



Application by Medworth CHP Limited for the Medworth Energy from Waste Combined Heat and Power Facility
The Examining Authority's schedule of changes to the draft Development Consent Order (dDCO) [\[REP3-007\]](#)
Issued on 5 June 2023

Responses are due by Deadline 5: 23:59 on Friday 16 June 2023

Ref	ExA's suggested changes	ExA's comments
GENERAL		
Drafting Guidance	When the dDCO is finalised, in Deadline 7, Friday 04 August 2023, all internal references, statutory citations and references and legal footnotes should be checked and updated as required. Drafting should be reviewed to follow best practice in Planning Inspectorate Advice Notes 13 and 15 and guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020).	As stated.
Drafting	The Final DCO to be submitted in PDF by the Applicant at Deadline 7 must be accompanied by a MS Word copy in the SI template with the SI template validation report confirming that it is in accordance with the format for the official draft SI template and has passed through the draft SI checker. All outstanding format issues must be addressed before submission and the Applicant must submit the checker reports to show that this has been done by Deadline 7.	As stated.
Use of "and/or"	Check use of "and/or": this is not considered to be suitable for statutory instruments.	As stated.
Explanatory Memorandum	A robust justification should be provided in the Explanatory Memorandum for each Article and Requirement in the dDCO, explaining why the inclusion of the power or requirement is necessary, proportionate to the novelty or controversy relating to the provision. Account should be taken of equivalent provisions in made DCOs, recognising that practice has evolved, and the model provisions set out in the infrastructure regulations may no longer be relevant.	As stated.
Statement of Reasons	The Statement of Reasons should be checked, and an updated version should be submitted alongside the Final DCO, in order to ensure that it accurately reflects the latest version of the Land Plans and also the final drafting of the DCO.	As stated.



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Art. 12 Construction and maintenance of new or altered means of access	<p>12.—(1) Those parts of each means of access specified in Part 1 of Schedule 6 (access) to be constructed or altered under this Order must be completed to the reasonable satisfaction of the highway authority or the person liable for the repair of the road and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.</p> <p>(2) Those parts of each means of access specified in Part 2 of Schedule 6 (access) to be constructed or altered under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority or the person liable for the repair of the road and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.</p> <p>(3) Those restoration works carried out pursuant to article 11(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 6 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority or the person liable for the repair of the road and must be maintained by and at the expense of the street authority.</p> <p>(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.</p> <p>(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—</p> <ul style="list-style-type: none">(a) the character of the street including the traffic which was reasonably to be expected to use it;(b) the standard of maintenance appropriate for a street of that character and used by such traffic;(c) the state of repair in which a reasonable person would have expected to find the street;	To ensure that works for means of access that may impact private roads, are completed to the satisfaction of the person liable for the repair of the road. Also, note that Art. 11(3) does not cover “new means of access” and therefore it is the ExA’s view that such eventuality needs to be addressed in Art. 12. Please also see ExQ2 DCO.2.12 and ExQ2 DCO.2.13



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	<p>(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and</p> <p>(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,</p> <p>but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.</p>	
Art. 13 Temporary prohibition or restriction of use of streets and public rights of way	Add: (7) The undertaker must restore any public right of way that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.	In order to secure that any temporarily altered existing public right of way is restored.
Art. 14 Use of private roads	Add: (1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction, maintenance, operation and decommissioning of the authorised development.	To make it clear that the Applicant proposes to use private roads in relation to the use/operation and also decommissioning of the authorised development.
Art. 17 Traffic regulation measures	Add: —(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection, or in consequence of, with the construction, maintenance and operation of the authorised development— (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;	In order to improve traffic regulation measures through appropriate levels of signalling on those roads or public rights of way where temporary prohibition or restrictions are proposed.



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	<p>(b) make provision as to the direction or priority of vehicular traffic on any road;</p> <p>(c) permit, prohibit or restrict the use of any road;</p> <p>(d) permit, prohibit or restrict vehicular access to any road;</p> <p>(e) revoke, amend or suspend in whole or in part any order made, or having effect as if made under the 1984 Act;</p> <p>(f) determine that no person is to drive any motor vehicle at a speed exceeding 30 miles per hour along the length of road known as New Bridge Lane and shown coloured blue on the access and public rights of way plans; and</p> <p>(g) temporarily place traffic signs and signals in the extents of the road specified in column 3 of Part of Schedule 7 (temporary prohibition or restriction of the use of streets or public rights of way),</p> <p>either at all times or at times, on days or during such periods as may be specified by the undertaker.</p>	
Art. 20 protective work to buildings	<p>(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure lying within the Order land as the undertaker considers necessary or expedient.</p> <p>(2) Protective works may be carried out—</p> <p>(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or</p> <p>(b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.</p> <p>(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage.</p> <p>(4) For the purpose of carrying out protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—</p> <p>(a) enter the building or structure and any land within its curtilage; and</p>	



