

Indaver Rivenhall IWMF DCO

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009

**Draft Development Consent Order [PINS
Ref: EN0101038]**

Draft Development Consent Order

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Indaver Rivenhall Ltd

Leading the field in
sustainable waste
management.

202X No. 0000

INFRASTRUCTURE PLANNING

The Rivenhall Generating Station Extension Order 202[]

Made - - - - 202[]

Coming into force 202[]

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (the “2008 Act”(a)) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and with the Infrastructure Planning (Examination) Procedure Rules 2010(c). The Examining Authority has submitted a report to the Secretary of State under section 83(1) of the 2008 Act.

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

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

The Secretary of State in exercise of the powers conferred by section 114, 115 and 120 of the 2008 Act, makes the following Order:

PART 1

General provisions

Preliminary

Citation and commencement

1. This Order may be cited as the Rivenhall Generating Station Extension Order 202[] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order, unless the context requires otherwise—

“the 1989 Act” means the Electricity Act 1989(f);

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

“the 2006 Act” means the Companies Act 2006(h);

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, to which there are amendments not relevant to this Order.

(c) S.I. 2010/103. This instrument was amended by S.I. 2012/635.

(d) S.I. 2017/572, amended by S.I. 2017/1012, S.I. 2018/695, S.I. 2018/834, S.I. 2018/942, S.I. 2018/904, S.I. 2018/1232 and S.I. 2020/1534.

(e) Section 104(2) was amended by Schedule 13, paragraph 49 to the Localism Act 2011 and s58(5) of the Marine and Coastal Access Act 2009 (c. 23).

(f) 1989 c. 29.

(g) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

(h) 2006 c. 46.

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

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

“authorised development” means the development described in Schedule 1 (Authorised Development) and illustrated indicatively on the plan(s) entitled Indicative Designs and Locations of Work No 1 and 2 certified as such by the Secretary of State under article 9 (Certification of plans, etc.);

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

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

“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 information” means the Environmental Statement and any information constituting “environmental information” as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 relied upon by the Secretary of State in reaching a reasoned conclusion on the significant effects of the authorised development on the environment pursuant to regulation 21(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

“Environmental Statement” means the document certified as such by the Secretary of State under article 9 (Certification of plans, etc.);

“existing generating station” means the generating station authorised by the TCPA permission which is being constructed within the area shown edged red on the plan entitled “Existing Generation Station Plan” certified as such by the Secretary of State under article 9 (Certification of plans, etc.);

“extended generating station” means the existing generating station as modified by the carrying out of the authorised development;

“group company” means in relation to the undertaker, the undertaker, any subsidiary or subsidiary undertaking or any holding company or parent undertaking from time to time of the undertaker, and any subsidiary or subsidiary undertaking from time to time of a holding company or parent undertaking of the undertaker;

“holding company” shall have the meaning given in the 2006 Act;

“maintain” includes inspect, upkeep, repair, adjust, alter, refurbish, clear, remove or reconstruct, replace and improve, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental information, and any derivative of “maintain” is to be construed accordingly;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“relevant planning authority” means Essex County Council and its statutory successors as waste planning authority within the meaning of the 1990 Act;

“subsidiary” shall have the meaning given in the 2006 Act;

“TCPA permission” means the planning permission granted by Essex County Council with reference ESS/34/15/BTE dated 26 February 2016, and any other variations thereto whether granted before or after the date of this Order (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

(a) 2008 c. 29.

“undertaker” means Indaver Rivenhall Limited (company number 13020091) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

“work” means a work identified as part of the authorised development in Schedule 1 (Authorised Development);

“Work No. 1” means the work described as such in Schedule 1 (Authorised Development);

“Work No. 2” means the work described as such in Schedule 1 (Authorised Development);

“works plan” means the plan certified by the Secretary of State as such under article 9 (Certification of plans, etc.); and

“working day” means Monday to Friday excluding bank holidays and other public holidays.

(2) In this Order, the expression “includes” or “include” is to be construed without limitation.

PART 2

Principal powers

Development consent granted by the Order

3. Subject to the provisions of this Order, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Authorisation of the operation of the extended generating station

4. The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order as part of the extended generating station.

Power to maintain the authorised development

5. The undertaker may at any time maintain the authorised development, except to the extent that this Order provides otherwise.

Compliance with the TCPA permission and requirements

6.—(1) The TCPA permission and the requirements set out in Schedule 2 of this Order shall apply to the carrying out of the authorised development and to the operation of the extended generating station as if both were authorised by the TCPA permission, and all details, plans or other matters approved by the relevant planning authority pursuant to conditions of the TCPA permission prior to or following the date of this Order shall apply accordingly.

(2) The carrying out of the authorised development and the operation of the extended generation pursuant to this Order will not prevent the carrying out of development pursuant to the TCPA permission.

Benefit of the Order

7. Subject to article 7 (Consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer the benefit of Order

8.—(1) Subject to paragraph (3) the undertaker may with the written consent of the Secretary of State—

- (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; and/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 between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except paragraphs (5) and (6), shall include references to the transferee or lessee.

(3) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1)—

- (a) the benefit transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker; and
- (c) 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 the exercise of powers under this article, except where the transferee or lessee is the holder of a licence under section 6 of the 1989 Act or is a group company.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must provide written notification to the Secretary of State and the relevant planning authority at least 14 days prior to transferring and/or granting any benefit pursuant to this article.

(6) A notice required under paragraphs (4) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted;
 - (iv) the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (b) be accompanied by a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

PART 3

Miscellaneous and general

Certification of plans, etc.

9.—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of—

- (a) works plan;
- (b) Environmental Statement;
- (c) Existing Generation Station Plan;
- (d) Indicative Design and Location of Work No 1 and Work No 2 Plan; and
- (e) TCPA permission

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.

Arbitration

10.—(1) Any difference under any provision of this Order, unless otherwise agreed in writing between the parties, shall be referred to and settled by a single arbitrator to be agreed between the parties within 14 days of receipt of a notice of arbitration 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.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

Service of notices

11.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978 (a) (references to service by post) 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 that 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 an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

	<i>Name</i>
Address	Department for Energy Security and Net Zero
Date	

SCHEDULE 1 Ref
Authorised Development

In the County of Essex

1. A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act—

- (a) Work No.1 – an extension to the existing generating station comprising mechanical modifications to the actuated steam turbine inlet control valves to allow steam capacity to be increased, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW; and
- (b) Work No.2 – an extension to the existing generating station comprising the installation and commissioning of unrestricted actuated steam turbine inlet control valves with a capacity of over 50MW, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW.

SCHEDULE 2 Ref
Requirements

Work No. 1 or Work No. 2

1. The undertaker may only carry out either Work No. 1 or Work No. 2, and having begun either work may not carry out the other.

Commencement

2.—(1) The authorised development must commence within five years of the date on which this Order comes into force.

(2) The undertaker shall serve notice to the relevant planning authority 5 working days prior to commencement, and shall confirm in that notice whether the undertaker is carrying out Work No. 1 or Work No. 2.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Indaver Rivenhall Limited (referred to in this Order as the undertaker) to construct an extension to an energy from waste generating station at Rivenhall, Essex, previously authorised by planning permission under the 1990 Act, and to operate the extended generating station at a capacity of over 50 MW.

