

Via Email:

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28 August 2024

Dear PINS/Case Manager

**THE MEDWORTH ENERGY FROM WASTE COMBINED HEAT AND POWER ORDER 2024 -
REQUEST TO MAKE AN ORDER CORRECTING ERRORS UNDER SCHEDULE 4 TO THE
PLANNING ACT 2008**

Reference: EN010110

I am writing on behalf of Fenland District Council (the Council) in response to the invitation from the Department for Energy Security & Net Zero of 24 June 2024, inviting consultees to comment on the proposed corrections to the Order, with apologies for the delayed response past the deadline set. As a key host authority, it is hoped that these comments can be accounted for in the decisions on the draft Correction Order

So, attached to this letter is a table containing the Council's comments on Medworth CHP Limited's proposed corrections to the Order. This table is a variation on the table Medworth CHP Ltd submitted to PINS. Where the Council has no comment to make regarding some of the proposed changes in Medworth CHP Limited's original table, these proposed changes have been removed from the table.

If you have any queries regarding this submission or require any further information, please contact [REDACTED]

Yours sincerely

[REDACTED]

Carol Pilson
Corporate Director - Fenland District Council

Comments on the Developer's Proposed Changes

This document sets out the comments by Fenland District Council (**the Council**) on the list of corrections to the Order requested by Medworth CHP Limited (**Medworth**) in relation to the Medworth Energy from Waste Combined Heat and Power Facility Order 2024.

The following table lists a number of errors considered to be contained within the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 ("the Order"), made on 20 February 2024, that Medworth, the undertaker with the benefit of the Order, has identified. The table is structured as follows:

- Column (1) identifies the provision of the Order that Medworth considers to be erroneous;
- Column (2) identifies the error;
- Column (3) sets out the correction that Medworth considers to be appropriate; and
- Column (4) includes commentary on the correction.

For the purposes of Fenland District Council responding to the Developer's requested corrections, a fifth column, Column (5) has been added, which contains comments from the Council.

This table is a variation on the table Medworth CHP Ltd submitted to PINS. Where the Council has no comment to make regarding some of the proposed changes in Medworth CHP Ltd's original table, these proposed changes have been removed from the table.

(1) Provision	(2) Error	(3) Correction requested	(4) Commentary	(5) Fenland District Council's Response
Article 17(1)	"Subject to the provisions of this article, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with, or in consequence of, the construction of the authorised development, temporarily—"	Add the words "and operation" after "construction". Delete ", temporarily".	Sub-paragraph (f), to determine that no person is to drive any motor vehicle at a speed exceeding 30 miles per hour on New Bridge Lane, is a requirement to manage the impacts of the authorised development during operation not just temporarily during construction. The speed restriction is therefore required to be in place for the lifetime of the authorised development. The Statement of Common Ground (SoCG) with Cambridgeshire County Council (CCC) [REP8-027] confirms at 6.3.1 and 6.3.2 that the Transport Assessment Team have agreed the approach in terms of the assessment including enhancements to New Bridge Lane, and that they would have no concerns over the impact of the development subject to the enhancements to New Bridge Lane. The SoCG refers to ES Chapter 6 Traffic and Transport [APP-033] which confirms at paragraph 6.6.124 that "to allow access along New Bridge Lane to the Proposed Development, the speed limit along this section of road should be reduced to 30- mph". The outline Construction Traffic	The Council objects to this change and considers that the proposed change offer the applicant extraordinarily wide powers to impose traffic regulations (with the consent of the traffic authority) on <u>any</u> road and now also permanently and during the operation of the facility. The SoS Decision Letter dated 20 February 2024 refers to concerns expressed by residents and stakeholders about traffic impacts (although the SoS only gave this neutral weight) (refer to paragraphs 4.7, 4.16, 4.190 and 5.7), although there was no sub section assessing traffic impacts or traffic regulations. In fact, the SoS in their Decision Letter in Section 9.1 (c) (ii) specifically restricted the provisions of this Article to the construction period only, also clarifying requirements for consultation and consent: <i>'Amendment of Article 17(1) to restrict the provision of this article to the construction period only as it is considered to be too broad as drafted, and to clarify the requirements to consult and seek consent. These amendments are consistent with other DCOs'.</i> The ES Chapter 6 (and especially Volume 6.2) Traffic and Transport and its Appendices (especially Appendices 6A and

