



# The Sizewell C Project

## 8.20 Draft Deed of Obligation Explanatory Memorandum - Clean Version

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**EXPLANATORY MEMORANDUM  
SIZEWELL C PROJECT  
DRAFT DEED OF OBLIGATION – DEADLINE 2**

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**1. INTRODUCTION**

- 1.1 In the ExA's Rule 17 Letter [\[PD-025\]](#) of 6 May 2021, the ExA stated in Question SA.1.62 :

*"The ExA thanks the Applicant for providing the draft s.106EM. In relation to the legal underpinnings, the ExA is seeking a guide, much like an EM for a DCO, of the purpose, policy compliance and legal powers for each clause, schedule and paragraph. Especially given not only the limitations of s.106 TCPA 1990 but also the approach in the Sizewell Special Arrangements, the ExA would be particularly assisted by this, however the eventual s.106 agreement turns out. Please will the Applicant include the s.111 agreement in the draft s.106EM".*

- 1.2 Following consideration of the ExA's comments in relation to the Sizewell Special Arrangements and draft s106 agreement in the above Procedural Decision, the Applicant has developed an alternative approach to securing contractual mitigation for the project. We refer to this as the 'Evolving Approach', and an explanation of it is provided in the Applicant's paper entitled 'Explanation of the Applicant's Evolving Approach to Contractual Commitments to Mitigation' Appendix 26A of the Response to ExQ1, which is provided in support of a number of the responses to the ExA's SA.1 questions.
- 1.3 Under the Evolving Approach, the Applicant would enter into a 'Deed of Obligation', which would be an ordinary contract from the Applicant's perspective, and an agreement under s111 LGA 1972 from the perspective of the local authorities. The agreement would contain all of the same commitments to mitigation and measures to enhance the benefits of the project which were set out in the draft s106 agreement supplied at Deadline 1. The agreement would 'run with the undertaking', through article 9 of the dDCO, which states (Rev 4.0) that: *'(b) save to the extent agreed by the Secretary of State, the Deed of Obligation completed pursuant to this Order, and any variations to it at the date of transfer or grant, shall be enforceable against the transferee or lessee as they would against the transferor'.*
- 1.4 In terms of enforcement, our intention is to include drafting within the dDCO which would allow the local authorities to enforce all of the obligations in the agreement against the Applicant. It would be irrelevant whether they meet the tests in s106(1)(a) to (d))TCPA 1990. Appropriate means of enforcement for the local planning authorities may be drafted into the DCO to the extent they cannot be adequately secured contractually. The nature of those enforcement measures is subject to further consideration by the Applicant, and will be the subject of engagement with East Suffolk Council and Suffolk County Council. To the extent relevant and useful, they may reflect enforcement powers under s106 TCPA 1990 - in this way dealing with one of the ExA's concerns: the enforcement powers would apply to all measures equally in the Deed of Obligation, rather than limiting enforcement to those obligations deemed to be 'planning obligations' by virtue of meeting the tests in s106(1)(a) to (d).
- 1.5 The proposed 'Evolving Approach' would not, however, obviate the need to be clear as to which contractual commitments in the Deed of Obligation may or must be taken into account by the Secretary of State in making the decision.





