electricity cable connection to the existing Tilbury Substation. These works are included as associated development.
- 3.3.20. Technology specific considerations to be taken into account for such works include biodiversity and geological conservation, landscape and visual amenity, noise, vibration and electromagnetic fields.

### **3.4. MARINE AND COASTAL ACCESS ACT 2009 (MACAA2009)**

- 3.4.1. In a case decided under s104 PA2008, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents determined in accordance with s59 MACAA2009. The Proposed Development includes the construction of a causeway and berthing pocket in the Thames Estuary.
- 3.4.2. The UK Marine Policy Statement (MPS) was published by the Department for Environment, Food and Rural Affairs (DEFRA) on 30 September 2011. It provides a framework for the taking of decisions affecting the marine environment. In summary, it advises that decision makers should weigh the proposed benefits and adverse impacts of each proposal drawing on different lines of evidence to consider the different impacts of a proposal.
- 3.4.3. However, the Marine Plan for the South East is in draft form only and has yet to take effect. It is therefore only the MPS that falls to be considered here.
- 3.4.4. The draft DCO submitted as part of the application also contains at Schedule 8 a Deemed Marine Licence (DML) under Part 4 of the MACAA2009.

### **3.5. EUROPEAN LAW AND RELATED UK REGULATIONS**

- 3.5.1. The UK left the European Union as a member state on 31 January 2020. The European Union (Withdrawal Agreement) Act 2020 provides for, amongst other things, EU law to be retained as UK law.
- 3.5.2. This Report has been prepared on the basis of retained law and references in it to European terms such as habitats have also been retained for consistency with the Examination documents. However, the

SoSBEIS will note that the Environment Act 2021 received Royal Assent on 9 November 2021. It will therefore be a matter for the SoSBEIS to satisfy themselves as to the position on retained law and obligations at the point of the decision.

### **The Air Quality Standards Regulations 2010**

- 3.5.3. The Air Quality Standards Regulations 2010 give statutory effect to the Air Quality Directive<sup>13</sup> (AQD) and transpose it into UK law. It requires the SoS, as the competent authority, to assess ambient air quality for the presence of sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. It sets limit values (LVs) for compliance and establishes control actions where the LVs are exceeded.
- 3.5.4. The Applicant has included relevant assessments on air quality impacts as part of the ES. I consider these further in Chapter 5 (section 5.3).

### **The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

- 3.5.5. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 give effect to Council Directive 2011/92/EU which defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It sets thresholds for projects that require an EIA and outlines the impacts on the environment that need to be assessed.
- 3.5.6. Further consideration is given to EIA and the contents of the ES in Chapters 4 to 7 of this Report.

### **Environmental Permitting (England and Wales) Regulations 2016**

- 3.5.7. The Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations) apply to all new installations and transpose the requirements of the EU Industrial Emissions Directive (IED)<sup>14</sup> into UK law. As the Proposed Development includes combustion activities falling within Part 2 of Schedule 1 of the EP Regulations, an EP would be required before the Proposed Development commences operation.
- 3.5.8. Under the EP Regulations, the operator of an installation such as the one proposed is required to employ Best Available Techniques (BAT) for the prevention or minimisation of emissions, to ensure a high level of protection for the environment.
- 3.5.9. As noted in Chapter 1 above, the Applicant intends to make an application for an EP to the EA following the grant of any DCO.

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<sup>13</sup> Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

<sup>14</sup> Directive 2010/75/EU on industrial emissions (integrated pollution and prevention control).

### **The Conservation of Habitats and Species Regulations 2017**

- 3.5.10. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) came into force on 30 November 2017 and give effect to the Habitats Directive<sup>15</sup> and Wild Birds Directive<sup>16</sup>.
- 3.5.11. Following the UK's departure from the EU, these were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 in order to ensure they continue to operate effectively. Most of these changes involve transferring functions from the European Commission to the appropriate authorities in England and Wales. All other processes or terms in the 2017 Regulations remain unchanged.
- 3.5.12. The Applicant has provided a report under the Habitats Regulations, which concludes that there would be no significant adverse effects from the Proposed Development. This is considered further in Chapter 6 of this Report.

### **The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFR)**

- 3.5.13. The WFR give effect to the Water Framework Directive<sup>17</sup> (WFD) which establishes a framework for water policy, managing the quality of receiving waters. The WFR are concerned with water management and seek to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems. They aim to improve the quality of surface and groundwater bodies by progressively reducing pollution and through restoration.
- 3.5.14. NPS EN-1 states<sup>18</sup> that an ES should describe existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and any impacts of the proposed project on water bodies or protected areas.
- 3.5.15. The application includes a Water Framework Directive Assessment as part of the ES (Volume 6: Appendix 17.3) [[PDC-027](#)]. Water quality is considered further in Chapter 5 of this Report.

### **The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 (the CCR Regulations)**

- 3.5.16. The CCR Regulations came into force on 25 November 2013. These regulations transpose Article 36 of the Industrial Emissions Directive into UK law.

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<sup>15</sup> Directive 92/43/EEC

<sup>16</sup> Directive 2009/147/EC

<sup>17</sup> Directive 2000/60/EC.

<sup>18</sup> Paragraph 5.15.3.

- 3.5.17. They provide that no order for development consent (in England and Wales) may be made in relation to a combustion plant with a capacity at or over 300MW unless the relevant authority has determined (on the basis of an assessment carried out by the Applicant) whether it is technically and economically feasible to retrofit the equipment necessary to capture the carbon dioxide that would otherwise be emitted from the plant, and to transport such carbon dioxide from the site to an appropriate long term geological store.
- 3.5.18. I consider this matter further in Chapter 5 (section 5.2) below.

## **3.6. OTHER LEGAL AND POLICY PROVISIONS**

### **Climate Change Act 2008**

- 3.6.1. The Climate Change Act 2008<sup>19</sup> sets legally binding targets for Green House Gas (GHG) emission reductions in the UK against a 1990 baseline. The coming into force of the Climate Change Act 2008 (2050 Target Amendment) Order 2019 confirmed the Government's commitment to cutting greenhouse gases to net zero by 2050 compared to 1990 levels and introduced a legally binding target of 100%<sup>20</sup>.

### **The Paris Agreement**

- 3.6.2. The UK is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change. This provides a framework to keep global warming below 2°C, pursuing efforts to limit the temperature increase to 1.5°C.
- 3.6.3. Matters relating to Climate Change are discussed further in Chapter 5.

### **National Planning Policy Framework**

- 3.6.4. The National Planning Policy Framework (NPPF)<sup>21</sup> sets out the Government's planning policies for England and how these are expected to be applied. The NPPF does not contain specific policies for NSIPs which are determined in accordance with the decision-making framework set out in the PA2008 and relevant NPS for major infrastructure, as well as any other matters that are considered relevant (which may include the NPPF). The NPPF contains guidance on promoting sustainable transport; requiring good design; promoting healthier communities; conserving and enhancing the natural and historic environment; and meeting the challenges of climate change. It sets out particular issues to take into account in determining planning applications and I have had regard to it in my consideration of this application.
- 3.6.5. National Planning Practice Guidance (PPG) was published in 2014 to replace previous guidance documents and support the application of the

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<sup>19</sup> As amended.

<sup>20</sup> SI 2019/1056

<sup>21</sup> 2019.



NPPF. It is updated on a rolling basis. Relevant PPG guidance was taken into account by the Applicant in preparing the ES. I do not consider that any changes to PPG published during the course of the Examination are important or relevant in terms of this application.

### **Natural Environment and Rural Communities Act 2006**

- 3.6.6. The Natural Environment and Rural Communities Act 2006 made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, Sites of Special Scientific Interest (SSSIs), National Parks and the Broads. It includes a duty that every public authority must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of conserving biodiversity. In complying with this duty, Ministers of the Crown and government departments must, in particular, have regard to the United Nations Environment Programme Convention on Biological Diversity 1992.

### **The Wildlife and Countryside Act 1981**

- 3.6.7. The Wildlife and Countryside Act 1981 (as amended) (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is NE.
- 3.6.8. The WCA provides for and protects wildlife; nature conservation, countryside protection and National Parks; and public rights of way (PRoW). If a species protected under the Act is likely to be affected by development, a protected species licence will be required from NE.

### **The Countryside and Rights of Way Act 2000**

- 3.6.9. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of PRoW, access land and for the protection and management of SSSIs.

### **The Law of Property Act 1925**

- 3.6.10. Section 193 of the Law of Property Act 1925 provides for public rights of access for air and exercise (on foot and horseback) to any land to which it applies. The main development site is subject to rights of access under this section.

### **The Historic Environment**

- 3.6.11. Regulation 3 of the Infrastructure Planning (Decisions) Regulation 2010 requires the SoS when deciding applications for development consent affecting listed buildings (or their settings), conservation areas or scheduled monuments (or their setting) to have regard to:

- the desirability of preserving an affected listed building or its setting or any features of special architectural or historic interest which it possesses;
- the desirability of preserving or enhancing the character or appearance of a conservation area; and
- the desirability of preserving an affected Scheduled Monument or its setting.

### **The Planning (Listed Buildings and Conservation Areas) Act 1990**

- 3.6.12. The Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 3.6.13. Section 66 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. By virtue of s1(5) of the Act a listed building includes any object or structure within its curtilage.

### **Ancient Monuments and Archaeological Areas Act 1979**

- 3.6.14. The Ancient Monuments and Archaeological Areas Act 1979 provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument.
- 3.6.15. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 and the NPPF.

### **Commons Act 2006**

- 3.6.16. The Commons Act 2006 (CA2006) makes provision for, amongst other things, the deregistration and exchange of registered common land. Applications for consent are made to the SoSDEFRA and considered against the guidance set out in DEFRA's Common Land Consents Policy (2015).
- 3.6.17. These matters, along with the provisions of s131 and s132 of the PA2008, are discussed further in Chapter 8 of this Report.

### **The Control of Pollution Act 1974**

- 3.6.18. Section 60 and s61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted.

- 3.6.19. Section 61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires that Best Practicable Means be adopted for construction noise on any given site.

**Water Resources Act 1991, Flood and Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991**

- 3.6.20. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures; discharge and pollution; and for drainage management related to non-main rivers.
- 3.6.21. Further consideration is given to these matters in Chapter 5 of this Report.

**The Equalities Act 2010**

- 3.6.22. The Equalities 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 in reporting and to the SoS in terms of decision-making. I have had regard to the PSED in my consideration of the application.

**United Nations Environment Programme Convention on Biological Diversity 1992 (“the Convention”)**

- 3.6.23. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with DEFRA which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.6.24. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the Convention in my consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.

**Noise Policy Statement for England**

- 3.6.25. The Noise Policy Statement for England<sup>22</sup> (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long-term vision of the Government’s noise policy which is to:

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<sup>22</sup> [The Noise Policy Statement for England](#) (March 2010), DEFRA.

*"promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development".*

- 3.6.26. The Explanatory Note within the NPSE provides further guidance on defining significant adverse effects and adverse effects using the concepts:
- No Observed Effect Level (NOEL) - the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established;
  - Lowest Observable Adverse Effect Level (LOAEL) - the level above which adverse effects on health and quality of life can be detected; and
  - Significant Observed Adverse Effect Level (SOAEL) - the level above which significant adverse effects on health and quality of life occur.
- 3.6.27. When assessing the effects of the Proposed Development on noise matters, the aims of the development should firstly avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.
- 3.6.28. The potential noise impacts of the Proposed Development are considered in Chapters 5 and 6 of this Report.

### **3.7. MADE DEVELOPMENT CONSENT ORDERS**

- 3.7.1. The Applicant has cited as precedent the following made DCOs:
- The Drax Power (Generating Stations) Order 2019 (SI 2019/1315).
  - The Eggborough Gas Fired Generating Station Order 2018 (SI 2018/1020).
  - The Port of Tilbury (Expansion) Order 2019 (SI 2019/359).
  - The Silvertown Tunnel Order 2018 (SI 2018/574).
  - The Glyn Rhonwy Pumped Storage Generating Station Order 2017 (SI 2017/330).
  - Cleve Hill Solar Park Order 2020 (SI 2020/547).
  - VPI Immingham Open Cycle Gas Turbine Order 2020 (SI 2020/847).
- 3.7.2. In addition, the following made DCO's were cited by IPs:
- The Lake Lothing (Lowestoft) Third Crossing Order 2020 (SI 2020/474).
  - The Swansea Bay Tidal Generating Station Order 2015 (SI 2015/1386).
  - The Hornsea Two Offshore Windfarm Order 2016 (SI 2016/844).
  - The Hornsea Three Offshore Wind Farm Order 2020 (SI 2020/1656).
  - Able Marine Energy Park Development Consent Order 2014 (SI 2014/2935).
  - The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015/318).
  - The Triton Knoll Electrical System Order 2016 (SI 2016/880).
  - The York Potash Harbour Facilities Order 2016 (SI 2016/772).

3.7.3. I have had regard to all of the abovementioned orders where relevant.

### **3.8. LOCAL IMPACT REPORTS**

3.8.1. Sections 104 and 105 of the PA2008 state that in deciding the application the SoS must have regard to any LIR within the meaning of s60(3) of the PA2008.

3.8.2. A LIR was submitted by TC [[REP2-076](#) (Executive Summary), [REP2-077](#) (LIR) and [REP5-022](#) (LIR Addendum)] and provides further details on the local policy context with the relevant administrative area, a summary of which is set out in section 4.3 below. In addition, the LIR sets out the principal local planning policies and other policies relevant to the Proposed Development and identifies areas of concern.

### **3.9. THE DEVELOPMENT PLAN**

3.9.1. Paragraph 4.1.5 of NPS EN-1 states that planning policies outside of the NPS can be relevant considerations to the SoS's decision and that these may include development plan documents or other documents in the local development framework.

3.9.2. The relevant planning policies adopted by TC are set out in Section 6.0 of its LIR [[REP2-077](#)]. These include policies contained within the Thurrock Core Strategy<sup>23</sup> (TCS) which are, amongst other things, intended to protect the green belt, the countryside and those living and working there, the landscape and the natural and historic environment.

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<sup>23</sup> Thurrock Local Development Framework – [REDACTED]  
[REDACTED] – Adopted January 2015.

## 4. THE MAIN PLANNING ISSUES

### 4.1. MAIN PLANNING ISSUES IN THE EXAMINATION

4.1.1. The main planning issues are set out below.

- **Principle of development**, including compliance with the requirements of the NPS.
- **Air Quality**, including the air quality impacts of the Proposed Development on those living and working nearby.
- **Climate Change**, including whether the Proposed Development meets the UK's obligations under the Climate Change Act 2008 and the United Nations Framework Convention on Climate Change (the Paris Agreement).
- **Cultural Heritage**, including the effect of the Proposed Development on designated and non-designated heritage assets and on buried and marine archaeology.
- **Cumulative Impacts**, including the cumulative and combined effects of the Proposed Development with other nearby developments that are likely to contribute to combined or cumulative impacts.
- **Onshore Ecology**, including temporary and permanent impacts on species and habitats and consideration of any necessary mitigation, monitoring, management and compensatory measures and their effectiveness.
- **Landscape and Visual Resources**, including the effect of the Proposed Development on landscape and visual amenity and the extent to which the design of permanent structures should be controlled and secured through any DCO.
- **Land use, agriculture and socioeconomic effects**, including the economic and social effect of the Proposed Development, whether the Proposed Development represents inappropriate development in the Green Belt, its effect on the openness of the green belt, and whether the harm by reason of inappropriateness, together with any other harm, would be clearly outweighed by other considerations so as amount to the very special circumstances (VSCs) required to justify the Proposed Development.
- **Public Health and Amenity**, including the effect of the Proposed Development on human health.
- **Marine Environment**, including the adequacy of submitted information in relation to dredging and disposal of sediment, the accuracy of sediment contaminant data set out in the Environmental Statement; the effect of the Proposed Development on fish and

wintering birds; and the potential need for mitigation measures to be secured through the Deemed Marine Licence.

- **Noise and Vibration**, including the noise and vibration impacts of the Proposed Development on those living and working nearby.
- **Onshore Water Environment**, including Flood Risk, drainage, surface and groundwater effects, contamination risks during construction, and whether there is sufficient information presented to ensure that the risk to the water environment as a result of the Proposed Development is effectively mitigated.
- **Traffic and Transport**, including the effect of the Proposed Development on traffic flows, delays, volumes and circulation in both the local and wider context, the effect of the Proposed Development on road safety, cyclists and pedestrian amenity and the consideration of alternatives to road freight.

4.1.2. Following the submission by the Applicant of a Preliminary Navigation Risk Assessment at Procedural Deadline C [[PDC-052](#)], it was accepted by IPs that this, together with Requirement 17 (Navigational risk assessment) which requires the submission of a final navigational risk assessment, was sufficient to ensure no significant effects would arise to shipping and navigation. I agree and am satisfied that matters of shipping and navigation do not need to be considered further as a main planning issue.

4.1.3. Other generic impacts listed in NPS EN-1 including matters relating to waste management, odour, artificial light, smoke, steam and insect infestation are not considered as important or relevant factors in the consideration of this application and, as such, are not dealt with in detail below.

## 4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. One representation was received from a local resident, **Ms Elaine Laver**, who raised concerns around the baseline used for the noise assessment [[RR-008](#)]. I consider this further in Chapter 5 below (section 5.8.). Additional comments made in relation to geese were not expanded upon but relate to land outside the Order Limits and which the Applicant confirmed was not impacted by the Proposed Development [[REP2-041](#)].

4.2.2. Representations were received from **HiE** which raised concerns with the construction impacts on the Strategic Road Network (SRN). These relate to the increase in vehicle movements travelling from the Port of Tilbury and the safe and effective operation of the 'Asda' roundabout. In addition, concerns were raised in relation to the impact of the Proposed Development on, and its interaction with, the LTC project. HiE confirmed at Deadline 5A that PPs had been agreed [[REP5A-004](#)]. Furthermore, a SoCG with the Applicant was submitted at D7 in which HiE [[REP7-033](#)] acknowledge that the impact on the roundabout can be adequately managed by the measures proposed in the Outline Construction Traffic

Management Plan (OCTMP). At the close of the Examination, there were no unresolved matters between the Applicant and HiE.

- 4.2.3. Representatives of the **Condovers Scout Activity Centre** (“Condovers”) raised concerns regarding the impact of the Proposed Development on the users of their facilities. In particular, they raised concerns in respect of additional Heavy Goods Vehicle (HGV) traffic along Church Road and the road and footpath closures proposed during construction, noise and air quality impacts resulting from the construction of the gas pipeline and new road access as well as the impact on noise and air quality on Condovers during operation. These matters are considered further in Chapter 5 below.
- 4.2.4. **Natural England** (NE) made a number of representations in relation to the permanency of the causeway, HRA matters and the effect of the causeway on land functionally linked to the nearby protected habitats and wintering birds. Although broadly satisfied with the survey methodologies, impact assessments and principles of mitigation in respect of onshore ecology, NE also made a number of representations in relation to water vole translocation, biodiversity net gain and the loss of common land. It also sought to secure appropriate controls in the dDCO to ensure that the causeway was not subject to unauthorised use. These matters are considered further in Chapters 5 to 9 below.
- 4.2.5. **Gravesham Borough Council** raised specific concerns in respect of the causeway, its long-term retention and lighting during construction. It drew attention to the potential for noise and disturbance impacts on Gravesham residents and sought to ensure that the Thames Estuary SPA and Ramsar site was not adversely affected by the proposal. It raised a number of further issues in respect of air quality and the impact of the Proposed Development on the openness of the Green Belt. These matters are considered further in Chapters 5 to 7 below.
- 4.2.6. **Anglian Water** were generally supportive of the Proposed Development but sought amendments to Article 16 of the dDCO and well as protective provisions in respect of its assets. These matters were agreed during the course of the examination and Anglian Water confirmed at D6 that the issues set out in its RR had now been resolved [[REP6-023](#)].
- 4.2.7. **Transport for London (TfL)** strongly encouraged the maximisation of water and rail to transport construction material to and from the site. In addition, they stated that the Applicant should be required to commit to ambitious targets to minimise freight movements by road and maximise the use of alternatives. No further representations were received from TfL during the course of the Examination.
- 4.2.8. **National Grid** (NG) sought protective provisions for the protection of its assets including overhead power lines, substations and cables. A joint Statement submitted by the Applicant and NG at D7 [[REP7-040](#)] confirms that protective provisions in favour of NG (and other arrangements) have been agreed and that there were no outstanding matters of disagreement between the parties. However, at the close of the



Examination, the 'other arrangements' referred to had not been put in place and NG's objection to the proposal had not been withdrawn.

- 4.2.9. Representations were received from **Port of Tilbury London Limited** (PoTLL) in its capacity as the owner and operator of the Port of Tilbury. In summary, it objected to the inclusion of the proposed causeway on the basis that other options were available for the delivery of AILs that could have avoided some of the adverse effects associated with its construction. It also sought protective provisions in the dDCO to safeguard the safe and efficient operation of its undertaking and to ensure that the proposal did not impact on PoTLL's existing obligations under the Tilbury 2 DCO. As the Examination progressed, PoTLL also raised concerns with the effect that the proposed causeway would have on the plans for the Thames Freeport. These matters are considered further in Chapters 5, 8 and 9 of this Report.
- 4.2.10. **RWE Generation (UK) Plc** objected to the inclusion of its land in the BoR and the inclusion of CA powers over its land interests. It also raised concerns regarding the prevention of future development of its land, the impact of the causeway, whether adequate consideration had been given to alternatives, the interference with the existing access road and its obligations to existing tenants. Furthermore, it raised concerns in relation to the proposed alteration to flood defences and the impact they would have on its land. It also sought PPs in the dDCO for its protection. I consider these matters further in Chapters 5, 8 and 9 below.
- 4.2.11. **Historic England** (HE) raised a number of concerns in relation to the setting of heritage assets, archaeological deposits and the impact on the historic environment resulting from a loss of common land. They also raised concerns in relation to the proposed exchange of common land. These matters are considered in further detail in Chapters 5 and 8 of this Report.
- 4.2.12. **Cogent Land LLP (Cogent)** raised concerns [[RR-009](#)] that insufficient consideration had been given to alternatives, particularly in relation to the corridors for the gas pipeline in Zone D and the impact it would have on its planned developments in this area. It sought clarity on a number of matters to ensure that the CA powers sought in respect of its land interests would not impede the delivery of its planned development of this area. Following further discussions with the Applicant, Cogent confirmed that its concerns had been addressed and formally withdrew its RR [[REP2-094](#)].
- 4.2.13. **Network Rail (NR)** raised concerns regarding the impact of the Proposed Development on nearby level crossings and NR infrastructure. It also raised concerns around the siting of the access off Station Road. NR confirmed at D8 that it had agreed modifications to Requirements 4 (Detailed design), 6 (CTMP) and 7 (CWTP) as well as protective provisions for the protection of its assets. As a result, it formally withdrew its objection [[REP8-006](#)].

- 4.2.14. **Essex County Council** noted that the ES is silent on matters relating to Waste and Minerals. It made a number of suggestions regarding the amounts and specification of aggregates. In addition, it raised matters relating to climate change noting that such a large scale, gas fired energy generation proposal such as the one proposed would further add to the detrimental impacts of fossil fuel use. It suggested that the level of investment required would reduce investment in other renewable energy projects that would have a much greater impact alongside battery storage. I consider these matters further in Chapter 5 below.
- 4.2.15. **Basildon Borough Council** raised no objection provided suitable measures were put in place in respect of air quality and transport [[RR-001](#)].
- 4.2.16. **The Marine Management Organisation (MMO)** sought further information on the disposal of dredged material, sediment analysis, the Applicant's consideration in the ES of underwater noise and the impact of the Proposed Development on fish. It also made representations on the outline WSI (OWSI) on the Marine Environment, HRA matters and flood risk. In addition, it requested a number of amendments to the DML contained in Schedule 8 of the dDCO and well as other changes to the dDCO including in terms of arbitration. These matters are considered further in Chapters 5 and 9 below.
- 4.2.17. **The Maritime and Coastguard Agency (MCA)** sought a consultative role in the establishment of any infrastructure or works in or over the marine environment. The MMO confirmed in its D2 response that consultation will be undertaken with the MCA as standard. No further representations were received and I do not consider this matter further.
- 4.2.18. **The Environment Agency (EA)** made a number of representations which raised issues in respect of flood risk and breach modelling, climate change, the WFD, dredging, land raising proposals, the discharge of water courses (including the condition and functionality of the outflows), the potential impact on water voles, and the impact of the causeway. It also made representations in relation to the proposed disapplication of Environmental Permits (EPs) in Article 10 of the dDCO and sought protective provisions in its favour.
- 4.2.19. Discussions between the EA and the Applicant continued throughout the Examination and a SoCG was received at D6 [[REP6-016](#)] in which the EA confirms that sufficient flood data has been provided to form the basis for the design mitigation measures, that the stated net gain in ditch habitat is sufficient to ensure that an adverse impact on water voles is avoided and that appropriate wording has been included in Requirements 4 (Detailed design), 10 (Surface and foul water drainage), 18 (Review of access for AILs) and 19 (Causeway decommissioning plan) of the dDCO to assuage many of its previous concerns. It also confirms that the Applicant had addressed its WFD concerns and that the EA was content that the associated dredging activity would be compliant with WFD water quality. Furthermore, it confirmed that the protective provisions including in version 8 of the dDCO had been agreed.

- 4.2.20. Nevertheless, at the close of the Examination the EA continued to express concerns in relation to the impact of the loss of intertidal habitat. This matter is discussed further in Chapter 5 of this Report.
- 4.2.21. Representations were received in support of the proposal from **Ms Diana Cole** of Orchard Farm (owner of the main development site and proposed exchange common land).
- 4.2.22. **London Resort Company Holdings Ltd** noted that traffic during construction and operation of the Proposed Development had the potential to have an impact on the London Resort project and vice versa [[RR-011](#)]. However, no further representations were received.
- 4.2.23. **Royal Mail (RM)** sought to limit any risk from the Proposed Development on its operations. In particular, it sought a consultative role in the dDCO in respect of road closures or diversions as well as the content of the final Construction Traffic Management Plan (CTMP). They also sought to include a mechanism to inform major road users about works affecting the local highway network. Changes were subsequently made to the dDCO to name RM as a consultee on the final CTMP (Requirement 6) and to ensure that the Applicant would give RM no less than one month's notice of any proposed road closures, diversions or alternative access arrangements. This is included in the OCTMP [[REP6-006](#)]. RM confirmed in its SoCG with the Applicant [[REP4-010](#)] that these changes address the matters raised by RM.
- 4.2.24. **Public Health England (PHE)** sought further information on the assessment of impacts on human health and on deprivation levels for Walton Common and the proposed exchange land. PHE also sought to secure provision in the dDCO for cycle parking. PHE confirmed in subsequent correspondence [[REP2-063](#)] that they considered the assessment of human health was generally appropriate and that the health impacts from the emission of particulate matter and NO<sub>2</sub> have been appropriately assessed. Furthermore, they acknowledged that there would be no disproportionate impact on populations with differing levels of deprivation and that details of cycle parking could be confirmed as part of the requirements. At the close of the Examination, there were no outstanding matters of disagreement between the Applicant and PHE.
- 4.2.25. Representations were also received from the **Ministry of Defence (MoD)** who noted that the application relates to a site outside of MoD safeguarding areas and therefore had no safeguarding objections to the proposal.
- 4.2.26. A representation [[RR-003](#)] was also received from **Castlepoint Borough Council** who had no comment to make.
- 4.2.27. As noted in Chapter 1 above (section 1.4), SoCGs were agreed between the Applicant and the following IPs:
- Anglian Water [[REP2-064](#)].
  - The Environment Agency [[REP6-016](#)].
  - Gravesham Borough Council [[REP6-015](#)].

- Highways England [[REP7-033](#)].
- Historic England [[REP6-017](#)].
- Maritime and Coastguard Agency [[REP2-065](#)].
- National Grid [[APP-148](#)].
- Natural England [[REP7-036](#)].
- Port of London Authority [[REP6-018](#)].
- Public Health England [[REP2-063](#)].
- Royal Mail [[REP4-010](#)].
- Thurrock Council [[REP7-038](#)].

4.2.28. In addition, joint statements were submitted between the Applicant and the following IPs at D7:

- National Grid (NGET and NGG) [[REP7-040](#)].
- Network Rail Infrastructure Limited [[REP7-041](#)].

4.2.29. I have had taken these into account in my consideration of the issues reported on below.

### **4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT**

4.3.1. The main issues identified as potential areas of concern to TC in its LIR relate to the impact on the Green Belt; loss of habitat and impact on protected species; landscape and visual impact; impact on heritage assets (archaeology); the loss of agricultural land; and climate change [[REP2-076](#), [REP2-077](#) and [REP5-022](#)].

4.3.2. I consider these matters further in Chapters 5 to 7 and 10 below.

### **4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS**

4.4.1. As noted above, the Proposed Development qualifies as an NSIP under s14(1)(a) and s15(2) of the PA2008 and consideration of the proposal is subject to the general considerations in NPS EN-1 as well as specific guidance on Electricity Generating Infrastructure in NPS EN-2, Gas Supply Infrastructure and Gas and Oil Pipelines in NPS EN-4 and Electricity Network Infrastructure in NPS EN-5.

4.4.2. NPS EN-1 makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution which projects would make towards satisfying this need. Paragraphs 3.6.1 and 3.6.2 of NPS EN-1 state that there is also a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner.

4.4.3. The Applicant has provided an ES which I am satisfied meets the requirements of the PA2008 and the EIA Regulations in terms both of scope and methodology. It also covers specific issues and mitigation measures to address adverse effects as identified in the NPS.

4.4.4. Consequently, subject to my detailed consideration of the proposal against the specific policies set out in the NPSs in Chapters 5-7 below, I am satisfied that the proposal conforms generally with the overarching policies set out in the NPSs.

## **4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS**

4.5.1. As noted in section 3.4 above, the Marine Plan for the South East is in draft form only and has yet to take effect. It is therefore only the MPS that falls to be considered here.

4.5.2. ES Chapter 17 (Marine Environment) provides an assessment of the likely significant effects of the Proposed Development on the Thames Estuary, including issues relating to dredging and sediment disposal. This is supported by a Hydrodynamic Modelling and Sediment Assessment (Volume 6, Appendix 17.2 [[APP-120](#)] and a Water Framework Directive Assessment (ES Appendix 17.3 [[PDC-027](#)]).

4.5.3. Subject to my detailed consideration of the effect on the Marine Environment in Chapter 5 below (section 5.7), I consider the application is generally in accordance with the MPS and meets the requirements of the NPS in this respect.

## **4.6. CONFORMITY WITH THE DEVELOPMENT PLAN**

4.6.1. Details of the Development Plan for Thurrock are set out in Chapter 3 above.

4.6.2. A number of local planning policies have been identified by TC [[REP2-077](#) and [REP5-022](#)] and the Applicant [[APP-135](#)] which are considered relevant to this application. These have been taken into account in my consideration of the main issues. However, in doing so I have noted that TC conclude, on balance, that the Proposed Development would be acceptable in planning policy terms.

4.6.3. No other IPs have raised any specific matters in relation to compliance with local planning policies.

## **4.7. APPLICATION OF OTHER POLICIES**

4.7.1. Other relevant sources of policy that give rise to important and relevant considerations for the SoS include policies referred to by TC in its LIR [[REP2-077](#) and [REP5-022](#)] and by the Applicant in section 3 of its Statement of Case and Green Belt Statement [[APP-135](#)].

4.7.2. These include:

- The Clean Growth Strategy – Leading the way to a low carbon future, BEIS (2017).
- Upgrading Our Energy System, Smart Systems and Flexibility Plan, Ofgem, 2017.

4.7.3. I have taken these into account in the relevant sections of this Report.

## **4.8. ENVIRONMENTAL PERMITTING REGIME**

4.8.1. As noted above in Chapter 3, the Proposed Development falls within Schedule 1 Part 2 (Combustion Activity) of the Environmental Permitting (England and Wales) Regulations 2016. As such, an EP would be required before the Proposed Development commences operation. An application for an EP is made separately and independently to the EA, who are the competent authority to issue and regulate EPs.

4.8.2. The EA confirmed (in its RR [[RR-013](#)] and SoCG with the Applicant [[REP6-016](#)]) that an EP is required. The Applicant's 'Other Consents and Licenses Statement' [[REP7-021](#)] indicates that an EP would be applied for following the grant of any DCO.

## **4.9. ENVIRONMENTAL IMPACT ASSESSMENT**

4.9.1. An ES accompanied the application [[APP-041 to APP-122](#)]. During the PM adjournment and throughout the Examination, the ES was amended with many of the changes made in response to the representations made by IPs during the course of the Examination, in response to my written questions or as a result of the accepted change requests proposed by the Applicant. This section addresses the documents comprising the ES at the close of the Examination.

4.9.2. The EIA process involves identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposes mitigation measures to avoid, reduce and offset the significance of the effect, expressed as residual effects after taking account of mitigation.

4.9.3. My assessment of the Proposed Development undertaken in Chapter 5 of this Report will report on the environmental effects from the identified stages as set out in the ES. However, it should be noted here that overall I consider the ES is sufficient to enable the SoSBEIS to take a decision in compliance with the EIA Regulations.

4.9.4. Article 41 of the dDCO makes provision for the certification by the SoSBEIS of the ES post-examination.

## **4.10. HABITATS REGULATIONS ASSESMENT**

4.10.1. The Proposed Development is one that gives rise to the potential for likely significant effects on European sites and hence is subject to HRA. A separate record of considerations relevant to HRA is set out in Chapter 6 of this Report.

4.10.2. However, at this point it is necessary to record that I have considered all documentation relevant to HRA as required by section 4.3 of NPS EN-1 and have taken it into account in the conclusions reached here and in the

Planning Balance (Chapter 7). Further, project design and mitigation proposals included in the ES and secured in the dDCO have been fully considered for HRA purposes.

- 4.10.3. Overall, I am satisfied on the adequacy of the data provided such that it does allow the SoSBEIS to act as the competent authority to undertake an appropriate assessment.

## **5. FINDINGS AND CONCLUSIONS IN RELATION TO THE MAIN PLANNING ISSUES**

### **5.1. INTRODUCTION**

5.1.1. This chapter sets out my findings and conclusions in relation to the main planning issues and environmental impacts of the Proposed Development identified in Chapter 4 above.

### **5.2. PRINCIPLE OF DEVELOPMENT**

5.2.1. As noted in Chapter 2 above, the Proposed Development would be designed to operate for up to 35 years and not run continuously but intermittently, during periods of low electricity supply or high demand up to a maximum of 4000 hours<sup>24</sup>. This is secured in Requirement 21 (Operational hours) of the dDCO [[REP7-012](#)].

#### *Need*

5.2.2. NPS EN-1 makes clear that applications for the types of infrastructure covered by the energy NPSs should be considered on the basis that the Government has already demonstrated that there is a need for those types of infrastructure. Furthermore, it notes<sup>25</sup> that there are a number of technologies which can be used to compensate for the intermittency of renewable generation, such as electricity storage. It points to the likelihood that increasing reliance on renewables will mean that we need more total electricity capacity than we have now, with a larger proportion being built only or mainly to perform back-up functions.

5.2.3. The Applicant's case for the need for the Proposed Development is set out in the Planning Statement of Case [[APP-135](#)]. This broadly relies on NPS EN-1 which recognises that the UK is highly dependent on natural gas for electricity generation and that gas will continue to play an important part in the UK's fuel mix for many years to come. It also makes clear that there is an urgent need for new energy NSIPs to be brought forward as soon as possible.

5.2.4. In addition, the Applicant points to the supportive role that battery storage can play in the transition to a low-carbon electricity system stating that:

*"The development is required to complement the changing mix of electricity generation, including intermittent renewable energy, and to meet the Government's objective of maintaining a reliable electricity supply. Once operational, the Flexible Generation Plant would have the ability to respond rapidly (within a few minutes for the gas engines and immediately for the battery storage) and reliably to the short-term*

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<sup>24</sup> Subject to any lower limit included in the EP.

<sup>25</sup> Paragraph 3.12.



*variations in demand and fluctuations in the output from renewable energy sources”.*

(Source: Planning Statement of Case and Green Belt Statement [[APP-135](#)], Appendix 1, paragraph 4.1).

- 5.2.5. As noted in Chapter 2 above, the Applicant explains that the Proposed Development may be constructed in a single phase of work (taking around 12-24 months) or may be split into three phases (with each phase lasting around 18 months but with gaps of up to 9 months between phases). However, as noted in Chapter 2 above, the DCO does not require any or all parts of the battery storage to be constructed in either scenario.
- 5.2.6. In ExQ1, I queried how this was taken account of in the dDCO. In response the Applicant explained that the approach would be specified in the CoCP secured under R5. However, I consider the wording of the CoCP on this point is ambiguous and while I accept phases 2 and 3 would help meet the need identified in the NPS, there are no firm obligations secured in the dDCO which would require their construction. In the event that phases 2 and/ or 3 was not, or could not be, constructed, these potential benefits would not be realised.
- 5.2.7. Nevertheless, I acknowledge that even in a 3-phase construction scenario, phase 1 alone would help meet the need established through the NPS.
- 5.2.8. In addition to the identified need established by the NPS, the Applicant draws attention to a very specific need in the 275kV circuit around London and highlights the contribution that the project can make to this need. This is confirmed by NG in its SoCG [[APP-148](#)].
- 5.2.9. Accordingly, in the absence of any obligation for it to be constructed as part of the development, I do not consider that the inclusion of battery storage provides any additional benefit in support of the Applicant’s need case.

#### *Consideration of alternatives*

- 5.2.10. NPS EN-1 and NPS EN-2 do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option<sup>26</sup>. However, applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice of site, taking into account the environmental, social and economic effects including technical and commercial feasibility. Furthermore, paragraph 4.4.3 of EN-1 advises that given the need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner.

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<sup>26</sup> NPS EN-1, Paragraph 4.4.1.

### *Location*

- 5.2.11. The main development site is located within the metropolitan Green Belt and is registered common land, forming part of common land register unit CL228 (Walton Common). Full details of the Site and the surrounding area are provided in Chapter 2 above.
- 5.2.12. ES Chapter 3 (Alternatives) [[APP-046](#)] sets out the Applicant's rationale for site selection and explains how the grid connection point was chosen. It acknowledges that while proximity to both gas and electricity grids was a principal driver, eventual site selection also involved consideration of other factors including access, environmental and sustainability criteria, land use and policy as well as other development proposals. It notes that an iterative master planning process was then undertaken to evaluate alternative arrangements for the site including access options and gas pipeline routes.
- 5.2.13. This is expanded on in the Applicant's Planning Statement of Case and Green Belt Statement ([APP-135](#), [APP-136](#), [APP-137](#), [APP-138](#) and [APP-139](#)) where a comparison is provided of the environmental, planning and commercial merits of the shortlisted sites.
- 5.2.14. In summary, twenty (20) sites were considered, twelve (12) located within the metropolitan green belt. These were assessed against the various criteria including the project imperatives (set out in paragraph 6.31), planning and land use matters, grid capacity, ability to connect to the gas network, as well as site acquisition and land availability. Three sites were shortlisted with two (Tilbury and Warley) being taken forward to final assessment. Further details, including a full list of the sites considered can be found in Appendix 1, Table 6.2 of the Applicant's Statement of Case and Green Belt Statement [[APP-135](#)]. Detailed site assessments for the alternative substations considered are set out in Annex B [[APP-136](#)].
- 5.2.15. The Applicant concludes that the analysis of potential sites demonstrates that the application site is the most appropriate and deliverable option for the project.
- 5.2.16. While I am mindful that the location of the main development site raises several potential issues including in relation to its common land and green belt status, its proximity to nearby European sites and the presence of existing apparatus, the Site's location clearly benefits from being close to nearby electrical, gas and transport links. Its location adjacent to a former power generation site and close to other nearby industrial development would deliver a number of other benefits including the ability to utilise existing infrastructure.
- 5.2.17. Overall, I am satisfied that sufficient information has been provided to explain the reasons for the Applicant's choice of site. I consider the application meets the requirements of NPS EN-1 in this respect.

### *Generating plant*

5.2.18. The application does not go into detail about the relative technical benefits of different gas-to-electricity generation technologies with the Applicant explaining that:

“...this will be dealt with in the justification of ‘Best Available Technology’ (BAT) required by the Environment Agency (EA) in order for an Environmental Permit to be granted for the facility’s operation”.

*(Source: ES Chapter 3, paragraph 1.2.1)*

5.2.19. The Applicant does however include some information on the alternative technologies considered in paragraphs 5.26 - 5.34 of its EIA Scoping Report [[APP-134](#)]. The alternative technologies considered include Open Cycle Gas Turbines (OCGT) and CCGT. Those discounted include wind, photovoltaic, nuclear and coal as they do not offer on-demand generation or the possibility of fast start-up.

5.2.20. A draft BAT assessment is also included in Appendix A of the Scoping Report which provides a review of BATs for power generation during periods of peak demand and compares the proposed reciprocating engines with OCGT and CCGT technologies in greater detail [[APP-134](#)].

5.2.21. In summary, the Applicant concludes that the proposed reciprocating engines are more energy efficient and have faster response times than OCGT or CCGT. I have no reason to conclude otherwise.

*Combined Heat and Power (CHP)*

5.2.22. As noted in Chapter 3, NPS EN-1 recognises the contribution that CHP can make to reducing emissions. It requires applicants either to include CHP in the project or present evidence in the application that the possibilities for CHP have been fully explored. Where a proposal is for thermal generation without CHP, applicants should explain why CHP is not economically or practically feasible, provide details of any potential future heat requirements in the area that the station could meet and detail the provisions in the proposed scheme for ensuring that any potential heat demand in the future can be exploited.

5.2.23. The Applicant has provided a Combined Heat and Power Report on the feasibility of operating the development as a CHP plant [[APP-127](#)]. Although this identifies a number of theoretical heat users with the 15km search area of the Proposed Development, many of these are located on the other side of the River Thames or separated from the Proposed Development by the nearby railway line. Furthermore, it notes the provision of CHP is not compatible with the short term and intermittent peaking nature of the generation plant proposed.

5.2.24. I accept that the provision of CHP is not compatible with the short term and intermittent peaking nature of the generation plant proposed. Furthermore, I agree with the Applicant’s conclusions that CHP would not be technically, or logistically or financially viable and, as such, I do not consider that the Proposed Development should be required to be constructed so as to be ‘CHP ready’.

### *Gas Connection*

- 5.2.25. A new gas pipeline connection to the existing high-pressure NTS at Feeder 18 will be required. As noted in sections 2.1.18 - 2.1.21 above, Feeder 18 is approximately 2km away from the main development site to the north east. The Order Limits include a corridor for routing the gas pipeline from the main development site through agricultural land as far as Station Road after which it would skirt Low Street Pit local wildlife site to the south and cross under FP200. It would then make two crossings of Station Road before connecting to Feeder 18.
- 5.2.26. The connection itself will comprise an AGI for the junction point with instrumentation and control kiosks set in a compound no greater than 50m<sup>2</sup> and with structures no more than 5m in height. These dimensions are secured in Schedule 2, Requirement 4 (Table 1) of the dDCO [[REP7-012](#)].
- 5.2.27. As explained in Chapter 2 above, the Applicant requires flexibility in the DCO for the final location of the NTS connection point. As a result, the Order Limits allow flexibility for the AGI location along the south-eastern side of the field in which it would be located.
- 5.2.28. The Works Plans [[REP7-004](#)] and the Gas Connection Concept Design Report [[APP-126](#)] show two potential routes for the Gas Connection and the connection locations. Further details can also be found in the Grid and Gas Connection Statement [[APP-124](#)].

### *Electrical Connection*

- 5.2.29. The Proposed Development includes a connection to the existing National Grid Tilbury 275kV substation. No changes are proposed to the existing high-voltage overhead lines crossing the main development site and the existing pylons will remain in place.
- 5.2.30. The total length of the grid connection is approximately 500m. The Works Plans [[REP7-004](#)] show the route for the cables (Work no. 3) and the connection locations. Further details can also be found in ES Chapter 2 (Project Description) [[REP7-019](#)].
- 5.2.31. The Grid and Gas Connection Statement submitted with the application [[APP-124](#)] provides a summary of the contractual arrangements already secured with NGET and notes that there are a number of advantages to providing new flexible generation and rapid-response storage capacity to the London 275kV transmission network. These are set out in detail in the SoCG between NGET and the Applicant [[APP-148](#)].

### *Design and Layout*

- 5.2.32. Detailed design is secured in Requirement 4 (Detailed design) of the dDCO which requires approval by the local planning authority. In addition, a design principles statement (DPS) is included with the application [[REP2-034](#)] which provides an overview of the design evolution and the principles that have informed the indicative layout and

elevation drawings. These can be found in the Illustrative General Arrangement Plans [[REP7-007](#)], and Illustrative Layout Plans [[PDC-044](#)], Illustrative Cross Section plans [[APP-013](#)].

#### *Carbon Capture Readiness*

- 5.2.33. The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 require the SoS to determine whether it is technically and economically feasible to retrofit the equipment necessary to capture the CO<sub>2</sub> that would otherwise be emitted from the plant.
- 5.2.34. NPS EN-1 also sets a requirement that new plant with a generating capacity of over 300MW should be constructed carbon capture ready (CCR) so that carbon capture and storage (CCS) can be retrofitted to the plant at a later date if required. As the Proposed Development seeks a maximum gross generating capacity of up to 750MW, CCR is required as part of the Proposed Development.
- 5.2.35. The CCR report [[APP-128](#)] assesses the technical feasibility of CCR and identifies a preferred carbon capture technology (post-combustion carbon capture) for potential future retrofit. Site layouts have been prepared to show how the equipment would fit into the land and the land is identified on the Works Plans [[REP7-004](#)] for these purposes. It also identifies potential locations for storage as well as transportation options including via pipeline and by sea. The land set aside for CCR is secured in Requirement 23 (CCR), while Requirement 24 (CCR monitoring report) makes provision for the submission of a CCR monitoring report at three-yearly intervals [[REP7-012](#)].
- 5.2.36. Overall, I am satisfied that sufficient space would be available on the main development site to accommodate carbon capture equipment in the future. I also consider the application includes sufficient details on the technical feasibility of retrofitting the plant and transporting it to the proposed storage area.

#### **Conclusions on the Principle of Development**

- 5.2.37. While I acknowledge the battery storage element has the potential to provide additional support for the transition to a low-carbon system, as I have already made clear above, in the absence of any obligation for it to be constructed as part of the Proposed Development, I do not consider it provides any meaningful benefit in support of the Applicant's need case.
- 5.2.38. Nevertheless, the need for fossil fuel energy generation is established through the NPS. I consider the Proposed Development would make a meaningful contribution to meeting this need. Furthermore, in view of its intermittent peaking nature, I acknowledge the supporting role it will play in helping transition to a low carbon system.
- 5.2.39. I also accept that the provision of CHP is not compatible with the short term and intermittent peaking nature of the technology proposed and as such, I do not consider that the Proposed Development should be required to be constructed so as to be 'CHP ready'.

- 5.2.40. I am satisfied that there is sufficient space is available on the main development site to accommodate carbon capture equipment in the future and that provision is made in the dDCO to secure this land. I am also satisfied that sufficient consideration has been given to design and layout and sufficient information provided on the consideration of alternatives to satisfy the requirements of NPS EN-1.
- 5.2.41. Accordingly, and subject to my consideration of the specific impacts of the Proposed Development (as set out in sections 5.3 to 5.14 below), I consider the Proposed Development meets the general requirements of NPS EN-1 in principle.

## **5.3. AIR QUALITY**

### **Policy Considerations**

- 5.3.1. NPS EN-1 acknowledges that infrastructure development can have adverse effects on air quality. Furthermore, it indicates that air quality considerations should be given substantial weight where a project would lead to deterioration in air quality in an area or lead to breaches of national air quality limits.
- 5.3.2. However, it also notes that the planning and pollution control systems are separate but complementary and that the Examination should work on the assumption that the relevant pollution control regime will be properly applied and enforced by the relevant regulator. NPS EN-2 notes that emissions from fossil fuel generating stations are regulated by the EA.

### **Applicant's Approach**

- 5.3.3. Operational emissions from the Proposed Development would be controlled by the EA through the EP regime.
- 5.3.4. The Applicant's air quality assessment can be found in ES Chapter 12 (Air Quality) [[APP-061](#)] and ES Chapter 25 [[APP-074](#)]. These are supported by the following ES Chapters and Appendices.
- ES Chapter 18 (CEA Introduction and Screening) [[APP-067](#)]
  - ES Chapter 31 (Summary of Interrelated Effects) [[APP-080](#)]
  - ES Chapter 32 (Summary of Cumulative Effects) [[APP-081](#)]
  - ES CEA Addendum [[AS-007](#)]
  - Alternative AIL Access ES Addendum [[AS-035](#)]
  - Appendix 12.1 (Air Quality Impacts on Ecological Receptors) [[APP-101](#)]
  - Appendix 12.2 (Baseline Air Quality Conditions) [[APP-102](#)]
  - Appendix 12.3 (Stack Height Determination) [[APP-103](#)]
  - Appendix 12.4 (Model Inputs and Outputs) [[APP-104](#)]
  - Appendix 12.5 (Results of Other Scenarios) [[APP-105](#)]
  - Appendix 12.6 (Assessment of Traffic Related Emissions) [[APP-106](#)]
  - Appendix 12.7 (Assessment of Plume Visibility) [[APP-107](#)]
  - Appendix 12.8 (Further Analysis of Air Quality in Gravesend) [[APP-108](#)]

- 5.3.5. Taken together, the application documents listed above consider the potential air quality impacts from the Proposed Development as well as the cumulative effects of emissions when taken with other committed developments in the area.
- 5.3.6. Baseline Particulate Matter (PM<sub>10</sub> and PM<sub>2.5</sub>) is presented in Table 1.5 of Appendix 12.2, while the study area is shown in figure 4.1 of ES Chapter 12 [APP-061]. Detailed modelling on emissions from construction traffic has been undertaken and is presented in Appendix 12.6 (Assessment of Traffic Related Emissions) [APP-106] using the traffic data obtained from the Applicant's Transport Assessment [ES Appendix 10.1 [APP-095].
- 5.3.7. Operational modelling has been undertaken and ES Chapter 12 provides details on the scenario resulting in the highest concentrations (ie. 48 x 12.4MW engines, each with its own stack). The results for the other scenarios considered are presented in Appendix 12.5 (Results of Other Scenarios) [APP-105].
- 5.3.8. Modelling was also undertaken to predict the effects of stacks at different heights and the results are provided in Appendix 12.3 (Stack Height Determination) [APP-103]. Figures 1.1 and 1.2 compare the maximum predicted annual mean nitrogen dioxide (NO<sub>2</sub>) process contribution with the modelled stack heights and maximum predicted 99.79<sup>th</sup> percentile of hourly mean NO<sub>2</sub> process contributions (PCs) for the stack heights modelled. Based on the modelling undertaken and professional judgement, it concludes that a stack height of 40m is suitable. The emissions data used can be found in ES Appendix 12.4 (Model Inputs and Outputs) [APP-104].
- 5.3.9. Maximum PCs from the Proposed Development are shown in Tables 4.5 to 4.7 of ES Chapter 12 [APP-061]. These have also been converted into isopleth contour plots to visually predict the PCs in the area surrounding the Proposed Development. These are presented in Figures 4.3 and 4.4 of ES Chapter 12 and were updated at D2 [REP2-044].
- 5.3.10. Impacts on ecological receptors are considered in Appendix 12.1 (Air Quality Impacts on Ecological Receptors) [APP-101], paragraph 1.5.1 of which states that no significant air quality effects on designated habitat sites are expected to arise.
- 5.3.11. Of the 47 receptor sites considered in the assessment, three are predicted to experience a moderate adverse effect in terms of NO<sub>2</sub> concentrations<sup>27</sup> with no significant effect predicted in the rest. A further 9 sites are predicted to experience moderate adverse effects for shorter-term average concentrations. Nevertheless, the ES considers the total NO<sub>2</sub> concentration will remain within the relevant objectives. The only modelled receptor where the objective would be exceeded is at West Street, Gravesend (Receptor 9).

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<sup>27</sup> Receptors 7, 9 and 42.

- 5.3.12. Details of embedded mitigation can be found in Table 2.20 of ES Chapter 12 [[APP-061](#)]. This is described further in Table 12.1 of Appendix 2.1 (Mitigation, Enhancement and Monitoring Commitments) [[AS-036](#)] and is secured in Requirement 5 (Code of construction practice (CoCP)) of the dDCO.
- 5.3.13. Interrelated and cumulative effects are assessed in ES Chapters 25, 31 and 32 [[APP-074](#), [APP-081](#) and [APP-080](#)] which recognise that interrelated effects for short term and long term human receptors may occur during both operation and construction. These effects arise from a combination of visual, noise, air quality and traffic effects. However, the assessment concludes that these are unlikely to alter the significance of effect already identified in ES Chapters 12 and 25 which would be effectively managed through the measures set out in the Outline Code of Construction Practice (OCoCP). Overall, the assessment concludes that the Proposed Development would make no material contribution to cumulative or interrelated effects with other development.

### **Views of IPs**

- 5.3.14. Gravesham Borough Council raised a number concerns in relation to the Applicant's assessment of air quality drawing particular attention to the predicted adverse impact on West St, Gravesend (Receptor 9). While agreeing with the Applicant's general conclusions on the emissions from construction, it sought clarification on a number of matters in respect of the assessment of air quality during operation [[RR-004](#) and [REP2-066](#), [REP3-019](#), [REP4-023](#)].
- 5.3.15. PHE noted that there was potential for minor and moderate air quality impacts on a number of human receptors and that this had been highlighted in the ES. It sought further information on the justification for the conclusions reached in the assessment noting that reducing public exposures to non-threshold pollutants (such as PM<sub>10</sub> and NO<sub>2</sub>) below air quality standards has potential public health benefits. It also indicated its support for approaches which minimise or mitigate public exposure to non-threshold air pollutants, address inequalities (in exposure), and maximise co-benefits (such as physical exercise) [[RR-020](#)].
- 5.3.16. Further correspondence from PHE was submitted at D2 [[REP2-063](#)] which confirmed that the health impacts from the emission of particulate matter and NO<sub>2</sub> have been appropriately assessed within the air quality and human health chapters and that the relative change in concentration and exposure are minimal. It notes that the Applicant will be required to implement BAT through the environmental permitting process, and will identify these through a BAT analysis at the time of applying for the permit. This would determine the air pollutant control system to be fitted to reduce changes to air quality to as low as reasonably practicable. No further concerns were raised by PHE during the Examination.
- 5.3.17. Condoverters raised concerns regarding the air quality impact on users of their Scout Activity Centre during both construction and operation. [[RR-](#)



[002](#), [PDD-009](#), [REP1-009](#), [REP2-079](#)]. It drew attention to the fact that its users undertake almost all activities outdoors, including sleeping.

5.3.18. TC, in its LIR [[REP2-077](#)] stated that it had no objection on air quality grounds and did not consider the proposal would lead to any significant impacts on air quality.

5.3.19. Basildon Borough Council sought to ensure that suitable measures were put in place for air quality [[RR-001](#)]. No further representations were received from Basildon Borough Council during the Examination.

### **Examination**

5.3.20. In ExQ1 I sought clarification on how the baseline NO<sub>2</sub> concentrations from the Tilbury 2 air quality assessment has been determined, further details on how the short-term exposures had been considered and on modelling within Thurrock Council's Air Quality Management Area (AQMA).

5.3.21. I also sought further information on the assessment of ecological receptors, how traffic speeds had been determined and the exclusion of carbon monoxide (CO), sulphur dioxide (SO<sub>2</sub>) and particulate matter from the operational assessment of stack emissions.

5.3.22. I sought further details on why the worst-case exposures to construction traffic emissions had been identified as sensitive for the consideration of stack emissions as well as further clarification on the Applicant's conclusions in respect of Receptor 9 (West Street, Gravesend).

5.3.23. I also highlighted a number of apparent inconsistencies presented in some of the documentation and sought further justification for not undertaking dust deposition or PM<sub>10</sub> monitoring during construction.

5.3.24. In response [[REP2-041](#)], the Applicant provided further information on the Tilbury 2 Air Quality Assessment and a comparison between the recent monitoring data and the concentrations taken from the Tilbury 2 Air Quality Assessment ([REP2-042](#)) (Air Quality Baseline – Table 1.3). These indicate that a conservative approach has been taken.

5.3.25. The Applicant also provided clarification on the exclusion of Zones F and H from the study area explaining that earthworks and construction activities are not supported in Zone H and works in Zone E would be limited.

5.3.26. In response to ExQ1.1.3, the Applicant explained that for most receptors both the annual mean and short-term (1 hour) NO<sub>2</sub> objectives apply and were taken account of in the assessment. The only areas where short-term objectives only could apply were at Parsonage Common, Tilbury Fort and the footpath to the south. Further information on short-term objectives was provided in [[REP2-042](#)] indicating that even taking a conservative approach, the Air Quality Assessment Level (AQAL) would be met.

- 5.3.27. In relation to modelling within Thurrock Council's AQMA, the Applicant explained that representative receptors had been used at locations where pollutant concentrations and/ or changes were expected to be greatest. A similar explanation was given as to why worst-case exposures to construction traffic emissions had been identified as sensitive for the consideration of stack emissions.
- 5.3.28. In response to my questions on ecological receptors, the Applicant confirmed that there were no ancient woodlands, Local Nature Reserves or National Nature Reserves within 2km of the stack and provided further information on the calculation of nutrient nitrogen deposition (see ExQ1.1.8 for further details [[REP2-041](#)]). Further details were provided showing the location of the ecological sites assessed [[REP2-043](#)] (AQ-2 - Ecological Receptors).
- 5.3.29. The Applicant also provided further justification for the exclusion of CO, SO<sub>2</sub> and particulate matter from the operational assessment of stack emissions, explaining that these had been excluded as they were not likely to be omitted in significant quantities. CO was not included as NO<sub>2</sub> and ammonia (NH<sub>3</sub>) were considered to be the main pollutants of local concern. It did, however, provide further information on CO, concluding that the process contributions of CO were not considered to be significant.
- 5.3.30. On the matter of Receptor 9 (West Street, Gravesend), the Applicant maintained its position that the air quality effects at this location would be minor adverse. It points to Appendix 12.8 (Further Analysis of Air Quality in Gravesend) [[APP-108](#)] which concludes that even though by 2022 there are a few small areas where the cumulative annual mean NO<sub>2</sub> concentrations are predicted to exceed the AQAL, these are confined to a few receptors at the front of buildings in West Street and Harmer Street. The Applicant goes on to state:
- "By 2025 it is only receptors within 14m of West Street that are predicted to exceed the AQAL and by 2030 concentrations are expected to be below the AQAL for all receptors. On this basis the effect is considered to be minor adverse and not significant".*
- (Source: Applicant's Response to ExQ1 [[REP2-041](#)]).
- 5.3.31. It was noted that Figures 4.3 and 4.4 (Annual Mean and Hourly Mean NO<sub>2</sub> Process Contributions) of ES Chapter 12 contained errors. Updated figures are provided in document AQ-3 [[REP2-044](#)] (Nitrogen Dioxide Contours).
- 5.3.32. The Applicant also confirmed that the largest annual mean NO<sub>2</sub> contribution at Receptor 47 was from the LTC not Tilbury 2 and there was no discernible contribution from Tilbury 2 due to distance [[REP2-041](#)].
- 5.3.33. In relation to dust deposition and PM<sub>10</sub> monitoring during construction, the Applicant explained that dust would not be generated or would be minimal in Zones E, F and H. Of the remaining Zones, only Zones C and D are within 350m of high sensitivity receptors while Zone A, the main

development site, is more than 600m away. The only ecological receptors within 50m of any of the zones are Local Wildlife Sites which are low sensitivity receptors.

- 5.3.34. Furthermore, I note that further monitoring of dust is included in Table 12.1 of ES Appendix 2.1 (Mitigation, Enhancement and Monitoring Commitments) [[AS-036](#)] and the OCoCP [[REP7-024](#)], and is secured under Requirement 5 (CoCP) of the dDCO. I consider this would go some way to ensuring any impact on air quality, including at the Condovers site, would be kept within acceptable levels.
- 5.3.35. In ExQ2, I noted that Table 1.3 of ES Appendix 12.8 displays an increase between the 2018 monitored concentration and 2022 modelled baseline concentration at several locations. In response, the Applicant explained that this was due to the height above ground at which the concentration was predicted, with concentrations in 2018 having been predicted at the actual height of the samplers at the monitoring locations, while those in 2022, 2025 and 2030 are predicted at the typical breathing height of sensitive receptors.
- 5.3.36. In response to the concerns raised by Gravesham Borough Council, the Applicant noted that while there would be a small incremental contribution to NO<sub>2</sub> concentrations, these would be controlled at source through the EP. It also provided further details on stack height modelling, traffic flow and its position on local air quality monitoring [[REP3-007](#)].
- 5.3.37. In its D4 response, Gravesham Borough Council sought further information on a number of aspects of the Applicant's approach. These were responded to by the Applicant at D5 [[REP5-013](#)] where it provided clarification on a number of Gravesham Borough Council's outstanding queries. A SoCG between Gravesham Borough Council and the Applicant submitted at D6 [[REP6-015](#)] confirms that there are no outstanding matters of disagreement between the parties in respect of air quality.
- 5.3.38. As the Examination progressed, Condovers requested that the works in Zone C were not carried out in May to Aug [[REP2-079](#)]. In response, the Applicant stated that it did not consider it was reasonable to limit construction for such a significant part of the year, particularly as the ES does not predict an adverse effect at this location [[REP3-014](#)].
- 5.3.39. While I acknowledge the concerns raised by Condovers, I note that the ES assessment has not predicted any significant adverse effects either during construction or operation at Condovers. I agree with the Applicant that this would be an onerous imposition in view of the limited effect predicted in the ES.
- 5.3.40. Overall, I am satisfied that the Applicant's responses provide the necessary clarification and consider there are no outstanding matters in respect of air quality that need to be addressed.

## **Conclusions on Air Quality**

- 5.3.41. Taking the above matters into account, I conclude that the assessment undertaken adequately assesses impacts on air quality and that no significant effects on air quality are likely to arise. In addition, I am satisfied that the measures secured in Requirement 5 (CoCP) of the dDCO would ensure that any residual effects on air quality can be suitably controlled and/ or mitigated.
- 5.3.42. Accordingly, I find that the requirements of both the AQD and NPS EN-1 will be met.

## **5.4. ONSHORE WATER ENVIRONMENT**

### **Policy Considerations**

- 5.4.1. Parts of the Site are located in areas of high (Flood Zone 3a) and medium (Flood Zone 2) flood risk as defined by the Environment Agency Flood Map for Planning.
- 5.4.2. Section 5.7 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. It makes clear that all applications for energy projects located in Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks would be managed, taking climate change into account.
- 5.4.3. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set 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. It makes clear that the SoS should not consent to development in Flood Zone 3 unless satisfied that the sequential and exception test requirements have been met<sup>28</sup>.
- 5.4.4. The overall aim of the sequential test is to steer new development away from areas at highest risk of flooding to those at lowest risk with the aim being to ensure development only takes place in areas at risk from flooding if there are no reasonably available alternatives at locations where the risk is less. It follows that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
- 5.4.5. For the exception test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site specific FRA must demonstrate that the

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<sup>28</sup> Paragraph 5.7.12.

development will be safe for its lifetime, taking into account the vulnerability of its users and without increasing flood risk elsewhere.

