

Medworth Energy from Waste Combined Heat and Power Facility



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Closing Position Statement on Access Improvements

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1. Introduction

- 1.1 The Proposed Development includes works to improve access to the EfW CHP Facility site in two locations. These are:
- (a) Work No 4A: being a new access into the site and access improvement works on and along New Bridge Lane. This includes junction improvements at the Cromwell Road / New Bridge Lane junction and dropped kerb provision at the mouth of Salters Way where it connects to New Bridge Lane. Part of the land subject to these works is not yet dedicated as public highway and the basis on which these works can be carried out is explained further in Section 2 below.
 - (b) Work No 4B: being a new access into the site and access improvement works on and along Algores Way. The part of Algores Way that is included within the Order limits is a private street owned by Fenland District Council.
- 1.2 This note summarises the legal mechanisms by which the Applicant will have the power to carry out Work Nos. 4A and 4B, ensuring that there will be no impediment to the implementation of the Proposed Development, and the numerous protections in place for the highway authority or street authority, landowner and other persons with rights of access.

2. Work No. 4A – New Bridge Lane

2.1 Junction of Cromwell Road and New Bridge Lane

- 2.2.1 The Access Improvements that form part of Work No 4A include land added to the Order limits through the Change Application (further details are set out in the Change Report [**AS-028**]).
- 2.2.2 The draft DCO (submitted at Deadline 8) contains a range of powers that can be exercised to carry out Work No. 4A. The draft DCO also contains a number of restrictions and controls over the use of these powers in order to protect the highway authority (Cambridgeshire County Council) and street authority (Tesco Stores Limited). A summary of the position is set out below.
- (a) *Highway powers*: the draft DCO includes a range of powers that apply to all of the land within the Order limits including article 10 (street works), article 11 (power to alter layout, etc., of streets), article 12 (construction and maintenance of new or altered means of access), article 13 (temporary prohibition or restriction of use of streets and public rights of way, and article 17 (traffic regulation measures). These powers apply to the parts of Cromwell Road and New Bridge Lane that form part of the public highway and also those parts that are private streets (such as Plot 12/4b). The restrictions and controls over the use of these powers to protect Cambridgeshire County Council include –



- (i) Requirement 7(1) of Schedule 2 to the draft DCO requires the details of any new or altered access to be approved by the highway authority. Requirement 7(2) of Schedule 2 to the draft DCO requires the details of Work No. 4A to be approved by the relevant planning authority, in consultation with the highway authority.
 - (ii) Further restrictions and controls are set out in the Outline Construction Traffic Management Plan [REP7-010] (secured by Requirement 11 in Schedule 2 to the draft DCO).
 - (iii) The use of these powers is also subject to compliance with the protective provisions for the benefit of Cambridgeshire County Council contained in Part 9 of Schedule 11 to the draft DCO and
 - (iv) The Section 106 Agreement between the Applicant and Cambridgeshire County Council, which requires a S278 Agreement to be entered into prior to commencing Work No. 4A.
- (b) *Compulsory acquisition powers*: the draft DCO contains the power to compulsorily acquire land, new rights, including restrictions, and/or to temporarily possess the land required for Work No. 4A, under article 23 (compulsory acquisition of land), article 25 (compulsory acquisition of rights and imposition of restrictive covenants), article 32 (temporary use of land for the construction of the authorised development) and article 33 (temporary use of land for maintaining the authorised development).
- 2.2.3 An explanation of how the Applicant will use the powers contained within the draft DCO is set out in item 5c of the Written Summary of the Applicant's Oral Submissions at ISH6 [REP6-024], and in item 3c of the Written Summary of the Applicant's Oral Submissions at CAH3 [REP6-026].
- 2.2.4 Full details of the junction improvement works and the status of each area of land is set out in the Change Application Report (Volume 13.2) [AS-028]. Further confirmation that the Applicant has included all powers required to implement the change, and to enable Cambridgeshire County Council as the local highway authority to maintain this, is provided in TT.2.7 in the Applicant's Response to the ExA's Second Written Questions ExQ2 [REP5-032].
- 2.2.5 In respect of plot 12/4b (which is a private street owned by Tesco Stores Limited), temporary possession powers have been sought and are considered to be sufficient and proportionate in the circumstances. This is because Cambridgeshire County Council, as highway authority, is party to and benefits from a Section 106 Agreement with Tesco Stores Limited, dated 11 December 2013, that requires land, including plot 12/4a, to be dedicated as public highway following the issue, by Cambridgeshire County



