



Department for
Business, Energy
& Industrial Strategy

Department for Business,
Energy & Industrial Strategy

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Our Ref: EN010092

16 February 2022

Dear Mr Troup

PLANNING ACT 2008

**APPLICATION FOR THE THURROCK FLEXIBLE GENERATION PLANT
DEVELOPMENT CONSENT ORDER**

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 16 November 2021 of the Examining Authority (“the ExA”), comprising a single examining Inspector, Rory James Cridland, who conducted an examination into the application (“the Application”) submitted on 27 May 2020 by Thurrock Power Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Thurrock Flexible Generation Plant (“the proposed Development”).

1.2 The Application was accepted for examination on 24 June 2020. The examination began on 16 February 2021 and was completed on 16 August 2021. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 16 November 2021.

1.3 The Order as applied for would grant development consent for the construction and operation of a gas-fired electricity generating station and associated underground gas and electricity connections with a maximum generating capacity totalling 600 megawatts (“MW”) through the use of up to 48 gas reciprocating engines and for the construction and operation of a battery storage facility with a rated electrical output of 150MW and storage capacity of up to 600MWh). The proposed Development would

be located on land adjacent to the North of National Grid's Tilbury Substation in Thurrock, off Station Road near Tilbury, in Essex.

1.4 The Secretary of State issued a consultation letter on 23 December 2021 after receipt of the ExA's Report and Recommendation seeking clarification from the Applicant on the proposed gross installed generating capacity and the carbon capture readiness provision, given a net rated electrical output of up to 600MW had been applied for and used during examination to define the proposed Development. The Applicant has explained that its assessment of generating capacity is based on the net export potential to the grid after the loss of cannibalised energy to run the functions of the proposed Development and, if the Secretary of State considers it necessary to state a figure, the actual installed gross generating capacity of the gas turbines would be up to 620MW. In order to provide consistency of approach to the issue of the capacity of gas-fired generating stations, the Secretary of State has adopted the figure for gross capacity.

1.5 As set out in the ExA's Report, the proposed Development would comprise the potential construction, operation and maintenance of (in general terms):

- **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 Work no. 1C(r) 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. 5A 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 with landscaping, (if required) 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 compounds and laydown areas south of Tilbury Loop railway.
- **Work No 9** – creation of salt marsh [which was removed from the Application during examination - see paragraph 1.8 below];
- **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 and connected works.
- **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 115,775m² 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 roads with gates, fencing and alterations to drainage, landscape planting and alteration of services.

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

1.7 Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The main features of the development proposals and the site are set out in Chapter 2 of the ExA's Report. The ExA's findings in relation to the main planning issues are set out in sections 5 - 7 of the ExA Report, the consideration of compulsory acquisition and temporary possession is set out in Chapter 8 and the ExA's conclusions on the terms of the Order and the case for development consent and are set out at sections 9 and 10 respectively. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report ["ER *.*.*"]

1.8 The Secretary of State notes the Applicant requested that changes should be made to the Application both before and after the start of the examination. The first request [ER 2.4.2] was submitted on 14 January 2021 for a non-material change requesting the removal of 2.2 hectares from the Order Limits – 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.) In addition, the Applicant removed Work No 9 – saltmarsh creation – and the related ‘Outline Saltmarsh Enhancement and Maintenance Plan’ [APP-146]. The ExA decided [ER 2.4.4] that the proposed changes were non-material and they were, therefore, accepted into the examination.

1.9 The other change request [ER 2.4.5] was made after the start of the examination when the Applicant sought the addition of the Alternative Abnormal Indivisible Loads (“AIL”) Access which required a new Work and a new sub-work to be added to the Application. In addition, the Applicant sought to include additional land affected by the compulsory acquisition powers being sought and thus made a request under Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 to add this additional land to the Application. The Applicant sought changes which included the acquisition of permanent rights over land, new rights over land and temporary rights over land.

1.10 The Secretary of State notes that the ExA decided [ER 2.4.8] that the changes requested were material but that they did not substantially alter the substance of the scheme applied for and that accepting them would not result in a materially different project. The changes outlined above were, therefore, accepted into the examination, were fully examined and were fully reported on in the ExA Report [ER 2.4.10].

1.11 The Secretary of State agrees with the ExA’s conclusions in respect of the Applicant’s requests that changes should be made to the Application.

1.12 The Secretary of State notes that after the receipt of the ExA’s Report, the Applicant reached agreement with Port of Tilbury London Limited and RWE Generation (UK) plc about the access arrangements for AILs along Work 15 as set out above. In light of this agreement, the Applicant requested various changes relating to the Port of Tilbury London Limited’s land and RWE Generation (UK) plc land and streets within their ownership and control and to remove the causeway and associated works (Work Nos. 10 and 11 and parts of work No. 12) from the scope of the development consent order that the Secretary of State is considering.

2. Summary of the ExA Report and Recommendation

2.1 The ExA’s recommendation in the ‘Summary of Findings and Conclusions’ section of the ExA Report [ER 10.1.16] is as follows:

“For all of the above reasons, and having had regard to the LIRs [Local Impact Reports] produced by TC [Thurrock Council] as well as my findings and conclusions on relevant matters set out in this report, I conclude that the case for development has been made and that development consent should be given through a DCO [development consent order] as recommended in paragraph 9.8.3 above and in the form set out in Appendix C [to the Report]”.

3. The Secretary of State's Consideration of the ExA Report

3.1 The Secretary of State notes that a total of 31 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, local councils and local residents.

3.2 The main planning issues considered by the ExA, as set out in the ExA Report are:

- the principle of and need for the proposed Development;
- conformity with Development Plan policies;
- air quality;
- onshore water environment;
- landscape and visual amenity;
- onshore ecology;
- marine environment;
- noise and vibration;
- cultural heritage;
- traffic and transport;
- public health and amenity;
- land use, agriculture and social-economic benefits;
- cumulative and combined effects; and
- climate change.

3.3 The Secretary of State has considered the ExA Report and all other material considerations, including further representations received in response to requests for information after the close of the ExA's examination ("the post-examination representations"). The Secretary of State's consideration of the ExA's Report and the post-examination representations is set out in the following paragraphs.

3.4 As set out in paragraph 2.1 above, the Secretary of State notes that the ExA concluded [ER 10.1.16] that the case for the Development had been made. The Secretary of State agrees with the ExA's conclusion.

4. The Principle and Need for the Development

4.1 The 2008 Act sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects. Section 104 sets out that where a National Policy Statement has effect in relation to a development, the Secretary of State must have regard to various documents and matters including the relevant Statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant National Policy Statement except where doing so would: lead to a breach of the UK's international obligations; lead to the Secretary of State being in breach of any duty imposed on them by or under any enactment; be unlawful by virtue of any enactment; or where the adverse effects of a development outweigh its benefits (the last at section 104(7) of the Act).

4.2 National Policy Statements EN-1 (the Overarching National Policy Statement for Energy - "NPS EN-1") and EN-2 (the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure – "NPS EN-2") set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. NPS EN-1 sets out that the assessment of development consent applications for electricity generating infrastructure should start with a presumption in favour of granting consent. The ExA noted the strong need case for electricity generating projects that is set out in NPS EN-1 and NPS EN-2. The Energy White Paper, "Powering our Net Zero Future", which was published on 14 December 2020 announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements, therefore, remain the basis for the Secretary of State's consideration of the Application.

4.3 The Secretary of State notes that the ExA [ER 5.2.5 et seq] questioned the Applicant about the potential for construction of the proposed Development in three phases – two phases for the gas-firing infrastructure and one for the battery storage element. The ExA stated that, while the construction of phases 2 and 3 would help meet the need (for generation capacity) identified in the National Policy Statement, the proposed development consent order did not require the construction of phases 2 and 3. In the event that phases 2 and/or 3 were not, or could not be constructed, the benefits of those phases would not be realised. However, the ExA sets out [ER 5.2.7] that even in a three-phase construction scenario, phase 1 on its own would help meet the need established through the NPS. The ExA concluded [ER 5.2.9] that in the absence of any obligation for it to be constructed as part of the proposed Development, it did not consider that the inclusion of battery storage provided any additional benefit in support of the Applicant's need case. The Secretary of State considers the battery storage facility would provide an additional benefit for the proposed Development but given there is no guarantee it will go ahead, it should only be given limited weight in the planning balance (see paragraph 8.6 below).

Consideration of Alternatives

4.4 The ExA notes [ER 5.2.10] that, while the National Policy Statements do not require developers to undertake a consideration of alternatives to establish whether a proposed development represents the best option, Environmental Statements must include information about the main alternatives to the proposed Development they have studied and include an indication of the main reasons for the choice of site. NPS EN-1 advises that, given the need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner.

4.5 The ExA further notes [ER 5.2.12 et seq] that the Applicant considered the question of alternatives in Chapter 3 of its Environmental Statement that was submitted to the Planning Inspectorate as part of its application for development consent. The Applicant's position was that it had considered a number of potential sites for the proposed Development and assessed them using several criteria including the proposed Development imperatives, planning and land use matters, electricity grid capacity, ability to connect to the gas network as well as site acquisition and land availability. Three sites were shortlisted with two being taken forward for final assessment.

4.6 The ExA comments [ER 5.2.16] that the decision to choose the Thurrock location for the proposed Development did raise a number of issues, including common land, Green Belt status and proximity to European sites and the presence of existing apparatus. However, the ExA noted that the proposed site benefits from being close to electrical, gas and transport links. The ExA's overall conclusion [ER 5.2.17] in relation to the Applicant's consideration of alternatives was that it met the requirements of NPS EN-1.

4.7 The Secretary of State notes the ExA's comments in this matter and has considered these in the overall 'planning balance' section of this decision letter.

Conformity with Development Plan Policies

4.8 The ExA considered [ER 4.6.1 et seq] the relevant local plan and local planning policies in reaching its conclusion – noting that Thurrock Council concluded, on balance, that the proposed Development would be acceptable in planning policy terms. The ExA also notes that no Interested Parties had raised any specific matters in relation to compliance with local planning policies. The Secretary of State notes the ExA's conclusions in this matter and sees no reason to take a different view.

Air Quality

4.9 The ExA points out [ER 5.3.1 et seq] that NPS EN-1 acknowledges the potential for infrastructure development to have adverse effects on air quality and that these should be given substantial weight where a project would lead to deterioration in air quality or lead to breaches of national air quality limits. The ExA notes that the Applicant's position was that the Environment Agency would regulate operational emissions from the proposed Development through the Environmental Permit regime [ER 5.3.3].

