



The Planning Act 2008

*Sizewell C (SZC)*

Planning Inspectorate Reference: *EN010012*

*Deadline 3 – 24 June 2021*

Comments by East Suffolk Council on revision 4 of the  
draft DCO for the Sizewell C Project

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## EAST SUFFOLK COUNCIL'S COMMENTS ON REVISION 4 OF THE DRAFT DCO FOR THE SIZEWELL C PROJECT

### 1 Introduction

- 1.1 The Applicant has submitted revision 4 of the draft DCO for Deadline 2 of the Sizewell C Examination.
- 1.2 East Suffolk Council (ESC) notes that, as set out in Annex A of the Examining Authority's (ExA) Rule 8 letter dated 21 April 2021, comments are invited on the Applicant's revised draft DCO for Deadline 3 on Thursday 24 June.
- 1.3 Pursuant to this, ESC wishes to make certain comments on this latest revision of the draft DCO. For ease of consideration and reference, these comments are set out in a tabular form below. ESC would be happy to provide further information on any of these comments should the ExA find that beneficial.

<u>Item number</u>	<u>Draft DCO – revision 4</u>	<u>ESC comments</u>
1	<p>Article 2: definition of “commence” excludes a number of operations; for revision 4 this has been updated to exclude from those exclusions the following (new text in italics):</p> <p>“(a) site preparation and clearance works <i>(except for the removal of any important hedgerows identified in Schedule 21 (Removal of important hedgerows) to the extent shown on the plans identified in Schedule 21)</i>”</p> <p>“(g) remedial work in respect of any contamination or adverse ground conditions <i>(excluding works including and associated with dewatering activities carried out as part of Work No.1A(1), Work No.1A(t) and Work No.1A(u) in Schedule 1)</i>”</p>	<p>ESC considers that the definition of “commence” and pre-commencement activities is too wide with the result that various activities can take place without mitigation. In particular, there is a concern with site preparation and clearance works being included – if these are outwith environmental surveys and monitoring then this could cause problems.</p> <p>Whilst ESC welcome the amendments that the Applicant has made to the definition of ‘commence’ in revision 4 of the draft DCO, it still has concerns.</p> <p>In particular, ESC remains concerned that items (a), (b), (d), (e), (f), (g), (h) and (j) that are excluded from the definition of ‘commence’ may still have significant environmental, specifically ecological, effects.</p> <p>ESC therefore suggest that the following wording is inserted to deal with this issue:</p>

		<p><u>Amendment to the requirements:</u></p> <p>Definition of “pre-commencement activities” to be inserted:</p> <p>“Pre-commencement activities” means any and all of those activities excluded from the definition of “commence”.</p> <p><u>New requirement to be inserted:</u></p> <p>"Pre-commencement activities</p> <p>(1) No part of the pre-commencement activities may take place until environmental surveying for those activities has been completed to the satisfaction of the local planning authority.</p> <p>(2) Should the local planning authority deem it necessary for subsequent monitoring to be carried out in relation to any pre-commencement activity, no such activities are to be carried out until details of such monitoring has been agreed.</p> <p>(3) Pre-commencement activities must be carried out in accordance with any monitoring requirements of the local planning authority."</p>
2	<p>“Article 2: definition of “maintain” now additionally includes the following words: “refurbish, clear, replace and improve”.</p>	<p>The Applicant’s draft DCO revision 4 includes an expanded definition of the term ‘maintain’, in particular the words ‘replace and improve’. ESC does not consider the inclusion of these words appropriate as they could be construed as having the same or similar meaning as the word ‘reconstruct’, which is not something that would be authorised by the DCO, nor is it something that has been environmentally assessed.</p> <p>ESC would welcome an explanation from the Applicant as to why these words have been included.</p>

