

<p><b>Reference:</b> 20/00983/ELEC</p>	<p><b>Site:</b> Tilbury Green Power Tilbury Freeport Tilbury RM18 7NU</p>
<p><b>Ward:</b> Tilbury Riverside and Thurrock Park</p>	<p><b>Proposal:</b> Proposed variation of s36 (Electricity Act) consent and deemed planning permission for the construction and operation of a biomass and energy from waste fuelled electricity generating station (Tilbury Green Power) - proposed amendment to condition no. 56 in order to remove the restriction on the tonnage of feedstock material to be delivered to the site by road and replace with a requirement to regularly assess alternative modes of transport to minimise impact on the road network and also amend the site boundary to exclude jetty infrastructure.</p>

<b>Plan Number(s):</b>		
<u>Reference</u>	<u>Name</u>	<u>Received</u>
Figure 1.1	Proposed Site Location Plan	31.07.2020
Figure 1.2	Section 36 Application Boundary March 2020	31.07.2020
Figure 1.2	Section 36 Boundary Modifications June 2020	31.07.2020
Figure 1.2A	Section 36 Application Boundary	31.07.2020

The application is also accompanied by:

- Covering letter
- Supporting Statement with appendices comprising –
  - Red-line boundary site plan (proposed amendment)
  - Relevant S36 Consent and deemed planning permission (March 2020)
  - Proposed amendments to the Relevant S36 Consent and deemed planning permission shown as tracked changes
  - Explanatory Memorandum detailing the reasons for the proposed changes to the consent/deemed permission
  - Statement explaining why the S36 should be varied
  - Consultation summary
  - Compliance checklist
  - Status of existing Planning Permissions and Discharge Submissions

- Report in Support of Amendment to Condition 56
- Supplementary Environmental Information Report (2019) comprising –
  - Description of the Phase 2 Development
  - Assessment of Potential Environmental Effects
  - Design and Access Statement Addendum
  - Application Drawings

**Applicant:**

Tilbury Green Power Limited (TGP)

**Validated:**

12.08.2020

**Date of expiry:**

23.10.2020

**Recommendation:** That Planning Committee agree that the content of paragraphs references 6.3 to 6.17(below) comprise the consultation response to be provided by the relevant planning authority to the Department for Business, Energy & Industrial Strategy.

**1.0 BACKGROUND AND DESCRIPTION OF PROPOSAL**

- 1.1 This report considers the issues raised by an application submitted by Tilbury Green Power (TGP) to the Secretary of State (SoS) for Business, Enterprise & Industrial Strategy (BEIS – formerly the Department for Energy & Climate Change (DECC)) to vary an existing s36 (Electricity Act 1989) consent and deemed planning permission for the construction and operation of a biomass and energy from waste fuelled electricity generation station at Tilbury Docks.
- 1.2 s36(c) of the Electricity Act 1989 (inserted by s20 of the Growth and Infrastructure Act 2013) allows for the SoS to vary a s36 consent and the process for an applicant to seek a variation is set out in the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013. A guidance note (July 2013) accompanying the Regulations confirms that that the SoS has the power to make “such variations as appear to be appropriate”. However, paragraph 26 of the guidance notes that the variation procedure is not intended as a way of authorising any change to a developer’s plans that would result in development that would be fundamentally different in character or scale from what is authorised by the existing consent
- 1.3 The Council is defined as the ‘relevant planning authority’ and is required to be consulted by BEIS along with the following bodies:
- Natural England;
  - Historic England;
  - NATS (National Air Traffic Services);

- Met Office
- Defence Infrastructure Organisation;
- Port of London Authority;
- Environment Agency;
- Highways England;
- Civil Aviation Authority;
- Health and Safety Executive; and
- Met Office Property Management.

1.4 A formal consultation was received from BEIS dated 12<sup>th</sup> August 2020 requesting that any comments are submitted no later than 23<sup>rd</sup> October 2020. Paragraph 8 (1) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 states:

*8(1) The appropriate authority (SoS) may cause a public inquiry to be held into a variation application if it considers it appropriate to do so having considered -*

- (a) any representations made about a variation application to the appropriate authority –*
  - (i) which a relevant planning authority makes within two months of the date on which a copy of the application was served on it under regulation 5(2)(b); and*
  - (ii) which any other person makes on or before the date specified in accordance with regulation 5(5)(b)(iii), where those representations are not withdrawn; and*
- (b) all other material considerations.*

The SoS therefore has discretionary power to hold a public inquiry to consider a variation application and in considering whether to hold such an inquiry the SoS must consider any representations submitted by the relevant planning authority or any other person where those representations are not withdrawn.

1.5 Members of the Planning Committee will be aware that with the enactment of the Planning Act 2008 (November 2008) a different consenting regime for onshore electricity generating stations with a capacity of more than 50MW was introduced. Under this Act such proposals are defined as Nationally Significant Infrastructure Projects (NSIPs) where permission is granted via a Development Consent Order issued by the relevant SoS. However, as the TGP proposal was submitted before the 2008 Act came into force, the provisions of the Electricity Act 1989 apply.