4.10 The ExA notes that the Applicant had assessed the potential impacts of the construction and operation of the proposed Development. The Applicant's assessment [ER 5.3.11] predicted that of the 47 receptor sites that had been assessed, three would experience a moderate adverse effect in terms of NO₂ concentration with no significant effect predicted at the rest. The Applicant predicts that an additional nine sites would experience moderate adverse effects for shorter-term average concentrations but that the total NO₂ concentration would remain within the relevant air quality objectives. Only one modelled receptor – West Street in Gravesend – would have effects exceeding its relevant Air Quality Standards objectives.

4.11 The ExA notes [ER 5.3.12] that the Applicant had made provision for embedded mitigation in the proposed Development, details of which are in the Environmental Statement that accompanied the Application. The Applicant's consideration of the interrelated and cumulative effects of the construction and operation of the proposed Development concluded that it would make no material contribution to cumulative or interrelated effects with other development [ER 5.3.13].

4.12 The ExA [5.3.14 et seq] sets out that a number of Interested Parties raised concerns about the potential impacts of the proposed Development on air quality. Gravesham Borough Council sought clarification of matters related to air quality arising

from the operation of the proposed Development. Public Health England (“PHE”) noted the potential for minor and moderate air quality impacts on some human receptors but subsequently confirmed the health impacts from the emission of particulate matter and NO₂ from the proposed Development had been appropriately assessed and that the relative change in the concentration of and exposure to those emissions were minimal. PHE also noted the Environmental Permitting process would determine the air pollutant control system to be fitted to reduce changes to air quality to as low as reasonably practicable.

4.13 Condoover Scout Activity Centre drew attention [ER 5.3.17] to the potential impacts the proposed Development would have on it during both construction and operation with particular respect to the fact that users of the facility undertook most of their activities outdoors, including sleeping. Thurrock Council’s Local Impact Report stated that it had no objections on air quality grounds and it did not consider the proposed Development would lead to any significant impacts on air quality, while Basildon Borough Council sought to ensure that suitable measures were put in place for air quality.

4.14 During the examination, the ExA sought [ER 5.3.20 et seq] further information from the Applicant on a range of issues affecting air quality resulting from the proposed Development. In response, the Applicant provided additional detail about its assessment and modelling processes, its monitoring proposals and explanations of its consideration of the air quality issue.

4.15 The Secretary of State notes that the Applicant provided more information to address concerns raised by Gravesham Borough Council and that a Statement of Common Ground between the Council and the Applicant [ER 5.3.37] confirmed that there were no outstanding matters of disagreement between the parties in respect of air quality.

4.16 The ExA notes [ER 5.3.38] that during the examination, the Condoovers Scout Activity Centre requested that works in Zone C of the proposed Development area should not be carried out between May and August (inclusive). In response to this point, the Applicant stated it did not consider it was reasonable to limit construction for such a significant part of the year particularly as the Environmental Statement did not predict an adverse impact at that location. The ExA [ER 5.3.39] agrees with the Applicant on this point.

Conclusion

4.17 In its conclusions, the ExA records [ER 5.3.40] that at the end of the examination, there were no outstanding matters in respect of air quality that needed to be addressed. The ExA also [ER 5.3.41 and 5.3.42] concludes that the Applicant’s assessment adequately assesses impacts on air quality and that no significant effects on air quality were likely to arise from the proposed Development – the ExA cited the relevant measures in Requirement 5 of the draft Order as ensuring that any residual effects on air quality can be suitably controlled and/or mitigated. The ExA finds, therefore, that the requirements of both the Air Quality Directive and NPS EN-1 will be met [ER 5.3.42]. The Secretary of State notes the ExA’s consideration of the issues related to air quality impacts and sees no reason to disagree with the ExA’s conclusion.

Onshore Water Environment

4.18 The ExA notes [ER 5.4.2] that NPS EN-1 sets out 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.

4.19 The ExA sets out [ER 5.4.3] that NPS EN-1 requires a sequential test then an exception test to be passed if development is to be permissible in a high risk flood zone area and that the Secretary of State should not consent to development in Flood Zone 3 unless satisfied that the requirements of the two tests have been met.

4.20 The ExA notes [ER 5.4.10 et seq] that the Applicant assessed issues in relation to flood risk (and produced a Flood Risk Assessment), surface and foul water drainage, the Water Framework Directive and ground conditions in its Application documentation. The ExA records [ER 5.4.14] that the Applicant states in relation to flood risk that an exception test is not required as the sequential test demonstrates that the proposed Development is considered acceptable.

4.21 A number of interested parties engaged with the issues raised by the Applicant's assessment and conclusions in relation to the onshore water environment and the ExA notes [ER 5.4.23 et seq] that the Environment Agency, Thurrock Council, Anglian Water and RWE Generation (UK) plc all had raised concerns but were content subject to the inclusion of suitable provisions in the Order and/or protective provisions (as applicable) in any Order that might be made by the Secretary of State. However, the ExA notes [ER 5.4.25] that the Marine Management Organisation agreed with the Applicant's conclusions on hydrology and flood risk.

4.22 The ExA states [ER 5.4.29] that it considers the Applicant's extensive site selection exercise and the need for access to key infrastructure demonstrates that the proposed Development could not be located in an area of lower flood risk. The ExA concludes, therefore that the sequential test has been met. In respect of whether the exception test has also been met. The ExA's conclusion [ER 5.4.34] is that the Application demonstrates there are no reasonable alternatives to the site available, that the proposed Development will be safe for its lifetime taking into account climate change and would not increase flood risk elsewhere. The ExA also considers that the proposed Development would deliver wider sustainability, socio-economic benefits and additional employment opportunities. Accordingly, the ExA concludes that the exception test has also been met.

Conclusions

4.23 In its conclusions on the onshore water environment [ER 5.4.42 et seq], the ExA concluded that an appropriate Flood Risk Assessment had been undertaken by the Applicant, that suitable Requirements had been included in the draft development consent order to guard against the risk of flooding, that the Applicant had provided sufficient information on flood risk to meet the requirements of the NPSs and that no further mitigation in relation to flooding was needed in the Order. The ExA also expressed satisfaction [ER 5.4 44] that subject to mitigation measures identified in the Environmental Statement and secured in the Order, there should be no adverse effects on water quality and resources from the proposed Development during its

construction, operation or decommissioning. The ExA found, therefore, that the proposed Development accords with the requirements of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and the Water Framework Directive and also met the relevant requirements of the NPSs.

4.24 As noted above (in paragraph 4.22), the ExA had already concluded that the sequential and exemption tests had been met. In light of the ExA's consideration of and conclusions on onshore water environment, the Secretary of State sees no reasons to disagree with the ExA in this matter.

Landscape and Visual Amenity

4.25 The ExA notes [ER 5.5.1 et seq] that the site of the proposed Development is not in any national or regional designation for landscape protection but does sit in within the Greater Thames Estuary Character Area and the Tilbury Marshes Local Character Area (with the latter including historic features such as Tilbury Fort, Hall Hill and Coalhouse Fort.)

4.26 The ExA references the National Policy Statements' recognition that all energy infrastructure is likely to have visual impacts [ER 5.5.4] and that it is not possible to eliminate these for fossil fuel generating stations [ER 5.5.5].

4.27 The Applicant had set out its consideration of the landscape and visual amenity impacts of the proposed Development in the Environmental Statement. The Applicant's assessment as set out in the ExA's Report [ER 5.5.6] was that while the proposed Development would be noticeable in some long-range views, it considered that these landscape impacts would be eroded by intervening vegetation or infrastructure [ER 5.5.8]. The Applicant also assesses that there would be moderate to significant visual impacts from some viewpoints (the latter restricted to viewpoints 6 and 15) during the construction of the proposed Development. However, the ExA records [ER 5.5.10] that the Applicant considers these impacts are not unacceptable in the context of the existing dockside and industrial developments.

4.28 In addition, the ExA notes [ER 5.5.11] that the draft Order requires the submission of detailed design information in accordance with the Design Principles Statement submitted with the Application. The Secretary of State notes that the Design Principles Statement describes – in paragraphs 1.1.8 and 1.1.9 – the principles of design that have informed the indicative layout and elevation drawings. The indicative drawings will be subject to further design and approval by Thurrock Borough Council prior to construction. In addition, it is proposed that the final design will have regard to the general principles described in the Design Principles Statement and to any further specific design points that may be agreed with Thurrock Borough Council.

4.29 The ExA notes [ER 5.5.13] that the Applicant's overall assessment was that there would be no material contribution from the proposed Development to cumulative significant adverse effects on landscape and visual resources.

4.30 The ExA notes [ER 5.5.14] that Thurrock Council's Local Impact Report noted that the main part of the proposed Development would benefit from its industrial and commercial context and that, while it considered that there would be an adverse

impact on the landscape this would not be significant and could be mitigated through careful design. Gravesham Borough Council noted [ER 5.5.15] that the operational development would not be prominent in long distance views or would be lost in the existing energy infrastructure setting. The ExA records [ER 5.5.16] that Historic England raised concerns about the impact of the proposed Development on historic landscape character (see paragraphs 4.53 – 4.55 below).

4.31 The ExA's record of matters raised during the examination in relation to visual and landscape effects [ER 5.5.17 et seq] generally aligns with the Applicant's assessment – that there would be some adverse effects on landscape and visual impact but that, with the designed in measures proposed and secured in relevant Requirements, the likely effect on landscape and visual resources would not be significant.

Conclusion

4.32 The ExA [ER 5.2.26] considered that, based on the evidence presented, it was satisfied that while the proposed Development would have some visual impacts, in view of its surrounding context, it would be unlikely to have a significant effect on landscape and visual amenity and meets the requirements of NPS EN-1 and NPS EN-2. The Secretary of State notes the adverse impacts from the proposed Development but agrees with the ExA's assessment that these would not be significant in relation to landscape and visual amenity. Therefore, he sees no reason to disagree with the ExA's conclusions in this matter.

Onshore Ecology

4.33 The ExA sets out [ER 5.6.1 et seq] the policy considerations in the National Policy Statements and the National Planning Policy Framework related to onshore ecology, noting that energy infrastructure development should avoid significant harm to biodiversity and geological conservation interests including through mitigation

4.34 The ExA records [ER 5.6.6 et seq] that the Applicant assessed the potential impacts on onshore ecology arising from the construction, operation and decommissioning of the proposed Development. The Applicant considered that there would be no significant cumulative impacts on onshore ecology from the operation and decommissioning of the proposed Development but that there was potential for invertebrates to be impacted during its construction. In response to this conclusion, the Applicant proposed additional mitigation, comprising the provision of habitat at the pre-commencement and construction phases which would be secured in the Outline Ecological Management Plan, itself secured in Requirement 14 of the draft Order.