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	<p>(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order land.</p> <p>(5) Before exercising—</p> <p>(a) a power under paragraph (1) to carry out protective works under this article to a building or structure;</p> <p>(b) a power under paragraph (3) to enter a building or structure and land within its curtilage;</p> <p>(c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage; or</p> <p>(d) a power under paragraph (4)(b) to enter and take possession of land, the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building, structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.</p>	<p>To limit the Applicant's power and ensure that protective work to buildings can be used to take possession of land.</p>
<p>Art. 32 temporary use of land for carrying out the authorised development</p>	<p>"Temporary use of land for carrying out the authorised development" to be changed to "Temporary use of land for the construction of the authorised development"</p>	<p>To improve precision of wording, particularly as article seems to only relate to the construction of the Proposed Development.</p>
<p>Art. 32 temporary use of land for carrying out the authorised development</p>	<p>Add: (2) Paragraph (1) does not authorise the undertaker to take temporary possession of— (a) any house or garden belonging to a house; or (b) any building (other than a house) if it is for the time being occupied.</p>	<p>In order to safeguard the position of other owners and occupiers.</p>
<p>Art. 32 temporary use of land for carrying out</p>	<p>Amend to read: (8) The undertaker may not <u>under this Order, compulsorily acquire or compulsorily acquire rights over,</u> the land referred to in paragraph (1)(a)(i).</p>	<p>To cover rights in addition to land.</p>



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the authorised development			
Art. 32 temporary use of land for carrying out the authorised development	Delete Art. 32(12) as it is redundant considering Art 32.(a)(ii).		As stated.
SCHEDULES			
Schedule 8 – Land in which only new rights etc. may be acquired – Table 8	(1) Number of plot shown on the land plans	(2) Rights etc. which may be acquired	<p>In order to restrict the powers granted to the Applicant for the identified plots as “any other works as necessary” is too vague a drafting and too broad a power.</p> <p>ExA suggest deleting “public rights of way” as the restrict the powers of the Applicant particularly in relation to the potential installation, alteration or removal of public rights of way.</p>
	1/1a, 1/1b, 1/1c, 1/1d, 1/1e, 1/2a, 2/1a, 2/1b, 3/1a, 3/1b, 4/1a, 4/1b, 5/1a, 5/1b, 5/1c, 6/1a, 6/1b, 6/1c, 6/1d, 6/1e, 6/1f, 6/1g, 6/1h, 6/1i, 6/1j, 6/1k, 6/2a, 6/2b, 7/1a, 8/1a, 8/1b, 8/2a, 9/1a, 9/1b, 9/1c, 10/1a, 10/2e, 10/2f, 10/5a, 11/1a(i), 11/2 ^a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve underground electricity cables, jointing bays, protection plates, ducting, telemetry and other ancillary apparatus (including but not limited to access chambers, manholes and marker posts) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telemetry and other ancillary apparatus	
		Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary	



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	<p>1/2a, 11/1a(i), 11/1a(ii), 11/1b(i), 11/1b(ii), 11/1b(iii), 11/2a, 12/1a, 12/1b, 12/1c, 12/1d, 12/1e, 12/1f, 12/1g, 12/1h, 12/1i, 12/1j, 12/1k, 12/1l, 12/2a, 12/4a, 12/5a, 13/4c(ii), 13/4d, 14/1a</p>	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p>	
	<p>10/1a, 10/1b, 10/1c, 10/2a, 10/2b, 10/2c, 10/2d, 10/2e, 10/2f, 10/2g, 10/3a, 10/4a, 10/5a, 11/1a(i), 11/2a</p>	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a potable water connection (including but not limited to pipes, trenches, ducting, protection plates, jointing bays, 54 associated telemetry and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined potable water connection and other ancillary apparatus</p>	
		<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p>	
	<p>11/2d, 11/2f, 11/7b, 13/4a</p>	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way</p>	



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		<p>and any other ancillary apparatus and any other works as necessary</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve combined heat and power equipment (including but not limited to steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated telemetry, vertical expansion loops, pipe bridges and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined heat and power equipment and other ancillary apparatus</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p>	
Schedule 14 – Maximum and Minimum Design Parameters	Table 11 to be amended to include minimum height (metres) for all the applicable Elements of authorised development		In order to comply with Schedule 2 Requirements 3.