3	Article 4: Limits of Deviation	Despite the Applicant's Drafting Note 9 submitted for Deadline 2 which seeks to explain the Applicant's approach to limits of deviation, ESC considers that the approach to any committed limits of deviation remains unclear. ESC would like to see Article 4 drafted so that it directly ties the limits of deviation to a distinct set of plans where these limits, both horizontal and vertical, are shown.
4	<p>Article 9 'Consent to transfer benefit of Order' has been substantially amended. 9(4) now states:</p> <p>"Where the undertaker has transferred any benefit ("transferor"), or for the duration of any period during which the transferor has granted any benefit, under paragraph (1) –</p> <p>(a) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations under this Order as would apply if those benefits or rights were exercised by the transferor; and</p> <p>(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."</p>	Whilst ESC understands the theory behind the approach that the Applicant is taking by making this amendment, it would welcome an explanation from the Applicant as to how this would work in practice if different elements of the powers are transferred to different parties. In particular, how would the liability be kept track of and who would do this?
5	Article 63 'Byelaws' has been amended so that the byelaws, "only relate to the area of the harbour limits as described in Schedule 19 and land controlled or used by the harbour authority".	ESC welcomes this amendment which appropriately limits the geographical extent of the byelaw powers. However, the Applicant has done so by reference to Schedule 19 which sets out in quite specialist language what the geographical extent of the harbour is. ESC would welcome an accompanying plan to be

		produced showing the harbour limits in a clearer way.
6	<p>Article 78 'Operational land for the purposes of the 1990 Act': this is now limited to:</p> <p>"(a) the permanent development site; and</p> <p>(b) land in respect of which Work No.1D and Work No.1E are authorised" (rather than also Works No.1A(n), 1A(u), 1B and 1C)"</p>	<p>ESC welcomes the amendments that the Applicant has made, which were at ESC's request. However, please could the Applicant explain what is meant by, "permanent development site" in 78(a)? Where is this term defined?</p>
7	<p>Article 79 now allows the undertaker to, "fell or lop any tree or shrub near, <i>within or overhanging</i> any part of the authorised development..." (wording in italics is new)</p>	<p>ESC already had concerns relating to how widely this article was drafted (see ESC's response to ExA's 1<sup>st</sup> written question DCO.1.50), and with this further amendment, these concerns remain and are exacerbated.</p> <p>ESC maintains that the following wording would be appropriate to ensure that this power applies only within the Order Limits:</p> <p>"The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots to the extent that they are within the Order limits, if it reasonably believes it to be necessary to do so..."</p>
8	Article 86	<p>Article 86 currently only refers to the Marine Management Organisation as the relevant local planning authority. Whilst this is correct in respect of land seaward of the Mean High Water Springs (MHWS), ESC's jurisdiction extends to Mean Low Water Springs (MLWS). In the overlapping intertidal area both ESC and MMO have potential to act as the approval and enforcement body. It is therefore essential that both ESC and the MMO retain responsibility for approving and enforcing any works in the overlapping intertidal area. This should be reflected appropriately in Article 86.</p>

9	Schedule 2, general provisions	<p>ESC considers that the use of the phrase ‘in general accordance’ is too wide and is unjustified.</p> <p>This wording is used in a number of requirements and ESC therefore suggests that a general provision be inserted at the start of Schedule 2 - a new 1(2)(c) – that will ensure that all such uses of the term, “in general accordance” are covered in the same way.</p> <p>The following wording is suggested:</p> <p>“Where any requirement provides that the authorised development or any part of it is to be carried out in ‘general accordance’ with details, or a scheme, plan or other document that is listed in Schedule 22 and certified under Article 80 of this DCO, this means that the undertaker will carry out such work(s) in a way that is consistent with the information set out in those details, schemes, plans or other document and in a manner that does not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.”</p>
10	Schedule 2, Requirement 4 ‘Project wide: The concept of a terrestrial ecology monitoring and mitigation plan’, which the Applicant must comply with has been introduced.	<p>ESC confirms that it has seen and commented on a draft of the Terrestrial ecology monitoring and mitigation plan (TEMMP) at Deadline 2. The TEMMP is not yet agreed.</p> <p>Whilst ESC is not concerned with the approach set out in Requirement 4, it notes that the TEMMP is not listed as a certified document in the draft DCO and would suggest to the Applicant that it is included as a certified document in the next draft of the DCO so as to ensure compliance is with an identifiable document.</p>
11	Schedule 2, Requirement 7A ‘Main development site: Coastal Processes Monitoring and Mitigation Plan’ has now	<p>Whilst ESC welcomes the amendments made, it is of the view that despite this, the requirement still does not deal with the</p>