4.35 Several Interested Parties including Natural England, Thurrock Council, Port of Tilbury London Limited and a member of the public [ER 5.6.15 et seq] raised concerns about the potential impacts of the proposed Development on onshore ecological issues with the last related to potential impacts on geese. The Interested Parties' concerns were addressed except for those from Port of Tilbury London Limited and the member of the public. However, the Secretary of State notes that the ExA records at ER 5.6.23 that at the close of the examination there were no significant outstanding matters that remained unresolved in relation to onshore ecology.

Conclusion

4.36 The Secretary of State notes the ExA's conclusion [ER 5.6.24] that ecological and nature conservation issues have been adequately assessed, that the proposed Development would result in biodiversity net gain and that provisions in Requirement 14 of the draft Order would ensure that significant harm to biodiversity would be avoided. The Secretary of State further notes the ExA concluded that the requirements of NPS-EN1 had been met. Having considered the ExA's assessment and conclusions, the Secretary of State sees no reason to disagree with them.

Marine Environment

4.37 The Secretary of State notes that the ExA carefully considered the impact of the proposed Development on the marine environment as a result of the construction and operation of a causeway and related works that were proposed to facilitate the movement of AILs to and from the proposed Development. However, the Secretary of State has been informed that the Applicant has reached an agreement with relevant Interested Parties on an alternative AIL access route and that the causeway and related works are no longer needed as part of the proposed Development. The Secretary of State notes that the ExA concluded that the effects of the proposed Development and its proposed causeway on the marine environment would be suitably managed and mitigated.

Conclusion

4.38 The Secretary of State has considered the ExA's assessment of and conclusions on the marine environment and sees no reason to disagree with them.

Noise and Vibration

4.39 The ExA notes [ER 5.8.1 et seq] that the National Policy Statements and the National Planning Policy Framework set out relevant matters for the assessment and consideration of noise and vibration impacts from nationally significant energy infrastructure noting that excessive noise can have adverse impacts on human health as well as on wildlife and biodiversity.

4.40 The ExA sets out [ER 5.8.6 et seq] that the Applicant provided assessments of noise and vibration impacts during the construction, operation and maintenance of the proposed Development as part of the pack of information submitted with the Application. The Secretary of State notes the Applicant considers that during construction, noise from the proposed Development and from any related traffic movements would be below the Lowest Observable Adverse Effect Level but that the Applicant still proposes mitigation to keep noise levels within acceptable levels. The Secretary of State also notes that the Applicant's assessment of noise impacts during operation, in particular [ER 5.8.11] that absolute sound levels would exceed World Health Organisation ("WHO") guidelines at a number of noise sensitive receptors but that the Applicant notes (also ER 5.8.11): "... *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*". The Applicant's conclusion [ER 5.8.12] is that the proposed Development is unlikely to cause or significantly contribute to the WHO

criterion being exceeded but that where it is exceeded, then this would have been the case before the impacts of the proposed Development were taken into account.

4.41 The Applicant's assessment of operational noise from the proposed Development [ER 5.8.13 et seq] is that, while for most noise sensitive receptors the increase in ambient noise levels would be below +3dB, for some noise sensitive receptors, night time increases in would be greater than +3dB or even +4dB. However, the Applicant argues that the baseline residual sound levels already exceed the WHO level at the majority of receptors, the additional impact from the operation of the proposed Development during the night on any sleep disturbance will be minimal and that the effects would not be significant and that no further mitigation measures would be needed beyond those already secured in the development consent order.

4.42 The Applicant assessed [ER 5.8.17] the potential impacts of the Alternative AIL Access route (Work No.15) on construction noise and vibration and concluded that this would not make any meaningful contribution to construction noise levels.

4.43 The ExA notes [ER 5.8.19] that the Applicant accepts the potential for significant adverse noise and vibration cumulative impacts to be generated when the proposed Development is considered alongside the Tilbury 2 and proposed Lower Thames Crossing development but argues that the effect is attributable to these proposals rather than to the proposed Development.

4.44 The ExA records [ER 5.8.20 et seq] that some Interested Parties raised concerns about the way that baseline noise had been assessed by the Applicant and the possible noise impacts arising from the construction of the proposed Development. In relation to the latter, the Interested Party (Condovers Scout Activity Centre) sought the use of a condition to minimise Heavy Goods Vehicle traffic movements during its peak activity time of May to August and also requested a condition to limit the use of the proposed Development between 23:00 and 07:00 between May and August to prevent sleep disturbance to those using the Centre. Both Thurrock Council and Gravesham Borough Council had no significant concerns about the potential noise and vibration impacts of the proposed Development.

4.45 During the examination, the ExA elicited information from the Applicant which addressed the concerns raised about potential noise impacts from the proposed Development. In relation to the Condovers Scout Activity Centre's concern, the Applicant pointed out that no significant adverse impacts had been predicted at the Condover site and that mitigation had already been proposed to limit impacts – there was no need for any further control to be put in place. In its response to the Applicant's stance, the ExA commented [ER 5.8.31 et seq] that changes in noise levels would be unlikely to cause any additional sleep disturbance at nearby noise sensitive receptors and that there was no justification for additional mitigation measures as requested by Condovers Scout Activity Centre.

Conclusions

4.46 The ExA concludes [ER 5.8.33 et seq] that the noise effects from the proposed Development would be below the significance thresholds set out in the Noise Policy Statement for England and the National Planning Policy Framework. The ExA remarks

that, while noise levels might exceed WHO thresholds at some times, these are already high and the proposed Development is unlikely to increase the overall effect to any material extent. In addition, the ExA notes the inclusion of sufficient safeguards (against noise impacts) in the draft development consent order and that the Application accords with policy on noise and vibration as set out in NPS-EN1 and NPS-EN2, the Noise Policy Statement for England and the NPPF. The Secretary of State notes the ExA's assessment of and conclusions on noise and vibration impacts and sees no reason to disagree with them.

Cultural Heritage

4.47 The ExA sets out [ER 5.9.1 et seq] the considerations that the Applicant should take into account when considering the potential impacts of energy infrastructure on cultural heritage assets on land and in the marine environment, and the considerations the Secretary of State should take into account.

4.48 The Applicant's approach to the consideration of cultural heritage impacts is set out in the ExA's Report [ER 5.9.14 et seq]. The ExA notes [ER 5.9.16] that the Applicant recorded no heritage assets within the main development site itself but that the surrounding area contained a number of archaeological assets some of which are close to the location of the proposed Development. The Applicant's assessment also records the potential for the proposed Development to have adverse impacts on the setting of a number of designated heritage assets.

4.49 The ExA sets out [ER 5.9.2 et seq] that the Applicant recognises that there is evidence of prehistorical activity and some of the remains, if found, would be likely to be of medium-high regional-national importance. The Applicant also recognises that where buried archaeology is present [on the site of the proposed Development], it is likely that this would be destroyed and these impacts would be permanent and non-reversible. The Applicant does, however, consider that these remains can be safeguarded through the submission and approval of Written Schemes of archaeological Investigation covering the onshore and offshore environments secured in the Order if granted.

4.50 The Applicant also considers [ER 5.9.26 et seq] the visual impact of the proposed Development on the setting of designated heritage assets and recognises that there would be a minor to moderate adverse effect on the setting of Tilbury Fort although it concludes that, given the context of the existing built and industrial landscape, the change to its setting would be limited.

4.51 The Applicant's consideration of potential impacts from the proposed Development also covered the Alternative AIL Access [ER 5.9.28 et seq] where it concluded that there would be some impacts to the setting of Tilbury Fort but that these would be temporary and reversible. In addition, it assessed the impacts on undisturbed below ground archaeological artefacts and concluded that where such impacts might occur, they would be mitigated through a programme of archaeological works as set out in the Outline Written Scheme of Investigation ("WSI").

4.52 As far as cumulative effects are concerned, the Applicant concluded [ER 5.9.31] that there would be no material contribution from the proposed Development to cumulative adverse effects on the historic environment.

4.53 The ExA notes [ER 5.9.32] that Historic England raised serious concerns about the Applicant's assessment of the significance of below ground archaeological deposits considering that there was no adequate understanding of the potential impact of the proposed Development on them, their extent or significance for the effect of the Proposed Development to be assessed and for the balance to be weighted proportionally. Historic England also [ER 5.9.33] raised concerns about the setting of designated heritage assets – St James Church, the Scheduled Monument known as 'earthworks near church' and the Second World War anti-aircraft battery at Bowaters Farm. In addition, Historic England objected to the loss of Walton Common as a feature of the historic landscape and raised further concerns about the potential cumulative effect of the proposed Development with other planned developments.

4.54 The ExA records [ER 5.9.34] that Thurrock Council held similar concerns to those raised by Historic England in relation to below ground archaeological assets and the setting of designated heritage assets but that the Council later confirmed it considered that less than substantial harm would result to the setting of heritage assets. However, the Council retained its position in relation to below ground archaeological assets [ER 5.9.35].

4.55 The ExA notes [5.9.36 et seq] that it asked for further information from the Applicant about its assessment of the impact of the proposed Development on heritage assets. The ExA also notes that discussions about this matter between the Applicant, Historic England and Thurrock Council continued throughout the examination which resulted in signed Statements of Common Ground being submitted at its close.

4.56 The ExA sets out its consideration and findings on 'archaeology' [ER 5.9.41 et seq] and on 'the setting of designated heritage assets' [ER 5.9.48 et seq]. In relation to the former issue, the ExA notes disagreement between the parties on whether investigative works by way of 'trial trenching' should be carried out pre-consent or post-consent. However, the ExA was satisfied that the submission of WSIs for both terrestrial and marine archaeology went some way to ensuring safeguards would be in place to protect the potential below ground archaeology in the event any was discovered. Despite this, the ExA accepts that there would be potential where buried archaeological remains were discovered for the proposed Development to result in their total loss. Notwithstanding, the ExA was satisfied that the likelihood of significant effects could be guarded against by means of the proposed WSI ensuring that any actual harm would be less than substantial. As far as the setting of designated assets is concerned, the ExA notes that there were unresolved issues between the parties which were set out in the relevant Statement of Common Ground. The ExA notes that it carried out site inspections which encompassed views of the designated assets. While noting that there would be some visual impact from the proposed Development, the ExA concludes that this needs to be considered in the context of the existing industrial and commercial infrastructure. The ExA states that [ER 5.9.55], in line with all parties to this matter, it takes the view that neither the individual nor the totality of

the harm to the settings of the aforementioned assets would be substantial.

4.57 The ExA also considered the potential impacts on the historical significance of Walton Common [ER 5.9.56 et seq]. The ExA notes that existing infrastructure means that the Common makes a limited contribution to the overall character of the historic landscape. The ExA also notes that, while Walton Common is one of the five interlinked commons on West Tilbury Marshes, this is not readily apparent – no particular historic landscape character has been identified, the loss of which would indicate any material harm to the historic landscape. The loss of Walton Common would not, therefore, result in any harm to the historic landscape character of the Thames Estuary.

