

BY EMAIL ONLY

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Our ref: PM08/JB13/47016.3/MCGEA

Your ref: TR010032

5 December 2023

Dear Sir, Madam

**Lower Thames Crossing Development Consent Order Application  
Objection by Thurrock Flexible Generation Limited to the LTC DCO Application and objection under  
s127 of the Planning Act 2008**

**1 INTRODUCTION**

- 1.1 We act for Thurrock Flexible Generation Limited (“TFG”), formerly known as Thurrock Power Limited<sup>1</sup> who is the undertaker of the Thurrock Flexible Generation Plant Development Consent Order 2022<sup>2</sup> (“TFG DCO”). We write to object to National Highways’ (“NH”) DCO application.
- 1.2 TFG (then called Thurrock Power Limited or TPL) submitted a relevant representation to the Examination in regard to the Application on 18 January 2023 noting that:

*“The Order Limits of that granted DCO and the LTC proposal overlap and there are a number of interfaces between the consented TPL DCO and the proposed Lower Thames Crossing (“LTC”) scheme including (without limitation):*

*1) TPL’s consented high pressure gas pipeline to connect the proposed reciprocating engines to the national gas transmission. The proposed gas pipeline route traverses the LTC scheme and could be constructed before, concurrently or after the construction of the LTC scheme. The LTC application proposes a diversion of TPL’s consented gas pipeline route;*

*2) TPL’s consented Station Road access, water pipe and other service routes interface with the proposed LTC scheme;*

*3) LTC’s proposed access and conveyor routes intersect the TPL DCO boundary; and*

*4) traffic management co-operation will need to be considered in the event the TPL DCO and LTC schemes are constructed concurrently.*

<sup>1</sup> The company number (10917470) has not changed but the company name and registered office address were updated at Companies House in 2023.

<sup>2</sup> S.I. 2022 no 157, made 16 February 2022  
WORK\50785747v.2

Classification: Confidential

*The parties are also in discussion as to how any powers each has or may have would be exercised to ensure alignment and prevent, for example, a clash in the use of compulsory powers or powers of temporary possession. Further discussion is also required as to how the interfaces can be managed to ensure that TPL can comply with the requirements of its DCO."*

- 1.3 It has always been the intention of the parties to enter into an agreement to control the interfaces between their projects. That had been raised during the TFG DCO Examination however NH were unwilling to progress at that time as their project was at an earlier stage and subject to change as part of the preparation of the re-application. The SoCG submitted to the TFG Exam<sup>3</sup> notes;

*"1.2.6 Highways England agree to work with Thurrock Power Limited on finalising an Interface Agreement setting out how the two projects will manage their interfaces and including matters relating to construction traffic volumes, management and access, and the high-pressure gas pipeline construction"*

- 1.4 The TFG DCO accordingly includes protective provisions in favour of NH for the express benefit of the LTC project as the interface agreement was not able to be put in place at that time.

- 1.5 TFG and NH have been in communication regarding their respective DCOs for some years. However, despite ongoing efforts, the parties have been unable to agree an interface agreement which would suitably protect TFG's interests in this application. TFG will continue to work with NH in the coming days to resolve these issues. The parties have very recently identified a potential route forward to resolve the outstanding matter between them, however it has not been possible to agree legal drafting to secure that in the time remaining before this Deadline 8. The parties are continuing to work together, and TFG will submit an update to the Examination for Deadline 9 as to any progress.

- 1.6 Given the late stage of NH's examination proceedings, and that an agreement has not been able to be concluded to date, in order to protect its position and development **TFG objects to the grant of a DCO to LTC which includes;**

- (a) **any power to alter, interfere with, delete or remove the gas pipeline consented under the TFG DCO and/or the land rights therefor; and**
- (b) **any power to alter, interfere with, delete or remove the access route to Station Road consented under the TFG DCO and/or the land rights therefor.**

- 1.7 As part of this objection, TFG object on the basis of clear and inarguable serious detriment being caused to TFG if NH are granted compulsory powers to remove or interfere with TFG's gas pipeline connection and to remove their land rights for that connection. This objection can however be addressed through the application of suitable protective provisions, and TFG has provided a draft of protective provisions which would be acceptable to it as appendix 2 to this letter.

## 2 BACKGROUND AND NATURE OF INTERACTION

- 2.1 TFG holds an electricity generation licence under the Electricity Act 1989<sup>4</sup>. TFG is therefore a Statutory Undertaker for the purposes of sections 127 and 138 of the Planning Act 2008. Where a Statutory Undertaker has made a representation about the compulsory acquisition (CA) of land or rights over land which has been acquired for the purpose of their undertaking, and this representation is not withdrawn, s127 of the PA 2008 applies.