			<p>Management Plan [REP7-010] confirms at paragraph 7.2.10 that “CCC as local highway authority supports the Applicant’s proposal to reduce the speed limit along New Bridge Lane once the New Bridge Lane Access Improvements have been completed and the road is available to be used by construction traffic.</p> <p>The Applicant’s DCO Article 17 gives it the ability to make traffic regulation measures and this will be updated to include a specific reference to changing the speed limit on New Bridge Lane to 30mph as suggested by CCC. Alternatively, the Applicant can apply to CCC with a request to reduce the speed limit to 30mph via a Traffic Regulation Order (S84 of the Road Traffic Regulation Act 1984). It is the intention that this speed limit is made permanent”.</p> <p>The consent of the traffic authority for all traffic regulation measures ensures appropriate oversight for the use of traffic regulation measures on a non-temporary basis. The power was included within the DCO as the speed limit is required as a mitigation measure during construction and operation.</p>	<p>6B – Construction Traffic Management Plan (CTMP) and the Transport Assessment) and the Outline Operational Traffic Management Plan have assessed traffic and transport effects during operation. However, to amend traffic regulations during operation were not assessed or considered necessary for mitigation – the only mitigation considered necessary was physical and formed part of the DCO proposals or were part of the construction phase. The operational traffic routes and restrictions were set out in Section 2.3 of the Outline OTMP and no further powers need to be sought. Within the ES Chapter 6 Appendix 6A, there are no specific comments about the need for additional operational traffic regulations during operation of the facility.</p> <p>It is considered that the now additional powers sought for amendments to traffic regulations during operation and potentially permanently may deleteriously affect the local area, cause unknown impacts that have not been assessed and so deleteriously affect the local highway authority’s ability to manage traffic effectively and hence affect FDC more locally. This may have negative ramifications for Fenland District Council in the vicinity of this facility, once fully constructed and especially when it is operational.</p> <p>The reasons given in the ‘commentary’</p>
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				<p>column, refer specifically to New Bridge Road and its 30mph speed limit and therefore is considered unnecessarily broad to cover this issue.</p> <p>However, it is acknowledged that Cambridgeshire CC is the highway/traffic authority and does not offer an objection, its comments are set out below in italics.</p> <p><u>Cambridgeshire CC Comments:</u></p> <p><i>'The Council agrees that the wording at present is at best ambiguous and relates poorly to the long-term intention of securing a permanent 30mph speed limit on New Bridge Lane (NBL).</i></p> <p><i>The proposal is therefore acceptable in conjunction with the widening of NBL, provision of footway and street lighting along the length of the approach road to be secured in the S278, and to be implemented prior to the commencement of construction from NBL'.</i></p>