Council, of a Final Certificate. The Applicant understands that there are some outstanding issues (relating to other land, not plot 12/4a) between Cambridgeshire County Council and Tesco Stores Limited that means that the Final Certificate has not yet been issued.

- 2.2.6 The Applicant has been engaging with Tesco Stores Limited and fully expects that Cambridgeshire County Council will be able to resolve the outstanding matters and proceed with the adoption under the Tesco S106 Agreement prior to the Work No. 4A being commenced. However, in the unlikely event that agreement cannot be reached voluntarily with Tesco Stores Limited, there are a number of options available to Cambridgeshire County Council. These include enforcing the terms of the Tesco S106 Agreement or serving a notice under section 228 of the Highways Act 1980 (which enables part of a street to be adopted following the service of a notice by the highway authority after the carrying out of street works) in respect of plot 12/4b.
- 2.2.7 The Applicant has been in discussions with Cambridgeshire County Council regarding the use of section 228 of the Highways Act 1980 and understands that Cambridgeshire County Council wishes to ensure that the service of such a notice would not affect the terms of or the ability to continue enforce the Tesco S106 Agreement in respect of land outside of the Order limits. The Applicant has therefore included a new article 48 in the draft DCO submitted at Deadline 8 to address these concerns.
- 2.2.8 The clear legal basis and precedent for including new article 48 in the draft DCO is as follows. Sections 120(3) and (4) of the Planning Act 2008 provide that a DCO may make provision for matters that are ancillary to the authorised development including the matters listed in Part 1 of Schedule 5. Paragraph 3 of Schedule 5 includes the “*abrogation or modification of agreements relating to land*”. A section 106 agreement is an agreement relating to land and the DCO can therefore include a power to modify such agreements. The power to modify or abrogate S106 agreements (as agreements relating to land) was used in the Manston Airport Development Consent Order 2022 (Article 35) and the Hornsea Four Offshore Wind Farm Order 2023 (Article 48).
- 2.2.9 New article 48 of the draft DCO therefore provides a fall-back solution and ensures that in the unlikely event that plot 12/4b has still not been adopted on the completion of Work No. 4A, and Cambridgeshire County Council wishes to serve a notice under section 228 of the Highways Act 1980, the Tesco S106 Agreement will be modified, but only to the limited extent that it no longer applies to the Order limits and with no impact on continued application of the planning obligations outside the Order limits and in respect of all the other land bound by the Tesco S106 Agreement.
- 2.2.10 The future maintenance of plot 12/4b (following the completion of the Applicant’s works and issue of a Final Certificate under the S278 Agreement) is covered by a commuted sum set out in the agreed form of S278 agreement to be entered into by the Applicant and Cambridgeshire County Council. Tesco Stores Limited has confirmed that it does not have



any concerns with this approach (see the Appendix to the Applicant's Deadline 8 Cover Letter).

- 2.2.11 The Applicant is therefore confident that the suite of powers in the draft DCO, and extent of the Order limits (as amended by the Change Application), is sufficient to carry out Work No. 4A.
- 2.2.12 In the event that the highway authority requires and can demonstrate that works necessarily have to be undertaken on land outside of the Order limits (either on public highway or private street) in order to approve the detailed design under the draft DCO or the S278 Agreement, the Applicant would need to obtain consent from the highway authority or the street authority in the usual way under the Highways Act 1980. It is commonplace for street works required for a Nationally Significant Infrastructure Project to be carried out pursuant to separate licence or agreement under the Highways Act 1980 and not under powers in the relevant DCO. Alternatively, if consent could not be obtained from the street authority, the Applicant could apply to amend the DCO accordingly.