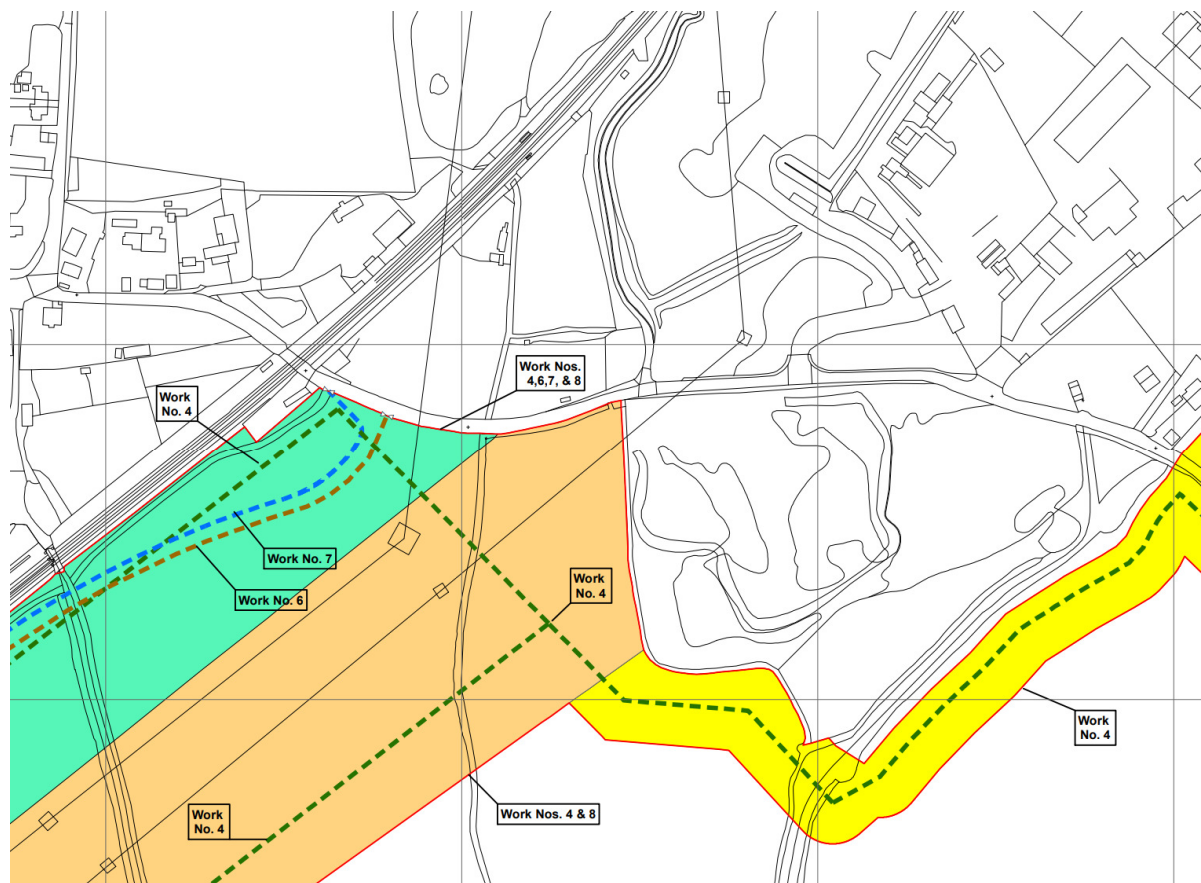
- 2.2 The TFG DCO consents a gas-fired peaking generation plant and battery storage. As an intrinsic part of that development, a connection to the National Grid gas grid pipeline known as Feeder 18 is required

<sup>3</sup> TFG DCO Examination library reference REP7-033, dated August 2021

<sup>4</sup> TFG are listed on the OFGEM list of licence holders available at ofgem.gov.uk