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Schedule 1	<p>“In connection with and in addition to Work Nos 1, 1A, 1B, 2A, 2B, 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10 and, to the extent that it does not otherwise form part of those Work Nos, further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement including”</p>	<p>replace “fall within the scope of the work assessed by” with “do not give rise to any materially new or materially different environmental effects from those assessed in”</p>	<p>The Decision Letter states that changes were made to this part of Schedule 1 to ensure consistency with other recently made DCOs. However, the Applicant notes that the two DCOs made since this Order both include provision for other development or works “<i>which do not give rise to any materially new or materially different environmental effects</i>”.</p> <p>These are The A66 Northern Trans-Pennine Development Consent Order 2024 at Schedule 1, under the heading Ancillary Works; and National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 at Schedule 1, within ‘such associated development listed above’, at paragraph (t). The Applicant requests the reinstatement of the precedented wording as this more accurately reflects the Rochdale Envelope approach undertaken for NSIPs.</p>	<p>Schedule 1 refers to many Work Nos across the development and is wide-ranging. The Council consider that the proposed correction would allow the developer to make wider changes than the current wording of the DCO allows. The Council considers that this introduces a risk of changes being introduced that will not have been assessed by the Environmental Statement. The current DCO wording does not rely on an assessment of whether any proposed further development (works or operations) are ‘not environmentally worse than’ (NEWT). Replacing the wording introduces the requirement for a NEWT assessment to be made by the developer and then the Host Authorities to review that, and there is a risk (albeit small) that there is disagreement. In the case of such disagreement, presumably it falls to the Secretary of State to make the decision, which would be onerous for all parties and possibly create lengthy delays. For this reason, the Council does not support this change.</p> <p>The SoS in their Decision Letter dated 20 February 2024 in Section 9.1 (g) (ii) specifically restricted the provisions of this Article, as follows:</p> <p><i>‘Amendment of Schedule 1 to delete the final paragraph and include words “comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the</i></p>
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				<p><i>environmental statement” for consistency with other development consent orders’.</i></p> <p>Despite the two additional DCO grants since this Order was made, this change is considered unnecessary and adopts the approach of the majority of previous DCO’s made.</p> <p>It is noted that Cambridgeshire CC also objects to this change.</p>
Schedule 2, Paragraphs 2(1) and 2(2)	“The details submitted for approval under subparagraph (1) must be substantially in accordance with the design principles set out in Appendix A of the design and access statement.”	Add the word “applicable” before “design principles”.	This amendment is required to ensure that the design must accord only with the design principles that are applicable to that Work No. For example, as Work Nos. 6A, 6B, 7 and 8 are located entirely underground with no visible external appearance and therefore there are no applicable design principles relating to such Work Nos.	<p>Paragraph 2(1) – no comment.</p> <p>Paragraph 2(2) – the Council agrees with the Cambridgeshire CC comment that if this change is being considered, then it suggests that a more precise form of replacement wording would be: <i>‘the design principles applicable to that Work Order.’</i></p> <p>It should be noted that Norfolk CC has objected to this correction, as the change is considered too vague.</p>

