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To: The Applicant and all Interested
Parties for information

Our Ref: EN010110

Date: 13 June 2023

Dear Sir/Madam

**Planning Act 2008 – sections 89 and 123; and The Infrastructure Planning
(Compulsory Acquisition) Regulations 2010 – Regulation 6**

**Application by Medworth CHP Limited for an Order Granting Development Consent
for the Medworth Energy from Waste Combined Heat and Power Facility**

Procedural Decision following request to make changes to the application

We are writing to inform you of the Procedural Decision made by the Examining Authority (ExA) following the change request made by the Applicant dated 05 June 2023 (Examination Library references [AS-017] to [AS-030]). All documentation referred to herein have been published under the 'Documents' tab on the [project webpage](#) of the National Infrastructure Planning website.

The Applicant's Change Application Report [\[AS-028\]](#) provides a summary of the changes proposed in Section 2.2.

Change 1: Minor Amendments to the Order Limits within the boundary of the existing and future public highway at the junction of Cromwell Road and New Bridge Lane to facilitate the carrying out of the Access Improvements to the public highway forming part of Work No.4A (the "Cromwell Road Junction Signal Scheme")

Change 2: Minor amendments to the Order Limits within the boundary of the existing public highway at the junction of New Bridge Lane and Salters Way to install proposed drop kerbs to the existing pavement forming part of Work No.4A (the "Salters Way Junction Pavement Works")

Section 2.1 sets out the need for the changes and in Section 1.4 of the same document, the Applicant sets out all the information submitted in support of the change request. This includes, amongst others, Volume 2.2: Land Plan – Change Application Report [\[AS-019\]](#); Volume 2.3: Works Plan – Change Application [\[AS-020\]](#); Volume 3.1 Draft DCO – Change Application [\[AS-024\]](#) and [\[AS-025\]](#) and Volume 13.4: Schedule of Changes [\[AS-030\]](#).

The ExA has reviewed the information provided and assessed the Applicant's request in line with paragraphs 109 to 115 of the DCLG Guidance [Planning Act 2008: Examination of Applications for Development Consent](#) and the [Planning Inspectorate's Advice Note 16 \(AN16\)](#) and has reached the following conclusions.

ExA's reasoning and decision

The ExA agrees with the Applicant that the proposed change is not so material as to constitute a materially different project and the proposed change is not considered to lead to the project being different in nature or substance to that which was originally accepted for Examination in August 2022.

The formal change request [AS-017] to [AS-030], follows from the Applicant's notice of intention to submit a request for changes [\[AS-015\]](#) to which the ExA's responded to in a Procedural Decision on the 26 May 2023 [\[PD-012\]](#).

The ExA's response of 26 May 2023 was based on the information provided by the Applicant in [\[AS-015\]](#), namely that both changes were minor amendments to the Order Limits within the boundary of the existing public highway and that, as the Applicant was not proposing to include in the draft Development Consent Order (draft DCO) a provision authorising the compulsory acquisition of additional land (as defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the "CA Regulations 2010"), the CA Regulations 2010 were not engaged.

To facilitate the ExA's decision process on non-statutory consultation and following from concerns raised by Cambridgeshire County Council (CCC), in its Procedural Decision of 26 May 2023 [\[PD-012\]](#), the ExA also asked the Applicant to carry out further diligent inquiries in relation to the additional land as to ascertain if all the land was, in fact, public highway land.

In response to the ExA's comments in relation to CA Regulations 2010, the Applicant confirms in paragraphs 2.1.6 and 2.1.11 of the Change Application Report [\[AS-028\]](#) that the CA Regulations 2010 are not applicable to either Change 1 or Change 2. The Applicant also confirms in the same document that is not proposing to include in the draft DCO a provision authorising the compulsory acquisition of additional land.

As a result of the further enquiries requested by the ExA, the Applicant was able to confirm that a small section of land required for Change 1 (now identified as plot 12/4b in the Land Plan [\[AS-019\]](#) and included in the Addition to the BoR (Appendix E of the Applicant's Change Application Report [\[AS-028\]](#)) is not public highway land. It is, in fact, in the ownership of Tesco Stores Limited and subject to a S.106 agreement [\[AS-016\]](#) under the Highways Act 1980 between CCC and Tesco Stores Limited.

