



The Planning Act 2008

*Sizewell C (SZC)*

Planning Inspectorate Reference: *EN010012*

Deadline 5 – *23 July 2021*

Written summary of oral case

ISH 1 draft DCO and s106 / Deed of Obligation, 7 July 2021

## Issue Specific Hearing 1 dDCO and s.106/Deed of obligation

Agenda item	East Suffolk Council submissions
<p><b>1. Introductions</b></p>	<p><b>Speakers on behalf of East Suffolk Council (ESC):</b></p> <p>Andrew Tait QC</p> <p>Angus Walker, BDB Pitmans</p>
<p><b>2. Draft DCO</b></p> <ul style="list-style-type: none"> <li>Securing mitigation, Code of Construction Practice, oLEMPs and related documentation, the appropriateness of “reasonable endeavours” and, “general accordance” as standards</li> </ul>	<p><b>Securing mitigation</b></p> <p>ESC’s main concern about the dDCO is that mitigation measures (and in particular mitigation comprised in numbered Works in the dDCO) designed to offset the impacts of the development are not required to be in place before the corresponding impacts occur, or at all.</p> <p>The project should not be regarded as so important that it should proceed without adequate mitigation. This project does not enjoy a higher status than any other energy project that is the subject of a DCO application – the ‘urgent’ need relied upon by the Applicant (paragraph 3.3.1 of EN-1) applies to all energy infrastructure. It cannot be the case (as is evident from the mitigation required in energy DCOs to date) that all energy projects are of such urgency that mitigation need not be properly secured to address their impacts.</p> <p>Furthermore, the Applicant relies on certain aspects of the mitigation in its Environmental Statement to reach its conclusions on residual impacts. For example, paragraph 10.5.9 of the Environmental Statement <a href="#">[APP-198]</a> treats the following elements as ‘embedded mitigation’:</p> <p><i>Accommodation campus at the main development site for up to 2,400 workers to reduce construction workforce trips on the up to [sic] highway network;</i></p>

	<p><i>400 space caravan park at the LEEIE for 600 workers (based on 1.5 people per caravan), who will be bussed to site in order to reduce the construction workforce trips on the highway network</i></p> <p>In the Environmental Statement, the campus is assumed to be delivered by Year 3 and the caravan site by Year 1 of the construction period.</p> <p>These have been included in the dDCO as Works No. 3(a) and 1A(ee) respectively.</p> <p>The Applicant should be obliged to demonstrate the mitigation it is relying upon to reach the conclusions of residual impacts in its Environmental Statement, particularly that described as ‘embedded mitigation’, is secured. The Deed of Obligation <a href="#">[REP3-024]</a> to which the Implementation Plan is appended (paragraphs 3.1.1 and 3.2.1 of the main agreement and paragraph 2.1 of Schedule 9) is separate from the dDCO and currently only obliges the Applicant to use reasonable endeavours to provide the Accommodation Campus and LEEIE Caravan Park, and the Key Environmental Mitigation.</p> <p>As stated at the hearing, ESC is not concerned with absolute timings, merely relative timings. It acknowledges that it did include a year in one of its suggested requirements, so it agrees to remove ‘or 2028’ from the requirement it proposed in its comments on dDCO V4 <a href="#">[REP3-064]</a> (row 16).</p> <p>ESC seeks to ensure that the caravan park at LEEIE (Work No 1A(ee)) is operational within 6 months of construction commencing.</p> <p>With a significant influx of construction workers forecast within East Suffolk during the construction period, the Council has identified a potential significant adverse impact on the availability of housing and tourist accommodation in proximity to the site, with potential overspill into adjacent authorities, one of the two main issues that led to the Examining Authority for the Wylfa Newydd DCO application recommending refusal. There would also be impacts from additional vehicles on the roads around the site from commuting workers. ESC is supportive of proposals for a workers’ caravan site with 400 pitches, housing up to 600 workers on Land East of Eastlands Industrial Estate (LEEIE) as this accommodation will reduce pressure on the private rented and tourist accommodation sectors within East Suffolk. ESC consider it important for the workers’ caravan park at LEEIE to be provided at the earliest opportunity. ESC have previously requested that the caravan site at the LEEIE is made available prior to work commencing on the Main Development Site in order to help mitigate forecast housing pressures within East Suffolk and to minimise the risk of unauthorised caravan sites emerging in the locality as occurred in Sedgemoor District</p>
--	--