- 1.6 **Section 2** below therefore outlines the relevant legal and policy tests (see also the diagram in the Appendix to this note). These tests apply even if the Applicant were proposing to enter into an agreement under s106 TCPA/s111 LGA. The only difference would be that the tests in s106(1)(a) to (d) would be relevant if the Applicant were seeking to argue that some or all of the obligations amounted to 'planning obligations'.
- 1.7 **Section 3** below sets out a summary of the provisions in the Deed of Obligation in respect of all of the substantive commitments in the schedules and will in due course outline the extent to which the Applicant considers the legal and policy tests are met – recognising, of course, that ultimately this is a matter for the Secretary of State. The Applicant has not for the time being attempted to provide an analysis of compliance as this is subject to further consideration and engagement with the local authorities alongside ongoing negotiation of the Deed of Obligation.
2. **LEGAL AND POLICY TESTS**
- What may the Secretary of State take into account?**
- 2.1 It is important to consider what the Secretary of State may and may not take into account when making a decision on the Sizewell DCO, having regard to law and guidance.
- 2.2 The law distinguishes between considerations which are relevant, and which therefore the decision maker is empowered to take into account, and those which the decision-maker is required to take into account.
- 2.3 A legally relevant consideration is only something that is not irrelevant or immaterial, and therefore something which the decision-maker is empowered or entitled to take into account.
- 2.4 The decision-maker is expressly or impliedly required by legislation (or by a policy which has to be applied) to take certain considerations into account. In addition, on the facts of a particular case there may be some considerations which are so “obviously material” that it would be irrational not to take them into account (see e.g. *R (ClientEarth) v. SSBEIS* [2020] 1303 (Admin) at para. 99) (**Written Submissions on matters raised orally at Preliminary Meeting Part 1, Appendix B [PDB-013]**).
- 2.5 When applying principles derived from caselaw relating to the TCPA regime, it is necessary therefore to be mindful of the differences in the statutory provisions which govern decision-making in each case and require the decision-maker to take certain matters into account.
- 2.6 In principle, any consideration which relates to the use and development of land is capable of being a material consideration. Whether a particular consideration falling within that broad class is material will depend on the circumstances (*Stringer v. Minister of Housing* [1970] 1 WLR 1281 at 1294H).
- 2.7 The approach to considering whether or not a particular planning obligation may be taken into account by the decision-maker as a material consideration is set out in *R (Wright) v. Forest of Dean DC* [2019] 1 WLR 6562. A threefold test was applied, equating the ambit of “material considerations” with the ambit of the power to impose planning conditions (derived from *Newbury DC v. SSE* [1981] AC 578), namely whether this:
- a. was for a planning purpose;
  - b. was fairly and reasonably related to the development; and
  - c. was not so unreasonable that no reasonable planning authority could have imposed it.



- 2.8 These criteria are known as the “*Newbury* criteria”, and a consequence of their application is that planning permission cannot be bought or sold. Planning obligations satisfying these criteria may be treated as material planning considerations (see *Tesco Stores Ltd. v. SSE* [1995] 1 WLR 759 at pp. 782-783 per Lord Hoffman).
- 2.9 As the Supreme Court explained in *Wright*, an obligation to pay money to a fund to provide for general community benefits unrelated to the proposed change in the character of the use of the development land does not have a sufficient connection with the proposed development as to qualify as a “material consideration” in relation to it (para. 38). In that case the community benefits promised by the developer were held not to satisfy the *Newbury* criteria and hence did not qualify as a material consideration because: “*The benefits were not proposed as a means of pursuing any proper planning purpose, but for the ulterior purpose of providing general benefits to the community. Moreover, they did not fairly and reasonably relate to the development for which permission was sought*” (para. 44)<sup>1</sup>.
- 2.10 The decision-maker must therefore consider whether the obligations satisfy the *Newbury* criteria. If they do, they may lawfully be taken into account as material considerations. The weight that is attached to any material consideration is a separate matter, and a matter of planning judgment for the decision-maker, subject to *Wednesbury* principles (see *Tesco*).
- 2.11 Section 105 of the Planning Act, which will apply to the Secretary of State's determination of the DCO application, identifies certain considerations that the decision-maker must take into account. It states that:
- “(2) *In deciding the application the Secretary of State must have regard to—*
- (a) *any local impact report (within the meaning given by section 60(3) ) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),*
- (b) *any matters prescribed in relation to development of the description to which the application relates, and*
- (c) *any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.*”
- 2.12 The text underlined (s105(2)(c)), obliges the Secretary of State to take into account any planning obligations committed to if they are considered by the Secretary of State not only to be relevant (i.e. to be a material consideration), but also to be important. The judgment as to importance is anticipated to reflect the weight that the decision-maker chooses to ascribe to the matter in question.
- 2.13 As a matter of policy, NPS EN-1, para 4.1.8 states:
- “The [Secretary of State] may take into account any development consent obligations that an applicant agrees with local authorities. These must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects”.<sup>2</sup>*

<sup>1</sup> The Applicant has had regard to that case law in explaining the nature, purpose and scale of the proposed Community Fund. See section 10.5 of the Planning Statement.

<sup>2</sup> This NPS policy mirrors the equivalent legal requirement under Reg. 122 CIL Regulations 2010, which applies to determination of planning applications under TCPA: “a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—(a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.” This does not apply to determination of DCOs, since they fall outside the definition of a ‘planning permission’ under the Regs.



