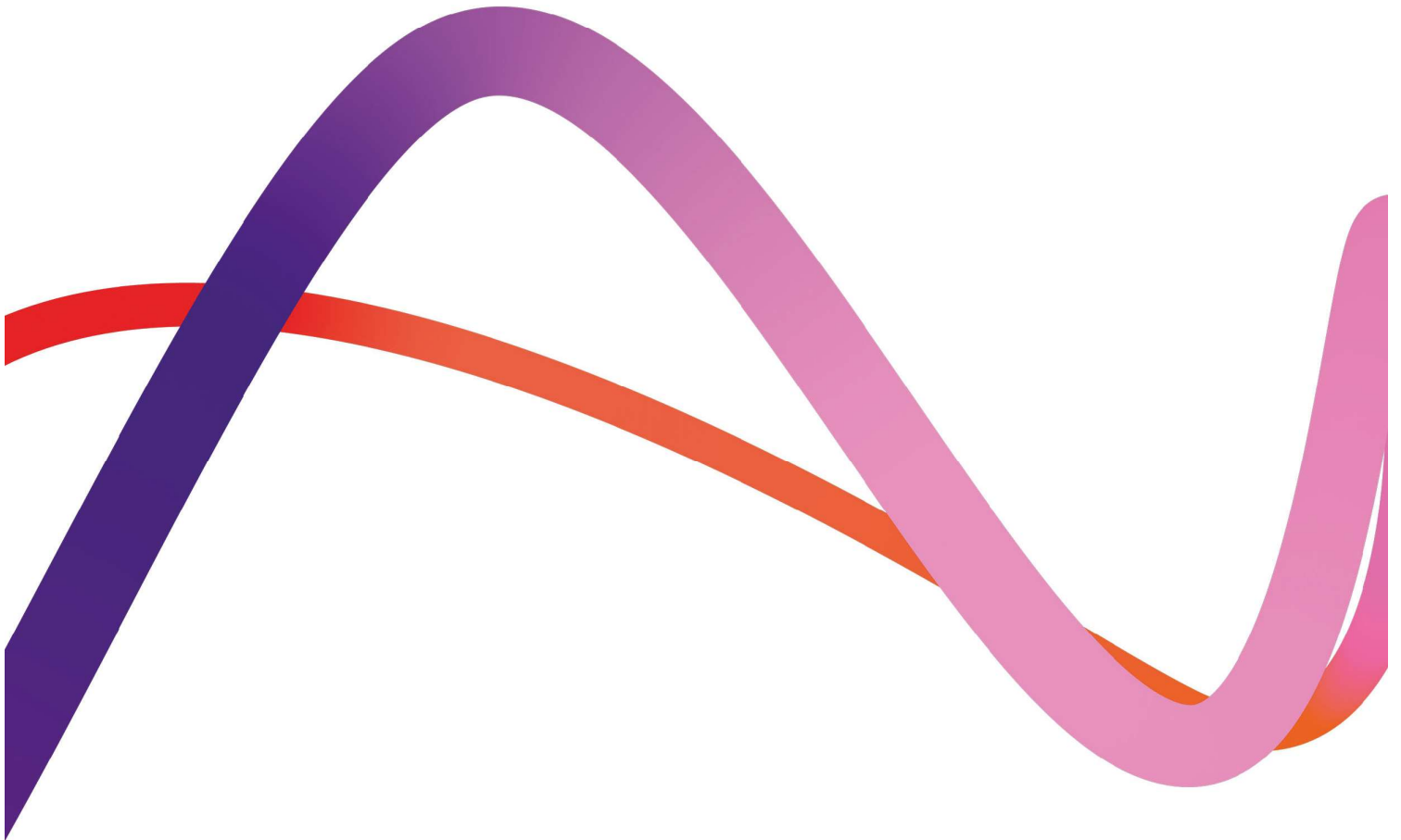


**Medworth Energy from Waste
Combined Heat and Power Facility**



PINS ref. EN010110
Document Reference Vol.14.3
Revision: 1.0
Deadline: 5
June 2023



**Applicant's Comments on the
ExA's Schedule of Changes to
the Draft Development Consent
Order**

**We inspire
with energy.**

Contents

1.	Introduction	2
1.1	Background	2

	Table 1.1 General	3
	Table 1.2 Schedules	12

1. Introduction

1.1 Background

1.1.1 Medworth CHP Limited (the Applicant) submitted an application for development consent to the Secretary of State on 7 July 2022 (the Application). The Application was accepted for examination on 2 August 2022. The Examination of the Application commenced on 21 February 2023.

1.1.2 This document, submitted for Deadline 5 (16 June 2023) of the Examination contains the Applicant's Comments on the Examining Authority's (ExA) Schedule of Changes to the Draft Development Consent Order published by the ExA on 5 June 2023.

1.1.3 The Applicant's comments are presented in the following tables:

- Table 1.1 General; and
- Table 1.2 Schedules.



