

DATED 4th October **2023**

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(1) CAMBRIDGESHIRE COUNTY COUNCIL

(2) MEDWORTH CHP LIMITED

DEED OF OBLIGATION

**pursuant to Section 111 of the Local Government Act
1972 and Section 1 of the Localism Act 2011
and all other powers enabling
relating to the
Medworth Energy from Waste Combined Heat and Power
Project in the administrative area of Cambridgeshire**

BETWEEN:

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE (the "**Local Authority**"); and
- (2) **MEDWORTH CHP LIMITED** whose registered office is at Devonport EfW CHP Facility, 40 Creek Road, Plymouth, United Kingdom, PL5 1FL (company number 13130012) (the "**Developer**")

WHEREAS:

- (A) The Local Authority is the local waste planning authority and the enforcing authority for the area in which the Site is situated.
- (B) On 7 July 2022 the Developer submitted the Application to the Secretary of State for development consent to construct, operate and decommission the Development on the Site. The Application was accepted for examination by the Secretary of State on 2 August 2022.
- (C) It is intended that the Developer will be the undertaker for the purposes of the Order and the Developer intends to construct, operate and decommission the Development as authorised by the Order.
- (D) The Parties have agreed to enter into this Deed in order to secure the performance of the obligations contained in it.

1. DEFINITIONS AND INTERPRETATION

1.1 Where in this Deed (which shall include the Recitals, Schedules and Plans hereto) the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

"1972 Act"	means the Local Government Act 1972
"2008 Act"	means the Planning Act 2008
"Application"	means the application for a development consent order made under section 37 of the Planning Act 2008 in relation to the Development and submitted to the Secretary of State on 7 July 2022 and given reference number EN010110 as modified by change application accepted by the Examining Authority on 28 July 2023
"Article"	means an article of the Order
"Board"	means individuals / organisations administering the Medworth Community Interest Organisation
"Commence"	has the same meaning as in Article 2 of the Order and the words " Commencement " and " Commenced " and cognate expressions are to be construed accordingly
"Community Liaison Manager"	means the community liaison manager employed by the Developer as secured in Requirement 24 of Schedule 2 of the Order
"Contribution"	means the Medworth Community Interest Organisation Fund Payment to be paid by the Developer to the Medworth Community Interest Organisation

"Date of Commencement"	of	means the date of Commencement of works pursuant to the Order, and as notified to the Local Authority pursuant to clause 4
"Date of Decommissioning"	of	means the date on which the Developer commences the decommissioning of the Development in accordance with the Decommissioning Environmental Management Plan approved under Requirement 28 of the Order, and as notified to the Local Authority pursuant to clause 4
"Date of Final Decommissioning"		means the date on which the Developer completes the decommissioning of the Development in accordance with the Decommissioning Environmental Management Plan approved under Requirement 28 of the Order, and as notified to the Local Authority pursuant to clause 4
"Deed"		means this deed made under section 111 of the 1972 Act and all other powers enabling
"Development"		means the authorised development as defined in and authorised by Schedule 1 to the Order
"Expert"		means the expert appointed by any of the Parties pursuant to Clause 19
"Geographical Area of Benefit"		means the geographical area of benefit determined through consultation with the Local Authority and the local community as part of establishing the Medworth Community Interest Organisation
"Index"		means the Consumer Price Index
"Index Linked"		means indexed in accordance with Clause 13
"Interest Rate"		means 4% above the Bank of England base rate applicable at the date the relevant payment is due
"Medworth Community Interest Organisation"		means the organisation established pursuant to Schedule 2 in order to promote, enhance, improve, protect and conserve the natural environment and promote health and wellbeing of the community within the Geographical Area of Benefit
"Medworth Community Interest Organisation Fund Payment"		means the annual sum of £200,000 (two hundred thousand pounds sterling) Index Linked
"Dispute Notice"		means the written notification given by any Party to the other Parties of their intention to refer to the Expert any dispute arising between the Parties in respect of any matter contained in this Deed, such notice to specify the matters set out in Clause 19
"Order"		means the development consent order to be made pursuant to the Application
"Parties"		means the Local Authority and the Developer and "Party" means any one of them as the context so requires
"Payment Date"		means the date when a Contribution (including a part of a Contribution where such Contribution is to be paid in tranches or pro rata) or other sum of money is due to be paid, provided or made available by the Developer pursuant to this Deed or its Schedules
"Plan"		means the plan attached to this Deed at Appendix 1 showing the Site