- 2.14 This is a statement of policy, and not law. Policy cannot make a matter which is otherwise a material consideration an irrelevant consideration (*Gransden & Co. Ltd. v. SoS* (1987) 54 P&CR 86 at p. 94). Its legal effect is different, therefore, from that of Regulation 122 of the Community Infrastructure Regulations 2010, which do not apply to decision-making under the PA 2008. The NPS policy is not only relevant, but also important in this case. It must therefore be taken into account by the decision-maker when determining the weight to be attached to any obligation and would apply equally to a development consent obligation or some other contractual obligation offered by the Applicant.
- 2.15 If the Secretary of State takes into account an obligation that is a material consideration (i.e. it satisfies the *Newbury* criteria) but which does not satisfy an element of the policy test in para. 4.1.8 that goes beyond those criteria (e.g. the requirement that the obligation is necessary to make the development acceptable in planning terms), it would be a departure from policy. The fact that the decision-maker has to have regard to the policy does not mean that it needs necessarily to follow the policy. However, if the decision-maker is going to depart from policy it must give clear reasons for doing so in order that the recipient of the decision will know why the decision is being made as an exception to the policy and the grounds upon which the decision was taken (*Gransden* at p. 94).
- 2.16 The scope for departing from the policy set out in EN-1 will be limited by the fact that some elements of the policy effectively reproduce the *Newbury* criteria.
- 2.17 The Secretary of State will therefore need to consider:
- a. whether the obligations satisfy the *Newbury* criteria so that they may be regarded as relevant;
  - b. if relevant, whether the obligations meet the tests set by policy in the NPS (where these tests go beyond the *Newbury* criteria); and
  - c. if not, whether there are reasons for nevertheless taking the obligation into account as a departure from policy.
- 2.18 If the Secretary of State concludes that an obligation is relevant and that it should be taken into account, the weight that is attached to it (and accordingly whether it is not only relevant, but also important) will be a matter for his or her planning judgment.
- 2.19 In this case the Applicant does not propose to make any of the obligations conditional upon a positive decision being reached by the Secretary of State as to their relevance, accordance with policy, weight or importance. Thus the obligations will be offered, secured and honoured whatever conclusion is reached by the Secretary of State as to the role (if any) which a particular obligation should play in the decision.
- 2.20 For ease of reference, the diagram in the Appendix to this note shows in diagrammatic form the analysis which must be undertaken by the ExA on the Secretary of State's behalf as set out above. It is this analysis which we have applied to the provisions in each of the Schedules to the Deed of Obligation in section 3.

## **Requirement vs Contractual Obligation**

- 2.21 We are aware also of paragraph 54 of the National Planning Policy Framework, which provides that: *“Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition”*. While it may be possible, in principle, for elements of the Deed of Obligation as drafted to be pulled out into requirements, we consider that in most, if not all, cases there is considerable practical advantage and merit in placing the commitments to plans etc together with the governance arrangements for approvals or amendments, and procedures for resolution of disagreements, which relate to them and which it would not be appropriate to draft into the DCO. The draft Deed of Obligation largely follows the form and approach in the Hinkley Point C s106 agreement, taking into account learnings from that project. Nuclear projects of the scale of Hinkley C and Sizewell C have few precedents in terms of their size, the length of their construction period and their complexity. We would be grateful if the ExA would consider this when having regard to paragraph 54 of the NPPF and considering the obligations which it is and is not appropriate to secure contractually. If after such consideration, the ExA wishes SZC Co to further justify the securing of any particular commitments by way of the Deed of Obligation rather than requirement, we would be pleased to respond.

## **3. SUMMARY OF THE DEED OF OBLIGATION AND LEGAL UNDER-PINNING**

- 3.1 We summarise below the content of the draft Deed of Obligation. This agreement would be entered into by the Applicant as a deed (under the ordinary provisions of contract law), and by the local authorities as a contract made pursuant to s111 LGA 1972. Section 111 LGA 1972 empowers local authorities to do anything *“which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions”*. This would include entering into a contract which secured mitigation measures and benefits relating to the Sizewell project, where these are incidental to the function of East Suffolk Council and Suffolk County Council in their capacity as local planning authorities, and incidental to the functions of Suffolk County Council as highway authority, fire and rescue authority, waste planning authority, lead flood authority and education authority.