- 5.4.6. In determining applications, NPS EN-1 advises that the SoS should be satisfied that the proposal also meets the requirements of the WFD. In addition, it notes<sup>29</sup> that where a project is likely to have effects on the water environment, applicants should undertake an assessment of the status of, and the impacts of the proposed project on, water quality, water resources and the physical characteristics of the water environment as part of their ES.
- 5.4.7. NPS EN-2 states that where a project is likely to have effects on water quality or resources, applicants should undertake an assessment which should demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts<sup>30</sup>. Furthermore, it advises that applicants should demonstrate measures to minimise adverse impacts on water quality and resources.
- 5.4.8. NPS EN-4 notes that the construction of pipelines can create corridors of surface clearance and excavation that can potentially affect watercourses, aquifers, water abstraction and discharge points<sup>31</sup>. Potential impacts include interference with groundwater flow pathways, mobilisation of contaminants already in the ground, and introduction of new contaminants. NPS EN-4 also advises that the Applicant should provide an assessment of these impacts.
- 5.4.9. The NPPF considers the vulnerability of different forms of development and infrastructure and provides similar guidance to local planning authorities in relation to water supply, wastewater and water quality, land contamination and flood risk management. Paragraph 155 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere. These principles are also set out in the relevant policies of the Thurrock Core Strategy. Paragraph 066<sup>32</sup> of the PPG provides details of flood risk vulnerability classifications setting out the types of development that are appropriate within each Flood Zone.

### **Applicant's Approach**

- 5.4.10. ES Chapter 15 [[PDC-017](#)] considers the potential impacts of the Proposed Development on Hydrology and Flood Risk. This is supported by ES Appendices 15.1 (Flood Risk Assessment) (FRA) [[PDC-025](#)], 15.2 (Flood Zones/Model Data) [[APP-113](#) and [APP-114](#)], 15.3 (Surface Water Abstraction Licences, Discharge Consents and Pollution Incidents) [[APP-115](#)] and 17.1 (Water Framework Directive Assessment) [[PDC-027](#)].

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<sup>29</sup> Paragraph 5.15.2.

<sup>30</sup> Paragraph 2.10.2.

<sup>31</sup> Paragraph 2.22.2.

<sup>32</sup> Reference ID: 7-066-20140306.

- 5.4.11. The Alternative AIL Access ES Addendum [[AS-035](#)] considers the likely effects on the onshore water environment associated with Work no. 15. No significant adverse effects on hydrology, hydrogeology or flood risk associated with Work no. 15 are predicted.
- 5.4.12. Cumulative impacts are considered in ES Chapter 28 [[APP-077](#)] which is supported by ES Chapter 18 (Cumulative Effects Assessment Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of Inter-Related Effects) [[APP-080](#)] and ES Chapter 32 (Summary of Cumulative Effects) [[APP-081](#)]. A summary of residual effects is also provided in ES Chapter 33 [[APP-082](#)].

#### Flood Risk

- 5.4.13. As noted above, parts of the Site are located in areas of high (Flood Zone 3a) and medium (Flood Zone 2) flood risk. However, the Applicant points out [[APP-135](#)] that although shown in Flood Zone 3a, the area is in fact protected by substantial tidal flood defences with a standard of protection for tidal events with up to a 1 in 1000-year return period. Nevertheless, while Flood Zone 2 is recognised in the PPG as an appropriate location for essential infrastructure, in Flood Zone 3a, application of the sequential and exception test is required.
- 5.4.14. To satisfy the sequential test, the Applicant points to its site selection exercise set out in the Statement of Case and Green Belt Statement [[APP-135](#)] which explains the need to assess against a range of criteria. The Applicant also states (ES Chapter 15, Table 1.2) that an Exception Test is not required as the Sequential Test demonstrates that the Proposed Development is considered acceptable. I consider this matter below.
- 5.4.15. Full details of all of the proposed flood mitigation measures can be found in Table 15.1 of ES Appendix 2.1 (Register of Mitigation, Enhancement and Monitoring Commitments) [[AS-036](#)]. These would be secured by Requirement 4 (Detailed design), Requirement 5 (Code of construction practice) and Requirement 11 (Flood evacuation plan) of the dDCO [[REP7-012](#)].
- 5.4.16. ES Chapter 28 [[APP-077](#)] assesses nine shortlisted cumulative developments within the study area and concludes that the cumulative effects would be minor adverse or negligible and not significant.

#### Surface and Foul Water Drainage

- 5.4.17. The application includes a Conceptual Drainage Strategy (CDS) [[REP4-014](#)] and Concept Drainage Plan (CDP) [[PDC-006](#)] which includes surface water drainage design parameters, advice on sustainable drainage systems, details on foul drainage as well as on pollution prevention and control. Requirement 10 (Surface and foul water drainage) of the dDCO would secure surface water drainage systems and retention and maintenance of the latter throughout the lifetime of the Proposed Development in accordance with the CDS.

### Water Framework Directive

- 5.4.18. The application is accompanied by a WFD Assessment [[PDC-027](#)] which identifies the Thames Middle as the main WFD waterbody which the Proposed Development has the potential to impact. It considers the effect of the Proposed Development on water quality, including in terms of the dredging activities proposed, on a number of receptors including water bodies, habitats, fish, water quality, and protected areas. It concludes that following the implementation measures set out in the CDS, there would be no deterioration in water quality for any receptor group.

### Ground Conditions

- 5.4.19. ES Chapter 16 [[APP-065](#)], supported by Appendix 16.1 (Phase 1 Preliminary Risk Assessment) [[APP-116](#)] and Appendix 16.2 (Phase 2 Site Investigation Report) [[APP-117](#)] identifies the relevant legal and policy context and describes the existing geological and hydrogeological conditions at the Site.
- 5.4.20. Together, they consider the potential risks posed by land contamination, assess ground disturbance on secondary aquifers and on the principal aquifer (the River Thames), consider impacts on water bodies protected under the WFD and identify mitigation and designed-in measures intended to minimise any impacts. These include further pre-construction investigation (and remediation where necessary), measures to prevent and control spillages, designated areas for the unloading and storage of materials, and risk assessments for construction workers. These are included in the OCoCP [[REP7-024](#)] and secured in Requirement 5 (CoCP) of the dDCO [[REP7-012](#)]. A full list of the potential impacts and the measures proposed can be found in ES Chapter 16, Table 5.1 [[APP-065](#)].
- 5.4.21. The assessment concludes that impacts during construction would be limited and potential impacts during operation would be localised and intermittent. Overall, it considers the measures proposed to be adopted as part of the Proposed Development, together with suitable monitoring, would ensure no significant effects would occur.
- 5.4.22. Nevertheless, in the event that contamination is found during preliminary works or construction, Requirement 12 (Contaminated land) of the dDCO [[REP7-012](#)] makes provision for a scheme of remediation to deal with it.

### **View of IPs**

- 5.4.23. As noted in Chapter 4 above, the EA made a number of representations during the Examination [[RR-013](#), [AS-045](#), [REP2-080](#), [REP2-081](#) and [REP2-082](#)] which raised issues in respect of flood risk and breach modelling, the WFD, dredging, land raising proposals and the discharge of water courses (including the condition and functionality of the outflows). It also made representations in relation to the proposed disapplication of EPs in Article 10 of the dDCO and sought protective provisions in its favour.

- 5.4.24. Discussions between the EA and the Applicant continued throughout the Examination and a SoCG was received at D6 [[REP6-016](#)] which confirms that the EA agree that sufficient flood data has been provided to form the basis for the design mitigation measures, and that appropriate wording has been included in the dDCO to assuage its previous concerns in this respect. It also confirms that the Applicant had addressed its concerns in relation to the WFD and that it is content that the associated dredging activity would be compliant with WFD water quality. Furthermore, it confirmed that the protective provisions including in version 8 of the dDCO had been agreed [[REP7-012](#)].
- 5.4.25. The Marine Management Organisation (MMO) noted in its RR [[RR-014](#)] that it agreed with the conclusions of the hydrology and flood risk chapter in relation to the coastal/physical processes but sought further information on the disposal of dredged material and sediment analysis.
- 5.4.26. TC, in its LIR [[REP2-077](#)], notes the application of the sequential and exception tests, the mitigation measures proposed as well as the Applicant's proposals in respect of surface water drainage. Overall, it concludes that, subject to suitable wording in the Requirements, the impact would be neutral. TC confirmed in its SoCG [[REP7-038](#)] that the wording of the Requirements was agreed.
- 5.4.27. Anglian Water initially sought amendments to Article 16 (Discharge of Water) of the dDCO and well as protective provisions in respect of its assets. These matters were agreed during the course of the Examination and Anglian Water confirmed at D6 that the issues set out in its RR had now been resolved [[REP6-023](#)].
- 5.4.28. RWE raised concerns in relation to the impact changes to the flood defences would have on its neighbouring site. However, the dDCO [[REP7-012](#)] contains PPs in favour of RWE which includes a consultative role for RWE on the design of those works . RWE confirmed at D8 that its concerns in this respect had been addressed [[REP8-007](#)].

### **Examination**

- 5.4.29. I accept that, in view of the extensive site selection exercise undertaken and the need for access to key infrastructure, the Applicant has demonstrated that the Proposed Development could not be located in an area of lower flood risk. Taking a proportionate approach, I consider the SoSBEIS can be satisfied that the sequential test has been met.
- 5.4.30. However, while I note the site benefits from tidal flood defences which provide for a 1 in 1000-year flood event, and that the FRA [[PDC-025](#)] notes<sup>33</sup> that when these are taken into account the tidal risk posed is considered to be low, paragraph 5.7.12 of NPS EN-1 makes clear that development should not be consented in Flood Zone 3 unless the SoS is satisfied that both the Sequential **and** Exception requirements have been met. Similar advice for 'essential infrastructure' can be found in the NPPF

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<sup>33</sup> At paragraph 4.2.6.



and PPG, with the latter indicating<sup>34</sup> that for essential infrastructure, the application of the Exception Test is required.

- 5.4.31. Section 6 of the FRA [[PDC-025](#)] identifies and assesses the risks from all forms of flooding. It undertakes breach modelling for the closest and most likely breach identified in TC's Strategic Flood Risk Assessment (SFRA) (TIL05) as well as the residual breach or failure at TIL03 (which the SFRA indicates could result in higher flood levels to those predicted for TIL05) and applying an allowance to take account of UKCP18 climate predictions – an approach agreed with the EA.
- 5.4.32. Furthermore, the FRA confirms that flood resilience measures have been incorporated into the development design which takes account of a breach at TIL03 and the H++ scenario for both TIL05 and TIL03. It also indicates that the Proposed Development would not increase flood risk elsewhere.
- 5.4.33. It goes on to outline a range of mitigation measures which would be utilised to provide flood protection as part of the CDS [[REP4-014](#)], including ground raising measures, the use of flood resistance and resilience materials where practicable and a flood evacuation plan. These are described further in section 6.3 of the FRA.
- 5.4.34. Overall, I consider the application demonstrates that there are no reasonable alternative sites available, that the Proposed Development will be safe for its lifetime taking into account climate change and would not increase flood risk elsewhere. Furthermore, it would deliver a number of wider sustainability benefits to the community including meeting the need for additional generating capacity, socio-economic benefits and additional employment opportunities. As a result, I consider the Exception test is also met.
- 5.4.35. In ExQ1 [[PD-010](#)], I asked for further information on the study area and how the Zone of Influence (ZOI) had been determined, questioned the omission of sensitive ecological receptors from the assessment, how baseline water quality data had informed the WFD assessment and how magnitude and sensitivity for non-quantifiable criteria had been allocated. I sought details on the location of the Proposed Development in relation to the EA's pluvial flood modelling outputs and requested a number of updates to the Application documents to address typographical errors and/ or inconsistencies.
- 5.4.36. I also sought clarification on where mitigation was provided for in the dDCO, up-to-date information on the condition and functionality of the outfalls identified in the CDP [[PDC-006](#)] as well as details of how the Flood Evacuation Plan will be disseminated to on-site operatives.
- 5.4.37. In response, the Applicant explained that the ZoI had been determined using professional judgement [[REP2-041](#)]. In view of the limited flood

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<sup>34</sup> PPG, Table 3: Flood risk vulnerability and flood zone 'compatibility'. Paragraph: 067 Reference ID: 7-067-20140306

risk noted above, I accept that a 250m buffer around the proposed causeway, the electrical cable corridor, gas pipeline connection corridor as well as the storage areas, compounds and permanent access road with an increased zone of influence of 1km around the gas engines and battery storage facilities is appropriate. I also note that no concerns have been raised by IPs to the approach taken.

- 5.4.38. The Applicant also explained why sensitive receptors identified in ES Chapters 9 (Onshore Ecology) and 17 (Marine Environment), or which are hydrologically linked to the Proposed Development site via the River Thames, are not included in the baseline and assessment stating that:

*"the only discharges from the onshore elements of the proposed development will be clean surface water discharge, controlled to a greenfield rate for the main development site and regulated by the Environmental Permit. The drainage scheme has been designed with consideration of comments from the EA, such that flows from the site will be managed and that no additional flows will enter the local water network. The incorporation of the drainage scheme will provide some benefit to the local network, aiding to manage flow rates during extreme storm events."*

(Source: Applicant's response to ExQ1.16.3 [[REP2-041](#)])

- 5.4.39. Further information was also provided in relation to dredging and the reasons for scoping out WFD waterbodies from the WFD Assessment. In addition, the Applicant confirmed that the main development site is not located in a groundwater Special Protection Zone (SPZ) and while the northern parts of Zones C, D and I are located within a groundwater SPZ3, this was assessed in ES Chapter 16 [[APP-065](#)] where it was concluded that no significant effects are predicted.
- 5.4.40. In addition, the Applicant explained the approach taken to the assessment of water quality effects noting that it takes account of the naturally high baseline suspended sediment concentrations with the Thames Estuary and that the suspended sediments would be minimal (when compared with baseline levels), short term and temporary. As such, they would not lead to cumulative effects on the water quality of the Thames Estuary or negative effects on the water quality objectives of the Thames Middle WFD Waterbody.
- 5.4.41. The Applicant also provided further information on the Flood Evacuation Plan and how it would be disseminated to on-site operatives during the operational life of the Proposed Development. Requirement 11 (Flood evacuation plan) of the dDCO also makes provision for it to be provided to the relevant planning authority or TC on request. Clarification was also provided on where mitigation was secured in the dDCO.

### **Conclusions on Onshore Water Environment**

- 5.4.42. Taking the above matters into account, I conclude that an appropriate FRA, meeting the requirements of NPS EN-1, has been carried out and that sufficient mitigation would be secured in Requirement 4 (Detailed

design), Requirement 5 (CoCP), Requirement 10 (Surface and foul water drainage) and Requirement 11 (Flood evacuation plan) of the dDCO to guard against the risk of flooding.

- 5.4.43. Furthermore, I consider that the Applicant has provided sufficient information on flood risk to meet the requirements of NPS EN-1, EN-2 and EN-4, and I am satisfied that no further mitigation in respect of flooding is necessary beyond that set out in the dDCO.
- 5.4.44. In addition, I am satisfied that, subject to the mitigation measures identified in the ES, and secured in Requirement 4 (Detailed design), Requirement 5 (CoCP), Requirement 10 (Surface and foul water drainage) and Requirement 12 (Contaminated land), there should be no adverse effects on water quality and resources from the Proposed Development during construction, operation or decommissioning. As such, I find that the Proposed Development accords with the requirements of the WFR and WFD.
- 5.4.45. Accordingly, I conclude that the requirements in respect of water quality and flood risk set out NPS EN-1, NPS EN-2 and NPS EN-4 are met.

## **5.5. LANDSCAPE AND VISUAL AMENITY**

- 5.5.1. The Site is not located in any national or regional designation for landscape protection. It sits within the Greater Thames Estuary National Character Area (NCA 81) and the Tilbury Marshes Local Character Area (LCA 5), where flat, low lying coastal landscape dominates and which includes notable historic features including Tilbury Fort, Hall Hill and Coalhouse Fort.
- 5.5.2. Further details on the Site itself and the surrounding area can be found in Chapter 2 of this Report, ES Chapter 2 (Project Description) [[REP7-019](#)] and the Applicant's Planning Statement of Case and Green Belt Statement [[APP-135](#)].
- 5.5.3. The effect on the openness of the Green Belt is considered in Section 5.12 below.

### **Policy Considerations**

- 5.5.4. NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case-by-case basis according to the type of development, its location and the landscape setting. Furthermore, it recognises that all proposed energy infrastructure is likely to have visual impacts and that it will be necessary to judge whether the visual effects, after allowing for mitigation measures, outweigh the benefits of the project. With this in mind, it advises that applicants should include a landscape and visual assessment in the ES.
- 5.5.5. NPS EN-2 notes that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. It advises that attention should be paid to the design of the generating station so as to reduce visual impacts. Provided that the location is appropriate for the project

and it has been designed sensitively, EN-2 indicates that the visibility of a fossil fuel generating station should be given limited weight.

### **Applicant's Approach**

- 5.5.6. ES Chapter 6 (Landscape and Visual Resources) [[APP-049](#), [APP-050](#), [APP-051](#), [APP-052](#), [APP-053](#), [APP-054](#), [APP-055](#)] sets out the Applicant's assessment of landscape and visual resources during construction, operation and decommissioning based on the maximum design envelope parameters set out in Table 2.7 of ES Chapter 6. It distinguishes between landscape and visual effects assessing each separately but noting that the procedures used are closely linked. For landscape, the assessment considers the physical effects of the Proposed Development on the physical characteristics of the landscape and its resulting character and quality, while for visual it considers the effect on views experienced by visual receptors.
- 5.5.7. It identifies the Zone of Theoretical Visibility based on a stack height of 40m and provides 34 representative viewpoints (figures 3.4 to 3.29) and their locations (figure 2.3) as well as providing character panoramas (figures 3.30 to 3.33) and a selection of photowireline and photomontage imagery (figures 4.1 to 4.31). These are all accessible using the ES chapter links provided above. At Procedural Deadline C, additional/ updated representative viewpoints, character, photowireline and photomontage images were submitted [[PDC-046](#)] provide further evidence of the landscape and visual effects.
- 5.5.8. The Applicant considers that in the context of its industrial and commercial surroundings, the Proposed Development would have only a minor adverse effect on the landscape character of the Thames Estuary NCA and a moderate effect on the Tilbury Marshes LCA. While it acknowledges there would be some long-range views of the Site within the landscape, it considers these are eroded by intervening vegetation, buildings and the considerable number of pylons and overhead powerlines crossing over and in close proximity to the site.
- 5.5.9. In terms of visual impact, the application is also accompanied by Illustrative General Arrangement Plans [[REP7-007](#)], Illustrative Layout Plans [[PDC-044](#)], Illustrative Cross Section Plans [[APP-013](#)] and Illustrative Landscaping Plans [[REP7-008](#)].
- 5.5.10. ES Chapter 6 [[APP-049](#)] indicates that during construction a number of viewpoints would experience moderate adverse visual effects with significant effects indicated at Viewpoint (VP) 6 (Figure 3.9) and VP15 (Figure 3.17). However, the Applicant considers these effects are not unacceptable, given the existing industrial and dockside context. No significant effects are predicted during operation but the assessment does recognise that a number of VPs would experience ongoing moderate adverse effects.
- 5.5.11. Requirement 4 (Detailed design) of the dDCO also includes provision for the submission of detailed design (which must be in accordance with the

Design Principles Statement submitted with the application [[REP2-034](#)]). Furthermore, the Applicant points out that the Proposed Development includes a number of designed in mitigation measures intended to help reduce the overall visual impact. These are set out in Table 6.1 of ES Appendix 2.1 [[AS-036](#)] (Register of Mitigation, Enhancement and Monitoring Commitments) and secured by Requirement 4 (Detailed design), Requirement 5 (CoCP) and Requirement 14 (Landscaping and ecological management plan (LEMP)) of the dDCO.

- 5.5.12. Cumulative effects are considered in ES Chapter 19 (CEA: Landscape and Visual Resources) [[APP-068](#)]. This is supported by ES Chapter 18 (CEA: Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of Inter-related effects) [[REP2-026](#)], ES Chapter 32 (Summary of Cumulative Effects) [[REP2-028](#)], ES Chapter 33 (Summary of Residual Effects) [[PDC-023](#)] and the Applicant's CEA addendum [[AS-007](#)].
- 5.5.13. In summary, having considered the cumulative effects of the Proposed Development with other planned developments in the surrounding area, it indicates that there would be no material contribution from the Proposed Development to cumulative significant adverse effects on landscape and visual resources.

### **Views of IPs**

- 5.5.14. TC, in its LIR, [[REP2-077](#)], recognise that the main part of the Proposed Development would be sited in a location nearest the existing Tilbury substation and, as such, benefits from its industrial and commercial context. Overall, it considers the proposal would lead to an adverse impact on the landscape, although it notes that this would not be significant and could be mitigated through careful design.
- 5.5.15. Gravesham Borough Council [[REP2-066](#)] noted that in terms of the operational plant itself, the views provided illustrate that the stacks, as the tallest element, are not prominent in long distance views or else become lost in the pylons and other associated electricity infrastructure.
- 5.5.16. HE raised concerns regarding the impact on historic landscape character. These are considered further in Section 5.9 (Cultural Heritage) of this Report.

### **Examination**

- 5.5.17. The Proposed Development would have between 33 and 48 engines each with its own stack. It is clear from the illustrative cross section plans, photographic imagery and my site inspections that the main, lasting, visual impact of the Proposed Development would be as a result of the stacks - which would be visible close up and from further afield.
- 5.5.18. During the Examination, I undertook a USI and ARI [[EV-010](#)] and visited a number of the representative viewpoints identified in the ES. This gave me an appreciation of the site, its surrounding context and its relationship within the wider landscape.

- 5.5.19. In addition, the Applicant provided a number of additional viewpoints [[REP5-018](#)] as well as 360° photography [[Link to 360° photography](#)] for the parts of the site that were not publicly accessible.
- 5.5.20. I agree that the imagery presented is representative of views of the Site. In relation to VP6 and VP15, I accept that the location amongst tall pylons, overhead cables and other industrial looking structures would reduce the overall visual impact and help mitigate the resultant harm. I see no reason that further mitigation cannot be secured as part of the approval of detailed design to ensure that the overall visual impact is acceptable.
- 5.5.21. Overall, I concur with the Applicant’s assessment of landscape and visual impacts. The Proposed Development would be seen in the context of the existing industrial and commercial surroundings, with many views taking in the pylons and overhead cables which dominate views towards the substation.
- 5.5.22. While I acknowledge there would be some adverse effects on landscape and visual resources, with the designed in measures proposed (and secured in Requirements 4 (Detailed design), 5 (CoCP) and 14 (LEMP) of the dDCO), I am satisfied that the likely effect on landscape and visual resources would not be significant.
- 5.5.23. The Applicant confirmed in its Alternative AIL Access ES Addendum [[AS-035](#)] that no changes to the assessment set out in ES Chapter 6 are required to take account of the addition of Work no. 15.

### **Conclusions on Landscape and Visual Resources**

- 5.5.24. Taking all of the above matters into account, I am satisfied that, subject to my further consideration in respect of historic landscape impact in section 5.9 below, an assessment of the landscape and visual effects of the Proposed Development meets the requirements of NPS EN-1.
- 5.5.25. Furthermore, I am satisfied that Requirements 4 (Detailed design), 5 (CoCP) and 14 (LEMP) of the dDCO would provide further opportunities to mitigate the visual impact of the Proposed Development on its surroundings.
- 5.5.26. Based on the evidence presented and having viewed the site from a number of representative viewpoints, I am satisfied that while the proposal would have some visual impacts, in view of its surrounding context, is unlikely to have a significant effect on landscape or visual amenity and meets the requirements of NPS EN-1 and NPS EN-2 in this respect.

## **5.6. ONSHORE ECOLOGY**

### **Policy Considerations**

- 5.6.1. Section 4.3 of NPS EN-1 sets out the policy considerations relevant to HRA. These are considered in Chapter 6 of this Report.

- 5.6.2. NPS EN-1<sup>35</sup> also sets out the importance of assessing, as part of the ES, the effects of the Proposed Development on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.
- 5.6.3. Furthermore, it states that, as a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests including through mitigation<sup>36</sup>. It also requires an applicant to show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.
- 5.6.4. Paragraph 5.3.8 advises that the SoS, in taking decisions, 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.
- 5.6.5. Additional policy guidance can be found in the NPPF which advocates a commitment to improving biodiversity, minimising impacts on it and encourages the incorporation of biodiversity improvements in and around developments. Likewise, local planning policy seeks to protect and enhance biodiversity and ensure ecological enhancement through good design.

### **Applicant's Approach**

- 5.6.6. Chapter 9 [[PDC-021](#)] sets out the Applicant's consideration of the likely effects of the Proposed Development on ecological receptors during construction, operation and decommissioning. It is supported by Appendix 9.1 (Ecological Desk Study and Survey Report) [[APP-091](#)], Appendix 9.2 (Third Party Survey Reports) [[APP-092](#)], Appendix 9.3 (Biodiversity Net Gain Assessment) [[PDC-031](#)] and Appendix 9.4 (Foreshore Wintering Bird Surveys) [[PDC-033](#)]. Intertidal and maritime habitats and receptors (other than wintering birds) are considered in Section 5.7 below.
- 5.6.7. The Applicant carried out a number of ecological surveys including a Phase 1 Habitat Survey, survey of grassland types, invertebrate surveys, reptile survey, breeding bird survey, bat survey, water voles and otter, badgers and terrestrial and foreshore wintering bird surveys. A summary of the site-specific surveys undertaken, together with their extent can be found in ES Chapter 9, Table 2.2 [[PDC-021](#)].
- 5.6.8. ES Chapter 9, Table 5.1 sets out a summary of the potential impacts considered and their likely significance of effect. It identifies that while most predicted effects would be minor adverse or negligible, moderate

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<sup>35</sup> Paragraph 5.3.3.

<sup>36</sup> Paragraph 5.3.7

adverse effects are predicted in relation to the permanent loss of grassland habitat, reptile habitat and water vole habitation.

- 5.6.9. In response, the Applicant proposes a number of mitigation and enhancement measures including the adoption of buffer zones, additional pre-construction surveys, detailed method statements, translocation of affected species, and the timing of measures to limit effects during key seasons.
- 5.6.10. In addition, it proposes a number of enhancement measures including the creation and management of areas of semi-improved hay meadow grassland habitat, flower rich grassland margins in zone C as well as the enhancement of retained habitat, the creation of log piles, and the planting of native hedgerows, which would provide invertebrate habitat and nesting opportunities for breeding birds. A full list of the mitigation measures proposed can be found in Table 9.1 of ES Appendix 2.1 (Register of Mitigation, Enhancement and Monitoring Commitments) [[AS-036](#)] and are included in the Outline Ecological management Plan (OEMP) secured via Requirement 14 (LEMP) of the dDCO [[REP7-026](#)].
- 5.6.11. The Applicant has also provided a biodiversity net gain assessment which indicates there would be an overall net gain in biodiversity [[PDC-031](#)]. An Alternative AIL Access ES Addendum [[AS-035](#)] was submitted in support of the Applicant's material change request and considers the likely effects on ecology associated with Work no. 15.
- 5.6.12. Cumulative impacts are considered in ES Chapter 22 [[APP-071](#)] which is supported by ES Chapter 18 (Cumulative Effects Assessment Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of Inter-Related Effects) [[APP-080](#)], ES Chapter 32 (Summary of Cumulative Effects) [[APP-081](#)], ES Chapter 33 [[APP-082](#)] and the Applicant's CEA Addendum [[AS-007](#)]).
- 5.6.13. In summary, while it predicts no significant cumulative effects from operation or decommissioning of the proposed development, it does recognise the potential effect on invertebrates during construction. This would arise because of the proximity of other developments resulting in the loss of invertebrate habitat (particularly Tilbury 2 and the Lower Thames Crossing), and the potential time-lapse between habitat losses and the maturation of habitat creation measures intended to mitigate losses for these other developments.
- 5.6.14. As a result, additional mitigation for invertebrates has been proposed to address risks of temporary habitat losses occurring at the same time as construction effects from adjacent projects. The additional mitigation comprises the provision of habitat at the pre-commencement and construction phases and would be secured in the same manner as the mitigation outlined above.



## **Views of IPs**

- 5.6.15. NE raised concerns regarding the assessment of the SPA bird population and available habitat. These matters are discussed further in Chapter 6 of this Report.
- 5.6.16. However, in its SoCG [[REP7-036](#)], NE agreed that the scope and methodology of the surveys undertaken are appropriate and that the impacts on onshore ecology have been satisfactorily assessed. It also notes that licensing for displacement of water voles or relocation of water voles is typically routine. It also agreed that the OEMP sets out appropriate mitigation and management measures for onshore ecology.
- 5.6.17. TC notes, in its LIR, [[REP2-077](#)] that while the Proposed Development would result in some adverse impacts on ecological receptors, the mitigation proposed would allow for translocation and biodiversity net gain. Overall, it considers the proposal provides the necessary information to comply with NPS EN-1.
- 5.6.18. The EA noted in its RR [[RR-013](#)] that impacts on water voles and long term habitat had been addressed and that there would be a net gain in ditch habitat. This was confirmed in the SoCG between the Applicant and the EA [[REP6-016](#)].
- 5.6.19. PoTLL raised some initial concerns [[RR-023](#)] in relation to the cumulative ecological impact with Tilbury 2. It also noted in its Procedural Deadline D response [[PDD-007](#)] that it was difficult to verify the Applicant's claims in relation to net biodiversity gain.
- 5.6.20. As noted in Chapter 4 above, Ms Elaine Laver raised concerns in relation to the impact of the Proposed Development on geese. These were not expanded upon but appear to relate to land outside the Order Limits and which the Applicant confirmed was not impacted by the Proposed Development [[REP2-041](#)]. I have no reason to conclude otherwise.

## **Examination**

- 5.6.21. In response to ExQ1, the Applicant provided further details on the biodiversity metric 2.0 spreadsheet [[REP2-048](#)] and noted that the proposed mitigation for water voles had been updated to include improvements to retained boundary ditches around Zone A.
- 5.6.22. Discussion between NE and the Applicant continued throughout the Examination. Agreement was reached on all outstanding matters in relation to onshore ecology, including NE's acknowledgement that no significant cumulative effects are likely to occur [[REP7-036](#)].
- 5.6.23. At the close of the Examination there were no significant outstanding matters that remained unresolved in relation to onshore ecology.

## **Conclusions on Onshore Ecology**

- 5.6.24. Given the evidence presented, I consider that ecological and nature conservation issues have been adequately assessed, that the Proposed Development would result in biodiversity net gain and that Requirement 14 (LEMP) of the dDCO would help ensure that significant harm to biodiversity would be avoided. As such, I am satisfied the requirements of NPS EN-1 are met.

## **5.7. MARINE ENVIRONMENT**

- 5.7.1. The Proposed Development includes the construction and operation of a causeway and associated works in the tidal Thames Estuary and, as such, has potential for effects on the marine environment, including on the physical estuary processes and their effects on water quality and marine ecology.
- 5.7.2. The dDCO also makes provision (in Article 35) for a marine licence to be deemed to have been issued in accordance with the detailed licence set out at Schedule 8 (See also Chapter 9 below).
- 5.7.3. As noted in Section 5.6 above, HRA matters are considered in Chapter 6 of this Report.

### **Policy Considerations**

- 5.7.4. The policy considerations set out in paragraphs 5.5.1 to 5.5.3 above also apply to the marine environment.
- 5.7.5. Furthermore, NPS EN-1 also recognises that the construction of an onshore energy project on the coast may involve dredging, dredge spoil deposition and marine landing facility construction which would result in direct effects to the coastline and marine ecology and biodiversity.
- 5.7.6. Paragraph 5.5.8 advises that for any projects involving dredging or disposal into the sea, the Applicant should consult the MMO at an early stage.

### **Applicant's Approach**

- 5.7.7. ES Chapter 17 (Marine Environment) [[PDC-019](#)] sets out the Applicant's assessment of the Marine Environment and considers the effects of the Proposed Development on intertidal and maritime ecological receptors during construction, operation and decommissioning.
- 5.7.8. It is supported by ES Appendices 17.1 (Phase 1 Intertidal Survey Report and Benthic Ecology Desktop Review) [[APP-119](#)], 17.2 (Hydrodynamic Modelling and Sediment Assessment) [[APP-120](#)], 17.3 (WFD Assessment) [[PDC-027](#)], and 17.4 (Third Party Survey Reports) [[APP-122](#)].
- 5.7.9. The dDCO [[REP7-012](#)] includes a power to dredge (Article 37) for the purposes of constructing and operating the Proposed Development. Article 5(3) makes clear that this does not extend to maintenance

dredging. The ES indicates that around 16,100m<sup>3</sup> of material would be removed in total; around 13,000m<sup>3</sup> of which would be removed by Water Injection Dredging. Initial sediment sampling has been undertaken and the MMO confirmed in its WR [[REP2-085](#)] that the material would likely be suitable for Water Injection Dredging and/ or disposal at sea. Further sediment sampling is also included in Condition 14 of the DML.

- 5.7.10. Having considered the potential environmental effects, including dredging and sediment deposition, and options for mitigation and monitoring, the Applicant concludes that other than long term/permanent habitat loss which would result from the causeway footprint, no significant effects would arise.
- 5.7.11. In the case of the causeway footprint, the maximum footprint is predicted to be around 5,380m<sup>2</sup>, with approximately 610m<sup>2</sup> affecting saltmarsh habitats and approximately 4,700m<sup>2</sup> within the intertidal mudflat. The Applicant acknowledges that the loss these habitats beneath the footprint of the causeway would result in significant effects, albeit that it considers this would be at a very local level.
- 5.7.12. Cumulative impacts are considered in ES Chapter 30. Again this is supported by ES Chapter 18 (Cumulative Effects Assessment Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of Inter-Related Effects) [[APP-080](#)], ES Chapter 32 (Summary of Cumulative Effects) [[APP-081](#)], ES Chapter 33 [[APP-082](#)] and the Applicant's CEA Addendum [[AS-007](#)]).
- 5.7.13. In summary, having identified the Tilbury 2 development as the only one with potential for cumulative effects with the Proposed Development, the ES concludes that there would be no significant cumulative effects on the marine environment as a result.

### **Views of IPs**

- 5.7.14. The EA does not agree that the total loss of inter-tidal area including the dredge pocket represents an insignificant effect. Whilst in terms of the size of the Thames it is small, at the local level, it considers it represents a significant change for this immediate environment. In its WR [[REP2-081](#)] it recommended that the Applicant investigate stretches of the Essex Coastline for suitable areas to provide compensation but recognised that there is considerable difficulty in providing such.
- 5.7.15. The MMO made a number of comments in their RR [[RR-014](#)] and throughout the Examination including seeking clarification of dredging figures, how fish and marine mammals had been assessed and raised concerns in relation to the impacts of sediment deposition and its timing. They also made a number of useful comments and suggestions on the drafting of the dDCO including in respect of the DML.
- 5.7.16. At the close of the Examination, while the Applicant had not agreed a SoCG with the MMO, there were no material issues outstanding between those parties in relation to the effect of the Proposed Development on the marine environment.

## **Examination**

- 5.7.17. During the Examination, I asked a number of questions including on how maintenance dredging would be controlled, the maximum design parameters used in the ES for the causeway and berthing pocket and asked the Applicant to provide a full assessment on fish receptors where significant effects are likely to occur.
- 5.7.18. In response, the Applicant confirmed that authority for maintenance dredging was not contained in the dDCO and provided clarification on the maximum design parameters, updating the dDCO accordingly. It also provided further justification for its approach to the assessment of fish receptors noting that all impacts assessed in Chapter 17 were found to have either negligible or minor effects on marine mammals and fish receptors and, as such, no further mitigation was necessary.
- 5.7.19. I accept the Applicant's assessment of the effects of the Proposed Development on intertidal and maritime ecological receptors. I also note that the Applicant accepts that the loss of these habitats beneath the footprint of the causeway would result in significant effects. However, I agree that this would be at a very local level and while I accept there would be some harm, I consider it would not be of such a magnitude that it would indicate any likelihood of significant effects being experienced more widely. Nevertheless, it does weigh against the proposal and represents further harm to be weighed in the overall planning balance. I consider this matter further in Chapter 7 below.
- 5.7.20. I also asked the MMO, EA, NE and the Applicant to work together to provide suitable draft wording for the further requirements and/ or for additional/ modified conditions in the DML to address the various matters of concern.
- 5.7.21. Discussions continued throughout the Examination and a DML was agreed which contains a number of conditions to regulate the interaction of the proposed causeway with the marine environment. This is secured in Article 35 and Schedule 8 of the dDCO [[REP7-012](#)].

## **Conclusions on Marine Environment**

- 5.7.22. The ES provides an adequate assessment of the effects of the Proposed Development on the marine environment including in terms of dredging, sediment deposition and marine ecology. Early and ongoing discussion between the Applicant and the MMO has resulted in a detailed DML which will help ensure that any effects to the marine environment are suitably managed and mitigated.
- 5.7.23. Overall, I am satisfied that the Applicant has provided sufficient information to meet the requirements of NPS EN-1.

## **5.8. NOISE AND VIBRATION**

### **Policy Considerations**

- 5.8.1. NPS EN-1 notes that excessive noise and vibration can result in adverse effects on a range of receptors including impacts on the quality of human life, health, wildlife and biodiversity. Furthermore, it states that development consent should not be granted unless significant adverse noise impacts on health and quality of life are avoided and other adverse impacts are mitigated and minimised<sup>37</sup>. It also advises that the SoS should be satisfied that, where possible, proposals contribute to improvements to health and quality of life through the effective management and control of noise.
- 5.8.2. Where impacts are likely to arise, paragraph 5.11.4 of NPS EN-1 sets out the matters that an applicant should include in the noise assessment, recognising that the nature and extent should be proportionate to the likely noise impact. It also advises that operational noise, with respect to human receptors, should be assessed using the principles of relevant British Standards (BS).
- 5.8.3. NPS EN-2 sets out the specific noise considerations that apply to fossil fuel generating stations and identifies potential sources of noise and vibration. It also requires a noise assessment as described in NPS EN-1 to be included as part of the ES. Furthermore, it advises that in making a decision, the SoS should be satisfied that noise will be adequately mitigated through requirements attached to the DCO. Both NPS EN-1 and NPS EN-2 note that the primary mitigation for noise is through good design.
- 5.8.4. As noted in Chapter 3 above, the NPSE seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. It provides guidance on defining 'significant adverse effects' and 'adverse effects' by reference to the NOEL, LOAEL and SOAEL (further details on these can be found at paragraphs 3.6.25 to 3.6.27 above).
- 5.8.5. The NPPF and PPG provide further advice on noise in planning. I have had regard to this in my consideration of this topic.

### **Applicant's Approach**

- 5.8.6. ES Chapter 11 [[APP-060](#)] sets out the Applicant's approach to noise, vibration and dust. It is supported by Appendix 11.1 (Baseline Sound monitoring report) [[APP-096](#)], Appendix 11.2 (BS4142:2014 statement on competence) [[APP-097](#)], Appendix 11.3 (Construction Noise Assessment Methodology and Results) [[APP-098](#)] and Appendix 11.4 (Operational Noise Assessment Methodology and Results) [[APP-099](#)].

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<sup>37</sup> Paragraph 5.11.9

- 5.8.7. Together they set out baseline conditions, identify the study area, significance criteria and key NSR's and assess the likely significance of effect. They take into account relevant guidance including BS 5228:2009 (A1:2014), and BS 4142:2014+A1:2019 as well as ISO 9613-2:1996.
- 5.8.8. ES Appendix 11.3 [APP-098] considers construction noise impacts. It notes that during construction, predicted noise levels at the most affected NSRs during all construction activities will remain below the lower cut off values set out in BS5228:2009+A1:2014. Overall, the ES concludes that construction noise is likely to have a negligible or minor adverse effect equivalent to noise levels below the LOAEL.
- 5.8.9. Likewise, in terms of noise from construction traffic, it concludes that significant effects are not likely to occur and that the impact of noise from construction traffic associated with the Proposed Development would be below the LOAEL.
- 5.8.10. Nevertheless, the Applicant proposes a number of designed-in measures which are intended to reduce noise levels and keep them within acceptable levels. These are set out in ES Chapter 11, Table 2.11 and include the use of Best Practicable Means (BPM), additional noise management measures for specific construction activities included in the OCoCP and limiting construction working hours. Full details can be found in Appendix 2.1 (Register of mitigation, enhancement and monitoring commitments) [AS-036] and are secured in Requirement 5 (CoCP) and Requirement 9 (Construction hours) of the dDCO.
- 5.8.11. Turning then to operation and maintenance, ES Appendix 11.4 (Operational Noise Assessment Methodology and results [APP-099] recognises that absolute sound levels will exceed WHO guidelines at a number of NSR's. However, the Applicant notes:
- "... the specific sound level is significantly below the existing ambient noise level during the day and will not contribute to or cause any change to ambient noise levels".*
- (Source: ES Appendix 11.4, paragraph 2.2.14)*
- 5.8.12. As a result, the Applicant considers that it is unlikely to cause, or significantly contribute to, any exceedance of the World Health Organisation (WHO) criterion. Furthermore, the Applicant notes that where the combined sound level does exceed the WHO threshold level, it already does so before the specific sound is added. As a result, the Applicant contends that the site will not result in adverse effects to amenity during the daytime".
- 5.8.13. Table 2.4 also shows the ambient noise level change attributable to the Proposed Development when operational. It shows that while at most NSR's the change in sound level would be below +3dB, night time levels at 2 NSRs would experience a change of +3dB (Havers Lodge and Gun Hill Farm) while a further two would experience an increase of +4dB (Buckland and St James' Church).

5.8.14. However, the Applicant points out that:

*"For a steady sound source with no discernible impulsive or tonal characteristics, a 3 dB change is generally taken as the minimum change which is perceptible to most people. As such, an increase above baseline residual sound levels of 4 dB, as presented in Table 2.4, is likely to be just noticeable. Noise changes during other time periods are all below this threshold of perception".*

*(Source: ES Appendix 11.4, paragraph 2.2.13)*

5.8.15. The ES also recognises that threshold level for the onset of sleep disturbance during the night time would also be exceeded at all receptors. However, the Applicant points out that the baseline residual sound level already exceeds the WHO level at the majority of receptors, including Havers Lodge/Condoverters where the change in sound level is at the threshold of perception.

5.8.16. As a result, the Applicant considers that while WHO guideline levels may be exceeded, the additional impact from the operation of the Proposed Development during the night on any sleep disturbance will be minimal and that the effects during operation would not be significant. As such, the Applicant does not consider further mitigation or noise management measures are necessary to the designed in-measures secured in Requirement 5 (CoCP).

5.8.17. The Alternative AIL Access ES Addendum [[AS-035](#)] considers the likely effects on construction noise and vibration associated with Work no. 15. It concludes that in view of the low number of AIL deliveries proposed and the distance between the proposed route and the closest receptors, the movement of AILs would not make any meaningful contribution to construction noise levels.

5.8.18. Cumulative and interrelated effects are discussed in ES Chapter 24 (CEA: Noise and Vibration) [[APP-073](#)], which is itself supported by ES Chapter 18 (CEA Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of inter-related effects) [[REP2-026](#)], ES Chapter 32 (Summary of Cumulative Effects) [[REP2-028](#)], ES Chapter 33 (Summary of Residual Effects) [[PDC-023](#)] and the Applicant's CEA Addendum [[AS-007](#)]).

5.8.19. Essentially, while the Applicant recognises there is potential for there to be significant adverse cumulative effects when considered with the Tilbury 2 development and the LTC project, it contends that the effect is not attributable to the Proposed Development but rather the other schemes and that the Proposed Development would not make any meaningful contribution to noise levels or the cumulative effect. As a result, it concludes that no further mitigation or management is necessary.

## Views of IPs

- 5.8.20. One local resident, Ms Elaine Laver, questioned the baseline noise assessment querying whether construction work between the former Bata Shoe Factory and East Tilbury Railway line may have affected baseline noise monitoring carried out by the Applicant [[RR-008](#)].
- 5.8.21. Condozers raised concerns in its RR [[RR-002](#)] in relation to the noise impacts of the Proposed Development during construction on the users of their site. These were expanded on in its WR [[REP2-079](#)] where it noted that while the OCoCP contains certain controls in relation to noise levels during construction, some techniques were still to be determined. Overall, it considered the documentation supplied by the Applicant was too vague to ensure adequate protection is provided to Condozers.
- 5.8.22. It proposed a number of additional mitigation measures including restrictions on road construction and minimisation of nearby HGV traffic movements during Condozers peak activity months of May to August, limiting use of Link 11 where it coincides with work on the LTC and monitoring of the restriction on construction times as well as measures for limiting dust during construction. It also sought a restriction on use of the Proposed Development between the hours of 23:00 and 07:00 between May and August to prevent sleep disturbance to those using the Condozers Site.
- 5.8.23. TC noted, in its LIR [[REP2-077](#)] that, subject to mitigation measures being implemented, it did not consider the Proposed Development would lead to any significant adverse effects on sensitive receptors in relation to noise and vibration.
- 5.8.24. Gravesham Borough Council noted there was potential for noise and disturbance impacts on residents during construction. However, in its SoCG [[REP6-015](#)] it confirmed that it had no significant concerns in relation to the potential for noise and disturbance to Gravesham residents, subject to the implementation of noise mitigation and monitoring during construction and operation as required by Requirement 9 (Construction hours) and Requirement 16 (Operational noise) of the dDCO.

## Examination

- 5.8.25. In ExQ1 [[PD-010](#)], I sought TC's views on the methodology and conclusions set out in the ES and sought clarification on the sensitivity and classification of certain receptors. I also queried where the restriction on continuous activities during construction (see paragraph 1.3.3. of ES Appendix 11.3) to 10 days per phase was secured in the dDCO. This was subsequently added to Table 11.1 of the ES Appendix 2.1 (Register of Mitigation, Enhancement and Monitoring Commitments).
- 5.8.26. In response to my query on the classification of residential receptors as medium sensitivity the Applicant explained that this was based on the average population having high recoverability to short term and intermittent noise effects. The Applicant also explained that their



classification as medium sensitivity had been consulted on at the PEIR stage and no comment was raised. It also noted that similar approaches have been taken in other DCO applications.

- 5.8.27. Responding to Ms Lavers concerns, the Applicant explained that the baseline sound environment at monitoring locations LT2, LT3 and LT7 was dominated by sound from EMR Metal Recycling and at LT2 by HGV traffic. It points out that any construction noise from beyond the more distant Bata Shoe site was not audible at the survey locations and did not affect the monitored baseline. No further comments were received, and this matter was not pursued further.
- 5.8.28. In response to the concerns raised by Condovers, the Applicant [[REP3-014](#)] points out that no significant adverse effects are predicted during construction or operation at Condovers. The Applicant resisted including the suggested additional mitigation in the dDCO explaining it considers doing so would severely hinder construction works and would prolong the duration of the construction programme with associated extended impacts on all receptors.
- 5.8.29. With regard to construction impacts, the Applicant notes that mitigation and monitoring measures are provided through the OCoCP and OCTMP. These documents are subject to approval in the detail by the local planning authority prior to commencement of construction works, under Requirements 5 (CoCP) and 6 (CTMP) of the dDCO and provide for adequate mitigation of impacts. Construction working hours and noise levels are already controlled under Requirement 9 (Construction hours).
- 5.8.30. With regard to operational noise impacts and operating hours, the Applicant points out that Requirement 16 (Operational noise) of the dDCO already provides controls and monitoring of night-time noise levels and Requirement 21 (Operational hours) provides a limit on annual operating hours.
- 5.8.31. In view of the limited change in ambient night time noise levels at Condovers (ie. +3dB), and taking into account the context of existing night time levels, I accept that any change would be unlikely to cause any additional sleep disturbance at nearby NSRs.
- 5.8.32. Overall, while I acknowledge there is likely to be some impact during construction, it will be limited in duration. Consequently, I find that, in view of the limited adverse effects predicted, there is no justification for imposing the additional mitigation measures suggested by Condovers.

### **Conclusions on Noise and Vibration**

- 5.8.33. Based on the evidence before me, I consider the Applicant's assessment of the noise and vibration impacts likely to arise from the construction, operation and decommissioning of the Proposed Development meets the requirements of NPS EN-1 and NPS EN-2.
- 5.8.34. Furthermore, I am satisfied that the noise resulting from the construction, operation and decommissioning of the Proposed

Development would remain below the significance thresholds as set out in the NPSE and NPPF. While I accept there would be some exceedances in relation to WHO thresholds, I agree that these are already high and the Proposed Development is unlikely to increase the overall effect to any material extent.

- 5.8.35. The inclusion in the dDCO of Requirement 5 (CoCP), Requirement 6 (CTMP), Requirement 9 (Construction hours), Requirement 16 (Operational noise) and Requirement 21 (Operational hours) provide sufficient safeguards to ensure that the adverse impacts resulting from the Proposed Development would be minimised.
- 5.8.36. Accordingly, I conclude that the application accords with the Government's policy on noise and vibration as set out in NPS EN-1, EN-2, the NPSE and NPPF.

## **5.9. CULTURAL HERITAGE**

### **Policy Considerations**

- 5.9.1. There are no designated heritage assets within the Site and no direct physical impacts to any designated heritage assets have been identified. However, the site lies in a highly sensitive area for the historic environment, situated on the former grazing marsh of the River Thames and within the setting of a number of highly valued heritage assets. These include Tilbury Fort, Coalhouse Fort, Tavern Fort, the anti-aircraft batteries at Bowaters Farm and East Tilbury, the earthworks near the Grade II Listed St James church, the Church itself and the Gravesend blockhouse.
- 5.9.2. The Infrastructure Planning Decisions Regulations 2010 require the decision maker to have regard to the desirability of preserving, amongst other things, the setting of a listed building or scheduled monument.
- 5.9.3. Section 5.8 of NPS EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the designated heritage assets and the historic environment. In addition, paragraph 5.8.6 indicates the SoS should also consider the impacts on non-designated heritage assets that have a heritage significance that merits consideration, even though those assets are of lesser value than designated heritage assets.
- 5.9.4. Paragraphs 5.8.8 to 5.8.10 of NPS EN-1 require the Applicant to fully assess the significance of the heritage assets affected by the Proposed Development and ensure that the extent of the impact can be adequately understood from the application and supporting documents. The level of detail required should be *proportionate* to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on the significance of the asset. Where proposed development will affect the setting of a heritage asset, representative visualisations may be necessary to explain the impact.

- 5.9.5. Where a development site includes, or the available evidence suggests it has the potential to include, heritage assets with an archaeological interest, paragraph 5.5.9 makes clear that an applicant should carry out a desk-based assessment and, where such an assessment is insufficient to properly assess the interest, a field evaluation.
- 5.9.6. In terms of decision-making, NPS EN-1<sup>38</sup> advises that in considering the impact of a proposed development on any heritage assets, account should be taken of the particular nature of the significance of the heritage assets and the value that they hold for this and future generations.
- 5.9.7. In determining the application, the SoS should take into account the desirability of sustaining and, where appropriate enhancing, the significance of the heritage assets, the contribution to their settings and the positive contribution they can make to sustainable communities and economic viability. Account should also be taken of the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment.
- 5.9.8. There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be.
- 5.9.9. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss. When considering proposals, the SoS should take into account the relative significance of the element affected and its contribution to the significance of the asset as a whole.
- 5.9.10. When considering applications for development affecting the setting of a designated heritage asset, the SoS should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.
- 5.9.11. Similar advice can be found in the NPPF and TCS Policies.
- 5.9.12. In terms of the marine historic environment, the MPS indicates that heritage assets should be conserved through marine planning in a manner appropriate and proportionate to their significance.
- 5.9.13. Designated heritage assets in coastal/intertidal zones and inshore/offshore waters may include Scheduled Monuments, Protected Wreck Sites and sites designated under the protection of Military Remains Act 1986. Non-designated heritage assets of equivalent status should be considered under the same policy principles as designated

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<sup>38</sup> Paragraph 5.8.12

heritage assets. Where the loss of the whole or material part of a heritage asset's significance is justified, suitable mitigation measures should be in place. Requirements should be based on advice from relevant regulators and advisors.

### **Applicant's Approach**

- 5.9.14. ES Chapter 7 (Historic Environment) [[APP-056](#)] sets out the Applicant's assessment of the effects of the Proposed Development on the historic environment. It includes details of the assessment methodology adopted, the significance criteria and the criteria for determining the magnitude of impact as well as the significance of effect. It also provides details of the extent of the study area<sup>39</sup> (section 2.4) and identifies the designated heritage assets within it.
- 5.9.15. It is supported by Appendix 7.1 (Historic Environment Desk Based Assessment) [[APP-086](#)] and Appendix 7.2 (Geoarchaeological Deposit Model Report) [[APP-087](#)], which provide a description of the historic environment baseline and set the site in its wider geoarchaeological context.
- 5.9.16. While it indicates no recorded assets within the main development site itself, it notes that there are a number of recorded archaeological asset discoveries in the surrounding area including prehistoric, Roman, Medieval, Post Medieval, and WWII, some within close proximity to the Order Limits. It also notes that there is potential for the Proposed Development to adversely impact on the setting of a number of designated heritage assets.
- 5.9.17. Further information on the statutory and non-statutory sites or features of the historic environment within a 15 km radius can be found in the Historic or Scheduled Monument Sites Plan [[REP7-009](#)].
- 5.9.18. At Procedural Deadline C, the Applicant also provided an updated baseline and significant effect report [[PDC-014](#)] and Historic Environment Settings Analysis [[PDC-013](#)] as well as additional representative viewpoints, character and photowireline and photomontage figures [[PDC-046](#)].
- 5.9.19. The Alternative AIL Access ES Addendum [[AS-035](#)] considers the likely effects on the historic environment associated with Work no. 15. It notes that there may be impacts to the setting of Tilbury Fort during the construction phase but that these effects are temporary and reversible. It also notes that given the previous ground disturbance in the area there are not expected to be any impacts to below ground archaeological deposits.

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<sup>39</sup> 3 km from the centre of Zone A in order to ascertain archaeological potential within the site as a whole; and 5 km from the centre of Zone A in relation to impacts to the settings of relevant designated assets (paragraph 2.4.2 and 2.4.2 ES Chapter 7 [[APP-056](#)]).

5.9.20. I have taken all of these documents into account.

#### *Archaeology*

5.9.21. A geophysical survey was carried out to identify below ground archaeological features. Further borehole investigations were then carried out and a geoarchaeological deposit model developed (ES Appendix 7.2 (Geoarchaeological Deposit Model Report) [[APP-087](#)]). At Procedural Deadline C further information was received [[PDC-014](#)] which included preliminary results of the geophysical survey carried out on the remaining areas within the Order Limits. Taken together, the geophysical survey results identify a number of potential archaeological features.

5.9.22. The Applicant recognises that there is evidence of prehistorical and Romano-British activity in terms of landscape reclamation and management (drainage channels) and potential for possible industrial activity (salt production) as well as anti-glider ditches from WWII. It also recognises there is some potential for additional Paleolithic and Mesolithic material and some, albeit small, potential for archaeological assets in the intertidal zone affected by the construction of the causeway.

5.9.23. Furthermore, it recognises that while none of the remains are considered to be of schedulable quality, some, if found, would be likely to be of medium-high, regional-national importance (paragraph 4.1.11, ES Chapter 7 [[APP-056](#)]). It also recognises that where buried archaeology is present, the physical impacts will be of a major magnitude and would be likely to involve their destruction. These impacts would be permanent and non-reversible.

5.9.24. However, the Applicant considers that these can be safeguarded by the submission and approval of written schemes of archaeological investigation (WSI) which provide for further investigation pre-construction, avoidance by design and monitoring during earthworks, which it considers would provide sufficient mitigation and reduce the residual effect to minor adverse.

5.9.25. A WSI for terrestrial archaeological investigation is secured by Requirement 13 (Archaeology) of the dDCO while a WSI for marine archaeological investigation is provided for under Condition 15 of the DML included at Schedule 8 of the dDCO. Both the terrestrial and marine WSIs must be substantially in accordance with the OWSIs submitted with the application [[REP2-039](#) and [REP4-018](#)].

#### *Setting*

5.9.26. In terms of setting, this is considered further in the Historic Environment Settings Analysis [[PDC-013](#)] which provides a specific and more detailed assessment of the visual impact of the Proposed Development on the settings of designated heritage assets. While the Applicant recognises that there would be a minor to moderate adverse effect of Tilbury Fort, given the wide ranging existing built and industrial landscape, it considers the changes to the setting of this scheduled monument due to the proposed development would be limited.

5.9.27. Moderate adverse effects on the setting of the West Tilbury Conservation Area are also predicted, which are considered to be significant. Again, the Applicant considers that given the existing industrialisation of the conservation area's setting, only a slight reduction to the setting's contributions to the assets' importance is predicted but the significance of effect acknowledges the medium to high sensitivity of this asset.

*Alternative AIL Access*

5.9.28. The Alternative AIL Access ES Addendum [[AS-035](#)] considers the additional impacts on the historic environment which would result from the Alternative AIL Access route. It recognises that there would be some impacts to the setting of Tilbury Fort from noise and vehicle movements, however, notes that these effects are temporary and reversible.

5.9.29. Furthermore, it notes that in view of the previous ground disturbance in the area there is not expected to be any impacts to below ground archaeological deposits. Where impacts may occur to previously undisturbed archaeological remains, these will be mitigated through a programme of archaeological works as set out in the OWSI. Overall, the Applicant considers the proposed Alternative AIL Access would not change the assessment of effects on the historic environment as set out in Chapter 7 of the ES.

*Cumulative effects*

5.9.30. Cumulative effects are considered in ES Chapter 20 (CEA: Historic Environment) [[APP-069](#)]. This is supported by ES Chapter 18 (CEA: Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of Inter-related effects) [[REP2-026](#)], ES Chapter 32 (Summary of Cumulative Effects) [[REP2-028](#)], ES Chapter 33 (Summary of Residual Effects) [[PDC-023](#)] and the Applicant's CEA Addendum [[AS-007](#)].

5.9.31. In summary, having considered the cumulative effects of the Proposed Development with other planned developments in the surrounding area, it concludes that there would be no material contribution from the Proposed Development to cumulative adverse effects on the historic environment.

**Views of IPs**

HE raised a number of concerns throughout the Examination, a number of which were resolved to their satisfaction. Full details of all of HE's representations can be found in Table 2 below together with the Applicant's responses.

**Table 2: HE representations and Applicant's responses**

<b>Document</b>	<b>EL Reference</b>
HE Relevant Representation	<a href="#">RR-012</a>
HE Written Representation	<a href="#">PDD-004</a>

Document	EL Reference
HE Responses to ExQ1	<a href="#">REP2-084</a>
HE D3 Submission	<a href="#">REP3-021</a>
HE D4 Submission	<a href="#">REP4-026</a>
HE D5 submission	<a href="#">REP5-024</a>
HE WR on Alternative AIL Access	<a href="#">REP5A-005</a>
Applicant's comments on HE D2 submission	<a href="#">REP3-008</a>
Applicants Written Summary of Oral Submissions for ISH2 (cultural heritage)	<a href="#">REP4-021</a>
Applicant's comments on HE D4 submission	<a href="#">REP5-015</a>
Statement of Common Ground between the Applicant and HE	<a href="#">REP6-017</a>

- 5.9.32. In summary, HE expresses serious concerns about the assessment of the significance of below ground archaeological remains and objects to the Applicant's proposed approach of carrying out further intrusive investigations post consent. Instead, it maintains that trail trench investigations should already have been carried out and form part of the Applicant's assessment of below ground archaeological deposits. It does not consider there is an adequate understanding of the potential impact on below ground archaeological deposits, their extent or significance for the effect of the Proposed Development to be assessed and for the balance to be weighted proportionally.
- 5.9.33. It also raises concerns in relation to the setting of designated heritage assets, namely St James Church, the Scheduled Monument known as 'earthworks near church' and the WWII anti-aircraft battery at Bowaters Farm. Moreover, it objects to the loss of Walton Common as a feature of the historic landscape and raises further concerns in relation to the potential cumulative effect of the Proposed Development with other planned developments.
- 5.9.34. Similar concerns were raised by TC, in its LIR [[REP2-077](#)] both with the impact on below ground archaeological deposits as well as on the setting of designated heritage assets. Discussions between the parties continued and TC confirmed in its SoCG with the Applicant [[REP7-038](#)] that it is satisfied that, following the submission of further information at Procedural Deadline C, the ES now provides an adequate assessment of above ground impacts on the setting of heritage asserts. Overall, it considers that less than substantial harm would result.

5.9.35. Nevertheless, it maintains its position in relation to below ground archaeological deposits contending that the assessment is inadequate and that trial trench evaluation should be undertaken before any consent is granted.

### **Examination**

5.9.36. In ExQ1 [[PD-010](#)], I sought further information on the Applicant's approach to the setting of heritage assets, the mitigation proposed, invited comments on the wording of the OWSIs and sought further information on the Applicant's suggested post-consent approach to intrusive archaeological site investigation. I also asked the Applicant to provide further photowireline and photomontage images for a number of key viewpoints.

5.9.37. These matters were explored further in ISH2 where both HE and TC confirmed that the OWSI had been agreed and provided sufficient safeguards in the event that consent was granted. However, both HE and TC maintained their overall objection to the proposed approach arguing that trial trenching should already have been carried out.

5.9.38. HE also continued to object to the Applicant's assessment of the setting of heritage assets arguing the assessment of significance had been underplayed.

5.9.39. At ExQ2 [[PD-015](#)], I sought clarification from HE on a number of matters to ensure I had a full understanding of its concerns.

5.9.40. Discussions continued between the Applicant, HE and TC throughout the Examination and signed SoCGs were submitted at D6 [[REP6-017](#)] and D7 [[REP7-038](#)] which set out the parties' respective positions on cultural heritage matters at the close of the Examination. My findings on these are set out below.

### *Findings on Archaeology*

5.9.41. The central issue in dispute between the Applicant, HE and TC in respect of archaeology is whether the instructive surveys in the form of trial trenching should be addressed pre-consent or post-consent.

5.9.42. The Applicant agrees that the main development site has the potential to negatively impact on archaeology, being the main area of construction and the one requiring deep foundations and piling. It also recognises that the pipeline route will also impact on known potentially significant archaeological deposits as identified by work undertaken as part of the LTC project. However, while it accepts that trial trenching is necessary, it argues that to do so at this stage would be disproportionate in view of the potential value of assets and that the OWSI for terrestrial archaeology secures both the trial trenching and any required mitigation which may arise as a result.



- 5.9.43. HE disagree, expressing concern that if archaeological deposits are discovered, and in situ preservation becomes necessary, it might result in the loss or damage to important or irreplaceable archaeological assets.
- 5.9.44. I accept that the importance of what lies below the ground cannot at this stage be known with certainty from the investigations that has been carried out to date. However, I also acknowledge that the Applicant's geophysical survey and geoarchaeological deposit model provide important information and demonstrate a good understanding of the site's archaeological potential.
- 5.9.45. While further information on trial trenching would be useful, I accept that there is nothing which would indicate significant potential for discoveries of either national or international importance and I do not consider this is necessary to adequately understand the potential impact of the proposal on the significance of these assets.
- 5.9.46. Furthermore, I am satisfied that the submission of WSIs for both terrestrial and marine archaeology go some way to ensuring safeguards are in place to protect the potential below ground archaeology in the event that it is discovered.
- 5.9.47. Nevertheless, I accept that there is potential that where buried archaeological remains are discovered, the Proposed Development would likely result in their total loss. However, I am satisfied that the likelihood of significant effects arising can be guarded against by means of the proposed WSI ensuring any actual harm would be less than substantial.