- 1.6 By way of background, the s36 consent and deemed planning permission were implemented and a first phase of the development, comprising a waste wood biomass plant with a 40MW output became operational in April 2018. This electrical output is generated from c.300,000 tonnes of waste wood biomass per annum (from a consented total of 650,000 tonnes waste input per annum).
- 1.7 In summary, the current submission to the SoS seeks firstly to vary the s36 consent to amend the extent of the application site (as delineated by a red line boundary) in order to exclude a jetty and associated infrastructure from the application site, and secondly seeks a direction from SoS that the deemed planning permission be varied to amend planning condition no. 56 as follows (proposed new text in italics, proposed deletions struck-through):

*(56) Throughout the operational life of the Phase 2 Development, there shall be submitted to the Council not less frequently than every five years from the commencement of operation of the Phase 2 Development, a report on the quantity of waste material delivered to the Phase 2 Development using road, rail and River Thames. The report shall also examine cost effective measures as may exist to minimise the impact of waste transport by road. ~~No more than 450,000 tonnes of Biomass, Waste Wood, Solid Recovered Fuel, Commercial & Industrial Waste and/or Municipal Solid Waste shall be delivered by road to the Site per annum.~~*

Reason: To minimise the impact of imports on the road network.

- 1.8 The applicant's background and reason for submitting the application is described thus:

*"The consented development consists of two generation units (Phase 1 and 2) having a combined electrical capacity of 80 MW. Construction is complete on the first phase of the development which commenced full operation in April 2018. The first generating unit is fired on waste wood biomass and has an electrical generating capacity of 40 MW approximately.*

*For Phase 2 of the development, engagement with waste supply companies in the environs of the development site commenced in 2018 and is currently ongoing. On foot of these discussions, to secure the commercial viability of the second generating unit TGP wishes to amend Condition 56 in the deemed permission for the development.*

*The Section 36 Consent for the TGP development permits up to 650,000 tonnes per annum of waste material to be brought onto the site to supply the Phase 1 and Phase 2 generating units. The Consent currently places a limit on the quantity of waste*

*material delivered to the development site by road at 450,000 tonnes per annum.*

*In the region of 300,000 tonnes per annum of waste wood is currently transported by road to the Phase 1 generating unit.*

*It is proposed to transport up to 350,000 tonnes of waste per annum to the Phase 2 generating unit. Under the current Consent, only 150,000 tonnes per annum of this can be transported by road, the balance of 200,000 tonnes per annum needing to be transported by alternative means such as river barge or by rail.*

*This restriction on road transportation significantly undermines the commercial viability of Phase 2 of the development by reducing the flexibility to avail of locally available waste material and waste from locations inland not readily connected to barge or rail transport, without significant additional handling and additional fixed infrastructure costs.*

*TGP is seeking the operational flexibility to avail of commercially viable waste transport methods for the waste contractors who will supply waste materials over the life of the project. TGP is not seeking to exclude any mode of transportation (road, rail, barge) and acknowledges that commercial factors associated with waste sources and appropriate transport modes may change over time. TGP intends therefore to apply to vary the Consent to remove the restriction on road transport and to require that the transport of waste to the site be reviewed at regular intervals.*

*Condition 56 in the S36 Consent currently limits waste transported to site to no more than 450,000 tonnes of Biomass, Waste Wood, Solid Recovered Fuel, Commercial & Industrial Waste and/or Municipal Solid Waste shall be delivered by road to the Site per annum. The principal change proposed is to amend this condition to remove the limitation on road transport and to require a report every five years on the commercial viability of waste transport modes”.*

## **2.0 SITE DESCRIPTION**

- 2.1 The TGP site is located within the Port of Tilbury, at the north-western end of the port complex and covers an area of some 9.3 hectares. The River Thames is located to the south-west of the site. The north and north-western boundary of the site is formed by a drainage channel known as Botney Channel, which is defined as a ‘main river’ by the Environment Agency. On the northern side of this channel is Grays Beach park, with mixed commercial and residential areas located further east at Manor Way and Curzon Drive. The north-eastern boundary of the site is formed by the Grays to Tilbury railway corridor. Land and buildings within the Port of Tilbury complex, including the internal port access roads, form all other boundaries to the site.