Table 1.1 General

Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
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.	Noted. The Applicant regularly checks to ensure that internal referencing, citations and footnotes are correct and up-to-date. The final draft DCO will be checked prior to submission at Deadline 7.
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.	Noted. The Applicant will submit a word version in the SI template with the SI template validation report at Deadline 7.
Use of "and/or"	Check use of "and/or": this is not considered to be suitable for statutory instruments.	As stated.	The Applicant is mindful that the use of 'and/or' within the draft DCO (Revision 4 provided at Deadline 5), is limited to the protective provisions contained in Schedule 11 for National Highways (Part 5) and Network Rail (Part 8), and Schedule 15, arbitration rules.



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
			<p>The Applicant has updated the arbitration rules to avoid the use of 'and/or'. However, in respect of the protective provisions, the Applicant is mindful that these are based on the statutory undertaker's preferred drafting. The Applicant is continuing to discuss the protective provisions with National Highways and Network Rail, however the final agreed provisions may nevertheless contain the use of 'and/or' where this is required by the statutory undertaker.</p>
<p>Explanatory Memorandum</p>	<p>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.</p>	<p>As stated.</p>	<p>An Explanatory Memorandum was submitted with the DCO Application [APP-014] and contained a robust justification for each article and requirement in the draft DCO.</p> <p>The Applicant confirms that an updated Explanatory Memorandum will be provided with the final draft DCO submitted at Deadline 7.</p>
<p>Statement of Reasons</p>	<p>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.</p>	<p>As stated.</p>	<p>Noted. To the extent that any further changes or amendments are required to the Statement of Reasons, the Applicant will submit an updated version at Deadline 7.</p>
<p>Art.12 Construction</p>	<p>12.—(1) Those parts of each means of access specified in Part 1 of Schedule 6</p>	<p>To ensure that works for means of access that may impact private roads, are completed to the</p>	<p>Article 2 of the draft DCO (Volume 3.1), Revision 4 provided at Deadline 5, includes the</p>



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
<p>and maintenance of new or altered means of access</p>	<p>(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</p>	<p>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</p>	<p>definitions used throughout the remainder of the draft DCO. This includes the definitions of “highway authority” and “street authority”. Highway authority has the same meaning as in the Highways Act 1980. Street authority has the same meaning as in Part 3 of the New Roads and Street Works Act 1991 (NRSWA 1991).</p> <p>The meaning of ‘street authority’ in Part 3 of NRSWA 1991 is set out in section 49, as:</p> <p><i>(1)(a) if the street is a maintainable highway, the highway authority, and</i> <i>(1)(b) if the street is not a maintainable highway, the street managers.</i></p> <p>And, at section 49(4): <i>In this Part [being Part 3] the expression “street managers”, used in relation to a street which is not a maintainable highway, means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street.</i></p> <p>Accordingly, the definition of ‘street authority’ already refers to the person liable for repair of the road and the Applicant therefore does not consider the additional text to be necessary.</p> <p>In accordance with the OPC drafting guidance, where a term is defined in relevant existing legislation, the definition should refer to that legislation. This is to ensure that the term is interpreted consistently. Using the same definitions as in other legislation is</p>



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
	<p>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> <p>(a) the character of the street including the traffic which was reasonably to be expected to use it;</p> <p>(b) the standard of maintenance appropriate for a street of that character and used by such traffic;</p> <p>(c) the state of repair in which a reasonable person would have expected to find the street;</p> <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, 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</p>		<p>recommended by the OPC drafting guidance in order to pick up case law on its meaning and ensure the inclusion of any future changes to its meaning (paragraph 4.1.11). It is also consistent with the Joint Committee on Statutory Instruments (JCSI) 14th report 1997/98, paragraph 10, that advises against the use of definitions rendered superfluous by other legislation.</p> <p>Please also see the Applicant's responses to ExQ2 DCO.2.12 and ExQ2 DCO.2.13.</p>



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
<p>Art. 13 Temporary prohibition or restriction of use of streets and public rights of way</p>	<p>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> <p>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.</p>	<p>In order to secure that any temporarily altered existing public right of way is restored.</p>	<p>Article 13 provides the power for the undertaker to “temporarily alter, divert, prohibit or restrict the use” of streets or public rights of way (PRoW) within the Order limits for the purposes of constructing the authorised development.</p> <p>This power relates to temporary alterations to the <u>use</u> of a street or public right of way not physical works.</p> <p>The powers to alter the layout of any street is contained in Articles 11 and 12 of the draft DCO and each provisions requires the street to be restored to the satisfaction of the street authority (Article 11(3) and Article 12(3)).</p> <p>However, the Applicant notes that Article 13(2) enables the undertaker to use any street or public right of way that has been prohibited or restricted as a temporary working site. In such circumstances, the Applicant agrees that it would be appropriate for any street or public right of way used as a temporary working site to be restored to the reasonable satisfaction of the street authority and has amended Article 13 (7) accordingly in the version of the draft DCO submitted at Deadline 5.</p>