*Findings on the setting of designated heritage assets.*

- 5.9.48. The unresolved matters between the Applicant and HE in relation to the impact of the Proposed Development on the setting of heritage assets are set out in the relevant SoCG [[REP6-017](#)].
- 5.9.49. In summary, for the 'earthworks near church' and the GII Listed Church of St James, HE believes their significance draws much from their setting, both of which are located in similar prominent locations, with wide views across Tilbury Marshes. It believes the development would significantly erode part of the setting and compromise the appreciation of both these designated heritage assets on a key sight line towards Tilbury Fort.
- 5.9.50. The Applicant points out that the Proposed Development site occupies only a small fraction of the overall visual envelope of these assets and one that already includes modern industrial development, transport infrastructure and other features relating to energy generation.
- 5.9.51. Furthermore, the Applicant disputes that the development site forms part of a key sightline looking southwest from the Church and Earthworks towards Tilbury Fort. It points to the additional photomontages provided at Procedural Deadline C [[PDC-013](#)]. Moreover, it notes that there are no views at present from the Bowaters Farm anti-aircraft battery as the monument is heavily overgrown and impenetrable. It considers this asset is, in any event, all about looking skyward and the Proposed

Development would only occupy only a small part of that panorama which already includes modern industrial development.

- 5.9.52. I visited the sites as part of my USI and ARI and was able to view them both up-close and from further away. While I concur with the Applicant that the Proposed Development does not interrupt the view from Tilbury Fort to the church and earthworks (or vice versa), the impact looking out from the sites themselves would be greater.
- 5.9.53. Nevertheless, I accept that these assets are experienced as part of a more intimate setting and do not appear related to the wider marshland or common. As a result, while there would be some visual impact, I agree that it would be seen within the existing industrial and commercial context and as such its effect on significance would be limited.
- 5.9.54. Likewise, in relation to Bowaters Farm, I accept that there would be some harm resulting from a change within the setting. However, this must be seen within the context of the neighbouring industrial and dockside development. On balance, I do not consider the Proposed Development would materially alter the manner in which this heritage asset is experienced.
- 5.9.55. I acknowledge that the assessment of setting and the impact on significance is a matter of professional judgement and that there will sometimes be differences in approach. However, all parties agree that, in NPS terms, neither the individual nor the totality of the harm to the settings of these assets would be substantial. I agree with that assessment.

*Findings on the historical significance of Walton Common*

- 5.9.56. In landscape terms, in view of the existing pylons and overhead power lines which appear prominent in the landscape, Walton Common itself makes a limited contribution to the overall character of the historic landscape. While I accept that it forms one of 5 interlinked commons on West Tilbury marshes, this is not readily apparent, and it is generally seen as an extension of the high density Tilbury Substation.
- 5.9.57. There is no substantive evidence which would indicate that Walton Common, as a separate landscape entity, predates the mid-19<sup>th</sup> Century. Likewise, there is no evidence which would demonstrate that it holds any particular significance over and above that of many other historic areas of common land. While I accept that it may provide evidence of a farming practice that developed during the medieval period, this practice is already well understood. No particular historic landscape character features have been identified, the loss of which would indicate any material harm to the historic landscape.
- 5.9.58. Overall, I am not persuaded its loss would result in any harm to the historic landscape character of this part of the Thames Estuary.

*Findings on Cumulative impacts*

- 5.9.59. HE's concerns in relation to cumulative impacts relate to the lack of visualisations to assess the cumulative impacts of the Proposed Development with Tilbury 2, LTC and LR projects.
- 5.9.60. I accept that the Applicant's position that it is not possible to present visualisations for the LTC and LR as both are currently being redesigned. Likewise, I acknowledge that the cumulative impacts of the Proposed Development with Tilbury 2 was assessed as part of the application. However, I agree with HE that further visualisations would be useful. Nevertheless, having viewed the site, its surrounding context and the viewpoints of most concern, I accept the Applicant's conclusions that the cumulative impact arising from the Proposed Development and Tilbury 2 on the historic environment would not be significant.
- 5.9.61. Overall, I consider the application has provided sufficient information to demonstrate that any cumulative effects attributable to the Proposed Development would be unlikely to make a significant contribution when taken with those other, considerably larger, projects.

### **Conclusions on Historic Environment**

- 5.9.62. Taking the above matters into account, I consider the Applicant has adequately assessed the significance of the heritage assets affected so that the extent of the likely impact can be understood. In my view, the application meets the requirements of NPS EN-1 in that regard.
- 5.9.63. However, I have found above that the Proposed Development would result in harm to archaeological remains, if present, but this would be mitigated by the proposed WSIs secured under Requirement 13 (Archaeology). I have also found that it would be harmful to the setting of designated heritage assets. In both cases, I consider there would be harm to the significance of these assets.
- 5.9.64. NPS EN-1 indicates that loss affecting any designated heritage asset should require clear and convincing justification and where there is any harm to the significance of a designated heritage asset, it should be weighed against the public benefit of development.
- 5.9.65. I consider this matter further in Chapter 7 below.

## **5.10. TRANSPORT AND TRAFFIC**

### **Policy Considerations**

- 5.10.1. NPS EN-1 recognises that new energy NSIPs can result in substantial impacts on the surrounding transport infrastructure. It identifies the traffic and transport effects that can arise from energy infrastructure developments and advises applicants to include a transport assessment using methodologies agreed with the relevant national and local highways and transportation authorities. It also indicates that the SoS should seek to ensure that the application has sought to mitigate impacts, including during the construction phase of the development.

5.10.2. NPS EN-2 advises that new fossil fuel generating stations need to be accessible and incorporate suitable access leading off from the main highway network. It encourages the multi-modal transport of materials and the locating of fossil fuel generating stations close to existing transport routes wherever possible.

**Applicant’s Approach**

5.10.3. ES Chapter 10 [APP-059] sets out the Applicant’s consideration of Transport and Traffic. It includes details on the assessment methodology, significance criteria and study area. It is supported by ES Appendix 10.1 (Transport Assessment) [APP-095] which focuses on the construction phase on the basis that it would generate the most HGV and staff vehicle movements. Together, these documents explain the primary and secondary access routes for construction traffic and their predicted impacts on the surrounding SRN.

5.10.4. As noted in the TA, the largest items of plant will be delivered via the River Thames and the proposed causeway (or any acceptable alternative identified as part of Requirement 18 (a matter to which I return below)).

5.10.5. From the causeway, AILs will be delivered to the site via the existing haul road running along the eastern side of the former Tilbury power station site. They would then proceed via one of two routes along private haul roads to the site. Only one of these routes would be taken forward.

5.10.6. The main construction access for HGV’s is shown in Figure 2 below. A secondary access point is proposed on Station Road (Link 11) which would only be used for construction traffic in exceptional circumstances – that is, in the event that the primary route was temporarily unavailable.

**Figure 2: Main Road Links**



- 5.10.7. Section 4 of ES Chapter 10 identifies the potential transport impacts resulting from all phases. Drawing on the data set out in Appendix 10.1 (Transport Assessment (TA)) it assigns all vehicles to all road links to ensure a robust assessment.
- 5.10.8. In summary, the TA predicts that around 80 HGV (two way daily movements) would occur throughout the construction period increasing to a maximum of 160 during peak construction. Staff movements would be relatively low with around 70 (peak) daily movements by car, 52 (peak) minibuses and 4 coaches being predicted.
- 5.10.9. While it acknowledges that there would be an increase in HGV traffic of greater than 30% on Link 11 (Coopers Shaw Road/Church Road/Station Road) it notes that this would be in respect of HGVs and not traffic increases as a whole. The Applicant also explains that the HGV exceedance is due to a low baseline and that this route would only be used as the primary construction access where the Fort Road access was temporarily unavailable.
- 5.10.10. The Applicant identifies built-in mitigation measures which include the identification of appropriate routes for HGVs, temporary reductions in speed limits at constrained junctions, nominated AIL access routes as well as the management of vehicle movements together with monitoring. They also include the submission of a CTMP and Construction Worker Travel Plan (CWTP), outlined versions of which have been included in the application [[REP6-006](#) and [REP6-007](#)]. These are included in ES Appendix 2.1 (Register of Mitigation, Enhancement and Monitoring Commitments [[AS-036](#)]) and are secured in Requirements 6 (CTMP) and Requirement 7 (CWTP) of the dDCO.
- 5.10.11. Overall, the assessment considers the effects on driver delay, severance, pedestrian delay, accidents and delivery of AILs and concludes that there would be no significant effects as a result of construction vehicle movements.
- 5.10.12. Cumulative effects are considered in ES Chapter 23 (CEA: Traffic and Transport) [[APP-072](#)] and the CEA Addendum [[AS-007](#)]. These are supported by ES Chapter 18 (CEA: Introduction and Screening) [[APP-067](#)], ES Chapter 31 (Summary of Inter-related effects) [[REP2-026](#)], ES Chapter 32 (Summary of Cumulative Effects) [[REP2-028](#)] and ES Chapter 33 (Summary of Residual Effects) [[PDC-023](#)].
- 5.10.13. In summary, having considered the cumulative effects of the Proposed Development with other planned developments in the surrounding area, it concludes that there would be no significant effects on Transport and Traffic.

### **Views of IPs**

- 5.10.14. HiE raised two specific points of concern in its RR [[RR-016](#)]. Firstly, the amount of additional vehicles needing to make the journey from the port to the application site over a prolonged period of time and secondly the

safety concerns at the Asda roundabout where multiple HGVs would be performing a U-turn manoeuvre.

- 5.10.15. While it acknowledged these concerns had been recognised in the draft CTMP, it did not consider they had been sufficiently explored. It also sought further information on a number of matters throughout the examination and was involved in ongoing discussions with the Applicant.
- 5.10.16. TC, in its LIR, confirmed that it had no objections in respect of traffic and transport matters and considered the overall impact would be neutral.
- 5.10.17. PoTLL raised a number of concerns in its RR [[RR-023](#)] and WR [[REP2-096](#)] in relation to the transport and traffic impacts. These include the robustness of predicted vehicle movements, baseline assessments, traffic modelling at the nearby 'Asda' roundabout, levels of shared transport provision, potential congestion within Tilbury 2, and potential interaction with the Tilbury 2 rail chord. It sought a greater role in the management of construction traffic as well as PPs for its benefit, including in relation to traffic movements within the Tilbury 2 site. It also raised concerns in relation to the delivery of AILs via the causeway.
- 5.10.18. As noted in paragraph 4.2.23 above, Royal Mail (RM) sought to limit any risk from the Proposed Development on its operations. Changes were subsequently made to the dDCO to name RM as a consultee on the final CTMP (Requirement 6) and to ensure that the Applicant would give RM no less than one month's notice of any proposed road closures, diversions or alternative access arrangements. This is included in the OCTMP [[REP6-006](#)]. RM confirmed in its SoCG with the Applicant [[REP4-010](#)] that these changes address its concerns.
- 5.10.19. As noted in paragraph 4.2.12 above, Network Rail (NR) raised some initial concerns regarding the impact of increased traffic on nearby level crossings and NR infrastructure. It also raised concerns around the siting of the access off Station Road. These matters were discussed further at ISH1 [[EV-013](#)] following which discussions continued between the Applicant and NR. NR confirmed at D8 that it had entered into an agreement with the Applicant and agreed modifications to Requirements 4 (Detailed design), 6 (CTMP) and 7 (CWTP) as well as PPs for the protection of its assets. As a result, it formally withdrew its objection [[REP8-006](#)].
- 5.10.20. TfL, in its RR, suggested that the Applicant should be made to comply with targets for minimising freight movements by road and to maximise alternatives. No particular targets were sought and no further representations were made during the examination.
- 5.10.21. Condozers raised concerns regarding the impact of additional traffic, particularly HGV traffic, along Church Road. It sought to minimise HGV traffic movements along Link 11 (Coopers Shaw Road/Church Road/Station Road) on Friday afternoons and Saturday mornings during Condozers peak activity months (May to Aug) and, where there was

cross over between Proposed Development and the LTC project, for construction traffic along Link 11 to be stopped entirely.

### **Examination**

- 5.10.22. In ExQ1, I asked a number of questions including what consideration had been given to the use of rail to transport materials to and from the site, how freight movements by road would be minimised and sought further details on how the maximum design scenario of 10% of construction worker journeys by car was secured. I also sought further information on the role envisaged for PoTLL in the CTMP, and sought confirmation on whether more recent information on the LTC and LR projects had impacted the assessments in the ES. I also sought confirmation from HiE on the assessment methodology used in the TA and its conclusions as well as further information on its concerns in relation to the 'Asda' roundabout.
- 5.10.23. In response, the Applicant explained that use of rail was not considered feasible, that the CTMP includes measures to reduce the number of movements by road and pointed out that most AILs would be delivered via the River Thames. It also drew attention to section 5.2 of the Outline Construction Worker Travel Plan (OCWTP) which sets a target of 10% for car drivers, and is secured by Requirement 7 of the dDCO.
- 5.10.24. The Applicant also confirmed that its CEA Addendum [[AS-007](#)] took account of the most recent information available on planned projects including LTC and LR.
- 5.10.25. At ISH1, I explored a number of areas further including impacts on the Asda roundabout, the Station Road access and proposed mitigation. HiE confirmed that the initial safety concerns regarding the use of the Asda roundabout had been addressed by changes to the OCTMP and that it had no outstanding issues in this respect.
- 5.10.26. RWE queried the mechanism for limiting Work no. 12 to either 12(c) or 12(d). This was followed up in ExQ2 and the Applicant included provisions in Article 19 and Requirement 4 (Detailed design) of the dDCO to ensure only one of the proposed routes could be created.
- 5.10.27. Discussion continued throughout the Examination between the Applicant and HiE and a SoCG [[REP7-033](#)] was submitted at D7 which confirmed that there were no unresolved matters between the Applicant and HiE at the close of the Examination. HiE confirmed it is content that the impact on the Asda roundabout could be suitably managed with the measures secured in the CTMP. I also note that HiE have a consultative role in the discharge by the local planning authority of Requirements 6, 7, and 18 of the dDCO.
- 5.10.28. PoTLL confirmed, at D2 [[REP2-096](#)], that it accepted the principle of 'normal' construction vehicles using the Tilbury 2 site. Discussion continued throughout the Examination and Requirements 6 and 7 include a consultative role for PoTLL in relation to both the CTMP and CWTP. In addition, the final version for OCTMP makes provision for the Applicant to

work with PoTLL to form specific construction traffic management measures in vehicles routing through Tilbury 2. It also makes provision for adequate liaison between the Applicant and PoTLL throughout the construction period including the co-ordination of HGV movements.

- 5.10.29. PPs are also included in Schedule 9, Part 8 of the dDCO in favour of PoTLL which provide further protections in respect of congestion and obstructions within the port.
- 5.10.30. In response to the concerns raised by Condoverters, the Applicant points out that Link 11 would only be used as a temporary option in the event of a route via Tilbury 2 being unavailable. This already provides for minimisation of traffic on this route including on Friday afternoons and Saturday mornings during May to August.
- 5.10.31. The Applicant also points out that details of construction traffic management would be provided through discharge of Requirement 6 (CTMP) and would include measures to minimise impacts on all receptors, including Condoverters, as far as possible. However, it considers the complete closure of a fallback access route during the specific circumstance in which that route might be needed (i.e. temporary unavailability of the primary route via Tilbury 2) would amount to preventing construction work from occurring and would be neither reasonable nor effective mitigation. I concur with that assessment and note that no significant effects are predicted along this route.
- 5.10.32. Overall, I accept the conclusions of ES Chapter 10 that no significant effects on the SRN nor road safety issues would arise from the proposed access or proposed routes for construction traffic. I am also satisfied that the application has sought to mitigate the impacts by way of the submission of a CTMP and CWTP.
- 5.10.33. A final, consolidated CTMP was submitted at D7 which takes account of all of the amendments made during the Examination. I am satisfied that this is sufficiently robust to ensure that the final CTMP will provide the necessary mitigation.
- 5.10.34. Accordingly, I find that the application meets the requirements of NPS EN-1 and NPS EN-2 in this respect.

### **AIL Access**

- 5.10.35. AIL Access routes were a matter of considerable discussion between the Applicant and various IPs throughout the Examination due to the retention of the causeway during the operational phase of the Proposed Development. There was a clear preference from the majority of IPs for the Applicant to explore alternatives to the proposed causeway and, where no acceptable alternative found, for the dDCO to contain a review mechanism to help identify one and facilitate its early decommissioning.
- 5.10.36. In response, the Applicant included Requirements 18 and 19 in the dDCO which provide for regular reviews of Alternative AIL access routes, and in the event that one is found, early decommissioning of the causeway.



Work no. 15 (together with the necessary CA powers in respect of it) were also added in order to help facilitate AIL access via the Port of Tilbury and provide an alternative to the delivery of AILs via the causeway.

- 5.10.37. I accept that AIL delivery via the causeway would help mitigate the impacts on the SRN during the construction phase of the Proposed Development. Furthermore, I acknowledge that the inclusion of the Alternative AIL Access route, coupled with Requirements 18 and 19 provides an adequate mechanism to facilitate the early removal of the causeway in the event that an acceptable alternative is found. I consider whether the Alternative AIL Access route provides such an acceptable alternative in Chapter 8 below.
- 5.10.38. However, for the purposes of this section, I am satisfied that AIL delivery via the causeway would not result in any significant environmental effects in relation to transport and traffic.

### **Conclusions on Traffic and Transport**

- 5.10.39. Taking the above matters into account, I find that the traffic and transport assessment set out in the ES meets the requirements of NPS EN-1. Furthermore, I am satisfied that that no significant traffic or transportation effects are likely to arise from the Proposed Development either alone or in combination with other developments.
- 5.10.40. In addition, I consider the control and management measures contained in the OCTMP and OCWTP (secured under Requirements 6 and 7 in the dDCO), as well as the review of AIL access arrangements and decommissioning of the causeway (secured under Requirements 18 and 19 of the dDCO) are sufficient to mitigate any likely adverse effects of the proposal to an acceptable level.
- 5.10.41. Accordingly, I find the requirements of NPS EN-1 and NPS EN-2 in respect of traffic and transportation impacts have been met.

## **5.11. PUBLIC HEALTH AND AMENITY**

### **Policy Considerations**

- 5.11.1. NPS EN-1 recognises that energy production has the potential to impact on the health and well-being of the population. The direct impacts on health can include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests. It also notes that generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them.
- 5.11.2. NPS EN-5 contains guidance on the assessment of the effects of Electromagnetic Fields (EMFs) with reference to the guidelines on exposure of people to EMFs published by the International Commission on Non-Ionizing Radiation Protection.

### **Applicant's Response**

- 5.11.3. Consideration of the impacts on human health arising from air quality, water quality, traffic and transport, noise and vibration, emissions to water and land contamination are considered in the relevant chapters of the ES.
- 5.11.4. The application is also accompanied by ES Chapter 13 (Human Health) [[APP-062](#)] which notes that the underground cable would be designed to comply with the relevant guideline exposure limits set out in the DECC code of practice (DECC, 2012). It considers a range of environmental effects during construction, operational and maintenance and decommissioning and concludes that no significant adverse effect on health due to changes in air quality or noise during construction or operation is predicted. Change in exposure to air pollution at sensitive locations including residential areas, schools and healthcare facilities would be minor and noise during construction and operation is not predicted to lead to a significant adverse health effect.
- 5.11.5. Furthermore, it recognises that construction employment generation has the potential for a beneficial effect on health on an individual level and would be enhanced by recruitment with training and skills development for local people in longer-term unemployment. This is secured by Requirement 20 of the dDCO which provides for the submission of a local employment and skills strategy.
- 5.11.6. In terms of cumulative effects, ES Chapter 26 [[APP-075](#)] provides an assessment of the effects on public health and amenity in combination with other relevant future projects. In summary, while it acknowledges that there is potential for adverse cumulative effects during operation, it attributes these to the size of some of the cumulative assessments considered and considers the contribution of the Proposed Development would be small and not significant in EIA terms.

### **Views of IPs**

- 5.11.7. PHE noted in its RR [[RR-020](#)] that it was broadly supportive of the methodology employed in Chapter 13 and recognised the challenges of obtaining ward level health data. However, it sought further information on deprivation levels for Walton Common, and the replacement land as well as further information on cycle parking provision at the Proposed Development.
- 5.11.8. No other concerns were raised by IPs in relation to public health effects.

### **Examination**

- 5.11.9. In ExQ1, I asked the Applicant to provide details on deprivation levels for Walton Common and the proposed replacement common land as requested by PHE in its RR. In response [[REP2-041](#)], the Applicant noted that both areas are currently in agricultural use and neither are populated and there would be no change in the deprivation level of the population with access to the common land associated.

- 5.11.10. This was accepted by PHE who confirmed it no longer sought further information on population deprivation levels in relation to human health [REP2-063] and that they consider the health impacts from Particulate Matter and NO<sub>2</sub> have been appropriately assessed in the relevant chapters of the ES.
- 5.11.11. At the close of the Examination, there were no outstanding concerns in relation to public health and amenity.

### **Conclusions on Public Health**

- 5.11.12. Taking the above matters into account, I find that the Applicant has had adequate regard to the human health impacts of the proposal. The evidence indicates that no significant impacts on human health are likely to arise from the Proposed Development either alone or in combination with other developments.
- 5.11.13. Accordingly, I am satisfied that the application accords with the guidance set out in NPS EN-1 and NPS EN-5 in this respect.

## **5.12. LAND USE, AGRICULTURE AND SOCIAL-ECONOMIC IMPACTS**

### **Policy Considerations**

- 5.12.1. The Site is located in the Green Belt. Section 5.10 of NPS EN-1 makes clear that the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open. It also makes clear that the most important attribute of Green Belts is their openness.
- 5.12.2. The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and if it is, whether their proposal may be inappropriate development within the meaning of Green Belt policy.
- 5.12.3. An applicant may be able to demonstrate that a particular type of energy infrastructure, such as an underground pipeline, which, in Green Belt policy terms, may be considered as an "engineering operation" rather than a building is not in the circumstances of the application inappropriate development.
- 5.12.4. In terms of decision making, NPS EN-1 indicates that when located in the Green Belt, energy infrastructure projects are likely to comprise 'inappropriate development'. Inappropriate development is by definition harmful to the Green Belt and the general planning policy presumption against it applies with equal force in relation to major energy infrastructure projects. Similar guidance is found in the NPPF and the PPG.

- 5.12.5. The SoS will need to assess whether there are VSCs to justify inappropriate development. VSCs will not exist unless the harm by reason of inappropriateness, and any other harm, is outweighed by other considerations. In view of the presumption against inappropriate development, the SoS should attach substantial weight to the harm to the Green Belt when considering any application for such development while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation.
- 5.12.6. NPS EN-1 also recognises that the construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local, regional and national levels. Paragraph 3.2.1 identifies the generally positive socioeconomic effects derived from electricity generation to meet nationally identified energy needs at the national level. It advises, in paragraph 4.2.2, that to enable the SoS to consider the potential effects, including benefits, the ES should include information on the likely significant social and economic effects of the Proposed Development and how they may be avoided or mitigated.
- 5.12.7. Paragraph 5.12.2 advises that where a project is likely to have socio-economic impacts at local or regional level, the Applicant should undertake and include in their application an assessment of these impacts as part of the ES.
- 5.12.8. Paragraph 5.12.6 sets out some of the matters to which the SoS should have regard in decision making. These include the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that they consider to be both relevant and important. In addition, paragraph 15.12.8 advises that the SoS should consider any relevant positive provisions the developer has made or is proposing to make to mitigate impacts.
- 5.12.9. NPS EN-1 also contains provisions in respect of open space and green infrastructure indicating that where development is proposed on these assets, the SoS should consider whether mitigation in the form of exchange land should be provided. It also makes clear that where sections 131 and 132 of the PA2008 apply, replacement land provided under those sections will need to confirm to the requirements of those sections. I consider these matters further in Chapter 8 below (CA).
- 5.12.10. Applicants should also seek to minimise the effect on 'best and most versatile' (BMV) agricultural land and preferably use land in areas of poor quality.

### **Applicant's Approach**

- 5.12.11. ES Chapter 8 [[APP-057](#)] considers the land use, agricultural and socio-economic effects of the Proposed Development. It identifies the key policy considerations, baseline conditions and considers the effects during construction and operation on agricultural land classifications, farm holdings, common land, public rights of way and cycle routes, as well as

job creation. It is supported by ES Appendices 8.1 (ALC Information and ALC site survey results) [[APP-088](#)] and 8.2 (Common land) [[APP-089](#)].

- 5.12.12. The Alternative AIL Access ES Addendum [[AS-035](#)] considers the likely land use, agricultural and socio-economic effects associated with Work no. 15.
- 5.12.13. The Applicant's consideration of the impact on the Green Belt is set out in its Statement of Case and Green Belt Statement [[APP-135](#), [APP-136](#), [APP-137](#), [APP-138](#) and [APP-139](#)].

#### Agricultural land

- 5.12.14. The site contains a number of parcels of Grade 3b agricultural land which would be affected by the Proposed Development and around 1.15ha of higher quality Grade 3a.
- 5.12.15. Agricultural land classifications across the site can be found in Figures 3.1 to 3.3 of ES Chapter 8 [[APP-057](#)]. Supporting information on soils can be found in ES Appendix 8.1 (ALC Information and ALC site survey results) [[APP-088](#)].
- 5.12.16. Overall, the magnitude of impact on agricultural land quality is assessed as major during construction, based on the combined total permanent and temporary effects identified.
- 5.12.17. However, with the adoption of measures to ensure that the soils and agricultural land quality would be restored at the end of construction to reduce any permanent effects on BMV land. When these are taken into account, the ES concludes that the permanent loss of the lower quality Grade 3b land would result in a moderate adverse effect during construction, operation and maintenance.
- 5.12.18. Similarly, in terms of its effect on farm holdings, the assessment recognises that there would be a permanent loss of around 20ha of land together with the temporary effects on a further 10ha. However, it concludes that the loss of this areas from 2 large arable land holdings would represent a negligible impact.

#### Common land

- 5.12.19. The main development site (Zone A) includes an area of around 10ha of registered common land known as Walton Common. Walton Common forms part of a wider Common land register unit CL228 known as The Green, Hall Hill, Fort Road, Parsonage and Walton Commons. The land is subject to both rights of common as well as public rights of access under the LPA 1925.
- 5.12.20. In addition, a small area of 0.08ha of Tilbury Green Common in Zone D1 would be temporarily affected by works associated with the laying of the proposed gas pipeline. While it is expected that trenchless construction for the pipeline would be employed at this location, it may be necessary to limit access for the duration of the works (less than one month) for

safety. In addition, following the acceptance of the Applicant's change request to accommodate the Alternative AIL Access route, a further area of around 0.05 ha of Tilbury Fort Common would be affected, making the total area of common to be lost around 10.15ha.

- 5.12.21. ES Chapter 8 [APP-057] acknowledges the permanent and temporary loss of common land would impact on this important resource. However, it proposes the creation of a new area of replacement common land in Zone E to mitigate for the loss. The rights of common and access would transfer to the new area of common. This is provided for in Article 33 of the dDCO.
- 5.12.22. In addition, the Applicant asserts that the creation of a new permissive footpath between Zone E and Fort Road would improve access on foot to the replacement common land and Parsonage Common to the north. The replacement common land, to which the same rights would be attached as those currently extant on Walton Common, would be available for use in advance of construction. Taking these factors into account the Applicant considers the magnitude of the impact on Common Land is assessed to be minor beneficial.
- 5.12.23. The route would also significantly reduce the walking distance to the area of replacement common land. Currently, Walton Common is accessed from Tilbury via common land along Fort Road, Cooper Shaw Road, Parsonage Common and the railway, a distance of over 2km. The route from Fort Road to the exchange land would be a permissive footpath which would be secured through contractual agreement with the landowner.

#### Public rights of way

- 5.12.24. ES Chapter 8 [APP-057] also identifies the two PRow affected by the proposal. The Thames Estuary FP runs along the northern shore of the River Thames along the approximate alignment of FP146 and forms part of National Cycle Route 13. The Applicant explains that this would remain along its current alignment throughout construction but that measures would be put in place to manage the interface of pedestrians, cyclists and construction traffic. These measures would be included in the final CoCP secured under Requirement 5 (CoCP) of the dDCO.
- 5.12.25. It also explains that a temporary diversion of a short length of FP200 may be required for up to a month in order to facilitate the construction of the gas pipeline in Zone D.
- 5.12.26. Overall, the ES considers the significance of effect on these routes would be minor adverse. No concerns were raised by IPs and I have no reason to reach a different conclusion.

#### Job creation

- 5.12.27. ES Chapter 8 [APP-057]) estimates than an average of 250 full time construction jobs would be created over the construction period. It considers that this would result in a 'minor to moderate benefit' to the

area. Again, no concerns were raised, and I have no reason to reach a different conclusion.

Green Belt

5.12.28. As noted above, the Applicant's consideration of the impact on the Green Belt set out in its Statement of Case and Green Belt Statement [[APP-135](#), [APP-136](#), [APP-137](#), [APP-138](#) and [APP-139](#)].

5.12.29. In summary, the Applicant argues that much of the associated development falls within the definition of 'engineering operations' and, therefore is capable of not being inappropriate development in the Green Belt, provided that it preserves its openness and does not conflict with the purposes of including land within it.

5.12.30. It goes on to explain that:

*"These elements will all be either completely buried, in the case of electricity cables and gas pipelines, or low lying, in the case of the causeway and access roads. They would have no impact on the openness of the Green Belt. There would be no conflict with the remaining relevant Green Belt purpose because there would be no visual encroachment onto the countryside"*

(Source: Appendix 1, Statement of Case and Green Belt Statement [[APP-135](#)], paragraph 4.179).

5.12.31. Nevertheless, it accepts that the above ground elements would be inappropriate development within the Green Belt (ie. the main development site (Work no. 1), the AGI (Work no. 5A), the temporary construction compound (Work no. 8) and the footbridge (Work no. 13)) and that they would be, by definition harmful. Likewise, it accepts that there would be harm to the openness of the Green Belt as well as conflicting with one of its main purposes - that is to prevent encroachment into the countryside. However, it considers that, overall, the harm would be limited.

5.12.32. In support of its position, the Applicant draws attention to the contribution the site currently makes to openness, noting that it is situated immediately adjacent to the Tilbury Substation, outside the Green Belt, and already contains pylons and overhead power lines. It states that in this context the perceived level of contribution to the openness of the Green Belt is limited. Nevertheless, it recognises that the Proposed Development would result in an increase in built, above ground development at Work nos. 1, 5, 8 and 13 where none currently exists.

5.12.33. Generating stations must ultimately connect into the electricity network at existing substations and therefore new generating stations must be sited at points on the network where connection is technically, economically and environmentally viable. The Applicant claims that all other suitable points of connection into the 275kV network would also require development within the Green Belt.

5.12.34. In summary, while the Applicant acknowledges that there would be harm by way of inappropriateness, harm to openness and the Proposed Development would conflict with one of the 5 purposes of the Green Belt, it considers that this harm, together with any other harm, would be clearly outweighed by other considerations so as amount to the VSCs required to justify the Proposed Development.

### **Views of IPs**

5.12.35. TC acknowledge in its LIR [[REP2-077](#)] that the proposal would constitute inappropriate development in the Green Belt. However, while it notes that the Proposed Development would impact negatively on openness and would not safeguard the countryside from encroachment, it considers that the site presents a unique opportunity for power generation making beneficial use of the existing Tilbury substation and associated infrastructure. As such, it considers that VSCs exist which outweigh the resultant harm.

5.12.36. TC also recognise that the Proposed Development would result in the permanent loss of agricultural land. However, it does not object to the loss of common land in land use terms due to the replacement land.

5.12.37. Gravesham Borough Council noted [[REP2-066](#)] that the neighbouring site is vacant and consists of previously developed land whose former use was a power station. It argues that it could be again without damage to the Green Belt.

5.12.38. PoTLL raised concerns in relation to the impact the causeway would have on its own expansion plans and plans for the Thames Freeport. At ISH1, it drew attention to its successful bid to become one of the Government's freeport sites and provided plans indicating its proposed freeport areas. These are reproduced in Figures 3 and 4 below. They include much of the former Tilbury Power station site as well as other land surrounding the main development site. While I accept they are at a very early stage of development and do not form part of any approved scheme, they nevertheless indicate potential interaction between the two projects.

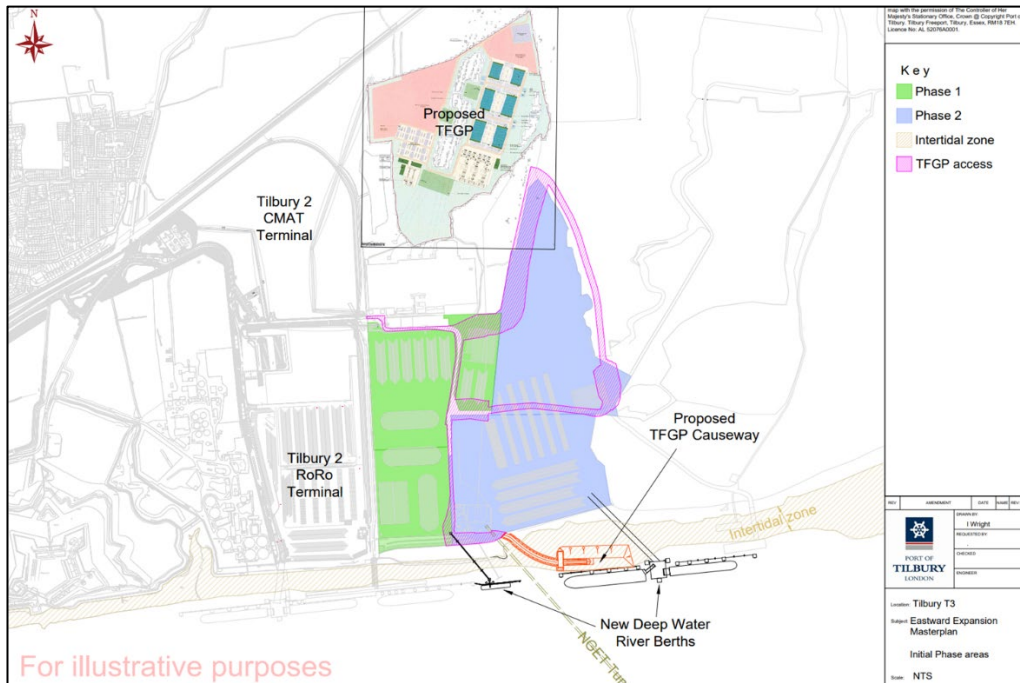
5.12.39. RWE also express support for the Thames Freeport proposals noting that they seek to create innovation hubs which boost global trade, attract inward investment and increase prosperity in the surrounding area by generating employment opportunities. It notes that there may be further opportunities for energy generation as a result and emphasises the importance of RWE retaining access to the river frontage.

5.12.40. TC provided an update on its position in relation to the Thames Freeport at D5A [[REP5A-002](#)]. It noted that it was a key priority for TC and will provide many benefits to Thurrock and the wider area. TC noted that it was its preference for the Alternative AIL Access to be used instead of the causeway option and that this was also supported by other IPs.

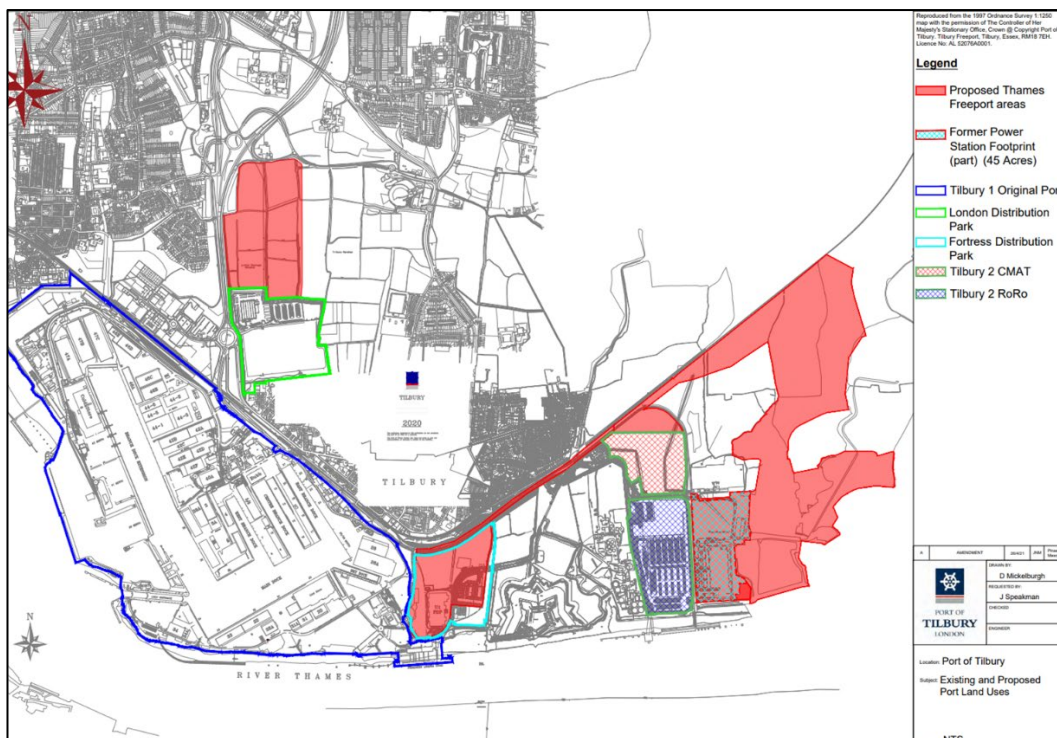
5.12.41. A number of other IPs also expressed support for the Freeport and use of the Alternative AIL Access rather than the causeway.



**Figure 3: Illustrative drawing showing PoTLL expansion proposals affected by the proposed TFGP causeway**



**Figure 4: Port of Tilbury existing and proposed port land uses plan**



## **Examination**

### *Green Belt*

- 5.12.42. In ExQ1, I asked questions on the benefits the Applicant considered should be weighed against the identified harm to the Green Belt and the views of the host authority on the Applicant's approach.
- 5.12.43. As noted above, TC confirmed in its LIR that it considered VSCs exist which outweigh the harm to the Green Belt.
- 5.12.44. I agree that Work Nos. 1, 5, 8 and 13 would constitute inappropriate development in the Green Belt and would have a negative impact on the openness of the Green Belt. Furthermore, while I acknowledge that the site's current contribution to openness has been considerably eroded by the pylons and overhead power lines situated on the site and nearby.
- 5.12.45. Likewise, while I acknowledge it would be seen in the context of the high-density electricity infrastructure both on the site and as part of the nearby substation, the fact remains that it would involve an encroachment into the countryside and be in conflict with this purpose of the Green Belt.
- 5.12.46. I consider whether this harm, together with any other harm, is outweighed by the VSCs necessary to justify Proposed Development in Chapter 7 below.

### *Thames Freeport*

- 5.12.47. I have given careful consideration to the various points made by the parties in relation to this matter and I am mindful of the impact that development in this area might have on what is a key government objective. I have also had regard to the NPSP and agree that it is an important and relevant consideration in so far as the Proposed Development would affect the Port of Tilbury.
- 5.12.48. Nevertheless, I agree with the Applicant that the plans provided by PoTLL are aspirational and that there is no robust evidence to indicate that the Proposed Development would have any material impact on the deliverability of the Thames Freeport scheme.

### *Common land*

- 5.12.49. Although the proposed permissive route would provide a more convenient access for those living in West Tilbury, its permissive nature limits its overall benefit and I do not consider it weighs positively in favour of the proposal. Nevertheless, subject to my findings in Chapter 8 as to the adequacy of the replacement land, I am satisfied that, in view of the proposed replacement land, the loss of common would not have any significant land use, agriculture or socio-economic effects.

## **Conclusions on Land Use, Agriculture and Socio-economics and Green Belt**

- 5.12.50. I am satisfied that the Applicant has had adequate regard to the agriculture, land use and socio-economic impacts of the proposal. The evidence presented indicates that there would be some moderate positive socio-economic benefits to the local economy not least in terms of job creation and that the Proposed Development has the potential to support further economic development in the local area.
- 5.12.51. While I acknowledge there would be some temporary effects on PRoWs during construction and the permanent loss of common land, I see no reason in principle that this could not be sufficiently mitigated by the measures proposed. I consider the adequacy of the replacement land in Chapter 8 below.
- 5.12.52. Nevertheless, the Proposed Development would result in the loss of agricultural land and would constitute inappropriate development in the Green Belt which would, by definition be harmful. It would also negatively impact on the openness of the Green Belt and would be in conflict with one of the 5 purposes of the Green Belt. It would, in this respect, be in conflict with NPS EN-1. I consider this further in Chapter 7 below.

## **5.13. CUMULATIVE AND COMBINED EFFECTS**

### **Policy Considerations**

- 5.13.1. The EIA Regulations require an ES to include an assessment of the potentially significant effects of a proposed scheme. Furthermore, NPS EN-1 advises that the SoS should take into account, amongst other things, any long term and cumulative adverse impacts. It requires applications to include information on how the effects of the proposal would combine and interact with the effects of other development.

### **Applicant's Approach**

- 5.13.2. ES Chapter 18 provides an introduction to the CEA and describes the approach taken in establishing the shortlist of cumulative projects for consideration. These are then included in the CEA of individual chapters which relate to the different aspects.
- 5.13.3. In addition, ES Chapter 31 provides a summary of inter-related effects, [[REP2-026](#)], ES Chapter 32 provides a summary cumulative effects [[REP2-028](#)] and ES Chapter 33 provides a summary of residual effects [[PDC-023](#)]. An addendum to the CEA was also provided to deliver supplementary information about the potential cumulative environmental effects with the proposed LTC [[AS-007](#)].
- 5.13.4. In summary, the Applicant concludes that for each of the cumulative impacts identified, either no significant effects are found or where the cumulative effect would be significant, the contribution of the Proposed Development is negligible and would not change the significance of the

cumulative effect identified. As a result, the Applicant concludes no further mitigation or monitoring measures are necessary.

### **Views of IPs**

- 5.13.5. Specific concerns in relation to cumulative effects have been considered in sections 5.3 to 5.12 above.
- 5.13.6. No other concerns were raised in respect of the Applicant's approach to cumulative and combined effects or the conclusions reached in its assessments

### **Examination**

- 5.13.7. At the close of the Examination there were no further matters to be resolved in relation to cumulative or combined effects.

### **Conclusions on Cumulative and Combined Effects**

- 5.13.8. I am satisfied that no long term and cumulative adverse impacts are likely to arise from construction, operation and decommissioning activities. Accordingly, I am satisfied that the requirements of NPS EN-1 are met in this regard.

## **5.14. CLIMATE CHANGE**

### **Policy Considerations**

- 5.14.1. The Climate Change Act 2008 sets a legally binding target for the UK to reduce its net GHG emissions from 1990 levels. This target is currently set at 100% by virtue of the Climate Change Act 2008 (2050 Target Amendment) Order 2019 ("the 2019 Order").
- 5.14.2. As noted in Chapter 3 above, the UK is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change. This provides a framework to keep global warming below 2°C, pursuing efforts to limit the temperature increase to 1.5°C.
- 5.14.3. NPS EN-1 notes the importance of securing reliable supplies as the UK transitions to a low carbon economy and ensuring a diverse mix of energy generating technologies, including fossil fuels to avoid overdependence on a single fuel type.
- 5.14.4. Furthermore, it recognises that gas is the cleanest and most reliable fossil fuel and is likely to continue to be a central part of the transition to a low carbon economy. It also notes that CO<sub>2</sub> emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided. Moreover, it requires applicants to consider the impacts on climate change and how the proposal will take account of the projected impacts<sup>40</sup>.

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<sup>40</sup> Paragraph 4.8.5.

- 5.14.5. NPS EN-2 advises that climate change should be considered by an Applicant in their ES, including how the development would be resilient to higher temperatures.
- 5.14.6. However, both NPS EN-1<sup>41</sup> and EN-2<sup>42</sup> also makes clear that applications do not need to be assessed in terms of carbon emissions against carbon budgets.

### **Applicant's Approach**

- 5.14.7. The Applicant recognises that the most significant risk arises from Flooding. The assessment of flood risk, including increases in rainfall rates due to climate change and the consequences of tidal flood defence breach, are considered in ES Chapter 15 (Hydrology and Flood Risk) and are discussed in section 5.4 above.
- 5.14.8. Chapter 14 of the ES [[APP-063](#)] considers the potential effects of the Proposed Development on climate change. It provides an assessment of the impact on GHG emissions over the estimated lifetime of the project and recognises that the Proposed Development would result in GHG emissions both during construction and operation - noting that emissions would be 0.3-0.4% of the UK's carbon budget to 2032. It is supported by Appendix 14.1 (GHG Calculations) [[APP-110](#)] and Appendix 14.2 (Climate Change Risk) [[APP-111](#)].
- 5.14.9. In summary, it considers the net impact on climate change by deducting from the GHG emissions caused by the Proposed Development, any GHG emissions that it displaces or avoids. It considers the projected changes in climate parameters at the Proposed Development and whether there is potential for significant environmental effects to arise.
- 5.14.10. Overall, it notes that the potential risks identified do not represent any new or unexpected issues and that good practice for the safe operation of power generation will mitigate against the likelihood of significant adverse effects.
- 5.14.11. It concludes that while the Proposed Development would result in around 46 million tonnes of CO<sub>2</sub> equivalent over its operating lifetime, this would be offset by the displacement of other gas fired generation.

### **Views of IPs**

- 5.14.12. TC noted in their LIR that the proposal would be contrary to policy CSTP25 of the TCS, but recognised that it would provide an on-demand facility for when electricity is needed and would not run 24 hours a day like a traditional power station. Nevertheless, it considers the impact on climate change would be negative.
- 5.14.13. Essex County Council sought to ensure that suitable mitigation was included in the operational phase and that safeguards were in place in

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<sup>41</sup> Paragraph 5.2.2.

<sup>42</sup> Paragraph 2.5.2.

relation to the CCR land. It also noted in its RR [[RR-006](#)], that TC have declared a climate emergency and while appreciating the calculation of negative GHG emissions, the proposed erection of a large scale, gas fired power station would further add to the detrimental impacts of fossil fuel use and would be contrary to the council's aspirations for a greener Essex.

### **Examination**

- 5.14.14. As the application had been submitted prior to the Committee on Climate Change's (CCC) Sixth Carbon Budget Report<sup>43</sup>. I asked the Applicant to provide an update on any impacts this has on the assessments undertaken in the ES.
- 5.14.15. In response [[REP2-041](#)], the Applicant explained that its assessment of GHG was evaluated in the context of both the UK's carbon budgets and policy goals for carbon reduction. While recognising that the emissions would increase as a percentage of the UK's carbon budget for the 2033-2037 budget period, the Applicant notes that this would still remain well below a 1% contribution.
- 5.14.16. The Applicant also draws attention to the committee's report recommendation concerning flexibility and storage, noting that:
- "A more flexible electricity system will help balance out the variability in renewable generation. Increasing flexibility comes from both demand (e.g. demand-side response, and use of surplus renewable generation to produce hydrogen) and supply (e.g. use of electricity storage)."*
- (Source: [REP2-041](#), Q1.2.1)
- 5.14.17. Furthermore, the Applicant points out that providing reliable back up capacity is crucial to the further deployment of intermittent renewable generation; and noting that doing so in a fuel-efficient manner is a benefit of the reciprocating gas engine technology proposed.
- 5.14.18. Moreover, the Applicant draws attention to the role of CCS in being able to reduce GHG emissions further, the land for which is safeguarded in Requirements 23 (CCR) and 24 (CCR monitoring report) of the dDCO [[REP7-012](#)].
- 5.14.19. I also asked the Applicant to provide further explanation for the methodology used to reach the conclusion that the Proposed Development would result in net negative GHG emissions and thus a net beneficial impact. In response, the Application explained the GHG methodology further and how net GHG emissions have been calculated. It also draws attention to other instances where the SoS has accepted a similar approach to GHG emissions [[REP2-041](#)].

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<sup>43</sup> The Sixth Carbon Budget: The UK's path to Net Zero (December 2020).

- 5.14.20. At D4, the Applicant added two new requirements to Schedule 2 which secures the CCR land and ensures it is preserved for its intended purpose (Requirement 23) and to provide a carbon capture monitoring report to the SoSBEIS every three years stating whether the retrofitting of carbon capture technology is feasible (Requirement 24).

### **Conclusions on Climate Change**

- 5.14.21. The proposal is not emissions free and would result in around 46 million tonnes of GHG emissions over the proposed 35 year lifetime of the Proposed Development.
- 5.14.22. However, NPS EN-1 explicitly recognises that there is an ongoing need for development of the type proposed. Furthermore, it notes that some of the new generating capacity needed is likely to come from new fossil fuel<sup>44</sup> generating capacity in order to maintain security of supply, and to provide a flexible back-up for intermittent renewable energy.
- 5.14.23. Peaking plants, such as the Proposed Development, are used to rapidly supply electricity to the network when required by National Grid. These plants can be fired up at short notice to help meet periods of high demand or low electricity supply nationally or when required to provide ancillary services to support the network. In general, they are a cleaner and more efficient source of electricity production compared to conventional gas power stations and other fossil fuel generating stations.
- 5.14.24. The overall contribution in terms of carbon budget would be less than 1%. I accept that this would, to a large extent, be offset by displacement of other, less flexible, technologies. However, as the NPS EN-1 and EN-2 make clear, applications do not need to be assessed in terms of carbon emissions against carbon budgets. As such, while I acknowledge there would be an absolute increase in GHG emissions, these will be dealt with as part of a managed, economy wide approach.
- 5.14.25. My examination of the impact of climate change on flood risk has been considered in section 5.4 above. I am satisfied that adequate consideration has been given to minimising the risks posed.
- 5.14.26. Consequently, taking all of the above into account, I consider the Proposed Development would accord with the guidance in NPS EN-1 and EN-2 in this respect.

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<sup>44</sup> Paragraph 3.6.3.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **6.1. INTRODUCTION**

- 6.1.1. This Chapter sets out my analysis and conclusions relevant to the Habitats Regulation Assessment (HRA). This will assist the SoSBEIS, as competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations').
- 6.1.2. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects the Proposed Development could have on European sites<sup>45</sup>, the competent authority considers it acceptable in light of the requirements stipulated in the Habitats Regulations.
- 6.1.3. Marine Conservation Zones (MCZ) are not included in the designations to be considered under the Habitats Regulations. Nevertheless, where the analysis below contains information of relevance to designated or proposed MCZ, cross reference is provided to where these matters are discussed within this Report.
- 6.1.4. I have been mindful throughout the Examination of the need to ensure that the SoSBEIS has such information as may reasonably be required to carry out their duties as the competent authority. I have sought evidence from the Applicant and IPs) including NE as the Statutory Nature Conservation Body (SNCB), through written questions and ISHs.
- 6.1.5. A HRA report accompanied the application [[APP-040](#)]. This was updated on a number of occasions with the latest version submitted at D7 which consolidates all previous versions. Unless otherwise specified, references to the HRA Report are to the latest version [[REP7-017](#)].

### **6.2. RIES AND CONSULTATION**

- 6.2.1. I issued a Report on the Implications for European Sites (RIES) [[PD-018](#)] which compiled, documented and signposted HRA-relevant information provided in the application and Examination representations up to D6 (20 July 2021). The RIES was issued to ensure that I had correctly understood HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European Sites at

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<sup>45</sup> The term European sites in this context includes Special Areas of Conservation (SAC), Sites of Community Importance (SCI), candidate SACs (cSAC), possible SACs (pSAC), Special Protection Areas (SPA), potential SPAs (pSPA), Ramsar sites and proposed Ramsar sites for which the UK is responsible. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.



that point in time. Consultation on the RIES took place between 19 July 2021 and 9 August 2021. Comments were received from the Applicant [[REP7-039](#)] at D7. These comments have been taken into account in the drafting of this Chapter. No other comments on the RIES were received during the Examination.

6.2.2. My recommendation is that the RIES, and consultation on it, represents an appropriate body of information to enable the SoS to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations.

6.2.3. Policy considerations and the legal obligations under the Habitat Regulations are described in Chapter 3 of this report.

### **6.3. PROPOSED DEVELOPMENT AND HRA IMPLICATIONS**

6.3.1. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 2.1 of the HRA Report [[REP7-017](#)]. The Applicant's HRA Report states that the Proposed Development is located 1.2km west from the closest European sites, the Thames Estuary and Marshes SPA and Ramsar sites. The Medway Estuary and Marshes SPA and Ramsar sites are the next closest European sites to the Proposed Development, located approximately 11.5km to the south east.

6.3.2. The Applicant states that the Proposed Development is not directly connected with, or necessary to, the management of a European site or a European marine site in Table 1.1 by way of stating the purpose of producing the HRA report [[REP7-017](#)], and no evidence exists to the contrary. Therefore, the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoSBEIS.

6.3.3. The Applicant's assessment of effects is presented in the HRA Report [[REP7-017](#)]. The documents used to support the HRA are listed in paragraph 1.2.5 of the RIES [[PD-018](#)].

6.3.4. In this Chapter, the Thames Estuary and Marshes SPA and Ramsar sites are referenced together for ease; any impacts relate to qualifying features which are common to both designations, with the exception of Avocet which is only a qualifying feature of the SPA.

6.3.5. The Applicant initially identified the following pathways of LSE to the Thames Estuary and Marshes SPA and Ramsar sites:

- hydrological changes;
- water quality; and
- in combination effects during construction and operation and decommissioning effects associated with the above.

6.3.6. In response to the Applicant's non-material change request, [[AS-011](#)], and objections from NE, the Applicant updated its HRA [[PDC-039](#); [REP2-022](#); [REP7-017](#)] and the impact pathways screened into assessment for

the Thames Estuary and Marshes SPA and Ramsar sites on Dunlin, Avocet, Redshank and Ringer Plover features.

6.3.7. In addition to hydrology and water quality, the final HRA report also identified potential LSE on the Thames Estuary and Marshes SPA and Ramsar sites; from noise and visual disturbance during construction of the causeway, visual disturbance during operation of the causeway and in combination effects. The Applicant's updated HRA Report concluded that these impacts would not result in adverse effects on the integrity (AEoI) of the Thames Estuary and Marshes SPA and Ramsar.

6.3.8. The Applicant also submitted a material change request [[AS-012](#)] as described in Chapter 2 of this Report and which I subsequently accepted. These changes did not alter the assessment in the Applicant's HRA.

## **6.4. SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION**

6.4.1. The main HRA matters raised and discussed during the Examination include:

- The screening out of LSE for the Thames Estuary and Marshes SPA and Ramsar sites due to habitat loss of functionally linked land (FLL);
- The screening out of LSE due to operational noise and visual disturbance from the causeway for features of the Thames Estuary and Marshes SPA and Ramsar sites;
- The Applicant's conclusion of no AEoI on the Thames Estuary and Marshes SPA and Ramsar sites as a result of noise and visual disturbance during construction of the causeway; and
- The Applicant's conclusion of no AEoI on the Thames Estuary and Marshes SPA and Ramsar sites as a result of visual disturbance during operation of the causeway.

6.4.2. These matters are discussed in the sections below, as appropriate.

6.4.3. Matters which were undisputed by any parties were:

- Screening out of LSE on the following sites:
  - Medway Estuary and Marshes SPA;
  - Medway Estuary and Marshes Ramsar;
  - North Downs Woodland SAC;
  - Benfleet and Southend Marshes SPA;
  - Benfleet and Southend Marshes Ramsar; and
  - Peter's Pit SAC.
- Screening out of LSE from changes in habitat management regime, loss of future space to allow for managed realignment, urbanisation, air quality and introduction of non-native species to the Thames Estuary and Marshes SPA and Ramsar sites; and

- Conclusion of no AEoI on the Thames Estuary and Marshes SPA and Ramsar sites for hydrological changes, water quality and in combination effects.

6.4.4. These matters are discussed further below.

## **6.5. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)**

6.5.1. Under regulation 63 of the Habitats Regulations, 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 this test is to identify any LSEs on European sites that may result from the project and 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.

6.5.2. The Applicant's HRA Report sets out the methodology for identifying LSE in section 3 where impact pathways are identified on sites located within 15km of the Proposed Development site; this is the maximum zone of influence of potential impacts (derived from the air quality ES Chapter [[APP-061](#)]). The magnitude of potential impacts is determined based on appropriate criteria for the impact being assessed e.g. noise thresholds. Judgement of significance is based on reasoning in the context of best available knowledge. The European sites and qualifying features that were considered in the Applicant's assessment of LSE are presented in paragraph 2.2.3 of the HRA Report [[REP7-017](#)]. The European Sites considered in the Applicant's assessment of LSE were:

- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar;
- North Downs Woodland SAC;
- Benfleet and Southend Marshes SPA;
- Benfleet and Southend Marshes Ramsar; and
- Peter's Pit SAC

6.5.3. The European sites identified were not disputed by any IPs in the Examination. However, the Applicant initially identified incorrect features of the Thames Estuary and Marshes Ramsar, Benfleet and Southend Marshes SPA and Benfleet and South End Marshes Ramsar sites. As part of my request for further information [[PD-006](#)], I asked the Applicant to update the HRA [[APP-040](#)] to address this and ensure they reflected those features identified on the Joint Nature Conservation Committee (JNCC) and NE websites. The Applicant's original HRA Report [[APP-040](#)] also only screened in Avocet as being potentially impacted by construction of the causeway (Table 9). This was disputed by NE [[RR-022](#) and [PDD-012](#)].

6.5.4. The Applicant provided an updated HRA, screening and integrity matrices (Appendix B) [[REP2-022](#)] listing correct features in line with the JNCC and NE websites and screening in Ringed Plover, Redshank and Dunlin

also as features of both the Thames Estuary and Marshes SPA and Ramsar sites. I am content with these revised screening matrices and that the correct European sites and qualifying features have been identified and considered.

### **LSE from the Proposed Development Alone**

- 6.5.5. The Applicant has described how it has determined what would constitute a 'significant effect' in paragraphs 3.2.5 and 3.2.6 of the HRA Report.
- 6.5.6. The Applicant identifies potential impacts of the Proposed Development in section 5 of the HRA Report. These include:
- Direct loss or damage of habitats within a designated site or FLL;
  - Changes in management regimes e.g. grazing or mowing, within a designated site or FLL;
  - Urbanisation that results in over shadowing, reduction of sight lines or which hinders flight paths;
  - Changes in air quality;
  - Changes in water quality;
  - Hydrological changes e.g. balance of saline and non-saline conditions;
  - Disturbance e.g. recreation, activity, noise and lighting; and
  - Introduction or spread of invasive non-native species.
- 6.5.7. The Applicant states that the decommissioning process will be similar to the construction process and impacts are anticipated to be broadly similar to that of construction [[REP7-039](#)].
- 6.5.8. The Applicant screened out all impacts and potential LSE to the following sites:
- Medway Estuary and Marshes SPA;
  - Medway Estuary and Marshes Ramsar;
  - North Downs Woodland SAC;
  - Benfleet and Southend Marshes SPA;
  - Benfleet and Southend Marshes Ramsar; and
  - Peter's Pit SAC.
- 6.5.9. The Applicant concluded there would be no LSE for the impacts listed in paragraph 6.5.6 above for the following reasons (as stated in the screening matrices in Appendix B of the HRA Report):
- The distance of the Proposed Development from these sites (>11.2km);
  - The lack of non-native species in the area of the Proposed Development or potential for them to be transported to site or to the European sites; and
  - That operational emissions are predicted to be <1% increase in critical load / level of any features or supporting habitat of the identified European sites and that the predicted environmental concentration is less than the Environmental Quality Standard.

6.5.10. The Applicant concluded that an LSE could not be excluded for the following:

**Table 3: Identified Potential LSE in the HRA Screening Assessment**

Impact	Thames Estuary and Marshes SPA			Thames Estuary and Marshes Ramsar		
	C	O	D	C	O	D
Phase	C	O	D	C	O	D
Hydrological Changes	All features	All features	All features	All features	All features	All features
Water Quality	All features	All features	All features	All features	All features	All features
Disturbance (noise)	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover
Disturbance (visual)	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover
In Combination	Avocet, Dunlin, Ringed Plover, Redshank and overwintering waterfowl	Avocet, Dunlin, Ringed Plover, Redshank and overwintering waterfowl	Avocet, Dunlin, Ringed Plover, Redshank and overwintering waterfowl	Ringed Plover, Redshank, Dunlin, wetland invertebrate assemblage and nationally rare plant assemblage	Ringed Plover, Redshank, Dunlin, wetland invertebrate assemblage and nationally rare plant assemblage	Ringed Plover, Redshank, Dunlin, wetland invertebrate assemblage and nationally rare plant assemblage

6.5.11. The initial application identified creation of new saltmarsh habitat as an enhancement [APP-146] but did not assess the impacts of the habitat creation in the HRA Report [APP-040]. NE and the EA objected to this proposal. NE [PDD-013] considered that such enhancement had the potential to alter hydrodynamics and saltmarsh, which would actually be less favourable for bird features than mudflat. The EA [RR-013] stated that natural succession would be preferable to artificial 'speeding up' of succession from mudflat to saltmarsh habitats.

6.5.12. As part of my request for further information [PD-006], I asked the Applicant to provide an updated HRA Report to include an assessment of the impacts arising from saltmarsh creation. However, following the removal of Work no. 9 from the application (See non-material change request [AS-011]), no further information on this was considered necessary.

6.5.13. I also requested an updated HRA to include an assessment of impacts on MCZs functionally linked to European sites with specific reference to Swanscombe MCZ [PD-006]. The Applicant provided further evidence

[[PDC-019](#)] that there would be no impact on the Swanscombe MCZ. NE [[REP7-036](#)] agreed with this conclusion and this impact was not considered in the screening.