“Requirement”	means the requirements in Schedule 2 to the Order
“Secretary of State”	means the Secretary of State for Energy Security and Net Zero or such other Secretary of State of His Majesty’s Government that has the responsibility for determining nationally significant infrastructure projects relating to energy development
“Site”	means the land on which part of the Development is situated and shown on the Plan
“Working Day”	means any day (apart from Saturday, Sunday and any statutory bank holiday) on which clearing banks are open in England for the transaction of ordinary business

1.2 In this Deed, unless stated otherwise:

- 1.2.1 words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- 1.2.2 words importing persons include firms, companies, corporations, and vice versa;
- 1.2.3 references to the Local Authority includes the successors to its statutory function as the local planning authority;
- 1.2.4 references to the Developer shall include any entity who takes a transfer or grant of all or part of the benefit of the Order;
- 1.2.5 references to an organisation, body or person who is not defined in this Deed shall mean that organisation, body or person as at the date of this Deed or their successor organisation, body or person;
- 1.2.6 references to clauses, paragraphs and Schedules are unless otherwise stated references to the relevant clauses and paragraphs of and Schedules to this Deed;
- 1.2.7 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.8 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.2.9 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.10 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.11 terms and expressions defined in the schedules shall have the meanings specified wherever those terms and expressions are used in this Deed;
- 1.2.12 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred herein, the provisions of this Deed shall prevail;
- 1.2.13 references to “notice” shall mean notice in writing;
- 1.2.14 references to “including” shall mean including without limitation; and

1.2.15 the Interpretation Act 1978 shall apply to this Deed.

2. LEGAL EFFECT

2.1 This Deed is made pursuant to section 111 of the 1972 Act, section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The obligations, covenants and undertakings on the part of the Developer in this Deed are, subject to Clause 6, entered into with the intent that they shall be enforceable by the Local Authority against the Developer and any transferees or grantees of the benefit of the Order and are entered into as obligations, covenants and undertakings in pursuance of the powers referred to in clause 2.1 with the intent that they shall be enforceable under contract.

3. CONDITIONALITY

3.1 Subject to clause 3.2, the Parties agree that:

3.1.1 Clauses 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18 and 19, shall have operative effect upon the date of this Deed; and

3.1.2 Clauses 4, 5, 12 and 13 shall not have operative effect unless and until the Order has come into force.

3.2 Where the Order becomes the subject of any judicial review proceedings under section 118 of the 2008 Act:

3.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Development has been Commenced; and

3.2.2 if following the final determination of such proceedings the Development authorised by the Order is capable of being Commenced, then this Deed will take effect in accordance with its terms.

3.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used) the following provisions will apply:

3.3.1 proceedings by way of judicial review are finally determined:

(a) when permission to bring a claim for judicial review has been refused and no further application may be made (excluding any application under CPR 52.30);

(b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused and any time for appealing such a refusal expires without such an appeal having been made or having been refused (excluding any application under CPR 52.30); or

(c) when any appeal is finally determined and no further appeal may be made (excluding any application under CPR 52.30).

4. DEVELOPER'S OBLIGATIONS

4.1 The Developer covenants with the Local Authority to observe and perform the obligations, undertakings, covenants and agreements in Schedule 1 of the Order.

4.2 The Developer shall give 20 Working Days advanced notice in writing to the Local Authority of the anticipated date of:

4.2.1 The Date of Commencement;

4.2.2 The Date of Decommissioning;

4.2.3 The Date of Final Decommissioning; and

4.2.4 Where the Order becomes the subject of any judicial review proceedings under section 118 of the 2008 Act, the date the Development authorised by the Order is capable of being Commenced (if the Development is capable of being commenced in accordance with clause 3.2.2).