	<p>Council in the early stages of the Hinkley Point C construction. The Applicant has confirmed that it is primarily the civil construction workforce that bring their own caravan accommodation to the site which is the first phase of construction. As such, ESC wishes to ensure that the current proposal in the Implementation Plan is for the LEEIE caravan park to be available at the end of Year 1 is secured. Ideally it would be available at the start of construction, but the Council is willing to compromise on its availability being within 6 months of construction starting. ESC is still in discussion with the Applicant regarding the delivery and availability of the LEEIE Caravan Site through the Implementation Plan in order for this to be relied upon to deliver its aim to mitigate effects of the peak non-home-based workforce and provide appropriate supply for demand from the early years' civils workforce.</p> <p>ESC also seeks to ensure that the campus accommodation (Work No 3(a)) is completed and available for use by the time 7,000 construction workers are engaged in the Project.</p> <p>Completion of the accommodation campus in the early stages of construction (along with the caravan park) before the forecast peak number of non-home-based workers will help to reduce the impact of several thousand non-home-based workers.</p> <p>ESC have noted that there are no controls proposed for workforce numbers meaning that these may exceed those assessed for the Early Years scenario prior to the delivery of relevant mitigation / or for the peak year scenario. The delivery of the Accommodation Campus may be later than assessed (end of year 2), resulting in additional pressure on the local housing market than assessed in the Applicant's ES. ESC proposes that the workforce be capped at 7000 workers (close to peak numbers) until the campus is available. This is anticipated to be several years later than the forecasted end of year 2 which the Applicant is proposing and thus would not be unduly restrictive on the Applicant. This cap would ensure that the Applicant can exercise their reasonable endeavours in providing the Accommodation Campus in accordance with the Implementation Plan but if there is any slippage in that timetable the cap would ensure the local housing market is not put under unmitigated pressure.</p> <p><b>Code of Construction Practice</b></p> <p>In most DCOs the local planning authority is responsible for approving the Construction Environmental Management Plan (CEMP). ESC has indicated in its written submissions that it wished to be responsible for approving the CEMPs produced</p>
--	--

	<p>pursuant to the broad principles set out in the CoCP. At the hearing, ESC indicated that it may be satisfied with the approval of the CoCP by ESC or with its identification as a certified document, provided that wording and requirements of the CoCP were made more robust, precise and enforceable. ESC committed to reviewing the draft CoCP to identify the ways in which it could be made more robust. Having carried out that exercise, ESC has concerns that many of the aims of the CoCP are expressed in aspirational terms and that much of the detail over which ESC wishes to have control (for example, the location of earth bunds) is not available at this stage of the process. ESC requests either that the Applicant should re-consider the wording and commitments contained in the CoCP or that an additional requirement is included in the draft DCO which provides for the approval of subsequent CEMPs by ESC. Further commentary on this issue is set out in <b>ANNEX A</b>, below.</p> <p><b>Related documentation</b></p> <p>Terrestrial Ecology Monitoring and Mitigation Plan (TEMMP): the Applicant submitted a TEMMP at Deadline 1 [<a href="#">REP1-016</a>] on which ESC commented at Deadline 2 [in <a href="#">REP2-173</a>]. The TEMMP is not yet agreed and ESC would wish it to be defined in the dDCO and added as a certified document to Schedule 22.</p> <p><b>‘Reasonable endeavours’</b></p> <p>As mentioned above ESC does not agree to the use of the phrase “reasonable endeavours” in connection with the provision of mitigation, in the absence of other control mechanisms.</p> <p><b>‘General accordence’</b></p> <p>On the phrase “general accordence” (used in the dDCO 30 times), ESC is grateful that the Applicant has adopted the wording it proposed at row 9 of its comments on the dDCO V4 for a definition of “general accordence”, except that it has added the word ‘substantively’ before ‘consistent’. ESC is still considering whether the Applicant’s proposed wording is acceptable.</p>
<ul style="list-style-type: none"> <li>• The deemed marine licence</li> </ul>	<p>On the issue of shared jurisdiction between ESC and the MMO in the intertidal area, ESC has consulted the MMO who have indicated that they do not wish to take on any planning functions (including planning enforcement, although they wish to retain marine licensing enforcement). Section 127 of the Planning Act 2008 provides a definition of the “relevant planning</p>

