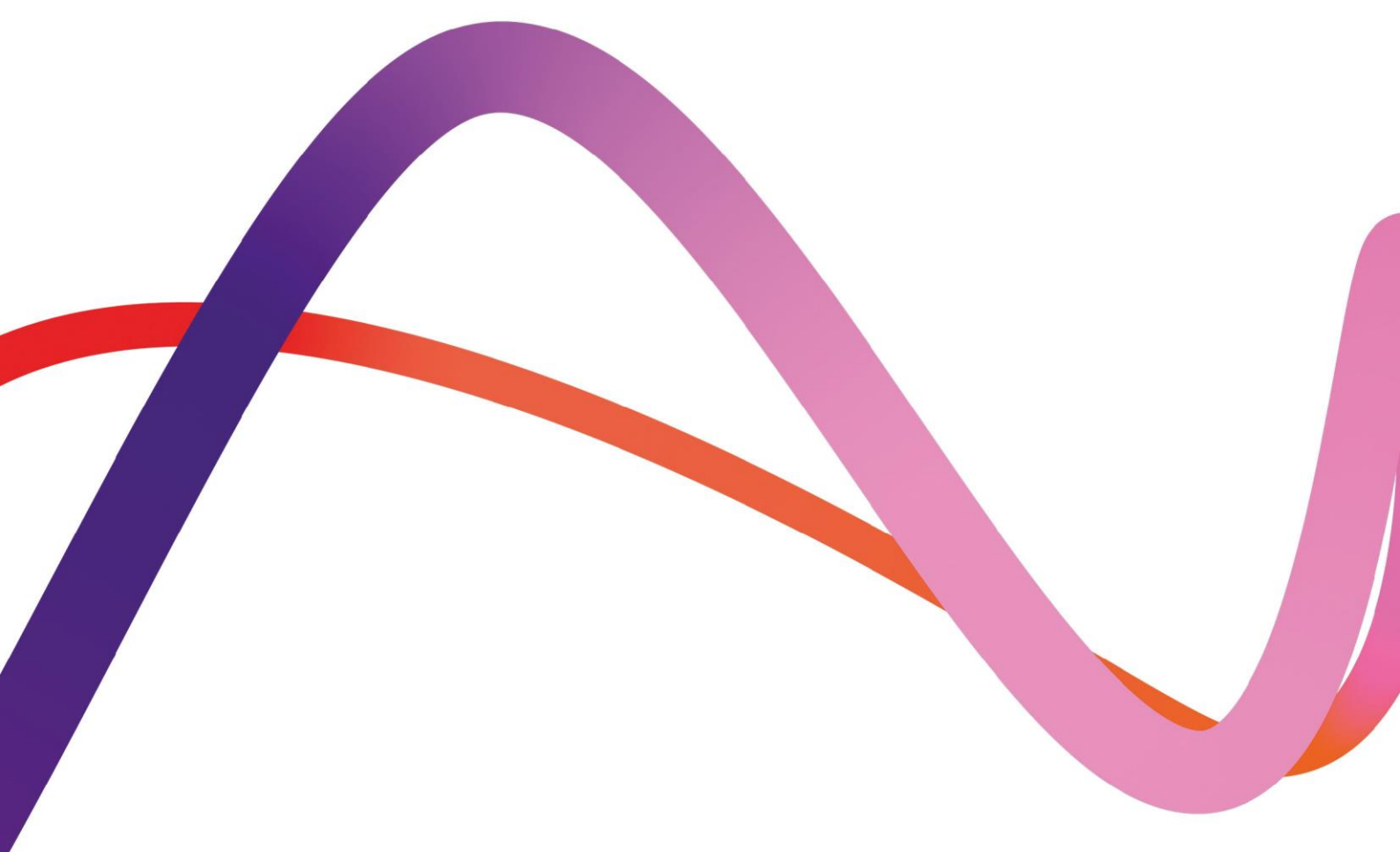


Medworth Energy from Waste Combined Heat and Power Facility

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Written Summary of the Applicant's Oral Submissions at ISH2 on the Draft DCO

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1 Written Summary of the Applicant's Oral Submissions at ISH 2

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Table 1.1 Written Summary of the Applicant's Oral Submissions at ISH 2

Item	ExA Question/ Context for Discussion	Applicant's Response
Agenda item 1 - Welcome, introductions, arrangements for the hearing		
1	The Examining Authority ("ExA") opened the hearing, introduced themselves and invited those parties present to introduce themselves.	<p data-bbox="797 549 909 580"><u>Applicant</u></p> <p data-bbox="797 612 1630 644">The following parties introduced themselves on behalf of the Applicant:</p> <ul data-bbox="846 667 1783 826" style="list-style-type: none"> <li data-bbox="846 667 1680 699">• Mr Gary McGovern, Partner, Pinsent Masons LLP for the Applicant <li data-bbox="846 699 1783 730">• Ms Claire Brodrick, Senior Associate, Pinsent Masons LLP for the Applicant <li data-bbox="846 730 1308 762">• Tim Marks, Head of Planning, MVV <li data-bbox="846 762 1330 794">• Paul Carey, Managing Director, MVV <li data-bbox="846 794 1563 826">• David Kenyon, Technical Director, WSP for the Applicant <p data-bbox="797 890 1675 922"><u>Cambridgeshire County Council (CCC) and Fenland District Council (FDC)</u></p> <ul data-bbox="846 922 2080 986" style="list-style-type: none"> <li data-bbox="846 922 2080 986">• Andrew Fraser-Urquhart KC, representative for Cambridgeshire County Council and Fenland District Council, collectively "the Councils" <p data-bbox="797 1018 2080 1082">Mr Fraser-Urquhart confirmed there were a number of other representatives present that would introduce themselves if called upon.</p> <p data-bbox="797 1114 954 1145"><u>Other Parties</u></p> <ul data-bbox="846 1152 2080 1294" style="list-style-type: none"> <li data-bbox="846 1152 2080 1216">• David Alford, Senior Environmental Quality Officer, King's Lynn and West Norfolk Borough Council (KLWN). Mr Alford wished to discuss the strategy for environmental quality. <li data-bbox="846 1225 2080 1294">• Nick Johnson, Head of Planning, Norfolk County Council (NCC). Mr Johnson intended to answer questions on behalf of the Council and Schedule 12, Article 43.



Item	ExA Question/ Context for Discussion	Applicant's Response
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Agenda item 2 – Purpose of the Issue Specific Hearing

2	The ExA explained that the main purpose of the ISH2 on the dDCO is to undertake the examination of the dDCO articles and schedules.	N/A
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Agenda item 3 – Articles and Schedules of the dDCO (excluding Articles 3, 11, 12, 13, 25, 28 and 32 and Schedules 2, 6, 7, 10 and 11)

The ExA explained that the following documents would form of basis of the questions asked to the Applicant:

- Draft Development Consent Order (Rev 2) **[REP1-006 (tracked); REP1-007 (clean)]**
- Schedule of Changes (Table 2.2) **[REP2-018]**
- Explanatory Memorandum **[APP-014]**
- Applicant's Comments on the Relevant Representations – Part 1 Local Authorities and 3(a) Statutory Parties **[REP1-028]**
- NPS Tracker **[REP1-052]**
- Applicant's response to the CCC and FDC Local Impact Reports **[REP2-020]**
- Applicant's response to the NCC and KLWN Local Impact Report **[REP2-021]**

Mr McGovern, on behalf of the Applicant, explained that the **Draft Development Consent Order (Rev 2) [REP1-006 (tracked); REP1-007 (clean)]** (DCO) has been drafted having regard to PINS' guidance contained in Advice Notes Thirteen and Fifteen, practice and precedents established in other made DCOs, in particular EfW DCOs and other energy DCOs. He also directed Interested Parties to the **Explanatory Memorandum [APP-014]**, which while still reflecting Revision 1.0 of the draft DCO, provides useful additional detail on the purpose and effect of each provision in the draft DCO. As explained in the Explanatory Memorandum, consideration has also been given to the Model Provisions contained in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, notwithstanding there is no requirement to do so. Mr McGovern confirmed that the draft DCO has then been tailored to reflect the particular requirements and characteristics of the Proposed Development.