### **Recitals**

- 3.2 The Recitals confirm the status of the Councils as planning authorities (in the case of East Suffolk Council and Suffolk County Council) and highway authority, fire and rescue authority, waste planning authority, lead flood authority and education authority (in the case of Suffolk County Council only).

### **Definitions and interpretation (Clause 1)**

- 3.3 Relevant definitions are set out in Clause 1.

### **Legal effect (Clause 2)**

- 3.4 Provides that the obligations in the Deed of Obligation are entered into pursuant to section 111 of the Local Government Act 1972.
- 3.5 Provides that the obligations in the agreement pursuant to s.106 of the Town and Country Planning Act 1990 previously executed in connection with the relocated facilities planning permission will continue to apply as if such works were being carried out under that planning permission, even where the equivalent works are carried out under the DCO.

### **Conditionality (Clause 3)**



- 3.6 Provides that save for in respect of obligations which expressly require compliance prior to Commencement, the provisions in the Schedules of the Deed of Obligation has operative effect from the "Commencement Date", which is defined to mean "the date of Commencement of works pursuant to the Development Consent Order", subject to exceptions provided for in circumstances where legal challenges are brought.

**Obligations (Clause 4)**

- 3.7 Provides that SZC Co covenants to comply with the obligations contained in the Schedules. Further, it provides that the three Councils will perform their obligations provided for in the Deed of Obligation.

- 3.8 Provides that where any payment is expressed to be payable on or before an event or activity, SZC Co covenants that it shall not commence that event or activity until the relevant payment has been made.

Provides that where an obligation requires SZC Co to undertake an action "on or before Commencement", then SZC Co covenants that it shall not commence that event or activity until the relevant obligation is satisfied.

**Release (Clause 5)**

- 3.9 Provides that SZC Co. will be released from all obligations under the Deed of Obligation upon transfer of the whole of the benefit of the DCO to another party pursuant to article 9, save in respect of antecedent breaches.

**Expiry (Clause 6)**

- 3.10 Provides that if the DCO expires or is revoked before the Commencement Date then the Deed of Obligation will determine and cease to have effect.

**Certificates of Compliance (Clause 7)**

- 3.11 Makes provision for the three Councils to provide certificates of compliance upon request by SZC Co. where obligations have been discharged.

**Resolution of Disputes (Clause 8)**

- 3.12 Makes provision for expert determination in relation to disputes between the Parties.

**Notices (Clause 9)**

- 3.13 Sets out the means of service and addresses to which notices may be served on the Parties.

**Indexation (Clause 10)**

- 3.14 Provides for the sums specified in the Deed of Obligation to be index-linked to date of payment.

**Interest (Clause 11)**

- 3.15 Provides for interest to be paid on late payments.

**Notice of Phases, payments and Dispositions (Clause 12)**

- 3.16 Requires SZC Co. to:

- 3.16.1 notify the Councils of the anticipated and actual Commencement Date and Transitional Date,

- 3.17 Empowers the Parties to agree variations to the triggers for fulfilment of obligations in the Deed of Obligation, but only where the Councils consider this would not give rise to materially new or materially different environmental effects to those assessed.

**Communications (Clause 13)**

- 3.18 Requires ESC and SCC to coordinate external communications with SZC Co.'s communications team in accordance with a protocol to be agreed. It also provides that where particular mitigation works, projects or benefits are funded from any contributions secured through the Deed of Obligation, SZC Co. will be acknowledged as having funded such works and able to publicise such funding through the means described.

**National Policy Statement EN-1 (Clause 14)**

- 3.19 Confirms that the Parties agree that the obligations contained in the Schedules are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development and thus satisfy the tests in paragraph 4.1.7 of National Policy Statement EN-1.