- 2.2 The TGP site is irregular in shape and comprises three main elements. Firstly, the southern part of the site comprises an existing jetty and associated conveyor line adjacent to the river frontage. The jetty has a river frontage of some 300m and projects approximately 230m beyond the mean high water mark. The conveyor line increases in height above ground level as it runs in a north-westerly direction parallel to the shoreline. This conveyor line terminates close to the south-eastern corner of the site. On the landward (north-eastern) side of the flood defence is an open area used for the storage of biomass awaiting use at the facility. The westernmost part of the site is occupied by Phase 1 of the TGP facility comprising principally a waste wood processing building, boiler hall, turbine building, air cooled condensers, chimney stack and associated ancillary buildings and plant.
- 2.3 The remainder of that part of the site south of Botney Channel comprises a largely open and hardsurfaced area containing the vehicle access (from an internal port estate road) and the electrical switching station for the facility.
- 2.4 The final component of the site is a small triangular-shaped area of open rough grassland located on the northern side of Botney Channel and immediately east of the Curzon Drive industrial estate.
- 2.5 The TGP site formerly comprised factory buildings, plant, warehousing and car parking areas operated by Cargill for the production of sweeteners from cereals. Production ceased in 2005 and the site remained unused thereafter. De-commissioning of the site and demolition of all buildings and structures, apart from a small gatehouse building, was undertaken in 2011/12.
- 2.6 The area surrounding the TGP site contains a variety of land uses. To the south, and within the dock complex, is a flour mill, substantial warehouse buildings, with lorry parking, service areas and areas used for the storage of containers and other materials. To the east of the site are a number of railway sidings aligned parallel with the main Grays to Tilbury railway line. To the east of this railway corridor are mainly small-scale modern industrial and warehouse units located on Thurrock Parkway. Small commercial units are also located to the north of the site at Curzon Drive. Public open space and the Grays Beach play facility are located adjacent to the north-eastern boundary of the site with residential properties on Manor Way, Crest Avenue and Conway Gardens beyond. The nearest existing residential properties are located approximately 100m from the TGP site boundary. A recent planning permission (ref. 14/00810/FUL) for the development of 27 flats at the former pumping station site in Manor Way which is located approximately 30m to the north of the TGP lapsed last year. A planning application (ref. 18/00386/FUL) for 44 flats on the former pumping station site is currently under consideration.

### 3.0 RELEVANT PLANNING HISTORY

3.1 Historically the site formed an undeveloped part of Grays Thurrock Marshes but was developed from the 1970's for industrial purposes associated with the manufacture of derivatives from cereals. This use ceased in 2005. There is an extensive recent planning history associated with the TGP facility which is set out in the table below.

<b>Application Ref</b>	<b>Description of Proposal</b>	<b>Decision</b>
08/00175/ELEC	Application for s36 Electricity Act consent and deemed planning permission to develop a 60 MW renewable electricity generating plant at Tilbury Docks	Consent and deemed planning permission issued by the Secretary of State (SoS) for the Department of Energy & Climate Change) (DECC) August 2009
10/50148/TTGD CD	Discharge of conditions 4 & 5 (wheel cleaning details) and 39 & 40 (archaeology) of 08/00175/ELEC	Approved
10/50179/TTGD CD	Discharge of conditions 6 & 7 (dust suppression) and condition 8 (demolition protocol) of 08/00175/TTGELEC	Approved
10/50188/TTGD CD	Discharge of condition 27 (noise and vibration monitoring scheme) of 08/00175/ELEC	Approved
10/50250/TTGD CD	Discharge of conditions 47 & 48 (bat surveys / protection / mitigation scheme) and conditions 49 & 50 (reptile surveys / protection / mitigation scheme) of 08/00175ELEC	Approved
11/50361/TTGETL	Extension of time limit for implementation of planning permission ref. 01.08.04/87C (08/00175/ELEC) to construct and operate a biomass and energy from waste fuelled generating station for a period of two years to 26 Aug 2014.	Approved
11/50376/TTGCND	Variation of conditions 58, 59 & 60 (source and transportation of fuels for the development) attached to planning permission 01.08.04/87c	Approved

	(08/00175/ELEC) and any corresponding conditions attached to any permission granted from planning application 11/50361/TTGETL	
12/01088/CONDC	Discharge of condition 41 (contamination risk) of 11/50376/TTGCND	Approved
13/00422/SCR	Request for EIA Screening Opinion for a proposed waste wood storage and processing facility at Tilbury Green Power Biomass and Energy from Waste Power facility	EIA Required
13/00427/SCO	Request for Scoping Opinions for a proposed waste wood storage and processing facility at Tilbury Green Power Biomass and Energy from Waste Power facility	Advice given
13/00453/NMA	Non-Material Amendment: To allow permitted preliminary works to be undertaken in advance of the submission and approval of details associated with conditions 19 and 23 (Planning Permission - 11/50376/TTGCND)	Approved
13/01079/NMA	Non-Material Amendment: To revise the requirement under Condition 12 of planning permission 11/50376/TTGCND for a green/brown roof on the administration/visitor building, replacing it with alternative ground level habitat adjacent to the proposed ecological area	Approved
13/01170/CONDC	Discharge of condition 13 (rainwater harvesting) of approved planning application 11/50376/CONDC	Approved
13/01179/FUL	The construction and operation of a waste wood processing facility incorporating process building, a visual screen to the River Thames, external plant and equipment, storage areas and car parking	Approved
14/00239/CONDC	Application for approval of details reserved by condition 9 (temporary	Advice Given