4.58 As far as the cumulative impacts of the proposed Development along with other relevant proposed developments in the locality are concerned, the ExA's findings [ER 5.9.59 et seq] were that, while accepting that the Applicant was not able to present visualisations for the proposed London Resort and Lower Thames Crossing, it would have been helpful to have further visualisations beyond those that were produced. However, notwithstanding that point, the ExA's overall conclusion is that the Applicant did provide sufficient information to show that any cumulative effects arising from the proposed Development would be unlikely to make a significant contribution when considered with the aforementioned, much larger, proposed developments.

Conclusions

4.59 The ExA considers [ER 5.9.62] that the Applicant has adequately assessed the significance of the heritage assets affected so that the extent of the likely impact can be understood, and that the Application meets the requirements of NPS EN-1 in this regard. However, the ExA states [ER 5.9.63] that the proposed Development would result in harm to archaeological remains, if present, but that this would be mitigated by the proposed WSIs secured under Requirement 13 (Archaeology) in the Order. The ExA also found there would be harm to the setting of designated heritage assets and that this should, in line with the requirements of NPS EN-1 weigh against the public benefits of the proposed Development.

4.60 The Secretary of State has considered the ExA's assessments and conclusions and notes the conclusion that the proposed Development would result in harm to notional archaeological remains and specified heritage assets. In this context, he notes the risk that the proposed Development would have an effect on the setting of St James Church, Tilbury Fort and Bowaters Farm. NPS EN-1 indicates that loss affecting any designated heritage asset should require clear and convincing justification and where there is harm to the significance of a designated heritage asset, it should be weighed against the public benefit of development.

4.61 In addition, the Secretary of State is aware that, where there is an identified harm to a heritage asset, he must give that harm considerable importance and weight and he does so in this case. Nevertheless, in light of the public benefit of the proposed Development, the Secretary of State agrees with the ExA [ER 7.1.23] that the harm to cultural heritage assets is clearly outweighed by the public benefits that would result from it.

Traffic and Transport

4.62 The ExA notes [ER 5.10.1] that NPS EN-1 recognises that new energy infrastructure can result in substantial impacts on the surrounding transport infrastructure. NPS EN-1 also 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 Secretary of State should seek to ensure that the application has sought to mitigate impacts, including during the construction phase of a development. In addition, the ExA notes [ER 5.10.2] that 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. The ExA also records that NPS EN-2 also encourages the multi-modal transport of materials and the locating of fossil fuel generating stations close to existing transport routes wherever possible.

4.63 The ExA notes [ER 5.10.3 et seq] that the Applicant considered the impacts of the proposed Development on traffic and transport. The Applicant's Transport Assessment sets out that the largest items of plant for the proposed Development would be delivered by way of the River Thames and the proposed causeway or by way of an alternative route (if identified). Deliveries made to the site from the causeway would be routed along an existing haul road and then proceed to the site by one of two haul roads.

4.64 Other access points to the site of the proposed Development for HGV construction traffic are identified by the Applicant and their impacts, along with all other traffic and transport impacts, are considered in the Environmental Statement submitted with the Application [ER 5.10.7]. The Applicant proposes mitigation measures to reduce the potential impacts of the traffic and transport elements of the proposed Development and the Applicant's overall assessment [ER 5.10.11] is that there would be no significant effects as a result of construction vehicle movements. The Applicant also concludes [ER 5.10.13] that there would be no significant cumulative impacts from the proposed Development when considered along with other planned developments in the surrounding area.

4.65 The ExA's Report [ER 5.10.14 et seq] sets out the views of Interested Parties on the proposed Development. The ExA notes that a number of Interested Parties expressed concerns about the potential impacts of the proposed Development on traffic and transport matters and that, while some of these were addressed (Royal Mail and Network Rail). However, other concerns remained including from Highways England, Port of Tilbury London Limited and Condoovers Scout Activity Centre.

4.66 Highways England's concerns related to the number of additional vehicles needing to make the journey from the port to the application site and safety concerns at the 'Asda Roundabout' which it did not consider had been sufficiently explored by the Applicant. The Port of Tilbury London Limited raised concerns about the robustness of predicted vehicle movements, baseline assessments, traffic modelling at the Asda Roundabout, the levels of shared transport provision, potential congestions within Tilbury 2 and potential interaction with the Tilbury 2 rail chord. The Port of Tilbury London Limited also sought a greater role in the management of

construction traffic as well as protective provisions in its favour including in relation to traffic movements within the Tilbury 2 site. It also had concerns in relation to the delivery of AILs via the causeway. Condozers Scout Activity Centre raised concerns about additional traffic movements and sought to set limits on HGV movements.

4.67 The ExA sets out [ER 5.10.22 et seq] that it asked a number of questions of Interested Parties (including the Applicant) during the examination across a range of relevant issues. The Applicant provided further information and confirmed that the Addendum to its Cumulative Environmental Assessment Addendum, which was submitted as part of the Environmental Statement that accompanied the Application, took account of the most recent information available on planned developments including the Lower Thames Crossing and the London Resort.

4.68 After discussion throughout the examination, Highways England and the Applicant submitted a Statement of Common Ground which confirmed there were no unresolved matters between them at the close of the examination. Highways England confirmed [ER 5.10.27] that it was content that the impact on the Asda Roundabout could be suitably managed with the measures secured in the Construction Traffic Management Plan. The ExA also notes that Highways England have a consultative role in the discharge by the local planning authority of a number of relevant Requirements in the draft development consent order.

4.69 RWE Generation (UK) plc reached an agreement with the Applicant about the inclusion in the draft development consent order of a provision to ensure that only one of the two possible haul roads that were proposed for AILs (see paragraph 4.63 above).

4.70 The Port of Tilbury London Limited has been given a consultative role in relation to both the Construction Traffic Management Plan and the Construction Workers Travel Plan. There are also provisions in the Outline Construction Traffic Management Plan for the Applicant and Port of Tilbury London Limited to cooperate to form specific construction traffic management measures in vehicles routing through Tilbury 2 and throughout the construction period. The ExA also notes [ER 5.10.29] that Port of Tilbury London Limited benefits from Protective Provisions in the draft development consent order which provide protections against congestion and obstructions in the Port.

4.71 The ExA notes [ER 5.10.30] that the Applicant responded to the concerns raised by Condozers Scout Activity Centre by pointing out that the Application already included mitigation options which would limit the impacts of construction traffic. In addition, the Applicant points out [ER 5.10.31] that the discharge of Requirement 6 of the draft development consent order would include measures to minimise impacts on all receptors as far as possible. The Applicant rejected the request from Condozers Scout Activity Centre for the closure of one of the construction route options because it would amount to a block on construction in certain circumstances.

4.72 The ExA [ER 5.10.32 et seq] accepts the Applicant's conclusion that the proposed access and proposed routes for the proposed Development would have no significant effects on the Strategic Road Network or on road safety. The ExA also concludes that the final Construction Traffic Management Plan would provide

necessary mitigation. The ExA, therefore, concludes that the Application meets the requirements of NPS EN-1 and NPS EN-2 in this respect.

4.73 The ExA notes separately [ER 5.10.35 et seq] that the AIL access routes were the subject of much discussion throughout the examination because of the retention of the proposed causeway during the operation of the proposed Development. The ExA records that there was a clear preference among the majority of Interested Parties for the Applicant to explore alternatives to the causeway and if no acceptable alternative was found to include in the development consent order a review mechanism to help identify one and facilitate the early decommissioning of the causeway. In response the Applicant included Requirements 18 and 19 in the draft development consent order that provide for regular reviews of Alternative AIL Access routes and, if appropriate, the early decommissioning of the causeway. In addition, Work No 15 and necessary compulsory acquisition powers 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. The ExA considers that the proposed additions to the development consent order provide adequate mechanisms to facilitate early removal of the causeway if an acceptable alternative is found. However, the ExA's final conclusion in relation to AIL Access [ER 5.10.38] is that AIL delivery via the causeway would not result in any significant environmental effects in relation to transport and traffic.

Conclusion

4.74 The ExA (ER 5.10.39 et seq) overall conclusion on traffic and transport impacts is that no significant transport and traffic effects are likely to arise from the proposed Development either alone or in combination with other developments. The ExA also finds that measures secured in the draft development consent order are sufficient to mitigate any likely adverse effects to an acceptable level. Therefore, the ExA finds that the proposed Development meets the requirements of NPS EN-1 and NPS EN-2. The Secretary of State has considered the ExA's assessments and conclusions in relation to this matter and finds no reason to disagree with them. However, the Secretary of State notes that there is now an agreement in place between the Applicant, Port of Tilbury London Limited and RWE Generation (UK) Plc about the use of the Alternative AIL Access route and that the causeway would not, therefore, be utilised. (As a result, causeway-related Requirements would not form part of the development consent order.)

Public Health and Amenity

4.75 The ExA [ER 5.11.1 et seq] sets out impacts on health, as recognised in relevant National Policy Statements.

4.76 The Application provides [ER 5.11.3 et seq] assessments of the potential impacts of the proposed Development on human health and amenity. The Applicant concludes that there is the potential for adverse effects from the proposed Development when considered with other developments but that the former would be small and not significant in Environmental Impact Assessment terms. Public Health England sought further information about deprivation levels at Walton Heath and the

'replacement land' and cycle parking provisions at the proposed Development. No other Interested Parties raised any other concerns.

4.77 The Applicant's response to Public Health England's request for further information [ER 5.11.9] set out that neither Walton Common nor the replacement land had any residents and there would be no change in the deprivation level of the population with access to the relevant common land. Public Health England accepted this analysis and confirmed that they consider the health impacts of Particulate Matter and NO₂ had been appropriately assessed by the Applicant.

Conclusions

4.78 The ExA concludes [ER 5.11.12 et seq] that 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. The ExA is also satisfied that the Application is in accordance with the relevant National Policy Statements. The Secretary of State has considered the ExA's assessment and conclusions in respect of this matter and sees no reason to disagree with them.

Land Use, Agricultural and Social-Economic Impacts

4.79 The ExA notes [ER 5.12.1 et seq] that the site of the proposed Development is in the Green Belt and that NPS EN-1 makes clear that the Green Belt exists to prevent urban sprawl. NPS EN-1 also sets out that the most important attribute of the Green Belt is its openness. There is a general presumption against 'inappropriate development' in the Green Belt, although some types of energy infrastructure, for example, underground pipelines might be located there where they can be considered as 'engineering operations' (rather than inappropriate development). In some circumstances ('Very Special Circumstances') inappropriate development in the Green Belt might be permitted, where any harm is outweighed by other considerations.

