

THURROCK FLEXIBLE GENERATION PLANT - DEADLINE 5A SUBMISSION (2 July 2021)

As an interested party to the examination of the Thurrock Flexible Generation Plant DCO (EN010092) Highways England (20025438) make the following comments at Deadline 5A.

Protective Provisions

Highways England can confirm that protective provisions for the protection of Highways England have now been agreed with the Applicant, a copy of which are appended to this submission. Highways England understands the Applicant will be inserting the protective provisions into the draft DCO to be submitted at deadline 6 on 20 July 2021.

The parties are continuing to engage to develop and agree an interface agreement to regulate the interaction between the Applicant's scheme and the proposed Lower Thames Crossing scheme.

Notification of wish to attend Issue Specific Hearing

Notwithstanding the above update, Highways England wishes to attend, and participate in as required, the Issue Specific Hearing 4 on the draft Development Consent Order scheduled for the 26 July 2021.

PART 9

FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED

Application

1. The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

Interpretation

2. In this Schedule “strategic road network” means any part of the road network including trunk roads, special roads or streets for which Highways England is the highway authority.

Approvals

3. Any approval of Highways England under this Order may be given subject to such reasonable requirements or conditions as Highways England may make for the protection of the strategic road network.

Construction of the authorised development

4.—(1) The undertaker must comply with Highways England’s road space booking procedures (in accordance with Highways England’s Asset Management Operational Requirements including Network Occupancy Management System used to manage road space bookings and network occupancy) prior to exercising a power under article 13 or article 15 of this Order in relation to the strategic road network and no power for which a road space booking is required shall be exercised without a road space booking having first been secured.

(2) Following any closure or partial closure of any part of the strategic road network for the purposes of carrying out the authorised development, the undertaker must give Highways England the opportunity to carry out a site inspection in order for Highways England to satisfy itself that that part of the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of Highways England prior to reopening that part of the strategic road network.

(3) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

Payments

5.—(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to approvals and/or consultation sought under articles 13 and 15 of this Order including—

- (a) the checking and approval of the information required to determine approvals under articles 13 and 15;
 - (b) all legal and administrative costs in relation to (a) above;
 - (c) any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,
- together comprising “the HE costs”.

(2) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) Highways England must consult the undertaker on any traffic regulation order proposed under sub-paragraph (2) prior to work commencing on any statutory procedure or preparation, including providing the undertaker with an explanation of why Highways England considers that the order is necessary to carry out or for effectively implementing the authorised development.

(4) Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above within 91 days of the issue of Highways England's determination of an approval sought under article 13 or article 15.

(5) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Interaction with the Lower Thames Crossing

6.—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Lower Thames Crossing. For the purposes of this sub-paragraph—

- (a) “conflict” does not include any overlap in the land to be occupied or developed by the undertaker and the Lower Thames Crossing or any overlap in the Order Limits and application of compulsory powers under this Order and any order granted for the Lower Thames Crossing, or any difference between anything required by a requirement of any order granted after the date of the making of this Order for the construction and operation of the Lower Thames Crossing and the provisions of this Order.
- (b) “reasonable endeavours” means—
 - (i) undertaking consultation with Highways England on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the Lower Thames Crossing;
 - (ii) having regard to the anticipated programme of works for the Lower Thames Crossing and any reasonable requirements of Highways England as regards any works to be undertaken on Work no. 4 within the area where the Lower Thames Crossing main highway is to be constructed;
 - (iii) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
 - (iv) complying with sub-paragraph (2) below,

and may include seeking approval of an amendment of any document or plan approved under a requirement for any Work where construction of that Work has not been commenced by the undertaker, but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

- (2) The undertaker must co-operate with Highways England so as to reasonably ensure—
- (a) the co-ordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Lower Thames Crossing;
 - (b) that, notwithstanding any provision of this Order and subject to reasonable notice being provided by Highways England, access to the Order land including secure working areas for the purposes of constructing the Lower Thames Crossing is not removed, prevented or prohibited by the undertaker for Highways England and its agents and/or contractors, including at—
 - (i) Station Road which is in the vicinity of plot 03/05 of the Land Plans;
 - (ii) Substation Road which is in the vicinity of plots 01/27, 01/28, 01/29, 04/01, 04/03, 04/05 and 04/06 of the Land Plans;
 - (iii) the Walton Common; and
 - (iv) the Tilbury Green common land and Footpath 200; and
- (3) Without limitation to the generality of sub-paragraphs (1) and (2)—
- (a) Work No. 4 must, unless otherwise agreed with Highways England, be constructed so that jointing blocks are installed at locations which are reasonably convenient to enable a diversion which does not conflict with the Lower Thames Crossing; and
 - (b) the undertaker must not discharge water or any other samples or materials to the Bowaters sluice (in the vicinity of plot 01/24 of the Land Plans) unless otherwise agreed with Highways England.
- (4) The undertaker must as soon as is reasonably practicable provide Highways England with—
- (a) as built drawings in connection with Works Nos. 2, 4, 6, 7, 12(a) and 12(d) following the completion of those works; and
 - (b) in relation to the Walton Common—
 - (i) a copy of the application for certification under article 33(1);
 - (ii) confirmation that the local planning authority has certified or has refused to certify the application referred to in sub-paragraph (i);
 - (iii) a copy of the application to amend the register of common land made under article 33(4);
 - (iv) confirmation that the register of common land has been amended following an application referred to in sub-paragraph (iii); or
 - (v) details of any application made to deregister that common land and any determination of such an application under the Commons Act 2006.
- (5) In this paragraph “Lower Thames Crossing” means the project which comprises a new road connecting Kent, Thurrock and Essex through a tunnel beneath the river Thames as well as improvements to the M25, A2 and A13, which is being promoted by Highways England and is proposed to be consented under section 22 of the 2008 Act.

Expert determination

7.—(1) Article [44] (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article [44].

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.