- 6.5.14. NE [[RR-022](#) and [PDD-012](#)] did not agree that LSE from operational disturbance could be excluded. This is discussed in further detail in section 3.3 of the RIES [[PD-018](#)]. The HRA was updated [[REP7-017](#)] to screen in visual disturbance impacts from the causeway during operation on Avocets, Ringed Plover, Dunlin and Redshank as features of the Thames Estuary and Marshes SPA and Ramsar sites (as shown in Table 3 above).
- 6.5.15. In ExQ1, I questioned [[PD-010](#)] why an assessment of the potential impacts of transportation of Invasive Non-Native Species (INNS) to European designated sites specifically from vessels serving the causeway had not been undertaken in the HRA Report [[PDC-039](#)]. The Applicant responded [[REP2-041](#)] that all materials used to construct the causeway would be sourced from land-based sources and that mitigation in the form of biosecurity measures was set out in Table 2.10 of ES Chapter 17 (Marine Environment) [[PDC-019](#)]. This would be implemented through the Code of Construction Practice and is secured in Requirement 5 (CoCP) of the dDCO.
- 6.5.16. I consider that, consistent with the Sweetman judgement, measures to avoid impacts could be considered to be mitigation and that consequently LSEs cannot be excluded for impacts from transportation of INNS to the Thames Estuary and Marshes SPA and Ramsar sites and associated FLL. I consider this further below as part of the consideration of AEoI.
- 6.5.17. As part of my request for further information during pre-examination [[PD-006](#)], I asked the Applicant to provide an updated HRA report to include an assessment of loss of FLL supporting European sites with specific reference to onshore grassland and grazing land within Mucking Flats and Marshes SSSI. In response, the Applicant explained that they had excluded LSE from habitat loss on the basis that the loss of FLL was so small and occurred outside the SPA (paragraph 5.1.19 and 5.1.20 of [[REP2-022](#)]). In ExQ2 [[PD-015](#)], I also asked for the assessment to consider how, and to what extent, the FLL (at the site of the causeway) supports features of the SPA and Ramsar sites. This question was raised to ensure that the consideration of effects on FLL was consistent with case law (e.g. Royal Society for the Protection of Birds and Lydd Airport Action Group v. Secretary of State for Communities and Local Government and Secretary of State for Transport [2014] EWHC 1523).
- 6.5.18. NE agreed that a LSE in terms of habitat loss of FLL could not be excluded. This is discussed in detail in section 3.4 of the RIES [[PD-018](#)].
- 6.5.19. The Applicant provided a further assessment [[AS-048](#)] to support its position that the amount of mudflat to be lost is negligible that there would be no potential for LSE. It demonstrates that habitat loss would be <1% of the available mudflat resource in the context of both the whole SPA/ Ramsar sites and at a local scale (in the context of Mucking Flats

SSSI only). Consequently, the Applicant concluded that there was no potential for LSE from the Proposed Development alone. In combination impacts from habitat loss, are discussed further below.

- 6.5.20. The Applicant maintained that bird numbers indicate the extent to which the mudflats support features of the Thames Estuary and Marshes SPA and Ramsar sites. I did not consider that the assessment explained 'how' the mudflats support Avocets, Dunlin, Redshank and Ringed Plover as features of these sites. NE [REP6-025] provided further detail on this point in that Avocets generally favour upper foreshore areas because prey densities are found to be higher in this location (the causeway will be constructed mainly off the foreshore, it will slope upwards to meet ground level at the top of the foreshore [APP-045]). However, NE highlights that a full understanding of the foraging resource is not publicly available and it does not agree to excluding LSE from habitat loss [REP7-036].
- 6.5.21. Taking the above into account, I do not consider a LSE from habitat loss for the Thames Estuary and Marshes SPA and Ramsar sites can be excluded.
- 6.5.22. Consequently, I disagree with the Applicant's screening assessment that LSE should be excluded for transportation of INNS and habitat loss as impacts to the Thames Estuary and Marshes SPA and Ramsar sites. This is discussed further in my consideration of AEOI below.
- 6.5.23. It is important to note that whilst a residual LSE was identified in ES Chapter 17 Marine Environment [PDC-019] from the loss of habitat in the marine environment, this assessment relates to requirements of the EIA Regulations and impacts to marine ecological receptors and does not form part of the HRA consideration.

### **LSE from the Proposed Development In Combination**

- 6.5.24. The Applicant has addressed potential in combination effects at section 7 of its HRA Report [REP7-017]. The methodology applied is described within the assessment and relates to impacts from the Proposed Development alone plus any additional impacts from other developments. The list of other developments is provided in ES Chapter 18 Cumulative Effects Assessment [APP-067].
- 6.5.25. In combination LSE were identified for Avocet, Dunlin, Redshank and Ringed Plover at the Thames Estuary and Marshes SPA and Ramsar sites due to effects from disturbance (noise and visual during construction and visual during operation) and to all features of the sites for water quality and hydrological changes during construction and operation (see Table 3 above).
- 6.5.26. NE [REP6-025] considers that LSE from habitat loss cannot be excluded from the Thames Estuary and Marshes SPA and Ramsar sites; I share this view.

## **Likely Significant Effects Assessment Outcomes**

### **Medway Estuary and Marshes SPA, Medway Estuary and Marshes Ramsar, North Downs Woodland SAC, Benfleet and Southend Marshes SPA, Benfleet and Southend Marshes Ramsar and Peter's Pit SAC**

- 6.5.27. LSEs from habitat loss, changes in habitat management regime, loss of future space to allow for managed realignment, urbanisation, hydrological changes, water quality disturbance and air quality during construction and decommissioning are excluded for these sites due to their being located >10km from the Proposed Development.
- 6.5.28. LSE from air quality during operation were excluded as the contribution of emissions were modelled as <1% and/ or the predicted environmental concentration is less than the Environmental Quality Standard.
- 6.5.29. LSE from the introduction of INNS species was excluded due to no pathways of transportation to these sites as a result of the Proposed Development and no INNS are currently known in the area.
- 6.5.30. I am content to screen out these impacts on this basis and these were not disputed by IPs during the Examination.

### **Thames Estuary and Marshes SPA and Ramsar**

- 6.5.31. LSE could not be excluded by the Applicant for impacts listed in Table 3 above. These impacts were not disputed by IPs during the Examination and I agree that LSE could not be excluded for the impacts identified. Furthermore, I also consider that LSE cannot be excluded for habitat loss and transportation of INNS.
- 6.5.32. In addition, I am also satisfied that LSE from hydrological changes and water quality impacts during construction, operation and decommissioning have not been excluded by the Applicant for all features of both sites and these matters are considered in the following sections of this Report.
- 6.5.33. The Applicant initially concluded no LSE from visual disturbance during operation but following challenge from NE, their conclusion was revised i.e. that LSE could not be excluded [[REP7-017](#)].

## **6.6. CONSERVATION OBJECTIVES**

- 6.6.1. The conservation objectives for the Thames Estuary and Marshes SPA are (listed in paragraph 6.4.15 of the HRA Report [[REP7-017](#)]):
- To maintain and restore the extent and distribution of the habitats of the qualifying features;
  - To maintain and restore the structure and function of the habitats of the qualifying features;
  - To maintain and restore the supporting processes on which the habitats of the qualifying features rely;



- To maintain and restore the population of each for the qualifying features; and
- To maintain and restore the distribution of the qualifying features within the site.

6.6.2. I consider that the Applicant has provided the SoSBEIS with the relevant conservation objectives (and supporting information) in order to carry out their duties under Regulation 63(3) of the HRA Regulations.

6.6.3. Whilst NE did not dispute the conservation objectives identified [[PDD-012](#) and [REP2-097](#)] they considered that 'maintain' and 'restore' had been misinterpreted and the HRA Report had not (in their view) demonstrated they would not be undermined. The Applicant provided a more proportionate assessment of loss of FLL in the context of the Mucking Flats and Marshes SSSI as part of the SPA/ Ramsar sites which demonstrated the loss of habitat would 'de minimis'. Nevertheless, I consider a LSE from habitat loss could not be excluded.

## 6.7. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

6.7.1. The Applicant could not exclude LSE from the Thames Estuary and Marshes SPA and Ramsar sites and its qualifying features either alone or in combination with other projects. The assessment of AEoI was made in light of the conservation objectives for the European sites (section 4 of the HRA Report). The LSE identified by the screening assessment were considered. Impacts to features of all other sites were screened out as explained above.

6.7.2. The Applicant concludes no AEoI on any European sites as a result of the Proposed Development [[REP7-017](#)].

6.7.3. While I have made clear above that I consider LSE from habitat loss and transportation of INNS could not be excluded, I nevertheless agree that this would not lead to an AEoI. This is discussed in further detail below.

### The Thames Estuary and Marshes SPA and Ramsar sites

6.7.4. The following impacts are those from which I consider LSE have potential to occur based on the screening conclusions set out above:

**Table 4: Potential LSE in the HRA Screening Assessment**

Impact	Thames Estuary and Marshes SPA			Thames Estuary and Marshes Ramsar		
	C	O	D	C	O	D
Hydrological Changes	All features	All features	All features	All features	All features	All features
Water Quality	All features	All features	All features	All features	All features	All features

Disturbance (noise)	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover
Disturbance (visual)	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Avocet, Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover
Habitat Loss	Avocet, Dunlin, Ringed Plover and Redshank	Avocet, Dunlin, Ringed Plover and Redshank	Avocet, Dunlin, Ringed Plover and Redshank	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover	Dunlin, Redshank and Ringed Plover
Transportation of INNS	All features	All features	All features	All features	All features	All features
In Combination	Avocet, Dunlin, Ringed Plover, Redshank and overwintering waterfowl	Avocet, Dunlin, Ringed Plover, Redshank and overwintering waterfowl	Avocet, Dunlin, Ringed Plover, Redshank and overwintering waterfowl	Ringed Plover, Redshank, Dunlin, wetland invertebrate assemblage and nationally rare plant assemblage	Ringed Plover, Redshank, Dunlin, wetland invertebrate assemblage and nationally rare plant assemblage	Ringed Plover, Redshank, Dunlin, wetland invertebrate assemblage and nationally rare plant assemblage

## Water Quality and Hydrological Change

6.7.5. I am content that with appropriate surface water features and safeguards in place (as set out in sections 6.2 and 6.3 of [REP7-017]) and included in the OCoCP [REP7-024] and Conceptual Drainage Strategy [REP4-014]), impacts on water quality due to hydrological changes will not result in an AEOI on the Thames Estuary and Marshes SPA and Ramsar sites. The measures to be implemented during construction include:

- Refuelling of machinery in designated areas so spills may be contained;
- Machinery routinely checked for working order;
- Double skinned tanks and pipes to prevent leaks and to include leak detection equipment;
- Briefing to construction staff;
- Temporary drainage for areas with prevalent run-off;
- Areas at risk of spills will be bunded with impermeable bases and carefully sited to avoid pollutants entering the drainage system;
- Minimised disturbance to watercourses;
- Excavated material and construction materials will be stored to avoid disturbance near watercourses;
- Plant machinery will be maintained in good condition;
- Settling tanks or ponds will manage surface runoff via a temporary drainage system;

- Haul road will be removed following completion of construction and any impacted watercourses will be reinstated to their previous condition;
- Temporary construction compounds will be made permeable to ensure risk of flooding is not increased and surface water will be intercepted by a temporary drainage system; and
- A method statement will be developed in the detailed design stage for trenchless water crossings.

6.7.6. Mitigation measures to be implemented during operation:

- Drainage channels around the boundary of the site connecting to existing drainage channels via balancing and containment features;
- Treatment features and pollution prevention interceptors to avoid polluted flows being discharged into designated sites; and
- Any chemical storage on site will be suitably bunded and containment features will be incorporated within the drainage system so that spills can be dealt with on site.

6.7.7. These measures are secured in Requirement 5 (CoCP) of the DCO [[REP7-012](#)].

6.7.8. I am satisfied that with these mitigation measures in place, impacts from hydrological changes and water quality will not lead to an AEoI on the Thames Estuary and Marshes SPA and Ramsar sites.

### **Disturbance During Construction (Noise and Visual Impact)**

6.7.9. NE requested a more localised assessment of disturbance to features of the SPA and Ramsar sites during construction and operation in the context of the Mucking Flats and Marshes SSSI [[RR-022](#)] (see section 4.2 of the RIES [[PD-018](#)]) as it considered by comparing the number of birds disturbed with the whole of the SPA, this 'watered down' the potential impact. The Applicant highlighted that the features are passive and tolerant to disturbance [[AS-047](#)] and also provided an updated assessment [[AS-048](#)] which considered the percentage of birds displaced in the context of the SSSI as a more localised part of the SPA/Ramsar site. This assessment also concluded no AEoI due to the number of birds being 'negligible'.

6.7.10. NE questioned whether a more precautionary approach should be adopted when considering the seasonality of features using the causeway area (please see section 4.3 of the RIES [[PD-018](#)] for more detail on this point). The Applicant did not agree to include a requirement in the dDCO [[REP7-012](#)] to avoid construction, operation or decommissioning in a particular season or month noting that as construction will take approximately six months or more, it will not be possible for construction to avoid all months where SPA and Ramsar features are present in peak counts. NE acknowledged this point [[PDD-012](#)] and subsequently agreed that the methodology for the HRA and surveys was appropriate [[REP7-017](#)]. However, it still considered that effort should be made to avoid seasonal disturbance impacts and suggested that there may be

opportunities to engineer the causeway to provide additional foraging habitats to enhance the causeway area [REP6-025].

- 6.7.11. The Applicant included a commitment in the Register of Mitigation, Enhancement and Monitoring Commitments (REAC) [APP-083] that construction of the causeway and dredge pocket was not proposed between November and March inclusive unless further evidence supported that construction during this period would not lead to a LSE on the Thames Estuary and Marshes SPA and Ramsar sites. This was subsequently removed in an updated REAC [PDC-029] on the basis that the Applicant could not guarantee that construction would not last less than six months. Following this, the Applicant [REP2-030] included a commitment in its REAC to monitor wintering birds using the causeway area where its use overlaps with the wintering bird seasons; this is secured via Requirement 16 (Operational noise) of the DCO [REP7-012]. Paragraph 6.4.66 of the HRA Report states that monitoring would inform avoidance of peak period of winter bird activity where possible and works would cease in the event that there are 14 consecutive days of freezing temperatures consistent with the guidance on cessation of wildfowl shooting during severe weather.
- 6.7.12. NE also questioned the noise threshold criteria used in the assessment of disturbance but subsequently agreed it was appropriate after consulting with a technical expert [REP6-025]. The Applicant also commits to using low-noise plant where practical to minimise noise generation (paragraph 6.4.66 of the HRA Report).
- 6.7.13. Although it recommended the measures outlined above, NE concluded that it agreed disturbance would not lead to an AEoI even without these measures in place [REP6-025]. I am also satisfied that even without mitigation, disturbance impacts during construction will be 'de minimis' considering the small number of features that have potential to be disturbed and as they are passive to disturbance. Consequently, I agree with the Applicant's conclusion that disturbance during construction will not lead to an AEoI of the Thames Estuary and Marshes SPA and Ramsar sites.

#### **Disturbance during Operation (visual)**

- 6.7.14. NE [RR-022] and the EA [RR-013] consider that the causeway should not be a permanent feature. In response, the Applicant updated the DCO [PDC-009] to commit to decommissioning the causeway at the end of the Proposed Development's lifetime of 35 years or sooner should an 'environmentally acceptable' alternative be identified. Requirement 18 of the dDCO [REP7-012] secures a 5-yearly review of a permanent, feasible and economic alternative to the causeway for AIL deliveries.
- 6.7.15. NE, along with other IPs, strongly expressed their preference for an alternative access to the causeway to be identified noting that it would mitigate impacts from disturbance to Avocet, Dunlin, Redshank and Ringed Plover features. In response, the Applicant submitted a change

request [[AS-012](#)] to include a material amendment to the submitted DCO relating to the access arrangements for AILs via the causeway.

- 6.7.16. In light of these changes, the Applicant submitted an updated HRA [[PDC-039](#) and [REP2-022](#)] to include an assessment of decommissioning impacts on European sites; a revised ES Chapter 17 Marine Environment [[PDC-019](#)], to include an assessment of effects from decommissioning the causeway [[PDC-012](#)]. Impacts from decommissioning were anticipated to be similar to those at construction.
- 6.7.17. In ExQ1, [[PD-010](#)] I asked why, in view of its 35 year lifespan, the effects of the proposed causeway should be considered temporary. The Applicant explained that the causeway would be removed at or before 35 years. To support its conclusion that impacts would be minimal during operation, the Applicant highlighted that the causeway would only be used in exceptional circumstances where large plant items would need to be replaced, bird features are recorded in low numbers in the area of the causeway and are increasingly passive to disturbance [[AS-047](#); [PDC-033](#)].
- 6.7.18. On the basis of the limited predicted disturbance, I am satisfied that disturbance during operation would not lead to an AEOI on any qualifying features of the Thames Estuary and Marshes SPA and Ramsar sites. Should an acceptable alternative AIL access be identified under Requirement 18 (Review of access for AILs) of the DCO, this would likely lessen the impacts on European sites.

### **Habitat Loss**

- 6.7.19. The Applicant did not consider that there was potential for LSE from habitat loss. However, noting NEs comments on this, I consider there is potential for LSE. However, based on the information above regarding the low number of features present at this site, their likely foraging habits and resistance to disturbance as well as the small quantity of habitat loss relative to that available (see percentage losses in Table 21 of [[AS-048](#)]) I agree with NE that habitat loss would not lead to an AEOI on the Thames Estuary and Marshes SPA and Ramsar sites.

### **Transportation of INNS**

- 6.7.20. I consider that, without mitigation, there is potential for LSE from transportation of INNS. The Applicant set out biosecurity measures to avoid transportation of INNS to the causeway site; these are described in the REAC [[AS-036](#)] and the OCoCP [[REP7-024](#)] which is secured in Requirement 5 (CoCP) of the DCO [[REP7-012](#)]. These measures include sourcing materials from on land and creation of a plan to ensure vessels comply with the International Maritime Organisation ballast water management guidelines. I am satisfied that with these measures in place, transportation of INNS is not likely to lead to an AEOI on the Thames Estuary and Marshes SPA and Ramsar sites.

## **In Combination**

- 6.7.21. The Applicant's approach to the in combination assessment is set out in section 7 of the HRA Report. The conclusion is that no additional adverse effects are anticipated as a result of in combination effects. The Applicant concluded no AEOI from in combination effects on the basis that noise thresholds were not reached to cause an AEOI. NE agreed with this conclusion [[REP6-025](#)]. Impacts from disturbance assumed that all birds were displaced and therefore the assessment is inherently cumulative. NE agree that the noise thresholds and study area used are appropriate [[REP7-036](#)].
- 6.7.22. In ExQ1, I also requested [[PD-010](#)] evidence of agreement to the in combination assessment. This fed into the dispute surrounding the conclusions of whether the Proposed Development would cause disturbance effects and lead to an AEOI as described above.
- 6.7.23. NE agreed that whilst it considered LSE from habitat loss could not be excluded, it did not consider habitat loss would lead to an AEOI on the Thames Estuary and Marshes SPA and Ramsar sites [[REP6-025](#) and [REP7-036](#)]. No evidence has been provided that there would be an in combination effect from habitat loss on the Thames Estuary and Marshes SPA and Ramsar sites including for any projects coming forward.
- 6.7.24. As such, I agree with NE and consider that, based on the fact that features are resistant to disturbance, are counted in low numbers in the area of the causeway and considering the small loss of mudflat (see percentage losses in Table 21 of [[AS-048](#)]) that it is, in the long term, a reversible impact. Consequently, I consider habitat loss would not lead to an AEOI in combination with other plans and projects.

## **AEOI Assessment Outcomes**

- 6.7.25. The Applicant's HRA Report has concluded that AEOI on the qualifying features of European site(s) can be excluded alone or in combination with other plans and projects. AEOIs from hydrological changes and water quality are reliant on mitigation as outlined above.
- 6.7.26. NE [[RR-022](#), [PDD-012](#) and [REP2-097](#)] initially disagreed with the assessment and conclusions of noise and visual disturbance effects on Avocet, Dunlin, Redshank and Ringed Plover as features of the Thames Estuary and Marshes SPA and Ramsar sites at the causeway area. They considered that, in the context of the SPA/ Ramsar as a whole, the assessment was too broad and 'watered down' potential AEOIs. In response, the Applicant provided an updated, more localised assessment [[AS-048](#)] in the context of the Mucking Flats and Marshes SSSI as a component of the SPA and Ramsar sites and highlighted that this did not change the conclusion of no AEOI as the number of bird features disturbed/ displaced on the FLL were a negligible percentage of the population. This is discussed in more detail in section 4.2 of the RIES [[PD-018](#)]. NE agreed [[REP6-025](#)] that whilst disturbance had potential to

lead to a LSE, it would not lead to AEoI. The Applicant's conclusions were not disputed by any other IPs during the course of the Examination.

6.7.27. I share the view of NE [[REP6-025](#) and [REP7-036](#)] that whilst LSE could not be excluded from habitat loss, this would lead to an AEoI on the Thames Estuary and Marshes SPA and Ramsar sites due to features being resistant to disturbance; their presence in low numbers at the causeway site; the small amount of habitat that will be lost; and the temporary and reversible nature of the impacts.

## **6.8. HRA CONCLUSIONS**

6.8.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoSBEIS.

6.8.2. Eight European Sites and their qualifying features were considered in the Applicant's assessment of LSE:

- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar;
- North Downs Woodland SAC;
- Benfleet and Southend Marshes SPA;
- Benfleet and Southend Marshes Ramsar; and
- Peter's Pit SAC.

6.8.3. LSE were excluded for the Medway Estuary and Marshes Ramsar and SPA sites, North Downs Woodland SAC, Benfleet and Southend Marshes SPA and Ramsar sites and Peter's Pit SAC both from the Proposed Development alone or in combination with other plans or projects. I am satisfied that there would be no LSE on these sites.

6.8.4. LSE from the Proposed Development alone or in combination on the Thames Estuary and Marshes SPA and Ramsar sites were identified in relation to hydrological changes, water quality, noise and visual disturbance from the causeway during construction and visual disturbance from the causeway during operation.

6.8.5. I am satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

6.8.6. Overall, I consider that, subject to the mitigation measures to be secured in the dDCO, AEoI on the Thames Estuary and Marshes SPA and Ramsar sites from the Proposed Development when considered alone or in combination with other plans or projects can be excluded from: water quality, hydrological changes and noise and visual disturbance impacts during construction and visual impacts during operation.

6.8.7. The Applicant's HRA Report and accompanying submissions have been considered carefully, along with the evidence and submissions discussed in this Chapter in order to form my assessment of the Proposed Development's implications for European sites. While the SoSBEIS is the competent authority under the Habitats Regulations, I recommend that the SoSBEIS can reach the conclusion that an AEoI from the Proposed Development when considered alone or in combination with other plans or projects can be excluded for all qualifying features of the Thames Estuary and Marshes SPA and Ramsar sites from: water quality, hydrological changes and noise and visual disturbance impacts during construction and visual impacts during operation.



## **7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **7.1. INTRODUCTION**

7.1.1. This Chapter provides an evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 5 and 6 above. It applies relevant law and policy to the application in the context of the matrix of facts and issues set out in Chapters 4 and 5. Whilst the HRA has been documented separately in Chapter 6, relevant facts and issues set out in that Chapter are taken fully into account.

7.1.2. I have taken into account all RRs, WRs and responses to ExQ1, ExQ2 and ExQ3 as well as all other representations made during the course of the Examination including the LIR received from TC.

7.1.3. In relation to the granting of development consent, I have reached the following conclusions:

#### **Principle of Development**

7.1.4. Although I have noted in Chapter 5 above that in a 3-phase construction programme, phases 2 (300MW) and 3 (Battery storage) may not be realised, and that the DCO does not require any or all parts of the battery storage to be constructed in either scenario, I nevertheless consider the need case is made out. Furthermore, in view of its intermittent peaking nature, I acknowledge the supporting role the Proposed Development will play in helping transition to a low carbon future.

7.1.5. I also accept that the provision of CHP is not compatible with the short term and intermittent peaking nature of the technology proposed and as such, I do not consider that the Proposed Development should be required to be constructed so as to be 'CHP ready'.

7.1.6. I am satisfied that there is sufficient space available on the main development site to accommodate carbon capture equipment in the future and that provision is made in the dDCO to secure this land. I am also satisfied that sufficient consideration has been given to design and layout and sufficient information provided on the consideration of alternatives to satisfy the requirements of NPS EN-1.

7.1.7. Overall, I consider the Proposal would positively contribute towards a secure, flexible energy supply, help meet the identified need for additional generating capacity, and would support the UK's transition to low carbon energy generation.

## **The Environmental Statement**

- 7.1.8. The ES and other information submitted by the Applicant during the Examination, is adequate and meets the requirements under the EIA Regulations. I have taken full account of all environmental information in my consideration of this application.

### **Air Quality**

- 7.1.9. The air quality assessment undertaken adequately assesses impacts on air quality and I accept that no significant effects on air quality are likely to arise. In addition, I am satisfied that the measures secured in Requirement 5 (CoCP) of the dDCO would ensure that any residual effects on air quality can be suitably controlled and/ or mitigated.
- 7.1.10. Accordingly, I find that the requirements of both the AQD and NPS EN-1 will be met. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development. The effect is therefore neutral.

### **Onshore Water Environment**

- 7.1.11. I am satisfied that an appropriate FRA, meeting the requirements of NPS EN-1, has been carried out and that sufficient mitigation would be secured in Requirement 4 (Detailed design), Requirement 5 (CoCP) Requirement 10 (Surface and foul water drainage) and Requirement 11 (Flood evacuation plan) of the dDCO to guard against the risk of flooding.
- 7.1.12. Furthermore, I consider that the Applicant has provided sufficient information on flood risk to meet the requirements of NPS EN-1, EN-2 and EN-4, and I am satisfied that no further mitigation in respect of flooding is necessary beyond that set out in the dDCO.
- 7.1.13. In addition, I am satisfied that, subject to the mitigation measures identified in the ES, and secured in Requirement 4 (Detailed design), Requirement 5 (CoCP), Requirement 10 (Surface and foul water drainage) and Requirement 12 (Contaminated land), there should be no adverse effects on water quality and resources from the Proposed Development during construction, operation or decommissioning. As such, I find that the Proposed Development accords with the requirements of the WFR and WFD.
- 7.1.14. As I have made clear in section 5.4 above, I consider the requirements in respect of water quality and flood risk set out NPS EN-1, EN-2 and EN-4 are met. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development. The effect is therefore neutral.

### **Landscape and Visual Resources**

- 7.1.15. Based on the evidence presented and having viewed the site from a number of representative viewpoints, I am satisfied that the Proposed Development would not have a significant effect on landscape or visual amenity and meets the requirements of NPS EN-1 and NPS EN-2.

- 7.1.16. Furthermore, I am satisfied that Requirements 4 (Detailed design), 5 (CoCP) and 14 (LEMP) of the dDCO will provide further opportunities to mitigate the visual impact of the Proposed Development on its surroundings. The visual impact is therefore neutral in the planning balance.

### **Ecology**

- 7.1.17. Given the evidence presented, I consider that ecological and nature conservation issues have been adequately assessed, that the Proposed Development would result in biodiversity net gain and that the requirements of NPS EN-1 are met.
- 7.1.18. Given the evidence presented, I am satisfied that ecological and nature conservation issues have been adequately assessed, that the Proposed Development would result in biodiversity net gain and that Requirement 14 (LEMP) of the dDCO would help ensure that significant harm to onshore ecology would be avoided. Overall, I consider the biodiversity net gain demonstrated would represent a benefit which weighs in favour of the Proposal. However, the gain indicated is not significant and, as such, I afford it only limited weight.

### **Marine Environment**

- 7.1.19. The ES provides an adequate assessment of the effects of the Proposed Development on the marine environment including in terms of dredging, sediment deposition and marine ecology.
- 7.1.20. Overall, I am satisfied that the Proposed Development would not result in any material harm to the marine environment. However, as noted in paragraph 5.7.20, I agree that the loss of intertidal mudflat and saltmarsh habitat would result in some additional harm and weighs against the proposal. However, I also agree that the impact would be localised and, as such, afford it only a moderate amount of weight.

### **Noise and Vibration**

- 7.1.21. I consider that the application accords with the Government's policy on noise and vibration as set out in NPS EN-1, EN-2, the NPSE and NPPF. However, again this aspect is neutral in the planning balance.

### **Historic Environment**

- 7.1.22. I have found above that the Proposed Development would result in harm to archaeological remains, if present, albeit that it would to a large extent be mitigated by the proposed WSIs secured under Requirement 13 (Archaeology). I have also found that it would be harmful to the setting of designated heritage assets. In both cases, I consider there would be harm to the significance of these assets and that the resultant harm would, both individually and cumulatively, be less than substantial.
- 7.1.23. However, the proposal would result in a number of public benefits, not least its contribution to meeting the established need for this type of electricity generation. In view of the limited harm that would result,

coupled with the safeguards secured in the dDCO, I consider the resultant harm to the significance of these assets is clearly outweighed by the public benefits which would result.

### **Traffic and Transport**

7.1.24. I am satisfied that that no significant traffic or transportation effects are likely to arise from the Proposed Development either alone or in combination with other developments. Furthermore, I consider the control and management measures contained in the CTMP and CWTP, secured under Requirements 6 (CTMP) and 7 (CWTP) in the dDCO, are sufficient to mitigate any likely adverse effects of the proposal to an acceptable level.

7.1.25. Accordingly, I find the requirements of NPS EN-1 and NPS EN-2 in respect of traffic and transportation impacts have been met. However, again this aspect is neutral in the planning balance.

### **Public Health**

7.1.26. The Applicant has had adequate regard to the human health impacts of the proposal. The evidence indicates that no significant impacts on human health are likely to arise from the Proposed Development either alone or in combination with other developments.

7.1.27. Accordingly, I am satisfied that the application accords with the guidance set out in NPS EN-1 and NPS EN-5. Again, this aspect is neutral in the planning balance.

### **Land Use, Agriculture, Socio-economics and Green Belt**

7.1.28. I am satisfied that the Applicant has had adequate regard to the agriculture, land use and socio-economic impacts of the proposal. The evidence presented indicates that there would be some moderate positive socio-economic benefits to the local economy not least in terms of job creation and that the Proposed Development has the potential to support further economic development in the local area. I afford this moderate weight.

7.1.29. Nevertheless, the Proposed Development would result in the loss of agricultural land and would constitute inappropriate development in the Green Belt which would, by definition be harmful. It would also negatively impact on the openness of the Green Belt and would be in conflict with one of the 5 purposes of the Green Belt. As noted in Chapter 5 above, this would be in conflict with NPS EN-1.

### **Cumulative and Combined Effects**

7.1.30. I am satisfied that no long term and cumulative adverse impacts are likely to arise from construction, operation and decommissioning activities. Accordingly, I am satisfied that the requirements of NPS EN-1 are met in this regard.

## **Climate Change**

- 7.1.31. NPS EN-1 explicitly recognises that there is an ongoing need for development of the type proposed. Furthermore, it recognises that some of the new generating capacity needed is likely to come from new fossil fuel generating capacity in order to maintain security of supply, and to provide a flexible back-up for intermittent renewable energy. I consider the Proposed Development would fall within this category.
- 7.1.32. While I acknowledge there would be an absolute increase in GHG emissions, it would be offset by displacement and is, in my view, outweighed by the contribution that the Proposed Development would have in supporting the transition to a low carbon economy.
- 7.1.33. Consequently, I consider the Proposed Development would accord with the guidance in NPS EN-1 and NPS EN-2.

## **7.2. THE PLANNING BALANCE**

- 7.2.1. I have found above that the Proposed Development would result the loss of agricultural land contrary to the advice set out in NPS EN-1. Furthermore, I have found that it would constitute inappropriate development in the green belt which is, by definition, harmful. I have also found that there would be harm to the openness of the Green Belt and that the Proposed Development would conflict with one of the purposes of including land within the Green Belt. I afford this substantial weight.
- 7.2.2. In respect of heritage assets, as already noted, I consider the overall level of harm would be less than substantial and would be outweighed by the public benefits. As such, I afford this only moderate weight.
- 7.2.3. In addition, I have found that there would be some, albeit localised, harm as a result of the habitat loss resulting from the causeway. However, for the reasons given above I afford this only a moderate amount of weight.
- 7.2.4. The Applicant points to a number of other considerations which it considers provide the VSCs required to outweigh the harm to the Green Belt, and any other harm. In particular, it points to the Proposed Development's role in supporting the growth of renewable energy, addressing a critical and urgent need for on-demand power generation, contributing to energy security and network resilience, the role of the application site in the green belt, the proximity to high pressure gas and 275kv electricity network connections, as well as the improvement of access to common land.
- 7.2.5. As I make clear in section 5.12 and Chapter 8 above, I do not consider the permissive access proposed to the replacement land would provide any meaningful benefit. As such, I afford it no weight.
- 7.2.6. Nevertheless, NPS EN-1 makes clear that there is an established need for on-demand power generation of the type proposed. It would support the

growth of renewable energy, contribute to energy security, network resilience and towards a secure, flexible energy supply. Overall, while I note that in the 3-phase construction scenario, phases 2 and 3 would not be guaranteed, the additional generation capacity from phase 1 alone (300MW) would help meet the need established through the NPS. Furthermore, in view of its peaking nature, I consider it would also support the UK's transition to low carbon energy generation.

- 7.2.7. Likewise, it makes use of transport by river limiting traffic congestion, is near to an electricity and gas connection, in an already industrialised area. Overall, I agree with TC that the site presents a unique opportunity for power generation making beneficial use of the existing Tilbury substation and associated electricity pylon infrastructure.
- 7.2.8. Taking the above factors into account, I conclude that the harm to the Green Belt, together with the other harm I have identified, is outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above. I further conclude that there is no breach of NPS policy overall.
- 7.2.9. For the reasons set out in the preceding chapters and summarised above, I find that the Proposed Development is acceptable in principle in planning terms. I carry this conclusion forward to my consideration of CA and TP proposals and objections to these in Chapter 8 and in my consideration of the dDCO in Chapter 9 below.

## **8. COMPULSORY ACQUISITION AND RELATED MATTERS**

### **8.1. INTRODUCTION**

8.1.1. The application included proposals for the CA and TP of land and rights over land. This chapter records the examination of those proposals and related issues.

### **8.2. THE REQUEST FOR CA AND TP POWERS**

8.2.1. The application dDCO (version 1.0) and all subsequent versions include provision for CA of freehold interests and private rights and the creation of new rights over land. They also contain provisions for the TP of land.

8.2.2. None of the land included in the CA request is Crown Land, National Trust Land or Open Space. However, the Order seeks to authorise the CA of land and rights over registered common land forming part of Common Land Register Units CL228 and CL411. Details of the land affected can be found in Part 5 of the BoR [[REP7-015](#)] and is identified in the Land Plans and Special Category Land Plans [[REP7-003](#)]. A summary is also provided in Table 6 below.

8.2.3. A Statement of Reasons (SoR) [[APP-024](#)], Funding Statement [[APP-023](#)] BoR [[APP-025](#)] and Land Plans and Special Category Land Plans [[APP-007](#)] were provided with the application. Revisions to the BoR and Land Plans and Special Category Land Plans were received at Procedural Deadline C to take account of non-material change requests proposed by the Applicant. Further revisions to the SoR, BoR and Land Plans and Special Category Land Plans were made during the Examination with the most up-to-date versions being those submitted at D7 ([[REP7-014](#), and [REP7-015](#), [REP7-003](#)] respectively). These documents, taken together, form the basis of the analysis in this Chapter. References to the SoR, BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above.

### **8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED**

8.3.1. The purposes for which the CA and TP powers are required are set out in the BoR and SoR. In summary, the Applicant states that:

*"In the absence of compulsory acquisition all of the land required to allow the Project to be constructed and operated may not be acquired and the Project will not proceed. The Applicant needs to have certainty that the land can be obtained within a reasonable timeframe and to be able to evidence this certainty to its funders".*

*(Source: Paragraph 7.7 SoR [[REP7-014](#)])*

### **8.4. THE CA AND TP POWERS SOUGHT**

8.4.1. The powers sought are for the acquisition of:

- all interests including freehold over plot numbers 01/05, 01/06, 01/07, 01/08, 01/12, 01/13, 01/16, 01/17, 01/18, 01/19, 01/20, 01/22, 01/23, 01/24, 01/26, 01/26a, 01/27, 01/28, 01/29, 01/32, 02/03, 02/05, 02/06, 02/07, 02/12, 02/14, 03/01a, 03/11, 04/02, 04/05, 04/06, and 05/05 shown edged red and shaded pink on the Land Plans. Article 19 of the dDCO is relied on in respect of this land;
- permanent new rights over plots 01/04, 01/09, 01/10, 01/11, 01/14, 01/15, 01/21, 01/25, 01/30, 01/31, 01/33, 01/34, 01/35, 01/36, 01/37, 02/01, 02/02, 02/04, 02/08, 02/09, 02/10, 02/11, 02/13, 03/01, 03/02, 03/03, 03/04, 03/05, 03/06, 03/08, 03/09, 04/01, 04/03, 05/01, 05/02, 05/03, 05/04, and 05/07 all of which are shown edged red and shaded blue on the Land Plans. Article 22 of the dDCO is relied on for the acquisition of these new rights and includes the power to impose restrictive covenants. The new rights which can be acquired are set out Schedule 5 of the dDCO;
- temporary possession of plot numbers 03/07, 03/10, 05/06 and 05/08, all of which are shown edged red and shaded green on the Land Plans. Articles 28 and 29 are relied on and the land affected by TP is listed in Schedules 5 and 6 of the dDCO and includes any other part of the Order land where CA powers have not been exercised; and
- land, rights and apparatus belonging to SUs within the Order land including powers to extinguish and suspend existing rights and to remove and reposition SU apparatus. Article 30 is relied on in respect of this.

## **8.5. LEGISLATIVE REQUIREMENTS**

- 8.5.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the 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 the development.
- 8.5.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, DCLG's guidance on compulsory acquisition ("the CA Guidance") indicates the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.5.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:
- that the application for the order included a request for CA of the land to be authorised - s123(2); or
  - that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
  - that the prescribed procedure has been followed in relation to the land - s123(4).



- 8.5.4. The application included a request for CA of the land to be authorised. Furthermore, the additional CA provisions sought as part of the Applicant's material change request [[AS-012](#)] were subject to the prescribed procedure set out in the CA regulations. As such, I am satisfied that the condition set out in s123(2) of the PA2008 has been met. See Section 2.4 above for further information on the additional powers sought and the procedures followed.
- 8.5.5. Sections 131 and 132 of the PA2008 apply to, amongst other things, the CA of any land forming part of a common. They provide that an order granting development consent is subject to special parliamentary procedure, to the extent that it authorises the CA of common land, or a right over common land, unless certain conditions are met. These include that the SoS is satisfied that replacement land has been or will be given in exchange for the order land, and the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land. They also require that the fact, and the relevant subsection concerned, are recorded in the order.
- 8.5.6. Section 127 of the PA2008 applies to SU land. S127(2) and (3) state that an order granting development consent may include provision 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 purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 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.
- 8.5.7. Section 138 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 section of the PA2008 is relevant to SUs with land and equipment interests within the Order Limits.
- 8.5.8. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.

- 8.5.9. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the Explanatory notes that accompany the Act. While it is not necessary to assess the proposal against these provisions, they provide a useful indication of how Parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers. As a result, I have had regard to the general principles that they espouse.
- 8.5.10. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also have to be addressed including:
- whether all reasonable alternatives to CA have been explored;
  - whether the Applicant has a clear idea of how it intends to use the land subject to CA powers;
  - whether the Applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
  - whether the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.5.11. I have taken all relevant legislation and guidance into account in my reasoning below and relevant conclusions are drawn at the end of this Chapter.

## **8.6. EXAMINATION OF THE CA AND TP CASE**

- 8.6.1. As noted in section 2.4 above, the Applicant made a request under Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (“the CA Regulations”) to add additional land to the application to facilitate Work no. 15 (the Alternative AIL Access) and this was accepted into the Examination.
- 8.6.2. As a result, alterations were made to the Examination Timetable in order to ensure they were fully and robustly examined and those affected (including existing IPs) were invited to submit RRs on the changes, including the proposed provisions, and an opportunity provided for them to make full WRs at D5A.
- 8.6.3. In examining the application, I considered all written material in respect of CA and TP. I asked questions of the Applicant and APs in ExQ1, ExQ2 and ExQ3. In addition, I held 2 CAHs [[EV-024](#) and [EV-026](#)] where the issues were explored in further detail. I describe these processes in further detail below.

### **Written Processes**

- 8.6.4. In ExQ1 [[PD-010](#)] (ExQ1.3.1 – Q1.3.32), I sought further information on land ownership (including in relation to whether any Crown land was

being sought), information on common land, unknown owners (and attempts made to identify them), and updates on the progress of discussions with APs. I also sought further information on what alternatives to CA had been considered, how funding for CA and TP was to be secured in the dDCO, the extent and potential effect on public access rights, further details on PPs for affected SUs, whether any options for alternative dispute resolutions had been considered as well as further clarification on inconsistencies in the BoR and Land Plans.

8.6.5. I also asked the Applicant to provide a CA schedule to be kept updated throughout the Examination, asked for details on the rationale for running parallel processes under both PA2008 and CA2006, as well as details on how the estimates of the amount of compensation payable had been calculated.

8.6.6. In ExQ2, I sought further information on the Applicant's intentions in respect of Work nos. 12(c) and 12(d), including whether the use of CA powers would be limited to only one of the two options proposed. I also sought updates on discussions with SUs and the acquisition of replacement common land under Article 33.

8.6.7. Following the submission of WRs on the additional provisions for proposed to facilitate Work no. 15 at D5A, I sought further clarification (ExQ3) on the Applicant's intentions in respect of these.

### **Hearings**

8.6.8. During the Examination, I held two CAHs (CAH1[EV-024] and CAH2 [EV-026]) at which I asked a number of questions of the Applicant and APs (and/ or their representatives). These provided an opportunity for APs to be heard and comment on the process and on the rights sought and provisions proposed in the dDCO.

8.6.9. My oral questions sought information and/ or clarification on a number of matters including:

- matters not clear from the written evidence;
- funding;
- progress on negotiations with APs;
- the need to acquire rights and alternatives;
- the proposed provisions to facilitate Work no. 15;
- updates to the BoR and Land Plans;
- PPs in relation to SUs and others; and
- whether there is a compelling case in the public interest.

### **Site Inspections**

8.6.10. My approach to site inspections is set out in Chapter 1 above (paragraphs 1.4.18 to 1.4.21). In summary, I visited a number of affected sites either unaccompanied or on an access required basis.

8.6.11. In view of the COVID-19 restrictions and advice in place at the time, I took the procedural decision not to hold an Accompanied Site Inspection

(ASI) and to instead accept the Applicant's alternative proposals which involve a combination of conventional and 360° photography [[REP5-018](#)].

- 8.6.12. Taken together this has provided me with a good understanding of the location of the affected plots as well as any above ground infrastructure.

### **The Applicant's case**

- 8.6.13. The Applicant's case for the CA and TP powers sought is set out in section 11 of the SoR [[REP7-014](#)] and was expanded upon in its response to ExQ1.2.28 [[REP2-041](#)]. In summary, the Applicant seeks CA and TP powers on the basis that the proposal meets an urgent need for new energy infrastructure, provides additional generating capacity on the 275kv network around London, is suitable in its context, minimises or mitigates adverse impacts to an acceptable degree and is compliant with the NPS.
- 8.6.14. The Applicant benefits from an exclusivity agreement with the landowner for most of the land proposed for the main development site and the area of replacement common land. The Applicant explains that CA powers are sought over this land on a precautionary basis in the event that other, unknown interests were to arise.
- 8.6.15. In addition, the use of CA and TP powers is sought to secure the land and other interests necessary to enable the Applicant to construct, operate and maintain the Proposed Development within a reasonable timeframe. It has therefore included powers to acquire land and create new rights over land in respect of Zones B, C, D, F, G and H and J (details of the various zones can be found in ES Chapter 2 (Project Description) [[REP7-019](#)] and a summary is provided in section 2.2 of this Report).
- 8.6.16. Article 22 includes powers to impose restrictive covenants in relation to land over which CA powers are exercised. Specific justification and details as to the types of restrictions likely to be imposed can be found in Section 11 of the SoR and include restrictions to protect and prevent interference with installed infrastructure.
- 8.6.17. The SoR also contains the Applicant's justification for the CA of common land and rights explaining that that in view of the extensive site selection exercise carried out, it is necessary for the construction and operation of the project.
- 8.6.18. Taking these matters into account, the Applicant concludes that there is a clear and compelling case in the public interest for the inclusion of powers of CA and that the public benefit of allowing the project to succeed outweighs the infringement of private rights which would occur in the event that the CA powers were exercised.

### **Alternatives**

- 8.6.19. The CA Guidance indicates that the Applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable

alternatives to compulsory acquisition (including modifications to the scheme) have been explored.

- 8.6.20. ES Chapter 3 (Alternatives) [[APP-046](#)] sets out the Applicant's rationale for site selection and explains how the grid connection point was chosen. Although it acknowledges that proximity to both gas and electricity grids was a principal driver, eventual site selection also involved consideration of the need to minimise CA.
- 8.6.21. Specifically in relation to CA, the Applicant states that its main consideration of alternatives has been to actively pursue the acquisition of the land and rights needed by voluntary agreement and to minimise the need for CA powers wherever possible. Furthermore, notwithstanding the request for CA and TP powers, the Applicant has conducted negotiations with APs in parallel with the Examination with the aim of acquiring the land by agreement.
- 8.6.22. It also notes that multiple access options were studied and consulted upon including access from the A13 via Brentwood Road, from the west via a temporary haul road for the B129 and the craning of AILs over the railway. These were subsequently rejected in favour of delivery of AILs by river before continuing along a haul road over the former Tilbury Power Station site (plots 04/02 and 04/01), minimising the impact on the local and strategic road network.
- 8.6.23. The Applicant also notes that the gas pipeline route was also refined to make two crossings of Station Road (rather than run along underneath it, as initially proposed), reducing the impact of construction in the road.
- 8.6.24. In general, I consider the Applicant has demonstrated that it has given sufficient consideration to alternative methods of AIL delivery other than by water. Nevertheless, concerns have been raised by IPs that insufficient consideration has been given to delivery of AILs via the Port of Tilbury, an option that would involve a reduction in the CA powers required.
- 8.6.25. In response the Applicant states that while this option was considered, it was not pursued due to an inability to secure the necessary agreements with the Port of Tilbury during the formative stage of proposals. As a result, it developed the causeway proposal which it considers is currently the only option which would provide certainty for the delivery of AILs. Nevertheless, in response to concerns raised by IPs, the Applicant has included Work no. 15 which is intended to help facilitate an Alternative AIL Access route (via the Port) if certain agreements can be reached.
- 8.6.26. Discussions were held during the Examination between the Applicant, PoTLL and RWE with a view to putting the Applicant in a position where it could withdraw the causeway option. Nevertheless, despite becoming the main focus of discussion between those parties, at the close of the Examination agreement had not been reached and both PoTLL and RWE's objections remain unresolved.

- 8.6.27. In summary, PoTLL and RWE assert that the Alternative AIL Access route is deliverable within the powers included in the Order and, as a result, the CA powers sought in respect of the causeway (plot 04/01 and 04/02) are not justified. In response, the Applicant argues that it could only commit to using the alternative if it had, amongst other things, secured a binding commercial agreement for the handling/ offloading of the AILs into the port and their onward passage to Fort Road. In the absence of such, it argues that it would not have the same degree of certainty as it would with the causeway option and this would negatively impact on the fundability and deliverability of the project.
- 8.6.28. I have considered the parties' representations on this matter carefully and acknowledge that, were it to be secured, the Alternative AIL Access route would be the preferred option for all parties. However, I consider at present, the proposed Alternative AIL Access provides only a partial solution. The dDCO does not make provision for the delivery of AILs to the Port, their handling or onward transmission to the public highway. In the event that reasonable terms could not be agreed, it would raise serious questions on the Applicant's ability to deliver key components to the site.
- 8.6.29. Furthermore, I believe the Applicant is best placed to determine whether any particular solution provides the certainty it requires. It should not, in my view, have alternative solutions imposed upon it, particularly where those options raise questions on the fundability and deliverability of the project. While I acknowledge this does not obviate the need for the Applicant to demonstrate the relevant legislative and policy tests have been met, it is, in my view, entitled to put forward the solution it considers best meets its needs and have its application considered on that basis.
- 8.6.30. While I note PoTLL's suggested scheduling of the heads of terms to the dDCO in an attempt to assuage the Applicant's concerns, these are not agreed by the Applicant and I do not consider it would be reasonable to impose them in the circumstances. Furthermore, they would essentially result in an obligation to agree something that, despite considerable efforts on the part of those involved, it has not been possible to achieve.
- 8.6.31. On balance, I am satisfied that the Applicant has demonstrated that it has explored all reasonable alternatives to CA including modifications to the scheme.

#### **Availability and adequacy of funds**

- 8.6.32. The Applicant's Funding Statement [[APP-023](#)] explains that the Applicant has the ability to secure the financial resources through its parent company, Stratera Energy Limited and details of the latest audited accounts for Stratera Energy Limited have been provided.
- 8.6.33. These indicate that the Applicant has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation.

- 8.6.34. The adequacy of funding for CA was not raised by any IP during the course of the Examination. At CAH1, PoTLL drew attention to paragraph 3.3.8 of the Funding Statement which indicates that board approval for the project may be connected to the award of a Capacity Market contract. However, PoTLL's concerns relate to the timescales that would result from such a funding model and do not raise concerns in relation to the Applicants ability to fund the Proposed Development.
- 8.6.35. As part of ExQ1, I sought clarification on the £2-5 million estimated compensation referred to in the SoR. In response, the Applicant provided an estimate of around £3.14 million together with a breakdown of the figures attributable to the different areas. Based on the information provided, I am satisfied that the necessary funds are available to the Applicant to cover the likely costs of CA.
- 8.6.36. In ExQ1 (ExQ.1.3.10) [[PD-010](#)], I sought further information on the mechanism to ensure funding for CA was secured. This was explored further in CAH1 [[EV-024](#)]. In response the Applicant included provisions (Article 34) which require the SoSBEIS to approve a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

## **8.7. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP**

- 8.7.1. At the start of the Examination, the following APs objected to CA and TP proposals:
- The Port of Tilbury London limited
  - RWE Generation (UK) Plc
  - Anglian Water
- 8.7.2. I was kept updated throughout the Examination on how matters were progressing with the abovementioned parties by means of a CA Schedule.
- 8.7.3. Formal notification of withdrawal of objections were received from Anglian Water [[REP6-023](#)] and I note that PPs have been agreed which offer the necessary protections for this SU. There are no outstanding issues or circumstances which would indicate that the CA powers sought in relation to the affected plots should not be granted. Furthermore, I am satisfied that the legal tests set out in PA2008 have been met. As a result, I do not consider them further below (except insofar as they are relevant to my consideration of the specific provisions of the dDCO in Chapter 9).
- 8.7.4. At the close of the Examination, the following APs still had objections outstanding:
- The Port of Tilbury London limited
  - RWE Generation (UK) Plc

8.7.5. Table 5 below sets out details of the plots affected by the outstanding objections and the provides links to the representations received from APs.

**Table 5: Objections to CA and TP outstanding at close of the Examination**

<b>AP</b>	<b>Plots Affected</b>	<b>Powers sought</b>	<b>Representations</b>
<b>RWE Generation (UK) Plc</b>  SU  (S127/138 PA2008 apply)	01/19	CA of Freehold	<a href="#">RR-031</a>
	01/20		<a href="#">AS-006</a>
	01/23 – subsoil		<a href="#">PDD-003</a>
	01/26 – subsoil		<a href="#">REP2-095</a>
	01/26a – subsoil		<a href="#">REP3-025</a>
	01/28		<a href="#">REP4-032</a>
	01/29 – subsoil		<a href="#">REP5-029</a>
	01/32		<a href="#">REP5A-009</a>
	04/02		<a href="#">REP6-027</a>
	04/05		<a href="#">REP7-047</a>
	04/06 – subsoil		<a href="#">REP8-007</a>
	01/22		
	01/17		
	02/05		
	02/06		
	02/07		
	01/11	CA of rights	



	01/21 01/30 01/31 01/34 01/37 04/01 04/03 01/09 01/10 01/15 01/04 01/33 01/35 05/04 02/09 02/11		
<b>Port of Tilbury London Limited</b>  SU	01/05 01/13 01/16 04/02 04/05	CA of Freehold	<a href="#">RR-023</a> <a href="#">RR-030</a> <a href="#">AS-009</a>

(S127/138 PA2008 apply)	01/04	CA of rights	<a href="#">AS-049</a>
	01/33		<a href="#">PDA-004</a>
	01/35		<a href="#">PDD-007</a>
	01/36		<a href="#">REP2-096</a>
	05/01		<a href="#">REP3-023</a>
	05/04		<a href="#">REP4-031</a>
	05/07		<a href="#">REP5-028</a>
	05/02 – subsoil		<a href="#">REP5A-008</a>
	05/03 – subsoil		<a href="#">REP6-026</a>
	01/14		<a href="#">REP7-049</a>
	01/28		<a href="#">REP8-008</a>
	02/01		<a href="#">REP8-009</a>
	02/04		<a href="#">REP8-010</a>
	04/01		<a href="#">REP8-011</a>
	04/03		
05/08 – subsoil	TP		

## 8.8. OBJECTIONS OUTSTANDING

### PORT OF TILBURY LONDON LIMITED (POTLL)

- 8.8.1. Details of PoTLL’s representations made during the Examination can be found in the representations listed in Table 5 above. PoTLL’s main objection in relation to the CA of its land interests can be found in [RR-030](#). Its final position on the outstanding matters still in dispute between it and the Applicant can be found in its D8 response [[REP8-008](#)].
- 8.8.2. In summary, it argues that the CA powers sought over plot 04/01 and 04/02 are not justified on the basis that there is a clear alternative in the Alternative AIL Access and that the use of these powers to provide a causeway that will only support an initial construction followed by minimal ad-hoc movements during operation would not be proportionate.
- 8.8.3. In addition, they raise concerns in relation to the impact that the proposal would have on its own future expansion as well as on the Thames Freeport proposals. Furthermore, while it acknowledges the Applicant’s need for CA powers as a backstop in the absence of any agreement, it objects to the Applicant having the ability to exercise those powers without certain controls as to their use. In particular, it seeks PPs

for its benefit which include provisions requiring PoTLL's consent for the use of those powers.

- 8.8.4. PoTLL's concerns in respect of the causeway and its impact on the socio-economic effects including its potential impact on the Thames Freeport proposals have been considered in Chapter 5. Likewise, the matters raised by PoTLL in respect of alternatives has been considered in section 8.6 above. I do not revisit these matters here.

### **RWE GENERATION (UK) PLC (RWE)**

- 8.8.5. RWE is a SU and owner of the former Tilbury Power Station site, located to the south of the main development site and over which the Applicant is seeking powers of CA.
- 8.8.6. Details of RWE's objection can be found in the representations listed in Table 5 above. In summary, it objects to the inclusion of CA powers over its land interests due to the effect this would have on the future development of its land, its undertaking and its obligations to existing tenants as well as the impact of the proposed flood defences over its site. It also raises concerns more generally with the CA of land required for the proposed causeway (plots 04/01 and 04/02) and whether the powers of CA are justified in view of the Alternative AIL Access.

### **Section 122(2) PA2008**

- 8.8.7. In general, I am satisfied that the land and rights sought by the Applicant are required to enable Work nos. 1 to 15 to be carried out. They are all an integral part of the Proposed Development and are either required for the development, to facilitate it or are incidental to it.
- 8.8.8. The central issue of contention in respect of s122(2) during the Examination related to plots 04/02 and the lower part of plot 04/01, both of which the Applicant considers are required to facilitate the delivery of AILs via the proposed causeway (Work nos. 10, 11 and 12). RWE and PoTLL essentially argue that, in view of the inclusion of the Alternative AIL Access, these plots are no longer required for the Proposed Development and should be removed from the Order.
- 8.8.9. I have given careful consideration to the parties' representations on this matter. However, I note the Applicant does not consider the Alternative AIL Access provides a like for like alternative to the causeway and would instead be subject to passage through the port and its associated handling and other requirements. Indeed, the Applicant has made clear throughout the Examination that the Alternative AIL Access route was not intended as a like for like alternative and its use was always subject to the Applicant securing other agreements with PoTLL and RWE. This was one of the main matters under discussion between the parties throughout the Examination. Nevertheless, despite focused and lengthy discussions between the parties, the fact remains that at the close of the Examination, such agreements had not been reached.

- 8.8.10. I am mindful that the Alternative AIL Access route is all parties' preferred option, including the Applicant's. However, there remains some considerable unease on the part of the Applicant over its actual operational delivery. In contrast, the causeway provides a complete solution which the Applicant considers is capable of delivery and provides the funding certainty it requires.
- 8.8.11. While I note PoTLL's contention that the Applicant can take advantage of the 'Open Port Duty' under s33 of the Harbours Dock's and Piers Clauses Act 1847, I accept that there are other matters, including in terms of handling and storage, with which the Applicant will want to satisfy itself before committing to an AIL delivery option that it is uncertain it can fully secure and may have significant implications for the delivery of its project.
- 8.8.12. At D8, PoTLL provided a mark up of the Applicant's version 8 of the dDCO which, amongst other things, suggested amendments which would replace the CA powers sought with a Lease of Easement and Heads of Terms scheduled to the DCO (together with obligations that they be entered into at some point in the future). While I accept that section 120(3) has a wide application, the fact remains that those Heads of Terms are not agreed, and that approach is not supported by the Applicant. In any event, I am not persuaded that imposing such an obligation in the face of the Applicant's stated opposition would overcome its concerns or provide it with the certainty it requires.
- 8.8.13. Overall, I concur with the Applicant that, without certainty over the Alternative AIL Access, the use of the causeway will need to be relied on. As such, I consider it meets the test set out in s122(2).
- 8.8.14. Turning then to the CA powers sought in order to help facilitate the Alternative AIL access, the Applicant explains that these powers would only be exercised in the event that agreement was reached on the Alternative AIL Access (and consequent removal of the causeway). Nevertheless, I consider they go some way to helping establish an alternative mechanism for AIL delivery which would assuage a number of IP concerns and allow for the early decommissioning of the causeway. I am satisfied they are sufficiently incidental to the Proposed Development to satisfy the test in s122(2).
- 8.8.15. Consequently, I am satisfied that the CA powers sought over all of the land identified in the land plans and BoR are required for the Proposed Development, to facilitate it or are incidental to it. I am therefore satisfied that the powers sought meet the condition set out in S122(2) of the PA2008.

### **Section 122(3)**

*RWE*

- 8.8.16. During the Examination, RWE raised a number of concerns in relation to how the Proposed Development would impact upon plans for the future development of the former Tilbury Power Station site. In summary, it

argued that the Proposed Development would restrict future development along the river frontage and materially constrain future possibilities for redevelopment of its land.

- 8.8.17. However, I note that the proposed construction access route runs along the northern boundary of the site and a right of access already exists in favour of NG over this route. The rights sought would co-exist alongside the existing rights in favour of NG and there is no reason to suppose they would materially alter the future development potential of the site.
- 8.8.18. While I acknowledge RWE's concerns in respect of the Applicant's use of the haul roads and the impact that the causeway would have on their ability to access the river frontage, its previous plans for the proposed Tilbury Energy Centre on the site are no longer being pursued and it has not identified any reasonably advanced proposals which would be directly affected.
- 8.8.19. On balance, while I accept the inclusion of the CA powers sought would add an additional constraint to be considered as part of any future redevelopment of the site, no robust evidence has been put forward which would indicate that they would have a materially detrimental effect on the future development potential of the wider RWE site.
- 8.8.20. Likewise, while I note RWE's contention that there can be no compelling case in the public interest for the causeway in view of the powers sought for the Alternative AIL Access, as I have already noted above, I do not consider it provides an acceptable alternative at this time. While I accept that the alternative route would result in less interference with RWE's land interests, I concur with the Applicant that the removal of the causeway would result in considerable uncertainty over whether the main components can be delivered to the site.

#### *PoTLL*

- 8.8.21. PoTLL also raised concerns in relation to how the Proposed Development would impact upon plans for the future development of the port including the Thames Freeport proposals.
- 8.8.22. However, as noted in Chapter 5 above, the Thames Freeport proposals are at a formative stage and while I accept it would need to take account of the new causeway, PoTLL has not in my view demonstrated that its construction would be materially detrimental to the success of that project.
- 8.8.23. Likewise, while I am mindful that PoTLL has its own plans for future expansion, these are also at a formative stage and there is nothing which would demonstrate that the erection of the causeway would be materially detrimental to any reasonably advanced proposals in that respect.

#### **Conclusion on s122 PA2008**

- 8.8.24. On balance, while I acknowledge the CA powers sought over the PoTLL and RWE land might result in some adverse impacts to those IPs' private

interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, I consider there is a compelling case in the public interest for the land to be acquired compulsorily.

### **Section 127 and s138 PA2008**

- 8.8.25. Both PoTLL and RWE are SUs for the purposes of s127 and s138 of the PA2008 whose representations have not been withdrawn. As such, the SoS must be satisfied that the CA powers sought are necessary for carrying out the Proposed Development and would not result in serious detriment to the carrying on of RWE's undertaking.

#### *RWE*

- 8.8.26. RWE assert that plot 04/02 is essential to allow for water intake and cooling for power related development and that it could not be purchased and replaced by other land without serious detriment to its undertaking.
- 8.8.27. However, while I accept the land offers access to the river frontage, and acknowledge its role as part of the former Tilbury Energy Centre Project, as I have already noted above, that project is no longer being pursued. I can see no reason that the exercise of CA powers over this land would materially impact on the future development of the wider RWE site. Furthermore, in view of the limited contribution the site makes to RWE's electricity generating activities, and the lack of any robust evidence to demonstrate that the land is earmarked for a particular project or scheme related to that undertaking, I am not persuaded that its loss would result in any serious detriment.
- 8.8.28. Nevertheless, I accept that, taken together, there is some potential for the exercise of the CA powers included to have adverse impacts on RWE's undertaking.
- 8.8.29. Discussions continued throughout the Examination between RWE and the Applicant with a view to agreeing PPs. I received regular updates as to the progress being made and the parties have confirmed that the form of PPs included in version 8 of the dDCO [[REP7-012](#)] are largely agreed. They include provisions in relation to flooding and security, provisions to ensure that RWE's existing apparatus cannot be acquired other than by agreement and ensure that access for RWE and its tenants would be maintained. RWE confirmed at D8 that, with the exception of paragraph 3, all other provisions are now agreed.
- 8.8.30. Nevertheless, at the close of the Examination, the parties continue to disagree as to whether the Applicant's use of CA powers should be subject to RWE's consent and have proposed alternative wording for this in paragraph 3. This can be found in the Applicants note on the status of PPs submitted at D7 [[REP7-028](#)].
- 8.8.31. In summary, the Applicant argues that the inclusion of a provision requiring RWE's consent before CA powers are exercised over its land

would allow RWE to prevent the Proposed Development despite the authorisation of CA powers by the SoSBEIS.

- 8.8.32. I do not agree. The principle of including consenting provisions in PPs for the benefit of SUs is well established. Amongst other things, it provides assurance that no serious detriment would arise to the undertaking due to unforeseen circumstances. Furthermore, in many cases those SUs in whose favour they have been included will have objected to elements of the scheme during its Examination. I do not accept that the circumstances are materially different in the present case to justify taking a different approach.
- 8.8.33. Nevertheless, I accept that it is normal to make this type of provision subject to the test of reasonableness. As noted in the Applicant's legal advice note submitted at D7 [[REP7-042](#)], the withholding of consent in such circumstances would need to be for a critically important reason and it would not be reasonable to withhold consent capriciously or arbitrarily. I am not persuaded that it would enable RWE to frustrate or prevent what has already been found to be acceptable.
- 8.8.34. In my view, the exercise of CA powers by the Applicant over RWE's land has the potential to cause serious detriment to its undertaking. The inclusion of appropriate consenting provisions, subject to the test of reasonableness, strike a fair balance between the needs of the Applicant and the need to ensure that there is no serious detriment to RWE's undertaking. I therefore recommend that a provision requiring the Applicant to obtain RWE's consent, such consent not to be unreasonably withheld, should be included in the PPs.
- 8.8.35. Consequently, and subject to my further consideration of the precise form of Schedule 9, Part 10, Paragraph 3 (See Chapter 9 below), I consider the PPs would provide sufficient protection to ensure that RWE's undertaking and apparatus is protected. In light of this, I consider the SoSBEIS can be content that the inclusion of CA powers over the RWE land interests is necessary for carrying out the Proposed Development and would not result in serious detriment to the carrying on of RWE's undertaking.
- 8.8.36. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.
- PoTLL*
- 8.8.37. PoTLL's position in respect of plot 04/02 is similar to that of RWE. It essentially argues that this land forms an important part of the river frontage and one of the last remaining locations for a deep water berth pocket close to London. As noted above, it also raises concerns with the impact that the proposal would have on its own expansion plans and the proposed Thames Freeport project. Full details of its outstanding concerns can be found in its D8 response [[REP8-008](#)].
- 8.8.38. However, as in the case of RWE, I do not consider PoTLL has sufficiently demonstrated that the CA powers sought over these plots would directly

affect any firm proposals for either of these projects. Both port expansion generally and the Thames Freeport proposals specifically, are at an early stage of development and any assessment of the potential impact that the construction of the causeway might have would, at present, be speculative.