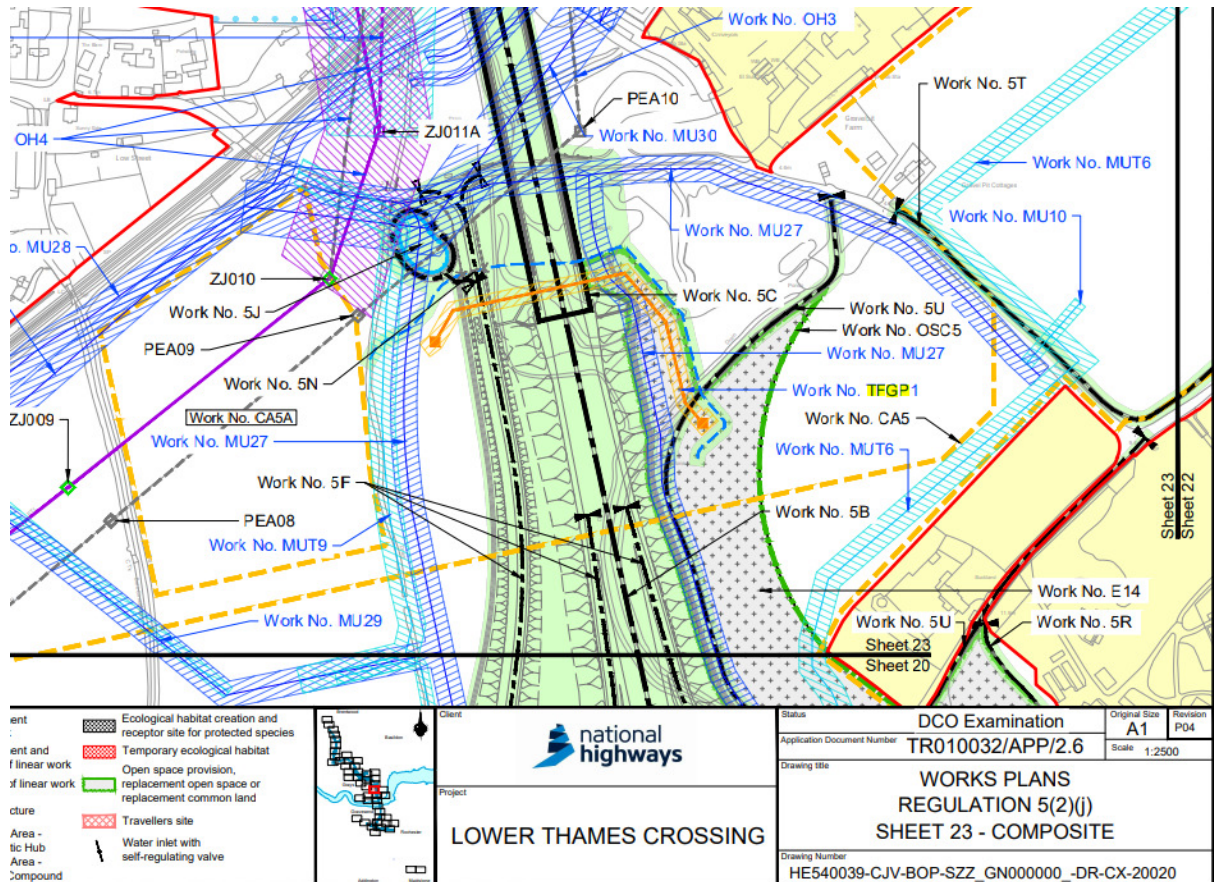
(Work No. 4 in the TFG DCO). This provides the connection to fuel the operation of the generating station. Work No. 4 of the TFG DCO crosses under the proposed route of the highway in the LTC DCO.

- 2.3 The TFG DCO was commenced in August 2023 with work on the battery storage element being undertaken. TFG have secured the necessary land rights to construct the gas pipeline connection and intend to commence construction of the gas pipeline in summer 2024.
- 2.4 The TFG DCO also includes access (Work No. 6) and a water utility connection (Work No. 7) to the Station Road public highway. This access connection (Work No 6) provides access to the main site and is an alternative to the access route through Port of Tilbury. As set out in the TFG DCO Exam, that access is necessary to allow the safe operation of the TFG generating station as it is needed for staff access, emergency services access and as the flood evacuation route in an emergency. It is understood that NH need to alter this access route to accommodate their works.
- 2.5 A full list of the agreed<sup>5</sup> interactions between the DCOs is set out in appendix 1. TFG considers that the draft protective provisions as set out in appendix 2 are required to control these interactions and prevent serious detriment being caused to TFG.
- 2.6 Of greatest concern to TFG are the interactions on the gas pipeline and access to Station Road.



Excerpt from TFG DCO Works Plans (REP7-054 of the TFG Examination Library), showing the gas pipeline and access route works in the location where LTC will cross the pipeline

<sup>5</sup> Agreed by email between the parties as part of the Interface Agreement work



Excerpt from LTC Works Plans (REP7-040) sheet 23, showing the gas pipeline diversion Work No TFGP1 as the orange line crossing under the highway

2.7 During the TFG DCO Examination, the northern option for the gas pipeline (the green area on the excerpt of the TFG DCO plan above) was agreed not to be used. This was in response to representations from both Network Rail and Highways England (as was, now called NH). NH sought that the southern route (the brown coloured area on the TFG work plan) was used in order to better align with their proposals. This was documented in the SoCG between the parties<sup>6</sup>:

*1.2.9 Thurrock Power Limited agree to use the southern route option for the western extent of the gas pipeline construction in Work no.4.*

2.8 As was agreed between the parties, where the TFG construction progresses ahead of the commencement of the overlapping LTC works, TFG will include on the route of the pipeline (as consented under the TFG DCO) 2 jointing blocks which provide points at which LTC can tie in a diversion of the gas pipeline.