Item ExA Question/ Context for Discussion Applicant's Response

- Applicant's Response to the Host Authorities Summary of Relevant Representations **[REP2-025]**
- CCC and FDC Response to the Examining Authority's ExQ1 **[REP2-030]**
- CCC and FDC comments on the Applicant's Deadline 1 Submissions **[REP2-031]**
- Land Plans (Rev 3) **[REP1-004]**
- Outline Construction Traffic Management Plan **[REP1-010]**
- Relevant Representation of Cambridgeshire County Council **[RR-002]** and Fenland District Council **[RR-003]**
- Joint Local Impact Report of Fenland District Council and Cambridgeshire County Council **[REP1-074]**

The ExA then asked the Applicant to comment on its approach to identification of articles and schedules for the draft DCO.

The ExA noted that a new article – Article 22 – had been introduced relating to the removal of human remains. The ExA asked for an explanation of why this was added, and whether parties were satisfied with this the wording of this article.

Mr McGovern confirmed that Article 22 had been added in response to comments from FDC. The provision is based on a model provision and Article 12 of the Little Crow Solar Park Order 2022.

The Applicant notes that Mr Fraser-Urquhart, on behalf of the Councils, confirmed that he did not have any instructions relating to the proposed drafting.



Item	ExA Question/ Context for Discussion	Applicant's Response
	The ExA further queried whether the removal of religious and other artefacts should also be covered by these provisions.	<p>In response to a question from the ExA on the disapplication of the Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950 and religious artifacts, Mr McGovern advised that, as this was a technical point, the Applicant would respond in writing.</p> <p><i>Post-Hearing note: Please see Table 1.2 below, for the Applicant's response to Action ISH2- AP1 on this matter.</i></p>
	The ExA asked if article 9(2) should include a reference to the power to override easements.	Mr McGovern confirmed that Article 28, the power to override easements and further rights, should be included in Article 9(2) of the draft DCO and that the next revision would be updated to include this.
	The ExA asked if any IPs wanted to ask questions of clarification in relation to DCO Articles and Schedules.	The Applicant notes that no questions were raised.
Agenda item 4 – Article 3 and Schedule 2		
	<p>The ExA asked CCC to explain and expand on its comments on the dDCO, included in the CCC and FDC Comments on the Applicant's D1 Submissions [REP2-031].</p> <p>There was discussion between the ExA, the Applicant and Mr Fraser-Urquhart KC on behalf of the Councils relating to the most appropriate hearing to discuss the issues raised by the Councils.</p> <p>The ExA decided that comments relating to biodiversity net gain (Requirement 6) should</p>	<p>In response to submissions from Mr Fraser-Urquhart that Schedule 2, paragraph 27, establishing a local air quality monitoring strategy, appeared to preclude the requirement for 12 months' baseline monitoring prior to final commissioning, Mr McGovern confirmed that the Applicant would amend the wording of Requirement 27 in the next revision of the draft DCO, to be submitted at Deadline 3. The revised wording would specify that the Local Air Quality Monitoring Strategy must be submitted prior to the date of commencement of the authorised development. Mr McGovern also confirmed that a revised Outline Local Air Quality Monitoring Strategy (Volume 9.21) (LAQMS) would also be submitted at Deadline 3. An updated Outline LAQMS has been provided at Deadline 3.</p> <p>Mr Fraser-Urquhart, on behalf of CCC, requested that the Community Liaison Manager in Requirement 24 of Schedule 2 the draft DCO be appointed prior to construction and final commissioning. Mr McGovern confirmed that the Applicant would provide a single point of contact in the form of a Community Liaison Manager during the construction period. Mr McGovern confirmed that the wording in the Outline Construction Environmental Management Plan (Volume 7.12) (CEMP) would be updated to make it clear that a Community Liaison</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
	<p>be reserved for an ISH on environmental matters.</p> <p>The ExA decided that comments relating to the Waste Hierarchy (Requirement 14) (as set out in RR-002, para 14.21-28 and RR1-029) would be reserved for an ISH on waste.</p> <p>The ExA decided that comments relating to drainage during construction (Requirement 8 and Requirement 10) would be reserved for the hydrology and flood risk ISH.</p>	<p>Manager would be appointed prior to the commencement of the authorised development. An updated Outline CEMP has been provided at Deadline 3.</p>
	<p>The ExA asked the Applicant to confirm its strategy in relation to Requirements 22 and 23 on carbon capture readiness.</p>	<p>Mr McGovern highlighted that Requirements 22 and 23 are provided in the context that there is currently no legal or policy requirement for the Proposed Development to be carbon capture storage and export ready, nor for it to be fully committed to implementing carbon capture storage and export. However, the Applicant is serious in its intent to facilitate carbon capture storage and export if it is feasible in the context of an evolving and transitioning policy framework.</p> <p>Mr McGovern explained that Requirements 22 and 23 seek to ensure that there is no impediment to implementing carbon capture storage and export. Land has been set aside in order to facilitate future deployment of carbon capture and export apparatus if the policy framework enables such capture and export to be feasible. Mr McGovern added that this language is taken from other DCOs and there is therefore precedent for this drafting.</p> <p>Mr Carey, on behalf of the Applicant, reiterated that the Applicant takes carbon capture very seriously. For example, in Germany, a pilot plant has been built to test a particular technology. Mr Carey explained that there are lots of different technologies that can be used to capture carbon, but it is still to be determined which is the best technology for energy from waste facilities. Mr Carey added that it is therefore important that the Applicant</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
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reserves sufficient space on the land to account for the various types of technology that could be used. The Applicant is confident that any of the potential technologies could be fitted into the reserve space.

Mr Carey explained that the challenge is in export, transportation and storage of captured carbon dioxide. The Applicant is part of a consortium that is actively looking at a potential Net Zero Project that would take captured carbon dioxide to Bacton on the Norfolk coast, approximately 80km to the East of the Proposed Development, where it would be pumped into caverns beneath the North Sea. This project would require the construction of pipelines and other apparatus and be subject to separate planning consents and licences to put the gas into storage under the North Sea. Mr Carey noted that there was Government support for the project.

Mr Carey further advised that the latest Government consultation document sets out four tests to identify whether facilities such as the Proposed Development would be required to be decarbonisation ready.¹ The Government proposes that the obligation to be decarbonisation ready would be brought within the remit of the Environment Agency and form part of the Environmental Permit. Once in force, this would mean that the requirement for the Proposed Development to be decarbonisation ready would form part of the Environmental Permit process, rather than the Development Consent Order.

In response to the ExA's request for certainty as to the commitments set out in the draft DCO, Mr McGovern advised that Requirements 22 and 23 as currently drafted do not commit the Applicant to implement a carbon capture storage and export scheme. This is deliberate drafting due to remaining uncertainties around the technology and export options. The Requirements do commit the Applicant to reserving the space for carbon capture storage and export so that, in the event the challenges are overcome, there is sufficient space within the site (Requirement 22) and require regular review and monitoring (Requirement 23). It purposefully stops short of obliging the Applicant to implement carbon capture storage and export for the reasons of uncertainty as to delivery outlined by Mr Carey.

In response to comments by the ExA about the extent to which carbon capture storage formed part of the Applicant's greenhouse gas reduction strategy set out in the **NPS Tracker [REP1-052]**, Mr McGovern advised that the Applicant would review its position and respond in writing at Deadline 3. An updated version of the **NPS Tracker (Volume 9.18)** has been submitted at Deadline 3.