- 8.8.39. While I accept that the erection of the causeway would add further constraints to development on this part of the river frontage, I am not persuaded that the CA powers sought in respect of plots 04/01 and 04/02 would materially affect PoTLL's ability to expand the existing port or could not be accommodated as part of any Thames Freeport proposals.
- 8.8.40. Nevertheless, I accept that, taken together, the extent of the powers and rights sought over PoTLL's land interests has the potential to adversely impact on its undertaking and agree that PPs for its benefit should appear in the dDCO.
- 8.8.41. Discussions continued throughout the Examination between PoTLL and the Applicant with a view to agreeing PPs. I received regular updates as to the progress being made and note that as a result the form of PPs included in version 8 of the dDCO [[REP7-012](#)] are largely agreed. They include provisions in relation to access, notification for works, restrictions on the use of Articles 20 (Statutory Authority to Override Easements)) and 23 (Private Rights) in relation to the port unless otherwise agreed and are intended to protect PoTLL's interests.
- 8.8.42. However, at the close of the Examination, a number of issues remained unresolved in respect of the PPs including in relation to definitions, the exercise of powers of CA, indemnities as well as details in relation to the agreed passage plan. I consider these in further detail in Chapter 9 below. Nevertheless, in my view, the parties' cases are sufficiently well set out that I consider I am able to come to a view on any necessary amendments that may be required to address the remaining matters in dispute.
- 8.8.43. As with the PPs in favour of RWE, the Applicant has advanced the same argument in relation to the restriction on CA powers over PoTLL's land interests without its consent. For the reasons set out previously, I consider the principle of including consenting provisions in PPs for the benefit of SUs is well established. Furthermore, I consider they would provide assurance to the SoSBEIS that no serious detriment would arise to the undertaking due to unforeseen circumstances. While I note the Applicant's concerns, particularly in relation to the broad extent of the powers initially sought, I consider similar consenting provisions to those included for RWE, subject to the requirement of reasonableness, are appropriate to ensure there would be no serious detriment arising from the exercise of CA powers.
- 8.8.44. As such, I consider that the inclusion of such a provision restricting the use of CA powers in respect of PoTLL's land interests, subject to the usual reasonableness requirement, would strike a fair balance between



the needs of the Applicant to secure the land and those of PoTLL to protect itself from serious detriment.

- 8.8.45. Consequently, I am satisfied that, subject to the inclusion of suitable PPs in the recommended dDCO (the specific details of which I consider further in Chapter 9 below), the CA powers in respect of the PoTLL land interests included in the recommended dDCO are necessary for carrying out the Proposed Development and would not result in serious detriment to the carrying on of PoTLL’s undertaking. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.

**Common land and application of s131 and s132 PA2008**

- 8.8.46. The application includes powers to compulsorily acquire approximately 10.1ha of Walton Common (which forms part of the main development site) together with a small number of other parcels forming part of common land register unit CL288 (The Green, Hall Hill, Fort Road, Parsonage Walton and Tilbury Fort Commons) in exchange for around 11.6ha of replacement land.
- 8.8.47. The installation of the gas pipeline will temporarily affect a small area, approximately 0.08ha (800m<sup>2</sup>) of Tilbury Green (CL411) (plot 03/03), although the Applicant notes in the SoR that the surface will be restored such that there would be no permanent impact on the Common or access over it.
- 8.8.48. Part of unit CL228 will be used for vehicular access for the purposes of establishing the replacement common land and for habitat creation and enhancement plots 01/14, 02/01 and 02/04. The vehicular access route will cross the common land at its junction with Cooper Shaw Road (highway verge) and it will also cross Parsonage Common (agricultural grassland) just north of the railway line. In total, both access routes amount to 0.25ha (2500m<sup>2</sup>). No works are proposed to surface the access although traffic management measures may need to be employed during construction for safety purposes where necessary.
- 8.8.49. Table 6 below provides a summary of the affected plots and interests sought. Further details can be found in the Land Plans and Special Category Land Plans [[REP7-003](#)] and the BoR [[REP7-015](#)].

**Table 6: Summary of CA plots and interests sought on registered common land**

<b>Plot No</b>	<b>Interest sought</b>	<b>Zone</b>
<b>01/13</b>	CA of freehold	A
<b>01/16</b>		A

<b>05/05</b>		H
<b>03/03</b>	CA of rights	D
<b>01/14</b>		F
<b>02/01</b>		F
<b>02/04</b>		F
<b>05/06</b>		TP

- 8.8.50. As noted above, s131 and 132 of the PA2008 require an order granting development consent to be subject to special parliamentary procedure to the extent that it authorises the CA of land and rights over common land unless the SoS is satisfied that replacement land has or will be given in exchange. It also requires that the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the Order land.
- 8.8.51. Section 12 of the SoR [[REP7-014](#)] sets out the reasons why the Applicant considers CA powers are required over this area of land. These include helping ensure the delivery of the Proposed Development with the permanent acquisition of common land being required for the main site and part of the access route for AILs.
- 8.8.52. Furthermore, it explains that the CA of rights is required to facilitate the installation of the gas pipeline, creation of a junction with the adopted highway at Fort Road for the access route for AILs and vehicular access for the purposes of establishing the replacement common land, as well as for habitat creation and enhancement. In summary, it concludes that the proposal meets the requirements of s131 and s132 PA2008. I consider these matters further below.

### **Commons Act 2016 Application**

- 8.8.53. The Applicant explains in the SoR that an application was submitted on 20 April 2021 under s16 of the CA2006 to seek the deregistration and exchange of the Common Land required to allow the construction of the Proposed Development.

- 8.8.54. As with s131 and s132 PA2008, any s16 consent would require that the replacement common vest in the current landowner of Walton Common and be subject to all of the same rights, trusts and incidents as the current common. The Applicant explains that the section 16 CA2006 determination process will be run in parallel with the Examination.
- 8.8.55. The s16 CA2006 determination process has a number of similar considerations to that under s131/132 PA2008. Both require the provision of 'replacement land' to vest in the owner of the release land and for the replacement land to be subject to the same rights, trusts and incidents as the release land. They also both require the decision maker to have regard to the interests of those having rights of common or other rights and to the public interest.
- 8.8.56. I have been kept informed of the progress of the s16 CA2006 application throughout this Examination and note that at the present time, that application is being held in abeyance at the request of the Applicant pending the outcome of this DCO application. During the course of the Examination, a number of IPs made reference to their representations on the s16 application and asked that they are taken into account in the determination of the DCO.
- 8.8.57. While it should be noted the consideration of matters under s131 and s132 of the PA2008 is a separate consenting regime, in the present case there is some considerable cross over between the applications. They both involve the same area of land and seek to achieve a similar outcome. Indeed, of the three outstanding objections to the s16 application, two objectors are IPs in this Examination and have made similar representations in both cases.
- 8.8.58. In order to ensure that the SoSBEIS is fully apprised of all relevant matters, the Applicant has supplied all documentation and representations received as part of the s16 CA2006 application. While these have been taken into account in my consideration below, it must be emphasised that the s16 CA2006 application is a separate process and subject to other considerations. My consideration of the matters below relates solely to the tests set out in the PA2008.
- 8.8.59. A summary of the key Examination documents, together with their corresponding reference in the EL, can be found in Tables 7 and 8 below.

**Table 7: Summary of main examination documents relating to CA of Common Land**

Document	Submitted by	EL Reference
Statement of Reasons	Applicant	<a href="#">REP7-014</a>

<b>Document</b>	<b>Submitted by</b>	<b>EL Reference</b>
ES Appendix 8.2 – Common Land	Applicant	<a href="#">APP-089</a>
Common Land Maps	TC	<a href="#">REP2-073</a>
LIR	TC	<a href="#">REP2-077</a> and <a href="#">REP5-022</a>
NE’s response to EXQ2	NE	<a href="#">REP5-026</a>
NE’s response to linked commons application section 16	NE	<a href="#">REP5-027</a>
HE Written Reps	HE	<a href="#">PDD-004</a> <a href="#">REP3-021</a> <a href="#">REP4-026</a> <a href="#">REP5-024</a> <a href="#">REP5A-005</a>
Applicant’s response to HE D4 submission	Applicant	<a href="#">REP5-015</a>
SOCG with HE	Applicant	<a href="#">REP6-017</a>

**Table 8: Other documents submitted into the Examination in relation to the linked application under Section 16 CA2006**

<b>Document</b>	<b>Submitted by</b>	<b>EL Reference</b>
Section 16 Common Land Report	Applicant	<a href="#">REP4-006</a>
Applicant’s response to Common Land objections	Applicant	<a href="#">REP6-009</a>

<b>Document</b>	<b>Submitted by</b>	<b>EL Reference</b>
Submission of s16 Application documents	Applicant	<a href="#">REP6-019</a>
NE's further submission to the common land Application	Applicant	<a href="#">REP7-045</a>
Open Spaces Society (OSS) Further submission to common land application	Applicant	<a href="#">REP7-046</a>
Applicant's response to OSS and NE submissions	Applicant	<a href="#">REP8-002</a>
NE Consultation response	Applicant	<a href="#">REP6-012</a>
OSS consultation response	Applicant	<a href="#">REP6-013</a>
HE Advice	Applicant	<a href="#">REP6-011</a>

8.8.88. I have taken all of the above documents and representations into account in my consideration below.

***The replacement land***

8.8.89. 'Replacement land' is defined in s131(12) as 'land which is not less in area than the Order land and is no less advantageous to the persons, if any, entitled to common or other rights, and to the public'.

8.8.90. The dDCO makes provision for around 11.6ha of replacement land (plot 01/07). This would not be less in area than that which would be lost. The central issue is therefore whether the replacement land is less advantageous to the persons, if any, entitled to common or other rights, and to the public.

***Whether the land is no less advantageous to the persons entitled to common rights***

8.8.91. There are rights of pasture currently exercisable over CL228. Section 2 of the Applicant's s16 Common Land Report [[REP4-006](#)] sets out the Applicant's understanding of the ownership of these rights.

8.8.92. No issues were raised by IPs involved in the Examination in relation to those entitled to those rights. However, as part of its response to the s16

application, the OSS query the Applicant's understanding of these rights and the level of engagement the Applicant has had with other rights holders. They also question whether the Applicant is in fact in control of all of the rights of common which subsist over the affected land.

- 8.8.93. I acknowledge there is some uncertainty over the nature of the grazing rights, with the Applicant indicating they are held *in gross*<sup>46</sup> and purchased from the conservators of the common on an annual basis. In contrast, the registers indicate that at the time of registration, a number of these grazing rights were attached to land.
- 8.8.94. Nevertheless, the replacement land would make an equivalent area of land available to those whose rights remain extant. Whether they attach to land or are held in gross, they would transfer to the replacement land and would be exercisable over it in the same way.
- 8.8.95. Furthermore, I note that consultation was undertaken both as part of the DCO application and as part of the s16 application, with all those noted on the common land register, including their successors in title having been consulted. No responses or objections were received. There is, in my view, no substantive evidence which would indicate that those entitled to the rights would be disadvantaged by the loss of the release land and the transfer of their rights to the replacement land.
- 8.8.96. On balance, in the absence of any evidence to the contrary, I consider the exchange land would be no less advantageous to those entitled to the rights of common.

***Whether the land is no less advantageous to the public.***

- 8.8.97. Defra's common land consents policy<sup>47</sup> indicates that the public interest test should include consideration of the public interest in nature conservation, conservation of the landscape, the protection of public rights of access, and the protection of archaeological remains and features of historic interest. I consider these in turn in the following sections.

*Conservation of nature*

- 8.8.98. Neither Walton Common nor the small area of Tilbury Fort Common affected by the proposals benefit from any formal designations in relation to biodiversity or nature conservation. The Applicant considers that the conversion of the replacement land from arable to semi-improved grassland would function as like for like exchange for the loss of the release land. It would include a larger area of replacement land and include additional planting along the edge to improve habitat connectivity. As a result, the Applicant considers there would be no

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<sup>46</sup> i.e. held personally and not attached to land.

<sup>47</sup> [Common Land Consents Policy, Defra 2015](#).

negative impacts on the public interest in nature conservation and instead asserts that there would be an overall benefit.

- 8.8.99. Section 3.2.20 of the s16 Common Land report sets out the works that would be undertaken to establish the exchange common land. These include planting a seed mix representative of the community present in the release land.
- 8.8.100. While I acknowledge NE's concerns that the replacement land would only acquire similar benefit in terms of nature conservation with a scheme for its ongoing management, Requirement 14 (LEMP) in Schedule 2 of the dDCO requires the submission of a landscaping and ecological details for each of the works, including maintenance proposals. Furthermore, Article 33 places a restriction on the use of CA powers in respect of Walton Common, until such time as the local planning authority certify that the replacement land has been satisfactorily laid out and been made available by the undertaker.
- 8.8.101. Taken together, this would help ensure that the necessary works were carried out and suitable management measures put in place to ensure there would be no overall harm to the public interest in nature conservation.
- 8.8.102. Consequently, I find the proposal would be no less advantageous to the public interest in nature conservation and, as such, find no harm in this respect.

*Landscape conservation*

- 8.8.103. Turning then to landscape conservation, HE raise a number of concerns in relation to the impact that the loss of Walton Common would have on the historic landscape character. It points out that Walton Common is one of five interlinked historic commons on West Tilbury Marshes all of which survive almost intact within the modern landscape.
- 8.8.104. However, neither the release land nor the replacement land lies within any designated landscape or contains any rare landscape features or elements. Furthermore, as I have made clear in section 5.9 above, in landscape terms, Walton Common itself makes a limited contribution to the overall character or understanding of the historic landscape.
- 8.8.105. While I accept that its interrelationship with the other areas of common land nearby positively contributes to the understanding of historic development and farming practices, these are not evident in the surrounding industrial context. Walton Common is considerably affected by the urbanising influence of its surroundings including the industrial and extensive power lines and pylons, both on Walton Common itself and in longer range views.
- 8.8.106. Overall, I do not consider its loss would have any material landscape impact or materially alter the historic landscape character of this part of Tilbury.

*Public rights of access*

- 8.8.107. The release land benefits from public rights of access under s193 of the LPA 1925 as well as those granted under the 1893 act. These rights extend to the riding of horses, the playing of games and general rights of access for the public over the whole of the land. In contrast, the replacement land is currently used as arable farmland and not subject to public access rights, informal or otherwise.
- 8.8.108. The dDCO makes provision for the rights, trusts and incidents currently attached to the release land to transfer to the replacement land by virtue of Article 33, including those rights under the 1983 and 1925 Act. I am therefore satisfied that the dDCO makes suitable provision for the transfer of these rights to the replacement land.
- 8.8.109. Nevertheless, concerns have been raised, both by NE during the examination and by NE and the OSS as part of their responses to the s16 application, in relation to the proposed permissive access from Fort Road. They point out that a permissive route does not improve accessibility and consider the absence of a permanent link would result in a missed opportunity to improve access.
- 8.8.110. Furthermore, NE consider that should the permissive route be revoked, the replacement land would essentially become inaccessible due to the need to walk a narrow and busy road. However, while I agree the proposed permissive access would not result in any material benefit to those living nearby, the proposed access arrangements to the replacement land, via parsonage common, would be comparable to those currently used to access Walton Common.
- 8.8.111. Consequently, while I accept that an improved access arrangement would be preferable, when compared to existing access arrangements to Walton Common, access to the replacement land would be no less advantageous to the public.

*Archaeological remains and features of historic interest.*

- 8.8.112. There are no above ground features of historic interest on Walton Common. The potential for below ground archaeological remains is considered in detail in section 5.9 above. In summary, I have found that the WSI secured under Requirement 13 (Archaeology) of the dDCO provides sufficient mitigation and safeguards to ensure that this important historical resource is preserved in situ or where this is not possible, suitably recorded.
- 8.8.113. Accordingly, I do not consider the exchange would have a negative impact on archaeological remains.

**Conclusion**

- 8.8.114. I have found above that the proposal would not negatively impact on the public interest in nature conservation, conservation of the landscape, the



protection of public rights of access, or the protection of archaeological remains and features of historic interest.

- 8.8.115. As such, I find that the replacement land would be no less advantageous to the public.

### **Conclusions on s131 and s132 PA2008**

- 8.8.116. I have found above that the proposed replacement land would be not less in area than the release land and would be no less advantageous to the persons, if any, entitled to common or other rights, or to the public.
- 8.8.117. Having had regard to all of the written evidence, I consider the SoSBEIS can be satisfied that the requirements of s131 and s132 are met and the provisions for CA need not be subject to the Special Parliamentary Procedure.

### **Human Rights Act 1998 and Equalities Act 2010 Considerations**

- 8.8.118. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. Schedule 1 of the Act sets out the Articles. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged. There are no residential properties to be acquired for the Proposed Development.
- 8.8.119. The Applicant acknowledges in the SoR [[REP7-014](#)] that the Order has the potential to infringe the rights of affected parties and acknowledges the need to strike a balance between the rights of the individual and the interests of the public.
- 8.8.120. In relation to Article 6, I accept that appropriate consultation took place before and during the process and that that there has been opportunity to make representations during the preparation of the application and owners of land had been consulted. There has also been the opportunity to make representations during the course of the Examination. At CAH1 and CAH2 I provided all APs who wished to be heard, an opportunity to be heard fully, fairly and in public. I consider this is sufficient to meet the obligations set out in Article 6.
- 8.8.121. In the SoR [[REP7-014](#)], the Applicant noted that it had sought to minimise the amount of land over which it required CA and TP powers and was seeking the minimum rights necessary to allow the project to succeed. In the Applicant's view, any infringement of human rights as a result of the inclusion of CA and TP powers in the DCO is proportionate and justified (SoR paragraph 13.6 [[REP7-014](#)]). It considers that there would be a significant public benefit from the grant of the DCO which outweighs the effects on those who own property within the Order land.
- 8.8.122. I agree. I have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, I consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the

public interest. I therefore consider the CA and TP powers sought are compatible with the Human Rights Act.

8.8.123. The Equalities Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. I have had regard to this duty throughout the Examination and in my consideration of the issues raised in this report.

## **8.9. CONCLUSIONS**

8.9.1. Having considered all of the material submitted to the Examination, I have reached the following conclusions:

- The application site has been appropriately selected.
- All reasonable alternatives to CA have been explored.
- The dDCO provides a clear mechanism for whereby the necessary funding can be guaranteed.
- There is a clear need for all the land included in the BoR to be subject to permanent acquisition.
- There is a need to secure the land and rights required to construct the development within a reasonable timeframe, and the development represents a significant public benefit to weigh in the balance.
- The private loss to those affected has been mitigated through the selection of the land; the minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of PPs in favour of those affected.
- The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
- The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.
- The SoSBEIS can rely on the exemptions in section 131 and 132 PA2008 and that the Special Parliamentary Procedure need not be applied.

## **9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **9.1. INTRODUCTION**

- 9.1.1. Version 1.0 of the dDCO [[APP-020](#)] and an Explanatory Memorandum (EM) [[APP-021](#)] were submitted by the Applicant as part of the application for development consent. A further 7 revisions of the dDCO were submitted.
- 9.1.2. Full details of the changes made, as well as tracked change versions of the dDCO were also submitted. These document the changes between version 1.0 and 8.0 and are listed, together with the relevant document links, in Table 9 below.
- 9.1.3. Version 8.0 of the dDCO consists of 45 articles and 9 schedules. It is broadly based on the Model Provisions (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) but departs from those clauses to draw upon drafting used in made Orders for similar development under the PA2008. It also includes some bespoke drafting to make provision for novel issues.
- 9.1.4. This chapter:
- comments on the structure of the dDCO;
  - reports on the processes that I used to examine the dDCO and its progress through the Examination;
  - signposts where to find the changes made to the dDCO during the Examination up to D7 that were either not the subject of contention or where they were, were subsequently resolved to the satisfaction of the parties;
  - reports in more detail on any matters that had not been resolved to the satisfaction of the main parties at the close of the Examination;
  - identifies any changes to version 8.0 of the dDCO I consider are necessary;
  - addresses the provision of a defence against nuisance in the DCO; and
  - sets out my conclusions.

### **9.2. THE STRUCTURE OF THE DCO**

- 9.2.1. The content of the dDCO (version 8.0 [[REP7-012](#)]) is listed on its face. I am content that the structure of the dDCO is fit for purpose and I do not recommend any changes to the structure as proposed by the Applicant.
- 9.2.2. The dDCO includes powers for the CA of common land. That fact, and the subsections concerned, are recorded on the face of the dDCO.
- 9.2.3. The dDCO (article 35) also makes provision for the marine licence included in Schedule 8 to be deemed to have been granted under Part 4 of the MACAA2009. This was subject to considerable discussion between the Applicant, the MMO, NE and the EA during the course of the

Examination and I am satisfied that it will ensure that any effects on the marine environment are suitably managed and mitigated.

### **9.3. EXAMINATION OF THE DCO**

- 9.3.1. I received regular updates throughout the Examination on the ongoing discussions between the Applicant and IPs on proposed amendments.
- 9.3.2. ExQ1 contained a number of questions about version 3 of the dDCO [[PDC-009](#)] and version 2 the EM [[PDC-035](#)]. In response, updates were made at D2 (version 4) some of which sought to address representations made by IPs.
- 9.3.3. I held an ISH on version 4 on 29 April 2021 (ISH3) [[EV-016](#)] where I asked a number of questions and invited oral submissions on various matters raised in the RRs and WRs. Following ISH3, an update was made to the dDCO at D4 (version 5).
- 9.3.4. A consolidated version (version 6) was submitted D5 following my acceptance of the Applicant's material change request which also addressed a number of matters under discussion. I asked a number of further questions on version 6 (ExQ2) [[PD-015](#)], as well as a number of additional written questions (ExQ3) [[PD-107](#)] following the submission of WRs on the Alternative AIL Access route. An updated version of the dDCO was then submitted at D6 (version 7).
- 9.3.5. I held a further hearing on version 7 of the dDCO on 26 July 2021 (ISH4) [[EV-028](#) and [EV-029](#)]. This explored a number of outstanding matters and IPs were given an opportunity to make further oral representations.
- 9.3.6. Following ISH4, I issued a schedule of amendments which I proposed should be made to the dDCO and gave the Applicant and IPs an opportunity to comment on it at D7. Version 8 of the dDCO [[REP7-012](#)] was submitted at D7 and incorporated most of my suggested amendments.
- 9.3.7. I have had regard to all of these in my consideration of the matters discussed below.

### **9.4. CHANGES DURING THE EXAMINATION**

- 9.4.1. As can be seen from section 9.3, discussions on the provisions contained in the dDCO were extensive throughout the Examination and resulted in a large number of changes. These are set out in the tables of changes made listed in Table 9 below.

**Table 9: Key dDCO documentation**

<b>dDCO Version</b>	<b>Deadline</b>	<b>Examination Library Reference/link</b>
1	-	<a href="#">[APP-020]</a>
2	-	<a href="#">[AS-003]</a> clean copy <a href="#">[AS-005]</a> (Table of changes made)
3	PDC	<a href="#">[PDC-009]</a> (clean copy) <a href="#">[PDC-010]</a> (tracked changes) <a href="#">[PDC-011]</a> (table of changes made) <a href="#">[PDC-035]</a> (revised EM) <a href="#">[PDC-036]</a> (revised EM – tracked changes)
4	D2	<a href="#">[REP2-014]</a> (clean copy) <a href="#">[REP2-015]</a> (tracked changes) <a href="#">[REP2-018]</a> (table of changes made) <a href="#">[REP2-016]</a> (revised EM) <a href="#">[REP2-017]</a> (revised EM tracked changes)
5	D4	<a href="#">[REP4-003]</a> (clean copy) <a href="#">[REP4-033]</a> (tracked changes) <a href="#">[REP4-004]</a> (table of changes made) <a href="#">[REP4-007]</a> (revised EM) <a href="#">[REP4-008]</a> (revised EM tracked changes)
6	D5	<a href="#">[REP5-003]</a> (clean copy) <a href="#">[REP5-004]</a> (tracked changes) <a href="#">[REP5-005]</a> (table of changes made) <a href="#">[REP5-006]</a> (revised EM)

7	D6	<a href="#">[REP6-003]</a> (clean copy) <a href="#">[REP6-004]</a> (tracked changes) <a href="#">[REP6-005]</a> (table of changes made)
8	D7	<a href="#">[REP7-012]</a> (clean copy) <a href="#">[REP7-044]</a> (tracked changes) <a href="#">[REP7-043]</a> (table of changes made) <a href="#">[REP7-013]</a> (Final EM)
-	-	<a href="#">[PD-020]</a> ExA's Schedule of proposed amendments <a href="#">[REP7-043]</a> Applicant's response to ExA schedule of proposed amendments

9.4.2. Following ISH4, I issued a schedule of proposed amendments to version 7.0 of the dDCO. These were responded to by the Applicant at D7 and were generally accepted with updates being made in version 8.

9.4.3. Version 8 of the dDCO consolidates all previous versions, incorporates most of my suggested amendments and includes further amendments which resolve a number of outstanding matters between the Applicant and IPs. Nevertheless, at the close of the Examination, a number of matters remained unresolved between the Applicant and IPs.

9.4.4. The remainder of this chapter considers those parts of the dDCO where objections remained outstanding at the close of the Examination, my recommendations in respect of them and the alterations I consider are necessary to form the recommended dDCO.

## 9.5. DCO PROVISIONS WITH OBJECTIONS OUTSTANDING

### Article 8 – Consent to Transfer Benefit

9.5.1. Article 8 requires the consent of the SoS to transfer the benefit of the Order other than in a limited number of circumstances including where the transferee is a gas or electricity licence holder, a highway authority, or in certain cases the Port of Tilbury as harbour authority.

9.5.2. It was amended at D5 (version 6) and D6 (version 7) to add, amongst other things, notification provisions in favour of PoTLL in cases where consent of the SoSBEIS is not required. It was also amended to increase the period under article 8(7) from 5 days to 14 days to ensure the SoS has sufficient time to consider any request.

- 9.5.3. However, during the Examination, PoTLL has also sought to include a provision in article 8 requiring the SoS to undertake consultation with PoTLL prior to any consent for transfer being granted ([\[REP2-096\]](#), [\[REP4-031\]](#), [\[REP6-026\]](#)).
- 9.5.4. This matter was discussed further at ISH4 [\[EV-028\]](#) and [\[EV-029\]](#) where PoTLL explained that it was seeking to ensure there is certainty. It noted that consenting to the transfer of benefit is not a routine matter for government departments and that the consent-giving SoS for the purposes of Article 8 is a different SoS to the SoS who would have an interest in ensuring that a statutory harbour authority is able to exercise its statutory powers and duties (i.e. the SoS for Transport).
- 9.5.5. In summary, it considers there would be no certainty that the interests of PoTLL would be thought of by BEIS as a relevant consideration before giving consent under this article, unless PoTLL's interests are expressly mentioned in Article 8. It also notes that that similar consultative provisions have been included in other made DCOs.
- 9.5.6. In my schedule of proposed amendments to version 7 of the dDCO [\[PD-020\]](#), I indicated that, notwithstanding the inclusion of such provisions in other made DCOs, I consider it is a matter for the SoSBEIS as to who to consult taking into account any relevant circumstances at the time consent is sought.
- 9.5.7. PoTLL maintained its requested amendment to Article 8 at D7 and D8 [\[REP7-049\]](#) and [\[REP8-008\]](#).

#### *Recommendation*

- 9.5.8. In general, I consider PoTLL's proposed amendment should be resisted by the SoSBEIS as a matter of principle. The parties the SoSBEIS considers should be consulted as part of any request for consent to transfer the benefit of the Order are already subject to the normal rules in respect of consultation. While I acknowledge similar provisions have been included in other made DCOs, I see no justification for including such a provision in the present circumstances.
- 9.5.9. However, I acknowledge PoTLL's legitimate concerns in ensuring they are aware of any transfer beforehand and are able to make their views known to both the undertaker and the SoS should they so wish.
- 9.5.10. With this in mind, I note that the Applicant has included PPs in favour of other SUs which require the Applicant to notify them of its intention to apply for consent and see no reason a similar provision could not be included in favour of PoTLL.
- 9.5.11. Accordingly, while I do not consider Article 8 of the dDCO should be amended to require the SoSBEIS to consult with PoTLL prior to granting consent, I recommend inclusion in Schedule 9, Part 8 a provision requiring the undertaker to notify PoTLL before any such application is made. I note that the Applicant has indicated that such an amendment would be acceptable.

9.5.12. Details of my proposed amendment can be found in Table 10 below.

### **Requirement 18 – Review of access for AILs**

9.5.13. Requirement 18 was introduced at version 3 of the dDCO in response to comments received from IPs in the RRs. It was amended in versions 4 and 5 to take account of responses to my written questions and the representations made by IPs including TC, HiE and PoTLL.

9.5.14. At D6, wording was inserted into Requirement 18(3) which provides PoTLL a consultative role in the review of access for AILs.

9.5.15. Requirement 18 was discussed further at ISH4 following which I set out my proposed changes in my Schedule of Proposed Amendments. The main change proposed was to require an initial review of AIL access to be carried out in the first year following the grant of consent to give further assurance that if an alternative becomes available prior to construction of the causeway, the alternative route would be brought into being instead. These were accepted by the Applicant and the changes carried forward version 8 of the dDCO.

9.5.16. PoTLL, in its D8 response [[REP8-008](#)], while maintaining its position in respect of causeway removal, drew my attention to its previous comments in relation in its D2, D4 and D5A submissions. It requested further amendments to ensure that if not only should any review be undertaken as quickly as possible but that where an alternative is identified, the works to remove the causeway should be carried out without delay. It also sought further amendments to Requirement 18(5) so that its consultative role provided for in 18(3) was also acknowledged in that sub-paragraph and asked for reviews to be carried out at shorter intervals.

9.5.17. I agree that the principle of including a requirement in Requirement 18(4) to remove the causeway in a timely manner would provide additional clarity and certainty. However, the commencement of works within one month would, in my view, be too onerous on the Applicant. While I note the importance of ensuring any removal is carried out as expeditiously as possible, I consider a period of three months would be more appropriate.

9.5.18. I also agree that the wording of 18(3) providing PoTLL a consultative role should be carried forward into 18(5). In both cases the issue involves the review of the decision of the relevant planning authority reaching a view on the report submitted on alternative AIL access options. However, in the interests of consistency, I consider that RWE and HiE should also be added as consultees in R18(5).

9.5.19. However, I do not agree that a shorter review period is necessary. While I accept that regular reviews are necessary, every five years following the initial review is a reasonable period, ensuring that a minimum of seven reviews were carried out over the proposed lifetime of the project. Any shorter would not be proportionate, particularly in view of the levels of harm that would result from the erection of the causeway. The five



year period will act as effective backstop to ensure that, in the event that an alternative is found, the causeway will be decommissioned following the next review.

- 9.5.20. Accordingly, I recommend the amendment set out in Table 9 below and have added it to the recommended dDCO annexed.

**Schedule 9, Part 8 – For the Protection of Port of Tilbury London Limited**

- 9.5.21. Discussions on PPs continued throughout the Examination and I was kept informed of developments. However, despite significant progress, at the close of the Examination a number of matters remained unresolved between the Applicant and PoTLL in relation to PPs. I consider these further below:

*Paragraph 2 - Definition of 'port'*

- 9.5.22. The parties disagree over the definition of 'the port'. In summary, the Applicant seeks to limit it to any land owned or used by the port at the time the order is made. PoTLL seek to widen the definition to include any land owned or used by the port at the time the relevant powers are exercised, or the works undertaken.
- 9.5.23. As I have made clear in Chapter 8 above, part of the role of PPs is to provide assurance that serious detriment would not arise due to unforeseen circumstances from the exercise of CA powers. However, this does not extend to land subsequently acquired by an undertaking in full knowledge that CA powers are being sought or have been granted over that land for the purposes of development.
- 9.5.24. As I have already noted, there is no robust evidence to demonstrate that that the Proposed Development would materially affect wider port expansion, or the Thames Freeport and I consider extending protection more widely would not be justified.
- 9.5.25. As such, I prefer the Applicant's drafting on this point and recommend no amendments to the dDCO.

*Paragraph 2 - Specified works*

- 9.5.26. The definition of "specified works" preferred by the Applicant includes any work, activity or operation authorised by the Order which may affect the port. It is quite wide ranging and includes access to and from premises and streets within the port, navigation within the port, the port's ability to carry out dredging activities and where it may affect the functions of PoTLL as harbour authority.
- 9.5.27. PoTLL have sought to expand the definition to include Work nos. 10, 11 and 15. However, while I acknowledge the port may be concerned to include parts of Work no. 15, this is already provided for to a large extent within the Applicant's proposed drafting.

9.5.28. However, as the Applicant points out [[REP7-028](#)], the detail and construction of Work nos. 10 and 11 is controlled by requirements and the DML, for which the port is a consultee. These works are situated entirely outside the port's undertaking and the marine element of the causeway is located within the jurisdiction of the PLA and MMO, both of whom will oversee its construction. While I accept the port is merely seeking to protect its interest, the wording proposed would give it a considerable amount of control over wider aspects of the development. I see no justification for including such wide-ranging provisions and do not recommend them for inclusion in the recommended dDCO.

*Paragraph 3 – Consent for the Exercise of CA Powers*

9.5.29. In paragraphs 8.8.44 - 8.8.45 above I made clear that I considered the inclusion of a provision limiting the use of CA powers without PoTLL's consent was appropriate to provide assurance that no serious detriment would arise to PoTLL's undertaking due to unforeseen circumstances.

9.5.30. While I agree that PoTLL's earlier wording was too wide-ranging, it has proposed a slimmed down version as part of its D8 response an extract of which is produced below:

*"3. (1) The undertaker must not exercise the powers conferred by articles 17 (authority to survey and investigate the land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development) and 30 (statutory undertakers) in respect of the Port unless the exercise of such powers is with the consent of Port of Tilbury London Limited, such consent not to be unreasonably withheld."*

9.5.31. This wording is similar to that found in other made DCOs and for the reasons already provided, I consider it would go some way to ensuring that no serious detriment would arise from the exercise of CA powers in respect of PoTLL's land interests.

9.5.32. I therefore recommend its inclusion in the recommended dDCO.

*Paragraph 10 – Passage plan*

9.5.33. Paragraph 10 of the PPs relates to the passage plan prepared under R17(5) and the restrictions that should be imposed on the Applicant in terms of arrival and departure.

9.5.34. It seems to me that these are matters best left to the approving body. Nevertheless, I note that PoTLL's preferred drafting would place greater restrictions on the use of causeway than those proposed by the Applicant. I am not persuaded there is a justification for taking such a restrictive approach and as such I prefer the Applicant's less restrictive drafting. I also note that these matters are intended to be minimum requirements and so would not prevent other, more restrictive measures being included in the passage plan where justified.

*Paragraph 12(1)*

- 9.5.35. Version 8 of the dDCO provides indemnities in favour of PoTLL for, amongst other things, all losses, costs, charges, damages, expenses, claims and demands which may be reasonably incurred by reason of or in connection with the matters specified in sub paragraphs 12(1)(a) to (d).
- 9.5.36. The main issues outstanding between the Applicant and PoTLL in respect of paragraph 12(1) relates to sub-paragraph (a) and in particular whether or not PoTLL should be able to recover its costs in relation to it reviewing documents submitted to it for consultation pursuant to the Requirements in Schedule 2 of the DCO.
- 9.5.37. Paragraph 12(1)(a) in version 8 of the dDCO makes provision for, amongst other things, the recovery of costs and charges in relation to PoTLL's perusal of plans and the inspection of a specified work. This accords generally with the PPs included in favour of other SUs.
- 9.5.38. PoTLL's role as a consultee in Schedule 2 relates to Requirement 6 (CTMP), Requirement 7 (CWTP), Requirement 17 (Navigational risk assessment), Requirement 18 (Review of access for AILs) and Requirement 19 (Causeway decommissioning plan). While I note PoTLL's need to ensure that the design of the marine aspects of the Proposed Development and the terrestrial and marine movements do not affect the operations of the port, in many cases it has actively sought a consultation role in relation to the relevant parts of Schedule 2 during the Examination. Furthermore, I am mindful that the role of consultee is different to that of discharging authority and note the Order does not, in general, make provision for the recovery of such costs in favour of other consultees. I see no reason to take an alternative approach.
- 9.5.39. PoTLL also seeks an indemnity for costs associated with the Applicant obstructing movements within the port, for example through a vehicle carrying abnormal loads crashing or breaking down on port roads, preventing other vehicles from accessing and existing the port. It explains that this has been PoTLL's primary concern in respect of managing vehicle movements, given the time critical nature of port activities. As such, it proposes that the following paragraph be included in the PPs in its favour:
- "the costs, expenses and losses associated with or arising from any obstruction, event or accident on or affecting any road, street, way within the Port or the river Thames which prevents or obstructs access into, out of or within the Port which is caused by or attributable to the undertaker or its agents or contractors;"*
- 9.5.40. The Applicant has objected to this provision questioning its reasonableness in the context of the existing considerable HGV use of port roads. It also strongly objects to the inclusion of 'into' and 'out of' the port, asserting it is fundamentally unreasonable to hold the undertaker liable where the accident or breakdown happens on the public highway. Furthermore, I note that at D8 the Applicant states that it has

been advised by its insurers that they cannot advise whether it can be covered or at what costs.

- 9.5.41. Overall, I find the Applicant’s argument more compelling. While I acknowledge the need for PoTLL to seek to protect the operation of the port and seek to recover any costs associated with an obstruction caused by movements of the Applicant, paragraph 12(c) already makes adequate provision for this and allows the port to take direct action to remedy any breakdown within the port at the Applicant’s cost. I am not persuaded that the wider protection sought by PoTLL is justified.
- 9.5.42. Accordingly, I do not recommend the proposed amendment should be included in the recommended dDCO.

**Schedule 9, Part – for the Protection of RWE Infrastructure (UK) Plc.**

*Paragraph 3*

- 9.5.43. In paragraphs 8.8.32 - 8.8.36 above I made clear that I considered the inclusion of a provision limiting the use of CA powers without RWE’s consent was appropriate to provide assurance that no serious detriment would arise to RWE’s undertaking due to unforeseen circumstances.
- 9.5.44. RWE’s proposed wording is contained in the Applicant’s note on the status of protective provisions submitted at D7 [[REP7-028](#)]. While it differs from that recommended for inclusion in Schedule 9, Part 8 for the benefit of PoTLL, it is nevertheless similar in its effect. For the reasons already provided, I consider it would go some way to ensuring that no serious detriment would arise from the exercise of CA powers in respect of RWE’s land interests.
- 9.5.45. I therefore recommend its inclusion in the recommended dDCO.

**9.6. EXA’S PROPOSED CHANGES**

- 9.6.1. Section 9.5 above identifies the proposed changes I consider are necessary to address the outstanding matter between the Applicant and IPs at the close of the Examination. In addition, I have identified a number of drafting and typographical errors which I consider should also be addressed. Table 10 below sets out the changes to the dDCO which I consider are necessary to address these matters.

**Table 10: Changes the ExA considers are required to version 8 of the dDCO.**

<b>Provision</b>	<b>Recommendation</b>	<b>Reasons</b>
Order title and contents	Add the word ‘Flexible’ to the Order title.	dDCO title differs to wording used in Art 1. They should align.

<b>Provision</b>	<b>Recommendation</b>	<b>Reasons</b>
	Other minor corrections.	To address typographical errors.
Article 2 Definition of "completion"	Remove superfluous wording (" means).	Typographical error.
Article 2 Definition of "concept drainage plan"	Change reference to the "concept drainage plan" to "conceptual drainage strategy".  Change the word 'plans' to 'document'.	The conceptual drainage plan is indicative. Requirement 10 requires compliance with conceptual drainage strategy. See also proposed changes to Art 41 below.
Article 2 Definition of "NGET"	Remove the word "registration".	Consistency in drafting.
Article 2 Definition of "NGG"	Remove the word "registration".	Consistency in drafting.
Article 2(6)	Remove in its entirety.	Repetition – already covered in the definition of "works" included in Art 2(1).
Article 7(2)(a)	Replace the word 'number' with the word 'no.'	Consistency in drafting.
Article 7(2)(b)	Replace the word 'numbers' with the word 'nos.'	Consistency in drafting.
Article 8(4)(b)	Replace the word 'numbers' with the word 'nos.'	Consistency in drafting.

<b>Provision</b>	<b>Recommendation</b>	<b>Reasons</b>
Article 10(4)(a)	After the word "Work" remove "Nos." and replace with "nos."	Consistency in drafting.
Article 19(3)	Remove the words "either (i) or (ii)" and replace with the words "either (a) or (b)".	Incorrect referencing.
Article 22(3)	Remove the words "either (i) or (ii)" and replace with the words "either (a) or (b)".	Incorrect referencing.
Article 28(3)(b)	Add the word 'a' after the word 'made' (line 4).	Typographical error.
Article 29(1)(a)	Remove the word 'reasonable' and replace with 'reasonably'.	Typographical error.
Article 33(3)	Remove reference to paragraph '(3)' and replace with paragraph '(2)'.	Incorrect reference.
Article 41(1)(e)	Change reference to 'concept drainage plan' to 'conceptual drainage strategy'.  Change document number to A7.3.	The conceptual drainage plan is indicative. Requirement 10 requires compliance with conceptual drainage strategy. See also proposed changes to Art 41 below.
Schedule 1 – Authorised Development	Addition of the word "no." to various references to works to make them consistent.	Consistency in drafting.

<b>Provision</b>	<b>Recommendation</b>	<b>Reasons</b>
Schedule 2, Part 1, Paragraph 1 – Interpretation	<p>Insert new definition of ‘Network Rail’ (taken from agreed definition in Schedule 9, Part 7).</p> <p>Alter references to Network Rail Infrastructure Limited.</p>	<p>Term not defined.</p> <p>Inconsistent use of terms.</p> <p>See also proposed changes to Schedule 9, Part 7, Paragraph 2 below).</p>
Schedule 2, Part 1, Paragraph 4	Change various references to “No.” to lower case.	Consistency in drafting.
Schedule 2, Part 1, Paragraph 6	All references to the ‘Construction Traffic Management Plan’ should be changed to lower case.	For consistency.
Schedule 2, Part 1, Paragraph 7	All references to the ‘Construction Worker Travel Plan’ should be changed to lower case.	For consistency.
Schedule 2, Part 1, Paragraph 10(3)	Change the word ‘concept’ to ‘conceptual’.	Typographical error.
Schedule 2, Part 1, Paragraph 15(1)(d)	Remove repetition of the words ‘to be’.	Typographical error.
Schedule 2, Part 1, Paragraph 16(3)	Change the words “Work 1A” to “Work no. 1A”.	Consistency in drafting.
Schedule 2, Part 1, Paragraph 18(4)	After the words ‘decommissioned’ add the following:	To provide certainty on the timescales for removal.

<b>Provision</b>	<b>Recommendation</b>	<b>Reasons</b>
	"no later than 3 months".	
Schedule 2, Part 1, Paragraph R18(5)	After the words 'relevant planning authority' add the following:  "following consultation with Highways England, RWE Generation (UK) Plc and Port of Tilbury London Limited".	For consistency.
Schedule 2, Part 1, Paragraph 19	Paragraph 19(2) – change reference to "undertake" to "undertaker".  Paragraphs 19(3) and (4) – minor changes to references to Work Nos. 10 and 11.	Typographical error.  Consistency in drafting.
Schedule 3, Schedule 4, Schedule 5 and Schedule 6	Full stops added where missing; references to "Work nos" updated to ensure consistency in drafting.	To address various typographical errors in version 8 of the dDCO.
Schedule 7 – Title	Replace 'for' with 'of'	Typographical error.
Schedule 7, Paragraph 4(8)	In Schedule 2A, Paragraph 13 – change the words "...of the right of the imposition..." to "...of the right or the imposition...".	Typographical error.
Schedule 8, Part 1, Paragraph 3(2)(a)	Addition of the word "a" before "gated".	Typographical error.



<b>Provision</b>	<b>Recommendation</b>	<b>Reasons</b>
Schedule 8, Part 2, Paragraph 16(2)	Remove the words "in accordance with recognised codes of good practice".	Ambiguous and unnecessary wording.
Schedule 9, Part 2	Paragraph 15 – minor changes to address typographical errors.  Paragraph 20 – change "that" to "than".  Paragraph 21 – change the word "company" to "undertaker".  Paragraph 22 – change references to "...paragraphs (4) to (6) and (8) above..." to "...paragraphs (17) to (19) and (21) above...".	Typographical error.  Typographical error.  Consistency in drafting.  Incorrect references.
Schedule 9, Part 4, Paragraph 3(2), Paragraph 5(6) and Paragraph 6(5)	Change references to "paragraph 11" to "paragraph 12".	Incorrect references.
Schedule 9, Part 4, Paragraph 12	Apply arbitration provisions included in Art 45 and remove references to SoS determination.	No reason that the matter should not be dealt with by means of the arbitration provisions included in Article 45.
Schedule 9, Part 5	Various formatting and typographical errors corrected.	Typographical and formatting errors.
Schedule 9, Part 5	Paragraph 5(4) - Change references to"	Incorrect referencing.

Provision	Recommendation	Reasons
	<p>paragraph 9 or 10" to "paragraphs 8 or 9".</p> <p>Paragraph 6(2) – change reference to "paragraph 8(1)" to "paragraph 7(1)".</p> <p>Paragraph 7(2) – change reference to "paragraph 15 (Arbitration)" to "paragraph 14 (Arbitration)".</p> <p>Paragraph 8(9) – change reference to paragraphs 6 to 8 (line 3) to paragraphs 5 to 7; and change reference to "paragraph 7(2)" to "paragraph 6(2)".</p> <p>Paragraph 9 - Sub-paragraphs renumbered due to typographical error in version 8 of the dDCO. Consequential amendments made to subsequent sub-paragraph references.</p> <p>Paragraph 9(8) - change reference to paragraphs 6 to 8 (line 3) to paragraphs 5 to 7; and change reference to "paragraph 7(2)" to "paragraph 6(2)".</p> <p>Paragraph 10(1)(a)(1) - change reference to "paragraph 7(3)" to "paragraph 6(3)".</p>	

Provision	Recommendation	Reasons
	<p>Paragraph 10(3) – change reference to “paragraph 15 (arbitration)” to “paragraph 14(Arbitration)”.</p> <p>Paragraph 12(1) – change reference to paragraph 7(2) to Paragraph 6(2); and references to “paragraphs (9) and (10)” to “paragraphs (8) and (9)” respectively.</p> <p>Paragraph 15 – change email address to “plantprotection@nationalgrid.com”.</p>	Incorrect email address.
Schedule 9, Part 6, Paragraph 13(5)	Add the word ‘in’ after the word ‘raised’.	Typographical error.
Schedule 9, Part 7, Paragraph 2  Definition of ‘network licence’	Change reference to ‘Network Rail Infrastructure Limited’ to ‘Network Rail’.	Consistency in drafting.
Schedule 9, Part 7, Paragraph 2  Definition of Network Rail	Remove existing definition in its entirety and replace with the following:  “Network Rail” has the same meaning as in Schedule 2, Part 1 of this Order.	Clarity and consistency.  See also Schedule 2, Part 1, paragraph 2 above.
Schedule 9, Part 7, Paragraph 5(4)	Change word “he” in line 2 to “be”.	Typographical error.
Schedule 9, Part 7, Paragraph 11(1)(b)	Replace “signaling” with “signalling”.	Typographical error.

Provision	Recommendation	Reasons
Schedule 9, Part 7, Paragraph 20	Change reference to 'article 9' to 'article 8'	Incorrect reference.
Schedule 9, Part 8, Paragraph 2  Definition of "erosion".	Replace the words "...of that are of..." with "...of that area of...".	Typographical error.
Schedule 9, Part 8, Paragraph 3	After paragraph 2, insert the following wording:  "3. (1) The undertaker must not exercise the powers conferred by articles 17 (authority to survey and investigate the land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development) and 30 (statutory undertakers) in respect of the port unless the exercise of such powers is with the consent of Port of Tilbury London Limited, such consent not to be unreasonably withheld."	To ensure there would be no serious detriment to PoTLL resulting from the exercise of CA powers over its land interests.

Provision	Recommendation	Reasons
Schedule 9, Part 8, Paragraph 5(3)	Change reference to paragraph 16 to paragraph 17.	Consequential amendment resulting from addition of new paragraph 3.
Schedule 9, Part 8	<p>Insert after paragraph 16:</p> <p>“17 - The undertaker must give written notice to PoTLL if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (Consent to transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—</p> <p>(a) the nature of the application to be made;</p> <p>(b) the extent of the geographical area to which the application relates; and</p> <p>(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.”</p>	To provide notification to PoTLL of an application to SoS to transfer the benefit of the Order.

Provision	Recommendation	Reasons
Schedule 9, Part 9, Paragraph 6(2)(b) (iii) and (iv)	Remove the word 'the' from start of paragraph.	Typographical error.
Schedule 9, Part 9, Paragraph 6(3) and (4)	References to Work No/Nos changed to lower case.	Consistency in drafting.
Schedule 9, Part 9, Paragraph 6 (4)(b)(iii)	Change reference to "article 33(4)" to "article 33(3)".	Incorrect reference.
Schedule 9, Part 10, Paragraph 3	<p>Remove paragraph 3 in its entirety and replace with the following:</p> <p>"3(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 must not acquire any land interest or apparatus under articles 19, 22, 25 or 30 override any easement or other interest of RWE otherwise than by agreement.</p> <p>(2) At least 56 days before the undertaker exercises any or all of:</p> <p>(a) the specified powers in respect of the site and the affected highways or streets within the site; or</p>	To ensure there would be no serious detriment to RWe's undertaking resulting from the exercise of CA powers over its land interests.

Provision	Recommendation	Reasons
	<p>(b) the specified powers in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site); or</p> <p>(c) the powers referred to in subparagraph(4),</p> <p>the undertaker must submit to RWE details of the works to be undertaken in reliance on those powers.</p> <p>(3) Any specified powers:</p> <p>(a) in respect of the site and the affected highways or streets within the site must not be exercised except with the agreement of RWE; and</p> <p>(b) in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site) must not be exercised without the undertaker first consulting RWE on the details submitted pursuant to subparagraph (2) and taking account of any consultation response.</p> <p>(4) The undertaker must not exercise the powers conferred by article 20 (statutory authority to override easements and other</p>	

Provision	Recommendation	Reasons
	rights) or article 23 (extinguishment of private rights) in relation to any land in the site without the consent of RWE”.	
Schedule 9, Part 10, Paragraph 6	References to ‘Work No’ changed to lower case	Consistency in drafting.
Schedule 9, Part 11, Paragraph 2  Definition or “RSA”	Remove the abbreviation “DMRB” and replace with “the Design Manual for Roads and Bridges”	DMRB is not defined.

#### **Post Examination request by Applicant to remove the causeway**

- 9.6.2. As noted in Chapters 1 and 8 above, discussions are continuing between the Applicant, RWE and PoTLL with a view to reaching agreements which would enable the removal of the causeway, and associated CA powers, from the DCO.
- 9.6.3. The Applicant confirmed at ISH4 that this was its preferred outcome and that if such agreements are reached in the period following the close of the Examination but before a decision is taken on the application by the SoSBEIS, it intends to make an application to remove the causeway direct to the SoSBEIS. The SoSBEIS may therefore wish to seek further information from the Applicant as to the status of these discussions, whether the parties have reached agreement and its intentions in this respect before making a decision on the application.
- 9.6.4. The Applicant also confirmed that this would involve further changes to the application documents including the proposed dDCO. In order to ensure that the SoSBEIS has early sight of the amended documentation, I invited the Applicant to submit an amended dDCO on a without prejudice basis, which sets out the amendments it considers would be necessary in the event that such an application were to be made. This, together with other amendments to the application documents the Applicant considers would be necessary is included in the Examination library [[REP7-052 to REP7-092](#)]. IPs were given an opportunity to comment on these documents at D8 and their comments were generally supportive.



- 9.6.5. In the event that such an application is made, the SoSBEIS can be satisfied that IPs have been given an opportunity to consider the changes proposed and would be generally supportive of such a move. Nevertheless, the SoSBEIS will need to satisfy himself that the necessary consultation on those proposed amendments are undertaken with those affected in accordance with the normal rules.
- 9.6.6. Nevertheless, in the event that such agreements are not reached, the SoSBEIS can be satisfied that that Requirement 18 (Review of access for AILs) provides a suitable mechanism to ensure that alternative routes are considered at regular intervals to enable the causeway to be removed at the earliest opportunity.

## **9.7. STATUTORY NUISANCE**

- 9.7.1. The application is accompanied by a Statutory Nuisance Statement (SNS) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) [[APP-123](#)].
- 9.7.2. Having reviewed the SNS, I am content that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the Proposed Development. It identified no effects that are likely to result in nuisance and concludes that no additional mitigation is necessary. I agree with this conclusion.
- 9.7.3. Article 9 of the dDCO contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for in NSIPs. The drafting is based on other made DCOs. I agree that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs.

## **9.8. CONCLUSIONS**

- 9.8.1. I have considered all versions of the dDCO as set out in Table 9 above and considered the degree to which the final dDCO (version 8) [[REP7-012](#)] has addressed outstanding matters.
- 9.8.2. I am satisfied that the requirements set out in version 8 of the dDCO provide mitigation for potential adverse effects identified in the ES and sufficiently addresses issues raised during the course of the Examination. Subject to the changes set out in Table 10, and some minor changes to punctuation and/ or formatting which do not affect meaning, the recommended dDCO at Appendix C is identical to version 8 of the dDCO.
- 9.8.3. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoSBEIS is minded to make the Order, I recommend it should be made in the form set out in Appendix C.

## 10. SUMMARY OF FINDINGS AND CONCLUSIONS

- 10.1.1. NPS EN-1 makes clear that there is an established need for on-demand power generation of the type proposed. It would support the growth of renewable energy, contribute to energy security, network resilience and towards a secure, flexible energy supply. Furthermore, in view of its peaking nature, I consider it would also support the UK's transition to low carbon energy generation.
- 10.1.2. While I acknowledge that in the 3-phase construction scenario it is possible that the gas fired generation plant could be constructed without the battery storage element, I nevertheless consider the additional generation capacity from phase 1 alone (300MW) would help meet the need established through the NPS. I am therefore satisfied that the Applicant's needs case is made out whether a single or 3-phase construction scenario is adopted.
- 10.1.3. As such, in relation to s104 of the PA2008, I conclude that:
- making the recommended dDCO would be in accordance with NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5. It would also accord with the TC development plan as a whole and with other relevant policy, all of which have been considered in this report. In reaching my recommendation, I have also had regard to the Local Impact Report produced by Thurrock Council (TC) and note that on balance, TC consider the Proposed Development would be acceptable subject to the mitigation measures secured in the recommended dDCO;
  - while the SoSBEIS is the competent authority under the Habitats Regulations, I conclude that, subject to the mitigation measures secured in the recommended dDCO, the Proposed Development would not adversely affect the integrity of European sites, species or habitats, and I have taken this into account in reaching my recommendation;
  - the Proposed Development would have no significant adverse effects that would outweigh its benefits and there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSS; and
  - with regard to all other matters and representations received, I have found no relevant matters that would individually or collectively lead to a different recommendation to that below.
- 10.1.4. In relation to the application for CA and TP powers, I conclude that the Proposed Development for which the land and rights are sought would be in accordance with national policy and would help meet a national need for additional electricity generating capacity.
- 10.1.5. In addition, I am satisfied that all reasonable alternatives to CA have been explored, that the recommended dDCO provides a clear mechanism to secure the necessary funding for CA and that there is a need to secure the land and rights required and to construct the Proposed Development within a reasonable timeframe.

- 10.1.6. Furthermore, I consider that the Proposed Development represents a significant public benefit, that the private loss to those affected is mitigated through the selection of the application land; the limitation to the minimum extent possible of the rights and interests proposed to be acquired; and the PPs included in Schedule 9 of the DCO.
- 10.1.7. Moreover, I consider the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 and meet the conditions set out in s127 and s138 of the PA2008 as well as the CA Guidance. I also consider the SoSBEIS can rely on the exemptions in section 131 and 132 PA2008 in relation to the CA of Common Land and that the Special Parliamentary Procedure need not be applied.
- 10.1.8. Overall, I consider the case for CA and TP powers has been made out and that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

### **MATTERS WHICH THE SOS MAY WISH TO CONSIDER FURTHER**

- 10.1.9. As noted above, a review of the energy NPSs is currently being undertaken and draft versions of the revised documents are currently being consulted on. However, the Energy White Paper "Powering our Net Zero Future", confirms that the current NPS are not being suspended and that they remain the basis for the consideration of the Application. Nevertheless, the SoS may wish to consider the position on the draft NPSs before making a decision on the application.
- 10.1.10. The SoS may also wish to note that the draft NPS EN-1 continues to recognise the important role that peaking plants which utilise reciprocating gas engines will have on maintaining system flexibility and reliability during the transition to a low carbon system. Furthermore, as noted in Chapter 3 above, I do not consider there is anything contained within the draft energy NPSs that would have a material bearing on my overall recommendation.
- 10.1.11. As noted in section 9.6 above, the Applicant is continuing discussions with both RWE and PoTLL to secure the outstanding agreements necessary to secure the Alternative AIL Access route. The SoSBEIS may wish to seek further information from the Applicant as to the status of these discussions and whether the parties have reached agreement.
- 10.1.12. An amended draft dDCO is included at [\[REP7-092\]](#) together with a table of proposed amendments [\[REP7-090\]](#) which sets out the amendments required to give effect to the removal of the causeway. These should be read in conjunction with the amendments proposed in Table 10 above. Other amendments to the application documents the Applicant considers would be necessary to give effect to this are included in the Examination library [\[REP7-052 to REP7-092\]](#).
- 10.1.13. In the event that such an application is made, the SoSBEIS can be satisfied that IPs have been given an opportunity to consider the changes proposed and would be generally supportive of such a move.

Nevertheless, the SoSBEIS will need to satisfy himself that the necessary consultation on those proposed amendments is undertaken with those affected in accordance with the normal rules.

- 10.1.14. However, in the event that such agreements are not reached, the SoSBEIS can be satisfied that that Requirement 18 (Review of access for AILs) provides a suitable mechanism to ensure that alternative routes are considered at regular intervals to enable the causeway to be removed at the earliest opportunity.

### **CONSIDERATION OF FINDINGS AND CONCLUSIONS**

- 10.1.15. Considering all of the above factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans. I conclude that the Proposed Development would comply with s122(2), s122(3), s127, s131, s132 and s138 of the PA2008.

### **RECOMMENDATION**

- 10.1.16. For all of the above reasons, and having had regard to the LIRs produced by TC as well as my findings and conclusions on relevant matters set out in this report, I conclude that the case for the development has been made and that development consent should be given through a DCO as recommended in paragraph 9.8.3 above and in the form set out in Appendix C.

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# **APPENDIX A: EXAMINATION LIBRARY**

# **Thurrock Flexible Generation Plant Examination Library**

**Updated – 16 November 2021**

This Examination Library relates to the Thurrock Flexible Generation Plant application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate.