**Third Parties (Clause 15)**

- 3.20 Provides that where any payments are stated to be payable by SZC Co to ESC and SCC for onward transfer to a person who is not a party to the Deed of Obligation (a "third party"), the relevant Council and SZC Co will use reasonable endeavours to enter into an agreement with the third party substantially in the form attached to the Deed of Obligation at Annex [●] (a "Deed of Covenant"). If no Deed of Covenant has been entered into within [●] Working Days of the date when the payment was due to be paid, SZC Co and the relevant Council will meet to determine either alternative delivery of the relevant mitigation or an alternative form of mitigation.
- 3.21 Provides that where the Deed of Obligation grants a third party a right to be represented on a governance group, that the relevant Council and SZC Co will use reasonable endeavours to enter into a Deed of Covenant in respect of this provision. If no Deed of Obligation is entered into prior to the date of the [second] meeting of the relevant governance group, SZC Co and the Councils will meet to determine whether it is necessary to appoint an alternative third party.

**VAT (Clause 16)**

- 3.22 Makes provision in relation to the payment of VAT on contributions paid pursuant to the Deed of Obligation.

**Legal Compliance (Clause 17)**

- 3.23 Provides that nothing in the Deed of Obligation requires the Parties to do anything which would be contrary to data protection, confidentiality or other legal requirements.

**Councils' Powers (Clause 18)**

- 3.24 Provides that nothing in the Deed of Obligation will fetter the statutory rights, powers or duties of the Councils.

**Good Faith (Clause 19)**

- 3.25 The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations.

**Rights of Third Parties (Clause 20)**

- 3.26 Provides that the Contracts (Rights of Third Parties) Act 1999 does not apply.



**Jurisdiction (Clause 21)**

- 3.27 Applies the laws of England and Wales to the Deed of Obligation.

**Counterparts (Clause 22) and Date of Delivery (Clause 23)**

- 3.28 Provides that the Deed of Obligation may be executed in counterparts, and will be deemed to be delivered as a deed on the date it is completed.

**SCHEDULE 1 – COUNCILS’ GENERAL OBLIGATIONS**

- 3.29 Provides that the Councils will keep all payments made under the Deed of Obligation in interest bearing accounts, that the monies received will be used only for the purpose for which they are paid, that monies unspent within 5 years of payment to the Council will be returned to SZC Co, <sup>3</sup>[that the Deed of Obligation will be registered as a local land charge], and that where agreement, consent or approval is required from the Councils it will not be unreasonably withheld and will be provided in writing within a specified period.
- 3.30 **Compliance with Newbury criteria?**
- 3.31 **Compliance with NPS policy test?**
- 3.32 **Any other reason for the Secretary of State to take it into account?**
- 3.33 **Could it be dealt with by way of requirement?**
- 3.34 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 2 – COUNCILS’ RESOURCING**

- 3.35 Provides for payments to the Councils to fund additional dedicated Council staff to fulfil the additional duties imposed on the Council by the Project.
- 3.36 **Compliance with Newbury criteria?**
- 3.37 **Compliance with NPS policy test?**
- 3.38 **Any other reason for the Secretary of State to take it into account?**
- 3.39 **Could it be dealt with by way of requirement?**
- 3.40 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 3 – HOUSING**

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<sup>3</sup> Note: The approach to registration of the Deed of Obligation as a land charge under the Evolving Approach set out in Appendix 26A to the Responses to ExQ1 is subject to further consideration.

- 3.41 Provides for the establishment of a Housing Fund which will fund initiatives to increase the supply of bedspaces in private housing and tourist accommodation, and support East Suffolk Council's housing advice and homelessness prevention service. A Private Housing Supply Plan, and a Tourist Accommodation Plan will be submitted for approval to the Accommodation Working Group, and the funds applied for the purposes agreed in those approved plans. Provision is made for the delivery of the Accommodation Campus for use by construction workers, as well as the appointment of one or more Accommodation Co-ordinators, and an Accommodation Management System. Provision is made in relation to the membership of the Accommodation Working Group and its working practices and administration, including its reporting and referral of decisions (in case of failure to agree) to the Social Review Group. An obligation is placed on SZC Co to conduct regular workforce surveys in order to provide information to the Accommodation Working Group in relation to the estimated number of home-based and non-home based workers, their use of accommodation of different types and the location of their accommodation.
- 3.42 **Compliance with Newbury criteria?**
- 3.43 **Compliance with NPS policy test?**
- 3.44 **Any other reason for the Secretary of State to take it into account?**
- 3.45 **Could it be dealt with by way of requirement?**
- 3.46 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 4 – EMERGENCY SERVICES**