2.9 The TFG DCO requirement 4(8) provides that TFG cannot construct the gas pipeline within 200m of Network Rail’s railway line. This was requested by Network Rail and is explicitly stated in the requirements of the made DCO. LTC Work No TFGP1 limit of deviation does not extend to the edge of the TFG DCO Work No.4, but ends approximately 185m from the railway line to the north. The LTC DCO accordingly creates a c15m ‘gap’ between where TFG can construct the gas pipeline and where

<sup>6</sup> TFG DCO Examination library reference REP7-033

NH can construct the diversion for that pipeline. It is challenging to establish that level of detail on the plans and the 'gap' accordingly only came to light during the LTC Examination.

### **3 OBJECTION TO POWERS AS REGARDS THE GAS PIPELINE**

- 3.1 Section 127 of the Planning Act 2008 provides that compulsory purchase of statutory undertakers' land can only be authorised where it can be purchased and not replaced without serious detriment to the carrying on of the undertaking.
- 3.2 NH is seeking powers which would allow it to extinguish TFG's interest in land for the gas pipeline and to remove part of the gas pipeline. Without the connection to the gas grid, the TFG NSIP cannot function. Accordingly, unless and until suitable protective provisions are imposed to protect the operation of TFG, the LTC DCO application cannot be found to comply with section 127 and the rights sought should not be granted.
- 3.3 It is clear from previous considerations of section 127 in DCO decisions that what constitutes 'serious detriment' is a high bar. Just because there is any adverse impact or detriment will not mean that serious detriment exists. TFG submits however that this test is clearly met in this case.
- 3.4 The Applicant notes that there have been various considerations<sup>7</sup> of the interaction between statutory undertakers over whom compulsory powers are sought in DCOs and the Protective Provisions which apply to them. In numerous instances it has been determined that Protective Provisions are required to prevent the compulsory powers resulting in serious detriment.
- 3.5 In the Hinkley Point C DCO<sup>8</sup>, compulsory acquisition of rights to install, operate and maintain an electricity line over Network Rail infrastructure were sought. Network Rail had objected to the compulsory acquisition of rights (in the form of an easement) over its operational land. The ExA concluded that Network Rail had not demonstrated that the grant of a permanent easement "would in any way compromise or otherwise adversely affect the safe and efficient operation of the railway"<sup>9</sup>. That contrasts starkly here where the rights sought would result in the prevention and or cessation of operation of the TFG NSIP, caused by NH; that is clearly an unacceptable adverse effect on the operation of the undertaking.

### **4 OBJECTION ON THE POWERS TO REMOVE LAND RIGHTS OR, CLOSE AND ALTER THE ACCESS ROUTE TO STATION ROAD**

- 4.1 The access and utility connections from TFG to Station Road are necessary to allow the safe operation of the TFG generation station. While TFG has no objection to NH altering or relocating this access as long as an alternative is provided, a safe and available route from TFG to the public highway to the east of TFG is required at all times. The parties had agreed wording to address this in the draft interface agreement, however as that cannot be completed due to agreement not being reached over the gas pipeline works, the protection of that route also now needs to be specifically secured in the protective provisions.
- 4.2 TFG accordingly object to the DCO on the basis that closing the access from TFG to Station Road without providing an alternative would prevent TFG from operating. TFG could therefore not fulfil its obligations to National Grid to help with demand balancing on the grid, which, as the core purpose of the NSIP, would constitute serious detriment. Without TFG's protective provisions in place, NH should

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<sup>7</sup> The following are given as indicative examples only and are not an exhaustive list: Hinkley Point C Connection Project Development Consent Order, Richborough Connection Development Consent Order, Thurrock Flexible Generation Plant Development Consent Order, M25 Junction 28 Improvement Project Development Consent Order

<sup>8</sup> Planning Inspectorate reference EN020001

<sup>9</sup> Examining Authority Recommendation Report on the Hinkley Point C Connection Project Development Consent Order paragraph 8.5.227

not be granted the powers to acquire TFG's interests in the access route land and/or interfere with the access route.

- 4.3 TFG considers that the protective provisions for 'normal' utility connections are in principle sufficient for the other connections themselves. However as in this case these are under the same works area as the access track, TFG considers it preferable that these are also addressed in the bespoke provisions provided to ensure alignment between works to the access and the utilities.