All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**EN010092 – Thurrock Flexible Generation Plant****Examination Library - Index**

<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a>  As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a>  Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a>  Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a>  Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<b><a href="#">Representations – by Deadline</a></b>	
<a href="#">Procedural Deadline A</a>	PDA-xxx
<a href="#">Procedural Deadline B</a>	PDB - xxx
<a href="#">Procedural Deadline C</a>	PDC-xxx
<a href="#">Procedural Deadline D</a>	PDD-xxx
<a href="#">Deadline 1:</a> Deadline for the receipt by ExA of: <ul style="list-style-type: none"><li>• Notification of wish to speak at any Issue Specific Hearing(s);</li></ul>	REP1-xxx



<ul style="list-style-type: none"> <li>• Notification of wish to speak at any Compulsory Acquisition Hearing(s);</li> <li>• Notification of wish to speak at an Open Floor Hearing;</li> <li>• Submission by the Applicant, Interested Parties (IPs) and Affected Persons (APs) of suggested locations for the ExA to include in any Unaccompanied Site Inspections (USIs) or Accompanied Site Inspections (ASIs), including the reason for nomination and issues to be observed, information about whether the location can be accessed using public rights of way or what access arrangements (if any) would need to be made, and the likely time requirement for the visit to that location;</li> <li>• Notification by Statutory Parties and certain Local Authorities who wish to be considered as an IP;</li> <li>• Notification of wish to have future correspondence electronically;</li> <li>• Any other information requested by the ExA for submission at Deadline 1</li> </ul>	
<p><b><u>Deadline 2:</u></b> Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExQ1;</li> <li>• Local Impact Reports (LIRs) from Local Authorities;</li> <li>• Written Representations (WRs) including summaries of all WRs exceeding 1500 words;</li> <li>• Comments on Relevant Representations;</li> <li>• Comments on Procedural Deadline D submissions;</li> <li>• Statements of Common Ground (SoCG) requested by the ExA;</li> <li>• Statement of Commonality of SoCG;</li> <li>• The Compulsory Acquisition (CA) Schedule;</li> <li>• Comments on any Additional Submissions accepted by the ExA;</li> <li>• A Guide to the Application;</li> <li>• Any other information requested by the ExA for submission at Deadline 2.</li> </ul>	REP2-xxx
<p><b><u>Deadline 3</u></b> Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs;</li> <li>• Responses to comments on RRs;</li> <li>• Responses to comments on Procedural Deadline D submissions;</li> <li>• Comments on responses to ExQ1;</li> <li>• Comments on LIRs;</li> <li>• Comments on other submissions for Deadline 2;</li> <li>• The Applicant's proposals for alternatives to ASI for areas which are not publicly accessible and/or cannot be viewed or accessed easily;</li> <li>• Progressed SOCG and updated Statement of Commonality of SOCG;</li> <li>• An updated Guide to the Application;</li> <li>• An updated version of the draft Development</li> </ul>	REP3-xxx

<p>Consent Order (dDCO) in clean and tracked versions;</p> <ul style="list-style-type: none"> <li>• Schedule of changes to the dDCO;</li> <li>• An updated CA Schedule in clean and tracked versions;</li> <li>• Any other information requested by the ExA for submission at Deadline 3.</li> </ul>	
<p><a href="#">Deadline 4</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses submitted for Deadline 3;</li> <li>• Written summaries of oral submissions made at any Hearings held during the weeks commencing 26 April 2021 or 3 May 2021;</li> <li>• Comments on the Applicant’s proposals for alternatives to ASI for areas which are not publicly accessible and/or cannot be viewed or accessed easily;</li> <li>• Any post-Hearing notes requested at the Hearings;</li> <li>• An updated Guide to the Application;</li> <li>• An updated version of the dDCO in clean, tracked and word versions;</li> <li>• An updated Schedule of changes to the dDCO;</li> <li>• An updated Compulsory Acquisition Schedule in clean and tracked versions;</li> <li>• Progressed SoCG and updated Statement of Commonality of SOCG;</li> <li>• Any other information requested by the ExA for submission at Deadline 4.</li> </ul>	REP4-xxx
<p><a href="#">Deadline 5</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExQ2;</li> <li>• Comments on responses submitted for Deadline 4;</li> <li>• Progressed SOCG and updated Statement of Commonality of SOCG;</li> <li>• An updated Guide to the Application;</li> <li>• Updated Book of Reference (if required);</li> <li>• Updated Statement of Reasons (if required);</li> <li>• Draft s106 Agreement(s) (if required);</li> <li>• An updated version of the dDCO in clean, tracked and word versions;</li> <li>• An updated Schedule of changes to the dDCO;</li> <li>• Additional photography proposed by the applicant as alternative to ASI;</li> <li>• Any other information requested by the ExA for submission at Deadline 5.</li> </ul>	REP5-xxx
<p><a href="#">Deadline 5A</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of wish to be heard at CAH;</li> <li>• Notification of wish to be heard at OFH;</li> <li>• Written Representations on accepted changes and proposed provisions;</li> <li>• Comments on Relevant Representations received on the accepted changes and proposed provisions.</li> </ul>	REP5A-xxx
<p><a href="#">Deadline 6</a></p>	REP6-xxx

<p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses submitted for Deadline 5;</li> <li>• Responses to ExA’s additional written questions (ExQ3).</li> <li>• Responses to Written Representations on accepted changes and proposed provisions.</li> <li>• Comments on additional photography.</li> <li>• Any other information requested by the ExA for submission at Deadline 6.</li> </ul>	
<p><a href="#">Deadline 7</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses submitted for Deadline 6;</li> <li>• Comments on the RIES (if required);</li> <li>• Comments on the ExA’s proposed schedule of changes to the dDCO (if required);</li> <li>• Written summaries of oral submissions made at any hearings held during the week commencing 26 July 2021</li> <li>• Any post-hearing notes requested at the hearings;</li> <li>• Responses to comments on additional photography (if any);</li> <li>• Comments on responses to ExA’s additional written questions (ExQ3).</li> <li>• Final SoCG and finalised Statement of Commonality;</li> <li>• Final Compulsory Acquisition Schedule in clean and tracked versions;</li> <li>• Final Guide to the Application;</li> <li>• A final Schedule of changes to the dDCO;</li> <li>• Final dDCO to be submitted by the Applicant in the Statutory Instrument (SI) template with the SI template validation report;</li> <li>• Resubmission of final version of updated application documents;</li> <li>• Final updated version of the Book of Reference;</li> <li>• Any final, duly executed, section 106 agreement(s);</li> <li>• Any other information requested by the ExA for submission at Deadline 7.</li> </ul>	REP7-xxx
<p><a href="#">Deadline 8</a></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Any further information requested by the ExA after Deadline 7 (if required), under Rule 17 of the Examination Rules</li> </ul>	REP8-xxx
<p><a href="#">Other Documents</a></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	OD-xxx

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APP-001	<a href="#">Thurrock Power Ltd</a> 1.1 - Covering Letter
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APP-003	<a href="#">Thurrock Power Ltd</a> 1.4 - Application Form (Electronic)
APP-004	<a href="#">Thurrock Power Ltd</a> 1.4 - Application Form (Signed)
APP-005	<a href="#">Thurrock Power Ltd</a> 1.5 - Copies of Newspaper Notices
APP-006	<a href="#">Thurrock Power Ltd</a> 2.1 - Location and Order Limit Plans
APP-007	<a href="#">Thurrock Power Ltd</a> 2.2 - Land, Special Category Land and Crown Land Plans
APP-008	<a href="#">Thurrock Power Ltd</a> 2.3 - Works Plans - showing individual areas of development
APP-009	<a href="#">Thurrock Power Ltd</a> 2.4 - Access, Rights of Way and Traffic Regulation Measures Plans
APP-010	<a href="#">Thurrock Power Ltd</a> 2.5 - Illustrative Highway Engineering Drawings
APP-011	<a href="#">Thurrock Power Ltd</a> 2.6 - Illustrative General Arrangement Plans
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APP-013	<a href="#">Thurrock Power Ltd</a> 2.8 - Illustrative Cross Section Plans
APP-014	<a href="#">Thurrock Power Ltd</a> 2.9 - Illustrative Landscaping Plan
APP-015	<a href="#">Thurrock Power Ltd</a> 2.10 - Concept Drainage Plan
APP-016	<a href="#">Thurrock Power Ltd</a> 2.11 - Historic or Scheduled Monument Sites Plan
APP-017	<a href="#">Thurrock Power Ltd</a> 2.12 - Statutory and Non-Statutory Nature Conservation Sites
APP-018	<a href="#">Thurrock Power Ltd</a> 2.13 - Tree Preservation Order and Hedgerow Plan
APP-019	<a href="#">Thurrock Power Ltd</a> 2.14 - Deemed Marine License Co-ordinate Plan
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APP-021	<a href="#">Thurrock Power Ltd</a> 3.2 - Explanatory Memorandum
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APP-042	<a href="#">Thurrock Power Ltd</a> 6.0.2 - Glossary, acronyms, units used in the Environmental Statement and application
APP-043	<a href="#">Thurrock Power Ltd</a> 6.1 - Non-Technical Summary of the Environmental Statement
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APP-119	<a href="#">Thurrock Power Ltd</a> 6.6 - Appendix 17.1 - Phase 1 Intertidal Survey Report and Benthic Ecology Desktop Review
APP-120	<a href="#">Thurrock Power Ltd</a> 6.6 - Appendix 17.2 - Hydrodynamic Modelling and Sediment Assessment
APP-121	<a href="#">Thurrock Power Ltd</a> 6.6 - Appendix 17.3 - Water Framework Directive Assessment
APP-122	<a href="#">Thurrock Power Ltd</a> 6.6 - Appendix 17.4 - Third Party Survey Reports
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APP-143	<a href="#">Thurrock Power Ltd</a> 8.7 - Outline Ecological Management Plan
APP-144	<a href="#">Thurrock Power Ltd</a> 8.8 - Construction Traffic Management Plan
APP-145	<a href="#">Thurrock Power Ltd</a> 8.9 - Construction Worker Travel Plan
APP-146	<a href="#">Thurrock Power Ltd</a> 8.10 - Outline Saltmarsh Enhancement and Maintenance Plan. <b>Submission Withdrawn by Letter dated 14 January 2021 [AS-011]</b>
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APP-148	<a href="#">Thurrock Power Ltd</a> 8.12 - National Grid Statement of Common Ground
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AoC-002	<a href="#">Brentwood Borough Council</a>
AoC-003	<a href="#">Castle Point Borough Council</a>
AoC-004	<a href="#">Dartford Borough Council</a>
AoC-005	<a href="#">Essex County Council</a>
AoC-006	<a href="#">Gravesham Borough Council</a>
AoC-007	<a href="#">Kent County Council</a>
AoC-008	<a href="#">London Borough of Bexley</a>
AoC-009	<a href="#">London Borough of Havering</a>
AoC-010	<a href="#">Thurrock Council</a>
<b>Relevant Representations</b>	
RR-001	<a href="#">David Gill on behalf of Basildon Borough Council</a>
RR-002	<a href="#">Thurrock District Scout Council</a>
RR-003	<a href="#">Castle Point Borough Council</a>
RR-004	<a href="#">Gravesham Borough Council</a>
RR-005	<a href="#">Winckworth Sherwood on behalf of Port of London Authority</a>
RR-006	<a href="#">Essex County Council</a>
RR-007	<a href="#">Thurrock Council</a>
RR-008	<a href="#">Elaine Laver</a>
RR-009	<a href="#">ICENI PROJECTS on behalf of Cogent Land LLP</a>
RR-010	<a href="#">Strutt &amp; Parker on behalf of Diana Cole</a>
RR-011	<a href="#">BDB Pitmans LLP on behalf of London Resort Company Holdings Ltd</a>
RR-012	<a href="#">Historic England</a>
RR-013	<a href="#">Environment Agency</a>
RR-014	<a href="#">Marine Management Organisation</a>
RR-015	<a href="#">Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited</a>
RR-016	<a href="#">Highways England</a>
RR-017	<a href="#">Anglian Water Services Limited</a>
RR-018	<a href="#">Transport for London</a>

RR-019	<a href="#">National Grid</a>
RR-020	<a href="#">Public Health England</a>
RR-021	<a href="#">Maritime and Coastguard Agency</a>
RR-022	<a href="#">Natural England</a>
RR-023	<a href="#">Vincent and Goring on behalf of Port of Tilbury London Limited</a>
RR-024	<a href="#">BNP Paribas Real Estate on behalf of Royal Mail Group Limited</a>
<b>Relevant Representations in Relation to the Applicant's Change Request</b>	
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RR-026	<a href="#">Castle Point Borough Council</a>
RR-027	<a href="#">Highways England</a>
RR-028	<a href="#">Natural England</a>
RR-029	<a href="#">Port of London Authority</a>
RR-030	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Ltd</a>
RR-031	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
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PD-003	<a href="#">Appointment of the Examining Authority</a> Notice of appointment of the Examining Authority
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PD-005	<a href="#">Rule 6 letter - Notification of the preliminary meeting and matters to be discussed</a>
PD-006	<a href="#">Procedural Decision to postpone Preliminary Meeting (Part 2) and other Procedural Decisions</a>
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PD-008	<a href="#">Notification of Procedural Decision - Rule 9</a> Examining Authority acceptance of Applicant's non-material change request
PD-009	<a href="#">Rule 8 – Notification of timetable for examination and Procedural Decision to close the Preliminary Meeting in writing</a>
PD-010	<a href="#">Examining Authority's First Written Questions (ExQ1)</a>
PD-011	<a href="#">Rules 8(3), 9, 13, and 17 - Procedural Decision on Site Inspections and Notification of Hearings</a>
PD-012	<a href="#">Notification of Procedural Decision on Proposed Changes to the Application</a>
PD-013	<a href="#">Proposed Provision Checklist for the Compulsory Acquisition of Additional Land</a>
PD-014	<a href="#">Rule 9 and Rule 17 – Procedural Decision on Applicant's alternative proposals for site inspection and Request for further information</a>
PD-015	<a href="#">Examining Authority's Second round of Written Questions (ExQ2)</a>
PD-016	<a href="#">Rules 8(3), 9 and 13, CA Regs 11 to 17 - Procedural Decision to amend the Examination timetable and Notification of Hearings</a>
PD-017	<a href="#">Examining Authority's Third round of Written Questions (ExQ3)</a>
PD-018	<a href="#">Report on the Implications for European Sites (RIES)</a> Issued by the Examining Authority - 19 July 2021
PD-019	<a href="#">Request for Further Information - Rule 17</a>

PD-020	<a href="#">Schedule of proposed changes to the draft Development Consent Order</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Thurrock Power Ltd</a> Additional Submission - Applicant's response to s51 advice - s51 Acceptance Letter - Accepted at the discretion of the Examining Authority
AS-002	<a href="#">Thurrock Power Ltd</a> Additional Submission - Applicant's response to s51 advice - 2.3 Works Plans - Accepted at the discretion of the Examining Authority
AS-003	<a href="#">Thurrock Power Ltd</a> Additional Submission - Applicant's response to s51 advice - 3.1 Draft Development Consent Order - Accepted at the discretion of the Examining Authority
AS-004	<a href="#">Thurrock Power Ltd</a> Additional Submission - Applicant's response to s51 advice - 5.1.4 Consultation Report Appendix 4 -Section 42 Consultation - Accepted at the discretion of the Examining Authority
AS-005	<a href="#">Thurrock Power Ltd</a> Additional Submission - Applicant's response to s51 advice - Table of amendments to the Development Consent Order between version 1 (application) to version 2 (post section 51 advice) - Accepted at the discretion of the Examining Authority
AS-006	<a href="#">RWE Generation UK Plc</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-007	<a href="#">Thurrock Power Ltd</a> Cumulative Effects Assessment Addendum. Additional Submission from the Applicant - accepted at the discretion of the Examining Authority
AS-008	<a href="#">Thurrock Power Ltd</a> Additional Submission from the Applicant - Accepted at the discretion of the Examining Authority - Letter to PINS (POTLL WS PD1) 16.10.20
AS-009	<a href="#">Port of Tilbury London Ltd</a> Additional Submission – Port of Tilbury London Ltd's response to Applicants letter of 16 October 2020 - accepted at the discretion of the Examining Authority
AS-010	<a href="#">Thurrock Power Ltd</a> Response to the ExA's Rule 17 letter of 6 January 2021, requesting further information from the Applicant
AS-011	<a href="#">Thurrock Power Ltd</a> Notification of a non-material change request to the submitted application
AS-012	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - Material Change Request Cover Letter

AS-013	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - Guide to the Application
AS-014	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.1 Location and Order Limits Plans
AS-015	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.2 Land Plans and Special Category Land Plans
AS-016	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.3 Works Plans
AS-017	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.4 Access Rights of Way and Traffic Regulation Measures Plans
AS-018	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.5 Illustrative Highway Engineering Drawings
AS-019	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.6 Illustrative General Arrangement Plans
AS-020	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.9 Illustrative Landscape Plan
AS-021	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.11 Historic or Scheduled Monument Sites Plan
AS-022	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.12 Statutory and Non-Statutory Nature Conservation Sites
AS-023	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.13 Tree Preservation Order and Hedgerow Plan
AS-024	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 2.14 Deemed Marine Licence Co-ordinate Plan
AS-025	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 3.1 draft Development Consent Order (Tracked)

AS-026	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 3.2 Explanatory Memorandum (Tracked)
AS-027	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 4.1 Funding Statement (Tracked)
AS-028	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 4.2 Statement of Reasons (Tracked)
AS-029	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the <b>Applicant's request for changes to the application</b> - 4.3 Book of Reference
AS-030	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 4.3 Book of Reference (Tracked)
AS-031	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 8.6 Code of Construction Practice
AS-032	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 8.6 Code of Construction Practice (Tracked)
AS-033	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 8.8 Outline Construction Traffic Management Plan
AS-034	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - 8.8 Outline Construction Traffic Management Plan (Tracked)
AS-035	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - Environmental Statement Addendum – Alternative AIL Access
AS-036	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - Environmental Statement Volume 6 Appendix 2.1: Register of Mitigation, Enhancement and Monitoring Commitments
AS-037	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicant's <b>request for changes to the application</b> - Environmental Statement Volume 6 Appendix 2.1: Register of Mitigation, Enhancement and Monitoring Commitments (Tracked)
AS-038	<a href="#">Thurrock Power Ltd, Port of Tilbury London Limited and RWE Generation (UK) Plc</a>

	Joint Position Statement - Additional submission accepted at the discretion of the Examining Authority
AS-039	<a href="#">Thurrock Power Ltd and Network Rail Infrastructure Ltd</a> Joint Position Statement - Additional submission accepted at the discretion of the Examining Authority
AS-040	<a href="#">Thurrock Power Ltd</a> Additional Submission - Notice of consultation on proposed changes to the accepted DCO under Regulation 8 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 - Accepted at the discretion of the Examining Authority
AS-041	<a href="#">Thurrock Power Ltd</a> Additional Submission - Notice of consultation on submission of supplementary environmental information for EIA development - Accepted at the discretion of the Examining Authority
AS-042	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicants Change Request - Guide to the Application (6 June 2021) - Accepted at the discretion of the Examining Authority
AS-043	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicants Change Request - Consultation Report - Accepted at the discretion of the Examining Authority
AS-044	<a href="#">Thurrock Power Ltd</a> Additional Submission in relation to the Applicants Change Request - Regulation 9 Notice - Accepted at the discretion of the Examining Authority
AS-045	<a href="#">Environment Agency</a> Additional Submission in relation to the Applicants Change Request - Accepted at the discretion of the Examining Authority
AS-046	<a href="#">National Grid Electricity Transmission Plc (NGET)</a> Additional Submission in relation to the Applicants Change Request - Accepted at the discretion of the Examining Authority
AS-047	<a href="#">Thurrock Power Ltd</a> Additional Submission accepted at the discretion of the Examining Authority - Response to Natural England's Response to Examining Authority's Further Written Questions (ExQ2)
AS-048	<a href="#">Thurrock Power Ltd</a> Additional Submission Accepted at the Discretion of the Examining Authority - Additional Analysis of Bird Data
AS-049	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited</a> Additional Submission accepted at the discretion of the Examining Authority. Amendment to deadline 6 submission - DCO Protective Provisions and Comments on responses submitted for Deadline 5 (Note: to replace REP6-026)
AS-050	<a href="#">Thurrock Power Ltd</a> Additional Submission Accepted at the Discretion of the Examining Authority - Emails from Applicant stating no agreement to heads of terms [REP8-009 and REP8-011]
<b>Events and Hearings</b>	
<b>Preliminary Meeting –</b>	

EV-001	<a href="#">Recording of Preliminary Meeting Part 1 - Tuesday 20 October 2020</a>
EV-002	<a href="#">Preliminary Meeting Note (Part 1)(PM1)</a>
<b>Accompanied Site Visits and Hearings</b>	
<b>Unaccompanied Site Inspection</b>	
EV-010	<a href="#">Examining Authority's Record of Access Required and Unaccompanied Site Inspections on 07 April 2021 and 08 April 2021</a>
<b>Issue Specific Hearings 1, 2 &amp; 3</b>	
EV-012	<a href="#">Agenda for Issue Specific Hearing 1 (ISH1), Issue Specific Hearing 2 (ISH2) and Issue Specific Hearing 3 (ISH3)</a>
EV-013	<a href="#">Recording of Issue Specific Hearing 1 on Transportation and Traffic (including matters relating to the proposed causeway) - Part 1 - 27 April 2021</a>
EV-014	<a href="#">Recording of Issue Specific Hearing 1 on Transportation and Traffic (including matters relating to the proposed causeway) - Part 2 - 27 April 2021</a>
EV-015	<a href="#">Recording of Issue Specific Hearing 2 on Cultural Heritage - 28 April 2021</a>
EV-016	<a href="#">Recording of Issue Specific Hearing 3 on the draft Development Consent Order (dDCO) - 29 April 2021</a>
<b>Compulsory Acquisition Hearing 1</b>	
EV-023	<a href="#">Agenda for Compulsory Acquisition Hearing 1 (CAH1)</a>
EV-024	<a href="#">Recording of Compulsory Acquisition Hearing 1 - 28 April 2021</a> Technical issues affected the recording of the first 8 minutes (approximate) of the Hearing, and the sound for the first 34 seconds of the recording. We apologise for this unavoidable error.
<b>Compulsory Acquisition Hearing 2</b>	
EV-025	<a href="#">Agenda for Compulsory Acquisition Hearing 2 (CAH2)</a>
EV-026	<a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2) - 26 July 2021</a>
<b>Issue Specific Hearing 4</b>	
EV-027	<a href="#">Agenda for Issue Specific Hearing 4</a>
EV-028	<a href="#">Recording of Issue Specific Hearing 4 (ISH4) - Part 1 - 26 July 2021</a>
EV-029	<a href="#">Recording of Issue Specific Hearing 4 (ISH4) - Part 2 - 26 July 2021</a>
<b>Procedural Deadline A – 06 October 2020</b>	
PDA-001	<a href="#">Gravesham Borough Council</a> Submission for Procedural Deadline A
PDA-002	<a href="#">London Resort Company Holdings Ltd</a> Submission for Procedural Deadline A
PDA-003	<a href="#">Marine Management Organisation</a> Submission for Procedural Deadline A
PDA-004	<a href="#">Port of Tilbury London Limited</a> Submission for Procedural Deadline A
PDA-005	<a href="#">Thurrock Council</a>



	Submission for Procedural Deadline A
PDA-006	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline A
<b>Procedural Deadline B – 30 October 2020</b>	
PDB - 001	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Submission for Procedural Deadline B
PDB - 002	<a href="#">Thurrock Council</a> Submission for Procedural Deadline B
PDB - 003	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline B
PDB - 004	<a href="#">Winckworth Sherwood on behalf of Port of London Authority</a> Submission for Procedural Deadline B
<b>Procedural Deadline C – 14 December 2020</b>	
PDC-001	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Procedural Deadline C Cover Letter
PDC-002	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C – Procedural Deadline C Letter – Cultural Heritage
PDC-003	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Access, Rights of Way & Traffic Regulation Measures Plans - Application Document Reference A2.4
PDC-004	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Book of Reference (Parts 1-5) - Application Document Reference 4.3 Version 3
PDC-005	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Book of Reference (Parts 1-5) - Application Document Reference 4.3 Version 3 Tracked
PDC-006	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Concept Drainage Plan - Application Document Reference A2.10 PO5
PDC-007	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Conceptual Drainage Strategy - Application Document Reference A7.3 Version P05
PDC-008	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Deemed Marine License Co-ordinate Plan - Application Document Reference A2.14
PDC-009	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Draft Development Consent Order - Application Document Reference A3.1 Version 3
PDC-010	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Draft Development Consent Order - Application Document Reference A3.1 Version 3 Tracked
PDC-011	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Draft Development Consent Order - Table of amendments to the DCO between Version 2 - Version 3

PDC-012	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement - Assessment of Causeway Decommissioning Revision 0
PDC-013	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement - Historic Environment Settings Analysis - Further Information
PDC-014	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement - Historic Environment Updated Baseline & Significance of Effect Report Further Information - Revision 1
PDC-015	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 2 Chapter 2 - Project Description
PDC-016	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 2 Chapter 2 - Project Description Tracked
PDC-017	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 15 - Hydrology & Flood Risk
PDC-018	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 15 - Hydrology & Flood Risk Tracked
PDC-019	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 17 - Marine Environment
PDC-020	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 17 - Marine Environment Tracked
PDC-021	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 9 - Onshore Ecology
PDC-022	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 3 Chapter 9 - Onshore Ecology Tracked
PDC-023	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 5 Chapter 33 - Summary of Further Mitigation, Residual Effects & Monitoring
PDC-024	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 5 Chapter 33 - Summary of Further Mitigation, Residual Effects & Monitoring Tracked
PDC-025	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 15.1 - Flood Risk Assessment
PDC-026	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 15.1 - Flood Risk Assessment Tracked
PDC-027	<a href="#">Thurrock Power Ltd</a>

	Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 17.3 - Water Framework Directive Assessment
PDC-028	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 17.3 - Water Framework Directive Assessment Tracked
PDC-029	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 2.1 - Register of Mitigation, Enhancement & Monitoring Commitments
PDC-030	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 2.1 - Register of Mitigation, Enhancement & Monitoring Commitments Tracked
PDC-031	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 9.3 - Biodiversity Net Gain Assessment
PDC-032	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 9.3 - Biodiversity Net Gain Assessment Tracked
PDC-033	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 9.4 - Foreshore Wintering Bird Surveys 2019-2020
PDC-034	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Environmental Statement Volume 6 Appendix 9.4 - Foreshore Wintering Bird Surveys 2019-2020 Tracked
PDC-035	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Explanatory Memorandum - Application Document Reference A3.2 Version 2
PDC-036	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Explanatory Memorandum - Application Document Reference A3.2 Version 2 Tracked
PDC-037	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Flood Evacuation Plan - Application Document Reference A8.5 Version 3
PDC-038	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Flood Evacuation Plan - Application Document Reference A8.5 Version 3 Tracked
PDC-039	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Habitats Regulations Assessment Report - Application Document Reference A5.2
PDC-040	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Habitats Regulations Assessment Report - Application Document Reference A5.2 Tracked
PDC-041	<a href="#">Thurrock Power Ltd</a>

	Submission for Procedural Deadline C - Historic or Scheduled Monument Sites Plan - Application Document Reference A2.11
PDC-042	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Illustrative Highway Engineering Drawings - Application Document Reference A2.5
PDC-043	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Illustrative Landscape Plan - Application Document Reference A2.9
PDC-044	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Illustrative Site Layout Plans - Application Document Reference A2.7
PDC-045	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Land Plans & Special Category Land Plans - Application Document Reference A2.2
PDC-046	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Landscape & Visual Resources Environmental Statement Chapter 6 - Representative Viewpoint, Character, Photowireline & Photomontage Figures
PDC-047	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Location & Order Limits Plans - Application Document Reference A2.1
PDC-048	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Outline Construction Traffic Management Plan - Application Document Reference A8.8
PDC-049	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Outline Construction Traffic Management Plan - Application Document Reference A8.8 Tracked
PDC-050	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Outline Ecological Management Plan - Application Document Reference A8.7 Version 1
PDC-051	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Outline Ecological Management Plan - Application Document Reference A8.7 Version 1 Tracked
PDC-052	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Preliminary Navigation Risk Assessment for the Thurrock FPG Plant Causeway - Revision R03-00
PDC-053	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Restrictions on Public Access to the Causeway - Revision 0
PDC-054	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Statutory & Non-Statutory Nature Conservation Sites - Application Document Reference A2.12
PDC-055	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Tree Preservation Order & Hedgerow Plan - Application Document Reference A2.13
PDC-056	<a href="#">Thurrock Power Ltd</a>

	Submission for Procedural Deadline C - Works Plans - Application Document Reference A2.3
PDC-057	<a href="#">Thurrock Power Ltd</a> Submission for Procedural Deadline C - Illustrative General Arrangement Plans - Application Document Reference A2.6
<b>Procedural Deadline D – 27 January 2021</b>	
PDD-001	<a href="#">Atkins Telecoms on behalf of Vodafone Limited</a> Submission for Procedural Deadline D
PDD-002	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Submission for Procedural Deadline D
PDD-003	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) PLC</a> Submission for Procedural Deadline D
PDD-004	<a href="#">Historic England</a> Submission for Procedural Deadline D
PDD-005	<a href="#">Marine Management Organisation</a> Submission for Procedural Deadline D
PDD-006	<a href="#">Ministry of Defence</a> Submission for Procedural Deadline D
PDD-007	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited</a> Submission for Procedural Deadline D
PDD-008	<a href="#">Thurrock Council</a> Submission for Procedural Deadline D
PDD-009	<a href="#">Thurrock District Scout Council</a> Submission for Procedural Deadline D
PDD-010	<a href="#">Thurrock Power Ltd - Certificate of Compliance</a> Submission for Procedural Deadline D
PDD-011	<a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority</a> Submission for Procedural Deadline D
PDD-012	<a href="#">Natural England</a> Submission for Procedural Deadline D - Late Submission - Accepted at the discretion of the Examining Authority - Comments on updated HRA
PDD-013	<a href="#">Natural England</a> Submission for Procedural Deadline D - Late Submission - Accepted at the discretion of the Examining Authority - DAS Advice
<b>Representations</b>	
<b>Deadline 1 – 02 March 2021</b> Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> <li>• Notification of wish to speak at any Issue Specific Hearing(s);</li> <li>• Notification of wish to speak at any Compulsory Acquisition Hearing(s);</li> <li>• Notification of wish to speak at an Open Floor Hearing;</li> <li>• Submission by the Applicant, Interested Parties (IPs) and Affected Persons (APs) of suggested locations for the ExA to include in any Unaccompanied Site Inspections (USIs) or Accompanied Site Inspections (ASIs), including the reason for nomination and issues to be observed, information about whether the location can be accessed using public rights of way or what access</li> </ul>	

<p>arrangements (if any) would need to be made, and the likely time requirement for the visit to that location;</p> <ul style="list-style-type: none"> <li>• Notification by Statutory Parties and certain Local Authorities who wish to be considered as an IP;</li> <li>• Notification of wish to have future correspondence electronically;</li> <li>• Any other information requested by the ExA for submission at Deadline 1</li> </ul>	
REP1-001	<a href="#">Thurrock Power Ltd</a> Deadline 1 Submission
REP1-002	<a href="#">Gravesham Borough Council</a> Deadline 1 Submission
REP1-003	<a href="#">Thurrock Council</a> Deadline 1 Submission
REP1-004	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Deadline 1 Submission
REP1-005	<a href="#">Marine Management Organisation (MMO)</a> Deadline 1 Submission
REP1-006	<a href="#">Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited</a> Deadline 1 Submission
REP1-007	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 1 Submission
REP1-008	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited</a> Deadline 1 Submission
REP1-009	<a href="#">Thurrock District Scout Council</a> Deadline 1 Submission
REP1-010	<a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority</a> Deadline 1 Submission
<p><b>Deadline 2 – 23 March 2021</b>            Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExQ1;</li> <li>• Local Impact Reports (LIRs) from Local Authorities;</li> <li>• Written Representations (WRs) including summaries of all WRs exceeding 1500 words;</li> <li>• Comments on Relevant Representations;</li> <li>• Comments on Procedural Deadline D submissions;</li> <li>• Statements of Common Ground (SoCG) requested by the ExA;</li> <li>• Statement of Commonality of SoCG;</li> <li>• The Compulsory Acquisition (CA) Schedule;</li> <li>• Comments on any Additional Submissions accepted by the ExA;</li> <li>• A Guide to the Application;</li> <li>• Any other information requested by the ExA for submission at Deadline 2.</li> </ul>	
REP2-001	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Cover letter
REP2-002	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Guide to the Application
REP2-003	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.1 - Location and Order Limits Plan
REP2-004	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.2 - Special Category Land and Crown Land Plans

REP2-005	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.3 Works Plans
REP2-006	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.4 - Access, Rights of Way and Traffic Regulation Plans
REP2-007	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.5 - Illustrative Highway Engineering Drawings
REP2-008	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.6 - Illustrative General Arrangement Plans
REP2-009	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.9 - Illustrative Landscape Plan
REP2-010	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.11 - Historic or Scheduled Monument Sites Plan
REP2-011	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.12- Statutory and Non-Statutory Nature Conservation Sites
REP2-012	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.13 - Tree Preservation Order and Hedgerow Plan
REP2-013	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 2.14 - Deemed Marine Licence Co-ordinate Plan
REP2-014	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 3.1 - Draft Development Consent Order - Rev 4
REP2-015	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 3.1 - Draft Development Consent Order Tracked - Rev 4
REP2-016	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 3.2 - Explanatory Memorandum - Rev 3
REP2-017	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 3.2 - Explanatory Memorandum Tracked - Rev 3
REP2-018	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Table of Amendments to the draft DCO - Rev 4
REP2-019	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Validation Report for dDCO
REP2-020	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 4.3 - Book of Reference
REP2-021	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 4.3 - Book of Reference (tracked)
REP2-022	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 5.2 - Habitats Regulations Assessment Report
REP2-023	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 5.2 Habitats Regulations Assessment Report (tracked)

REP2-024	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.4.12 - Cumulative Environmental Statement : Chapter 29: Geology, Hydrogeology and Ground Conditions
REP2-025	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Deadline 2 Submission - 6.4.12 - Cumulative Environmental Statement : Chapter 29: Geology, Hydrogeology and Ground Conditions (tracked)
REP2-026	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.5.1 - Environmental Statement Volume 5 - Chapter 31 : Summary of Inter-Related Effects
REP2-027	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.5.1 - Environmental Statement Volume 5 - Chapter 31 : Summary of Inter-Related Effects (tracked)
REP2-028	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.5.2 - Environmental Statement Volume 5 - Chapter 32: Summary of Cumulative Effects
REP2-029	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.5.2 - Environmental Statement Volume 5 - Chapter 32: Summary of Cumulative Effects (tracked)
REP2-030	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.6.1 - Environmental Statement Volume 6 - Appendix 2.1 Mitigation Enhancement and Monitoring Commitments
REP2-031	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 6.6.1 - Environmental Statement Volume 6 - Appendix 2.1 Mitigation Enhancement and Monitoring Commitments (tracked)
REP2-032	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 7.7 - Other Consents and Licenses
REP2-033	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 7.7 - Other Consents and Licenses (tracked)
REP2-034	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 8.4 - Design Principles Statement
REP2-035	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 8.6 - Code of Construction Practice
REP2-036	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 8.6 - Code of Construction Practice (tracked)
REP2-037	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 8.8 - Outline Construction Traffic Management Plan
REP2-038	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 8.8 - Outline Construction Traffic Management Plan (tracked)
REP2-039	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - 8.11a Written Scheme of Investigation for Terrestrial Archaeological Mitigation - Rev 5
REP2-040	<a href="#">Thurrock Power Ltd</a>



	Deadline 2 Submission - 8.11b - Written Scheme of Investigation for Marine and Intertidal Archaeological_Mitigation - Rev 3
REP2-041	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Applicant's Response to the ExA's First Written Questions
REP2-042	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Response to Examination Question - 1.1.1 - AQ-1 - Air Quality Baseline
REP2-043	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Response to Examination Question - AQ-2 - Ecological Receptors
REP2-044	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Response to Examination Question - AQ-3 - Nitrogen Dioxide Contours
REP2-045	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - CA1 - Compulsory Acquisition Schedule
REP2-046	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - CA2 - West Tilbury Common Bye-Laws
REP2-047	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - CC-1 - Additional information supporting the response to ExQ1.2.1 - Hydrogen Combustion in Reciprocating Engines
REP2-048	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - ECO-1 - Biodiversity Net Gain Spreadsheet
REP2-049	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - EIA-1 - Supporting Information in Response to ExA Q1.8.2 - Comparison between the Tilbury and Warley sites
REP2-050	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - FR-1 - Surface Water Map
REP2-051	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - FR2 - Environment Agency Letter dated 15 February 2021
REP2-052	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - GEN-1 - National Grid Electricity Transmission Letter dated 23rd February 2021
REP2-053	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - HER 1 - Minutes of Meeting with Highways England and Essex County Council
REP2-054	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Response to Examination Question - HER-2 Historic Environment Information
REP2-055	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Response to Examination Question 1.15.2 - Baseline Ambient Noise Levels
REP2-056	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Comments on Natural England's Procedural Deadline D Submission
REP2-057	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Lower Thames Crossing Comparison

REP2-058	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Commonality for Statements of Common Ground - Rev 0
REP2-059	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with Thurrock Council - draft
REP2-060	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with Environment Agency - draft
REP2-061	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with Historic England - draft
REP2-062	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with Marine Management Organisation - draft
REP2-063	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with Public Health England - Signed
REP2-064	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with Anglian Water Services Limited - Signed
REP2-065	<a href="#">Thurrock Power Ltd</a> Deadline 2 Submission - Statement of Common Ground with the Maritime and Coastguard Agency - Signed
REP2-066	<a href="#">Gravesham Borough Council</a> Deadline 2 Submission - Written Representation and response to ExA's first written questions
REP2-067	<a href="#">Winchworth Sherwood LLP on behalf of Port of London Authority</a> Deadline 2 Submission - Summary of Written Representation
REP2-068	<a href="#">Winchworth Sherwood LLP on behalf of Port of London Authority</a> Deadline 2 Submission - Written Representation
REP2-069	<a href="#">Winchworth Sherwood LLP on behalf of Port of London Authority</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-070	<a href="#">Thurrock Council</a> Deadline 2 Submission - Cover letter
REP2-071	<a href="#">Thurrock Council</a> Deadline 2 Submission - Written Representation
REP2-072	<a href="#">Thurrock Council</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-073	<a href="#">Thurrock Council</a> Deadline 2 Submission - ExAQ1 3 - 1.3.3 - Common Land Maps
REP2-074	<a href="#">Thurrock Council</a> Deadline 2 Submission - Common Land
REP2-075	<a href="#">Thurrock Council</a> Deadline 2 Submission - Proposed revised Local Wildlife Site boundaries - 2016
REP2-076	<a href="#">Thurrock Council</a> Deadline 2 Submission - Local Impact Report - Executive Summary
REP2-077	<a href="#">Thurrock Council</a> Deadline 2 Submission - Local Impact Report

REP2-078	<a href="#">Thurrock Council</a> Deadline 2 Submission - draft Statement of Common Ground
REP2-079	<a href="#">Thurrock District Scout Council</a> Deadline 2 Submission - Written Representation
REP2-080	<a href="#">Environment Agency</a> Deadline 2 Submission - Summary of Written Representation
REP2-081	<a href="#">Environment Agency</a> Deadline 2 Submission - Written Representation
REP2-082	<a href="#">Environment Agency</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-083	<a href="#">Highways England</a> Deadline 2 Submission - Written Representation and response to ExA's first written questions
REP2-084	<a href="#">Historic England</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-085	<a href="#">Marine Management Organisation</a> Deadline 2 Submission - Written Representation and response to ExA's first written question including Comments on Relevant Representations, Procedural decision D submissions and additional submissions from the applicant
REP2-086	<a href="#">Eversheds Sutherland LLP on behalf of National Grid Electricity Transmission Plc (NGET) and National Grid Gas Plc (NGG)</a> Deadline 2 Submission - Written Representation
REP2-087	<a href="#">Eversheds Sutherland LLP on behalf of National Grid Electricity Transmission Plc (NGET) and National Grid Gas Plc (NGG)</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-088	<a href="#">Network Rail Infrastructure Limited</a> Deadline 2 Submission - Summary of Written Representation
REP2-089	<a href="#">Network Rail Infrastructure Limited</a> Deadline 2 Submission - Written Representation
REP2-090	<a href="#">Network Rail Infrastructure Limited</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-091	<a href="#">Network Rail Infrastructure Limited</a> Deadline 2 Submission - Itinerary in relation to the requested site inspections including plan of level crossings
REP2-092	<a href="#">Anglian Water Services Limited</a> Deadline 2 Submission - Written Representation
REP2-093	<a href="#">Anglian Water Services Limited</a> Deadline 2 Submission - Response to ExA's first written questions
REP2-094	<a href="#">Cogent Land LLP</a> Deadline 2 Submission - Withdrawal of all Cogent Land LLP representations in respect of the DCO application
REP2-095	<a href="#">RWE Generation (UK) Plc</a> Deadline 2 Submission - Written Representation
REP2-096	<a href="#">Port of Tilbury London Limited (POTLL)</a> Deadline 2 Submission - Written Representation and response to ExA's first written questions
REP2-097	<a href="#">Natural England</a> Deadline 2 Submission - Late submission accepted at the discretion of the Examining Authority
<b>Deadline 3 – 12 April 2021</b>	

Deadline for receipt by the ExA of:

- Comments on WRs;
- Responses to comments on RRs;
- Responses to comments on Procedural Deadline D submissions;
- Comments on responses to ExQ1;
- Comments on LIRs;
- Comments on other submissions for Deadline 2;
- The Applicant's proposals for alternatives to ASI for areas which are not publicly accessible and/or cannot be viewed or accessed easily;
- Progressed SOCG and updated Statement of Commonality of SOCG;
- An updated Guide to the Application;
- An updated version of the draft Development Consent Order (dDCO) in clean and tracked versions;
- Schedule of changes to the dDCO;
- An updated CA Schedule in clean and tracked versions;
- Any other information requested by the ExA for submission at Deadline 3.

REP3-001	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Cover Email
REP3-002	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Guide to the Application
REP3-003	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Notice of Hearings - Kent Online
REP3-004	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Notice of Hearings - Thurrock Gazette
REP3-005	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Statement of Commonality for Statements of Common Ground Rev 1
REP3-006	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Proposals for a Virtual Accompanied Site Visit
REP3-007	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on Gravesham Borough Council's Deadline 2 Submission
REP3-008	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on Historic England's Deadline 2 Submission
REP3-009	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on Natural England's Deadline 2 Submission
REP3-010	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on Network Rail's Deadline 2 Submission
REP3-011	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on Port of Tilbury London Limited's Deadline 2 Submission
REP3-012	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on RWE Generation (UK) Plc's Deadline 2 Submission
REP3-013	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on the Environment Agency's Deadline 2 Submission

REP3-014	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Comments on Thurrock District Scout Council's Deadline 2 Submission
REP3-015	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Draft Statement of Common Ground with the Environment Agency
REP3-016	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Draft Statement of Common Ground with the Port of London Authority
REP3-017	<a href="#">Thurrock Power Ltd</a> Deadline 3 Submission - Draft Statement of Common Ground with Thurrock Council
REP3-018	<a href="#">Thurrock Council</a> Deadline 3 Submission
REP3-019	<a href="#">Gravesham Borough Council</a> Deadline 3 Submission
REP3-020	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Deadline 3 Submission
REP3-021	<a href="#">Historic England</a> Deadline 3 Submission
REP3-022	<a href="#">Marine Management Organisation (MMO)</a> Deadline 3 Submission
REP3-023	<a href="#">Port of Tilbury London Limited (POTLL)</a> Deadline 3 Submission
REP3-024	<a href="#">Port of London Authority</a> Deadline 3 Submission
REP3-025	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 3 Submission
<p><b>Deadline 4 – 17 May 2021</b> Deadline for receipt by the ExA of;</p> <ul style="list-style-type: none"> <li>• Comments on responses submitted for Deadline 3;</li> <li>• Written summaries of oral submissions made at any Hearings held during the weeks commencing 26 April 2021 or 3 May 2021;</li> <li>• Comments on the Applicant's proposals for alternatives to ASI for areas which are not publicly accessible and/or cannot be viewed or accessed easily;</li> <li>• Any post-Hearing notes requested at the Hearings;</li> <li>• An updated Guide to the Application;</li> <li>• An updated version of the dDCO in clean, tracked and word versions;</li> <li>• An updated Schedule of changes to the dDCO;</li> <li>• An updated Compulsory Acquisition Schedule in clean and tracked versions;</li> <li>• Progressed SoCG and updated Statement of Commonality of SOCG;</li> <li>• Any other information requested by the ExA for submission at Deadline 4.</li> </ul>	
REP4-001	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Cover Letter
REP4-002	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Guide to the Application Deadline 4
REP4-003	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Draft Development Consent Order (Version 5)

REP4-004	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Table of Amendments to the Draft DCO - Version 4 to Version 5 for Deadline 4
REP4-005	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Validation Report for Draft DCO (Version 5)
REP4-006	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Section 16 Application Common Land Report (April 2021)
REP4-007	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Explanatory Memorandum - Application Document Reference A3.2 Version 4
REP4-008	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Explanatory Memorandum Tracked Change from Version 3 to Version 4 for Deadline 4 - Application Document Reference A3.2
REP4-009	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Statement of Commonality for Statements of Common Ground (Rev 2)
REP4-010	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Statement of Common Ground with the Royal Mail Group Limited (Final Version April 2021)
REP4-011	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Draft Statement of Common Ground with Historic England
REP4-012	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Draft Statement of Common Ground with Natural England
REP4-013	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Draft Statement of Common Ground with Thurrock Council
REP4-014	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Conceptual Drainage Strategy - Application Document Reference A7.3 (Version P06)
REP4-015	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Conceptual Drainage Strategy - Application Document Reference A7.3 (Version P06) (Tracked)
REP4-016	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Outline Construction Traffic Management Plan - Application Document Reference A8.8
REP4-017	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Outline Construction Traffic Management Plan - Application Document Reference A8.8 (Tracked)
REP4-018	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Written Scheme of Investigation for Marine and Intertidal Archaeological Mitigation - Application Document Reference A8.11b
REP4-019	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Written Summary of Oral Submissions for Compulsory Acquisition Hearing 1
REP4-020	<a href="#">Thurrock Power Ltd</a>

	Deadline 4 Submission - Written Summary of Oral Submissions for Issue Specific Hearing 1 - Traffic and Transport
REP4-021	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Written Summary of Oral Submissions for Issue Specific Hearing 2 - Cultural Heritage
REP4-022	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Written Summary of Oral Submissions for Issue Specific Hearing 3 - Draft DCO
REP4-023	<a href="#">Gravesham Borough Council</a> Deadline 4 Submission
REP4-024	<a href="#">Thurrock Council</a> Deadline 4 Submission
REP4-025	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Deadline 4 Submission
REP4-026	<a href="#">Historic England</a> Deadline 4 Submission
REP4-027	<a href="#">Marine Management Organisation (MMO)</a> Deadline 4 Submission
REP4-028	<a href="#">Ministry of Defence</a> Deadline 4 Submission
REP4-029	<a href="#">Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited</a> Deadline 4 Submission
REP4-030	<a href="#">Port of London Authority</a> Deadline 4 Submission
REP4-031	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited (POTLL)</a> Deadline 4 Submission
REP4-032	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 4 Submission
REP4-033	<a href="#">Thurrock Power Ltd</a> Deadline 4 Submission - Draft Development Consent Order Tracked Change from Version 4 (REP2-014) to Version 5 - Late Submission - Accepted at the discretion of the Examining Authority
<p><b>Deadline 5 – 14 June 2021</b> Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExQ2;</li> <li>• Comments on responses submitted for Deadline 4;</li> <li>• Progressed SOCG and updated Statement of Commonality of SOCG;</li> <li>• An updated Guide to the Application;</li> <li>• Updated Book of Reference (if required);</li> <li>• Updated Statement of Reasons (if required);</li> <li>• Draft s106 Agreement(s) (if required);</li> <li>• An updated version of the dDCO in clean, tracked and word versions;</li> <li>• An updated Schedule of changes to the dDCO;</li> <li>• Additional photography proposed by the applicant as alternative to ASI;</li> <li>• Any other information requested by the ExA for submission at Deadline 5</li> </ul>	
REP5-001	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Deadline 5 Cover Letter
REP5-002	<a href="#">Thurrock Power Ltd</a>

	Deadline 5 Submission - Guide to the Application
REP5-003	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Draft Development Consent Order (Version 6)
REP5-004	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Tracked Change Draft Development Consent Order - Version 5 to Version 6
REP5-005	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Table of Draft Development Consent Order Amendments - Version 5 to Version 6
REP5-006	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Explanatory Memorandum - Application Document Reference A3.2 (Version 5)
REP5-007	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ2)
REP5-008	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Statement of Reasons - Application Document Reference A4.2 (Version 2)
REP5-009	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Statement of Commonality for Statements of Common Ground (Revision 3)
REP5-010	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Draft Statement of Common Ground with Thurrock Council
REP5-011	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Draft Statement of Common Ground with Highways England
REP5-012	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Statement of Common Ground with the Port of London Authority (Final Version)
REP5-013	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Applicant's Comments on Gravesham Borough Council's Deadline 4 Submission
REP5-014	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Applicant's Comments on Highways England's Deadline 4 Submission
REP5-015	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Applicant's Comments on Historic England Deadline 4 Submission
REP5-016	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Applicant's Comments on Port of Tilbury London Limited's Deadline 4 Submission
REP5-017	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Applicant's Comments on RWE Generation (UK) Plc's Deadline 4 Submission
REP5-018	<a href="#">Thurrock Power Ltd</a> Deadline 5 Submission - Appendix to Applicant's Deadline 5 submission: Additional photography proposed by the Applicant as an alternative to Accompanied Site Inspections (ASI)
REP5-019	<a href="#">Thurrock Council</a>



	Deadline 5 Submission - Cover Letter
REP5-020	<a href="#">Thurrock Council</a> Deadline 5 Submission - Response to Examining Authority's Further Written Questions (ExQ2)
REP5-021	<a href="#">Thurrock Council</a> Deadline 5 Submission - Draft Statement of Common Ground (Tracked)
REP5-022	<a href="#">Thurrock Council</a> Deadline 5 Submission - Local Impact Report Addendum
REP5-023	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Deadline 5 Submission
REP5-024	<a href="#">Historic England</a> Deadline 5 Submission
REP5-025	<a href="#">Marine Management Organisation (MMO)</a> Deadline 5 Submission
REP5-026	<a href="#">Natural England</a> Deadline 5 Submission - Response to Examining Authority's Further Written Questions (ExQ2)
REP5-027	<a href="#">Natural England</a> Deadline 5 Submission - Response to Linked Commons Act S16 Consultation
REP5-028	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited (POTLL)</a> Deadline 5 Submission
REP5-029	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 5 Submission
<b>Deadline 5A – 02 July 2021</b> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Notification of wish to be heard at CAH;</li> <li>• Notification of wish to be heard at OFH;</li> <li>• Written Representations on accepted changes and proposed provisions;</li> <li>• Comments on Relevant Representations received on the accepted changes and proposed provisions.</li> </ul>	
REP5A-001	<a href="#">Thurrock Power Ltd</a> Deadline 5A Submission
REP5A-002	<a href="#">Thurrock Council</a> Deadline 5A Submission
REP5A-003	<a href="#">Forestry Commission</a> Deadline 5A Submission
REP5A-004	<a href="#">BDB Pitmans LLP on behalf of Highways England</a> Deadline 5A Submission
REP5A-005	<a href="#">Historic England</a> Deadline 5A Submission
REP5A-006	<a href="#">Marine Management Organisation (MMO)</a> Deadline 5A Submission
REP5A-007	<a href="#">Ministry of Defence</a> Deadline 5A Submission
REP5A-008	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited (POTLL)</a> Deadline 5A Submission

REP5A-009	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 5A Submission
<b>Deadline 6 – 20 July 2021</b> Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> <li>• Comments on responses submitted for Deadline 5;</li> <li>• Responses to ExA’s additional written questions (ExQ3).</li> <li>• Responses to Written Representations on accepted changes and proposed provisions.</li> <li>• Comments on additional photography.</li> <li>• Any other information requested by the ExA for submission at Deadline 6.</li> </ul>	
REP6-001	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Deadline 6 Cover Letter
REP6-002	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Guide to the Application
REP6-003	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Draft Development Consent Order (Clean) (Version 7)
REP6-004	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Draft Development Consent Order (Tracked) (Version 7)
REP6-005	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Table of amendments to the draft Development Consent Order between version 6 (REP5-003) to version 7 (REP6-003)
REP6-006	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Outline Construction Traffic Management Plan - Application document number A8.8
REP6-007	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Outline Construction Worker Travel Plan Application document number A8.9 (Clean)
REP6-008	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Outline Construction Worker Travel Plan Application document number A8.9 (Tracked)
REP6-009	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Applicant's Response to Common Land Application Objections
REP6-010	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Applicant’s response to the ExA’s Third Written Questions (ExQ3)
REP6-011	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Historic England Advice
REP6-012	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Natural England Consultation Response
REP6-013	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Open Spaces Society Consultation Response
REP6-014	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Statement of Commonality for Statements of Common Ground (Revision 4)
REP6-015	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Statement of Common Ground with Gravesham Borough Council

REP6-016	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Statement of Common Ground with Environment Agency
REP6-017	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Statement of Common Ground with Historic England
REP6-018	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Statement of Common Ground with Port of London Authority
REP6-019	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Submission of Common Land Application Documents
REP6-020	<a href="#">Thurrock Power Ltd</a> Deadline 6 Submission - Note on status of protective provisions in version 7 of the dDCO
REP6-021	<a href="#">Thurrock Council</a> Deadline 6 Submission - Cover Letter
REP6-022	<a href="#">Thurrock Council</a> Deadline 6 Submission - Responses to ExA's additional written questions (ExQ3)
REP6-023	<a href="#">Anglian Water Services Limited</a> Deadline 6 Submission - Email correspondence regarding position
REP6-024	<a href="#">Marine Management Organisation (MMO)</a> Deadline 6 Submission - Comments on responses submitted for Deadline 5
REP6-025	<a href="#">Natural England</a> Deadline 6 Submission - Responses to ExA's additional written questions (ExQ3)
REP6-026	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited</a> Deadline 6 Submission - DCO Protective Provisions and Comments on responses submitted for Deadline 5 ( <b>superseded by AS-049 due to errors with original submission</b> )
REP6-027	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 6 Submission - Comments on responses submitted for Deadline 5
<p><b>Deadline 7 – 9 August 2021</b> Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses submitted for Deadline 6;</li> <li>• Comments on the RIES (if required);</li> <li>• Comments on the ExA's proposed schedule of changes to the dDCO (if required);</li> <li>• Written summaries of oral submissions made at any hearings held during the week commencing 26 July 2021</li> <li>• Any post-hearing notes requested at the hearings;</li> <li>• Responses to comments on additional photography (if any);</li> <li>• Comments on responses to ExA's additional written questions (ExQ3).</li> <li>• Final SoCG and finalised Statement of Commonality;</li> <li>• Final Compulsory Acquisition Schedule in clean and tracked versions;</li> <li>• Final Guide to the Application;</li> <li>• A final Schedule of changes to the dDCO;</li> <li>• Final dDCO to be submitted by the Applicant in the Statutory Instrument (SI) template with the SI template validation report;</li> <li>• Resubmission of final version of updated application documents;</li> <li>• Final updated version of the Book of Reference;</li> </ul>	

<ul style="list-style-type: none"> <li>• Any final, duly executed, section 106 agreement(s);</li> <li>• Any other information requested by the ExA for submission at Deadline 7.</li> </ul>	
REP7-001	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Cover Letter
REP7-002	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Location and Order Limits Plans
REP7-003	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Land Plans and Special Category Land Plans
REP7-004	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Work Plans
REP7-005	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rights of Way and Traffic Regulation Measures Plans
REP7-006	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Illustrative Highway Engineering Drawings
REP7-007	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Illustrative General Arrangement Plans
REP7-008	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Illustrative Landscape Plan
REP7-009	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Historic or Scheduled Monument Sites Plan
REP7-010	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Statutory and Non-Statutory Nature Conservation Sites
REP7-011	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Tree Preservation Order and Hedgerow Plan
REP7-012	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Draft Development Consent Order (Version 8)
REP7-013	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Explanatory Memorandum - Version 6 for Deadline 7
REP7-014	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Statement of Reasons - Version 3 for Deadline 7
REP7-015	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Book of Reference
REP7-016	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Book of Reference (Tracked)
REP7-017	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Habitats Regulations Assessment Report
REP7-018	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Habitats Regulations Assessment Report (Tracked)
REP7-019	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Environmental Statement Volume 2 - Chapter 2: Project Description

REP7-020	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Environmental Statement Volume 2 - Chapter 2: Project Description (Tracked)
REP7-021	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Other Consents and Licenses Statement
REP7-022	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Other Consents and Licenses Statement (Tracked)
REP7-023	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Outline Employment and Skills Strategy
REP7-024	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Outline Code of Construction Practice
REP7-025	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Outline Code of Construction Practice (Tracked)
REP7-026	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Outline Ecological Management Plan
REP7-027	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Outline Ecological Management Plan (Tracked)
REP7-028	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Applicant's summary of position and note on status of protective provisions in version 8 of the draft DCO (deadline 7)
REP7-029	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Written Summary of Oral submissions: Compulsory Acquisition Hearing 2 (26 July 2021)
REP7-030	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Written Summary of Oral submissions: Issue Specific Hearing 4 (ISH4) Draft DCO (26 July 2021)
REP7-031	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Compulsory Acquisition Schedule
REP7-032	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Compulsory Acquisition Schedule (Tracked)
REP7-033	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Statement of Common Ground with Highways England
REP7-034	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Guide to the Application
REP7-035	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Statement of Common Ground (proposed draft) with the Marine Management Organisation
REP7-036	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Statement of Common Ground with Natural England
REP7-037	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Statement of Commonality for Statements of Common Ground
REP7-038	<a href="#">Thurrock Power Ltd</a>

	Deadline 7 Submission - Statement of Common Ground with Thurrock Council
REP7-039	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Thurrock Power Ltd Comments on RIES
REP7-040	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Joint Statement with National Grid
REP7-041	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Joint Statement with Network Rail
REP7-042	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Legal advice note Development Consent Order (9 August 2021)
REP7-043	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Response to the ExA's schedule of amendments to the draft DCO and table of amends to the dDCo
REP7-044	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Tracked change draft DCO version 7 (REP6-003) to version 8 submitted for Deadline 7 (August 2021)
REP7-045	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Natural England's Further Submission to the Common Land Application (23 July 2021)
REP7-046	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Open Spaces Society's Further Submission to the Common Land Application (20 July 2021)
REP7-047	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 7 Submission - Comments on responses submitted for Deadline 6
REP7-048	<a href="#">Marine Management Organisation (MMO)</a> Deadline 7 Submission - Comments on responses submitted for Deadline 6
REP7-049	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited</a> Deadline 7 Submission - Submission in respect of the examination of the application by Thurrock Power Limited
REP7-050	<a href="#">Thurrock Council</a> Deadline 7 Submission - Cover Letter and response to Deadline 6
REP7-051	<a href="#">Thurrock Council</a> Deadline 7 Submission - Statement of Common Ground with RPS Group
<b>Deadline 7 – 9 August 2021</b> Applicant's response to Rule 17 Request [PD-019]. Alternative Application Documents	
REP7-052	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.1 Location and Order Limits Plans - Causeway removal
REP7-053	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.2 Land Special Category Land and Crown Land Plans - Causeway removal
REP7-054	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.3 Works Plans - Causeway removal
REP7-055	<a href="#">Thurrock Power Ltd</a>

	Deadline 7 Submission - Rule 17 Response - A2.4 Access Rights of Way and Traffic Regulation Measures Plans - Causeway removal
REP7-056	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.5 Illustrative Highway Engineering Drawings - Causeway removal
REP7-057	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.6 Illustrative General Arrangement Plans - Causeway removal
REP7-058	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.8 Illustrative Cross Section Plans - Causeway removal
REP7-059	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.9 Illustrative Landscape Plan - Causeway removal
REP7-060	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.11 Historic or Scheduled Monument Sites Plan - Causeway removal
REP7-061	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.12 Statutory and Non-Statutory Nature Conservation Sites - Causeway removal
REP7-062	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A2.13 Tree Preservation Order and Hedgerow Plan - Causeway removal
REP7-063	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A4.3 Book of Reference - Causeway removal
REP7-064	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - Book of Reference (Parts 1-5) - Causeway removal (Tracked)
REP7-065	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A5.2 Habitats Regulations Assessment Report - Causeway removal
REP7-066	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A5.2 Habitats Regulations Assessment Report - Causeway removal (Tracked)
REP7-067	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.2.2 Environmental Statement Volume 2 - Chapter 2: Project Description - Causeway removal
REP7-068	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.2.2 Environmental Statement Volume 2 - Chapter 2: Project Description - Causeway removal (Tracked)
REP7-069	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - Environmental Statement Volume 5 - A6.5.1 Chapter 31: Summary of Inter-Related Effects - Causeway removal
REP7-070	<a href="#">Thurrock Power Ltd</a>

	Deadline 7 Submission - Rule 17 Response – A6.5.1 Environmental Statement Volume 5 - Chapter 31: Summary of Inter-Related Effects - Causeway removal (Tracked)
REP7-071	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response – A6.5.2 Environmental Statement Volume 5 - Chapter 32: Summary of Cumulative Effects - Causeway removal
REP7-072	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response – A6.5.2 Environmental Statement Volume 5 - Chapter 32: Summary of Cumulative Effects - Causeway removal (Tracked)
REP7-073	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response – A6.5.3 - Environmental Statement Volume 5 -Chapter 33: Summary of Further Mitigation, Residual Effects and Monitoring - Causeway removal
REP7-074	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.5.3 Environmental Statement Volume 5 - Chapter 33: Summary of Further Mitigation, Residual Effects and Monitoring - Causeway removal (Tracked)
REP7-075	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.6.1 Environmental Statement Volume 6 - Appendix 2.1: Register of Mitigation, Enhancement and Monitoring Commitments - Causeway removal
REP7-076	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.6.1 Environmental Statement Volume 6 - Appendix 2.1: Register of Mitigation, Enhancement and Monitoring Commitments - Causeway removal (Tracked)
REP7-077	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.6.11 Environmental Statement Volume 6 - Appendix 9.3: Biodiversity Net Gain Assessment - Causeway removal
REP7-078	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A6.6.11 Environmental Statement Volume 6 - Appendix 9.3: Biodiversity Net Gain Assessment - Causeway removal (Tracked)
REP7-079	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A7.7 Other Consents and Licenses Statement - Causeway removal
REP7-080	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A7.7 Other Consents and Licenses Statement - Causeway removal (Tracked)
REP7-081	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.4 Design Principles Statement - Causeway removal
REP7-082	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.4 Design Principles Statement - Causeway removal (Tracked)



REP7-083	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.6 Outline Code of Construction Practice - Causeway removal
REP7-084	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.6 Outline Code of Construction Practice - Causeway removal (Tracked)
REP7-085	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.7 Outline Ecological Management Plan - Causeway removal
REP7-086	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.7 Outline Ecological Management Plan - Causeway removal (Tracked)
REP7-087	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.8 Outline Construction Traffic Management Plan - Causeway removal
REP7-088	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - A8.8 Outline Construction Traffic Management Plan - Causeway removal (Tracked)
REP7-089	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - Explanatory Memorandum - Causeway removal
REP7-090	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - Schedule of amendments to the draft DCO - Causeway removal
REP7-091	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - to accompany tracked change draft DCO showing changes required - Causeway removal
REP7-092	<a href="#">Thurrock Power Ltd</a> Deadline 7 Submission - Rule 17 Response - Tracked change draft DCO from version 8 submitted for Deadline 7 (July 2021) to show changes - Causeway removal
<b>Deadline 8 – 13 August 2021</b>	
Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> <li>Any further information requested by the ExA after Deadline 7 (if required), under Rule 17 of the Examination Rules</li> </ul>	
REP8-001	<a href="#">Thurrock Power Ltd</a> Deadline 8 Submission - Submission in response to Deadline 7
REP8-002	<a href="#">Thurrock Power Ltd</a> Deadline 8 Submission - Common land response to Open Spaces Society and Natural England - August 2021
REP8-003	<a href="#">Thurrock Power Ltd</a> Deadline 8 Submission - Photographs of fly tipping
REP8-004	<a href="#">Thurrock Council</a> Deadline 8 Submission - Further comments after Deadline 7
REP8-005	<a href="#">Marine Management Organisation (MMO)</a> Deadline 8 Submission - Response to submissions for Deadline 7
REP8-006	<a href="#">Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited</a>

	Deadline 8 Submission - Withdrawal of Network Rails objection in respect of the DCO application
REP8-007	<a href="#">Eversheds Sutherland on behalf of RWE Generation (UK) Plc</a> Deadline 8 Submission - Comments on responses submitted for Deadline 7
REP8-008	<a href="#">Port of Tilbury London Limited</a> Deadline 8 Submission - Response to Deadline 7 submissions
REP8-009	<a href="#">Port of Tilbury London Limited</a> Deadline 8 Submission - Appendix 1: Comparison of Heads of Terms
REP8-010	<a href="#">Port of Tilbury London Limited</a> Deadline 8 Submission - Appendix 2: Response to Applicants Email
REP8-011	<a href="#">Port of Tilbury London Limited</a> Deadline 8 Submission - Appendix 3: Mark up of Applicant's DCO Version 8 [REP7-012]
<b>Other Documents</b>	
OD-001	<a href="#">TFGP - Regulation 32 Transboundary Screening</a>
OD-002	<a href="#">Section 51 advice to the Applicant</a>
OD-003	<a href="#">Thurrock Power Limited</a> Applicant's S56 notice of accepted application
OD-004	<a href="#">Thurrock Power Ltd</a> Certificate of Compliance with Section 56 of the Planning Act 2008
OD-005	<a href="#">Thurrock Power Ltd</a> Certificate of Compliance with Section 59 of the Planning Act 2008
OD-006	<a href="#">Thurrock Power Ltd</a> Certificate of Compliance with Regulation 16 Notice
OD-007	<a href="#">Frequently Asked Questions (FAQs)</a>
OD-008	<a href="#">Thurrock Power Limited</a> Applicant's Notice in relation to Examining Authorities Request for Further Information and Procedural Decision to Postpone Part 2 of the Preliminary Meeting
OD-009	<a href="#">Thurrock Power Ltd</a> Hearing Notice for April 2021 Hearings
OD-010	<a href="#">Thurrock Power Ltd</a> Notice for July 2021 Hearings

# **APPENDIX B: LIST OF ABBREVIATIONS**

## APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AIL	Abnormal Indivisible Load
AEoI	Adverse Effects on Integrity
AGI	Above Ground Installation
ALC	Agricultural Land Classification
AN (number)	Planning Inspectorate's Advice Notes
AP	Affected Person
AQAL	Air Quality Assessment Level
AQD	Directive 2008/50/EC on ambient air quality and cleaner air for Europe
AQMA	Air Quality Management Area
ARI	Access Required Inspection
ASI	Accompanied Site Inspection
BAT	Best Available Techniques
BEIS	Department for Business, Energy and Industrial Strategy
BMV	Best and Most Versatile
BoR	Book of Reference
BS	British Standard
BPM	Best Practicable Means
CA	Compulsory Acquisition
CA2006	Commons Act 2006
CAH	Compulsory Acquisition Hearing
CA Regulations	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CCC	Committee on Climate Change
CCGT	Combined Cycle Gas Turbine
CDP	Concept Drainage Plan
CDS	Concept Drainage Strategy
CEA	Cumulative Effects Assessment
CCR	Carbon Capture Ready
CCR Regulations	The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013
CCS	Carbon Capture and Storage
CEA	Cumulative Effects Assessment
CDP	Concept Drainage Plan
CHP	Combined Heat and Power
CO	Carbon Monoxide
CO <sup>2</sup>	Carbon Dioxide
CoCP	Code of Construction Practice
Cogent	Cogent Land LLP
CoPA	Control of Pollution Act 1974
Condovers	Condovers Scout Activity Centre
cSAC	Candidate Special Areas of Conservation

<b>Abbreviation or usage</b>	<b>Reference</b>
CTMP	Construction Traffic Management Plan
CWTP	Construction Workers Travel Plan
D (number)	Deadline, with a number referring to a specific deadline identified in the Examination Timetable
DPS	Design principles statement
dB	Decibel
DCLG/MHCLG	Former Department for Communities and Local Government, re-organised to form Ministry of Housing, Communities and Local Government (MHCLG) in January 2018 and currently the Department for Levelling Up, Housing and Communities. References to documents (eg Examination Guidance) or decisions taken by the former department are referred to using the abbreviation DCLG
DCO	Development Consent Order
dDCO	draft Development Consent Order
DECC	Former Department for Energy and Climate Change, reorganised to form BEIS
DEFRA	Department for Environment, Food and Rural Affairs
DML	Deemed Marine Licence
DPS	Design Principles Statement
EA	Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EM	Explanatory Memorandum
EMF	Electromagnetic Field
EP	Environmental Permit
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ (number)	Written examination questions issued by the ExA
FLL	Functionally Linked Land
FP	Footpath
FRA	Flood Risk Assessment
GCN	Great Crested Newts
GHG	Green House Gas
ha	Hectare
HGV	Heavy Goods Vehicle
HE	Historic England
HiE	Highways England
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017

<b>Abbreviation or usage</b>	<b>Reference</b>
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IED	Directive 2010/75/EU on industrial emissions (integrated pollution and prevention control).
INNS	Invasive Non-Native Species
IP	Interested Party
ISH (number)	Issue Specific Hearing and where followed by a number, the number is a reference to a specific ISH on a date in the examination timetable
ISO	International Organization for Standardization
JNCC	Joint Nature Conservation Committee
km	kilometre
kV	Kilovolt
LBCA Act	The Planning (Listed Buildings and Conservation Areas) Act 1991
LCA	Local Character Area
LEMP	Landscaping and Ecological Management Plan
LIR	Local Impact Report
LOAEL	Lowest Observable Adverse Effect Level
LPA	Local Planning Act
LR	London Resort
LTC	Lower Thames Crossing
LV	Limit value(s) – a regulatory limit expressed as a value above which a regulated substance should not be found in the environment and triggering action for pollution control
LSE	Likely Significant Effects
m	metre
made Order	A statutory Order providing development consent made by the relevant SoS under PA2008, use of this term signifies a reference to a DCO that has been decided
MCA	Marine and Coastguard Agency
MCZ	Marine Conservation Zones
MoD	Ministry of Defence
MMO	Marine Management Organisation
MPS	Marine Policy Statement 2011
MW	Megawatt
MWh	Megawatt hours
NCA	National Character Area
NE	Natural England
NG	National Grid – used to refer to NGET and NGG collectively.
NGET	National Grid Electricity Transmission Plc
NGG	National Grid Gas Plc
NH <sub>3</sub>	Ammonia
NOEL	No Observed Effect Level

<b>Abbreviation or usage</b>	<b>Reference</b>
NO <sub>2</sub>	Nitrogen Dioxide
NO <sub>x</sub>	Nitrogen Oxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-2	National Policy Statement for Fossil Fuel and Electricity Generating Infrastructure
NPS EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NPSE	Noise Policy Statement for England
NPSP	National Policy Statement for Ports
NR	Network Rail
NSR	Noise Sensitive Receptor
NSIP	Nationally Significant Infrastructure Project
NTS	National Transmission System
OCGT	Open Cycle Gas Turbine
OCoCP	Outline Code of Construction Practice
OCTMP	Outline Construction Traffic Management Plan
OCWTP	Outline Construction Worker Travel Plan
OEMP	Outline Ecological Management Plan
OSS	Open Spaces Society
OWSI	Outline Written Scheme of Archaeological Investigation
OFGEM	Office of Gas and Electricity Markets
OFH	Open Floor Hearing
PPs	Protective Provisions
PA2008	Planning Act 2008 (as amended)
PC(s)	Process Contributions
PLA	Port of London Authority
PM	Preliminary Meeting
PM <sub>2.5</sub>	Particulate Matter
PM <sub>10</sub>	Particulate Matter
PHE	Public Health England
PoTLL	Port of Tilbury London Limited
PPG	Planning Policy Guidance accompanying the NPPF
PRoW	Public Right of Way
pSAC	Possible Special Areas of Conservation
PSED	Public Sector Equality Duty
pSPA	Potential Special Protection Areas
REAC	Register of Mitigation, Enhancement and Monitoring Commitments
RIES	Report on the Implications for European Sites
RM	Royal Mail
RR	Relevant Representation
RWE	RWE Generation (UK) Plc

<b>Abbreviation or usage</b>	<b>Reference</b>
s (number)	Section of a statute and when followed by a number, a particular section number from a named statute
SAC	Special Area of Conservation
SCI	Sites of Community Importance
SFRA	Strategic Flood Risk Assessment
SI	Statutory Instrument
SNCB	Statutory Nature Conservation Body
SNS	Statutory Nuisance Statement
SOAEL	Significant Observed Adverse Effect Level
SO <sub>2</sub>	Sulphur Dioxide
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSBEIS	... for Business, Energy and Industrial Strategy
SoSDEFRA	... for Environment, Food and Rural Affairs
SPA	Special Protection Area
SPZ	Special Protection Zone (groundwater)
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU(s)	Statutory Undertaker(s)
TA	Transport Assessment
TC	Thurrock Council
TCS	Thurrock Core Strategy
TfL	Transport for London
TP	Temporary Possession
UK	United Kingdom
UKCP18	UK Climate Change Projections 2018
USI	Unaccompanied Site Inspection
VSCs	Very Special Circumstances
VP	Viewpoint
WACA1981	The Wildlife and Countryside Act 1981
WFR	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
WFD	Water Framework Directive – Directive 2000/60/EC
WHO	World Health Organisation
WR	Written Representation
WSI	Written Scheme of Investigation (archaeology)
WWII	World War Two
ZOI	Zone of Influence



# **APPENDIX C: THE RECOMMENDED DEVELOPMENT CONSENT ORDER**

# The Thurrock Flexible Generation Plant Development Consent Order 202[ ]

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## DRAFT DEVELOPMENT CONSENT ORDER

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Planning Act 2008	
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009	
Regulation Number	Regulation 5(2)(b)
Planning Inspectorate Project Reference	EN010092
Application Document Reference	A3.1
Author	Burges Salmon LLP

Version	Date	Description
8	August 2021	Version 8 for deadline 7

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202[] No.