4.80 The ExA sets out [ER 5.12.6 et seq] that NPS EN-1 recognises the need for the Applicant to consider the social-economic impacts of proposed developments in formulating any applications for development consent and for the Secretary of State to assess whether the developer has made any positive provisions to mitigate any impacts.

4.81 The ExA [ER 5.12.9] also points out that NPS EN-1 contains provisions in respect of open space and green infrastructure and indicates that where development is proposed on these assets, then the Secretary of State should consider the need for 'exchange land' to mitigate any impacts. The ExA also states that where section 131 and 132 of the 2008 Act apply, then replacement land provided under those sections will have to conform to the requirements of those sections of the Act. Finally, the ExA points out that developers should aim to minimise the effects of their proposed development on 'best and most versatile' agricultural land and preferably use land in areas of poor quality.

4.82 The Applicant's Environmental Statement considers the land-use, agricultural and social-economic effects of the proposed Development [ER 5.12.11 et seq].

4.83 In respect of its consideration of the impact of the proposed Development on agricultural land, the Applicant notes the use of some Grade 3b land and a small amount (around 1.15 hectares) of higher quality Grade 3a land. The ExA notes [ER 5.12.16] the Applicant's assessment that the proposed Development would have a major impact on agricultural land quality during construction based on the combined total permanent and temporary effects identified. However, set against the major impact would be measures to restore soils and land quality at the end of the construction period to reduce impacts on best and most versatile agricultural land. The Applicant's overall outcome, therefore, was that the permanent loss of the lower quality Grade 3b land would result in a moderate adverse effect during construction, operation and maintenance. Finally, the Applicant assesses [ER 5.12.18] that there would be a permanent loss of around 20 hectares of land together with the temporary effect on a further 10 hectares but concludes that the loss of these areas from two large arable land holdings would represent a negligible impact.

4.84 On common land, the ExA records [ER 5.12.19] that the main site of the proposed Development includes an area of around 10 hectares of registered common land – Walton Common which forms part of a wider Common land register unit known as The Green, Hall Hill, Fort Road, Parsonage and Walton Commons. The land is subject to rights of common as well as public rights of access. Additionally, 0.08 hectares of Tilbury Green Common would be temporarily affected by works associated with the laying of the proposed gas pipeline which forms Work No. 4 and it might be necessary to restrict access to the area of the work for safety. Further, a small part (0.05 hectares) of Tilbury Fort Common would be affected by the proposed Alternative AIL Access Route. Thus, the total area of common land to be lost would be around 10.15 hectares.

4.85 The Applicant proposes to create a new area of replacement common land in Zone E of the proposed Development to mitigate for the loss on to which the rights of common and access would be transferred. The replacement land is provided for in Article 33 of the draft development consent order.

4.86 The Applicant also asserts [ER 5.12.22] 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 would be available for use before the commencement of construction. In light of these matters, the Applicant considers that the magnitude of the impact of the proposed Development on Common Land is minor beneficial. Finally, in relation to impacts on Common Land [ER 5.12.23], the proposed new permissive footpath would shorten the walking distance to the area of replacement common land. As indicated, the route to the exchange land would be a permissive footpath which would be secured through contractual agreement with the landowner.

4.87 In respect of public rights of way [ER 5.12.24 et seq], the Applicant sets out that the proposed Development would affect two public footpaths – FP 146 and FP200. For FP146, which forms part of National Cycle Route 13, the current route would be retained during construction but measures would be put in place to manage any interaction of pedestrians and cyclists and construction traffic. The relevant measures would be included in the final Code of Construction Practice and secured in Requirement 5 of the draft development consent order. The Applicant sets out the

possible need for a temporary short diversion to be put in place along FP200 to facilitate the construction of the gas pipeline in Zone D of the proposed Development. The ExA notes [ER 5.12.26] that the Applicant concluded the significance of effect on these footpaths would be minor adverse. The ExA further notes that no concerns were raised by Interested Parties and that it, therefore, has no reason to reach a different conclusion to the Applicant's.

4.88 The ExA sets out [ER 5.12.27] that the Applicant estimated that an average of 250 full-time construction jobs would be created over the construction period of the proposed Development and that this would be a minor to moderate benefit. The ExA notes no concerns were raised about the Applicant's analysis and there was no reason, therefore, to reach a different conclusion to the Applicant's.

4.89 As indicated in paragraph 4.79 above, the Green Belt receives considerable protection from inappropriate development. The Applicant considered the impacts of the proposed Development in its Statement of Case and Green Belt Statement both of which formed part of the documentation submitted with the Application. The ExA notes [ER 5.12.29 et seq] the Applicant's argument that much of the associated development for the proposed Development can be considered to be engineering operations and would not be classed as inappropriate development in the Green Belt as long as it preserves its openness and does not conflict with the purposes of including land within it.

4.90 However, the ExA records [ER 5.12.31] that the Applicant also accepts that the above ground elements of the proposed Development would be inappropriate development within the Green Belt, and that they would be, by definition, harmful. The Applicant also accepts that there would be harm to the openness of the Green Belt and conflict with one of the Green Belt's main purposes – to prevent encroachment into the countryside – but considers that, overall, the harm would be limited. The Applicant [ER 5.12.32 and 5.12.33] noted that the site of the proposed Development was adjacent to the existing Tilbury substation and that it contained pylons and overhead power lines. Given that context, it considered that the contribution the site made to the Green Belt's openness was limited but acknowledged that elements of the proposed Development would result in built above ground development at Work No.s 1, 5, 8 and 13 where none currently exists. The ExA's Report [ER 5.12.33] noted that generating stations must connect into the electricity network at existing substations and 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. The ExA summarises the Applicant's position [ER 5.12.34] as being that there would be harm by way of inappropriate development, harm to openness and conflict with one of the five purposes of the Green Belt but that any harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposed Development.

4.91 Thurrock Council accepted [ER 5.12.35] the proposed Development would constitute inappropriate development in the Green Belt, would impact negatively on openness and would not safeguard the countryside from encroachment but considered that very special circumstances exist which outweigh the harm. The

Council also accepted that the proposed Development would result in the permanent loss of agricultural land but did not object to the loss common land in land use terms because of the replacement land.

4.92 Gravesham Borough Council noted [ER 5.12.37] that the neighbouring site is vacant and consists of previously developed land whose former use was a power station. It argued that it could be used again without damage to the Green Belt.

4.93 The Port of Tilbury London Limited expressed concerns [ER 5.12.38] about the impacts the causeway would have on its expansion plans and on the proposed Thames Freeport. The ExA notes that these plans are at a very early stage of development and do not form part of any approved scheme but there is still potential for interaction between the two proposed developments. RWE Generation (UK) plc also supports the Thames Freeport proposals, noting that further opportunities for energy generation might result. The company also emphasises the importance of retaining access to the river frontage. Thurrock Council noted [ER 5.12.40] that the Thames Freeport was a priority development which would provide many benefits. The Council also preferred the Alternative AIL Access option as opposed to the proposed causeway and noted that other Interested Parties were of the same view. A number of other Interested Parties [ER 5.12.41] expressed support for the Freeport and use of the Alternative AIL Access rather than the causeway.

4.94 During the Examination, the ExA sought to clarify the benefits of the proposed Development and the views of the host authority on the Applicant's approach [ER 5.12.42 et seq]. As noted in paragraph 4.91 above, Thurrock Council considered that very special circumstances exist which outweigh harm to the Green Belt. The ExA sets out that Works No.s 1, 5, 8 and 13 would constitute inappropriate development in the Green Belt and that, despite the fact that openness has already been eroded, would have a negative impact on the openness of the Green Belt. Whilst acknowledging the proposed Development would be seen in the context of high-density electricity infrastructure, the ExA concluded that the proposed Development would represent an encroachment into the countryside and thus be in conflict with this purpose of the Green Belt.

4.95 As far as its consideration of potential impacts of the proposed Development on the proposed Thames Freeport are concerned, the ExA notes [ER 5.12.47 et seq] that it has considered the matter carefully and is mindful of the impact that development in this area might have on a key Government objective. The ExA had regard to the National Policy Statement for Ports and agreed it was an important and relevant consideration in so far as the proposed Development would affect the Port of Tilbury. However, the ExA considers that the plans provided by Port of Tilbury London Limited are aspirational and, therefore, there is no robust evidence that the proposed Development would have any material impact on the deliverability of the Thames Freeport.

4.96 In respect of its consideration of potential impacts of the proposed Development on Common Land, the ExA notes [ER 5.12.49] that while the proposed permissive route would provide more convenient access for those living in West Tilbury, the fact that the route is permissive puts a limit on its benefit and it does not, therefore, weigh positively in favour of the proposed Development. The ExA was, however, subject to

its conclusions in respect of the adequacy of the proposed replacement land (see paragraph 7.14 below), satisfied that the provision of replacement land meant that the loss of common space would not have any significant land use, agricultural or socio-economic effects.

Conclusions

4.97 The ExA [ExA 5.12.50 et seq] sets out the moderate positive socio-economic benefit of the proposed Development, which it affords moderate weight [ER 7.1.28]. The ExA also notes that there would be some temporary impacts on public rights of way and permanent loss of common land but that there is no reason, in principle, why these could not be mitigated by the measures proposed. The ExA's concluding point is that the proposed Development would result in the loss of agricultural land (contrary to NPS-EN1; [ER 7.2.1]) and would be inappropriate development in the Green Belt which would, by definition, be harmful. It would negatively impact on the openness of the Green Belt and would be in conflict with one of the purposes of the Green Belt and so would be in conflict with the NPS EN-1. The ExA [ER 7.2.1] gives substantial weight to the adverse impacts of the proposed Development on agricultural land and the Green Belt.

4.98 The Secretary of State notes the weight accorded by the ExA to the loss of agricultural land and the harm to the Green Belt. The Secretary of State also notes that paragraph 5.10.17 of NPS EN-1 states that "In view of the presumption against inappropriate development, the [decision-maker] will attach substantial weight to the harm to the Green Belt when considering any application for such development". He agrees, therefore, that these matters should attract substantial weight against the proposed Development. This matter is considered further in Section 8 (The Secretary of State's Consideration of the Planning Balance) below.

Cumulative and Combined Effects

4.99 The ExA records [ER 5.13.2 et seq] that the Applicant provided information about the cumulative and combined impacts of the proposed Development in the Environmental Statement that was submitted with the Application. The ExA notes that where cumulative impacts are found, the Applicant concludes that either there would be no significant effects or, where there were any, the proposed Development's contribution would be negligible and would not change the significance of the cumulative effect identified. The Applicant's conclusion, therefore, is that no further mitigation or monitoring measures are needed. There were no further matters to be resolved at the close of the examination in relation to this matter. The ExA was satisfied that no long term and cumulative adverse impacts were likely to arise from construction, operation and decommissioning activities and that the requirements of NPS EN-1 were, therefore, met.