## 5 PROTECTIVE PROVISION DRAFTING

- 5.1 The protective provisions as set out in appendix 2 have been based on the provisions in favour of National Grid and National Grid Gas as set out in revision v9.0 of the LTC dDCO (REP7-090). Given the subject matter is the protection of an electricity undertaking and diversion of the high-pressure gas pipeline connection thereto, TFG considers that these represent a reasonable basis to adopt and provide protections which NH have already agreed to in principle for other parties.
- 5.2 The references to the network code and network code claims have been deleted as inapplicable.
- 5.3 References to TFG relying on its own compulsory powers are deleted as TFG does not have the necessary powers in place outside the order limits of its DCO.
- 5.4 The drafting submitted does not include the ability to offset the benefit of providing 'better' apparatus as a diversion or alternative supply from any costs which can be claimed from NH. This is because any apparatus which is diverted or replaced in this case will be new, designed for the current use and not in need of replacement. There is accordingly no material benefit to offset as replacing relatively new apparatus with new apparatus provides no material increase in life span or capacity.
- 5.5 Bespoke access provisions have been added.

TFG accordingly submits that in the absence of the intended agreement between the parties being reached, and the severity of the potential impact on its NSIP, it is necessary and reasonable that protective provisions are included in the LTC DCO in its favour in order to resolve TFG's objection. TFG submit that the inclusion in its DCO of provisions in favour of NH demonstrate the reasonableness of this request as TFG is only seeking parity with the position of NH.

Yours sincerely



Burges Salmon LLP

Appendix 1 – agreed interfaces between TFG DCO and LTC DCO

Interface	TFGP Reference	LTC Reference
<b>The ‘gas pipeline’,</b>	Work No 4 as shown in TFGP DCO Work Plans (A2.3) Sheets 2 & 3	Work No TFGP1 as shown on LTC DCO Work Plans (2.6) Sheet 23
<b>Access and egress to/from/at Station Road</b>	<p>Work No 6 as shown in TFGP DCO Work Plans (A2.3) Sheets 2 &amp; 3</p> <p>And any instances of overlapping requirements regarding those routes shown in TFGP DCO Access, Rights of Way and Traffic Regulation Plans (A2.4) Sheet 3</p>	<p>Any instance of overlapping requirements that may give rise to an impediment on the use of Station Road including;</p> <p>Those routes shown in LTC DCO Streets Subject To Temporary Restrictions Of Use (2.8), notably 14/A (Sheet 23) to 14/C (Sheet 22); and</p> <p>Those routes as shown in LTC DCO Temporary Works Plans (2.17) Sheets 22 and 23; and</p> <p>Those works as shown in LTC DCO Works Plans (2.6) notably Work No MUT11, 5R and 5T as shown on Sheet 22; and</p> <p>Those works as shown in LTC DCO Works Plans (2.6) notably Work No OH4, OH3, OHT2, MU27, MU28, MU29, MU30, MUT6, MUT8, MUT9, MUT10, CA5, CA5A, 5C, 5F and 5U as shown on Sheet 23</p>
<b>Services in the vicinity of the railway line at Station Road</b>	Insofar where they interface with those areas and works as shown as Work Nos 4,6,7 & 8 in TFGP DCO Work Plans (A2.3) Sheet 3	Any instance of overlapping requirements regarding those works as shown in LTC DCO Works Plans (2.6) notably Work No OH3, OH4, OHT2, MU27, MU28, MU30 and MUT9 as shown on Sheet 23