4.3 Where any payment in this Deed is expressed to be payable on or before an event or activity, the Developer covenants that it shall not commence that event or activity until the relevant payment has been made.

5. THE LOCAL AUTHORITY'S OBLIGATIONS

5.1 The Local Authority covenants with the Developer to use reasonable endeavours to agree with the Developer the legal form and terms of reference for the establishment and management of the Medworth Community Interest Organisation as set out in Schedule 1 of the Order.

6. RELEASE AND ASSIGNMENT

6.1 The Developer shall not be liable for any breach of the obligations or other provisions of this Deed after it shall have parted with the entire benefit of the Order pursuant to Article 8 (Consent to transfer benefit of the Order) but without prejudice to any rights of the Local Authority in respect of any antecedent breach of those obligations.

7. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS

7.1 Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Developer to use or develop any part of the Site in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order or other statutory authority granted either before or after the date of this Deed, other than the Order (and for the avoidance of doubt for the purposes of this Clause the Order shall include any non-material or material change or any other variation or alteration made to the Order).

8. EXPIRY

8.1 If the Order expires or is quashed or revoked prior to the Date of Commencement then this Deed shall immediately determine and cease to have effect.

9. NOTICES

9.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

9.2 Any such notice must be delivered by hand or by pre-paid special delivery post (unless the receiving party agrees to receive the notice electronically) and shall conclusively be deemed to have been received:

9.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

9.2.2 if sent by special delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

9.3 A notice or communication shall be served or given:

9.3.1 on CCC at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for

the attention of the Head of Planning and Sustainable Development (or equivalent should that role no longer exist); and/or

9.3.2 on the Developer at its address above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of the Medworth EfW CHP Facility Community Liaison Manager.

9.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 9 PROVIDED THAT such notification shall only be effective on:

9.4.1 the date specified in the notification as the date on which the change is to take place; or

9.4.2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

10. APPROVALS

10.1 Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

11. THE LOCAL AUTHORITY'S POWERS

11.1 Nothing in this Deed shall fetter the respective statutory rights, powers or duties of the Local Authority such as its functions as local planning authority, lead local flood authority, as highway authority or its powers and duties under the Health and Social Care Act 2012 as the case may be and nothing in this Deed (including its Schedules) shall require the Local Authority to do anything that would be unlawful.

12. INTEREST

12.1 Where any obligation in this Deed is expressed to require the Developer to pay any sum of money, interest at the Interest Rate shall be payable in addition to the sum of money itself calculated from the Payment Date to the date on which the sum of money is actually paid.

13. INDEXATION

13.1 All payments and financial contributions to be paid, provided or made available pursuant to this Deed will be increased by reference to the amount of the increase in the Index from the Index Date until the date payment is due in accordance with the following formula (where the Index at Payment Date / Index Date is equal to or greater than one (1)):

$$\text{Amount Payable} = \text{Sum} \times (\text{Index at Payment Date} / \text{Index Date})$$

where:

"Amount Payable" is the amount of money required to be paid;

"Sum" is the amount of the Contribution or other sum of money stated in this Deed;

"Index at Payment Date" is the Index published two months before the Payment Date (for example, the Index published in January where the Payment Date is in March); and

"Index Date" is the relevant Index with a base rate of February 2024.

14. GOOD FAITH

14.1 The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

15. **RIGHTS OF THIRD PARTIES**

15.1 It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

16. **JURISDICTION**

16.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

16.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

17. **COUNTERPARTS**

17.1 This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

18. **COSTS**

18.1 The Developer shall pay on completion of this Deed the reasonable legal costs of the Local Authority incurred in the preparation, negotiation and execution of this Deed up to a maximum of £[XXX].

19. **DISPUTE RESOLUTION**

19.1 In the event of any dispute arising between the Parties then the Parties to the dispute will attempt to resolve that dispute amicably including holding a meeting attended by at least one representative from each party of senior director level.

19.2 If the Parties are unable to resolve the dispute amicably pursuant to Clause 19.1 within 15 Working Days the Parties in respect of any matter contained in this Deed the same may be referred to the Expert by any Party serving the other Parties with a Dispute Notice.