	buildings etc.) of planning permission ref. 11/50376/TTGCND	
14/00439/CONDC	Application for approval of details reserved by condition no. 18 (river transport opportunities) of planning permission reference 11/50376/TTGCND	Advice Given
14/00561/CONDC	Application for approval of details reserved by condition 8 (demolition materials recovery target) of planning permission ref. 11/50376/TTGCND	Approved
14/00599/CONDC	Application for approval of details reserved by conditions 19 (travel plan) and 20 (vehicle and accident monitoring scheme) of planning permission reference 11/50376/TTGCND	Advice Given
14/00603/CONDC	reserved by condition 23 (pile driving) of planning permission reference 11/50376/TTGCND	Approved
14/00648/CONDC	Application for approval of details reserved by condition no. 10 (site layout and design) of planning permission ref. 11/50376/TTGCND	Advice Given
14/00658/CONDC	Application for approval of details reserved by condition nos. 49 and 50 (landscaping and creative conservation) of planning permission ref. 11/50376/TTGCND	Advice Given
14/00660/CONDC	Application for the approval of details reserved by conditions 33 and 34 (method and working of drainage) of planning permission ref. 11/50376/TTGCND	Advice Given
14/01139/CONDC	Application for approval of details reserved by condition 9 (Travel Plan) of planning permission ref. 13/01179/FUL	Advice Given
14/01141/CONDC	Application for approval of details reserved by condition no. 3 (Construction Environment Management Plan) of planning permission ref. 13/01179/FUL	Advice Given

14/01212/NMA	Application for a non-material amendment following the grant of planning permission - removal of condition 15 (biomass storage building foundation details) of planning permission ref. 11/50376/TTGCND and s.36 (Electricity Act) deemed planning permission variation ref. 12.04.09.04/266C issued by the Department of Energy Climate Change dated 20 August 2014	Approved
14/01287/CONDC	Application for the approval of details reserved by condition 5 (foundation design details) and 6 (pile driving scheme) of planning permission ref. 13/01179/FUL	Advice Given
14/01298/CONDC	Application for approval of details reserved by condition no.15 (surface water management strategy) of planning permission ref. 13/01179/FUL	Advice Given
16/00102/CONDC	Discharge of condition 66 (Stack Aviation Lighting) from approved planning permission 11/50361/TTGFUL. For Phase 1 Stack Only	Approved
16/00873/NMA	Non material amendments to condition 10 of planning application 11/50376/TTGCND; A series of detailed design driven amendments to the layout and design of the generation station phase 1, including the on site electricity substation	Approved
16/00991/CONDC	Application for the approval of details reserved by condition no. 64 (air pollution monitoring) of deemed planning permission ref. 12.04.09.04/266C (biomass and energy from waste fuelled electricity generating station at Tilbury Docks) in respect of phase 1 of the development (biomass power plant).	Approved

16/01709/CONDC	reserved by condition nos. 4 (wheel washing) and 5 (wheel washing) of DECC deemed planning permission ref. 12.04.09.04/266	Approved
17/00843/CONDC	Application for the approval of details reserved by condition no. 29 (noise and vibration management plan) of the deemed planning permission for the Tilbury Green Power power plant facility (as amended by 11/50376/TTGCND).	Advice Given
17/00844/CONDC	Application for the approval of details reserved by condition no. 13 (noise and vibration management plan) of planning permission ref. 13/01179/FUL	Advice Given
17/01093/CONDC	Application for the approval of details reserved by condition no. 53 (pest and vermin control) of DECC deemed planning permission ref. 12.04.09.04/266 - Thurrock Council ref. 11/50376/TTGCND	Advice Given
17/01266/CONDC	Application for the approval of details reserved by condition nos. 63 (disposal and re-use of post combustion residues) of planning permission ref. 11/50376/TTGCND	Advice Given
17/01590/CONDC	Application for the approval of details reserved by condition no. 17 (flood response plan) of planning permission ref. 11/50376/TTGCND	Advice Given
17/01591/CONDC	Application for the approval of details reserved by condition nos. 68 of planning permission ref. 11/50361/TTGETL	Advice Given
19/00499/ELEC	Proposed variation of s36 (Electricity Act) consent and deemed planning permission for the construction and operation of a biomass and energy from waste fuelled electricity generating station (Tilbury Green Power) - proposed increase in generating capacity to 80MW and	Consultation response provided to SoS – Variation approved by SoS March 2020

	<p>variations to conditions including restrictions on source and quantity of waste material components.</p>	
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3.2 The applications of principal importance from the above table are:

