

**THE SIZEWELL C PROJECT**  
**(EN010012)**

**DEADLINE 2**

**COMMENTS ON DRAFT S.106, ACCOMPANYING DRAFT EXPLANATORY MEMORANDUM AND  
DRAFT CONFIRMATION SUBMITTED BY THE HEVENINGHAM HALL ESTATE (THE HHE)**

**(INTERESTED PARTY NUMBER: 20026675)**

**The Sizewell C (Nuclear Generating Station) Order 20[ ]**

**Proposed Amendments to the section 106 agreement**

The Heveningham Hall Estate (**HHE**) requests the following amendments and additions to the Draft section 106 agreement. These principally relate to Associated Development, namely the Northern Park and Ride (**NPR**) and the Yoxford Roundabout (**YR**). Parts of the HHE, including the Grade I listed Cockfield Hall are proximate to the NPR and YR. The HHE reserves the right to make further comments on any subsequent drafts of the section 106 agreement.

The comments in this document all relate to the “Deed of Development Consent Obligations” (the **s.106**) internally dated “Draft 6 May 2021” forming Appendix 1 of the draft s.111 deed and uploaded to the PINS website on 14 May 2021.

In this document the original text of the s.106 is shown as “black text”, proposed deletions are shown struck through in “~~red text~~” and proposed insertions are shown as underlined “blue text”.

Clause	
Payments to Third Parties (clause 15)	<p>The mechanism is too restrictive. The Councils should have the discretion to pay out funds if satisfied that these will be spent in accordance with the terms of the s.106. For small unincorporated community groups it may not be possible, or may be difficult for a Deed of Covenant in the terms drafted to be entered into. It is noted that this was also an issue raised by the ExA. The wording at clause 15.3.3 should be revised to read:</p> <p>“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 East Suffolk Council, West Suffolk Council or Suffolk County Council (as relevant) shall meet to determine either <u>(i) the exercise of their discretion to make the payment to the third party if the third party has demonstrated to their satisfaction that the payment will be spent on the intended objects; or (ii) the alternative delivery of the relevant mitigation; or (iii) an alternative form of mitigation.</u></p>
Rights of Third Parties (clause 20)	<p>Consider a carve out for particular obligations to allow direct enforcement.</p> <p>In the s.106 Explanatory Memorandum it is stated as follows indicating that third parties will be involved in negotiating obligations that directly affect them; they should therefore have the facility to enforce those same obligations:</p>



	<p><i>“... we would like to be clear with Interested Parties that the negotiation of such agreements must take place solely between SZC Co. and the three relevant Councils, with the exception of cases where a particular Interested Party is expressly referenced in the draft s106 Agreement in relation to particular obligations.”</i></p> <p>The wording should be revised to read:</p> <p><i>“<a href="#">Save as set out below</a> 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. <a href="#">[add list of relevant obligations and enforcing parties]</a>”</i></p>
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Schedule 1 – Councils’ General Obligations	
Para 4.1	<p>5 years is too short for the repayment of unspent funds; for a project with a construction period of 12 years it would be appropriate for the funds to be returned if unspent within 10 years from the date of payment.</p> <p>The obligation should be extended so that if funds have been committed for expenditure but not yet spent then these do not need to be returned, for example, if a contract has been entered into but the date of payment under the contract has not yet occurred then it would be unacceptable for the Councils to have to return the funds in those circumstances.</p> <p>The wording should be revised to read:  “.... remains unspent <a href="#">or uncommitted for expenditure</a> within <del>5</del><a href="#">10</a> years of the date that <a href="#">the</a> amount was paid by SZC Co, <a href="#">then</a> the Councils ....”</p> <p>This same comment applies in relation to the Deed of Covenant at para 6.1 which simply refers to the return of “unspent monies”. The time period for repayment is currently left blank, but should mirror the time period in Sched 1 para 4.1.</p>
Para 6	<p>Default approval provisions are rarely acceptable. The dispute resolution provision at clause 8 should be engaged to reach a decision. The s.106 obligations that require approval/consent from the Councils contain key environmental mitigation, and it is important that there is sufficient scrutiny to ensure that the conclusions of the environmental statement are being achieved. The wording should be revised to read:</p> <p>“... and in the event of the relevant Council failing to respond within the relevant decision period (or longer period as agreed) <del>that then</del> SZC Co may <a href="#">utilise Clause 8 (Resolution of Disputes) to obtain a decision in relation to the relevant matter</a> <del>proceed with the Project on the basis that such matter, scheme or measure has been approved by the relevant Council.</del></p>