Although it is clear, according to the S.106 agreement [\[AS-016\]](#), that the land identified in plot 12/4b is likely to be dedicated in the future as public highway land, it is at the moment, still in the ownership of Tesco Stores Limited and although the ExA agrees that the CA Regulations 2010 are not engaged as no compulsory acquisition powers are required over any of the land included in Change 1 or Change 2, the proposed change does represent an expansion of the Order Land and, therefore, an expansion of its powers.

In light of the nature of the addition to the BoR and confirmation from the Applicant that not all land included in Change 1 or Change 2 is, in fact, public highway land, the ExA has had to re-valuate its position in relation to non-statutory consultation.

In its Procedural Decision on the 26 May 2023 [\[PD-012\]](#) the ExA stated that, as per the Planning Inspectorate's Advice Note 16 [\(AN-16\)](#), a change request should include, amongst other things, confirmation that the CA Regulations are not engaged including, if appropriate, a copy of the consent obtained from all persons with an interest in the additional land.

Although the Applicant has not provided a copy of any consents obtained, in Appendix D of the Change Application Report [\[AS-028\]](#), the Applicant has provided compelling evidence that CCC is aware of the change requests and their implications. Nevertheless, the ExA cannot see any concrete evidence of engagement with the owner of plot 12/4b, Tesco Stores Limited or, more importantly, evidence of their support for the proposed approach and awareness of the changes.

In defence of its proposed approach, the Applicant, in paragraph 2.5.9 of the Change Application Report [\[AS-028\]](#), goes on to say that the land in question is owned by a landowner that is listed in the Addition to the BoR (Appendix E of the Applicant's Change Application Report [\[AS-028\]](#)) in respect of the adjacent plot of land (Plot 12/4a). It goes on to say that the landowner has therefore been made aware of the Proposed Development and, by virtue of its interest in Plot 12/4a, is already aware that works are intended over part of its land in order to provide improvements to the Cromwell Road Junction.

The ExA disagrees with the Applicant on this point and considers that, although it accepts that the land owner of plot 12/4b is the same as of plot 12/4a as listed in the Addition to the BoR (Appendix E of the Applicant's Change Application Report [\[AS-028\]](#)), it doesn't necessarily follow that the landowner is, in fact, aware of the change request or any of its implications.

The Applicant's argument and approach, as set out above, partially relies on the fact that non-statutory consultation is not required on the changes because all of the owners and persons with a direct interest in the land, are aware of the change request. If this is Applicant's position, then evidence of engagement with all affected parties to a standard that would satisfy the ExA and provide reasonable assurance that the proposed changes have been noted and not objected to, would have to be provided.

Although the Applicant states in paragraph 2.5.11 that it understands that CCC is in contact with the landowner and that the land included in the change requests could shortly be dedicated as public highway, this is yet to materialise. The additional land is, therefore still in private ownership and without evidence of consultation or awareness of the proposed changes from Tesco Stores Limited, the ExA is not fully persuaded that non-statutory consultation is not required.

The ExA would also clarify that the previous advice given to the Applicant on the procedural implications of the proposed change and on the need, scale and nature of the proposed consultation exercise, was given based on the information submitted with the Notice of intention to submit a request for changes [\[AS-015\]](#). In the notice, the Applicant mentioned that all of the additional land included in Change 1 and Change 2 was public highways land. Only subsequent to the ExA's advice in Procedural Note [\[PD-012\]](#) did the

Applicant carried out diligent enquiries which confirmed that not all of the land was, in fact, public highways land and that private land was going to be affected by having existing easements, servitudes and other private rights temporarily suspended.

As such, the ExA finds that, in light of the nature of the land and the addition to the BoR and in the absence of compelling evidence that demonstrates that all known directly affected parties are aware of the changes, in order to ensure that it acts reasonably and fairly, in accordance with the principles of natural justice, reasonable and proportionate non-statutory consultation should be carried out before the change request can be accepted.