- 08/00175/ELEC – this refers to an application submitted to the SoS (DECC) for (i) consent under section 36 of the Electricity Act 1989 to construct and operate a 60 megawatt (MW) biomass and energy from waste fuelled electricity generating station and (ii) a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission for the development be deemed to be granted. Thurrock Council were a consultee and in responding to DECC raised an objection and requested that a public inquiry be held before the SoS reached a decision on the application. The former Thurrock Thames Gateway Development Corporation (TTGDC) were also a consultee (as they performed the function as the relevant planning authority at that time) and did not maintain any objection to the application, subject to planning conditions and obligations within a s106 legal agreement. After considering all material planning matters the SoS granted a s36 consent and a direction (deemed planning permission) in August 2009 (DECC reference 01.08.10.04/87C. In September 2009 DECC issued an errata to one of the planning conditions. In July 2011 TGP sought a direction from the SoS pursuant to condition 3(2) of the s36 consent to extend the period within which commencement of the development was required to occur (from 26.08.12 to 26.08.14). The SoS issued a s36 direction in July 2011 allowing commencement of development no later than 26.08.14. However the SoS noted that consent from the relevant planning authority would also be required to extend the life of the deemed planning permission.
- In 2011 TGP submitted two applications to TTGDC (the relevant planning authority at that time). Application ref. 11/50361/TTGETL sought an extension to the time limit for implementing the deemed planning permission (DECC ref. 01.08.10.04/87C) for two further years until 26.08.14. This application was approved by TTGDC subject to planning conditions and a deed of variation to the s106 unilateral undertaking signed by TGP. At the same time TGP submitted a s73 (Planning Act) application to TTGDC seeking variation of condition nos. 58-60 of the deemed planning permission which related to the sources and transportation of fuels to the site. The Council (as a consultee) raised no strategic policy objection to the proposal and permission was granted, subject to a deed of variation to the s106 unilateral undertaking, in January 2012.
- In April 2014 TGP applied to the SoS (DECC) for (i) a variation to the s36 (Electricity Act) consent to extend the time period for implementation by one year (until 26.08.15) (ii) clarification that TGP has the right to assign the benefit of the s36 consent and (iii) a s90 direction (deemed planning permission) the extending

the time period for commencement until 26.08.15 and replication of planning permission ref. 11/50376/TTGCND with regards to conditions and progress on discharging the requirements thereof. In August 2014 the SoS approved the application (ref. 12.04.09.04/266C).

- In March 2019 TGP applied to the SoS (DECC) for (i) a variation to the s36 (Electricity Act) consent to increase the generating capacity of the facility to 80MW and (ii) vary planning conditions attached to the deemed planning consent, including restrictions on source and quantity of waste material components. It is notable that this application included a proposal to delete condition no. 56. In March 2020 the SoS approved the application, but considered that condition no. 56 should be retained.

#### **4.0 CONSULTATIONS AND REPRESENTATIONS**

4.1 As this is an application submitted by TGP to the SoS pursuant to the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 there is no requirement for the relevant planning authority to undertake any formal consultation or notification. Instead the applicant is required to include within their submission to the Department for Business, Energy & Industrial Strategy (BEIS - formerly DECC) a statement of what account has been taken of views expressed by persons consulted by the applicant. The application includes, at Appendix 5, a 'Report on Consultation with Statutory Agencies and the Public' (November 2018). This report confirms that TGP consulted with the following bodies:

- Thurrock Council;
- Highways England; and
- Port of London Authority.

4.2 TGP received the following consultation replies:

4.3 HIGHWAYS ENGLAND:

Confirm that comments will be submitted to the formal consultation.

4.4 PORT OF LONDON AUTHORITY:

Would object to any application to remove the cap on the amount of material brought to the site by road. The Tilbury Green Power Site is ideally placed for sustainable transport both being located within Tilbury Dock and having a frontage (and jetty) on the River Thames. It would be a significant missed opportunity and contrary to planning policy that seeks to increase sustainable transport, if all the materials

needed for the plant could be brought in by road. Whilst the proposal to review at regular intervals (suggested to be every 5 years) is noted all that seems to be proposed is a report, with no requirement to act on the findings of the report. It is also unclear whether consultees would be able to review and comment on the report and therefore there would be no critical appraisal of the report that is produced. The PLA considers that in line with planning policy, the use of water to deliver materials to the development site should be maximised.

4.5 Planning officers have consulted with the Council's Highways Officer who has responded as follows:

4.6 HIGHWAYS:

The proposal would mainly impact on the strategic highway network (A1089) which is a Highways England asset. There are still concerns with the impact of this development on the local network, particularly in regard to the sourcing of materials from local sites away from the strategic network. Overall the preference would be for the continued servicing of the development to remain with more sustainable transportation modes.

## **5.0 POLICY CONTEXT**

### **5.1 National Policy Statements (NPS)**

As noted above the TGP was consented under the Electricity Act 1989 as the proposal was submitted prior to the provisions of the Planning Act 2008 coming into force. Proposals for onshore generating stations with a capacity of more than 50mW submitted after 1<sup>st</sup> March 2010 qualify as NSIPs where consent is obtained via a DCO. The Planning Act 2008 requires that applications for a DCO are determined by the SoS in accordance with relevant National Policy Statements (NPS). Although the existing consent and current submission were not considered under the Planning Act 2008, the following NPS are nevertheless relevant to the consideration of the application.