Schedule 8 - Heritage	
Para 1.1	<p>The HHE’s evidence is that there is harm to the setting of a very considerable number of designated and non-designated heritage assets due to the quantum, type and duration of construction traffic that will pass these assets during the construction period on the identified HGV and AIL construction routes both pre and post the construction of the SLR and TVB. It is likely to be impractical to provide individual <a href="#">mitigation</a> for each of these assets, (although in some instances additional screening or noise attenuation measures may be realistic), however it is possible to provide <a href="#">compensation</a> for the heritage harm. The HHE’s case is that a Heritage Fund should be established from which monies can be drawn down for</p>



	<p>identified and approved heritage projects that will benefit the heritage assets or historic settlements affected by the Project's construction traffic, and compensate for the effect of construction traffic, and heritage harm.</p> <p>A definition should be inserted as follows:</p> <p><u><b>"Heritage Mitigation Contribution"</b> means the sum of £[ · ] to be paid and applied in accordance with paragraph 4;</u></p> <p>Schedule 14 includes a "Sizewell C Community Fund" (the <b>Fund</b>) and provides for the administration of the Fund. The quantum is unknown. The HHE suggest that the "Heritage Mitigation Contribution" forms a ring-fenced pot within that wider Fund, provided that the objects of the "Suffolk Community Foundation" (<b>SCF</b>), who administer the Fund, are wide enough to cover the objects of the Heritage Mitigation Contribution. There is no visibility on the purposes of the SCF charity in the s.106. This will need to be checked. The HHE reserve the right to provide alternative drafting (to para 4 below) if the SCF's purposes are not sufficiently wide.</p> <p>The amount of the Heritage Mitigation Contribution is to be determined by the ExA or agreed with SZC Co. The HHE reserve the right to suggest an appropriate figure.</p> <p>Paragraph 4 should be worded as follows:</p> <p><u><b>"4. HERITAGE MITIGATION CONTRIBUTION"</b></u></p> <p><u>4.1 SZC Co shall pay the Heritage Mitigation Contribution to the Suffolk Community Foundation on or before Commencement; such amount is to be applied by Suffolk Community Foundation in accordance with the terms of the Deed of Transfer and relevant Administration Agreement for the purpose of mitigating the effects on heritage assets from construction traffic associated with the Project.</u></p> <p><u>4.2 Paragraph 2.2 of Schedule 14 shall apply to the Heritage Mitigation Contribution, and reference therein to the "first instalment of the Sizewell C Community Fund" shall instead be taken to be a reference to the "Heritage Mitigation Contribution" and reference therein to paragraph 2.3.1 shall be taken to be a reference to paragraph 4.1 above. The following words in paragraph 2.2 of Schedule 14 are not relevant to the Heritage Mitigation Contribution and should be ignored in relation to the Heritage Mitigation Contribution <i>"Thereafter SZC Co shall enter into a Deed of Transfer and (if necessary) an Administration Agreement in respect of each subsequent instalment of the Sizewell C Community Fund to be paid by SZC Co to the Suffolk Community Foundation pursuant to paragraph 2.3."</i></u></p> <p><u>4.3 Paragraphs 2.4 to 2.10 of Schedule 14 shall apply to the Heritage Mitigation Contribution, save that paragraphs 2.5.6, 2.5.8, 2.5.10, and the post-script following paragraph 2.5.10 shall not apply. The maximum liability sum in paragraph 2.10 shall be deemed to include the Heritage Mitigation Contribution."</u></p>
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Schedule 9 – Implementation Plan	
Para 1	<p>The "Key Environmental Mitigation" refers to the "Park and Rides" (sic should be Park and Ride Sites) and "Yoxford Roundabout". The latter is not a defined term, and the former just refers to land edged red on a plan annexed to the deed. However, it is not clear from the s.106 drafting that the works to deliver these facilities will include the necessary mitigations for these facilities themselves. Schedule 9 just relates to delivery of the facilities as mitigation for the Main Site and nothing to do with their management or operation.</p>