Conclusion

4.100 The Secretary of State has considered the ExA's assessment and conclusions in respect of this matter and sees no reason to disagree with them.

Climate Change

4.101 The ExA notes [ER 5.14.1 et seq] that The Climate Change Act 2008 as amended sets a legally binding target for the UK to reduce its net Greenhouse Gas emissions by 100% from 1990 levels. The ExA also notes that NPS EN-1 recognises that gas is the cleanest and most reliable fossil fuel with a continuing part to play in the transition to a low carbon economy.

4.102 The ExA sets out [ER 5.14.7 et seq] that the Applicant recognised the most significant risk [arising from climate change] was the risk of flooding at the site of the proposed Development. The Applicant had also considered the potential effects of the proposed Development on climate change and provided an assessment of the impact on Greenhouse Gas emissions over its lifetime – concluding that it would result in the equivalent of around 46 million tonnes of CO₂ emissions but that these would be offset by any emissions displaced or avoided.

4.103 The ExA noted [ER 5.14.12 et seq] that Thurrock Council, while acknowledging the benefits of the proposed Development, set out that it considered the impact on climate change would be negative. The ExA also noted that Essex County Council sought to ensure that suitable mitigation was in place during the operation of the proposed Development and wanted safeguards to be put in place in relation to carbon capture readiness land. Essex County Council also considered that the gas-fired generating station would be contrary to its aspirations for a greener Essex.

4.104 During the examination, the Applicant explained [ER 5.14.15 et seq] that it had assessed Greenhouse Gas emissions in the context of the UK's carbon budgets and policy goals for carbon reduction. The Applicant recognised that, while emissions would increase as a percentage of the UK's carbon budget for 2033 – 2037, they would still remain well below a 1% contribution. The Applicant also drew attention to the Climate Change Committee's Sixth Carbon Budget Report: The UK's path to Net Zero (which was issued in December 2020 after the Application was submitted) which set out that 'a more flexible electricity system will help balance out the variability in renewable generation'. The Applicant also set out that providing reliable back-up capacity is crucial to the further deployment of intermittent renewable generation and that doing so in a fuel-efficient manner would be a benefit of the use of reciprocating gas engines in the proposed Development.

4.105 The Applicant also drew attention [ER 5.14.18] to the role of carbon capture and storage in the reduction of Greenhouse Gas emissions and pointed to two Requirements in the development consent order which secure the land needed for carbon capture readiness and provide for a carbon capture monitoring report to be submitted to the Secretary of State every three years stating whether the retrofitting of carbon capture technology is feasible.

Conclusion

4.106 The ExA notes [ER 5.14.21 et seq] the potential emissions of 46 million tonnes of Greenhouse Gases over the lifetime of the proposed Development but sets this against the recognition in NPS EN-1 that there is an ongoing need for development of the type being proposed by the Applicant to maintain security of supply and to provide

flexible back up for intermittent renewable energy. The ExA also points out that peaking plants like the proposed Development provide, for example, a flexible and quick response to National Grid demands for electricity at short notice. The ExA accepts the overall contribution of the proposed Development to the carbon budget would be less than 1% and that this would to a large extent be offset by the displacement of other, less flexible, technologies. The ExA also notes that NPS EN-1 and NPS EN-2 do not require applications for development consent to be assessed in terms of their carbon emissions against carbon budgets and that the increase in Greenhouse Gas emissions from the proposed Development would be dealt with as part of a managed, economy wide, approach. Finally, the ExA considers that adequate consideration has been given to minimising the flood risks associated with climate change and that the proposed Development would be in accordance with the guidance in NPS EN-1 and NPS EN-2.

4.107 The Secretary of State is aware of the contribution to Greenhouse Gas emissions that the proposed Development would make but considers that the contribution the peaking plant would make to supporting the increased deployment of low carbon electricity generation (through providing fast response electricity at times of low renewable generation to offset any intermittency in supply) is a benefit in its favour. The Secretary of State notes the fact that the proposed Development would be carbon capture ready which also weighs in its favour. Overall, therefore, the Secretary of State has considered the ExA's assessment and conclusions in respect of this matter and sees no reason to disagree with them.

5. Other Matters

Carbon Capture Readiness ("CCR")

5.1 The Secretary of State notes that the ExA considered the obligations which derive from the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 and National Policy Statement EN-1 in respect of carbon capture readiness. As the proposed Development is for a gas-fired power station over 300MW, the ExA notes that it is necessary to assess whether it is technically and economically feasible to retrofit the equipment necessary to capture the CO₂ that would otherwise be emitted from the plant. The ExA was satisfied that the Applicant's Carbon Capture Readiness Assessment demonstrated that it would be feasible to retrofit the necessary carbon capture equipment and transport the captured CO₂ to a suitable storage area. The Secretary of State has no reason to disagree with the ExA's assessment in this matter.

5.2 However, he noted that the Applicant's Carbon Capture Readiness Assessment (February 2020) states: ".....The intention is to build the plant out to an initial capacity below 299MW followed by a further development beyond 299MW, which would trigger CCR demonstration for the full 600MW". As the Carbon Capture Guidance is relevant to applications for power stations with an electrical generating capacity at or over 300 MW gross capacity, he asked the Applicant to provide details of the gross electricity generating capacity for a potential 'Phase 1' only development and how this would impact on any requirements for carbon capture and recovery for that Phase in the event it was to be the only one constructed if development consent was granted.

5.3 The Applicant responded acknowledging that the first phase of the development could exceed the 300MW gross CCR threshold and that it accordingly intended to produce monitoring reports for that phase. It conceded that the wording of Requirement 23 might be ambiguous in that respect and so suggested an amendment to ensure that the obligation in respect of CCR reporting in Requirement 24 takes effect when the first phase is completed and not just on completion of the full development. The Secretary of State has accepted this suggestion and has amended the Order accordingly. He is, therefore, satisfied that matters in respect of carbon capture readiness have been dealt with satisfactorily.

Combined Heat and Power

5.4 The Secretary of State notes that the ExA is satisfied that the Applicant's Combined Heat and Power ("CHP") Report on the possibility of operating the plant as a CHP plant has properly assessed the issue in line with the requirements of the National Policy Statements. He agrees with the ExA's conclusion that the provision of CHP is not compatible with the short term and intermittent peaking nature of the generation plant proposed. The ExA does not consider that the proposed Development should be required to be constructed so as to be CHP ready; the Secretary of State agrees.

Submissions to the Secretary of State after Receipt of the ExA's Report

5.5 The Applicant's solicitors, Burges Salmon, wrote to BEIS officials on 16 November 2021 to indicate that good progress had been made by the Applicant, Port of Tilbury London Limited and RWE Generation (UK) plc in resolving issues between those parties in relation to the alternative AIL access route and that a substantive update would be provided by 26 November 2021. Burges Salmon subsequently wrote to BEIS officials on 30 November 2021 which indicated that, while progress had been made in resolving issues between the parties, the parties would wait until a formal request for information was made by the Secretary of State.

5.6 In the absence of an agreement on AIL access, the Secretary of State consulted with the parties concerned on 21 December 2021 with a request to receive the latest information on the state of play. In their responses to the request, the Applicant, Port of Tilbury London Limited and RWE Generation (UK) plc set out that agreement had been reached on the alternative AIL access route and that the Applicant would, therefore, ask the Secretary of State to remove the provisions relating to the proposed causeway and related works (Works 10 and 11 and specific parts of Work 12). In addition, changes were requested in relation to the Port of Tilbury London Limited and RWE Generation (UK) plc's land and street works within the ownership or control of the Port of Tilbury London Limited and RWE Generation (UK) plc. With the exception of the definition of Port, the changes were agreed by the Port of Tilbury London Limited and RWE Generation (UK) plc.

5.7 The Secretary of State notes that there was a conflict in the positions adopted by the Applicant and the Port of Tilbury London Limited in relation to the definition of 'the Port'. In particular, Port of Tilbury London Limited (in its letter of 21 January 2022) asked the Secretary of State to adopt a definition which includes specific land in the Freeport Tax Sites (Thames) Regulations 2021 in which the Port of Tilbury London

Limited holds an interest. However, the Applicant opposed this, setting out the reasons in its letter of 24 January 2022. Those reasons included that the Port of Tilbury London Limited is seeking to include future expansion within the definition, which the Applicant submits is not reasonable. The Applicant submits it does not consider it to be fair or reasonable that it can become bound by the Protective Provisions in respect of considerable areas of land at an uncertain point in the future simply because this is acquired by Port of Tilbury London Limited and which cannot, by its nature, be in Port use at the time any development consent order is made.

5.8 Port of Tilbury London Limited submitted a further letter to the Secretary of State, received on 11 February 2022, setting out its response to the Applicant's letter of 24 January 2022 referenced in paragraph 5.7 above. The letter also provided the Secretary of State with a list of Port of Tilbury London Limited's consideration of typographical and other errors in the last development consent order submitted.

5.9 The Secretary of State has considered all the issues raised in the responses to his consultation letter, including all arguments from both the Applicant and the Port of Tilbury Limited and the ExA's consideration of the definition of port [9.5.21 et seq]. He has also considered the letter of 10 February 2022 from Port of Tilbury London Limited. The Secretary of State agrees with the ExA's view that extending the protection for Port of Tilbury London Limited would not be justified. The Secretary of State considers that the provisions proposed by the Applicant offer appropriate protection to the Port of Tilbury London Limited in respect of any interaction with the proposed Development. A definition of "the Port" and "Work no.15 land" have been added into Article 2 of the development consent order, further to changes requested by the Applicant. The Secretary of State has also made some typographical changes to the development consent order.

6. Findings and Conclusions in Relation to Habitats Regulations Assessment

6.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the proposed Development would be likely, either alone or in combination with other plans or projects, to have a significant effect on a European site as defined in the Habitats Regulations.

6.2 The Convention on Wetlands of International Importance 1971 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites defined in the Habitats Regulations (collectively referred to in this decision letter as "protected sites").

6.3 If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations. The Secretary of State may only agree to the proposed Development if he has ascertained that it will not adversely affect the integrity of a protected site. This process is collectively known as a Habitats Regulations Assessment ("HRA").