Post-Hearing note: Please see Table 1.2 below, for the Applicant's response to Action ISH2-AP5 on this matter.

¹ Department for Energy Security and Net Zero Consultation on Decarbonisation readiness: updates to the 2009 Carbon Capture Readiness requirements, March 2023



Item	ExA Question/ Context for Discussion	Applicant's Response
	<p>The ExA requested the Applicant respond to comments from Mr Alford of Kings Lynn and West Norfolk Borough Council regarding a potential financial contribution to existing air quality monitoring schemes.</p>	<p>Mr Marks, on behalf of the Applicant, advised that the Applicant is willing to replace the obligations set out in the proposed Outline LAQMS(Volume 9.21) (updated for Deadline 3) with the payment of a financial contribution, subject to agreeing a proportionate contribution, towards existing air quality monitoring schemes and secured through the use of a section 106 agreement if this was considered preferable by the local authorities.</p> <p>It was agreed that the Applicant and KLWN would discuss how a contribution may be agreed and any consequential changes required to the Outline LAQMS following the hearing and report back to the ExA.</p>
	<p>The ExA requested any additional comments under Agenda item 4.</p>	<p>Mr McGovern advised that in response to submissions from the Councils the Applicant intends to update Requirement 28 of Schedule 2 of the draft DCO at Deadline 3 to refer to an Outline Decommissioning Plan. The Applicant intends to submit the Outline Decommissioning Plan at Deadline 4.</p>
<p>Agenda item 5 – Articles 11, 12 and Schedule 11</p>		
	<p>The ExA requested the Applicant respond to CCC's submissions in relation to Articles 11 and 12 of the draft DCO granting the Applicant powers to alter the highway.</p>	<p>Mr McGovern explained that the Applicant submitted updated figures at Deadline 1 showing improvement works to New Bridge Lane and Algores Way [REP1-009] and the Outline Construction Traffic Management Plan (CTMP) [REP1-010] was updated with additional detail and commitments relating to engagement and consultation with Cambridgeshire County Council. The Applicant also signposted to Requirement 7 of Schedule 2 of the draft DCO, as this is relevant to both Articles 11 and 12. Mr McGovern explained that Requirement 7(2) provides that no part of Work No. 4A (being the New Bridge Lane improvement works) and no part of Work No. 4B (being the Algores Way improvement works) may commence until written details of the access improvements have been submitted to and approved by the relevant planning authority. This Requirement is the control mechanism in respect of Articles 11 and 12 and ensures that the detailed design is approved before the powers are exercised.</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>Mr McGovern explained that, in addition, discussions are progressing on the s278 agreement that will cover the concerns raised by CCC regarding surveys and maintenance costs. Heads of terms were sent to CCC's solicitor in March and the Applicant had recently received comments back from CCC's solicitor.</p> <p>Mr McGovern confirmed that the Applicant is content in principle to consider the inclusion of protective provisions for the benefit of CCC on highway related matters, subject to ensuring that there was no inconsistency or overlap between, or duplication of, the different control mechanisms.</p> <p>In response to comments from the ExA and Mr Fraser-Urquhart regarding the application of Requirement 7 to all highway works forming part of the authorised development, Mr McGovern confirmed that the Applicant would clarify the language of Requirement 7 to reflect that this is intended to cover all of the access improvement works in addition to specific accesses.</p>
	<p>The ExA asked the Applicant to explain which areas of land Work Nos. 4A and 4B relate to, with reference to the Works Plan [APP-007].</p>	<p>Mr McGovern referred to the Works Plan [APP-007] and confirmed that the area shown in green relates to Work No. 4B, being the access improvements on Algores Way. The grey hatched area extending from the bottom of the site to the south-west along New Bridge Lane to Cromwell Road relates to Work No. 4A.</p> <p>Mr Carey clarified that the hatched area detailing the extent of Work No. 4A does not cover the entirety of New Bridge Lane but stops slightly to the south-east of the main EfW CHP Facility Site. It does not extend down to the A47.</p> <p>The Applicant agreed to consider if an insert or separate layer could be added to the Works Plan to make it easier to distinguish between the various Work Nos.</p>
	<p>The ExA asked the Applicant to advise on why the intersection between the A47 and New Bridge Lane is not covered by Requirement 7 of the draft DCO.</p>	<p>Ms Brodrick, on behalf of the Applicant, explained that all highways improvement works to be undertaken are contained within Work No. 4A so far as they relate to New Bridge Lane. The remainder of New Bridge Lane to the A47 has been included within the Order limits because the Grid Connection and Water Connection are located there. Ms Brodrick reiterated that no highway improvement works are proposed on this section of New Bridge Lane. The Grid Connection and Water Connection will be undertaken using the street works powers pursuant to Article 10 of the draft DCO.</p> <p>Mr Carey confirmed that there will only be two accesses onto the EfW CHP Facility Site: the main access will be from New Bridge Lane for HGVs to make deliveries; the access will be on Algores Way for staff and visitors</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>to the EfW CHP Facility Site. Mr Carey emphasised that these are the only points at which the EfW CHP Facility Site will connect to the road network.</p> <p>As the southern section of Algores Way is privately owned, compulsory acquisition powers to acquire a right of access is being sought in the draft DCO in addition to the proposed modifications to the existing site access onto Algores Way (forming Work No. 4B).</p> <p>Mr Carey added that the section of New Bridge Lane from Cromwell Road, including part of Cromwell Road, crossing the disused railway line and including a short length of New Bridge Lane after the disused railway line, to the main EfW CHP Facility access for HGVs will need to be modified and improved. This is Work No. 4A. All of these works would be subject to approval of the highways authority as prescribed in Requirement 7 in Schedule 2 to the Draft DCO.</p> <p>In response to comments from Mr Fraser-Urquhart regarding the current drafting of Requirement 7 of Schedule 2, including the need for approval to be given by the highways authority, the Applicant agreed to clarify the wording of Requirement 7.</p>
	<p>The ExA requested the Applicant respond to submissions by CCC in respect of damage to the highway from HGV traffic.</p>	<p>Mr McGovern sought clarification as to whether CCC were requesting pre- and post-condition surveys of New Bridge Lane, or if the point was a more general one. Mr Ashman, on behalf of CCC, confirmed that the request also related to Cromwell Road as the artery linking the A47 to New Bridge Lane.</p> <p>The Applicant agreed to discuss this point with CCC following the hearing and report back to the ExA.</p>
	<p>The ExA requested the Applicant respond to comments that the condition of Algores Way should be included in surveys and for repairation.</p>	<p>Mr Marks explained that Algores Way will be the initial access point at the start of construction. Once Work No. 4A had been constructed, the New Bridge Lane access route will be the principal access into the EfW CHP Facility Site. Mr Marks added that 65% of HGVs will use New Bridge Lane and 35% will use Algores Way during construction.</p> <p>Mr Marks reiterated that following construction, Algores Way will only be used for visitors and staff accessing the EfW CHP Facility. As Algores Way is a private road past number 19, CCC is not responsible for the maintenance of that part of Algores Way as highway authority.</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
Agenda item 6 – Article 12 and Schedule 6		
	<p>The ExA asked CCC to explain and expand on its response to ExQ1 DCO.1.6 [REP2-030].</p>	<p>Mr McGovern confirmed that Algores Way has been removed from the table in Part 1 of Schedule 6 and it is no longer shown as being maintainable at the public expense. The Applicant agreed to review Schedule 6 relating to access number A7.</p>
	<p>The ExA asked CCC to explain and expand on its response to ExQ1 DCO.1.27 [REP2-030].</p>	<p>Mr Ashman, on behalf of CCC, explained that it would be helpful to have greater clarity in Schedule 6 regarding which sections will become maintainable at public expense. The Applicant confirmed that it would engage with CCC and review and update Schedule 6 to make it clearer.</p>
	<p>The Applicant was asked to respond in terms of changes to article 6, Schedule 2.</p>	
Agenda item 7 – Article 13 and Schedule 7		
	<p>The ExA asked the Applicant to explain how the temporary prohibition or restriction of use of streets and public rights of way will be implemented and justification for powers under Art.13(5).</p>	<p>Mr McGovern explained that Article 13(5) is a limitation on the general power in Article 13(1), which provides a general power to temporarily impose restrictions on usage of streets within the Order limits. This is required for safe and efficient construction of the EFW CHP Facility. Sub-paragraph 5(a) of Article 13 provides that the Applicant cannot temporarily prohibit or restrict any street listed in Schedule 7 without first consulting the highways authority.</p>
Agenda item 8 – Article 25		
	<p>The ExA asked the Applicant to explain its position and intention in relation to Art. 25, particularly in relation to the power to impose new restrictive covenants.</p>	<p>The Applicant confirmed that Schedule 8 would be updated to correctly refer to Article 25.</p> <p>Mr McGovern explained that Article 25 entitles the undertaker to acquire existing rights, or to create new rights or impose restrictions on any of the Order land.</p> <p>This would allow the Applicant, where appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights/restrictive covenants instead, thus minimising the degree of interference with property rights. The structure of the compulsory acquisition provisions sets out a series of options which are intended to provide alternatives to compulsory acquisition.</p>