The ExA agrees with the Applicant that the proposed changes are not so material as to constitute a materially different project and that the proposed changes is not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally accepted for examination on the 02 August 2023.

Consultation

The Applicant has set out, in paragraphs 5.7 and 5.8 of the Notification of intention to submit the request for changes [\[AS-015\]](#), its proposal in relation to consultation and implications for the Examination Timetable in the event that the ExA considers consultation is required. The ExA has considered the Applicant's consultation proposal in light of DCLG Guidance [Planning Act 2008: Examination of Applications for Development Consent](#).

The ExA agrees with the Applicant that, for the purposes of non-statutory consultation, the Applicant:

- Should not require a public exhibition of event, given the minor nature of Change 1 and Change 2;
- Should only involve local newspapers (i.e. not a national newspaper);
- Should involve the same 'Core Consultation Zone' as was used at statutory consultation but limited to the administrative area of CCC as neither Change 1 nor Change 2 are relevant to the Grid Connection which extends into Norfolk County Council;
- Should involve writing to relevant prescribed consultees (including statutory undertakers) that have an interest/responsibilities relating to Change 1 and/or Change 2.

In addition, the ExA's requests that the Applicant:

- Writes to all known land interests identified in relation to any Land now included in the Order limits as a result of Change 1 and Change 2;
- Publishes, for the purposes of non-statutory consultation, a Statement of Purposes where the Applicant details the reasons for any proposed changes to the Order limits. The Statement of Purposes should also include clear visual representation of the proposed changes in a map;
- Runs the consultation for a minimum of 15 days.

After the end of the non-statutory consultation and before the change request can be accepted, ExA requests that the Applicant:

- Submits a statement encompassing a non-statutory consultation report, and that;

- Lists all of the known interests it has written to in connection with Change 1 and Change 2;
- Provides a copy of the Statement of Purposes issued to inform the non-statutory consultation;
- Provides copies of any newspaper notices or site notices;
- Appends as an annex any consultation responses received.

The Applicant's proposed timetable assumed that any consultation would need to take place in the period 7 June 2023 to 5 July 2023 and the Change Application to be accepted on 14 July 2023. As the Applicant will be unable to start the consultation on the 7 of June, as originally predicted, the Applicant is asked to consider if it can carry out the consultation set out above within the existing timetable for the Examination, bearing in mind that the examination must be completed within the statutory timetable of 6 months and that the ExA must also allow for any other procedural requirements to still be met.

If the Applicant is of the view that it can carry out the consultation set out above within the existing timetable for the Examination, then the Applicant is asked to confirm this to the ExA alongside proposed dates for the start and finish of the non-statutory consultation process and when the Applicant believes it will be in a position to submit the information hereby requested under the Consultation section of this letter. The Applicant must also submit an updated version of the proposed Examination Timetable in light of the non-statutory consultation outlined.

The Applicant must also be alive to the fact that, if the findings from the consultation exercise reveal that the proposed change would result in new or different issues, as for example, identification of additional parties with any rights in relation to land included in Change 1 and/ or Change 2, the ExA's may be of the view that it will not have enough time to adequately examine those issues within the current timetable. This will mean that the ExA will, therefore, not be in a position to accept the change request. This is due to the change request being submitted at the later stages of the Examination.

Taking into consideration the nature and scale of the proposed changes, the ExA is of the opinion that the non-statutory consultation proposed is considered to be a reasonable and proportionate approach that will provide meaningful consultation and give all known land interests directly affected by the proposed changes an appropriate opportunity to engage with the proposed changes. In relation to all other Interested Parties (IPs), the ExA is of the view that the current Examination Timetable allows sufficient time for any IPs to make submissions in respect of the consequences of the proposed changes.

The ExA has issued this advice in line with the [Planning Inspectorate's Advice Note 16](#) (AN 16) and has taken into consideration issues of fairness and natural justice.

If you have any questions about the content of this letter, please contact the Medworth Planning Inspectorate Case Team on Medworth@planninginspectorate.gov.uk

Yours faithfully

Andre Pinto

Lead Member of the Panel of Examining Inspectors