	See the HHE's amends to the DCO and Requirements that ensure the necessary mitigations for these facilities are delivered, and that these are managed and operated so as to minimise environmental harm.
Para 2.1	<p>SZC Co should use "best endeavours", not "reasonable endeavours" to carry out and complete "Key Environmental Mitigation" otherwise the LPA can have no confidence that the assessed effects of the environmental statement will be achieved.</p> <p>The wording should be revised to read:</p> <p>"SZC Co shall use <del>reasonable</del> <b>best</b> endeavours to carry out and complete the Key Environmental Mitigation in accordance with the Implementation Plan."</p>

#### Schedule 11 – Natural Environment

Para 1.1	<p>It is unclear what is to be covered in the "Terrestrial Ecology Monitoring and Mitigation Plan" (TEMMP), and whether this covers the Associated Developments or not. The HHE submit that it should due to the presence of sensitive habitats adjacent to the NPR and YR in particular.</p> <p>Footnote 29 on page 73 states <i>"The scope of the Environment Review Group's role is subject to ongoing discussions with stakeholders in relation to the terrestrial ecology plans in development. Further details are intended to be included at Deadline 3."</i></p> <p>The HHE reserves its position to comment further when the scope of the TEMMP becomes clear.</p>
Para 11	<p>Para 11.4.1 provides that the remit of the Ecology Working Group (EWG) is to "review monitoring undertaken in accordance with the TEMMP".</p> <p>There are no references in para 11 to the EWG having any overview or involvement in the Associated Development sites. The EWG's scope should cover ecological overview of these sites. This could come through the TEMMP (see row above) or be included by direct reference in para 11.</p>

#### Schedule 16 – Transport

Para 1.1	<p>The HHE have highlighted safety concerns in relation to the Darsham Level Crossing and its already high risk rating<sup>1</sup>; the +10.3% increase in HGV construction traffic travelling through the crossing raises what TPA describes as a "fundamental highway safety issue". The TA Addendum acknowledges that the increased use of trains as part of SZC Co's revised transport strategy may require <i>"Network Rail to undertake improvements to level crossings on the East Suffolk line, in line with their duties as infrastructure manager, to <b><u>mitigate the risk to level crossing users arising from more frequent services</u></b>"<sup>2</sup> (emphasis added). The HHE suggest mitigation measures / improvements to Darsham and Middleton level crossings may be required, once a proper assessment has been undertaken .</i></p> <p>The terms of reference of the Community Safety Working Group do not obviously include recommending upgrades to level crossings if there are safety concerns, nor does there obviously appear to be a fund from which monies could be drawn down to make necessary safety improvements if required.</p> <p>The HHE suggests that a new definition is added:</p>
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<sup>1</sup> See Paragraph 2.5(d) of the HHE'S Written Representation.

<sup>2</sup> Paragraph 4.2.6 of the TA Addendum.



	<p><u>“The Level Crossings Contribution” means the cost of designing and implementing improvements to level crossings on the East Suffolk Line affected by the Project including but not limited to the Darsham and Middleton level crossings up to a maximum cost of £[●] (if required), to be used by Suffolk County Council (in consultation with Network Rail) for upgrades or improvements to the level crossings;”</u></p> <p>Provision can be made if necessary for Suffolk County Council to forward the contribution to Network Rail.</p>
Para 4.1	<p>The HHE suggests the addition of:</p> <p><u>“4.1.5 provide a review of the level crossings on the East Suffolk Line affected by the Project including but not limited to the Darsham and Middleton level crossings (following consultation with Network Rail), with the report to include recommendations for any upgrades or improvements to the level crossings.”</u></p>
Para 9	<p>The HHE suggests the addition of a new para 9:</p> <p><b><u>“LEVEL CROSSING CONTRIBUTION</u></b></p> <p><u>SZC Co will pay the Level Crossing Contribution to Suffolk County Council within 20 Working Days of any report presented to the Community Safety Working Group pursuant to paragraph 4.1.5 above that recommends any upgrades to the level crossings.”</u></p>