Item ExA Question/ Context for Discussion Applicant's Response

Where it is possible to achieve the purposes of the scheme by only acquiring rights, then reliance would be placed on Article 25, instead of compulsorily acquiring the freehold of the land under Article 23, in order to minimise the interference with property rights.

The ExA queried why the drafting in Column 1 in Schedule 8 was broad. Ms Brodrick explained that the provisions referred to by the ExA related to the acquisition of a new right of access to use existing private access ways. This included the existing access to the Walsoken Substation (currently a private access owned by Eastern Power Networks) and the unadopted section of Algores Way (owned by Fenland District Council).

Ms Brodrick explained that the Applicant would not have the ability to access and egress the EfW Facility Site using Algores Way unless a new right of access was acquired. The powers sought in Schedule 8 of the draft DCO are therefore to provide an access easement over Algores Way. The Applicant is also seeking a right to upgrade Algores Way (Work No. 4B). If the unadopted section of Algores Way fell into disrepair, the Applicant would have the right to carry out maintenance and repair works.

Ms Brodrick added that Article 25 also provides for the imposition of restrictions in addition to the acquisition of new rights. The Applicant is therefore seeking to impose restrictions to prevent others from obstructing use of the access rights.

Ms Brodrick referred to the **Statement of Reasons [APP-017]** and explained that these rights can only be used to facilitate or incidental to the authorised development. This is an overarching restriction on the use of compulsory acquisition powers. The Applicant therefore considers that the rights are proportionate and reasonable and required to facilitate the authorised development.

In response to the ExA's concerns over use of the wording "*any other works necessary*", Ms Brodrick advised that the rights, in this example for the Grid Connection, are drafted so as to include all of the requirements the Applicant considers are necessary to install, use and maintain before ultimately decommissioning the Grid Connection. The Applicant has listed some of the specific rights that are required for this purpose, however it is standard drafting for a DCO to include the purpose for which rights are required and not an exhaustive list of rights. It is therefore considered appropriate to include '*any other works necessary*' in order avoid listing everything that may be required.



Item	ExA Question/ Context for Discussion	Applicant's Response
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Ms Brodrick advised that the rights can only be exercised in connection with the authorised development. That is, in order to construct the works listed in Schedule 1 of the draft DCO, or works that are required to facilitate or are incidental to the authorised development. Ms Brodrick emphasised that rights could not be compulsorily acquired for any other purposes. Ms Brodrick added that whilst it is a fairly broad power, this is to ensure the deliverability of a nationally significant infrastructure project. However, Ms Brodrick reiterated that this needed to be read in the context of the overarching restriction that the use of compulsory acquisition powers must be required for, or to facilitate or incidental to, the authorised development.

The ExA raised further queries concerning the right “to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development”, and whether this conflicted with statements about not using the unadopted section of Algores Way for HGV vehicles.

Ms Brodrick confirmed that the use of Algores Way will be used by HGVs during the construction phase of the authorised development and by non-HGV traffic during operation for staff and visitors. An ongoing right of access is therefore required. Ms Brodrick added that the need to compulsorily acquire a right of access is due to the landowner, FDC, currently not being willing to grant a voluntary easement over the unadopted section of Algores Way.

Ms Brodrick further explained that the management of traffic is secured in Schedule 2 of the draft DCO. Requirement 11 addresses management of construction traffic, and this is sets out in the **Outline CTMP [REP1-010]** and contains measures relating to the Applicant's use of Algores Way and New Bridge Lane. During operation, Requirement 12 requires an operational traffic management plan to be put in place, which would specify the routes that vehicles delivering waste materials would be required to take, thereby restricting use of Algores Way for such vehicles (see the **Outline Operational Traffic Management Plan (OTMP) [REP1-025]**). Ms Brodrick emphasised that the use of compulsory acquisition powers must be considered in light of the Requirements that place restrictions on the construction and operation of the authorised development.

Agenda item 9 – Articles 28 and 32 and Schedule 10



Item	ExA Question/ Context for Discussion	Applicant's Response
	<p>The ExA asked the Applicant to explain its position and intention in relation to Art. 28, particularly in relation to the power to override easements and other rights.</p>	<p>Mr McGovern explained that Article 28 provides the power to override easements and other rights. This power is supplementary to other acquisition rights and should therefore be read in conjunction with these other Articles, including Article 27 that deals with private rights.</p> <p>Article 28 provides for a situation where rights or restrictions continue to apply, i.e. where the freehold has not been acquired which would trigger the extinguishment of such rights. The Article ensures that any pre-existing rights or restrictions would not interfere or hinder the implementation of the authorised development. Article 28 also provides for a situation where access to the land for the purposes of the authorised development occurs before vesting of land acquired compulsorily; it may also allow for construction works to be undertaken on land, enabling the acquisition of land at the end of construction to be limited and minimised to only the footprint of what has been built.</p> <p>Ms Brodrick confirmed that Article 28(1) refers only to activities that are authorised by the Order. That is, the power to override easements and other rights is constrained by the works and the powers and the uses of land that are permitted by the DCO. Paragraph (2) then sets out the ways in which the undertaker could potentially interfere with an existing right, divided into three separate categories of activities. All of this is limited by the works, powers and uses that are authorised within the DCO itself.</p> <p>Ms Brodrick advised that the Applicant does not consider this power to be extremely broad because it is constrained by the powers and works set out in the DCO, being the powers required to for or to facilitate the construction and operation of the authorised development.</p> <p>In response to concerns from the ExA that the power in Article 28 could be used to interfere with someone's right to use Algores Way for access, Ms Brodrick confirmed that, although Articles 27 and 28 would give the Applicant the ability to interfere with an individual's access, the powers should be considered in light of the restrictions that are placed in the Requirements. For example, additional text has been added to the Outline CTMP [REP1-010] which is secured by Requirement 11, which ensures that access is retained for those premises that rely on the unadopted section of Algores Way for access to and egress from their property. Ms Brodrick reiterated that whilst the power has been included in the DCO there to interfere with these rights, that power is limited by the other provisions in the DCO.</p> <p>The Applicant advised that this is standard drafting and must be broad enough to deal with any new rights and issues that may arise so as to ensure the deliverability of a nationally significant infrastructure project. The</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>Applicant's position was that the Outline CTMP was therefore the preferred mechanism to put restrictions on, for example, the use of Algores Way, rather than restrict the compulsory acquisition power itself.</p>
	<p>The ExA asked the Applicant to explain its position and intention in relation to Art. 32, particularly in relation the broad powers requested and why these do not appear to be confined, in all cases, to the plots and purposes listed in Schedule 10.</p>	<p>Mr McGovern explained that Schedule 10 lists land which may only ever be used temporarily, i.e. as part of the construction period. The power in Article 32 seeks to allow the Applicant to enter and take temporary possession of any of the other land within the Order limits, which may later become subject to compulsory acquisition of the freehold or acquisition of rights as part of the permanent development. The reason for this is to allow the Applicant to carry out construction through use of temporary powers, in order to ultimately ensure that only what is required for the as built operational facility is compulsorily acquired. Without this power, it may be necessary to acquire the freehold of, or rights over, a larger area of land in order to facilitate construction. The purpose of allowing temporary access over the Order land in general is to facilitate the minimum acquisition of land and permanent rights over land in due course.</p> <p>The ExA sought assurance that the DCO would protect against the temporary possession of sites not needed in future.</p> <p>Ms Brodrick confirmed that the power in Article 32(1) can only be used in connection with authorised development. The use cannot be for any other purpose. Ms Brodrick explained that the remainder of the Article does include protections for landowners, including the payment of compensation for temporary use of land and for any loss or damage caused by such use. The Article also includes a requirement to restore the land after the temporary use has ceased, in the event that land used temporarily it is not required on a permanent basis. As an example, Ms Brodrick explained that when constructing a grid connection, you typically need wider area of land for construction than is needed on a permanent basis. The drafting of this temporary power is based on a model provision and typical DCO use. The power ultimately enables the reduction of permanent land take.</p> <p>The ExA raised further queries about whether article 32 enabled the Applicant to temporarily enter and land without notice, including the removal of buildings.</p> <p>Ms Brodrick confirmed that there is a requirement to serve notice under sub-paragraph (2) before utilising the power to temporarily possess land. The reference to land where "no notice" has been served within Article 22(1)(a)(ii) is in relation to the mechanisms to acquire rights on a permanent basis. There are two mechanisms to exercise compulsory acquisition powers: either by the service of a notice to treat and notice of entry; or using a general vesting declaration. This provision therefore states that, if the undertaker has taken either of</p>