2.2 Improvements at Salters Way

- 2.2.1 The improvements at the junction of Salters Way and New Bridge Lane, forming part of Work No. 4A, consist of the provision of dropped kerbs. The land within which the dropped kerbs will be placed was added to the Order limits through the Change Application (as set out in the Change Report [**AS-028**]).
- 2.2.2 All of the land required for these works is located within the boundary of the public highway. The work can be undertaken under the highway powers included within the draft DCO, including article 11 (power to alter layout, etc., of streets). An explanation of how the Applicant will use the powers contained within the draft DCO is set out in item 5c of the Written Summary of the Applicant's Oral Submissions at ISH6 [**REP6-024**].
- 2.2.3 There is no impediment to, or requirement for any further powers in the DCO in order to carry out these works. Further details are set out in the Applicant's response to the 7th paragraph of Cambridgeshire County Council's submissions, on page 29 of the Applicant's comments on the Deadline 6 Submissions: Part 1 Statutory Parties [**REP7-028**].

3. Work No. 4B – Algores Way

- 3.1 The Access Improvements that form Work No. 4B are located wholly within the unadopted part of Algores Way that is a private street owned by Fenland District Council. The Applicant has included the power to compulsorily acquire new rights for the Applicant to take access to the EfW CHP Facility site, over the privately owned section of Algores Way. The power to acquire this access right is included under article 25 (compulsory acquisition of rights and imposition of restrictive covenants) of the draft DCO (submitted at Deadline 8) and is necessary in the absence of a voluntary access agreement with Fenland District Council.



- 3.2 These works will be undertaken using the powers contained in article 10 (street works), article 11 (power to alter layout, etc., of streets), article 12 (construction and maintenance of new or altered means of access) and article 13 (temporary prohibition or restriction of use of streets and public rights of way) of the draft DCO (submitted at Deadline 8).
- 3.3 The draft DCO authorises the specific access improvement works listed in Schedule 3 (streets subject to street works), Schedule 4 (streets subject to permanent alteration of layout) and Schedule 6 (access). All works must be completed to the reasonable satisfaction of the street authority (Fenland District Council), and any work that is not specifically authorised by the DCO is subject to the consent of the street authority. Requirement 7(3) of Schedule 2 to the draft DCO requires the details of Work No. 4B to be approved by the relevant planning authority, in consultation with the highway authority.
- 3.4 Algores Way is presently used by numerous businesses to access their premises. These existing rights of access are protected by article 13(3) (temporary prohibition or restriction of use of streets and public rights of way) of the draft DCO (submitted at Deadline 8) which requires reasonable access to premises to be provided during any temporary restrictions which may be necessary for safety reasons during construction.
- 3.5 In addition, article 27(2) (private rights) of the draft DCO (submitted at Deadline 8), provides that private rights are only extinguished if and to the extent that they would be inconsistent with the exercise of the right exercised (or any restriction imposed) by the Applicant. The Applicant is seeking an access right, that will be held in common with and is not inconsistent with the access rights held by the other businesses on Algores Way. Further detail is set out in CA.2.2 in the Applicant's response to ExQ2 [**REP5-032**].
- 3.6 In addition, paragraph 3.5.22 of the Outline Construction and Environmental Management Plan [**REP6-012**] (secured by Requirement 10 of Schedule 2 to the draft DCO submitted at Deadline 8), requires the Applicant establish a local liaison group which will include businesses on Algores Way.
- 3.7 Furthermore, paragraphs 7.4.13 and 7.4.34 of the Outline Construction Traffic Management Plan [**REP7-010**] (secured by Requirement 11 in Schedule 2 to the draft DCO submitted at Deadline 8) require access to businesses to be maintained at all times and provides that advance notification of any works must be given to businesses.
- 3.8 As set out in the Applicant's response to ExQ2 TT.2.4 [**REP5-032**], and for the avoidance of any doubt, the Applicant is not seeking to compulsorily acquire the freehold of the unadopted part of Algores Way. This is because Cambridgeshire County Council, as highway authority, has confirmed that it does not want to adopt it as public highway.