19.3 The Dispute Notice must specify:

19.3.1 the nature, basis and brief description of the dispute;

19.3.2 the clause of this Deed or paragraph of a Schedule of this Deed to which the dispute has arisen; and

19.3.3 the proposed Expert.

19.4 The Expert shall be an independent person possessing expertise relevant to the dispute and in the event that the Parties are unable to agree whom should be appointed as the Expert within twenty (20) Working Days after the date of the Dispute Notice then any Party may request:

19.4.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;

19.4.2 if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;

19.4.3 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert; or

19.4.4 in all other cases, the President of the Law Society to nominate the Expert.

- 19.5 The Expert shall act as an expert and not as an arbitrator and whose cost shall be at their discretion or in the event that they make no determination, such costs will be borne by the Parties to the dispute in equal shares.
- 19.6 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that they are to determine submitted jointly by the Parties) subject to an express requirement that they reach a decision in accordance with clause 19.8.
- 19.7 The Expert shall be required to give notice to each of the said Parties to the dispute inviting each of them to submit to them within twenty (20) Working Days from the date of their appointment written submissions and supporting material and shall afford to the said Parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 19.8 The Expert shall have regard to all representations and evidence before them when making their decision and reach their decision and communicate it to the Parties to the dispute in writing and with reasons for the decision within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of receipt of the written submissions and counter submissions under clause 19.7 above.
- 19.9 In the absence of manifest error the Expert's decision shall be binding on the Parties.
- 19.10 The Parties agree that nothing in clauses 19.1 to 19.9 shall prevent the Local Authority from enforcing this Deed in accordance with the Order.

SCHEDULE 1

MEDWORTH COMMUNITY INTEREST ORGANISATION

1. THE MEDWORTH COMMUNITY INTEREST ORGANISATION FUND PAYMENT

- 1.1 Subject to paragraph 1.2, on or prior to the Date of Commencement, and on the anniversary of the Date of Commencement until the Date of Final Decommissioning, the Developer will pay the Contribution.
- 1.2 Where on each or any given anniversary of the Date of Commencement and for so long as the Medworth Community Interest Organisation holds uncommitted funds of £500,000 (five hundred thousand pound sterling) or more of Contributions paid by the Developer, the Developer will be under no obligation to pay the Contribution. The Developer's obligation to pay the Contribution as provided in paragraph 1.1, will recommence at the next occurring anniversary of the Date of Commencement where the funds held and uncommitted by the Medworth Community Interest Organisation total less than £500,000 (five hundred thousand pound sterling) provided that if Medworth Community Interest Organisation notifies the Developer as part of its quarterly review process that the funds held and uncommitted by the Medworth Community Interest Organisation total less than £500,000 (five hundred thousand pound sterling) then the Contribution shall be payable by the Developer within 30 days of such notification.

2. ESTABLISHMENT OF THE MEDWORTH COMMUNITY INTEREST ORGANISATION

- 2.1 Prior to the Date of Commencement, the legal form and terms of reference for the establishment and management of the Medworth Community Interest Organisation will be defined and agreed between the Developer and the Local Authority taking into account the principles and objectives set out in this Schedule 1 and including provisions for the continuation of the Medworth Community Interest Organisation following the Date of Final Decommissioning if considered appropriate to do so. This will involve the setting up of the Board to manage the Medworth Community Interest Organisation.
- 2.2 The Board shall have a minimum of three and a maximum of nine members, one of which shall be elected as chair. Membership will be drawn from the Geographical Area of Benefit, local authorities and other stakeholders.
- 2.3 Where it is not possible to attract suitable candidates to set up a Board to manage the Medworth Community Interest Organisation, alternative administration and management vehicles will be identified and agreed between the Developer and the Local Authority.
- 2.4 Secretarial duties for the Medworth Community Interest Organisation shall be provided free of charge by the Community Liaison Manager or another agreed organisation at the Developer's cost.
- 2.5 The principal responsibilities of the Board will be:
- 2.5.1 to initially agree and then reaffirm on a regular basis the terms upon which Medworth Community Interest Organisation Payment can be allocated taking into account the objectives set out in paragraph 3 of this Schedule 1 and having regard to any potential conflict between the objectives set out in paragraph 3 of this Schedule 1;
 - 2.5.2 to actively encourage applications for funding;
 - 2.5.3 advise and support potential applicants for funding to properly apply within the terms of the fund;
 - 2.5.4 to receive applications for funding;
 - 2.5.5 to review the allocation of funding as appropriate from the Medworth Community Interest Organisation to maximise the benefit of the fund;