6.4 The preparation of the HRA that is published alongside this decision letter was prepared by environmental specialists in BEIS. The HRA concludes that a likely significant effect cannot be ruled out in respect of two protected sites when considered alone or in-combination with other plans or projects [ER 6.5.10]: the Thames Estuary and Marshes SPA and the Thames Estuary and Marshes Ramsar site. It was, then, necessary to consider whether the proposed Development, either alone or in combination, would have an adverse effect on the integrity of those sites. An Appropriate Assessment (“AA”) was, therefore, undertaken by the Secretary of State to determine whether an adverse effect on the protected sites could be ruled out in light of the sites’ conservation objectives.

6.5 In response to his letter dated 21 December 2021, the Applicant, Port of Tilbury London Limited and RWE Generation (UK) plc confirmed that agreement had been reached in relation to securing an ‘Alternative AIL Access Route’ and a suitable voluntary agreement had been signed. As such, likely significant effects which were associated with the construction, operation and decommissioning of the causeway no longer form part of the HRA.

6.6 The effects of changes to water quality and changes to hydrology from the proposed Development alone and in-combination with other plans or project were taken forward to the AA to consider whether there would be an adverse effect on the integrity of the Thames Estuary and Marshes SPA and Ramsar site. The Applicant proposed pollution control measures and safeguards to mitigate the risk of contaminated runoff, silt and pollutants reaching watercourses. Full details of the pollution measures and safeguards were provided in Volume 3, Chapter 15: Hydrology and Flood Risk of the ES and the Outline Code of Construction Practice. The Applicant referred to the Conceptual Drainage Strategy which sets out that drainage ditches removed by the proposed Development will be replaced with a reconfigured ditch network that will not alter the hydrodynamic regime overall outside the main development site itself. Discharges to water and the environmental management of the proposed Development will be regulated by the Environment Agency through an Environmental Permit.

6.7 In the Statement of Common Ground between Natural England and the Applicant, Natural England agreed that appropriate mitigation measures in the form of surface water management measures and pollution control safeguards had been identified to ensure there would be no adverse effect on the integrity of both sites from the proposed Development alone or in-combination with other plans or projects. These mitigation measures are secured in Requirements 5 and 10 of the Order.

6.8 The Secretary of State notes that the ExA concluded that the proposed Development, subject to mitigation measures set out in the recommended Order, would not have any adverse effects on the integrity of the Thames Estuary and Marshes SPA and Ramsar site [ER 6.8.6 and 6.8.7]. The Secretary of State finds no reason to disagree with the ExA’s conclusion on this matter.

7. Compulsory Acquisition and Related Matters

7.1 The Application included proposals for the compulsory acquisition and temporary possession of land and rights over land.

7.2 The ExA [ER 8.2.2] notes that none of the land included in the request for compulsory acquisition is ‘Crown Land’, National Trust land or ‘Open Space’ but that a request is made to authorise the compulsory acquisition of land and rights over registered common land. The ExA also notes [ER 8.2.3] that the Applicant provided various documents as part of the Application to support the request for powers of compulsory acquisition and temporary possession and set out the Applicant’s rationale for making the request:

“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”.

7.3 The ExA also sets out [ER 8.4.1] that the Applicant sought powers for the acquisition of: all interests including freehold over a number of plots of land; permanent new rights over a number of plots; the temporary possession of several plots and land, rights and apparatus belonging to statutory undertakers within the Order land, including powers to extinguish and suspend existing rights and to remove and reposition statutory undertakers’ apparatus. Each of the requested powers is linked to a provision in the development consent order.

7.4 The ExA provides its consideration of the tests in the 2008 Act [ER 8.5.1 et seq] noting that they derive from sections 122(2), 122(3), 123, 127, 131, 132, 138 of and Schedule 5 to the Planning Act 2008. The ExA [ER 8.5.9] also draws attention to provisions in the Neighbourhood Planning Act 2017 which relate to the temporary possession of land (although noting that they were not in force at the time the Report was written).

7.5 In addition to the legislative requirements outlined above, the ExA draws attention to the relevant compulsory acquisition guidance which sets out a number of general considerations which have to be addressed in considering whether to grant compulsory acquisition powers 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.

7.6 The Secretary of State notes that the ExA [ER 8.5.11] states that it had taken all relevant legislation and guidance into account in its reasoning in relation to compulsory acquisition and temporary possession.

7.7 The ExA set out [ER 8.6] the steps it took to assess the requested compulsory acquisition and temporary possession powers: a written process; two specific

compulsory acquisition hearings; and site inspections. The ExA notes the Applicant's case [ER 8.6.13] that it was seeking compulsory acquisition and temporary possession powers because 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. The ExA notes the Applicant's conclusion [ER 8.6.18] that there was a clear and compelling case in the public interest for the inclusion of compulsory acquisition powers and that the public benefit of allowing the proposed Development to proceed outweighs the infringement of private rights which would occur in the event that the compulsory acquisition powers were exercised.

7.8 The ExA sets out that it considered the questions of alternatives and the availability of adequacy of funding in its assessment of the appropriateness and adequacy of funding in relation to the requested compulsory acquisition powers. In its conclusion on 'alternatives', the ExA set out [ER 8.6.31] that it considered, on balance, that the Applicant had demonstrated that it had explored all reasonable alternatives to compulsory acquisition including modifications to the scheme. In relation to funding, the ExA noted [ER 8.6.35] that it was satisfied the necessary funds were available to the Applicant to cover the likely costs of compulsory acquisition. The ExA also noted [ER 8.6.36] that the Applicant had included in the development consent order, a provision to require the Secretary of State to approve a guarantee or alternative form of security for compensation that may be payable before the compulsory acquisition provisions could be exercised. The ExA considered that this provided a clear mechanism whereby the necessary funding for compulsory acquisition could be guaranteed.

7.9 The ExA notes [ER 8.7.1] that at the start of the examination, three 'Affected Parties' – The Port of Tilbury London Limited, RWE Generation (UK) plc and Anglian Water – objected to the proposed compulsory acquisition and temporary possession proposals but that Anglian Water withdrew its objection before the close of the examination.

7.10 The ExA considered [ExA 8.8.1 et seq] the outstanding objections against the tests set out in the 2008 Act. In particular, it considered concerns by Port of Tilbury London Limited that the impact of the grant of compulsory acquisition powers, particularly in relation to land acquired for the proposed causeway – plots 04/01 and 04/02. The ExA notes [ER 8.8.5 et seq] that RWE Generation (UK) plc also had concerns about the justification for the grant of compulsory acquisition powers, again with a reference to plots 04/01 and 04/02. The ExA found [ER 8.8.24] in relation to the tests in section 122 of the Planning Act 2008 that, while acknowledging the compulsory acquisition powers over the Port of Tilbury London Limited and RWE Generation (UK) plc land might result in some adverse impacts to those Parties' private interests, the established need for energy generation and the need to provide certainty of project delivery, there was a compelling case in the public interest for the relevant land to be compulsorily acquired.

7.11 The ExA also considered [ExA 8.8.25 et seq] the Port of Tilbury London Limited and RWE Generation (UK) plc objections against the tests in sections 127 and 138 of the 2008 Act. The ExA notes discussion between RWE Generation (UK) plc and the Applicant throughout the examination about the former's concerns about the proposed

Development resulting in serious detriment to their undertaking. In particular, there was no agreement between those parties on whether the Applicant's use of compulsory acquisition powers should be subject to RWE Generation (UK) Plcs's consent with the former arguing that this would allow RWE Generation (UK) Plc to prevent the proposed Development from proceeding despite compulsory acquisition powers being granted by the Secretary of State. The ExA did not agree with the Applicant's position in this matter and, therefore, recommended to the Secretary of State that a provision should be included in the relevant Protective Provisions in the development consent order requiring the Applicant to obtain the consent of RWE Generation (UK) Plc and that that consent should not be reasonably withheld [ER 8.8.35]. The ExA found [ER 8.8.35] that the recommended Protective Provisions in favour of RWE Generation (UK) Plc would ensure that the company's undertaking and apparatus were protected and that the Secretary of State could be content that the inclusion of compulsory acquisition powers were necessary for carrying out the proposed Development and would not result in serious detriment to the carrying on of RWE Generation (UK) Plc's undertaking. The ExA, therefore, considered that the tests set out in sections 127 and 138 of the Planning Act 2008 had been met.

7.12 The ExA notes [ER 8.8.37 et seq] that Port of Tilbury London Limited also had concerns about the impact the grant of compulsory acquisition powers as requested would have on its current and future operations. The Secretary of State notes the lengthy discussions about this matter during the examination and that the ExA adopted a similar approach to considering them as it had done in the case of the RWE Generation (UK) Plc's concerns. The ExA concluded [ER 8.8.45], therefore, that subject to the inclusion of suitable Protective Provisions in any development consent order that the Secretary of State might make, the compulsory acquisition powers requested in respect of the Port of Tilbury Limited land were necessary for carrying out the proposed Development and would not result in serious detriment to the carrying on of that organisation's undertaking. The ExA, therefore, considered that the tests set out in sections 127 and 138 of the Planning Act 2008 had also been met in respect of Port of Tilbury London Limited.

7.13 However, the Secretary of State notes that after he had received the ExA's Report, both the Applicant and Port of Tilbury London Limited made submissions to him in response to his request for comments on a number of relevant matters. The Secretary of State notes that the submissions highlighted disagreement between the Applicant and the Port of Tilbury London Limited in respect of the Protective Provisions that should be put in place to protect the latter's interests in case of adverse impacts from the proposed Development. In particular, the Applicant opposed Port of Tilbury London Limited's request that the definition of 'the Port' in the relevant Protective Provision should include specific land in the Freeport Tax Sites (Thames) Regulations 2021 in which the Port of Tilbury London Limited holds an interest. The Secretary of State has carefully considered the submissions made by the parties in respect of this matter. The Secretary of State has also considered the ExA's consideration of the definition of port [9.5.21 et seq]. The Secretary of State agrees with the ExA that extending the protection for the Port of Tilbury London Limited would not be justified. The Secretary of State also considers that the provisions proposed by the Applicant offer appropriate protection to the Port of Tilbury London Limited in respect of any interaction with the proposed Development. The Secretary of State considers that the tests set out in sections 127 and 138 of the 2008 Act would still be met in respect of

Port of Tilbury London Limited without the Port's suggest definition of 'the Port' being included in the Order.

7.14 The Secretary of State notes that the ExA considered [ER 8.8.46 et seq] at great length the request for powers to be granted to compulsorily acquire approximately 10.1 hectares of Walton Common (part of the main development site) together with a small number of other parcels of land forming part of the common land register unit CL 288 (The Green, Hall Hill, Fort Road, Parsonage Walton and Tilbury Fort Commons) in exchange for around 11.6 hectares of replacement land. The ExA notes [ER 8.8.47] that the installation of the proposed Development's necessary gas pipeline would also temporarily affect a small area of Tilbury Green although the Applicant noted that the surface would be restored and there would be no permanent impact on the Common or access over it.