- 3.47 Provision is made for payment of sums from the Emergency Services Contribution to Suffolk County Council for onward payment to the Suffolk Constabulary, the Suffolk Fire and Rescue Service and the East of England Ambulance Service Trust. Provision is also made for (additional) contingency payments in circumstances where additional resources become necessary due to protests, demonstrations, evacuations or public safety initiatives. Provision is made in relation to the membership of the Community Safety Working Group and its working practices and administration, including its reporting and referral of some decisions (in case of failure to agree) to the Social Review Group.
- 3.48 **Compliance with Newbury criteria?**
- 3.49 **Compliance with NPS policy test?**
- 3.50 **Any other reason for the Secretary of State to take it into account?**
- 3.51 **Could it be dealt with by way of requirement?**
- 3.52 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 5 - PUBLIC SERVICES AND COMMUNITY SAFETY**

- 3.53 Provision is made for the payment of the Public Services Resilience Fund, to be used for new or enhanced Local Community Safety and Community Health Measures, Social Care Resilience Measures, and School and Early Years Resilience Measures. In addition, a payment is to be made for School and Early Years Capacity Measures. Provision is made for the roles of the Community Safety Working Group and the Social Review Group in the approval of measures to be funded through such payments.
- 3.54 **Compliance with Newbury criteria?**
- 3.55 **Compliance with NPS policy test?**
- 3.56 **Any other reason for the Secretary of State to take it into account?**
- 3.57 **Could it be dealt with by way of requirement?**
- 3.58 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 6 – HEALTH**

- 3.59 Provision is made for the establishment of Sizewell Health (a private occupational healthcare service to be located on the SZC Development Site to be used by SZC construction workers). The Residual Healthcare Contribution is to be paid in instalments during the Construction Period and applied towards the cost to clinical commissioning groups of providing healthcare. A Health Working Group is to be established. Provision is made in relation to its membership, decision-making and administration. In the case of failure to reach agreement, a reference will be made from the Health Working Group to the Social Review Group.
- 3.60 **Compliance with Newbury criteria?**
- 3.61 **Compliance with NPS policy test?**
- 3.62 **Any other reason for the Secretary of State to take it into account?**
- 3.63 **Could it be dealt with by way of requirement?**
- 3.64 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 7 – EMPLOYMENT, SKILLS, EDUCATION AND SUPPLY CHAIN**

- 3.65 Provision is made for a number of measures to ensure a strategic approach to developing the workforce requirements for the Project and shaping a legacy for the region. These include putting in place Workforce Delivery Strategy Strategies for each phase of the Project, producing a Sizewell C Skills Prospectus, putting in place a Sizewell C Apprenticeship Strategy, funding a Regional Skills Co-ordination Function, providing the Sizewell C Employment Outreach Fund and Asset Skills Enhancement and Capability Fund, establishing a Sizewell C Bursary Scheme, creating the Sizewell C Jobs Service, and providing the Young Sizewell C programme. The membership and administration of the Economic Review Group, and the Employment, Skills and Education Working Group is provided for. SZC Co is also required to implement the Supply Chain Strategy, which will be overseen by the Supply Chain Working Group, whose membership and administration is provided for. SZC Co is obliged to monitor the Project's supply chain as specified in the Schedule.
- 3.66 **Compliance with Newbury criteria?**

- 3.67 **Compliance with NPS policy test?**
- 3.68 **Any other reason for the Secretary of State to take it into account?**
- 3.69 **Could it be dealt with by way of requirement?**
- 3.70 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 8 – HERITAGE**

- 3.71 Provision is made for the payment of money for the purpose of the First Leiston Abbey Enhancement Scheme and the Second Leiston Abbey Enhancement Scheme, which will fund heritage works on two scheduled monument sites connected with Leiston Abbey. Provision is also made for the payment of the SCC Archaeological Monitoring Contribution for the purpose of archaeological monitoring and mitigation, and review of SZC Co's archaeological reports, across all of sites on which works are being carried out for the purpose of the Project.
- 3.72 **Compliance with Newbury criteria?**
- 3.73 **Compliance with NPS policy test?**
- 3.74 **Any other reason for the Secretary of State to take it into account?**
- 3.75 **Could it be dealt with by way of requirement?**
- 3.76 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 9 – IMPLEMENTATION PLAN**