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those steps, it cannot use this temporary use power. The Applicant will only be able to use the temporary possession power before issuing a general vesting declaration or a formal notice to treat.

In relation to the removal of buildings, Ms Brodrick highlighted that the Order land in this project consists of the main EfW CHP Facility Site (for which a voluntary agreement has been entered into for the majority of the site), areas of scrub land for the temporary construction compound, Access Improvements, Grid Connection, Water Connection and CHP Connection. Ms Brodrick highlighted that there aren't any buildings or land owned by individuals, other than in respect of the Water Connection, that could be affected by this power. Therefore, although the power is broad, because of the nature of the Order land, it would not disproportionality affect any landowners.

Agenda item 10 – Schedule 11 Protective Provisions

The ExA asked the Applicant for an update on progress between parties regarding protective provisions; an explanation of any important differences of view and a timescale for resolution.

Network Rail

Mr McGovern stated that the Applicant submitted the Status of Negotiations with Statutory Undertakers at Deadline 2 [REP2-022] which summarised negotiations with statutory undertakers on protective provisions, including Network Rail. The situation as set out in this document remains the position. The Applicant remains in discussions with the solicitors at Network Rail and is confident that an agreement will be reached during the course of the Examination.

The ExA queried whether the Applicant had a draft of the protective provisions.

Ms Brodrick explained that the protective provisions included within Part 8 of Schedule 11 of the draft DCO are Network Rail's standard protective provisions. The Applicant is not anticipating, and has not been informed of, any amendments that will be required to the protective provisions as matters will be dealt with in a separate framework agreement. Ms Brodrick added that on the face of the Order, these provisions are to remain as they are; if an agreement is not reached then the Applicant would expect Network Rail to submit their preferred drafting to the extent any concerns are not covered by the current protective provisions.

Anglian Water



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Mr McGovern explained that the position remains as outlines in the Deadline 2 submission. The Applicant was provided with an updated template from Anglian Water and the Applicant has reviewed this, suggested minor amendments and these have been returned. The existing draft DCO reflects the Applicant's preferred position. The Applicant awaits comments back from Anglian Water.

National Highways

The ExA noted that substantial changes had been made to National Highways protective provisions in the latest draft DCO and requested an update on agreement.

Ms Brodrick explained that the protective provisions included in the draft DCO submitted at Deadline 1 were based on protective provisions provided to the Applicant by National Highways. Since then, National Highways has provided the Applicant with a further set of protective provisions as part of a nationwide update of its standard protective provisions.

Ms Brodrick added that the Applicant is in the process of working through the new standard protective provisions to decide which provisions are applicable to the authorised development, rather than a project with greater interaction with the strategic road network. The Applicant has also been provided with bond and collateral warranty documents which the parties are proposing to include in a separate side agreement. As a result, it is likely that the protective provisions in Part 5 of Schedule 11 will be updated significantly. The Applicant anticipates that an agreed set of protective provisions will be included in the draft DCO prior to the close of the Examination.

Businesses on Algores Way

The ExA noted that at paragraphs 7.4.29 to 7.4.31 of the **Outline CTMP [REP1-010]** it mentions protective provisions in the advanced notification requirements in relation to affected businesses, including those located on Algores Way. The ExA requested the Applicant provide an update.

Ms Brodrick explained that the Applicant's preference is for any traffic-related measures to be contained within the Outline CTMP. The Applicant has not received any specific requests for amendments to the new wording. To the extent that any particular business owners along Algores Way require any additional measures to be put in place, the Applicant's position is that the Outline CTMP is the appropriate place for these, rather than in



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the DCO itself. The Applicant does not consider it necessary to have bespoke protective provisions for businesses and this would not normally be contained in a DCO. Protective provisions are for statutory bodies and utilities owners providing public services. The Applicant considers that the measures that may affect any one business would be applicable to all businesses, and therefore the Outline CTMP is the appropriate place for such measures.

The ExA queried whether there had been any discussions with businesses along Algores Way.

Mr Marks responded that since the Open Floor Hearings, the Applicant had a meeting on site with one of the business owners to discuss how their access arrangements on Algores Way would interact with the Proposed Development. This discussion was with the owner of Mackle's Apples opposite the Algores Way entrance to the EfW CHP Facility Site.

Mr Marks also explained that the Applicant had had further informal meetings with other business owners following the hearings and the Applicant remains open to meeting with business owners. Mr Marks stated that letters had also been sent to the businesses on Algores Way with an offer to meet to discuss the Proposed Development and any concerns the business owners may have.

Agenda item 11 – Schedule 13 Documents and Plans to be Certified

The ExA asked the Applicant to confirm if Table 10 of Schedule 13 needed to be updated to include the carbon capture and export readiness reserve space plan.

Mr McGovern confirmed that Table 10 of Schedule 13 will be updated in the next version to include the appropriate referencing for the Carbon Capture Readiness Reserve Space Plan that was submitted at Deadline 2 [REP2-024].

Agenda item 12 – Consents, licences and other agreements

The ExA asked the Applicant to provide an update to the List of Other Consents and Licences [APP-026], with particular reference to the Environment Agency, IDBs and Natural England.

Environment Agency

Mr Kenyon stated on behalf of the Applicant that the Other Consents and Licences document [APP-026] listed three additional permits that might be required, the first of which is the Environmental Permit (EP). The position set out in the document remains unchanged. An EP application was made in August 2022 and the Applicant is still waiting for it to be confirmed as being duly made by the Environment Agency. Mr Kenyon explained that,



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as confirmed in the Environment Agency's Written Representation **[REP2-034]**, the Applicant submitted its application for an EP under the Environmental Permitting (England and Wales) Regulations 2016 and is currently being assessed prior to confirmation that it has been "duly made".