7.15 The ExA notes [ER 8.8.50] that sections 131 and 132 of the 2008 Act require an order granting development consent to be subject to special Parliamentary Procedure to the extent that it authorises the compulsory acquisition of land and rights over common land unless the Secretary of State is satisfied that replacement land has or will be given in exchange. The requirements of sections 131 and 132 mean 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. The ExA sets out [ER 8.8.51 et seq] the Applicant's rationale for seeking compulsory acquisition powers in respect of this land and that the Applicant considers that its proposal meets the requirements of sections 131 and 132 of the 2008 Act.

7.16 The ExA notes [ER 8.8.53 et seq] that the Applicant had made an application under section 16 of the Commons Act 2006 to seek the deregistration and exchange of the Common Land required to allow for the construction of the proposed Development. The ExA further notes that there are similarities between the processes under the Commons Act 2006 and the Planning Act 2008 in respect of the tests that must be met relating to the replacement of common land. While the two processes are being run in parallel, the ExA notes that they are entirely separate (although it did allow submissions made as part of the Commons Act application to be considered in the examination of the Application) and that the focus of its consideration is on considering the tests under the Planning Act 2008. Finally, the ExA notes that the application under the Commons Act is being held in abeyance at the request of the Applicant pending the outcome of the Application.

7.17 The ExA considered the question of 'replacement land' in relation to the issue of whether it would be less advantageous to the persons, if any, entitled to common or other rights, and to the public. As far as the consideration of whether it would be less advantageous to the person entitled to common rights is concerned, the ExA, while noting some uncertainty about the nature of the grazing rights over the land and concerns from the Open Space Society about the nature of the rights that were in place, noted [ER 8.8.91 et seq] there was no evidence there would be any disadvantage to those entitled to the rights of common [ER 8.8.96].

7.18 As far as the question of whether the replacement land is no less advantageous to the public, the ExA sets out [ER 8.8.97] 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. The ExA's consideration of these matters is set out in ER 8.8.97 et seq. The Secretary of State notes that, while there were concerns from Natural England about the benefit of the proposed replacement land in terms of nature conservation with a scheme for its ongoing management, the ExA records that measures would be put in place to ensure that there would be no overall harm to the public interest in nature conservation and that it found [ER 8.8.102] the proposal would be no less advantageous to the public interest in nature conservation and, as such, found no harm in this respect.

7.19 Turning to landscape conservation, the ExA notes [ER 8.8.103 et seq] that Historic England raised concerns about the impact that the loss of Walton Common would have on the historic landscape character due to the interlinked nature of the historic commons. However, the ExA considered that, while there was an interrelationship between the commons, Walton Common was already affected by industrial infrastructure and it did not consider its loss would have any material landscape impact or materially alter the historic landscape character of this part of Tilbury.

7.20 With respect to public rights of access, the ExA notes [ER 8.8.107 et seq] that there is existing access to the release land for a variety of purposes while the replacement land is currently used as arable farmland and is not subject to public access rights. However, the rights, trusts and incidents attached to the release land would be transferred to the replacement land by way of Article 33 of the Order and the ExA was satisfied this was a suitable provision. However, the ExA does note concerns from Natural England (under the Planning Act process and the Commons Act) and the Open Spaces Society (under the Commons Act) about access to the replacement land. The ExA considers that the proposed access arrangements would be comparable to those currently used to access Walton Common. The ExA concluded, therefore [ER 8.8.111] that improved access would be preferable, when compared to the access to Walton Common, access to the replacement land would be no less advantageous to the public.

7.21 With respect to the assessment of archaeological remains and features of historic interest, the ExA concluded [ER 8.8.112 et seq] that it did not consider the exchange would have a negative impact on archaeological remains.

7.22 The Secretary of State notes that the ExA's overall conclusion [ER 8.8.114 et seq] in this matter was that the proposal for replacement land 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 and that the replacement land would not, therefore, be less advantageous to the public. Accordingly, the requirements of sections 131 and 132 of the 2008 Act have been met and the compulsory acquisition provisions do not need to be subject to the Special Parliamentary Procedure.

Human Rights

7.23 In relation to the proposals for compulsory acquisition and temporary possession of land and rights over land, the ExA considered the Human Rights Act

1998, which incorporates the European Convention on Human Rights into UK law. Schedule 1 to that Act sets out the Articles. The ExA is satisfied that the obligations in Article 6 (right to a fair trial) are met. The ExA accepts that appropriate consultation took place before and during the process, there was an opportunity to make representations during the preparation of the application and the owners of the land had been consulted. There was also the opportunity to make representations during the course of the examination. The ExA is also satisfied that the proposed interference with human rights is lawful, necessary, proportionate and justified in the public interest.

7.24 The ExA concludes that the compulsory acquisition and temporary possession powers are therefore compatible with the Human Rights Act. The Secretary of State notes that compensation would be available in respect of any quantifiable loss and agrees with the ExA's conclusion that the proposed interference is proportionate and justified and therefore compatible with the Human Rights Act 1998.

Equality Act 2010

7.25 The Equality Act 2010 includes a public sector equality duty ("PSED"). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sex; sexual orientation; gender reassignment; disability; marriage and civil partnerships¹; pregnancy and maternity; religion or belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.26 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

7.27 The Secretary of State notes that the ExA states it has had regard to the Equality Act duty throughout the examination and in its consideration of the issues raised in its Report. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Conclusion

7.28 The Secretary of State notes the consideration that the ExA has given to the assessment of the tests set out in the 2008 Act and relevant guidance in relation to the Applicant's request for compulsory acquisition and temporary possession powers over a number of plots of land within the Order limits. He notes the ExA's detailed conclusions set out in its Report at ER 8.9.1 and that the relevant tests have been met. The Secretary of State has considered the ExA's assessment and conclusions in respect of this matter and sees no reason to disagree with them.

8. The Secretary of State's Consideration of the Planning Balance

8.1 All nationally significant energy infrastructure developments will have some potential adverse impacts.

8.2 The determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion.

8.3 The Secretary of State's determination of the Application must take account of the ExA's views and recommendations on the impacts of the proposed Development on a range of factors and the weighting that is ascribed to those impacts. The Secretary of State is not bound to follow those views and recommendations if he considers that the evidence presented to him can support a different conclusion.

8.4 In the case of the proposed Development, the Secretary of State's notes the ExA's view that the proposed Development would result in the loss of agricultural land contrary to the advice in National Policy Statement EN-1 (the Overarching National Policy Statement for Energy), which the ExA afforded moderate weight to. The ExA also considered that substantial weight should be given to harm to the openness of the Green Belt within which the proposed Development would be located. The ExA further considered there would be harm to the setting of some heritage assets. Finally, the ExA notes the Applicant's assessment that the proposed Development would emit around 46 million tonnes of CO₂ equivalent over its lifetime. However, despite those adverse impacts, the ExA concluded that the need for the proposed Development and its benefits in terms of its ability to generate electricity quickly when demand outstripped supply, outweighed the disadvantages.

8.5 The Secretary of State has carefully considered the adverse impacts identified by the ExA in its Report. He notes that, in the matter of impacts on the setting of heritage assets, he must give significant weight to those impacts. The Secretary of State also notes that the potential adverse impacts on the marine environment that were identified by the ExA as a result of the construction and operation of the proposed causeway are no longer relevant to his decision as the Applicant has removed the causeway from the proposed Development.

8.6 The Secretary of State's overall conclusion is that, while he accepts there are harms that arise from the construction and operation of the proposed Development, these do not outweigh the need – set out in National Policy Statement EN-1 - for

developments of the sort that is the subject of the Application. The proposed Development's ability to provide electricity generation rapidly in the event of a fall in supply or an increase in demand reinforces that conclusion. The Secretary of State recognises that generation plant providing peaking load is helpful in offsetting the intermittency of many forms of renewable electricity generation. The Secretary of State has given very limited weight to the benefits of the proposed battery storage infrastructure and has not affected his conclusion on the planning balance. Even without the proposed battery storage infrastructure, he concludes that the benefits of the proposed Development outweigh its adverse effects.

Natural Environment and Rural Communities Act 2006

8.7 The Secretary of State has considered the Secretary of State's duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

8.8 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform his decision to grant consent to the proposed Development.

Climate Change Act and the Net Zero Target

8.9 The Secretary of State has considered that the UK's sixth Carbon Budget requires a 78% reduction of emissions by 2035 compared to 1990 levels. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 22 June 2021, following advice from the Climate Change Committee, the UK Government announced a new carbon reduction target for 2035 which resulted in a requirement for the UK to reduce net carbon emissions by 2035 from 78% below the 1990 baseline.

8.10 The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State considers, therefore, that the ongoing need for the Authorised Development is established and that granting the Order would not be incompatible with the sixth Carbon Budget target as set out in the Carbon Budget Order 2021 or the 2050 net zero target – as specified in the Climate Change Act 2008 as amended by the (2050 Target Amendment) Order 2019. Operational emissions of the proposed Development will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore, need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

9. Modifications to the draft Order

9.1 The ExA records that there were a number of changes to the development consent order submitted by the Applicant as part of the Application as it progressed through the examination process. Many of the changes were minor in nature but

others were more substantive. All potential changes to the Order were subject to discussion and consultation during the examination and during the decision-making period.

9.2 Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the Order:

- Omitted paragraph (1) of Art 26 (modification of Part I of the 1965 Act), because paragraph (1) deals with matters already dealt with in Schedule 7 to the Order.
- Schedule 2 (Requirements), new paragraph 30 (Documents): The Applicant requested (in its letter of 12th January 2022) a new article to require the undertaker to update certain documents and then submit them to the Secretary of State for approval. This has been included in Schedule 2, paragraph 30, with an additional requirement not to commence work under this Order, or exercise any powers under the Order, until the Secretary of State has given approval.
- Removal of definition of “Secretary of State” as the “Secretary of State for Business, Energy and Industrial Strategy” to allow discretion as to Secretary of State.
- Schedule 2 (Approval of matters specified in requirements), paragraph 32 (Appeal) – paragraph (2) has been omitted and provisions have been included for the appeals process.
- Various changes, as requested by the Applicant in its letter dated 12 January 2022, including amending Works 1 and 1A referring to gross rather than net rated electrical output.

9.3 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes made in the interests of clarity and consistency, and changes to ensure that the Order has its intended effect.

10. Challenge to decision

10.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

11. Publicity for decision

11.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2 Section 134(6A) of the 2008 Act provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective

purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely



Gareth Leigh
Head of Energy Infrastructure Planning

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/thurrock-flexible-generation-plant/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).