### **5.2 Overarching National Policy Statement for Energy (EN-1)**

Identifies a general need for new electricity infrastructure projects and highlights the role of renewable electricity generation, including biomass and energy from waste. Generic impacts associated with proposals for generating stations include traffic and transport and waste management. Paragraph 5.13.2 states that the consideration and mitigation of transport impacts is an essential part of the Government's wider policy objectives for sustainable transport.

### 5.3 Renewable Energy Infrastructure (EN-3)

Part 2 of this NPS refers to assessment and technology-specific information and part 2.5 covers biomass and waste combustion. Under the heading of 'transport infrastructure', paragraph 5.2.24 notes that biomass and energy from waste generating stations are likely to generate considerable transport movements. Paragraph 5.2.25 states that Government policy encourages multi-modal transport and expects materials to be transported by water or rail routes where possible. This paragraph goes on to say that although there may in some instances be environmental advantages to rail or water transport, whether such methods are viable is likely to be determined by the economics of the scheme.

### 5.4 **National Planning Guidance**

#### National Planning Policy Framework (NPPF)

The revised NPPF was published on 24<sup>th</sup> July 2018 (and subsequently updated with minor amendments on 19<sup>th</sup> February 2019). The NPPF sets out the Government's planning policies. Paragraph 11 of the Framework sets out a presumption in favour of sustainable development. Paragraph 2 of the NPPF confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions.

The following headings and content of the NPPF are relevant to the consideration of the current proposals:

6. Building a strong, competitive economy;
9. Promoting sustainable transport;
12. Achieving well-designed places; and
14. Meeting the challenge of climate change, flooding and coastal change.

### 5.5 Planning Policy Guidance (NPPG)

In March 2014 the Department for Communities and Local Government (DCLG) launched its planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning policy guidance documents cancelled when the NPPF was launched. NPPG contains a range of subject areas, with each area containing several sub-topics. Those of particular relevance to this application include:

- Air quality
- Climate change;

- Design;
- Environmental Impact Assessment;
- Flood risk and coastal change;
- Health and wellbeing;
- Natural environment;
- Renewable and low carbon energy;
- Travel Plans, Transport Assessments and Statements;
- Use of planning conditions; and
- Waste.

#### 5.6 Waste (England and Wales) Regulations 2011

The Regulations transpose the European Directive on waste and, inter-alia, impose duties in relation to waste management and the improve use of waste as a resource. The Regulations refer to a waste hierarchy comprising: prevention; preparing for re-use; recycling; other recovery (for example energy recovery); and disposal.

#### 5.7 Waste Management Plan for England 2013

Sets out the Government's aim to work towards a more sustainable and efficient approach to waste management.

#### 5.8 National Planning Policy for Waste 2014

Sets out detailed waste planning policies to be read in conjunction with the NPPF, the Waste Management Plan for England and National Policy statements.

#### 5.9 **Local Planning Policy**

##### Thurrock Local Development Framework (2015)

The Council adopted the "Core Strategy and Policies for the Management of Development Plan Document" (as amended) in 2015. The following Core Strategy policies in particular apply to the proposals:

Overarching Sustainable Development Policy:

- OSDP1 (Promotion of Sustainable Growth and Regeneration in Thurrock).

Spatial Policies:



- CSSP3 (Infrastructure)

Thematic Policies:

- CSTP14 (Transport in the Thurrock Urban Area)
- CSTP15 (Transport in Greater Thurrock)
- CSTP16 (National and Regional Transport Networks)
- CSTP17 (Strategic Freight Movement and Access to Ports)
- CSTP28 (River Thames)

Policies for the Management of Development:

- PMD1 (Minimising Pollution and Impacts on Amenity)
- PMD9 (Road Network Hierarchy)
- PMD10 (Transport Assessments and Travel Plans)
- PMD11 (Freight Movement)

#### 5.10 Thurrock Local Plan

In February 2014 the Council embarked on the preparation of a new Local Plan for the Borough. Between February and April 2016 the Council consulted formally on an 'Issues and Options (Stage 1)' document and simultaneously undertook a 'Call for Sites' exercise. In December 2018 the Council began consultation on an Issues and Options (Stage 2 Spatial Options and Sites) document, this consultation has now closed and the responses have been considered and reported to Council. On 23 October 2019 the Council agreed the publication of the Issues and Options 2 Report of Consultation on the Council's website and agreed the approach to preparing a new Local Plan.

#### 5.11 Thurrock Design Strategy

In March 2017 the Council launched the Thurrock Design Strategy. The Design Strategy sets out the main design principles to be used by applicants for all new development in Thurrock. The Design Strategy is a supplementary planning document (SPD) which supports policies in the adopted Core Strategy.

### **6.0 ASSESSMENT**

- 6.1 As set out above, this application is submitted to the SoS for consideration and decision, although the Council as the relevant planning authority is invited by BEIS to submit its views. The purpose of this report is to provide the Committee with an appraisal of the proposed variation to the s36 consent and deemed planning

permission in order to inform a consultation response to BEIS. Also as confirmed above, before determining the application the SoS may cause a discretionary public inquiry to be held if it is deemed appropriate to do so having considered the representations received and all other material considerations.