- 3.77 Provision is made for the carrying out of the key elements of the Project's physical development in accordance with the timings set out in the Implementation Plan, in order to ensure the proper mitigation of Project impacts. Adherence to the Implementation Plan and addressing any delays as against the Implementation Plan is to be managed in accordance with the Schedule.
- 3.78 **Compliance with Newbury criteria?**
- 3.79 **Compliance with NPS policy test?**
- 3.80 **Any other reason for the Secretary of State to take it into account?**
- 3.81 **Could it be dealt with by way of requirement?**
- 3.82 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 10 – LEISURE, PUBLIC RIGHTS OF WAY AND AMENITY**



- 3.83 Provision is made for payment of the Sports Facilities Design Payment, to be used to design the Leiston Sports Facilities Works (a 3G pitch and two multi-use games areas in Leiston) in consultation with Alde Valley Academy, and thereafter the payment of the Sports Facilities Works Payment to fund the carrying out of these works. East Suffolk Council is to manage the Leiston Sports Facilities, in accordance with a management plan approved by SZC Co. Payments are to be made annually by SZC Co during the Construction Period towards the maintenance of the Leiston Sports Facility. Provision is also made for the payment of the PROW Fund to mitigate and enhance and create rights of way in East Suffolk, which will be managed by the Rights of Way Working Group established under this Schedule.
- 3.84 **Compliance with Newbury criteria?**
- 3.85 **Compliance with NPS policy test?**
- 3.86 **Any other reason for the Secretary of State to take it into account?**
- 3.87 **Could it be dealt with by way of requirement?**
- 3.88 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 11 – NATURAL ENVIRONMENT**

- 3.89 Provision is made for the establishment of a Natural Environment Improvement Fund, with a specified minimum amount to be allocated to projects within the part of the Suffolk Coast and Heaths AONB and Suffolk Heritage Coast located within East Suffolk. Applications will be invited for funding for projects meeting the objectives of this Fund. Decisions on applications made to the Fund will be determined by the Natural Environment Awards Panel established under the Schedule, in accordance with the criteria specified in the Schedule. Provision is also made for payment of sums to establish and run the Land Management and Skills Scheme, which will be paid to East Suffolk Council and Suffolk County Council to carry out the scheme within East Suffolk and the part of the Suffolk Coast and Heaths AONB located within East Suffolk respectively.
- 3.90 The Schedule provides for payment of the European Sites Access Contingency Fund to fund European Sites Mitigation Measures, and the Minstermere and Sandlings (north) Contingency Fund to pay for the Minstermere and Sandlings (north) Mitigation Measures, as well as sums for the monitoring of certain protected European sites (SPA and SACs). Provision is made for payment of the Recreational Avoidance Mitigation Contribution (towards mitigating the in-combination recreational disturbance impacts of the Project on the Suffolk Coast RAMS Zone of Influence Zone B). In the event that the Ecology Working Group determines that the Fen Meadow Target Quantum has not been achieved, some or all of the Fen Meadow Contingency Fund must also be paid, in accordance with the table set out in the Schedule. Such payments are to be used for the creation of new fen meadow habitat in Suffolk or the improvement of existing fen meadow habitats in Suffolk.
- 3.91 Provision is made in relation to establishment, purpose and operation of the Environment Review Group, the Marine Technical Forum, the Ecology Working Group and the Natural Environment Awards Panel.

#### **SCHEDULE 12 – NOISE**

[To be drafted]

- 3.92 **Compliance with Newbury criteria?**

- 3.93 **Compliance with NPS policy test?**
- 3.94 **Any other reason for the Secretary of State to take it into account?**
- 3.95 **Could it be dealt with by way of requirement?**
- 3.96 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 13 – THIRD PARTY RESILIENCE FUNDS**

- 3.97 Provision is made for the payment of monies to the National Trust, Pro Corda and the RSPB to mitigate the impacts of the Project.
- 3.98 **Compliance with Newbury criteria?**
- 3.99 **Compliance with NPS policy test?**
- 3.100 **Any other reason for the Secretary of State to take it into account?**
- 3.101 **Could it be dealt with by way of requirement?**
- 3.102 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 14 – SIZEWELL C COMMUNITY FUND**