	<p>been amended so that the construction of the soft coastal defence feature and the hard coastal defence features (HRDF) cannot commence until this plan has been submitted to and approved by ESC, following consultation with the relevant statutory nature conservation body, the EA and the MMO.</p>	<p>situation where there is shared authority between the MMO and ESC in relation to the intertidal area between the MHWS and MLWS. An appropriate solution to this situation needs to be incorporated into this requirement. ESC has had positive discussions with the MMO over how to manage the intertidal zone. We will be able to share the outcome of these shortly.</p>
12	<p>Schedule 2, Requirement 12B 'Main development site: Marine Infrastructure' has been amended significantly and now states that:</p> <p>Construction of the permanent beach landing facility, the soft coastal defence feature (SCDF), the HCDF and the temporary beach landing facility must not commence until:</p> <p>(a) Details of the layout, scale and external appearance of those works <u>in respect of land landward of the mean high water springs</u> have been submitted to and approved by ESC, in consultation with the MMO;</p> <p>(b) For <u>land seaward of the mean high water springs</u> it is the opposite: the MMO must approve those works in consultation with ESC.</p>	<p>Whilst ESC welcomes the amendments made, it is of the view that despite this, the requirement still does not deal with the situation where there is shared authority between the MMO and ESC in relation to the intertidal area between the MHWS and MLWS. An appropriate solution to this situation needs to be incorporated into this requirement. ESC has had positive discussions with the MMO over how to manage the intertidal zone. We will be able to share the outcome of these shortly.</p>
13	<p>Schedule 2, requirement 14 has been amended so that a landscape scheme for the permanent development must be approved by ESC, "within six month of Unit 1 commencing operation".</p>	<p>ESC welcomes the new trigger in this requirement.</p>
14	<p>Schedule 2, New requirement: removal of the HCDF</p>	<p>ESC has concerns regarding the retention of the HCDF as a hard point on the coastline in the future. ESC requests that an appropriate amendment be made to the draft DCO to commit to the removal of the HCDF when no longer required, unless</p>

		it is shown to be appropriate to leave it in situ at that time.
15	Schedule 2, New requirement: Maintenance Activity Plan (MAP)	<p>ESC is of the view that there ought to be a requirement dealing with the MAP.</p> <p>ESC suggests the following wording:</p> <p>"A MAP shall be submitted not less than 6 months before commencement of the first maintenance activity and at 5-year intervals thereafter. The MAP must be approved by ESC following consultation with members of the Marine Technical Forum (MTF). The plan must cover and include:</p> <ul style="list-style-type: none"> <li>(a) All temporary and permanent works associated with the HCDF, SCDF, BLF above MHWS and all 'Marine works' below MHWS;</li> <li>(b) A list of maintenance works foreseen for the station;</li> <li>(c) Details of the typical equipment and personnel requirements for each activity;</li> <li>(d) Details of the frequency and typical timing of each activity;</li> <li>(e) Details of controls and mitigation in place in order to protect the environment.</li> </ul> <p>The MAP must be updated every 5 years commencing from the date of the commencement of all temporary and permanent marine works above and below MHWS.</p> <p>Should the undertaker propose, or be required to undertake, additional activities not included within the plan, they must submit a further MAP for approval by ESC in consultation with the MTF not less than 6 months prior to the commencement of that maintenance activity, unless the works required are an emergency, in which case notification in writing is to be given to ESC in advance of works taking place to</p>



		<p>allow for a representative from ESC to be on-site during the emergency works.</p> <p>Maintenance activities are defined as Inspections, survey, upkeep, repair and adjustment, alteration, replacement of structure (not including the alteration, removal or replacement of foundations), and other requirement maintenance activities to the extent assess in the environmental information."</p>
16	Schedule 2, New requirement: Mitigation	<p>ESC is concerned that there is currently no provision in the draft DCO setting out that any mitigation needs to be carried out before development commences. In particular, it is keen to ensure that before any development commences, that the caravan park providing accommodation for construction workers is complete. ESC is also of the view that the accommodation campus ought to be up and running by peak construction.</p> <p>Four amendments are suggested to deal with this concern:</p> <p>Schedule 1:</p> <ol style="list-style-type: none"> <li>1. Make Work No.3 (Main development site: accommodation campus) Work No.3A</li> <li>2. Insert a new Work No.3B (Caravan Park) described as, "A temporary caravan site, to include- (a) 600 caravan pitches; (b) welfare, administration and amenity buildings; (c) surface vehicle parking area to provide up to 300 parking spaces; and (d) caravan site servicing area. The location of the above works is shown on sheet no. [ ] of the Works Plans. [Wording adapted from current Work No.3]</li> </ol> <p>Schedule 2:</p> <p>Insert two new requirements:</p> <p>Main development site: Work No.3A</p>