**INFRASTRUCTURE PLANNING**

**The Thurrock Flexible Generation Plant Development Consent  
Order 202[]**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

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(a) 2008. c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13(1) to, the Localism Act 2011 (c. 20). Section 83(1) was amended by paragraph 35 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13(1) to, that Act.

(b) S.I. 2009/2264, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83(1) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the single appointed person, and taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land (as defined in article 2 of this Order), and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.

The Secretary of State is satisfied that the special category land (as defined in article 2 of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122, 123, 131, 132 and schedule 5 of the 2008 Act, makes the following Order:

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Thurrock Flexible Generation Plant Development Consent Order 202[ ] and comes into force on [ ] 202[ ].

#### **Interpretation**

2.—(1) In this Order except where provided otherwise—

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

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

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

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(a) S.I. 2010/103, amended by S.I. 2012/635.

(b) S.I. 2017/572.

(c) 1961 c.33

(d) 1956 c.65

(e) 1980 c.66

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(a)**

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

“1991 Act” means the New Roads and Street Works Act 1991**(c)**

“2008 Act” means the Planning Act 2008;

“2009 Act” means the Marine and Coastal Access Act 2009 **(d)**

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

“the access, rights of way and traffic management plans” means the plans certified as such by the Secretary of State for the purposes of this Order;

“apparatus” has the same meaning as in section 105(1) of the New Roads and Street Works Act 1991**(e)**;

“authorised development” means the development and associated development described in Schedule 1 (authorised development);

“book of reference” means the document certified as such by the Secretary of State as the book of reference for the purposes of the Order;

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

“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;

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

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

“completion” means the date on which the authorised development commences operation by generating power on a commercial basis, but excluding the generation of power during commissioning, and ‘complete’ and ‘completed’ and cognate expressions are to be construed accordingly;

“concept drainage strategy” means the document certified as such by the Secretary of State for the purposes of this Order;

“design principles statement” means the document certified by the Secretary of State as the design principles statement for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the documents certified by the Secretary of State as the environmental statement for the purposes of this Order;

“highway authority” means Thurrock Borough Council;

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4LZ, 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;

“the illustrative cross section plans” means the document certified as the illustrative cross section plans by the Secretary of State for the purposes of the Order;

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(a) 1981 c.66.  
(b) 1990 c. 8.  
(c) 1991 c.22.  
(d) 2009 c.23.  
(e) 1991 c. 22.

“the illustrative landscape plan” means the document certified as the illustrative landscape plan by the Secretary of State for the purposes of the Order;

“the land plans and special category land plans” means the document certified as the land plans and special category land plans by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part, provided that such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” is to be construed accordingly;

“MMO” means the Marine Management Organisation;

“NGET” means National Grid Electricity Transmission Plc (company number 02366977), whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“NGG” means National Grid Gas Plc (company number 02006000), whose registered offices is at 1 to 3 Strand, London, WC2N 5EH;

“Order land” means the land which is required for the authorised development shown on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of the Order;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of the Order;

“outline construction worker travel plan” means the document certified as the outline construction worker travel plan by the Secretary of State for the purposes of the Order;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of the Order;

“outline local employment and skills strategy” means the document certified as the outline local employment and skills strategy by the Secretary of State for the purposes of the Order;

“outline marine written scheme of archaeological investigation” means the document certified as the outline marine written scheme of archaeological investigation applying below Mean High Water Springs by the Secretary of State for the purposes of the Order;

“outline written scheme of archaeological investigation” means the document certified as the outline written scheme of archaeological investigation applying above Mean High Water Springs by the Secretary of State for the purposes of the Order;

“owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a)

“preliminary navigational risk assessment” means the document certified as the preliminary navigational risk assessment by the Secretary of State for the purposes of the Order;

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) the provision of temporary means of enclosure and site security for construction;
- (d) the temporary display of site notices or advertisements;
- (e) protected species relocation in accordance with a relevant licence;
- (f) infilling of ditches and creation of new ditches; and
- (g) site clearance (including vegetation removal, vegetation management to create or enhance habitat);

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(a) 1981 c.67.



“PLA” means the Port of London Authority;

“plot” means the plots listed in the book of reference and shown on the land plans;

“Port of Tilbury London Limited” means the statutory harbour authority for and operator of the Port of Tilbury, London;

“relevant planning authority” means Thurrock Borough Council;

“replacement land” means the land forming plot 01/07 listed in the book of reference and shown on the special category land plan of the land plans as replacement common land;

“requirement” means those matters set out in Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Schedule with the same number;

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy;

“special category land” means the land registered as common land under the Commons Registration Act 1965 and shown on the special category land plan of the land plans;

“statutory undertaker” has the same meaning as set out in section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority” in relation to street, has the same meaning as in part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the undertaker” means Thurrock Power Limited, company number 10917470, whose registered office is at 1st Floor, 145 Kensington Church Street, London, W8 7LP;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“work” means a work set out in Schedule 1; and a reference to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule;

“working day” means any day other than a Saturday, Sunday, or English bank or public holiday; and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) Reference 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 creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of the land which is acquired under this Order or is otherwise comprised in the Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(4) In this Order “includes” must be construed without limitation.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

(6) All areas described in square metres in the book of reference are approximate.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order, including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

#### **Limits of deviation**

4.—(1) The undertaker must construct the authorised development within the Order limits shown on the works plans.

(2) In constructing or maintaining the authorised development, the undertaker may deviate laterally from the indicative centrelines or situations of the authorised development shown on the works plans to the extent of the limits of deviation for each work shown on those plans; and

- (a) vertically from the levels of the authorised development shown on the illustrative cross section plans—
  - (i) upwards only within the parameters for the relevant work set out in table 1 in requirement 4; or
  - (ii) downwards to any distance.

#### **Maintenance of authorised development**

5.—(1) Subject to sub-paragraphs (2) and (3), 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.
- (3) Nothing in this Order authorises the carrying out of maintenance dredging by the undertaker.

#### **Operation of generating station**

6.—(1) The undertaker is authorised to use and operate the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of the authorised development.

#### **Benefit of Order**

7.—(1) Subject to article 8 (consent to transfer benefit of order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

- (2) Paragraph (1) does not apply to —
  - (a) Work no. 3 in relation to which this Order has effect for the benefit of the undertaker and NGET; and
  - (b) Work nos. 4 and 5 in relation to which this Order has effect for the benefit of the undertaker and NGG.

#### **Consent to transfer benefit of Order**

8.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) 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.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transferee or lessee is—

- (a) the holder of a licence under section 6 of the Electricity Act 1989(a);
- (b) in relation only to a transfer or lease of Work nos. 4 or 5, the holder of a licence under section 7 of the Gas Act 1986(b);
- (c) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order limits; and
- (d) in relation to a transfer or lease of any works within a street situated within the Port of Tilbury or work no. 15, Port of Tilbury London Limited or any successor as the statutory harbour authority for the Port of Tilbury.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must notify the Secretary of State and the Port of Tilbury London Limited in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) 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 (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), 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.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of 14 days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) 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.

### **Defence to proceedings in respect of statutory nuisance**

9.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(c) in relation to a nuisance falling within paragraph (g) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served under

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(a) 1989 c.29.

(b) 1986 c.44. Section 7 (1) was amended by section 76 of the Utilities Act 2000 (c.27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20).

(c) 1990 c. 43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25). There are amendments to this Act which are not relevant to this Order.

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(a);

- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) 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.

### **Disapplication of legislation etc.**

10.—(1) The following enactments do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of, or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development —

- (a) the West Tilbury Commons, West Tilbury, Essex, Bye-Laws, made by the Conservators of West Tilbury Commons, under the powers of the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893(b);
- (b) 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(c);
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(d);
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(e) in respect of a flood risk activity (including works affecting sea defences) only;
- (e) sections 23 and 30 of the Land Drainage Act 1991(f); and
- (f) the provisions of the Neighbourhood Planning Act 2017(g) in so far as they relate to the temporary possession of land under articles 28 and 29 of this Order.

(2) Except as provided for in paragraphs 9(3), 9(4) and 17(2) of Part 6 of Schedule 9, sections 66 to 75 of the Port of London Act 1968 do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of any part of the authorised development.

(3) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(h) any building comprising part of the authorised development is deemed to be-

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purposes inspecting or maintaining fixed plant for machinery.

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(a) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(b) 1893

(c) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(d) As substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(e) 2016/1154

(f) 1991 c. 59

(g) 2017 c.20

(h) 2010/948

(4) The carrying out of any of the following works and operations-

- (a) Work nos. 12 (a), 12(e), and 15;
- (b) any ancillary work listed in Schedule 1;
- (c) the use of Substation Road for the passage of construction, maintenance or decommissioning vehicles utilised for the authorised development; and
- (d) any activities carried out pursuant to the requirements set out in Schedule 2,

is not to be regarded as conflicting, or constituting non-compliance by Port of Tilbury London Limited, with the following requirements in Schedule 2 to the Port of Tilbury (Expansion) Order 2019-

- (e) Requirement 4;
- (f) Requirement 5;
- (g) Requirement 11 (c), (d), (f) and (h); and
- (h) Requirement 12.

## PART 3 STREETS

### Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (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) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### Application of the 1991 Act

12.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3)(a) of that Act; or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(b) (dual carriageways and roundabouts) of the 1980 Act or section 184(c) (vehicle crossings over footways and verges) of that Act.

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(a) Section 86(3) defines what highway works are major highway works.  
(b) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c.22).  
(c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c.22).

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(a) (power to give directions as to timing of street works);
- (b) section 56A(b) (power to give directions as to placing of apparatus);
- (c) section 58(c) (restriction on works following substantial road works);
- (d) section 58A(d) (restriction on works following substantial street works); and
- (e) schedule 3A(e) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(f) referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works), subject to paragraph (6);
- (b) section 55 (notice of starting date of works), subject to paragraph (6);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### **Temporary restriction of use of streets**

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (4), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may temporarily restrict or control the use of the streets set out in column 2 of Schedule 4 to the extent set out in column 3 of that Schedule.

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(a) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c.18).  
(b) Inserted by section 44 of the Traffic Management Act 2004 (c.18).  
(c) As amended by section 51 of the Traffic Management Act 2004.  
(d) Inserted by section 52 of the Traffic Management Act 2004.  
(e) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.  
(f) All as amended by the Traffic Management Act 2004.

(3) The undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(4) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(5) The undertaker must not temporarily alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) 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 of the 1961 Act.

(7) Save for any application made to Highways England, if a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Access to works**

14. The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Traffic regulation**

15.—(1) From such a date as the undertaker may determine, the application of the traffic regulation order listed in column 3 of Schedule 3 will be suspended until the completion of the authorised development.

(2) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the commencement of suspension under paragraph 1 not less than 14 days before the date to be determined under paragraph (1), and 14 days prior to completion of the authorised development of the date of completion for the purposes of paragraph (1).

(3) Without limitation on the scope of paragraph (1), and subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development revoke, amend or suspend in whole or in part any order not listed in Schedule 3 made, or having effect as if made, under the 1984 Act, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 12 months from the commencement of operation of the authorised development but subject to paragraph (8) any prohibition, restriction or other provision made under this article may have effect both before and after the expiry of that period.

(5) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (6).

(6) The undertaker must not exercise the powers conferred by this article unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph

(a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(7) Any prohibition, restriction or other provision made by the undertaker under this article-

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) 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.

(8) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by this article within a period of 24 months from the opening of the authorised development.

(9) Before exercising the powers conferred by this article the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(10) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(11) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(12) Save for any application made to Highways England, if the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

16.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use 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 under 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 or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(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 such approval must not be unreasonably withheld; and

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(a) 1991 c. 56.



(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 under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(a).

(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(1) (interpretation) of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local 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 is deemed to have granted consent or given approval, as the case may be.

### **Authority to survey and investigate the land**

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

(a) survey or investigate the land;

(b) without prejudice 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 prejudice 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 fourteen 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 or after entering the land, produce written evidence of their authority to do so; and

(b) may take with them 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.

(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 question of disputed compensation) of the 1961 Act.

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(a) S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(b) 1964 c. 40.

(c) 1991 c. 57.

(6) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

### **Removal of human remains**

18.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from within the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from within the Order limits the undertaker must give notice of the intended removal, describing the location of the identified remains and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the boundary of the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specific land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be:

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order limits; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who has received the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground, or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857 (a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

19.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to paragraph (3), article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil etc. only), article 28 (temporary use of land for carrying out the authorised development) and article 33 (special category land).

(3) The undertaker may only exercise the power conferred by paragraph (1) on 1 of the 2 options for access forming part of Work no. 12 being-

- (a) the area within Work no. 12(c) as shown on the works plans and comprising plots 01/19, 01/21, 01/22, 01/30, 01/31 and 01/32 and part of plot 01/20, as shown on the lands plans; or
- (b) the area within Work no. 12(d) as shown on the works plans and comprising plots 01/27, 01/28, 01/29, 04/05, and 04/06 and part of plot 04/03 as shown on the lands plans; and

where the undertaker serves notice to treat under section 5 of the 1965 Act, or makes a declaration under section 4 of the 1981 Act over any of the land specified in either (a) or (b), it must at the same time serve on the owners of the land of the other option, a notice specifying that compulsory acquisition powers cannot be exercised over that land under this Order.

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(a) 1857 c.81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2. There are other amendments to this Act which are not relevant to this Order.

### **Statutory authority to override easements and other rights**

20.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are 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 use of land arising by 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) 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.

### **Time limit for exercise of authority to acquire land compulsorily**

21.—(1) After the end of the period 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 24 (application of the Compulsory Purchase (Vesting Declaration) Act 1981).

(2) The authority conferred by article 28 (temporary use of the land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent 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**

22.—(1) Subject to paragraphs (2) and (3), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 19 (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 Schedule 5 (land of which temporary possession may be taken and in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land and the imposition of such restrictive covenants as are specified in column 2 of that Schedule.

(3) The undertaker may only exercise the power conferred by paragraph (1) on 1 of the 2 options for access forming part of Work no. 12 being-

- (a) the area within Work no. 12(c) as shown on the works plans and comprising plots 01/19, 01/21, 01/22, 01/30, 01/31 and 01/32 and part of plot 01/20, as shown on the land plans; or
- (b) the area within Work no. 12(d) as shown on the works plans and comprising plots 01/27, 01/28, 01/29, 04/05, and 04/06 and part of plot 04/03 as shown on the land plans; and

where the undertaker serves notice to treat under section 5 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either (a) or (b), it must at the same time serve on the owners of the land of the other option, a notice specifying that compulsory acquisition powers cannot be exercised over that land under this Order.

(4) Subject to section 8 of the 1965 Act (other provision as to divided land), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of 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 a new right.

### **Private rights**

23.—(1) Subject to the provisions of this article, all private rights 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; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order land 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 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 under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertaker etc.) or article 30 (statutory undertakers) applies.

(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 of rights over 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;
- 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 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) This article is subject to article 22(4).

### **Application of the 1981 Act**

24.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied, 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) Omit section 5 (earliest date for execution of declaration).

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1) (extension of time limit during challenge)—

(a) For “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) For “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 21 of the Thurrock Power Flexible Generation Plant Development Consent Order 202[ ]”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—

“(1b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

(8) In section 7 (constructive notice to treat) in subsection (1)(a) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 26 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

### **Acquisition of subsoil only**

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be 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 land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 22(4) or paragraph 10 of Schedule 7 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) 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 (as modified by article 26 (modification of Part 1 of 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.

### **Modification of Part 1 of the 1965 Act**

26.—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are 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.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 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.

(3) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 21 of The Thurrock Flexible Generation Plant Development Consent Order 202[ ]”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 21 of The Thurrock Flexible Generation Plant Development Consent Order 202[ ]”.

### **Rights under or over streets**

27.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or 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) does not 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 or any easement or right in the street.

(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 by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

28.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 5 (land of which temporary possession may be taken and in which only new rights etc. may be acquired) for the purposes of constructing the authorised development;
  - (ii) the land in column 1 of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule; and
  - (iii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration), other than in connection with the acquisition of rights only;
- (b) remove any buildings 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 specified in relation to that land in column (2) of Schedule 5 or column (2) of Schedule 6, or any mitigation;

but may not use the power granted under this article to construct any new means of access within Work nos. 12(c) or 12(d) unless details of the design for the new road section to be constructed as part of that work have been approved under paragraph 4 of Schedule 2 to this Order.

(2) Not less than fourteen 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) and (ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
- (b) In the case of land referred to in paragraph (1)(a)(iii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 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 of the 1965 Act or made a declaration under section 4 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 to be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land 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 any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.



(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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)(ii).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession of any land more than once.

### **Temporary use of land for maintaining the authorised development**

29.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph 11) 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 such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) 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 twenty-eight 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 provisions of 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 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 5 years beginning with the date on which the generating station forming Work no.1A first exports electricity to the national electricity transmission network.

### **Statutory undertakers**

30. Subject to article 22 and the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans and described in the book of reference;
- (b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertaker shown on the land plans and described in the book of reference.

### **Apparatus and rights of statutory undertakers in stopped up streets**

31. Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 13 (temporary restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and right in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (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 public sewer but where such a sewer is removed under article 30 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

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 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 31 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

### **Special category land**

33.—(1) The special category land is not to vest in the undertaker by virtue of any power granted by this Order until the undertaker has acquired the replacement land and the relevant planning authority has certified that the replacement land has been satisfactorily laid out and been made available by the undertaker.

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(a) 2003 c.21.

(2) On the requirements of paragraph (1) being satisfied the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights trusts and incidents as attached to the special category land.

(3) As soon as reasonably practicable after paragraph (2) takes effect, the undertaker must apply under section 14 (statutory dispositions) of the Commons Act 2006<sup>(a)</sup> and paragraph 8 of Schedule 4 (applications pursuant to section 14: statutory dispositions) to the Commons Registration (England) Regulations 2014<sup>(b)</sup> to amend the relevant register of common land accordingly.

(4) In this article “rights, trusts and incidents” includes all such provisions contained the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893 or having effect under that Act and s193 of the Law of Property Act 1925.

## **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.

## **PART 6 OPERATIONS**

### **Deemed Marine Licence**

35. The marine licence set out in Schedule 8 (deemed marine licence) is deemed to have been issued under Part 4 of the 2009 Act for the licensed activities set out in Part 1, and subject to the licence conditions set out in Part 2, of that licence.

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(a) 2006 C.26  
(b) S.I. 2014/3038

### **Felling or lopping of trees and removal of hedgerows**

36.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits 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.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) 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 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

### **Works in the river Thames: conditions**

37.—(1) Subject to the provisions of this article, notwithstanding any rule of law, the public right of navigation will be—

- (a) temporarily suspended during the construction of Work no.10, over any part of the river Thames that is situated within the Order limits, and
  - (b) permanently extinguished before operation of Work no.10, over any part of the river Thames that is situated with the Order limits,
- with the written approval of the PLA.

(2) Not later than 28 days prior to the proposed commencement date of any suspension or extinguishment of the public right of navigation, the undertaker must apply to the PLA for approval under paragraph (1) for such suspension or extinguishment.

(3) An application for approval under paragraph (2) must provide details of the proposed suspension or extinguishment, including particulars of—

- (a) its commencement date;
- (b) the duration of any suspension;
- (c) the affected area; and
- (d) must include an explanation of the need for any 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 or permanent extinguishment 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 or permanent extinguishment 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 or extinguishment given by the PLA under this article or determined in accordance with article 45 (arbitration), the PLA must issue a notice to mariners within 21 days of the approval, giving the commencement date and other particulars of the suspension or extinguishment to which the approval relates, and that suspension or extinguishment 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 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 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) If any of the conditions set out in paragraph (10) is satisfied in relation to any land which forms part of the river and is land over which public rights of navigation have been permanently extinguished pursuant to paragraph (1)(b), the PLA may issue a notice to mariners that the land (or any part of it) is available for navigation, and on the issue of such notice the public rights of navigation are re-established in relation to that land.

(10) The conditions referred to in paragraph (9) are the following-

- (a) construction of Work no.10 is not commenced on the land within 5 years of the permanent extinguishment of rights over the land pursuant to article 37(1)(b);
- (b) having been commenced, construction of Work no.10 on the land ceases and for this purpose construction will be deemed to have ceased if—
  - (i) work to construct or carry out Work no.10 has ceased for 20 years; or
  - (ii) the undertaker has confirmed to the PLA in writing that the land is no longer required for Work no.10 or that the undertaker does not object to the public rights of navigation over the land being re-established;
- (c) if any tidal work constructed on the land is removed pursuant to paragraph 15 of Part 6 of Schedule 9.

(11) The undertaker may not exercise the powers of paragraphs (1)(a) after completion of construction of Work no.10.

(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.

### **Power to dredge**

38.—(1) The undertaker may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore of any part of the Order limits situated within the river Thames as may be required for the purpose of constructing 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 a marine licence granted by the MMO; and
- (b) the PLA 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 Schedule 8 (deemed marine licence) 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.

**PART 7**  
**MISCELLANEOUS AND GENERAL**

**Protective provisions**

39. Schedule 9 (protective provisions) has effect.

**Operational land for the purposes of the 1990 Act**

40. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land) of the 1990 Act.

**Certification of plans, etc.**

41.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plans and special category land plans (consisting of a key plan and sheets 1 to 5 inclusive) (document number A2.2);
- (b) the works plans (document number A2.3);
- (c) the illustrative cross section plans (document number A2.8);
- (d) the illustrative landscape plan (document number A2.9);
- (e) the conceptual drainage strategy (document number A7.3);
- (f) the book of reference (document number A4.3);
- (g) the environmental statement (document number A6.0);
- (h) the design principles statement (document number A8.4);
- (i) the outline code of construction practice (document number A8.6);
- (j) the outline ecological management plan (document number A8.7);
- (k) the outline construction traffic management plan (document number A8.8);
- (l) the outline construction worker travel plan (document number A8.9);
- (m) the outline written scheme of archaeological investigation, (document number A8.11);
- (n) the outline marine written scheme of archaeological investigation (document number A8.11b);
- (o) the preliminary navigational risk assessment (issue number R03-00);
- (p) the outline local employment and skills strategy (document number A8.13); and
- (q) the concept causeway design (document number A7.8 revision D);
- (r) any other plans or documents referred to in this Order as requiring certification,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

**Service of notices**

42.—(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 (5) 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.

(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 the 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 any 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 name or 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 a 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) the notice or document is 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 7 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.

(7) Any consent to the use of electronic communication given 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 7 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.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **No double recovery**

43. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

### **Application of landlord and tenant law**

44.—(1) This article applies to any agreement entered into by the undertaker under article 8 (consent to transfer of benefit of 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.

### **Arbitration**

45. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Date

*Signed*  
Title  
Department



# SCHEDULES

## SCHEDULE 1

Articles 2 and 3

### AUTHORISED DEVELOPMENT

In the administrative area of Thurrock Borough Council

The construction, operation and maintenance of a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, comprising—

Work no. 1 – An electricity generating station and battery storage facility with a net rated electrical output of up to 750 MW comprising—

1A – Gas fired electricity generating station with a net rated electrical output of up to 600 MW consisting of-

- (a) engine house building(s);
- (b) up to 48 gas reciprocating engines;
- (c) up to 48 exhaust stacks;
- (d) up to 48 gas engine exhaust energy recovery systems;
- (e) cooling system;
- (f) air pollutant control system;
- (g) lubricating oil and air pollutant control system reagent storage;
- (h) a gas pre-heat, metering and pressure reduction compound; and

1B – Battery storage facility with a net rated electrical output of up to 150 MW for four hours consisting of-

- (i) storage battery houses or containers;
- (j) storage inverter containers;
- (k) cooling system; and

1C – Facilities to serve both 1A and 1B consisting of-

- (l) electrical equipment comprising 132 kV and 275 kV substations and electrical cables, switch houses and switch rooms, and auxiliary transformers;
- (m) fire suppression system and firewater tank;
- (n) operations, maintenance and storage buildings;
- (o) control room(s);
- (p) septic tank or packaged foul treatment plant;
- (q) internal roads and parking;
- (r) surface water drainage;
- (s) surface water runoff attenuation pond(s); and
- (t) landscaping.

together with associated development -

Work no. 2 – Creation and enhancement of onshore wildlife habitat including topsoil strip, planting, construction of ditches, mounds and banks, and enhancement of retained ditches for ecological benefit; and connection of retained ditches to Work no. 1C(r) surface water drainage.

Work no. 3 – An electrical connection to Tilbury Substation comprising—

3A – 275 kV high-voltage underground cables for electricity export and lower voltage underground cables for auxiliary power supply; and

3B – Connection equipment in Tilbury Substation consisting of-

- (a) civil works – equipment bases, cable trenching, fencing;
- (b) electrical equipment installation – current transformers, voltage transformers, high accuracy metering equipment, circuit breakers, disconnectors and emergency shutoff;
- (c) cable sealing end (where underground high voltage transmission cables join to existing overhead transmission cable) including, base, structure and terminations;
- (d) blockhouse (switch room); and
- (e) control and protection modifications for the re-equipped bay and integration to the site wide systems, including busbar protection.

Work no. 4 – An underground high-pressure gas pipeline between Work no. 1 and Work no. 5A and gas pipeline(s) within Work no. 1.

Work no. 5 – A connection point to the gas National Transmission System comprising—

5A – A gas connection compound with landscaping consisting of-

- (f) a National Grid Minimum Offtake Connection facility containing remotely operable valve, control and instrumentation kiosk, and electrical supply kiosk;
- (g) a Pipeline Inspection Gauge Trap Facility containing pipeline inspection gauge launching facility, emergency control valve, isolation valve, control and instrumentation kiosk, and electrical supply kiosk; and

5B – If required by the siting of Work no. 5A, a high-pressure underground gas pipeline between Work no. 5A(a) and the gas National Transmission System; and

5C – An access track and junction from Station Road with drainage and landscaping.

Work no. 6 – An access road and junction from Station Road with drainage and landscaping.

Work no. 7 – A water supply connection to the water main at Station Road.

Work no. 8 – Construction compound(s) and laydown area(s) south of Tilbury Loop railway.

Work no. 9 – *Not used.*

Work no. 10 – A gated causeway with crane platforms, extending from above mean high water springs into the river Thames, and a berthing pocket for barges and including-

- (a) the construction and use of a causeway constructed of solid foundations, with a precast concrete pad running surface; and
- (b) creation by dredging, use and maintenance of a berthing pocket.

Work no. 11 – Alteration to sea wall.

Work no. 12 – An access road from the A1089 St Andrew's Road comprising—

- (a) improvements, repairs, widening, realignment and surfacing of existing private roads, verges and hardstanding areas, to make the route suitable for use by heavy goods vehicles;

and connecting to 12(a)—

- (b) engineering works and construction of new road section with drainage;
- (c) engineering works and construction of new road sections with drainage and landscaping;
- (d) engineering works and construction of new road sections with drainage and landscaping; and
- (e) engineering works and construction of new road section with alterations to ditch and electrical service boxes.

Work no. 13 – A footbridge, ground works and fencing for a permissive path between Fort Road and Work no. 14.

Work no. 14 – Creation of approximately 115,775m<sup>2</sup> of common land with planting and landscaping.

Work no. 15 - An access road and junction from Fort Road to the Port of Tilbury access road, comprising engineering works and construction of new road with gates, fencing and alterations to drainage, landscape planting and alteration of services.

In connection with the construction of any of those works comprising the Nationally Significant Infrastructure Project or associated development to the extent that they do not otherwise form part of any such work, further development within the Order limits consisting of—

- (a) retaining walls, embankments, barriers, parapets, drainage, fencing, culverts and lighting;
- (b) site clearance (including fencing and demolition of existing structures), earthworks (including soil stripping and storage, site levelling) and remediation of contamination if present;
- (c) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, internal roads and tracks, perimeter enclosures, security fencing, construction-related buildings, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences including provision of services and utilities; and
- (e) landscaping, planting, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches;
- (f) alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments;
- (g) diversions during construction of existing access routes and subsequent reinstatement of existing routes;
- (h) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development, and
- (i) in relation to Work no. 10, works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, fenders, rubbing strips and fender panels, fender units and pontoons);

but only insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### **Interpretation**

1. In this Schedule—

“AOD” means above Ordnance Datum;

“CCR area” means the area reserved for carbon capture readiness as shown on the work plans;

“commissioning” means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“concept causeway design” means the document certified as the concept causeway design by the Secretary of State for the purposes of the Order;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

“discharging authority” means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement;

“LEMP” means the Landscape and Ecological Management Plan;

“navigational risk assessment” means assessment of any potential risk of the specified works, and must contain the following information-

- (a) existing navigational features including extent of authorised channels, existing navigational structures and constraints;
- (b) tidal characteristics;
- (c) existing river uses;
- (d) general navigational arrangements;
- (e) existing site specific issues;
- (f) existing navigational risks;
- (g) proposed navigational strategies;
- (h) delivery schedules; and
- (i) such other details as agreed between the undertaker and the PLA;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“Network Rail property” means any railway belonging to Network Rail within the Order limits and -

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement.

### **Time limit**

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

### **Notice of commencement of authorised development**

3. Notice of commencement of the authorised development must be given to the relevant planning authority within 7 days of the date on which the authorised development is commenced.

### **Detailed design**

4.—(1) Other than Work no.10, no part of the authorised development can commence until written details of the following for that part have been submitted to and approved by the relevant planning authority specifying—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
- (b) the colour, materials and surface finishes of all permanent buildings and structures; and
- (c) details of the provision made for cycle parking facilities for staff.

(2) The details to be submitted for approval under sub-paragraph (1) must—

- (a) be in accordance with the design principles statement;
- (b) include flood resistance and resilience measures for a flood level of up to 2.84m above Ordnance Survey datum for critical equipment; and
- (c) include appropriately scaled plans and sectional drawings.

(3) No works to the tidal defence wall in the vicinity of the proposed causeway can commence until the detailed design for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and Port of Tilbury London Limited.

(4) No works creating or affecting culverts in ordinary watercourses or the balancing pond east of Fort Road may be commenced unless the detail of such works has been approved by the relevant planning authority in consultation with Thurrock Council in its capacity as the lead local flood authority.

(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.

(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 and Port of Tilbury London Limited.

(7) The detailed design for Work no.10 submitted under sub-paragraph (5) must be substantially in accordance with the concept causeway design.

(8) Other than Work no.10, the authorised development must be designed in accordance with the parameters specified in Table 1 below and the works plans and constructed in accordance with approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

### **Table 1**

<i>Parameter</i>	<i>Work no.s</i>	<i>Maximum value(s) and unit</i>
Gas engine exhaust stack height	1A(b)	43m AOD
Gas engine building(s) or equipment dimensions (in total)	1A(a, b, d, e, f)	Width: 135m Length: 265m Height: 20m
Battery building(s) or containers dimensions (in total)	1B	Width: 106m Length: 106m Height: 10m
Customer substation equipment height	1C(l)	15m
Height of all equipment and structures within Work 1 not otherwise specified	1	10m
National grid gas connection compound dimensions	5A	Width: 50m Length: 50m Height: 5m
Gas pipeline(s) maximum excavation depth	4	4m for trenched or 5m below base of feature crossed for trenchless construction
Underground cable(s) maximum depth	3A	4 m for trenched or 5 m below base of feature crossed for trenchless construction
Road construction working corridor width	6	20 m
Gas pipeline construction working corridor width	4	23 m
CCR minimum area	n/a	32,100 m <sup>2</sup>
Footbridge to replacement common land	13	Must be a clear span structure

(9) The buildings and structures identified in Table 1 must only be constructed within the area for the work of which they form part as shown in the works plans.

(10) The details submitted for Work no.12 under sub-paragraph (1) above may only include details for either Work no.12(c) or Work no.12(d), and must specify which of Work no. 12(c) or Work no.12(d) is to be developed.

(11) In so far as the details submitted under paragraph (1) relate to Work nos. 4, 6 and 7, the relevant planning authority must consult Network Rail on those details where the relevant works may impact Network Rail property and:

- (a) in respect of Work no. 4, any part of that work is situated over 200 metres from Network Rail property;
- (b) in respect of Work no. 6, any part of that work is situated over 15 metres from Network Rail property; and
- (c) in respect of Work no. 7, any part of that work is situated over 15 metres from Network Rail property.

### **Code of construction practice**

5.—(1) No part of the authorised development can commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice must be substantially in accordance with the outline code of construction practice and-

- (a) include relevant measures relied on in the environmental statement; and
- (b) include management plans, working methods and mitigation measures including:
  - (i) details of lighting during construction;
  - (ii) pollution incident control plan;
  - (iii) soil management strategy; and
  - (iv) dust management and monitoring plan.

(3) Construction of the authorised development must be carried out in accordance with the approved code of construction practice.

### **Construction traffic management plan**

6.—(1) No part of the authorised development can commence 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, Highways England, Network Rail, Port of Tilbury London Limited and Royal Mail.

(2) The construction traffic management plan must-

- (a) specify measures to manage the impacts of construction traffic during the construction works; and
- (b) be substantially in accordance with the outline construction traffic management plan.

(3) Construction works for the authorised development must be carried out in accordance with the approved construction traffic management plan for that part.

### **Construction worker travel plan**

7.—(1) No part of the authorised development can commence 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, Highways England, Network Rail and Port of Tilbury London Limited.

(2) The construction worker travel plan must be substantially in accordance with the outline construction worker travel plan.

(3) Construction works for the authorised development must be carried out in accordance with the approved construction worker travel plan for that part.

### **External lighting**

8.—(1) No part of the authorised development where use of artificial lighting is proposed in operation can be externally lit between 18:00 and 07:00 until a scheme for the management and mitigation of artificial light emissions during the operation of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme approved under sub-paragraph (1) must be implemented and maintained as approved during the operational phase.

### **Construction hours**

9.—(1) Subject to sub-paragraph (2), no construction works are to take place except between—

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 08:00 to 13:00 on Saturdays;

unless otherwise agreed by the relevant planning authority.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) works that cannot be interrupted or emergency works; and
- (b) works which do not cause noise that is more than 5dB above the pre-construction ambient noise at the nearest residential property to the Order limits, subject to lower cut-off values

of 65dB, 55dB and 45dB LAeq,T from site noise alone, for the daytime, evening and night-time periods, respectively, determined in accordance with Annex E of BS 5228-1:2009+A1:2014.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the relevant planning authority within 72 hours of their commencement.

### **Surface and foul water drainage**

10.—(1) No part of the authorised development can commence until written details for that part have been submitted to and approved by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) must include-

- (a) the means of pollution control;
- (b) connection points to existing drainage network with consideration to directing drainage away from the West Tilbury Main catchment; and
- (c) ground raising and effects on the routing of flood waters.

(3) The details submitted under sub-paragraph (1) must be in accordance with the conceptual drainage strategy certified under article 41.

(4) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details unless otherwise agreed in writing by the relevant planning authority.

### **Flood evacuation plan**

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 operational life of the authorised development and be made available for inspection by all users of the site and displayed in a visible location at all times.

(2) A copy of the flood evacuation plan must be provided to the relevant planning authority or Thurrock Council acting as lead local flood authority on request.

### **Contaminated land**

12.—(1) If contaminated land is found during preliminary works or construction of the authorised development, no further development can be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contaminated land is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(2) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (1) must be carried out in accordance with the approved scheme.

### **Archaeology**

13.—(1) Other than Work no.10, no part of the authorised development with the potential to affect buried archaeological assets can commence until for that part a written scheme of archaeological investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority following consultation with Historic England.

(2) The scheme approved under sub-paragraph (1) must be substantially in accordance with the outline written scheme of archaeological investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.



(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be carried out in accordance with the approved scheme.

### **Landscaping and ecological management plan**

14.—(1) Other than Work no.10, no part of the authorised development can commence until a LEMP for that part, substantially in accordance with the outline ecological management plan and illustrative landscape plan, including—

- (a) where necessary, measures to protect water voles;
- (b) ecological mitigation and enhancement measures;
- (c) details of all proposed soft landscaping works, including location, number, species, size and planting density of any proposed planting;
- (d) proposed finished ground levels;
- (e) details of existing trees to be retained, with measures for their protection during the construction period;
- (f) implementation timetables for all ecological and landscaping works; and
- (g) maintenance proposals,

has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The authorised development must be carried out in accordance with the approved LEMP and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

### **Construction compound restoration**

15.—(1) Prior to the completion of construction of Work no.1, the undertaker must submit a plan to the relevant planning authority for approval detailing how all of the construction compound areas which do not form part of the permanent works will be restored, including—

- (a) details of the use and condition of the land before it was used as a construction compound;
- (b) proposed finished ground levels;
- (c) details of any soft landscaping works to be undertaken as part of the restoration;
- (d) details of any hard landscaping to be undertaken as part of the restoration including paving, surfacing, gates and fencing; and
- (e) implementation timetables for the restoration works.

(2) The restoration of the construction compounds must be carried out in accordance with the approved plan.

### **Operational noise**

16.—(1) Between 23.00 and 07.00 hours, noise arising from normal operation of the site may not exceed a rating level of 45 dB  $L_{A,T,r}$  at any residential property which is lawfully inhabited at the date of the making of this Order.

(2) The level set out in sub-paragraph (1) is to be as measured in accordance with British Standard 4142:2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and British Standard 7445-3:1991 (Description and measurement of environmental noise. Guide to application to noise limits) or any standards replacing those.

(3) Prior to the commencement of the authorised development, the undertaker must submit a plan to the relevant planning authority for approval detailing how noise monitoring will be undertaken during construction and within a six month period beginning with the date of first commercial export

of electricity from Work no. 1A. That plan must specify a monitoring location point, which must be in as close proximity as the undertaker can lawfully access, or at a point representative of, the nearest residential property which is lawfully inhabited at the date of the making of this Order.

(4) Noise monitoring must be undertaken by the undertaker in accordance with the plan approved under sub-paragraph (3); and the results of this monitoring must be submitted by the undertaker to the relevant planning authority at the intervals set out in the plan.

(5) Where the results of the monitoring undertaken in accordance with sub-paragraphs (3) and (4), show any exceedance of the level set out in sub-paragraph (1), the undertaker must, within 10 working days, submit to the relevant planning authority for approval a mitigation plan detailing how the exceedance will be mitigated and including a timetable for carrying out any works required to deliver such mitigation.

(6) The undertaker must comply with any plan approved under sub-paragraph (5).

### **Navigational risk assessment**

17.—(1) Construction of Work no.10 must not commence until a final navigational risk assessment has been submitted to and approved in writing by the PLA following consultation with the Port of Tilbury London Limited.

(2) The final risk assessment submitted under sub-paragraph (1) must be substantially in the form of the preliminary navigational risk assessment.

(3) Work no.10 must be constructed, maintained 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).

(4) No change to the operation of Work no.10, including any decommissioning, may be implemented until a revised navigational risk assessment reflecting the proposed change has been submitted to and approved by the PLA following consultation with the Port of Tilbury London Limited.

(5) Prior to any marine operation, a detailed passage plan for that marine operation must be approved the PLA following consultation with the Port of Tilbury London Limited.

(6) A passage plan submitted under sub-paragraph (5) must include the measures to reduce operational risk identified in the navigational risk assessment including but not limited to-

- (a) pilotage requirements in accordance with the applicable PLA pilotage directions;
- (b) specific procedures including holding procedures, safe tidal operating windows for the berthing operation, weather limitations, emergency response procedures and navigational constraints; and
- (c) a marine operations plan addressing interaction with the Port of Tilbury.

(7) The PLA may request any amendment to or revision of any passage plan approved under sub-paragraph (5) at any time and the marine operation to which it relates may not be commenced until the revised or amended passage plan has been approved the PLA.

(8) Any marine operation must be operated in accordance with the passage plan approved under sub-paragraph (5) or as amended or revised under sub-paragraph (7).

(9) In this requirement “marine operation” means any movement to and from the causeway by a vessel delivering an abnormal indivisible load, and includes tugs or other supporting vessels required for that movement.

### **Review of access for abnormal indivisible loads**

18.—(1) No later than one year from the coming into force of this Order, 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 and send a copy to Highways England.

(2) A report submitted under sub-paragraph 1 must set out how the options assessed perform against the tests set out in sub-paragraph (6).

(3) If, in the opinion of the relevant planning authority, following consultation with Highways England, RWE Generation UK Plc and Port of Tilbury London Limited, an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access, which would not have a significant adverse effect on traffic conditions on the strategic road network, is identified in the report submitted under sub-paragraph (1), then the relevant planning authority must notify the undertaker of that decision in writing. Where such notice is issued the undertaker must-

- (a) submit applications for any consents required for that alternative AIL access within 6 months of the date of the issue of a notice under this sub-paragraph by the relevant planning authority, and
- (b) advise the relevant planning authority and the Port of Tilbury London Limited of the outcome of any applications under this sub-paragraph which were not determined by that planning authority within five business days of the undertaker being notified of that outcome.

(4) Where all the consents required to create and use the alternative AIL access are granted, the causeway to be constructed as Work no.10 and the changes to the sea-defence wall to be carried out as Work no.11 must be decommissioned no later than 3 months in accordance with requirement 19(4).

(5) (a) Where, in the opinion of the relevant planning authority, following consultation with highways England, RWE Generation (UK) Plc and Port of Tilbury London Limited the review undertaken under sub-paragraph (1) does not identify an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access, or the necessary consents to create or use such an access are not granted, then the undertaker must carry out a subsequent review within five years of the later of-

- (i) the submission of the review under sub-paragraph (1); or
  - (ii) the undertaker notifying the relevant planning authority of the refusal of consent under sub-paragraph 2(b).
- (b) Where, in the opinion of the relevant planning authority, the review undertaken under this sub-paragraph identifies an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access which was not identified in the previous review, sub paragraphs (2) and (3) will apply as if the report had been submitted under sub-paragraph (1).
- (c) Where a subsequent review undertaken under this sub-paragraph does not, in the opinion of the relevant planning authority, identify an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access, then a further review will be required at each five year interval as if the subsequent review had been submitted under sub-paragraph (1).

(6) In this requirement, an environmentally acceptable, permanent, feasible and economic alternative means-

- (a) that the environmental impacts of the alternative are determined by the relevant planning authority to be acceptable having regard to
  - (i) any environmental impact assessment required from and provided by the undertaker, and
  - (ii) any required assessment of the impact on protected species and habitats, and taking account of any mitigation which can be delivered without prejudicing the ability of the alternative to comply with paragraphs (b), (c) and (d) of this sub-paragraph;
- (b) that the alternative route is available and will remain so for the operational lifetime and decommissioning of Work no.1;
- (c) that transport of AIL via the alternative route is practicable, taking into account factors including but not limited to the physical characteristics of the AILs and the route (such as load limits and clearance), the agreement of landowners and having all of the consents required to create and/or use the alternative route; and

- (d) that the alternative route costs no more than 10% more than the cost of shipment of AILs from the nearest port of delivery, berthing and unloading at the causeway.

(7) In this requirement “AIL” means abnormal indivisible load and includes the generating station engine blocks.

### **Causeway decommissioning plan.**

19.—(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, Port of Tilbury London Limited and the PLA.

(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, Port of Tilbury London Limited and the PLA.

(3) The causeway decommissioning plan must include-

- (a) a description of the decommissioning works and methods for Work nos.10 and 11;
- (b) a description of environmental management measures to be employed including pollution control, traffic management and public rights of way management;
- (c) details of the reinstatement of the sea defence wall altered as part of Work no.11;
- (d) details of the restoration of mudflat and coastal saltmarsh habitat;
- (e) details of any barge or other vessel movements required and measures to avoid shipping or navigation risks; and
- (f) a timetable for implementation.

(4) Decommissioning of Work nos.10 and 11 must be carried out in accordance with the approved causeway decommissioning plan.

### **Local employment and skills strategy**

20. No part of the authorised development can commence until a local employment and skills strategy, substantially in accordance with the outline local employment and skills strategy has been submitted to and approved by the relevant planning authority.

### **Operational hours**

21. Work no.1A (the gas fired electricity generating station) may only be operated for the purposes of generating electricity up to a maximum of 4,000 hours per calendar year.

### **Details to accord with Environmental Statement**

22. Any plans, details, schemes or other documents which require approval by the discharging authority pursuant to any requirement must comply with the parameters set out in the Environmental Statement and, where applicable, the outline plans certified under article 41.

### **Carbon capture readiness**

23. Until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the CCR area; or
- (b) do anything, or allow anything to be done or to occur,

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 land for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

### **Carbon capture readiness monitoring report**

24.—(1) The undertaker must make a report ('carbon capture readiness monitoring report') to the Secretary of State—

- (a) no later than three months from the date of full commissioning of Work no.1A; and
- (b) within one month of the third anniversary, and each subsequent three year anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has compiled with requirement 23—

- (a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and
- (b) 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 23 over the next three years.

(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.

(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.

### **Amendments to approved plans, etc.**

25.—(1) With respect to any plans, details, schemes or other documents which require approval by the discharging authority pursuant to any requirement (the "approved plans"), the undertaker may submit to the discharging authority for approval any amendments to the approved plans and following any such approval by the discharging authority the approved plans are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the discharging authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

### **Anticipatory steps**

26. If before this Order comes into force the undertaker or any other person has taken any step in compliance with any requirement in Part 1 of this Schedule, that step may be taken into account to determine compliance with that requirement provided that step would have been a valid step for the purpose of the requirement if it had been taken after this Order came into force.

### **Submissions and approvals**

27.—(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.

(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.

(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.

## PART 2

### APPROVAL OF MATTERS SPECIFIED IN REQUIREMENTS

#### **Applications made under requirements**

28. Where an application has been made to the discharging authority for any agreement or approval required pursuant to a requirement included in this Order, the discharging authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 13 weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority; or
- (b) such longer period as may be agreed by the undertaker and the discharging authority.

#### **Further information**

29.—(1) Where an application has been made under paragraph 28 the discharging authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the discharging authority must issue the consultation to the requirement consultee within 5 working days of receipt of the application. Where the consultee requires further information they must notify the discharging authority in writing specifying the further information required within 21 days of receipt of the consultation. The discharging authority must notify the undertaker in writing specifying any further information requested by the consultee within 5 working days of receipt of such a request.

(4) In the event that the discharging authority does not give such notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

#### **Provision of information by Consultees**

30.—(1) Any consultee who receives a consultation under paragraph 29(3) must respond to that request within 28 days from receipt unless subparagraph (2) of this paragraph applies.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 29(3) then they must respond to the consultation within 10 working days from the receipt of the further information requested.

#### **Fees**

31.—(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<sup>(a)</sup> (or any regulations replacing the same) is to be paid by the undertaker to the discharging authority in accordance with these regulations.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of the application being rejected as invalidly made.

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(a) S.I. 2012/2920

## Appeal

32.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or
- (b) the discharging authority does not give notice of its decision to the undertaker within the time period specified in paragraph 28.

(2) The provisions of Sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions) apply to any appeal under sub-section (1) as if the requirement concerned was a condition imposed on a grant of planning permission.

## SCHEDULE 3

Article 15

### TRAFFIC REGULATION SUSPENSION OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Extent of suspension</i>
Thurrock Borough	Station Road	The Borough of Thurrock (Station Road (Love Lane to Princess Margaret Road) East Tilbury) (Weight Restriction) Order 1995.	Suspended between Love Lane and Princess Margaret Road.

## SCHEDULE 4

Article 13

### HIGHWAYS SUBJECT TO TEMPORARY CONTROL OR RESTRICTION

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Control or Restriction</i>
Thurrock Borough	Station Road within the two areas shown hatched in red on sheet 3 of the access, rights of way and traffic management plans.	Controls on use including marshalling during construction to allow crossing of the highway for construction access. Temporary restriction on all use for up to two weeks at each location, concurrently or consecutively.
Thurrock Borough	Station Road within the area shown hatched in dark green on sheet 3 of the access, rights of way and traffic management plans.	Controls on use including temporary restrictions on use and partial carriageway closures with traffic management to allow construction of new accesses.
Thurrock Borough	Footpath through common land connecting Footpath 200 at the	Controls on use the footpath where it crosses the pipeline

	location shown hatched in green on sheet 3 of the access, rights of way and traffic management plans.	route including marshalling during construction and operation to allow installation and maintenance of a gas pipeline. Temporary restriction on all use and diversion during construction.
Thurrock Borough	Coast path / Footpath 146/ National cycle route 13, to the extent shown coloured pink on sheet 4 of the access, rights of way and traffic management plans.	Controls on use of the path where it crosses the vehicular access route, including marshalling, to allow construction, use and maintenance of the causeway including access to and from the causeway by vehicles.

## SCHEDULE 5

Articles 22 and 28

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN AND IN WHICH ONLY RIGHTS ETC MAY BE ACQUIRED

<i>(1) Plot reference number shown on land plans</i>	<i>(2) Rights over land which may be acquired</i>	<i>(3) Relevant part of the authorised development for which temporary possession for construction can be taken</i>
Land Plans – Sheet 1		
01/04	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All works
01/09	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work no.3
01/10	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work no.3



01/11	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/14	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
01/15	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work no.3
01/21	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/25	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work nos.4 and 8
01/30	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/31	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/33	Right of access including vehicular access, to construct,	All works

	operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	
01/34	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
01/35	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
01/36	Right of access including vehicular access, to construct, operate and maintain the authorised development, to construct new access road and a new junction use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
01/37	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
Land Plans – Sheet 2		
02/01	Right of access, including vehicular access, to create and maintain habitat creation and enhancement land.	Work no.2
02/02	Right of access, including vehicular access, to create and	Work no.2

	maintain habitat creation and enhancement land.	
02/04	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
02/08	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
02/09	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
02/10	Right of access, including vehicular access, to create and maintain replacement common land and habitat creation and enhancement land, and to use, repair, improve or alter existing accesses, tracks, roads or ways.	Work nos.2 and 14
02/11	Right of access, including vehicular access, to create and maintain replacement common land and habitat creation and enhancement land, and to use, repair, improve or alter existing accesses, tracks, roads or ways.	Work nos.2 and 14
02/13	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work nos.4 and 8
Land Plans – Sheet 3		
03/01	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work nos.4 and 8
03/02	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and	Work no.4

	<p>associated infrastructure, and to take vehicular access for the same.</p> <p>Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.</p>	
03/03	<p>Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same.</p> <p>Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.</p>	Work no.4
03/04	<p>Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same.</p> <p>Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.</p>	Work no.4
03/05	<p>Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same.</p> <p>Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.</p>	Work no.4
03/06	<p>Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same.</p> <p>Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.</p>	Work no.4
03/08	<p>Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and</p>	Work no.4

	to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	
03/09	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4
Land Plans – Sheet 4		
04/01	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
04/03	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All Works
Land Plans – Sheet 5		
05/01	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All Works
05/02	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All Works
05/03	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All Works
05/04	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways and to construct new access road and a new junction to existing access road.	All Works

05/07	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways and to construct new access road and a new junction to the public highway.	All Works
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## SCHEDULE 6

Article 28

### LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Location</i>	<i>(2) Plot Reference Number shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
<b>Land Plans – Sheet 3</b>			
Road forming public highway and private road shown coloured yellow on the access, rights of way and traffic management plans	03/07	To allow a temporary diversion of a public right of way.	Work no.4
Station Road, Public Highway at Station Road, East Tilbury	03/10	To create a new access from the public highway including temporary partial closure of the highway and traffic management.	Work nos.4 and 5
<b>Land Plans – Sheet 5</b>			
Fort Road, public highway at Fort Road, Tilbury	05/06	To allow the creation of a new access from the public highway including temporary partial closure of the highway and traffic management.	Work no.15
Fort Road, public highway at Fort Road, Tilbury	05/08	To allow the creation of a new access from the public highway including temporary partial closure of the highway and traffic management.	Work no.15

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land 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 or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2. Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification-

For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5) (a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 4(5) of Schedule 7 to the Thurrock Flexible Generation Plant Development Consent Order 20[•] (the “Thurrock Flexible Generation Plant Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 7 to the Thurrock Flexible Generation Plant Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(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 4(3)—

- (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”.

### Application of Part 1 of the 1965 Act

4.—(1) Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (application of Part 1 of the Compulsory Purchase Act 1965) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 4(2); and
- (b) with such other modifications as may be necessary.

(2) The modifications referred to in sub-paragraph (1) are as follows:

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(a) 1973 c.26.

- (a) 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—
  - (i) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
  - (ii) the land over which the right is or is to be exercisable, or the restriction is or 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 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 so as 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 so as 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 applies to a compulsory acquisition), 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(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) 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 24(3) is also modified so 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, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

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(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).  
(b) Section 11B was inserted by section 187(2) of the above Act.



COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT  
IN NOTICE TO TREAT

**Introduction**

5.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Thurrock Flexible Generation Plant Development Consent Order 20[•] in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Thurrock Flexible Generation Plant Development Consent Order 20[•] which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

**Counter-notice requiring purchase of land**

6. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

7. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

**Response to counter-notice**

8. 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.

9. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

10. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

11. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

12. If the authority serve 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 the Upper Tribunal**

13. On a referral under paragraph 7, 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.

- 14.** In making the 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.

**15.** 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 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

**16.** If the Upper Tribunal determines that the acquiring 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.

**17.—(1)** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 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 it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

**18.** Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## SCHEDULE 8

Article 35

### DEEMED MARINE LICENCE

#### PART 1

#### GENERAL

##### **Interpretation**

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” is to be construed accordingly;

“condition” means a condition in Part 2 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“licensed activity” means any of the activities specified in paragraph 3 of this licence;

“Mean High Water Springs ” means the average of high water heights occurring at the time of spring tides;

“statutory historic body” means Historic England or its successor in function;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“the Order” means the Thurrock Flexible Generation Plant Development Consent Order 2020(a);

“the River” means so much of the river Thames and the Thames estuary as is within the UK marine area; and

“the UK marine area” has the meaning given to it in section 42 (UK marine area) of the 2009 Act;

“the undertaker” means Thurrock Power Limited, company number 10917470, whose registered office is at 1st Floor, 145 Kensington Church Street, London, W8 7LP, their agents and sub-contractors and any transferee pursuant to article 8 of the Order.

(2) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT);

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

## **Contacts**

2. All notifications sent by the undertaker to the MMO must be sent using the MMO’s Marine Case Management System (MCMS) web portal.

Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are-

(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.consent@marinemanagement.org.uk](mailto:marine.consent@marinemanagement.org.uk)

Marine Management Organisation, MMO Lowestoft

Pakefield Road,

Lowestoft,

Suffolk,

NR33 0HT;

Tel – 0208 026 6094;

Email – [lowestoft@marinemanagement.org.uk](mailto:lowestoft@marinemanagement.org.uk)

## **Details of 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 (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the licensed activities; 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 licensed activities” mean—

(a) Work no.10 being the construction and use of a gated causeway which causeway is to be constructed of solid foundations, a minimum of 2 layers of geotextile and crushed rock

infill, 500 mm thick precast concrete pad running surface over well graded gravel bedding layer with side slopes comprising rock filled reno mattress within the following parameters;

**Table 1**

<i>Dimension</i>	<i>Parameter</i>
Length	195m
Width	24m
Height	2.7m at saltmarsh edge above existing ground surface +4 m AOD at sea wall
Area of footprint	5,380 m <sup>2</sup>
Maximum volume of material to be removed	2,900m <sup>3</sup>
Volume of rock to be deposited as part of construction	8,500 m <sup>3</sup>

(b) creation by dredging and use of a berthing pocket within the following parameters-

**Table 2**

<i>Dimension</i>	<i>Parameter</i>
Length	200m
Width	70m
Depth	2.1m
Area to be dredged	14,200 m <sup>2</sup>

(c) activities to—

- (i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including River walls);
  - (ii) carry out excavations (including archaeological investigation excavation) and clearance (excluding clearance or detonation of ordnance), 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) temporarily 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 and protection piles but not including groynes;
  - (vii) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights and bollards;
- (d) such other works as may be necessary for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including works comprising geotechnical investigation and archaeology investigation (including the drilling of boreholes, taking of samples and opening of trenches and pits for such investigations); and works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, fenders, rubbing strips and fender panels, fender units and pontoons); and

- (e) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development.