The ExA queried whether any pre-application feedback had been received from the Environment Agency.

Mr Kenyon responded that the Applicant had meetings with the Environment Agency prior to submitting the EP application and is able to provide minutes of these if required. The Applicant is also liaising with the Environment Agency in terms of the Statement of Common Ground (SoCG). As there will be items that will be considered as part of the EP process, the Environment Agency needs to ensure that the SoCG is drafted to make it clear that it has not pre-determined the application.

Natural England

Mr Kenyon explained that in relation to Natural England, the Applicant's position as set out within the **Other Consents and Licences [APP-026]** remains the same and there is a potential need for a protected species licence. As part of the Environmental Impact Assessment the Applicant did not find any protected species and Natural England has confirmed these results were acceptable to it in its relevant representation **[RR-022]**. The Applicant and Natural England agree that there will be pre-construction surveys and, if protected species are found, the Applicant will submit a protected species licence to Natural England at that point in time. However, currently, Natural England is content that no licence is required, as stated in their relevant representation.

In response to a query from the ExA about where the process to reassess the situation in respect of protected species is set out, Mr Kenyon stated that this can be found in the Outline Construction Environmental Management Plan **[REP1-024]**. This includes a section on biodiversity and this requires pre-construction surveys to be carried out ahead of any construction commencing. If there are signs of protected species on the site, then this information would be brought together in an application for a licence that would be sent to Natural England. Works would not be able to start until a licence is issued by Natural England.

Internal Drainage Boards

In relation to the internal drainage boards, Mr Marks explained that the Applicant has had discussions with the Middle Level Commissioners (MLC) and the Water Management Alliance (WMA). The Applicant has recently received comments on protective provisions that the Applicant is currently reviewing. The comments reflect



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		<p>the position of both the MLC and WMA. The Applicant intends to provide an update in due course once it has discussed the protective provisions and other technical points relating to culverting drains and the installation of the Grid Connection.</p>
	<p>The ExA requested an update in respect of the proposed section 106 agreement with CCC and if there is an indicative timescale for finalising it.</p>	<p>Mr McGovern stated that the proposal to enter into a s106 agreement with CCC arose out discussions relating to the s278 highways agreement. The Applicant suggested the s106 agreement as the means to secure the obligation for the Applicant to enter into the s278 agreement. He advised that the intention was to negotiate an agreed form for the s278 agreement, whilst the s106 agreement would contain the obligation on the parties to enter into the s278 agreement prior to the commencement of construction of the authorised development.</p> <p>The Applicant confirmed that it will prepare the first draft of the s278 agreement.</p>
<p>Agenda item 13 – Statements of Common Ground relevant to the DCO</p>		
	<p>The ExA asked the Applicant to provide an update of progress and timescales for completion of the Statements of Common Ground.</p>	<p><u>EEAST; UKHSA; Historic England</u></p> <p>Mr Kenyon explained that the Statement of Commonality of Common Ground (Volume 9.16) [REP2-016] submitted Deadline 2 confirms that the Applicant had signed SOCGs with EEAST (the East of England Ambulance Service Trust) and the UKHSA.</p> <p>Subsequently the Applicant has a signed SoCG with Historic England which will be submitted at Deadline 3.</p> <p><u>Natural England</u></p> <p>The Applicant is confident that following an update to ES Chapter 11 Biodiversity Appendix 11M Biodiversity Net Gain Strategy (Volume 6.4) which will be submitted at Deadline 3, it will be able to secure a signed SoCG with Natural England, and this should be signed by Deadline 4.</p> <p><u>Environment Agency</u></p> <p>The Applicant is continuing to liaise with the Environment Agency. They have asked for further clarification in relation to the drafting of some of the Requirements and have stated that they would like to take some</p>



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information out of the Statement of Common Ground in order to clarify that they have not predetermined the environmental permit application. The Applicant expects to secure a signed SoCG by Deadline 4.

Wisbech Town Council

Mr Kenyon explained that the Applicant is currently liaising with Wisbech Town Council. They wished to review the updated **Waste Fuel Availability Assessment (Rev 2) (WFAA) [REP2-009]** prior to engaging with the Applicant on the SoCG. The Applicant has offered to meet with the Town Council to progress the SoCG.

The ExA queried whether it is still the case that there are no areas of agreement with Wisbech Town Council.

Mr Kenyon explained that this was due to the Council not wishing to engage before receiving the updated WFAA. The Applicant is hoping that progress can be made following receipt by the Council of the updated WFAA submitted at Deadline 2.

Walsoken Parish Council

The **Statement of Commonality of Common Ground [REP2-016]** records that Walsoken Parish Council does not consider it has the relevant expertise and resources to comment upon many of the assessments reported within the Environmental Statement. The Applicant will continue to support the Parish Council with a view to preparing a SoCG but anticipates that this will be limited in scope.

Host Authorities

Mr Kenyon added that the Applicant has had a number of meetings, received comments and held a discussion last week with the host authorities regarding how the SoCG is to be structured. It has been agreed that the one SoCG will be produced, with the contents to be split in half: one half will cover NCC and KLWN; and the other half will cover CCC and FDC. This is due to these Councils having similar issues and comments. The Applicant expects that an updated draft Statement of Common Ground with the host authorities will be submitted at Deadline 4.

Network Rail; National Highways; Anglian Water; Internal Drainage Boards



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		<p>With regard to Network Rail, National Highways, Anglian Water and the IDBs, Mr Kenyon explained that the SoCGs with these organisations are ongoing as set out within the Statement of Commonality of Common Ground (Volume 9.16) [REP2-016] and as explained previously.</p>
Agenda item 14 – Review of issues and actions arising		
	<p>The ExA stated that he does not intend to review the issues and actions from this hearing now, but they will be written into a note and published as soon as practicable.</p>	N/A
Agenda item 15 – Any other business		
	<p>The ExA asked if there was any other business for the hearing.</p>	<p>Mr Fraser-Urquhart on behalf of CCC and FDC requested that Schedules 3, 4, 5, 6 and 7 are updated to include the status of each highway in brackets for clarity. Mr McGovern confirmed that the Applicant would amend the draft DCO to include this information.</p> <p>Mr Fraser-Urquhart requested that the timeframe in Schedule 12, paragraph 3(3), be extended from 5 days to 15 days and the phrase, “unless otherwise agreed” be added. Mr McGovern advised that the Applicant will amend the draft DCO to include “unless otherwise agreed” and agreed in principle with the lengthening of the time period. The Applicant will review the drafting in order to confirm that the Schedule timetable still worked with this amendment.</p> <p>Mr McGovern further confirmed that the Applicant proposed to extend the period of 9 weeks listed in Schedule 12(2) to 12 weeks.</p> <p>Mr McGovern also confirmed that the Applicant will remove paragraph 2 from Article 6, that disapplies the requirement for a flood risk permit, as requested by the Environment Agency. Following queries from the ExA about the location of this information, Mr McGovern explained that this can be found in the Written Representations of the Environment Agency [REP2-034].</p>



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	<p>In response to a comment from Mr Johnson, on behalf of NCC, on whether it was appropriate that matters are deemed approved under Schedule 12, Mr McGovern responded that the consent requirements are limited to particular scenarios. Deemed approval would only occur where there are no materially new or different environmental effects. The deemed approval process is in place to ensure these matters can be dealt with efficiently and there are no delays to the delivery of a nationally significant infrastructure project. Mr McGovern referred to precedents for deemed approval mechanisms in other DCOs, including the Riverside Energy Park Order 2020 and the Wheelabrator Kemsley K3 Generating Station Order 2021.</p>
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Agenda item 16 – Closure of the Hearing	
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Table 1.2 ISH1 Action Points: Applicant's response