		<p>Work No. 3A must be completed by the peak construction year of 2028 or by the time that 7,000 individuals are engaged in construction activities related to the authorised development, whichever occurs first.</p> <p>Main development site: Work No.3B</p> <p>No part of the authorised development may be commenced until Work No. 3B has been completed and is ready for use.</p>
17	Schedule 2, New requirement: Implementation Plan	<p>ESC considers that there ought to be a requirement relating to an Implementation Plan. There should be an Implementation Plan for the whole of the works, which ought to be submitted prior to development commencing and which should detail the schedule for delivery of the off-site associated development works. ESC is of the view that this should be an iterative plan that is agreed with relevant stakeholders.</p>
18	Schedule 2, New requirement – Marine Technical Forum (MTF)	<p>ESC would like the Applicant to consider securing the MTF through the DCO (rather than through a section 106 agreement or otherwise). As the MTF includes the Environment Agency and Natural England as members, they will not be signatory to a section 106 or otherwise, so securing their attendance at the MTF through a s106 agreement or otherwise could be difficult. ESC would expect to be involved in agreeing the details of its function and terms of reference. For any requirements ESC will expect individual organisations to be named (as appropriate) as consultees rather than referencing the MTF.</p>
19	Schedule 8 'Deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2'.	<p>ESC remains concerned that in Schedule 8, certain conditions in Permissions 1 and 2 are not appropriately reflected in the requirement which is drafted as corresponding to the conditions (full details are set out below). In addition, ESC</p>

	<p>notes that in revision 4 of the draft DCO submitted for Deadline 2, the Applicant has inserted additional reference to requirements 2 and 5.</p> <p><u>Particular concerns:</u></p> <p>In particular, ESC has the following concerns:</p> <p><u>Part 1, row 3, and Part 2, row 3:</u></p> <p>There appears to be no equivalent of conditions 7, 9, 10, 12, 13 or 17 in the CoCP (or other control documents or in the Requirements themselves). Please could the Applicant explain how the provisions in these conditions are replicated in Requirement 2? If, as ESC considers to be the case, there are no equivalents, please can the Applicant rectify this?</p> <p>In relation to conditions 7 and 10 in particular, ESC considers that this would be best addressed through a new separate requirement in Schedule 2 of the draft DCO.</p> <p>In addition, there also appears to be no equivalent of conditions 18 and 19 in relation to emergency plans. Although ESC notes that there is now a new Requirement 5A in this requirement does not appear to reflect the conditions. Please could the Applicant rectify this?</p> <p><u>Part 1, row 4, and Part 2, row 4:</u></p> <p>Requirement 14, or the Outline Landscape and Ecology Management Plan sitting under it, does not appear to specify any maintenance period whereas condition 12 refers explicitly to a 5 year maintenance period.</p> <p><u>Part 1, row 5:</u></p> <p>Condition 26 appears to be covered by Requirement 7 rather than Requirement 5.</p>
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		<p><u>Part 2, row 6:</u></p> <p>Not all of condition 21 is covered by Requirement 3. In particular, the following is not covered: "None of the buildings hereby approved shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programmes set out in the Written Scheme of Investigation approved under Condition [20] and the provision made for analysis, publication and dissemination of results and archive deposition."</p> <p>ESC would like the Applicant to provide a full explanation as to the equivalence between the conditions and the requirements listed in the table in Schedule 8.</p>
20	Schedule 23 'Procedure for approvals, consents and appeals': some time limits have been changed.	<p>ESC welcomes the changes that the Applicant has made to Schedule 23, to bring the timescales in line with Advice Note 15.</p> <p>However, ESC would also like to see a reference in Schedule 23 to fees relating to staffing costs for the discharge of requirements and would welcome the Applicant providing some wording in this regard.</p>