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
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.	The Applicant has amended Article 14(1) accordingly in the version of the draft DCO submitted at Deadline 5.
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; (b) make provision as to the direction or priority of vehicular traffic on any road; (c) permit, prohibit or restrict the use of any road; (d) permit, prohibit or restrict vehicular access to any road; (e) revoke, amend or suspend in whole or in part any order made, or having effect as if made under the 1984 Act; (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	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.	The Applicant does not consider this drafting to be necessary but has included it in the draft DCO submitted at Deadline 5. For completeness, the Applicant has also amended the drafting as follows: <i>“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), and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016”</i>



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
Art. 20 protective work to buildings	<p>shown coloured blue on the access and public rights of way plans; and (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), either at all times or at times, on days or during such periods as may be specified by the undertaker.</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>The Applicant notes that the wording "<i>and take possession of</i>" was included in Article 20(5)(d) of the Riverside Energy Park Order 2020. However, the Applicant has removed it from the draft DCO submitted at Deadline 5 for consistency as Article 20(4)(b) only refers to "<i>entry</i>".</p>



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
	<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> <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>		



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
Art. 32 temporary use of land for carrying out the authorised development	"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"	To improve precision of wording, particularly as article seems to only relate to the construction of the Proposed Development.	Whilst the term " <i>carrying out</i> " has been used in numerous made DCOs, the Applicant has included this amendment within the draft DCO (Volume 3.1), Revision 4 provided at Deadline 5.
Art. 32 temporary use of land for carrying out the authorised development	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.	In order to safeguard the position of other owners and occupiers.	This wording has been deliberately excluded from draft Article 32 as the Applicant is seeking temporary possession powers during construction over the house and garden at No. 9 New Bridge Lane and the front garden at No 10 New Bridge Lane (for the construction of the acoustic fence) to ensure compliance with Requirement 19(1) and 19(3).
Art. 32 temporary use of land for carrying out the authorised development	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).	To cover rights in addition to land.	The Applicant considers this wording to be unnecessary and the drafting proposed by the Applicant has been considered acceptable in numerous made DCOs including the Drax Power (Generating Stations) Order 2019 and the Riverside Energy Park Order 2020. By referring only to 'compulsorily acquire', it is clear that this is the use of compulsory acquisition powers in the Order, i.e. those in Article 23. Article 23 is then subject to article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil only), and article 32 (temporary use of land for carrying out the authorised development). Accordingly, by referring generally to not being able to compulsorily acquire the land, all permanent

12 Applicant's Comments on the ExA's Schedule of Changes to the Draft Development Consent Order



Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
			powers of acquisition are restricted including the compulsory acquisition of rights.
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.	<p>The Applicant disagrees that this provision is redundant as it makes it clear that temporary possession can be taken on more than one occasion in respect of the same land (i.e. possession is returned to the landowner in the intervening period). This drafting has been included in the Drax Power (Generating Stations) Order 2019 and the Riverside Energy Park Order 2020.</p> <p>However, the Schedule being referenced is incorrect and should be Schedule 10 (land of which temporary possession may be taken). The Applicant has corrected this error in the draft DCO (Volume 3.1), Revision 4 provided at Deadline 5.</p>

Table 1.2 Schedules

Ref	ExA's Suggested Changes	ExA's Comments	Applicant Response
Schedule 8 – Land in which only new rights etc. may be acquired – Table 8	<p>(1) Number of plot shown on the land plans</p> <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,</p>	<p>(2) Rights etc. which may be acquired</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish,</p>	<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>Please see the Applicant's response to ExQ2 DCO.2.7. The Applicant considers the existing drafting to be necessary and proportion.</p> <p>In respect of public rights of way, the reference solely relates to the purpose of the right from a</p>

13 Applicant's Comments on the ExA's Schedule of Changes to the Draft Development Consent Order



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

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

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.

property perspective and do not override any protections for public rights of way under other legislation. Any works to alter or restrict the use of a public right of way are governed by Article 13 of the draft DCO.

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.

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

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.~~



14 Applicant's Comments on the ExA's Schedule of Changes to the Draft Development Consent Order

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

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

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

11/2d, 11/2f, 11/7b, 13/4a

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



15 Applicant's Comments on the ExA's Schedule of Changes to the Draft Development Consent Order

13/1a, 15/1a, 15/2a, 15/2b, 16/1a(i), 16/1a(ii), 16/1b(i), 16/1b(ii), 16/2a, 16/3a, 16/4a, 16/5a, 17/1a

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

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.~~

Schedule 14 – Maximum and Minimum 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.

The Applicant confirms that the only element of the authorised development for which a minimum height is relevant is the chimneys. No changes have been made to Schedule 14 of the

16 Applicant's Comments on the ExA's Schedule of Changes to the Draft Development Consent Order



**Design
Parameters**

draft DCO (Volume 3.1), Revision 4 provided at
Deadline 5, as a result.