<p><b>Sub station / transformer for HV supplies into North Portal area (temporary) and permanent</b></p>	<p>Insofar where they interface with those areas and works as shown as Work Nos 12(a) and 12(c) in TFGP DCO Work Plans (A2.3) Sheet 4</p>	<p>Any instance of overlapping requirements that may give rise to an impediment on the use of Substation Road including;</p> <p>Those routes as shown in LTC DCO Temporary Works Plans (2.17) Sheets 16, 17, 20, 21 and 23; and</p> <p>Those works as shown in LTC DCO Works Plans (2.6) notably Work No MU27, MUT4 and MUT5 as shown on Sheet 20; and</p> <p>Those works as shown in LTC DCO Works Plans (2.6) notably Work No MU27 and MUT4 as shown on Sheet 21; and</p> <p>Those works as shown in LTC DCO Works Plans (2.6) notably Work No MU27 as shown on Sheet 23.</p>
<p><b>Access across the marsh from the Port including any necessary ground improvement works and/or soil stabilisation</b></p>	<p>Work No 12(c), 12(d) as shown in TFGP DCO Work Plans (A2.3) Sheets 2, 4 and 5</p>	<p>Any instance of overlapping requirements that may give rise to a need to coordinate an interface within the Shared Land to permit access from Substation Road for TFGP to access their facility as shown on TFGP DCO Illustrative General Arrangement Plans (A2.6) Sheet 2, as shown on the LTC DCO Land Plans (2.2), via Plot 16-02, 16-04, 16-05, 16-06 at Sheet 16, Plot 21-35, 21-36 at Sheet 21, Plot 20-01, 20-02, 20-12, 20-13, 20-14, 20-18, 20-19, 20-20, 20-21, 20-22, 20-27, 20-28, 20-29, 20-32, 20-33, 20-34, 20-36, 20-37, 20-40, 20-41, 20-42, 20-43, 20-44, 20-45, 20-47, 20-48, 20-49, 20-50, 20-55, 20-56, 20-57, 20-58, 20-59, 20-60 at Sheet 20, Plot 23-25, 23-26, 23-28, 23-29, 23-30, 23-43, 23-52, 23-68, 23-82, 23-84, 23-86 at Sheet 23</p>
<p><b>Proposed conveyor route</b></p>	<p>Insofar where they interface with those areas and works as shown as;</p> <p>Work Nos 1, 2, 3, 4, 12(c), 12(d) as shown in TFGP DCO Work Plans (A2.3) Sheets 2, 4 and 6</p>	<p>Any instance of overlapping requirements that may give rise to a need to coordinate an interface within the Shared Land for the construction, operation and removal of the conveyor route required as part of LTC DCO Work No CA5 through land, as shown on the LTC DCO Land Plans (2.2), via Plot 20-02 at Sheet 20, Plot 21-18, 21-19, 21-27, 21-30, 21-31 at Sheet 21.</p>



<p><b>Ecological or Environmental Mitigation as may be required in accordance with either DCO (when granted)</b></p>	<p>Work No 2 as shown in TFGP DCO Work Plans (A2.3) Sheet 2, 4 and 5</p>	<p>Any instance of overlapping requirements that may give rise to a need to coordinate an interface within the Shared Land for the construction, operation and maintenance of ecological or environmental mitigation as required by the LTC DCO, shown on the Works Plans (2.6), notably Work No E14 at Sheets 16, 20 and 23,</p>
<p><b>Interfaces with working areas</b></p>	<p>Insofar where they interface with those areas and works as shown as;</p> <p>Work Nos 1, 2, 3, 4, 8, 12(c), 12(d) as shown in TFGP DCO Work Plans (A2.3) Sheet 2; and</p> <p>Work Nos 4, 5, 6, 7, 8 as shown in TFGP DCO Work Plans (A2.3) Sheet 3; and</p> <p>Work Nos 1, 2, 3, 4, 12(a), 12(b), 12(c), 12(d) in TFGP DCO Work Plans (A2.3) Sheet 4; and</p> <p>Work Nos 1, 2, 3, 4, 9, 10, 11, 12(a), 12(b), 12(c), 12(d) in TFGP DCO Work Plans (A2.3) Sheet 5</p>	<p>In all instances where LTC DCO shows works within the Shared Land on Works Plans (2.6), Temporary Works Plans (2.17) and Streets Subject To Temporary Restrictions Of Use (2.8).</p>
<p><b>Emergency Preparedness</b></p>	<p>In accordance with those provisions contained at Sections 4.9 and 6.6, and cognisant of paragraph 6.7.20 of the TFGP DCO Outline Code of Construction Practice [A8.6]</p>	<p>In accordance with those provisions contained at Sections 6.9 Emergency Preparedness of the LTC DCO Environmental Statement Appendix 2.2 Code of Construction Practice or otherwise contained within the provisions and requirements of the LTC DCO, which are to be made known.</p>

<p><b>Perimeter establishment including fencing and security control facilities</b></p>	<p>In all instances where the TFGP DCO and LTC DCO overlap</p>	<p>In all instances where the TFGP DCO and LTC DCO overlap</p>
<p><b>Drainage to existing EA drains</b></p>	<p>In all instances where the TFGP DCO and LTC DCO overlap</p>	<p>In all instances where the TFGP DCO and LTC DCO overlap</p>
<p><b>Design matters so far as they relate to the physical works listed above</b></p>	<p>In all instances where the TFGP DCO and LTC DCO overlap, to the satisfaction of both parties.</p>	<p>In all instances where the TFGP DCO and LTC DCO overlap, to the satisfaction of both parties.</p>
<p><b>Site investigations of an exploratory nature, including ground investigations, ecological and environmental surveys.</b></p>	<p>In all instances where the TFGP DCO and LTC DCO overlap, to the satisfaction of both parties.</p>	<p>In all instances where the TFGP DCO and LTC DCO overlap, to the satisfaction of both parties.</p>

## Appendix 2 - protective provisions in favour of TFG

### FOR THE PROTECTION OF THURROCK FLEXIBLE GENERATION LIMITED

#### Application

1.—(1) For the protection of Thurrock Flexible Generation Limited as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Thurrock Flexible Generation Limited.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and Thurrock Flexible Generation Limited, 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 sub-paragraph (1) has effect as if it had been made between Thurrock Flexible Generation Limited and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited).