Ref	Party	Action Point	Deadline	Applicant's Response
ISH2-1	Applicant	To consider whether the removal of religious artifacts or any artifacts that are found alongside any human remains should be included as part of the provisions in the Article 22. Action for the Applicant to review this and come back in writing to the ExA.	Deadline 3	<p>Article 22 of the Draft DCO (Volume 3.1) provided at Deadline 1 [REP-007] seeks to replace the existing and disparate regimes for regulating the removal of human remains and to consolidate the applicable provisions into a single article in the DCO. Paragraph (15) disappplies section 25 of the Burial Act 1857 (which requires a licence to remove human remains) and paragraph (16) disappplies the Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950 (which contains provisions restricting the use of land, formerly used in relation to religious worship or as a burial ground, by acquiring authorities until certain actions have been taken). The Applicant considers that the provisions of Article 22 (removal of human remains) provide adequate alternative protection. There are numerous DCO precedents for this article, including the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the M42 Junction 6 Development Consent Order 2020 in addition to similar wording being included in various Transport and Works Act Orders including the Midland Metro (Birmingham Eastside Extension) Order 2020.</p> <p>Article 22 of the DCO does not disapply any provision for the treatment of religious artefacts or artefacts found alongside human remains. The DCO does not seek to disapply any legislation, such as the Treasure Act 1996, that governs finds of this nature. The Applicant therefore does not consider it necessary to include any bespoke provisions within the DCO for the treatment of such artefacts.</p>
ISH2-2	Applicant	The Applicant to add reference to article 28 to paragraph 2 of article 9 of the draft Development Consent Order (dDCO).	Deadline 3	Revision 3 of the Draft DCO (Volume 3.1) contains this amendment and has been provided at Deadline 3.
ISH2-3	Applicant	For the Applicant to amend requirement 27 of the DCO to reflect that the local air quality monitoring strategy must be submitted 12 months prior to the	Deadline 3	See the Applicant's response to ISH2-4. The Draft DCO Requirement 27 (Volume 3.1), submitted at Deadline 3 is updated to require the approval of the Local Air Quality Monitoring Strategy prior to the commencement of authorised works.



Ref	Party	Action Point	Deadline	Applicant's Response
		date of commencement of the authorised development.		
ISH2-4	Applicant	Applicant to submit revised version of the Outline Local Air Quality Monitoring Strategy reflecting the 12 months baseline data gathering exercise.	Deadline 3	<p>The Applicant has updated and submitted at Deadline 3, the Outline Local Air Quality Monitoring Strategy (Rev 2) (Volume 9.21). Section 2.2 of the updated strategy amends its implementation from one year prior to the commencement of final commissioning to prior to the commencement of the authorised works. This approach was confirmed by the Applicant and agreed with officers from KLWN at a meeting on 18 March 2023. The updated approach generates approximately 36 rather than 12 months of background data before final commissioning of the EfW CHP Facility.</p> <p>The Draft DCO (Volume 3.1) has been updated for Deadline 3 to make it clear that the Outline Local Air Quality Monitoring Strategy (Volume 9.21) (submitted at Deadline 3) must be submitted and approved prior to the commencement of the authorised development.</p>
ISH2-5	Applicant	For the Applicant to identify and clarify wording of the Community Liaison Manager which should be available during the construction and operational phases of the project.	Deadline 3	<p>The Applicant has updated and submitted at Deadline 3, the Outline Construction Environmental Management Plan (Volume 7.12). Section 3.5.21 of the plan confirms a community liaison manager will be employed prior to and for the duration of construction. The CEMP and consequently the Applicant's commitment to employ a Community Liaison Manager for the construction phase is secured by Draft DCO Requirement 10 (Volume 3.1) [REP1-007].</p> <p>The Applicant's commitment to employ a Community Liaison Manager for the duration of operations, continues to be secured by Draft DCO Requirement 24 (Volume 3.1) [REP1-007].</p>



Ref	Party	Action Point	Deadline	Applicant's Response
ISH2-6	Applicant	To consider commitments to carbon capture in the DCO to support the applicant's greenhouse gas emissions strategy.	Deadline 3	<p>The Applicant has provided an updated National Policy Statement Tracker (Volume 9.18) at Deadline 3, which clarifies that the Applicant's greenhouse gas emissions strategy is not reliant or dependent upon the installation of carbon capture and export capability.</p> <p>As set out in paragraph 3.6.6 of the National Policy Statement for Energy (EN-1) and paragraph 2.5.28 National Policy Statement for Renewable Energy Infrastructure (EN-3), all commercial scale fossil fuel generating stations with a capacity of 300MW or more and of a type covered by the EU's Large Combustion Plant Directive¹ (LCPD), should demonstrate that the plant is carbon capture, transportation and storage ready. Where applicable, (proposals in excess of 300MW), applicants are required to demonstrate that their proposed development complies with the Carbon Capture Readiness (CCR) guidance (Nov 2009)² or any successor to it.</p> <p>In brief, to ensure CCR, Section 4.7.10 of the EN-1 sets out at several tests which must be met to indicate that readiness, these are:</p> <ul style="list-style-type: none"> A) Carbon capture readiness (on site): <ul style="list-style-type: none"> a. <i>"that sufficient space is available on or near the site to accommodate carbon capture equipment in the future"</i>; b. <i>"the technical feasibility of retrofitting their chosen carbon capture technology"</i>. B) CO₂ transportation readiness: <i>"the technical feasibility of transporting the captured CO₂ to the proposed storage area"</i>; C) CO₂ storage readiness: <i>"that a suitable area of deep geological storage offshore exists for the storage of captured CO₂ from the proposed combustion station"</i>; and D) Economic feasibility of Carbon Capture, Transport and Storage: <i>"the economic feasibility within the combustion station's lifetime of the full CCS chain, covering retrofitting, transport and storage"</i>. <p>Footnote 88 of EN-1 confirms Energy from Waste plants are not covered by the LCPD.</p>



Ref	Party	Action Point	Deadline	Applicant's Response
				<p>CCR and national policy EN-1 and EN-3 were tested at Examination in the assessment of Cory's 665,000tpa Riverside EfW (EN010093). The Secretary of State's decision letter (09 April 2020) at section 4.16 concludes;</p> <p><i>"As the combustion element of this Application seeks consent for an electricity generating facility with a total generating capacity of under 300 MW using waste as fuel, the Secretary of State is satisfied that this is not a development to which the CCR requirement applies".</i></p> <p>Consequently, CCR guidance was not required to be examined and the development was approved without a CCR requirement.</p> <p>Based on existing national policy and a recent comparable DCO Examination; at less than 300MW and excluded from LCPD, the Proposed Development does not need to provide CCR and therefore complies with EN-1 and EN-3.</p> <p>Published on 30 March 2023, the Applicant has reviewed the draft EN-1³ and EN-3⁴; see National Policy Statement Tracker (Volume 9.18) submitted at Deadline 3. The position on carbon capture remains unchanged, however the Applicant acknowledges paragraph 4.8.12 states: <i>"If, as expected, that consultation ^[1] leads to changes in the relevant legal or policy framework then those new requirements will apply and supersede the existing CCR requirements. In the meantime, CCR policy remains as set out in the section above".</i></p> <p>That position is likely to change if the Government's recently published proposals Decarbonisation Readiness consultation⁵ are implemented. However, these proposals would only require the Applicant's proposals to demonstrate Decarbonisation Readiness, as defined by the Government and to be regulated through the Environmental Permit (see Section 4).</p>