(3) The grid coordinates for the area of the River within which the undertaker may carry out licensed activities are specified below and more particularly shown on the works plans—

**Table 3**

<i>Point reference</i>	<i>British National Grid Co-ordinates</i>	
	<i>Easting</i>	<i>Northing</i>
1	566452	175450
2	566480	175428
3	566511	175407
4	566538	175396
5	566549	175412
6	566562	175421
7	566577	175425
8	566798	175432
9	566806	175419
10	566824	175350
11	566822	175323
12	566809	175308
13	566573	175288
15	566400	175349
14	566375	175417
16	566397	175426
17	566410	175440
18	566417	175444
19	566428	175443

## PART 2

### CONDITIONS APPLYING TO CONSTRUCTION ACTIVITIES

#### Notifications regarding licensed activities

4.—(1) The undertaker must inform the MMO, UK Hydrographic Office and HM Coastguard in writing—

- (a) at least 5 business days prior to the commencement of the first licensed activity; and
- (b) within 5 business days following the completion of the final licensed activity, of the commencement or the completion (as applicable).

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 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) The necessary contact details are as follows-

- (a) The Source Data Receipt team,  
UK Hydrographic Office,

Taunton,  
Somerset,  
TA1 2DN;  
Tel - 01823 337900;  
Email - sdr@ukho.gov.uk

(3) MCA HQ,  
Spring Place,  
105 Commercial Road,  
Southampton,  
SO15 1EG;  
Tel – 02038172000;  
Email - nmoccontroller@hmcg.gov.uk

(4) Any changes to details supplied under subparagraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(5) 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, together with any 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.

7. Copies of this licence must be available for inspection at the following locations—

- (a) the undertaker's registered office;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

8. The undertaker must request that 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 make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.

### **Construction method statement**

9.—(1) The undertaker must submit a method statement for approval by the MMO, in consultation with the Environment Agency and Natural England, at least 6 weeks prior to the commencement of any licensed activity.

(2) The method statement must include the following details—

- (a) the detailed construction methodology to be employed by the undertaker in carrying out the licensed activity; and
- (b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works.

(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.

### **Marine pollution contingency plan**

10.—(1) The undertaker must submit a marine pollution contingency plan for approval by the MMO at least 6 weeks prior to the commencement of any licensed activity.

(2) The marine pollution contingency plan must set out the undertaker's assessment of the likely risks which could arise as a result of a spill or collision during construction and operation of the authorised development and the methods and procedures the undertaker intends to put in place to address them.

(3) The MMO must consult the Environment Agency and the PLA on the marine pollution contingency plan before approving it.

(4) The undertaker must not commence the licensed activity until the MMO has approved in writing the submitted marine pollution contingency plan.

(5) The licensed activity must be carried out in accordance with the approved marine pollution contingency plan, unless otherwise agreed in writing by the MMO.

### **Concrete and cement**

11. The undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the River. The undertaker must site concrete and cement mixing and washing areas at least 10 metres from the River and surface water drains to minimise the risk of run off entering the River.

### **Spills, etc.**

12. The undertaker must—

- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers;
- (b) report any oil, fuel or chemical spill within the marine environment to the MMO Marine Pollution Response Team within 12 hours [in line with the approved marine pollution contingency plans if one is available], by contacting 0300 200 2024, (within office hours) or 07770 977 825 (outside office hours) or 0345 051 8486 at all times if other number are unavailable, or [dispersants@marinemanagement.org.uk](mailto:dispersants@marinemanagement.org.uk); and
- (c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

### **Coatings and treatments**

13. 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.

### **Sediment sampling**

14.—(1) The undertaker must, prior to the commencement of the licensed activities, carry out further sediment sampling of the river bed and analysis of those samples.

(2) The further sediment sampling and analysis carried out under sub-paragraph (1) must be carried out in accordance with a plan which has been submitted to and approved by the MMO and the PLA.

(3) The plan described in sub-paragraph (2) must include—

- (a) details of the sampling locations with surface, mid and depth levels which will provide a representative sediment assessment; and
- (b) details of an alternative method of dredging to the use of water injection dredging if the further sediment sampling and analysis carried out in accordance with sub-paragraph (2) identifies that the sediment contains contaminants which, in the reasonable opinion of the

MMO or the PLA, make the use of water injection dredging unsuitable for the licensed activities.

(4) The results and analysis of the further sediment sampling carried out in accordance with the plan approved under sub-paragraph (2) must be provided to the MMO and the PLA.

(5) Where the further sediment sampling and analysis carried out in accordance with sub-paragraph (2) identifies, in the reasonable opinion of the MMO or the PLA, that the sediment contains contaminants no water injection dredging must be carried out for the licensed activities and dredged material must be removed to a licenced waste disposal site.

### **Marine archaeology**

15.—(1) No licensed activity with the potential to affect buried archaeological assets can commence until a written scheme of marine archaeological investigation has been submitted to and approved by the MMO.

(2) The scheme approved under sub-paragraph (1) must be substantially in accordance with the outline marine written scheme of archaeological investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be carried out in accordance with the approved marine written scheme of archaeological investigation.

### **Bird Monitoring**

16.—(1) No part of the licensed activities can commence until a plan for the carrying out of foreshore bird passage and wintering bird survey and monitoring and including-

- (a) details of pre-commencement surveys to be carried by the undertaker;
- (b) details of the monitoring to be carried out by the undertaker during construction;
- (c) details of post-construction monitoring to be carried by the undertaker; and
- (d) how the results of surveys and monitoring are to be provided to Natural England,

has been submitted to and approved by the MMO in consultation with Natural England.

(2) The surveys and monitoring must be carried out in accordance with the approved details

### **Saltmarsh colonisation and mudflats monitoring programme**

17. 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.

### **Post-construction**

18.—(1) The undertaker must remove all temporary structures, waste and debris associated with the construction activities within 6 weeks following completion of the final construction activity.



## PART 3

### PROCEDURE FOR THE DISCHARGE OF CONDITIONS

#### **Meaning of “application”**

19. In this Part, “application” means a submission by the undertaker for any approval required under the conditions of the deemed marine licence set out in Part 2 of this Schedule.

#### **Further information regarding application**

20.—(1) The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider the application.

(2) If the MMO does not make a request under sub-paragraph (1) within 20 business days of the day immediately following that on which the application is received by the MMO, it is deemed to have sufficient information to consider the application and is not entitled to request further information after this date without the prior agreement of the undertaker.

#### **Determination of application**

21.—(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 paragraph 16; 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.

#### **Notice of determination**

22.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application within 65 business days of the day immediately following that on which the application is received by the MMO.

(2) Where the MMO has made a request under paragraph 20, the MMO must give notice to the undertaker of the determination of the application no later than 35 business days of the day immediately following that on which the further information is received by the MMO.

(3) The MMO and the undertaker may agree in writing a longer period of time for the provision by the MMO of a notice under sub-paragraph (1).

(4) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

(5) Where notice is not given by the MMO in accordance with sub-paragraph (1) or (2) the application is deemed to have been refused.

#### **Arbitration not to apply**

23. Article 45 (Arbitration) does not apply to any decision made by the MMO under this Schedule.

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. 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 undertaker 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 duty 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 within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); 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 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(d),

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;

“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; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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(a) 1989 c. 29.

(b) 1986 c. 44.

(c) 1991 c. 56.

(d) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

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.

### **Land not affected by this Part**

3.—(1) 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.

(2) This Part of this Schedule does not apply to any apparatus belonging to National Grid as defined in Part 4 of this Schedule.

### **Apparatus in restricted streets**

4. Regardless of the temporary restriction of any highway under the powers conferred by article 13 (temporary restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and 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.

### **Acquisition of land**

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.

### **Removal of apparatus**

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 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 must not be extinguished until alternative apparatus has been constructed and is in operation 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 28 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 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 its best 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 45 (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 45 (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 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, 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.

### **Facilities and rights for alternative 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 are to 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 45 (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.

### **Retained apparatus**

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 of the works to be executed.

(2) Those works must be executed only in accordance with the plan 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) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is 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 3 and 5 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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(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 of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

### **Expenses and costs**

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably 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) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), 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 45 (arbitration) to be necessary then, if such placing involves cost 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) 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 must not 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.

(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 such works referred to in paragraphs 6(1) or 6(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 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) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(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 a utility undertaker, its officers, servants, contractors or agents.

(4) 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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

### **Cooperation**

11. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, 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 the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

12. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

### **Provision for Anglian Water Services Limited**

13. Nothing in this Part of this Schedule applies to Anglian Water Services Limited

## **PART 2**

### **FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED**

14.—(1) For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

15. In this Part—

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and

(a) any drain works vested in Anglian Water under the Water Industry Act 1991,

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“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

“plan” includes sections, drawings, specifications and method statements.

16. The undertaker may not interfere with, build over or near to any apparatus within the Order limits or 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 the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

17.—(1) The alteration, extension, removal or re-location of any apparatus may not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

18. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquired any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

19. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker will, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 45 (arbitration).

20. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

21. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

22. If for any reason or in consequence of the construction of any of the works referred to in paragraphs (17) to (19) and (21) above 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water, by reason or in consequence of any such damage interruption.

23. Notwithstanding the provisions of article 16(2), for any sewer or drain which forms part of the statutory undertaking of Anglian Water, any dispute will not be treated as a dispute under s106 of the Water Industry Act 1991, but will be settled by arbitration in accordance with article 45 (arbitration).

24. Where the detailed design for any part of the authorised development includes any proposal to interact with, connect to or interfere with any asset belonging to Anglian Water, the undertaker must consult Anglian Water on the proposed design before it is submitted for approval under requirement 4 of Schedule 2. The undertaker must have regard to any response to consultation provided by Anglian Water and must include a copy of any response within the submission seeking approval of the detailed design.

### PART 3

#### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORK

1. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. 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;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) of the 2003 Act; and

an electronic communications network which the undertaker 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers conferred by article 30 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

4.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (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 the authorised development), 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 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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise 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 45 (arbitration).

5. 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 damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. 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 in land belonging to the undertaker on the date on which this Order is made.

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

2. In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes executing, placing, altering, replacing, relaying and removal and excavating and “construct” and “constructed” are to be construed accordingly;

“drainage work” means (i) any main river and includes any land which provides or is expected to provide flood storage capacity 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 and (ii) any sea defence;

“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” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

“sea defence” means any bank, wall, embankment (and 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 of the Environment Agency's area 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

- (a) so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a main river or 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 watercourse or other surface waters or ground water;
  - (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;
- (b) so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a sea defence which is likely to endanger the stability of, cause damage to or reduce the effectiveness of that sea defence, or interfere with the Agency's access to or along that sea defence;

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency 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 12.

(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 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval and
- (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 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) If the Agency refuses any approval required under this paragraph then the refusal must be accompanied by a statement of the grounds for refusal.

4.—(1) Without limiting paragraph 3 but subject always to the provisions of that paragraph as to reasonableness, 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.

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or settled 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 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 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 the specified work to which the protective works relate.

(4) 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.

(5) Subject to sub-paragraph (6), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon 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 execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) 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 (5) until the dispute has been finally determined in accordance with paragraph 12.

6.—(1) Subject to sub-paragraph (6), 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 Order Land and on land possessed 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 (5), 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 reasonably necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing are recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) 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 12.

(6) This paragraph does not apply to

- (a) drainage works which are vested in the Agency, or 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 for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

7. 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 reasonably incurred by the Agency in so doing from the undertaker.

8.—(1) If by reason of construction of a specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such 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 within 24 hours of the undertaker becoming aware of such obstruction.

9.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a 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 a 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.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing are recoverable from the undertaker.

(4) Subject to paragraph 11, in any case where immediate action by the Agency is reasonably required in an emergency 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.

10. The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may incur —

- (a) in the examination or approval of plans under 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.

11.—(1) The undertaker is responsible for and shall indemnify the Agency against all costs and losses not otherwise provided for in this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works 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 works or dealing with any failure of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—expenses and charges; staff costs and overheads; and legal costs;

“losses” includes physical damage.

(3) The undertaker shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

“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;

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable written notice of any such claim or demand as is referred to in sub-paragraph (1) as soon as reasonably practicable after it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior agreement of the Undertaker which agreement may not be unreasonably withheld or delayed.

(6) 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, does not relieve the Undertaker from any liability under the provisions of this Part of this Schedule.

(7) 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.

**12.** Any dispute arising between the undertaker and the Agency under this part of this Schedule will, be determined by arbitration under article 45 (arbitration) unless otherwise agreed in writing by the undertaker and the Agency. **PART 5**

## **FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER**

### **Application**

1.(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to 11(3)(b)).

## **Interpretation**

2. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means

(a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;

(b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid 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(1) 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” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“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 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 National Grid (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, shall require the undertaker to submit for National Grid'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 National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means:

(a) National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

(b) National Grid Gas plc (company number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“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;

“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 paragraph 7(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 paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High Pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22 and/or activity that is referred to in development near overhead lines EN43-8 and the Health and Safety Executive’s (HSE) guidance note 6 “Avoidance of Danger from Overhead Lines”).

“undertaker” means the undertaker as defined in article 2(1) of this Order;

### **On Street Apparatus**

3. Except for paragraphs 4 (*Apparatus of statutory undertakers in temporarily restricted streets*), 8 (*retained apparatus: protection for electricity undertaker*) and 9 (*retained apparatus: protection for gas undertaker*), 10 (*expenses*) and 11 (*indemnity*) 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 National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of statutory undertakers in temporarily restricted streets**

4. Despite the temporary stopping up or diversion of any highway under article 13 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on 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 restriction or diversion was in that highway

### **Acquisition of land**

5. (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 (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with

or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid 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 National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraph (2) to (5).

(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 National Grid advance 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 and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) 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 or land secured by 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, National Grid must, 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it 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 National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid 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.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(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 less favourable on the whole to National Grid 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 matter may be referred to arbitration in accordance with paragraph 14 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of electricity undertaker**

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid 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;
- (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;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing: -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;

- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid 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 National Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) 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 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(10) 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 development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

### **Retained apparatus: protection of gas undertaker**

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid 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 National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid 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 National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) 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 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 specified 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 will not be 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid 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 10.

### **Expenses**

10.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (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.

(2) There will 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 paragraph 14 (*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 National Grid by virtue of sub-paragraph (1) will

be reduced by the amount of that excess save to the extent that it is not possible in the circumstances 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 will not 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 will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Enactments and agreements**

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid 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 National Grid 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**

12.(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph (8) or (9), 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 works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

13. If in consequence of the agreement reached in accordance with paragraph 5(1) 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 National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

14. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 45 (*arbitration*).

### **Notices**

15. Notwithstanding article 42 (*service of notices*), any plans submitted to National Grid by the undertaker pursuant to this Part must be sent to Plant Protection at

plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 6

### FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

#### **Part to have effect unless otherwise agreed**

1. 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.

#### **Interpretation**

2. In this part of this Schedule—

“1968 Act” means the Port of London Act 1968;

“construction” means execution, placing, altering, replacing, relaying, removal and renewal and, 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;

“navigational risk assessment” means assessment of any potential risk of the specified works, and must contain the following information-

- (a) existing navigational features including extent of authorised channels, existing navigational structures and constraints;
- (b) tidal characteristics;
- (c) existing river uses;
- (d) general navigational arrangements;
- (e) existing site specific issues;
- (f) existing navigational risks;
- (g) proposed navigational strategies;
- (h) delivery schedules; and
- (i) such other details as agreed between the undertaker and the PLA;

“permanent work” means any work or structure forming part of the authorised development that is required for the construction, maintenance and operation of the authorised development that is on, in, under or over the surface of the land below the level of mean high water springs forming part of the river;

“plans” includes navigational risk assessments, plans, sections, drawings, elevation, specifications, calculations, construction programmes, method statements, hydraulic information and the causeway decommissioning plan, relating to the construction, carrying out and, where appropriate, removal of any specified work;

“scour and accretion monitoring and mitigation strategy” means a scour and accretion monitoring and mitigation strategy for the specified works to be submitted to the PLA under paragraph 11(1), including, but not limited to, results and clarification of existing and further works, and the extent, frequency, and form of the monitoring and mitigation for scour and accretion;

“specified function” means any function of the undertaker under this Order (except for any function under article 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights) or 25 (acquisition of subsoil, etc. only)) the exercise of which may affect the river Thames or any function of the PLA;

“specified work” means any permanent or temporary work or operation, constructed or carried out under this Order that is, or may be on, in, under or over the surface of land below mean high water level forming part of the river including-

- (a) any projection over the river by booms, cranes or similar plant or machinery whether or not they are situated within the Order limits;
- (b) the placing or maintenance of apparatus, plant, or equipment;
- (c) any surveying work undertaken pursuant to article 17 (Authority to survey and investigate the land) or maintenance works undertaken pursuant to article 5 (Maintenance of authorised development) which would if not for the provisions of this Order require a licence pursuant to section 66 of the 1968 Act;
- (d) any such work or operation (including any suspension or extinguishment of public rights of navigation under article 37 (Works in the river Thames: conditions) that affects the river or any function of the PLA, whether or not that work or operation is in, over or under the river;
- (e) but does not include maintenance dredging; and

“temporary work” means any work or structure forming part of the authorised development other than Work no. 10, that is not required for the operation of the authorised development and which is on, in, under or over the surface of the land below the level of the mean high water springs forming part of the river.

### **Approvals**

3.—(1) The undertaker must not commence;

- (a) the construction of;
- (b) the carrying out of; or
- (c) an operation for maintenance of;

any specified work or the exercise of any specified function until plans of that work or function and any further particulars the PLA may reasonably require, which may include a scour and accretion monitoring and mitigation strategy relating to that work, its proposals for any lighting and laying down of buoys, to secure the navigational safety of the river in the vicinity of the specified work (including any area over which the public right of navigation is to be suspended), 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 information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed. The PLA may, within 35 business days starting with the day on which plans and information described in sub-paragraph (1) are submitted under this sub-paragraph, reasonably require the undertaker to provide such further particulars as it considers necessary to reach its determination.

(3) 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 within 65 business days of-

- (a) the date on which plans and information were submitted under sub-paragraph (2); or
- (b) the provision of further information under that sub-paragraph;

whichever is the later.

(4) Any approval of the PLA required under this paragraph must not be unreasonably withheld 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.

(5) Conditions made under sub-paragraph (4) 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 length of time that any temporary work may be kept in place;

- (c) the programming of temporary works or the exercise of the specified functions;
- (d) 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;
- (e) the relocation, provision and maintenance of works (other than a specified work), moorings, apparatus and equipment necessitated by the specified work or specified function; and
- (f) 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.

(6) An approval of the PLA under this paragraph will not be deemed to have been unreasonably withheld if approval within the time limit specified by sub-paragraph (3) 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) An approval of the PLA under this paragraph is evidence that the plans to which the approval related have been approved only as affecting the PLA, the PLA's functions and the River in relation to those functions, and does not imply approval or endorsement of the plans for any other purpose.

### **General provisions as to construction of works including inspection**

4.—(1) The construction or carrying out of any specified work or specified function will, once commenced, be carried out by the undertaker with all reasonable dispatch and to the reasonable satisfaction of the PLA so that river traffic, the flow or regime of the river Thames and the exercise of the PLA's functions will not suffer more interference than is reasonably practicable.

(2) Any person so authorised by the PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey any specified work.

(3) As soon as reasonably practicable following the completion of any specified work, the undertaker must provide to the PLA as built drawings of any those 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.

### **Notifications**

5.—(1) The undertaker must inform the PLA in writing of the intended start date and the likely duration of the carrying out of specified work at least 10 business days prior to the commencement of the first specified work.

(2) The undertaker must serve notice in writing of any transfer made pursuant to Article 8 (Consent to transfer of the benefit) upon the PLA together with a copy of the instrument or deed effecting such transfer within 10 business days of any such transfer.

(3) The undertaker must within 7 days after the completion of any sale, agreement or other transaction in relation to which any powers, rights and obligations of the undertaker are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

### **Discharges etc.**

6.—(1) The undertaker must not without the consent of the PLA exercise the powers conferred by article 16 (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 will not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any such consent is deemed to have been refused if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 business days of the day on which the request for consent is submitted under paragraph sub-paragraph (1)

(4) Article 16 (discharge of water) has effect subject to this paragraph.

(5) The undertaker must not, in the exercise of the powers conferred by article 16 (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 determined under paragraph 19 or is otherwise approved in writing by the PLA.

### **Navigational lights, buoys, etc**

7.—(1) The undertaker must during construction, at or near any specified work, any other work below mean high water level of which the undertaker is in possession 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) After the completion of Work no. 10 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.

(3) The PLA must give the undertaker not less than 20 business days written notice of a requirement under sub-paragraphs (1) and (2) except in the case of emergency when the PLA will give such notice as is reasonably practicable.

(4) Without prejudice to section 133 of the 1968 Act (Lights detrimental to navigation), the undertaker must comply with the directions of the Harbour Master from time to time with regard to the lighting on the specified work, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

(5) 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.

### **Removal, etc of the PLA's moorings and buoys**

8.—(1) Subject to paragraph 8(2), if by reason of the construction of any specified work 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 will 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.

### **Removal of temporary works**

9.—(1) On completion of the construction or carrying out of any part of a permanent work, authorised by this Order the undertaker must—

- (a) as soon as reasonably practicable after such completion seek approval under paragraph 3 for the removal required by sub-paragraph (b); and
- (b) as soon as reasonably practicable after the grant of that approval under paragraph 3 remove—
  - (i) in the case of completion of part, any temporary work (other than a residual structure) carried out only for the purposes of that part of the permanent work;
  - (ii) on completion of all the specified works, any remaining temporary work (other than a residual structure); and
  - (iii) in either case, any materials, plan and equipment used for such construction;

and must make good the site of the permanent work 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 (licencing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 10 (disapplication of legislation etc.) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 of the 1968 Act.

(5) In this paragraph "residual structure" means any part of a temporary work that the PLA agrees cannot reasonably be removed by the undertaker on completion of the construction of the permanent work.

### **Obstruction in the river Thames**

10.—(1) If any pile, stump or other obstruction to navigation becomes exposed as a result of constructing any specified work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker will, as soon as reasonably practicable after the receipt of notice in writing from the PLA requiring such action, remove it from the river Thames or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river Thames as the PLA may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the PLA may reasonably require.

(2) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the PLA may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing will be recoverable from the undertaker.

### **Scour monitoring and mitigation**

11.—(1) The undertaker must submit a scour and accretion monitoring and mitigation strategy to the PLA for approval, such determination to be given by the expiry of 20 business days from receipt of the submission made under this paragraph.

(2) Prior to the commencement of any specified work, a scour and accretion monitoring and mitigation plan must be prepared by the undertaker in accordance with the scour and accretion monitoring and mitigation strategy approved under paragraph 11(1) or otherwise determined, and the scour and accretion monitoring and mitigation plan must be submitted to the PLA for approval

within 35 business days starting on the day on which such submission is received by the PLA under this paragraph.

(3) The scour and accretion monitoring and mitigation strategy and scour and accretion monitoring and mitigation plan must include the investigation of the sluice as shown on PLA chart 337 Gravesend Reach (Lower), location 566500, 175250.

(4) Following the submission of a scour and accretion monitoring and mitigation plan under sub-paragraph (2), the approval process in paragraph 3 will apply to such submission as if it were a submission under that paragraph.

(5) The carrying out of any specified work may proceed only in accordance with the scour and accretion monitoring and mitigation plan as approved by the PLA under paragraph 11(2).

### **Survey of river bed**

12.—(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 or carrying out of the first specified work to be commenced following approval under paragraph 3, a survey of such parts of the river Thames as might be affected by sedimentation or scouring that might result from the construction of the specified works if they were to be constructed, such survey being for the purpose of establishing the condition of the river Thames at the time the survey is carried out;
- (b) before the commencement of construction or carrying out of any specified work approved under paragraph 3, a survey of such parts of the river Thames as might be affected by sedimentation or scouring resulting from that specified work, such survey being for the purpose of establishing the condition of the river Thames at the time the survey is carried out;
- (c) during the construction or carrying out of any specified work, such surveys of the river Thames (for the purpose of ascertaining the effect of that scheduled work on the river Thames) as are stipulated in the scour and accretion monitoring and mitigation strategy or the relevant scour and accretion monitoring and mitigation plan; and
- (d) after completion of, respectively, all the specified works constructed or carried out under this Order, a survey of the specified works completed as constructed or carried out (for the purpose of establishing the condition of the river Thames and the effect that the specified works are having on sedimentation or scouring, the flow and regime of the river Thames, the navigation of the river Thames or the protection of structures within the river Thames or the exercise of the PLA's functions) as are stipulated in the scour and accretion monitoring and mitigation strategy or the relevant scour and accretion monitoring and mitigation plan.

(2) The PLA must make available to the undertaker the results of any survey carried out under this paragraph.

(3) 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 established the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(c), the effect of the specified works and the specified functions.

(4) A survey carried out under this paragraph is the property of the PLA.

### **Sedimentation, etc: remedial action**

13.—(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 a specified function during the period beginning with the commencement of construction of that 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) 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 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) At any time before the expiry of the period of 6 years after the completion of all the specified works comprised in the authorised development (“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 specific 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-paragraph (1) and (2) ought to apply; and
- (b) the PLA’s reasons for reaching that opinion.

(4) 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.

(5) 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 19 of this Part.

(6) 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 (5), 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.

### **Protective action**

14.—(1) If any specified work or the exercise of any specified function is constructed or carried out—

- (a) otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3; or
- (b) during construction or carrying out is found to give rise to sedimentation, scouring, currents or wave action that is 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 its own expense to comply with the remedial requirements specified in the notice.

(2) 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 that 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.

(3) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, the undertaker must, in compliance with its duties under any enactment take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the PLA.

(4) If—

(a) the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document the PLA must notify the undertaker of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by a specified work and of the measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact.

(5) The undertaker must implement the measures that the PLA has notified to the undertaker or such other measures as agreed between the undertaker and the PLA.

(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 3.

#### **Abandoned or decayed works**

15.—(1) If a specified work 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 that work, or any part of it, or to remove that specified work 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 that work.

(2) If a specified work 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 part of it; or

(b) if the undertaker so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site of the work 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.

#### **Disapplication of legislation, etc**

16. Subject to article 10 (disapplication of legislation, etc.) 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 Harbour Master under any enactment; and

(c) any other exercise by the PLA or the Harbour Master of any function conferred by or under any enactment.

#### **Permanent works where land not acquired**

17.—(1) Notwithstanding any rule of law, Work no.10 constructed in, on under or over land that is not acquired by the undertaker will remain vested in the undertaker and will not be annexed to the land.

(2) The PLA, following construction, will grant to the undertaker a licence under section 66 of the 1968 Act in respect of any work to which sub-paragraph (1) applies and such licence may be granted for a consideration to be agreed or assessed in accordance with section 67 of the 1968 Act and on such terms as the PLA thinks fit.

### **Indemnities, costs and exercise of DCO powers and compensation**

18.—(1) The undertaker will be responsible for and make good to the PLA all financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the PLA by reason of—

- (a) the construction or operation of the authorised development or the failure of any works comprised within it;
- (b) the exercise of any specified function;
- (c) anything done in relation to a mooring or buoy pursuant to paragraph 7; or
- (d) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised development or dealing with any failure of the authorised development; and
- (e) the undertaker will indemnify the PLA from and against all claims and demands arising out of or in connection with the authorised development or any such failure, act or omission.

(2) 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;

will 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.

(3) In complying with the indemnity provisions pursuant to this paragraph the undertaker's liability will either be limited to a sum to be agreed between the parties or unlimited.

(4) 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 any such claim or demand will be made without the prior consent of the undertaker.

### **Disputes**

19. Any dispute arising between the undertaker and the PLA under this Part of this Schedule will be determined by arbitration in accordance with article 45 (arbitration) unless otherwise agreed in writing by the undertaker and the PLA.

### **Restriction on powers of compulsory acquisition**

20. Nothing contained in Part 5 (powers of acquisition and possession of land) of this Order authorises the acquisition of any interest in, or the acquisition or extinguishment of any right in, on or over and Order land if the interest or right is at the time of the proposed acquisition vested in the PLA.

### **Consideration for dredged material**

21.—(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 undertaker must pay consideration under sub-paragraph (1) as respects 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 person exercising any powers under this Order.

### **As built drawings**

22. As soon as reasonably practicable following the completion of construction of the permanent specified works, the undertaker must provide to the PLA as built drawings of those works in a form and scale to be agreed between the undertaker and the PLA and the PLA to show the position of those works in relation to the river Thames.

### **Maintenance dredging**

23. For the avoidance of doubt, section 73 of the 1968 Act applies to any maintenance dredging carried out by the undertaker.

## **PART 7**

### **FOR THE PROTECTION OF NETWORK RAIL**

#### **Part to have effect unless otherwise agreed**

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail, and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

#### **Interpretation**

2. In this Part of this Schedule -

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

"Network Rail" has the same meaning as given in Schedule 2, Part 1 of this Order.

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"promoter" means the undertaker as defined in article 2 (interpretation) of this Order;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail within the Order limits and -

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

"Specified Work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the promoter with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The promoter must not exercise the powers conferred by—

- (a) article 16 (discharge of water);
- (b) article 17 (authority to survey and investigate the land);
- (c) article 19 (compulsory acquisition of land);
- (d) article 22 (compulsory acquisition of rights);
- (e) article 25 (acquisition of subsoil only);
- (f) article 28 (temporary use of land for carrying out the authorised development);
- (g) article 29 (temporary use of land for maintaining the authorised development);
- (h) article 30 (statutory undertakers);
- (i) article 36 (felling or lopping of trees and removal of hedgerows);
- (j) or the powers conferred by section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The promoter must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The promoter must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 30 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The promoter must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The promoter must, before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the promoter may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the promoter. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the promoter that



Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the promoter in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the promoter.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the promoter, if Network Rail so desires, and such protective works must be carried out at the expense of the promoter in either case with all reasonable dispatch and the promoter must not commence the construction of the specified works until the engineer has notified the promoter that the protective works have been completed to his reasonable satisfaction.

6.(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the promoter must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the promoter or its servants, contractors or agents.

7. The promoter must-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the promoter and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the promoter with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the promoter reasonable notice of its intention to carry out

such alterations or additions (which must be specified in the notice), the promoter must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the promoter, Network Rail gives notice to the promoter that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the promoter must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the promoter may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the promoter to Network Rail under this paragraph.

10. The promoter must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the promoter as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph-

- (a) “EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and
- (b) “Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the

relevant part of the authorised development giving rise to EMI (unless the promoter has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the promoter must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the promoter's compliance with sub-paragraph (3)-

- (a) the promoter must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the promoter all information in the possession of Network Rail reasonably requested by the promoter in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the promoter reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the promoter must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the promoter's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (a) the promoter must afford reasonable facilities to Network Rail for access to the promoter's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the promoter for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the promoter any additional material information in its possession reasonably requested by the promoter in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6) –

- (a) Network Rail must allow the promoter reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the promoter in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (Arbitration) to the Institution of Civil Engineers must be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the promoter informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the promoter must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The promoter must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the promoter, be repaid by the promoter to Network Rail.

15.—(1) The promoter must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 43 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the promoter must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the promoter or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the promoter from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the promoter reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the promoter.

(3) The sums payable by the promoter under sub-paragraph (1) may if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the promoter, from time to time provide the promoter free of charge with written estimates of the costs, charges, expenses and other liabilities for which the promoter is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the promoter to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the promoter under this Schedule or increasing the sums so payable.

18. The promoter and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the promoter of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The promoter must give written notice to Network Rail if any application is proposed to be made by the promoter for the Secretary of State's consent, under article 8 (Consent to transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The promoter must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 8

### FOR THE PROTECTION OF PORT OF TILBURY LONDON LIMITED

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Port of Tilbury London Limited.

2. In this Part of this Schedule

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation within the Port;

“the affected highways” means the A1089 St Andrews Road, Ferry Road, Fort Road and the unnamed link road between Fort Road and the A1089 St Andrews Road;

“erosion” means any erosion of the bed or banks of that area of the river, or any quay or jetty or other structure of whatever nature, within the Port;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements, traffic management measures, vehicle movement profiles and hydraulic information including, but not limited to, information as to the intended discharge of water and materials within the Port;

“the Port” means any land (including land covered by water) within the Port of Tilbury which is owned or used by PoTLL as at the date of the Order, and specifically including the private highways and access roads within the Port, and includes the Work no.15 land;

"specified work" means any work, activity or operation authorised by this Order and their associated traffic movements which may affect-

- (a) the Port;
- (b) access to and from premises within the Port;
- (c) streets within the Port;
- (d) navigation within the Port;
- (e) the Port of Tilbury London Limited's ability to carry out dredging to facilitate shipping access to the Port; and
- (f) the functions of Port of Tilbury London Limited as the statutory harbour authority for the Port;

“street” has the same meaning as in the 1991 Act;

“Tilbury2” means the development in the river Thames authorised by the Port of Tilbury (Expansion) Order 2019;

3. - (1) The undertaker must not exercise the powers conferred by articles 17 (authority to survey and investigate the land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development) and 30 (statutory undertakers) in respect of the Port unless the exercise of such powers is with the consent of Port of Tilbury London Limited, such consent not to be unreasonably withheld.

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to the Port, unless preventing such access is with the consent of Port of Tilbury London Limited

(2) The undertaker must notify Port of Tilbury London Limited prior to exercising its powers conferred by articles 11 (street works) or 13 (temporary restriction of use of streets) in respect of any of the affected highways. Notification under this sub-paragraph will be effected by the undertaker sending to Port of Tilbury London Limited a copy of the documents seeking consent to or approval of the works or measures under those articles at the time as they are submitted to the relevant street authority for such consent or approval. The undertaker must also forward to Port of Tilbury London Limited a copy of any response received by the undertaker from the relevant street authority in response to any such submission for consent or approval under those articles.

(3) Articles 20 and 23 do not apply to the Port and any interests or rights held by Port of Tilbury London Limited unless otherwise agreed by Port of Tilbury London Limited, acting reasonably.

5.—(1) At least 56 days before commencing the carrying out or maintenance of any specified work, the undertaker must submit to Port of Tilbury London Limited plans of that work for its approval.

(2) Any approval of Port of Tilbury London Limited under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements, conditions or restrictions as Port of Tilbury London Limited may make for the protection of the Port and navigation within the Port and its ability to carry out dredging to facilitate access to the Port, including a requirement for the undertaker to carry out protective works at its own expense; and
- (c) must not restrict the powers granted to the undertaker by this Order where such powers do not affect the Port.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under paragraph 17 of this Part of this Schedule

(4) The undertaker must inform Port of Tilbury London Limited in writing of the intended start date and the likely duration of the carrying out of any specified work at least 30 working days prior to the commencement of the specified work.

6.—(1) If during the construction of a specified work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by Port of Tilbury London Limited acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction, maintenance or operation of the specified work and, if it refuses or fails to do so as soon as reasonably practicable, Port of Tilbury London Limited may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy must be its removal; and
- (b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as Port of Tilbury London Limited reasonably requires.

7. In exercising the powers conferred by the Order in relation to the affected highways or any street through the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused, and seek to minimise such disruption, delay or congestion so far as is reasonably practicable. The undertaker must not at any time prevent or unreasonably impede access by emergency services vehicles to the Port.

8.—(1) Where the undertaker carries out any works to any street within the Port it must make good any defects in those works notified to it by Port of Tilbury London Limited within the period of three months after the date of its removal from occupation of that area of street.

(2) The undertaker may, at its sole discretion and in place of carrying out any works to remedy any defects under sub-paragraph (1), pay to Port of Tilbury London Limited a sum equal to the cost to Port of Tilbury London Limited of carrying out the required works as calculated by Port of Tilbury London Limited, acting reasonably.

(3) Where any event or accident on or affecting any road, street, way or the river Thames, prevents or obstructs access into, out of or within the Port, which event or accident is caused by or attributable to the undertaker, its agents or contractors, or which requires the removal of any item, vessel or vehicle which is preventing or obstructing access and which is owned by, contracted to or otherwise being used on behalf of the undertaker, the undertaker must use its best endeavours to reinstate access or remove the obstruction as soon as practicable.

(4) Port of Tilbury London Limited may, where an obstruction has occurred and has not been removed by the undertaker on request by Port of Tilbury London Limited, remove the obstruction itself and repair any damage caused by the event or accident causing the obstruction.

9. Any person duly appointed by Port of Tilbury London Limited for this purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of a specified work; and the undertaker must give to such person all reasonable facilities for such inspection and, if the duly appointed person is of the opinion that the construction of the work poses danger to any property of the Port or person within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

10. (1) Port of Tilbury London Limited may at any time close the Port and exclude access by the undertaker (including access under any power granted by this Order, under any access right howsoever acquired and as provided for in any agreement between the undertaker and Port of Tilbury London Limited) where Port of Tilbury London Limited reasonably considers that it is necessary to do so in

response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons or of damage to property.

(2) Port of Tilbury London Limited must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

11.—(1) The passage plan to be prepared by the undertaker under Requirement 17(5) must include, but is not limited to, the following matters-

- (a) a deconfliction process for use of Work no. 10 and vessels navigating to and from and berthing at berths adjacent to Work no. 10;
- (b) a prohibition on arrival at or departure from Work no. 10 within the period between 1 hour before and 1 hour after a scheduled departure or arrival of large vessels at berths adjacent to Work no. 10; and
- (c) protocols for sharing of information between Port of Tilbury London Limited and the undertaker to facilitate compliance with paragraphs (a) and (b).

(2) In this paragraph, ‘berths adjacent to Work no.10’ means the construction materials and aggregates berths constructed and operated as part of Tilbury2 and situated on the river Thames to the west of Work no.10.

12. Where transhipment use of the Port by the undertaker is authorised by Port of Tilbury London Limited (on such commercial terms as may be agreed), the undertaker may not commence such use unless and until a port passage plan in respect of that transhipment has been approved by Port of Tilbury London Limited.

13.—(1) The undertaker is to be responsible for, and must make good to Port of Tilbury London Limited all losses, costs, charges, damages, expenses, claims and demands however caused, which may reasonably be incurred or occasioned to Port of Tilbury London Limited by reason or arising in connection with-

- (a) the perusal of plans of any specified work, and the inspection of a specified work;
- (b) the costs of alterations to aids to navigation within the Port owned by Port of Tilbury London Limited, laying down moorings or buoys within the Port or carrying out any dredging operations in relation to either of those activities within the Port, as may be necessary in consequence of the construction of a specified work;
- (c) where the undertaker has not reinstated access or removed an obstruction the costs, expenses and losses of Port of Tilbury London Limited incurred in removing the obstruction itself and repairing any damage caused by the event or accident causing the obstruction;
- (d) the construction, maintenance or failure of a specified work, or the undertaking by Port of Tilbury London Limited of works or measures to prevent or remedy a danger or impediment to navigation within the Port, or damage to the Port arising from such construction, maintenance or failure, including but not limited to—
  - (i) any additional costs of dredging incurred by Port of Tilbury London Limited as a result of the construction, maintenance, decommissioning or use of the specified work or the contamination of the riverbed caused by the construction, maintenance, decommissioning or use of the specified work; and
  - (ii) damage to any, street, plant, equipment or building belonging to Port of Tilbury London Limited that is caused by the construction, maintenance or failure of a specified work; and
  - (iii) any act or omission of the undertaker or its servants and agents while engaged in the construction, maintenance or use of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify Port of Tilbury London Limited from and against all claims and demands arising out of, or in connection



with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) are attributable to negligence on the part of Port of Tilbury London Limited or of any person in its employ or of its contractors.

(4) Port of Tilbury London Limited must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

14. The fact that any work or thing has been executed or done with the consent of Port of Tilbury London Limited and in accordance with any conditions or restrictions prescribed by Port of Tilbury London Limited or in accordance with any plans approved or deemed to be approved by Port of Tilbury London Limited under this Part of this Schedule or under Schedule 2 to this Order or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

15. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, Port of Tilbury London Limited at the date of this Order coming into force.

16. With the exception of any duty owed by Port of Tilbury London Limited to the undertaker, nothing in this Order is to be construed as imposing upon Port of Tilbury London Limited any duty or liability to which Port of Tilbury London Limited would not otherwise be subject.

17.—(1) Any difference arising between the undertaker and Port of Tilbury London Limited under this Part of this Schedule (other than any difference as to the meaning or construction of this Part of this Schedule) will be resolved by expert determination.

(2) The undertaker and Port of Tilbury London Limited will agree on the appointment of the expert and will agree with the expert the terms of their appointment.

(3) If the undertaker and Port of Tilbury London Limited are unable to agree on an expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party will then be entitled to request the President of the Institution of Civil Engineers to appoint an expert of repute with no less than 15 years' experience in the relevant matter, and to agree with the expert the terms of appointment.

(4) The expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to the expert.

(5) The expert will act as an expert and not as an arbitrator. The expert's written decision on the matters referred to them is final and binding on the parties in the absence of manifest error or fraud.

(6) The expert's fees, any costs properly incurred by them in arriving at their determination and the costs incurred by the parties under this paragraph will be borne by the parties equally or in such other proportions as the expert may direct.

18 - The undertaker must give written notice to PoTLL if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (Consent to transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

## PART 9

### FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED

#### **Application**

1. The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

#### **Interpretation**

2. In this Schedule “strategic road network” means any part of the road network including trunk roads, special roads or streets for which Highways England is the highway authority.

#### **Approvals**

3. Any approval of Highways England under this Order may be given subject to such reasonable requirements or conditions as Highways England may make for the protection of the strategic road network.

#### **Construction of the authorised development**

4.—(1) The undertaker must comply with Highways England’s road space booking procedures (in accordance with Highways England’s Asset Management Operational Requirements including Network Occupancy Management System used to manage road space bookings and network occupancy) prior to exercising a power under article 13 or article 15 of this Order in relation to the strategic road network and no power for which a road space booking is required shall be exercised without a road space booking having first been secured.

(2) Following any closure or partial closure of any part of the strategic road network for the purposes of carrying out the authorised development, the undertaker must give Highways England the opportunity to carry out a site inspection in order for Highways England to satisfy itself that that part of the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of Highways England prior to reopening that part of the strategic road network.

(3) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

#### **Payments**

5.—(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to approvals and/or consultation sought under articles 13 and 15 of this Order including—

- (a) the checking and approval of the information required to determine approvals under articles 13 and 15;
- (b) all legal and administrative costs in relation to (a) above;
- (c) any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(2) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any

traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) Highways England must consult the undertaker on any traffic regulation order proposed under sub-paragraph (2) prior to work commencing on any statutory procedure or preparation, including providing the undertaker with an explanation of why Highways England considers that the order is necessary to carry out or for effectively implementing the authorised development.

(4) Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above within 91 days of the issue of Highways England's determination of an approval sought under article 13 or article 15.

(5) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Interaction with the Lower Thames Crossing**

6.—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Lower Thames Crossing. For the purposes of this sub-paragraph—

(a) “conflict” does not include any overlap in the land to be occupied or developed by the undertaker and the Lower Thames Crossing or any overlap in the Order Limits and application of compulsory powers under this Order and any order granted for the Lower Thames Crossing, or any difference between anything required by a requirement of any order granted after the date of the making of this Order for the construction and operation of the Lower Thames Crossing and the provisions of this Order.

(b) “reasonable endeavours” means—

- (i) undertaking consultation with Highways England on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the Lower Thames Crossing;
- (ii) having regard to the anticipated programme of works for the Lower Thames Crossing and any reasonable requirements of Highways England as regards any works to be undertaken on Work no. 4 within the area where the Lower Thames Crossing main highway is to be constructed;
- (iii) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (iv) complying with sub-paragraph (2) below,

and may include seeking approval of an amendment of any document or plan approved under a requirement for any Work where construction of that Work has not been commenced by the undertaker, but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

(2) The undertaker must co-operate with Highways England so as to reasonably ensure—

- (a) the co-ordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Lower Thames Crossing;

- (b) that, notwithstanding any provision of this Order and subject to reasonable notice being provided by Highways England, access to the Order land including secure working areas for the purposes of constructing the Lower Thames Crossing is not removed, prevented or prohibited by the undertaker for Highways England and its agents and/or contractors, including at—
  - (i) Station Road which is in the vicinity of plot 03/05 of the Land Plans;
  - (ii) Substation Road which is in the vicinity of plots 01/27, 01/28, 01/29, 04/01, 04/03, 04/05 and 04/06 of the Land Plans;
  - (iii) Walton Common; and
  - (iv) Tilbury Green common land and Footpath 200; and
- (3) Without limitation to the generality of sub-paragraphs (1) and (2)—
  - (a) Work no. 4 must, unless otherwise agreed with Highways England, be constructed so that jointing blocks are installed at locations which are reasonably convenient to enable a diversion which does not conflict with the Lower Thames Crossing; and
  - (b) the undertaker must not discharge water or any other samples or materials to the Bowaters sluice (in the vicinity of plot 01/24 of the Land Plans) unless otherwise agreed with Highways England.
- (4) The undertaker must as soon as is reasonably practicable provide Highways England with—
  - (a) as built drawings in connection with Works nos. 2, 4, 6, 7, 12(a) and 12(d) following the completion of those works; and
  - (b) in relation to Walton Common—
    - (i) a copy of the application for certification under article 33(1);
    - (ii) confirmation that the local planning authority has certified or has refused to certify the application referred to in sub-paragraph (i);
    - (iii) a copy of the application to amend the register of common land made under article 33(3);
    - (iv) confirmation that the register of common land has been amended following an application referred to in sub-paragraph (iii); or
    - (v) details of any application made to deregister that common land and any determination of such an application under the Commons Act 2006.
- (5) In this paragraph “Lower Thames Crossing” means the project which comprises a new road connecting Kent, Thurrock and Essex through a tunnel beneath the river Thames as well as improvements to the M25, A2 and A13, which is being promoted by Highways England and is proposed to be consented under section 22 of the 2008 Act.

### **Expert determination**

7.—(1) Article 45 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;

- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 45.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## PART 10

### FOR THE PROTECTION OF RWE GENERATION (UK) Plc

1. The provisions of this part of this Schedule have effect for the protection of RWE Generation UK Plc unless otherwise agreed in writing between the undertaker and RWE Generation UK Plc.

2.—(1) In this Part of this Schedule-

"the road" means the existing road owned by RWE which runs through the site shown as plots 01/04, 01/11, 01/19, 01/20, 01/21, 01/22, 01/30, 01/33, 01/34, 04/01, 04/03, 04/05 and 04/06 on sheets 1 and 4 of the Land Plans ;

"the proposed road" means an access road for abnormal indivisible loads which runs through the site shown as plots 01/35, 01/36, 01/37 and 04/02, on sheets 1 and 4 of the Land Plans

"existing apparatus" means any pipes, cables, drainage systems or associated equipment belonging to RWE within the Order land;

"environmental permit" means the environmental permit held by RWE in relation to the site with reference EP3433LZ;

"functions" includes powers and duties;

"in" in a context referring to the existing apparatus or alternative apparatus being in land, includes a reference to apparatus under, over or on land;

"plan" includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

"RWE" means RWE Generation UK Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SNS 6PB or any of its entities or successor entities;

"RWE Undertaking" means any land and existing apparatus belonging to RWE including but not limited to the site, the existing apparatus and the land subject to the environmental permit including any rights, liabilities and duties of RWE;

"specified powers" means the powers conferred by articles 11 (street works); 13 (temporary restriction of use of streets); 14 (access to works); 15 (traffic regulation); 17 (authority to survey and investigate the land); 18 (removal of human remains); 27 (rights under or over streets); 28 (temporary use of land for carrying out the authorised development); 29 (temporary use of land for maintaining the authorised development) of the Order;

"specified works" means any authorised works under the Order which are undertaken within 3m of the road or proposed road (or 15m of any apparatus within the site) or which may have an adverse impact on the RWE Undertaking and includes invasive investigatory works;

"the site" means the former Tilbury B Power Station site located to the East of Tilbury Town as shown on sheets 1 and 4 of the Land Plans.

(2) Where under this Part of this Schedule RWE is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval:

- (a) is not to be unreasonably withheld and any consent,
- (b) may be given subject to such reasonable requirements and/or conditions as RWE may have or consider necessary for the protection of the existing apparatus and RWE Undertaking; and
- (c) is intended to control the means and practicalities of the specified works to protect the existing apparatus and the RWE Undertaking.

### **Exercise of Powers**

3.—(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 must not acquire any land interest or apparatus under articles 19, 22, 25 or 30 override any easement or other interest of RWE otherwise than by agreement.

(2) At least 56 days before the undertaker exercises any or all of:

- (a) the specified powers in respect of the site and the affected highways or streets within the site; or
- (b) the specified powers in respect of the RWE Undertaking (insofar as that

Undertaking is located outside of the site); or (c) the powers referred to in sub-paragraph(4),

the undertaker must submit to RWE details of the works to be undertaken in reliance on those powers.

(3) Any specified powers:

- (a) in respect of the site and the affected highways or streets within the site must not be exercised except with the agreement of RWE; and
- (b) in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site) must not be exercised without the undertaker first consulting RWE on the details submitted pursuant to sub-paragraph (2) and taking account of any consultation response.

(4) The undertaker must not exercise the powers conferred by article 20 (statutory authority to override easements and other rights) or article 23 (extinguishment of private rights) in relation to any land in the site without the consent of RWE.

### **Existing apparatus**

4.—(1) Despite any provision of this Order and anything shown on the Land Plans, the undertaker must not acquire any existing apparatus other than by agreement.

(2) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any existing apparatus is placed, that existing apparatus must not be removed and any right of RWE to use, maintain, or renew that existing apparatus in that land must not be extinguished until a replacement is installed and available for use by RWE.

(3) Any replacement apparatus must fulfil the same functions as the apparatus being replaced and must be no less advantageous in nature to RWE than the apparatus being replaced.

(4) Not less than 56 days before starting the execution of specified works, the undertaker must submit to RWE a plan, section and description of the works to be executed.

(5) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (4) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by RWE for the alteration or otherwise for the protection of the existing apparatus, or for securing access to it, and RWE is entitled to watch and inspect the execution of those works, and the undertaker must supply RWE with any additional information concerning such works as RWE may reasonably require.

(6) Any requirements made by RWE under sub-paragraph (5) must be made within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph 4(4) are submitted to it.

(7) Where RWE requires any protective works under sub-paragraph (5) to be carried out either by itself or by the undertaker (whether of a permanent or temporary nature), the protective works must be carried out to RWE's reasonable satisfaction prior to the carrying out of the specified works.

(8) 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, 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.

(9) The undertaker is not required to comply with sub-paragraph (4) in a case of emergency, but in that case it must give to RWE 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 (5) in so far as is reasonably practicable in the circumstances.

(10) The undertaker must pay to RWE the proper and reasonable expenses reasonably incurred by RWE in, or in connection with, the inspection, alteration or protection of any existing apparatus.

(11) Subject to sub-paragraph (14) if by reason, or in consequence, of the construction, use, operation or failure of any specified works or in consequence of the construction, use, operation, maintenance or failure of any 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, any damage is caused to any existing apparatus or property of RWE, or to the road, or to the RWE Undertaking, or to operations, or there is any interruption in any service provided by RWE, or in the supply of any goods to RWE or by RWE, or RWE becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the proper and reasonable cost reasonably and properly incurred by RWE in making good such damage or restoring operations, services or supply; and
- (b) indemnify RWE for any other expenses, losses, demands, proceedings, damages, claims penalty or costs incurred by or recovered from RWE, by reason or in consequence of any such damage or interruption.

(12) The fact that any act or thing may have been done by RWE on behalf of the undertaker or in accordance with a plan approved by RWE or in accordance with any requirement of RWE or its supervision does not (subject to sub-paragraph 4(11)) excuse the undertaker from liability under paragraph 4(11)(a).

(13) Nothing in paragraph 4(11)(a) imposes any liability on the undertaker with respect to any loss, damage, injury or interruption to the extent that it is attributable to the neglect or default of RWE, its officers, servants, contractors or agents.

(14) RWE must give the undertaker reasonable notice (being not less than 28 days) of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it reasonably withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Road, proposed road and RWE Undertaking**

5.—(1) The undertaker must give RWE no less than 56 days' written notice of the intended commencement of any specified works and must include with this notification a plan and description of the works to be commenced and a programme for these works.

(2) Subject to sub-paragraph (3), the undertaker must permit RWE, its successors in title, occupiers, tenants and invitees of the site pedestrian and vehicular access at all times and for all purposes along the road and proposed road in common with the undertaker.

(3) The undertaker must give RWE not less than 28 days' notice of any exercise of powers under article 11 (Street works), article 13 (Temporary restriction of use of streets), article 14 (access to

works) and article 15 (traffic regulation) which would restrict access by RWE, its successors in title, occupiers, tenants and invitees to the road and/or the proposed road. Where access to the road along an existing route is prevented or restricted by the undertaker, the undertaker must ensure that suitable alternative is available for use by RWE, its successors in title, occupiers, tenants and invitees for the whole period of the closure or restriction before exercising any power.

(4) Save in the case of emergency, the undertaker may not prevent or restrict RWE from using the road (or any alternative access provided under these protective provisions).

(5) The undertaker must ensure that the road or a suitable alternative is open for emergency access to the site at all times.

(6) If the undertaker requires to undertake any specified works which will break open the surface of the road or involve any temporary closure of the road then the undertaker must provide 7 days written notice of such works to RWE and acting reasonably must have regard to (and accommodate so far as reasonably practicable) any requests from RWE in respect of this period of works, including measures, where practicable to minimise disruption and facilitate access to the site.

(7) Where any temporary closure of the road is required, a suitable alternative access to the site must be provided to RWE, its occupiers, tenants and invitees which is no less convenient to access the site than the road for the whole period of the closure. The undertaker must have regard to any requests from RWE (acting reasonably) in relation to the location of the alternative access road.

(8) The undertaker must keep the road (or alternative access if one is provided) clean and tidy and free of obstructions at all times.

(9) If at any time RWE require the relocation, variation or alteration of the road or the proposed road, then RWE shall serve written notice on the undertaker informing them of this fact and identifying the proposed relocation, alteration or variation of the road or the proposed road within the Site.

(10) Subject to -

- (a) agreement by the undertaker (not to be unreasonably withheld or delayed) that the proposed relocation, alteration or variation of the road or the proposed road within the site is acceptable; and
- (b) RWE meeting any costs of the undertaker associated with the proposed relocation, alteration or variation of the road and/or the proposed road within the site including alterations of connections to access roads outside the Site; and
- (c) RWE granting the necessary rights for the proposed relocation, alteration or variation of the road or the proposed road within the Site; and
- (d) the undertaker seeking and being granted, the necessary rights for the proposed relocation, alteration or variation of the road or the proposed road as is necessary to connect to the altered or varied road or proposed road.

### **Flood Defences and Site Security**

6.—(1) The undertaker must consult RWE on the detailed design for the flood defences and gate in the flood defence wall (forming part of Work no. 11) prior to undertaking these works.

(2) The undertaker must take into account any reasonable comments and suggestions from RWE in relation to the design of the flood defences and gate in the flood defence wall (forming part of Work no. 11).

### **General**

7. Any difference or dispute arising between the undertaker and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RWE, be determined by arbitration in accordance with article 45 of this Order.

8. The undertaker and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.



## Notices

9. Any plans or notices submitted to RWE by the undertaker pursuant to this Part must be sent to RWE c/o the Company Secretary at its registered address on Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PB or such other address as RWE may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 11

### FOR THE PROTECTION OF THURROCK BOROUGH COUNCIL

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Thurrock Council.

2. In this Part of this Schedule—

“costs” will include the reasonable costs to the Council of the time of its own officers as well as costs expended;

“illuminated signage” means two illuminated highway signs to be installed within the boundary of the local highway (Station Road) to the south of the Station Road Level Crossing to provide warning of the level crossing, and any associated works including provision of an electrical connection;

“Consents” means approvals, consents, licences, permissions, or registrations;

“RSA” or “Road Safety Audit” means a review of the proposed design or any works and any road safety impacts carried out in accordance with the Design Manual for Roads and Bridges or such other standard as the undertaker and the Council may agree;

“the Council” means Thurrock Borough Council;

“highway” means a highway vested in or maintainable by the Council as highway authority under the 1980 Act; and

“specified work” means the works under the Order to create new junctions to the public highway at Station Road and Fort Road, and the installation of Work no. 4 (the gas pipeline) in or under Station Road.

### Road condition surveys

3. The Council will, at the cost of the undertaker, procure or undertake road conditions surveys on the following highways-

- (a) St Andrews Road, between Tilbury Port Gate 1 and Ferry Road junction;
- (b) Port Access Road between Ferry Road Junction and Fort Road (including connection road);
- (c) Fort Road, between Port Access Road and Coopers Shaw Road/Gunn Hill Junction;
- (d) Coopers Shaw Road between Fort Road and Station Road, and
- (e) Station Road between Cooper Shaw Road and the site entrance.

4.—(1) The undertaker will notify the Council of

- (a) the anticipated date of commencement of development under this Order; and
- (b) the anticipated construction programme and date of completion of the authorised development;

not less than 3 months prior to that anticipated date of commencement of development under this Order.

(2) The Council will provide a proposed scope setting out the number (having regard to the construction programme notified to it by the undertaker), content and format of road conditions surveys to the undertaker for comment no later than 4 weeks after being notified under sub-

paragraph (1). The proposed scope will include live data monitoring to provide 24/7 speed and volume counts. The Council must have regard to any reasonable comments made by the undertaker within 2 weeks of receipt of that proposed scope in finalising the scope of the road conditions surveys.

(3) The first road condition survey must be undertaken prior to the anticipated commencement of HGV movements for the authorised development, and further surveys must be undertaken at 3 month intervals from the date of the first surveys until the completion of the construction phase of the authorised development. A final survey must be undertaken within 28 days of the Council being notified by the undertaker that the construction of the authorised development has been completed.

5.—(1) The Council will invoice the undertaker for the reasonable anticipated costs of all of the planned road conditions surveys set out in the scope following the finalisation of the scope.

(2) Where the costs incurred by the Council exceed the sum invoiced under sub-paragraph (1) because the development did not complete in accordance with the programme notified to the Council under paragraph 4(1)(a), the Council may, following the carrying out of the final survey under sub-paragraph 4(3), invoice the undertaker for the costs incurred in excess of the sum invoiced under sub-paragraph (1).

### **HGV route remediation**

6. The undertaker must maintain and provide to the Council [at 3 month intervals] from the date of commencement of development under this Order until the authorised development is completed, records of the number of HGVs using the local highway to access the authorised development and details of which route such HGVs used.

7.—(1) The Council will, having regard to the road condition surveys, identify any need for remediation of the highway on the following roads-

- (a) St Andrews Road, between Tilbury Port Gate 1 and Ferry Road junction;
- (b) Port Access Road between Ferry Road Junction and Fort Road (including connection road);
- (c) Fort Road, between Port Access Road and Coopers Shaw Road/Gunn Hill Junction;
- (d) Coopers Shaw Road between Fort Road and Station Road, and
- (e) Station Road between Cooper Shaw Road and the site entrance.

(2) Where a need for remediation works or measures is identified under sub-paragraph (1), the Council must prepare a schedule of the works or measures required and of the cost of the delivery of those works or measures.

(3) The Council will invoice the undertaker for a portion of the costs of the works or measures identified under sub-paragraph (2) proportionally with the undertaker's HGV use of the roads as compared to the overall HGV movements in percentage terms as established by the road conditions surveys. For example, where the undertaker's HGV use is 10% of all HGV use of the highways listed in sub-paragraph (1), the undertaker will be liable to the Council for 10% of the costs of the identified remediation works and measures.

8.—(1) Where the undertaker's HGV use deviates from the anticipated route (being the highways listed in paragraph (3)), the Council may, acting reasonably, take such action by way of the making of traffic regulation orders or traffic management, as it considers is necessary to prevent HGV use of unsuitable highways or to protect the safety or amenity of other highway users and properties adjacent to highways.

(2) Where the Council takes action under sub-paragraph (1) it may invoice the undertaker for the reasonably incurred costs of that action.

(3) Reasonably incurred costs under sub-paragraph (2) will include the costs of promoting and making any traffic regulation order.

### **Specified works**

9.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the Council acting as highway authority to participate in the design process for any Work authorised by this Order which involves a specified work, and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) The undertaker must, before commencing any specified work, provide to the Council for approval the proposed details for the specified works and a total estimate of the cost for all of the specified works.

(3) Following approval under sub-paragraph (2), the Council will issue to the undertaker an invoice for 6% of the total estimate of the costs for all of the specified works as approved, which sum will be used to cover the Council's reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified works.

10.—(1) Any officer of the Council duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

- (a) is in, on, over or under any highway; or
- (b) which may affect any highway;

during the carrying out of the work, and the undertaker will give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work poses danger to any highway or to any property of the relevant highway authority or danger to persons or vehicles or other property in relation to which the highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid.

(2) Any officer of the Council exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

11. The undertaker must, if reasonably required by the Council, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual as may be necessary.

### **Level crossing warning illuminated signage**

12.—(1) The illuminated signage is to be located in the vicinity of the new junction to be formed from the new access road (Work no. 6 authorised by this Order) on to Station Road.

(2) The Council will prepare a design for the illuminated signage in consultation with Network Rail within 8 weeks of being requested to do so by the undertaker, or 8 weeks from the date of receipt of the notice of commencement of the authorised development, whichever is the earlier.

(3) The Council must obtain any Consents required to install the illuminated signage.

(4) The Council is responsible for approving, procuring, carrying out, supervising and, inspecting any works associated with installing the illuminated signage.

(5) The Council must carry out any RSAs which are required in relation to the design and installation of the illuminated signage.

(6) The Council must use best endeavours to carry out the works to install the illuminated signage no later than 6 months from the date of commencement of the authorised development.

(7) The Council will invoice the undertaker for its reasonably incurred costs under this paragraph as soon as reasonably practicable following installation of the illuminated signage.

### **Payment of invoices**

13. Any invoice issued by the Council under this Part of this Schedule is payable by the undertaker within 30 days of issue.

### **Disputes**

14. Any difference arising between the undertaker and the Council under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 45 (arbitration).

### **Indemnity**

15. The undertaker indemnifies the Council as highway authority in relation to all costs, damages, losses or claims reasonably incurred by the Council in relation to any works by the undertaker in, on, over or under the highway.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Thurrock Power Limited to construct, operate and maintain a new gas fired generating station and battery storage facility at Tilbury, Thurrock, Essex and carry out all associated works.

The Order also makes provision in connection with the maintenance of the authorised development.

The Order would permit Thurrock Power Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the plans, environmental statement and other documents mentioned in this Order and certified in accordance with article 41 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Thurrock Power Limited, 145 Kensington Church St, Kensington, London W8 7LP.