- 6.2 The structure of the assessment below sets out the variations applied for and a suggested response.

Proposed Variation of s36 Consent

- 6.3 Paragraph 1:

Proposed amendment of the s36 Application Boundary (site plan) in order to remove the river jetty and associated conveyor connecting to the south-eastern corner of the 'main' site. Replacement of Figure 1.2 with Figure 1.2A.

**Response:** The proposed change to the site boundary to remove the river jetty and associated conveyor is linked to the proposed amendment to condition no. 56 (described below). The proposal would, in effect, remove any potential for access to the river for delivery or export of materials to or from the facility. This proposed variation is considered in more detail below.

Proposed Variation of Deemed Planning Permission

- 6.4 Condition no. 56 (Material Inputs):

The current condition is:

*“No more than 450,000 tonnes of Biomass, Waste Wood, Solid Recovered Fuel, Commercial & Industrial Waste and/or Municipal Solid waste shall be delivered by road to the Site per annum.”*

- 6.5 The proposal would delete the condition and introduce a replacement condition as follows:

*“Throughout the operational life of the Phase 2 Development, there shall be submitted to the Council not less frequently than every five years from the commencement of operation of the Phase 2 Development, a report on the quantity of waste material delivered to the Phase 2 Development using road, rail and River Thames. The report shall also examine cost effective measures as may exist to minimise the impact of waste transport by road.”*

- 6.6 **Response:** With regard to condition no. 56, the proposed amendment would remove the current cap restricting road deliveries to no more than 450,000 tonnes per annum and would potentially allow for all deliveries of feedstock (up to 650,000 tonnes per annum) by road. Existing condition no. 55 limits imports of all feedstocks to the site to no more than 650,000 tonnes per annum, so the effect of condition nos. 55 and 56 is to require 200,000 tonnes of feedstock to be delivered by modes of transport other than road transport. The site is located at the northern-end of the Tilbury Docks complex and is accessed from an internal estate road within the Port. The Port itself is accessed from the A1089 which connects to the A13. Both the A1089 and A13 (west of the A1089 junction) form part of the Strategic Road Network (SRN) where Highways England (HE) are the responsible highways authority. At the time of writing Officers have not seen a consultation response from HE. Nevertheless, as noted by the Council's Highways Officer, the highway impacts of the proposed amendment will predominantly affect the trunk road network in respect of actual traffic impact and policy issues associated with potential vehicle kilometres travelled. Accordingly, it is reasonable for the Council to defer to HE on the issue of potential impacts of additional vehicle movements on the SRN.
- 6.7 The Port of Tilbury, which includes the land within the s36 application boundary is specifically referred to by adopted Core Strategy policy CSTP28 (River Thames). This policy states at (1.) that the Council and partners will ensure that the economic and commercial function of the river will continue to be promoted through (inter-alia): (i) priority being given to allocating riverside sites to uses that require access to the river frontage (ii) safeguarding port-related operational land and (iv) safeguarding existing and promoting new jetties and wharves for transport of goods and materials. Core Strategy policy CSTP17 (Strategic Freight Movement and Access to Ports) is also to a degree relevant as this policy recognises the tradition of port-related and freight activity in Thurrock and seeks to support the logistics and port sectors by, inter-alia, facilitating a shift to river and rail freight. The site currently has access to the River Thames via both the jetty included within the s36 application boundary and the nearby dock berths accessed by the internal port estate roads.
- 6.8 The NPPF and NPS (Energy) refer to the importance of sustainable transport and the pre-submission consultation response from the Port of London Authority also mentions the policy intention of moving bulk materials by river and the ideal placement of the site within Tilbury Docks and with a frontage to the River Thames. The site is therefore in a location capable of being served by sustainable modes of transport.
- 6.9 As noted above, in 2019 the TGP applied to the SoS to vary the s36 consent and deemed planning permission and the amendments proposed at that time included the deletion of condition no. 56. In responding to the SoS, the Council referred to the position of the site within Tilbury Docks, the riverfront access and planning policies

aimed at securing sustainable modes of transport. The consultation response to the SoS (June 2019) therefore queried whether the proposed amendment to condition no. 56 was consistent with policies promoting sustainable transport.