Ref	Party	Action Point	Deadline	Applicant's Response
				<p>Decarbonisation Readiness (DR) is the updated term for Carbon Capture Readiness (CCR) which was defined in 2009.</p> <p>If the proposals for DR are adopted in their current form, the Applicant via their Environmental Permit would have to satisfy the following criteria:</p> <ul style="list-style-type: none"> a) that sufficient space is available on the site to accommodate any equipment necessary to facilitate CCUS; b) that it is technically feasible to retrofit a CCUS plant to the combustion power plant; c) that the site's location enables access to offshore permanent storage for the CO₂; d) and that it is likely to be economically feasible, within the power plant's lifetime, to retrofit CCUS. This test would be non-mandatory to pass. <p>Section 1.2 of the Project Benefits (Volume 7.4) [APP-095] confirms, MVV has a growth strategy to be carbon neutral by 2040 and thereafter carbon negative, i.e., climate positive. A result of MVV's sustainable growth strategy and acknowledging the national position of carbon capture could change and be applicable to the Proposed Development, a responsible way forward was to proceed with a suitably sized area of land within the EfW CHP facility Site for future CC technology.</p> <p>Section 3.40 (Carbon Capture) ES Chapter 3: Description of the Proposed Development (Volume 6.2) [APP-030], summarise the points made above and confirms:</p> <ul style="list-style-type: none"> 1) The EfW CHP Facility Site has been designed to allow sufficient space for the plant and equipment for a CCS facility, if required, in the future (criterion (a) of EN-1 and the draft DR requirements) 2) The steam turbine and associated equipment will be designed be retrofit ready for the installation of CCS (criterion (b) of EN-1 and the draft DR requirements).



Ref	Party	Action Point	Deadline	Applicant's Response
ISH2-7	Applicant	Applicant to engage with Borough Council King's Lynn and West Norfolk to look at financial contributions in relation to air quality and how these can be secured and delivered, if through a Local Air Quality Monitoring Strategy or other vehicle.	Deadline 3	<p>On criterion (c) and (d) of EN-1 and the draft DR requirements, the Applicant has conducted pre-feasibility studies and continues to consider available options to ensure compliance.</p> <p>Whilst the regulatory requirements and arrangements to deliver DR via the Environmental Permitting process are yet to be confirmed, to confirm Applicant's commitments and provide comfort to the ExA that matters surrounding future carbon capture are addressed within the Draft DCO (Volume 3.1) [REP1-007], two DCO Requirements are included:</p> <ul style="list-style-type: none"> • Requirement 22 – Carbon capture and export readiness reserve space; and • Requirements 23 – Carbon capture readiness monitoring report. <p>In summary, the Proposed Development complies with the adopted and emerging national policy statements and future proofs the Proposed Development to ensure compliance with carbon capture readiness policy.</p> <p>¹EU Directive 2001/80/EC ²Carbon Capture Readiness (CCR): a guide on consent applications (Nov 2009) ³DRAFT: Overarching National Policy Statement for energy (EN-1) (March 2023) ⁴DRAFT: National Policy Statement for renewable energy infrastructure (EN-3) (March 2023) ⁵Decarbonisation Readiness Consultation on updates to the 2009 Carbon Capture Readiness requirements (March 2023)</p> <p>The Draft DCO (Volume 3.1) (updated at Deadline 3) includes Requirement 27 (Local air quality monitoring strategy). This requires the Applicant to submit a local air quality monitoring strategy for approval prior to the date of commissioning and thereafter that it be implemented as approved. The Applicant is of the opinion that the requirement (as amended at Deadline 3 – see below) provides sufficient guarantees to the relevant planning authority and therefore a S106 agreement is not required to address this matter.</p>



Ref	Party	Action Point	Deadline	Applicant's Response
				In light of KLWN's comments on the Outline Local Air Quality Monitoring Strategy (Volume 9.21) [REP1-055] , the Applicant met officers on the 18 March 2023. FDC were invited but no response was received. At this meeting it was agreed that, <u>either</u> the LAQMS is secured by a DCO Requirement (the current proposal) <u>or</u> a financial contribution towards extending the host authority's local air quality monitoring scheme is secured by a S.106 contribution. The level of financial contributions to be proportionate to the commitments within the updated Outline LAQMS and raw data/reports to be shared with the Applicant. The Applicant awaits a response from KLWN, in consultation with FDC on which option they wish to proceed with.
ISH2-9	Applicant	Applicant's intention to submit an outline of the decommissioning plan and revise requirement 28 to reflect this.	Deadline 4	Action noted.
ISH2-10	Applicant	To consider drafting of Requirement 7, Schedule 2 "Highway Access" in order to provide further detail regarding access improvements proposed.	Deadline 3	Revision 3 of the Draft DCO (Volume 3.1) contains this amendment and has been provided at Deadline 3.
ISH2-11	Applicant	Amend Requirement 7, Schedule 2 "Highway Access" paragraph 2 to state "highways authority", not "planning authority".	Deadline 3	Revision 3 of the Draft DCO (Volume 3.1) contains this amendment and has been provided at Deadline 3.
ISH2-12	Applicant	Applicant to consider current drafting of Requirement 7, Schedule 2 and to provide further explicit reference within the requirement of the works proposed and the approved details, in line with CCC.	Deadline 3	Revision 3 of the Draft DCO (Volume 3.1) contains this amendment and has been provided at Deadline 3.



Ref	Party	Action Point	Deadline	Applicant's Response
ISH2-13	Applicant and CCC	Applicant to engage with CCC an update the ExA in relation to progress with negotiations in relation to predevelopment condition surveys, monitoring of the condition of the highway and compensation figures for additional traffic.	Deadline 3	The Applicant met CCC to discuss highway matters on the 13 April 2023 and is liaising with them regarding predevelopment condition surveys and s278 obligations.
ISH2-14	Applicant	Works Plan APP-007 sheet 1 - inset to be provided to separate the layers for clarity.	Deadline 3	An updated version of the Works Plan (Volume 2.3) Sheet 1 has been submitted at Deadline 3 with a cover layer showing Work No. 4A and Work No. 6A alone.
[sic]	Applicant	Applicant to review its position in relation to A47 and review which Table it should be included in as part of Schedule 6, Access.	Deadline 3	<p>The Access and Public Rights of Way Plan (Volume 2.4) (Rev3) [REP1-003] shows the location of the various permanent and temporary accesses required to facilitate the Proposed Development. Access A11 is located at the southern end of New Bridge Lane and abuts the A47. This access is required for the construction of the Water Connection and the Grid Connection, which will be laid below New Bridge Lane. The Water Connection will then cross beneath the A47, to connect to an existing water main to the south of the A47. The Grid Connection will turn eastwards and be laid in the verge of the A47 to the Walsoken Substation.</p> <p>Access A11 is required temporarily for the construction of the Grid and Water Connections only. No permanent access is being constructed in this location; all HGV traffic to the facility will use the existing roundabout between the A47 and Cromwell Road, before turning right onto New Bridge Lane and accessing the facility via the permanent access being constructed at the location indicated by A8 on the Access and Public Rights of Way Plan.</p> <p>The Applicant has included access A11 within Part 3 of Schedule 6, as the works to restore the temporary access will be maintained by the street authority. The Applicant is satisfied that this reflects the use of this access, being required during the construction of the Grid and Water Connections only, with the existing highway layout being reinstated in this location.</p>



Ref	Party	Action Point	Deadline	Applicant's Response
ISH2-15	Applicant and CCC	Schedule 6 "Access" tables to be refined and clarified and applicant to engage with CCC to review consents regarding access, particularly in relation to Tables 4 and 5	Deadline 3	Revision 3 of the Draft DCO (Volume 3.1) contains this amendment and has been provided at Deadline 3.
ISH2-16	Applicant	To update Schedule 12 to reflect request for 15 working days and 'unless otherwise agreed' clause. Also para 2 to be amended from 9 weeks to 12 weeks.	Deadline 3	Revision 3 of the Draft DCO (Volume 3.1) contains this amendment and has been provided at Deadline 3.