#### Interpretation

2.—(1) In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Thurrock Flexible Generation Limited to enable Thurrock Flexible Generation Limited to operate the Thurrock Flexible Generation Plant in a manner no less efficient than previously;

“apparatus” means any apparatus belonging to or maintained by Thurrock Flexible Generation Limited for the purposes of electrical, water or telecoms supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Thurrock Flexible Generation Limited 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; and any mains, pipes or other apparatus belonging to or maintained by Thurrock Flexible Generation Limited for the purposes of gas supply to the Thurrock Flexible Generation Plant together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Thurrock Flexible Generation Limited for the purposes of transmission, and/or supply of gas to the Thurrock Flexible Generation Plant, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“commence” and “commencement” in this Part of this Schedule includes 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;

“ground mitigation scheme” means a scheme approved by Thurrock Flexible Generation Limited (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, will require the undertaker to submit for Thurrock Flexible Generation Limited’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” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Thurrock Flexible Generation Limited: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas Transmission” means National Gas Transmission plc (company number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA 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 6(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 6(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas Transmission’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 installations-requirements for third parties”); and/or
- (d) may interrupt, prevent or hinder use of the access from the Thurrock Flexible Generation Plant to the public highway (Station Road) over the route shown as Work No. 6 in the Thurrock Flexible Generation Plant Development Consent Order 2022;

“Thurrock Flexible Generation Limited” means Thurrock Flexible Generation Limited, (Company Number 10917470) of 4th Floor 80 Victoria Street, London, England, SW1E 5JL who were formally known as Thurrock Power Limited and are the undertakers of the Thurrock Flexible Generation Plant Development Consent Order 2022

“Thurrock Flexible Generation Plant” means the nationally significant infrastructure project and associated development consented by the Thurrock Flexible Generation Plant Development Consent Order 2022;

“Thurrock Flexible Generation Plant Development Consent Order 2022” means the statutory instrument titled Thurrock Flexible Generation Plant Development Consent Order 2022, and given number S.I. 2022 no 157, made on 16 February 2022; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

**3.** This Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Thurrock Flexible Generation Limited, the provisions of Part 1 of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Thurrock Flexible Generation Limited are regulated by the provisions of this Part.

### **Protective works to buildings**

**4.** The undertaker, in the case of the powers conferred by article 20 (protective work to land and buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Thurrock Flexible Generation Limited (such consent not to be unreasonably withheld).

## 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 Thurrock Flexible Generation Limited unless agreed by Thurrock Flexible Generation Limited.

(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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited or affect the provisions of any enactment or agreement regulating the relations between Thurrock Flexible Generation Limited and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must, as Thurrock Flexible Generation Limited reasonably requires, enter into such deeds of consent upon such terms and conditions as may be agreed between Thurrock Flexible Generation Limited and the undertaker acting reasonably and which must be no less favourable on the whole to Thurrock Flexible Generation Limited unless otherwise agreed by Thurrock Flexible Generation Limited, 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) Save where otherwise agreed in writing between Thurrock Flexible Generation Limited and the undertaker, the undertaker and Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited and/or other enactments relied upon by Thurrock Flexible Generation Limited as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Thurrock Flexible Generation Limited under any other paragraph of this Part of this Schedule, is not to 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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited in accordance with sub- paragraphs (2) to (4).

(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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited reasonably needs to remove any of its apparatus) the undertaker must secure any necessary consents for the alternative apparatus and afford to Thurrock Flexible Generation Limited 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) 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 Thurrock Flexible Generation Limited and the undertaker.

(4) The undertaker 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 Thurrock Flexible Generation Limited of any such facilities and rights as are referred to in sub-paragraph (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus. The undertaker may subsequently 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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited and must be no less favourable on the whole to Thurrock Flexible Generation Limited than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Thurrock Flexible Generation Limited.

(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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of apparatus**

8.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to Thurrock Flexible Generation Limited a plan and, if reasonably required by Thurrock Flexible Generation Limited, a ground monitoring scheme in respect of those works.

(2) In relation to specified works, the plan to be submitted to Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited has given written approval of the plan so submitted.