2.5.6 to ensure that funding once allocated is properly and efficiently spent and to report on any upsent and uncommitted funds held by the Medworth Community Interest Organisation on a quarterly basis; and

2.5.7 to regularly review its own membership and terms of reference to make sure that they remain relevant to the purpose the Medworth Community Interest Organisation.

2.6 The Developer must make available to the Medworth Community Interest Organisation a suitable venue at which they may hold their meetings at the Developer's cost.

2.7 The Geographical Area of Benefit will initially be a 5km radius from the centre line of the chimneys. However, this may be adjusted to include whole communities where the 5km radius bisects any particular community.

3. OBJECTIVES OF THE MEDWORTH COMMUNITY INTEREST ORGANISATION

3.1 The objectives of the Medworth Community Interest Organisation are to provide funding to organisations which promote, enhance, improve, protect and conserve the natural environment and promote health and wellbeing within the Geographical Area of Benefit.

3.2 The Board will have the following three core interests against which to consider activities and proposals:

3.2.1 Community:

- (a) The provision and/or improvement and/or maintenance of public amenity spaces;
- (b) Transport-related local well-being initiatives;
- (c) The improvement and/or remediation of underused land places and eyesores; and
- (d) The provision of youth facilities.

3.2.2 Social / Health:

- (a) Community and social enterprise businesses in the locality (including for the avoidance of doubt businesses which currently operate from the homes of residents) especially where they are employment-generating and/or other regeneration projects that will have a positive impact; and
- (b) Contribute to initiatives which improve health and wellbeing outcomes.

3.2.3 Environmental

- (a) Low carbon energy and efficiency initiatives;
- (b) The restoration of buildings and/or heritage features of historic and/or architectural interest;
- (c) Proposals to bring nature sites into positive management to deliver biodiversity benefits;
- (d) Proposals to use nature based solutions to manage and mitigate flooding and other climate challenges; and
- (e) Projects to promote recycling and the circular economy.

- 3.3 The Medworth Community Interest Organisation shall not give or lend money to or invest money in any commercial "for profit" enterprise.
- 3.4 The Medworth Community Interest Organisation shall not give or lend money to individuals, unincorporated groups without a constitution and bank account, statutory bodies or undertakings whose legal duty is to fund the schemes detailed in paragraph 3.2.
- 3.5 On the first anniversary of the Medworth Community Interest Organisation being established, a report of the activities for the preceding year will be issued by the Medworth Community Interest Organisation to the Local Authority, and thereafter an annual report will be issued on each subsequent anniversary until the Date of Final Decommissioning.
- 3.6 The obligations of the Developer under paragraphs 2.4 and 2.6 will cease on the Date of Final Decommissioning.
- 3.7 If the Medworth Community Organisation is dissolved on or after the Date of Final Decommissioning any remaining funds are to be donated to local charities in the Geographical Area of Benefit and at the discretion of the Board.

IN WITNESS whereof this Deed has been duly executed by the Parties to this Deed on the date which appears at the head of this document.

1/38/23



The **COMMON SEAL** of **CAMBRIDGESHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:



)
)
)

Authorised signatory

EXECUTED as a **DEED** by **MEDWORTH CHP LIMITED**

)
)