<p>Schedule 12, paragraph 2(3)</p>	<p>“(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must:”</p>	<p>Replace “:” with “—”; Replace “relevant planning authority” with “relevant authority”</p>	<p>Typographical error and incorrect use of defined term. In Schedule 12 the term “relevant authority” (as defined in paragraph 1) is used. This is wider than the definition of “relevant planning authority”. The Applicant notes that only some of the references to “relevant authority” have been changed to “relevant planning authority” and we assume this is an error.</p>	<p>The first correction here – replacing the colon with the word ‘with’ is accepted.</p> <p>The SoS in their Decision Letter dated 20 February 2024 in Section 9.1 (i) reviewed the provisions of this Schedule and inserted three paragraphs to be consistent with previous DCOs and no specific reference was made to the need to amend ‘relevant planning authority’.</p> <p>The Council notes the reasoning for the proposed change, but also that the relevant planning authority (RPA) is the discharging authority for all but two of the Requirements.</p> <p><u>Cambridgeshire CC Comments</u> FDC agrees, in relation to Requirement 7, although Cambridgeshire County Council, as the Highway Authority, would lead on the delivery and timescales of the requirement, there is a clear benefit to having the RPA maintain overview, administration and governance of the discharge of this requirement and therefore recommend wording to the effect of: - ‘<i>relevant planning authority, except in the case of requirement 26 where the relevant discharging authority is the Ministry of Defence</i>’.</p> <p>It should also be noted that Norfolk CC objects to this proposed change to ensure that the relevant County Planning Authority have oversight of the DCO Requirements discharge process.</p>
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<p>Schedule 12, paragraph 2(4)(b)</p>	<p>“the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,”</p>	<p>Replace “relevant planning authority” with “relevant authority”</p>	<p>Incorrect use of defined term.</p>	<p>Given the relatively limited and standard nature of the highway works, and the detail provided to date, the view of the Highway Authority is that it is difficult to envisage any material issues arising/ changes given the physical constraints, other than alterations/ works adjacent watercourses, for which we would seek confirmation from the developer of acceptance by the local drainage board.</p> <p>Should there be any protected species in the watercourses, this may give rise to wider considerations which the Highways Authority would not be able to address, and they would not have the knowledge or processes to undertake the necessary consultation. Whilst it is acknowledged that the DCO process is distinct from district and county planning (under the Town and Country Planning Act 1990 (as amended), the RPA has the relevant knowledge and procedures to undertake such consultations. Therefore, it is the Council’s view that it is advisable for the RPA to retain the governance of the discharge of requirement 7 and the wording should remain as drafted, with the additional information in respect of the MOD being the relevant authority in respect of requirement 26. As with Cambridgeshire CC, taking the above into account, the Council suggests the following replacement wording: <i>‘relevant planning authority, except in the case of requirement 26 where the relevant discharging authority is the Ministry of Defence’</i>.</p>
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<p>Schedule 12, paragraph 2(5)</p>	<p>(5) At the same time as submitting an application to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also give notice of such application, and provide a copy of the application, to any requirement consultee, if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. As part of the notification to any requirement consultee, the undertaker must include a statement that refers to:"</p>	<p>Replace “:” with “—“; Replace “relevant planning authority” with “relevant authority”.</p>	<p>Typographical error and incorrect use of defined term.</p>	<p>The first correction here – replacing the colon with the word ‘with’ is accepted.</p> <p>In relation to the second proposal, refer to the notes above. Furthermore, the only discharging authority other than the RPA (if the Highways Authority is excluded as suggested above) is the MoD and the requirement that they are responsible for does not require any other consultation.</p> <p>Therefore, Cambridgeshire CC in its role as the RPA and the Highways Authority does not support this change and these are the only two authorities that the change would affect.</p>
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Schedule 12, paragraph 3(6)(a)	“(a) A requirement consultee is required to notify the relevant planning authority in writing specifying any further information it considers necessary in order to comment on the application within 10 working days of receipt of the application pursuant to paragraph 2(5);”	Replace “relevant planning authority” with “relevant authority”.	Incorrect use of defined term.	The Council refers to the point made above relating to the oversight of the discharge of requirements by the RPA. In relation to this change, for the only two requirements where it is not stated that the RPA is responsible for the discharge, the Council cannot envisage that there would be any consultees except internal to CCC Highways teams and the MoD who may have their own internal consultees. Leaving the wording as it is will allow for the RPA to handle such requests and therefore, for the reasons given above, this change is unnecessary and is not supported by the Council.
Schedule 12, paragraph 3(6)(c)	“(c) At the same time as providing any further information to the relevant planning authority pursuant to a request under paragraph (2), if the undertaker has been notified of further information requested by a requirement consultee, the undertaker must also give any further information to the requirement consultee;” further information has been requested); and”	Replace “relevant planning authority” with “relevant authority”. Replace “paragraph (2)” with “sub-paragraph (2)”	Incorrect use of defined term. Amendment consistent with SI drafting convention.	FDC supports the County Council in its views that in their role as Highways Authority would usually only consult their internal consultees (for example in relation to lighting / structures / signals) and would not contact third parties to undertake further consultation. In the event that third parties, such as the local drainage board, need to provide advice on the proposed scheme and / or confirmation that the relevant technical consents or approvals have been obtained, they would expect the developer to provide this information. Therefore, unless the MoD intend to undertake external consultation, the Council does not consider that this change is necessary.