(4) Any approval of Thurrock Flexible Generation Limited 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, Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Thurrock Flexible Generation Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Thurrock Flexible Generation Limited will be entitled to watch and inspect the execution of those works.

(7) Where Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited's satisfaction, prior to the commencement of any specified works for which protective works are required and Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited 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 7(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, but in that case it must give to Thurrock Flexible Generation Limited 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 the undertaker must comply with the relevant standards as published by; the Institute of Gas Engineers and Managers (IGEM) (including but not limited to IGEM/SR/18 'Safe working practices to ensure the integrity of gas pipelines and associated installations'); National Gas Transmission (including T/SP/SSW22 'Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties', CAD/SP/SSW/22 'Specification for Safe Working in the Vicinity of Cadent Assets' and any revision); and the Health and Safety Executive's guidance document 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 Thurrock Flexible Generation Limited 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 9.

## Expenses

9.—(1) Save where otherwise agreed in writing between Thurrock Flexible Generation Limited and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Thurrock Flexible Generation Limited within 30 days of receipt of an itemised invoice or claim from Thurrock Flexible Generation Limited all charges, costs and expenses reasonably and properly incurred by Thurrock Flexible Generation Limited 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) 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;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the approval of plans;

- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) 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.

## Indemnity

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Thurrock Flexible Generation Limited, or there is any interruption in any service provided, or in the supply of any goods or energy, by Thurrock Flexible Generation Limited, or Thurrock Flexible Generation Limited becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Thurrock Flexible Generation Limited the cost reasonably and properly incurred by Thurrock Flexible Generation Limited in making good such damage or restoring the supply; and
- (b) indemnify Thurrock Flexible Generation Limited for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Thurrock Flexible Generation Limited, by reason or in consequence of any such damage or interruption or Thurrock Flexible Generation Limited becoming liable to any third party other than arising from any default of Thurrock Flexible Generation Limited.

(2) The fact that any act or thing may have been done by Thurrock Flexible Generation Limited on behalf of the undertaker or in accordance with a plan approved by Thurrock Flexible Generation Limited or in accordance with any requirement of Thurrock Flexible Generation Limited or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Thurrock Flexible Generation Limited fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Thurrock Flexible Generation Limited, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Thurrock Flexible Generation Limited as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 10; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) Thurrock Flexible Generation Limited must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.



(5) Thurrock Flexible Generation Limited must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Thurrock Flexible Generation Limited must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Thurrock Flexible Generation Limited's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Thurrock Flexible Generation Limited's control and if reasonably requested to do so by the undertaker Thurrock Flexible Generation Limited must provide an explanation of how the claim has been minimised, where relevant.

### **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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited 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 Thurrock Flexible Generation Limited requires the removal of apparatus under paragraph 6(2) or Thurrock Flexible Generation Limited makes requirements for the protection or alteration of apparatus under paragraph 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 Thurrock Flexible Generation Limited undertaking and Thurrock Flexible Generation Limited must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Thurrock Flexible Generation Limited'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. —(1) If, in consequence of 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 Thurrock Flexible Generation Limited to maintain or use the apparatus no less effectively than was possible before such obstruction.

(2) The undertaker must, on reasonable request from Thurrock Flexible Generation Limited, allow access to land within its occupation or control where such access is required to allow the carrying out of survey works (including but not limited to survey for the purposes of monitoring mitigation provision for ecological receptors), but subject to Thurrock Flexible Generation Limited complying with all relevant health and safety laws and the directions of any site manager while within any working area or site in the occupation or control of the undertaker.

(3) The undertaker will not, without the consent of Thurrock Flexible Generation Limited which consent may not be unreasonably withheld or delayed, prevent access by Thurrock Flexible Generation Limited to the site of the Thurrock Flexible Generation Plant from the public highway to the east known as Station Road, except when and only for as long as necessary, in which circumstances the undertaker must provide a suitable alternative access which is made available for use to access and egress the Thurrock Flexible Generation Plant before the access from Station Road is closed and which alternative access must be maintained in place throughout the entirety of any closure of the access from Station Road.

### **Arbitration**

14. Save for differences or disputes arising under paragraph 6 and 7 any difference or dispute arising between the undertaker and Thurrock Flexible Generation Limited under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and be determined by arbitration in accordance with article 64 (arbitration).

### **Notices**

15. Notwithstanding article 63 (service of notices), any plans submitted to Thurrock Flexible Generation Limited by the undertaker pursuant to this Part must be submitted to the Company Secretary of addressed to the Company Secretary of Thurrock Flexible Generation Limited and sent by hand, recorded or special delivery or first class post to Thurrock Flexible Generation Limited's registered offices or such other address as Thurrock Flexible Generation Limited may from time to time appoint instead for that purpose and notify to the undertaker in writing.