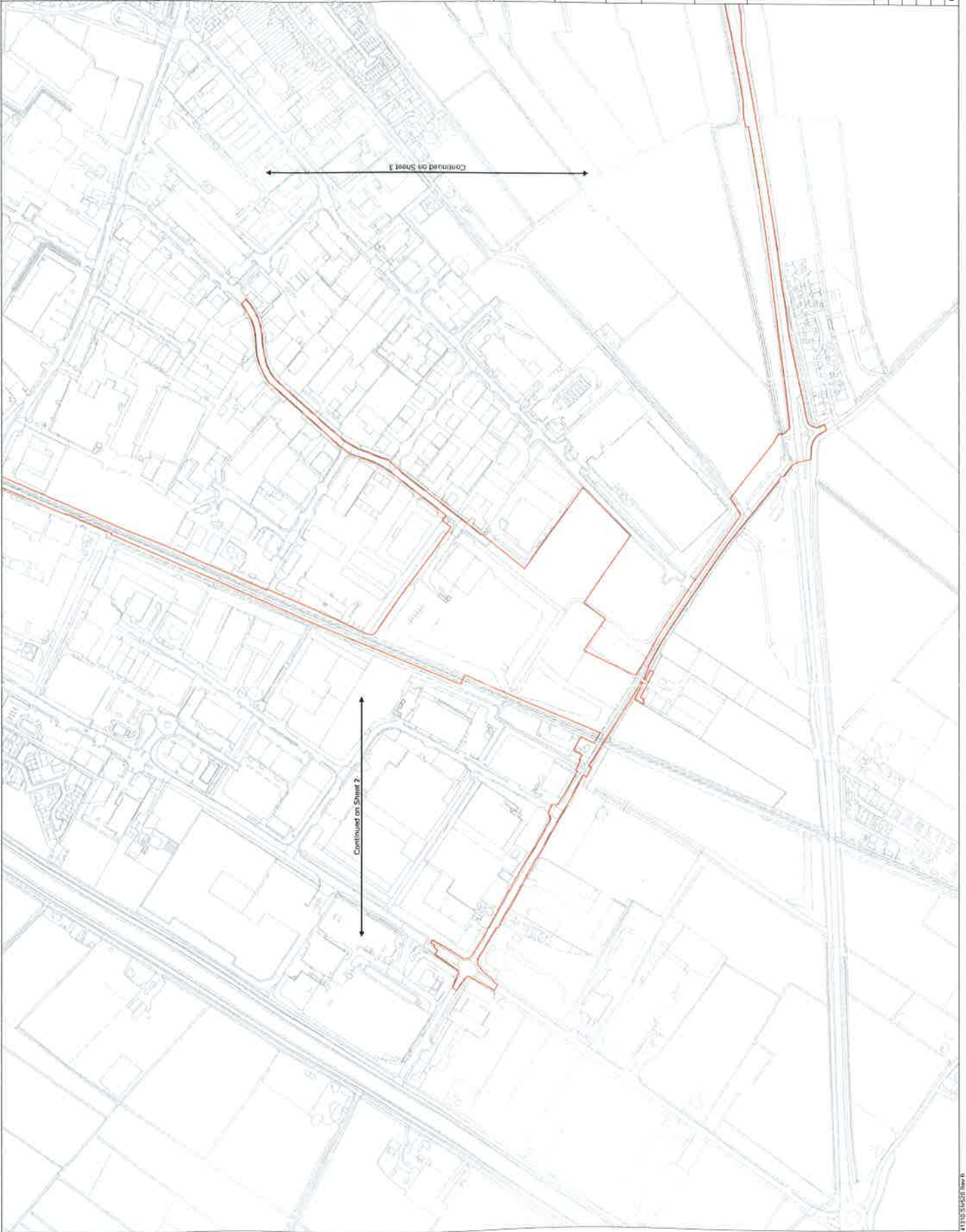
acting by two directors

Director

Director

APPENDIX 1

PLAN



Order limits

Scale



Map Scale: A1 Scale: 1:2,000
Coordinate System: British National Grid
Projection: Transverse Mercator
Central Bearing: 54.5, 81
Central Meridian: 0.7, 209



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MEDWORTH CHP LIMITED
MEDWORTH ENERGY FROM WASTE COMBINED HEAT AND POWER FACILITY
SITE LOCATION PLAN
APPD REGULATIONS: S(10)
SHEET 1 OF 4

ISSUE	DATE	COMMENTS	AUTH	CHKD	APPD
0	JULY 2023	DCS SUBMISSION	J.P.	D.K.	T.M.