- 3.103 Provision is made for the establishment of the Sizewell C Community Fund in order to mitigate the intangible and residual impacts of the Project on the communities within the administrative boundary of East Suffolk through providing grants for schemes, measures and projects which promote the economic, social or environmental well-being of those communities and enhance their quality of life. SZC Co is to enter into arrangements with the Suffolk Community Foundation in relation to the establishment and administration of this fund, and the making of awards via a panel established for this purpose.
- 3.104 **Compliance with Newbury criteria?**
- 3.105 **Compliance with NPS policy test?**
- 3.106 **Any other reason for the Secretary of State to take it into account?**
- 3.107 **Could it be dealt with by way of requirement?**
- 3.108 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 15 – TOURISM**

- 3.109 Provision is made for payment of a contribution to East Suffolk Council towards the cost of employing a Tourism Programme Manager, and for the administration of the Tourism Fund and Tourism Working Group. During the Construction Period, SZC Co will pay East Suffolk Council sums from the Tourism Fund towards the development of an Annual Tourism Fund Implementation Plan and the carrying out of plans, projects and programmes promoting local tourism, as well as monitoring the effects of the Project on tourism. Governance arrangements for the Tourism Working Group are specified, and in cases of failure to agree the group will refer matters to the Social Review Group.

- 3.110 **Compliance with Newbury criteria?**
- 3.111 **Compliance with NPS policy test?**
- 3.112 **Any other reason for the Secretary of State to take it into account?**
- 3.113 **Could it be dealt with by way of requirement?**
- 3.114 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 16 – TRANSPORT**

- 3.115 SZC Co commits to implementing the Construction Traffic Management Plan, the Construction Worker Travel Plan, the Traffic Incident Management Plan, and the Operational Travel Plan, subject to any changes which may be approved to these plans from time to time by the Transport Review Group, provided that no changes may be made which give rise to materially new or materially different environmental effects to those assessed.
- 3.116 The purpose, membership, administration and governance arrangements for the Transport Review Group are specified. An obligation is placed on SZC Co to appoint a Transport Co-ordinator, whose duties will include ensuring compliance with all of the transport plans, liaising with the relevant Working Groups in relation to transport matters, and gathering and reporting information to the Transport Review Group. The Working Groups with whom the Transport Co-ordinator will liaise are: the Community Safety Working Group, the Parish Councils, the Rights of Way Working Group, the Wickham Market Working Group, the Leiston Working Group, and the Marlesford and Little Glemham Working Group. The purpose of the latter three of these Working Groups is to design highway improvements schemes in their locality using funds provided by SZC Co.
- 3.117 A number of specific highway safety measures relating to the B1078 are to be funded by SZC Co, and highway conditions surveys in relation to the B1122 are to be carried out before and after the opening of the Sizewell Link Road, with SZC Co funding works to improve the condition of this road before and after the opening of the Sizewell Link Road. A Cycle Connectivity Fund is to be provided, as well as the payment of sums to Suffolk County Council to audit and supervise the various road schemes which form part of the Project. Surveys are to be carried out on the AIL Routes to assess the highway structures and street furniture. SZC Co shall carry out any necessary changes to the street furniture approved by Suffolk County Council prior to delivering abnormal indivisible loads by road on the AIL Routes.
- 3.118 Two Contingency Funds are provided for, to cover the mitigation of specific additional transport effects of the Project in the event that they arise.
- 3.119 **Compliance with Newbury criteria?**
- 3.120 **Compliance with NPS policy test?**
- 3.121 **Any other reason for the Secretary of State to take it into account?**
- 3.122 **Could it be dealt with by way of requirement?**
- 3.123 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

#### **SCHEDULE 17 – GOVERNANCE**

- 3.124 Details of the governance arrangements applicable to the Delivery Steering Group, Planning Working Group and the Social Review Group are provided for. This Schedule includes a visual representation of the governance structure which is provided for in the Deed of Obligation.
- 3.125 **Compliance with Newbury criteria?**
- 3.126 **Compliance with NPS policy test?**
- 3.127 **Any other reason for the Secretary of State to take it into account?**
- 3.128 **Could it be dealt with by way of requirement?**
- 3.129 **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**Herbert Smith Freehills LLP**





## ANNEX

### WHICH OBLIGATIONS MAY THE SECRETARY OF STATE TAKE INTO ACCOUNT?