- 6.10 The decision letter from the SoS (dated 26<sup>th</sup> March 2020) responding to the proposed 2019 variation referred at paragraph no. 4.4 to the proposed deletion of condition no. 56 as follows:

*“The Applicant has also requested the removal of the restriction imposed by Condition 56 (Material Inputs), which currently allows only 450,000 tonnes of waste and biomass fuel to be brought to the site by road (i.e. the remaining 200,000 tonnes needs to be delivered by the River Thames). Thurrock Council queried whether the proposed amendment is consistent with policies promoting sustainable transport (i.e. the Thurrock development plan for waste includes the National Policy for Waste (2014) and adopted Core Strategy (2015); The National Planning Policy Framework and NPS (Energy) also refer to the importance of sustainable transport). The Secretary of State has considered the issue and notes, in particular, that although the policy requirements in EN-1 (Overarching National Policy Statement for Energy) and EN-3 (Renewable Energy Infrastructure) do not mandate the used of water-based transport there is a clear expectation that transportation of materials by water or rail should be preferred where cost effective and that any change should be based on considerations of the impacts of its retention on the costs-effectiveness and viability of the scheme. The Secretary of State has also considered the information contained within the Transport Assessment provided by the Applicant and notes that Highways England has not objected to the proposed removal of the condition. The Applicant has not provided any specific evidence as to why the condition should be removed or why it is no longer cost effective. The Secretary of State therefore considers that the current condition which was put in place to minimise the impact on the surrounding roads should be retained.”*

- 6.11 The SoS therefore acknowledged that although river or rail transport methods are preferred, the encouragement of these sustainable transport modes has to be balanced with whether such methods are financially viable, as determined by the economics of the scheme (NPS EN-3, paragraph no. 2.5.25). Nevertheless, as the 2019 variation application did not provide specific evidence why the condition should be removed or why the condition was no longer cost effective, the SoS concluded that the condition should remain unchanged.
- 6.12 It is noted that the applicant has now submitted a supporting document titled ‘Tilbury Green Power Phase 2 Application to Amend Planning Condition 21 May 2020’ (Mott Macdonald). Part 3 of this document investigates the commercial impacts of different transport modes and concludes at paragraph no. 3.3.3 that road and rail transport,

road and barge transport and finally barge transport directly from an on-site wharf are all transport modes which are more expensive than direct road transport.

- 6.13 The Council does not dispute the conclusions of the applicant's supporting document. In addition, the Council recognises that EN-3 refers to the cost effectiveness and financial viability of transportation. Therefore, in the absence of any objection from Highways England relating to potential impact on the strategic road network, it is a matter for the SoS to balance the environmental benefits of sustainable modes of transport with the relative costs of different modes of transport and their impact on the financial viability of the scheme.
- 6.14 However, the Council has considered the content of the proposed wording of condition no. 56 and notes that it only requires the submission to the Council of a five-yearly report which confirms the tonnages delivered by different modes of transport and examines potential measures to minimise the impacts of transport by road. If the SoS concludes that removal of the existing wording is appropriate, the replacement wording should require the submission of a regular report to the relevant planning authority. The report should investigate the opportunities for sustainable modes of transportation and comment on their cost effectiveness and impact on financial viability. If the results of the investigation conclude that it is viable and economic to use modes of transport other than by road, then there should be a commitment to utilise sustainable transport modes. The wording of the condition should also include reference to consultation by the local planning authority with the Port of London Authority. The Council suggests that the following, or similar wording should be used for condition no. 56:

*“Every five years starting from the Commissioning of the Phase 2 Development and throughout the operational life of the Phase 2 Development a report on the quantity of feedstocks delivered to the Phase 2 Development using road, rail and the River Thames shall be submitted to and approved by the local planning authority, in consultation with the Port of London Authority. The report shall include an investigation as to whether rail and / or river transport can be used for the transportation of feedstocks into the site. In the event that the report concludes that it is viable and economic to use rail and / or river transport then these modes shall be used within a timescale to be agreed in writing by the local planning authority.”*

- 6.15 The Council notes that the proposed amendment to the site plan (Figure 1.2A) would remove the potential for the site to be served directly from the adjacent jetty. The proposed removal of the jetty from the site plan would therefore restrict the potential options transport by river and potentially prejudice this mode of transport as a viable option. The SoS is requested to consider whether there are sound reasons to remove the potential for direct river access from the site.

## **7.0 CONCLUSIONS AND REASONS FOR RECOMMENDATION**

- 7.1 The purpose of this report is to provide the SoS (BEIS) with the Council's views on an application to amend the s36 (Electricity Act) consent and deemed planning permission for the TGP facility. The proposed amendment to condition no. 56 was previously considered by the Council in 2019 and at that time it was queried whether the removal of the condition in its entirety was consistent with policies promoting sustainable transport. In amending the s.36 and deemed planning permission earlier this year the SoS did not remove condition no. 56 as no evidence about cost-effectiveness has been submitted by the applicant.
- 7.2 The applicant has now provided an assessment of the costs of different modes of transport which concludes that road transport is the most cost-effective method. National policy expressed in EN-3 sets out a preference for sustainable transport modes where cost-effective. It is a matter for the SoS to judge whether the applicant's case is robust. If the SoS concludes that the condition can be amended a stronger form of wording is suggested to require a commitment to enacting sustainable transport.

## **8.0 RECOMMENDATION**

- 8.1 That Planning Committee agree that the content of paragraphs references 6.3 to 6.17 (above) comprise the consultation response to be provided by the relevant planning authority to the Department for BEIS.

### **Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

[www.thurrock.gov.uk/planning](http://www.thurrock.gov.uk/planning)