	<p>authority” which, in this instance would be ESC. As such, ESC considers that Article 86 of the DCO could be deleted, or if it is retained, it should identify ESC as the relevant planning authority.</p> <p>ESC considers that the Coastal Processes Monitoring and Mitigation Plan (CPMMP) referred to in Requirement 7A and condition 17 of the Deemed Marine Licence would either have to be approved by both ESC and the MMO, or split into two documents covering each body’s functions separately. This matter is subject to ongoing discussion between ESC, the MMO and the Applicant.</p> <p>In relation to the Hard Coastal Defence Feature (HCDF) ESC requests that the default position is that this is removed following the decommissioning of the nuclear power station.</p> <p>Schedule 20, Deemed Marine Licence: ESC requests that the Maintenance Activities Plan referred to in paragraph 34 covers the whole of the four marine features (the HCDF (Work No. 1A(o)), the Soft Coastal Defence Feature (Work No. 1A(n)), the temporary beach landing facility (Work No. 1A(bb)) and the permanent beach landing facility (Work No. 1A(m)) and that a requirement equivalent to paragraph 34 is included for the parts of those features for which ESC is responsible. This is to ensure that ESC has appropriate control over maintenance activities relating to coastal works which may have the potential to affect coastal processes.</p>
<ul style="list-style-type: none"> <li>Limits of deviation and the parameter plans</li> </ul>	<p>ESC considers that there is some difficulty in understanding the lateral and vertical restrictions on works, as terminology/references to works plans are not consistently described across the Schedules. For example, the Parameter Plans table refers to 4 emergency diesel generator buildings, but elsewhere refers to emergency diesel generator buildings and associated buildings, raising questions of whether the associated stack buildings are included in the restrictions or not. ESC would appreciate more clarity from the Applicant, perhaps by consistently using Works numbers from the DCO in the plans and other documents that refer to them.</p> <p>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 and potentially</p>

	<p>uncontrolled. For example, the obligations under the dDCO as to where the reactors (Work No. 1A(a)) could be built runs as follows:</p> <ul style="list-style-type: none"> <li>• Article 3 obliges the authorised development to be carried out within the lines or situations shown on the Works Plans.</li> <li>• Article 4 obliges the authorised development to be constructed and maintained within the Order limits, with an unlimited vertical deviation.</li> <li>• Requirement 11 obliges Work No 1A(a) to be carried out in accordance with plans listed in Schedule 7 and the detailed design principles in chapter 5 of the Main Development Site Design and Access Statement. Any alternatives to those plans must be approved by ESC and must comply with the Main Development Site Operational Siting and Height Parameters and the relevant Parameter Plans</li> <li>• The relevant plans listed in Schedule 7 can be found in <a href="#">[APP-028]</a>. Each of these has a precise delineation of the design of the relevant structure including heights, with a very small plan of the main site at its bottom right with the position of the structure indicated in red. That latter plan is the only indication as to the lateral position of the structure within the order limits; it is at a very small scale and is arguably not part of the plan in any event and so there could be no obligation to adhere to it. Furthermore, the plans do not refer to the Work numbers, the reader is left to pair up e.g the description of Work 1A(a) as ‘two reactor buildings’ to two elements of the plans described as ‘REACTOR BLDG’ and so on. The descriptions in Schedule 1 do not correspond exactly to the descriptions in the plans, leaving what is where uncertain.</li> <li>• If an alternative is proposed, then this has to be in accordance with (not ‘general accordance’ this time) the Main Development Site Operational Siting and Height Parameters, which are defined in article 2 as meaning the heights shown in five tables in Chapter 2 of Volume 2 of the Environmental Statement <a href="#">[APP-180]</a> and the positions shown in two figures in an accompanying document <a href="#">[APP-183]</a>, together with two of the Main Development Site Operational Parameter Plans. The two figures in the ES are the same as the Parameter Plans and do show the lateral locations of the reactor buildings as two turquoise circles labelled ‘Zone 1A-2’, which presumably corresponds to ‘Parameter Zone 1A-2 (reactor buildings)’ in Table 2.1 in the ES. It should be noted that the figures in the ES have not changed while the Parameter Plans are on their third iteration <a href="#">[REP2-009]</a>; since the dDCO obliges the works to comply with both of them one hopes they have become more rather than less aligned. The heights in the Environmental Statement tables also do not refer to Work numbers, and the reader must pair them up again; they do not correspond exactly to either the descriptions in Schedule 1 or the plans in Schedule 7.</li> </ul>
--	--

	<p>ESC suggests that the Works Plans are substituted with the Parameter Plans, which are amended to refer to particular elements of works or sets of works (e.g. Work No. 1A(a)), and article 3 or 4 is amended to state that each element of each Work must be constructed within the limits for that element shown on the Works Plans. In this way the locations of the elements of the project would be set by a single article linked to a single set of plans in the same way that almost all other DCO projects are.</p>
<ul style="list-style-type: none"> <li>• Appeals and dispute resolution</li> </ul>	<p>ESC is content with the extended time limits that the Applicant has proposed but requests that Schedule 23 is amended to require ESC's staffing costs for dealing with approvals and consents to be met by the Applicant.</p>
<ul style="list-style-type: none"> <li>• Tailpieces and EIA</li> </ul>	<p>ESC has no comment on tailpieces.</p>
<ul style="list-style-type: none"> <li>• [Other issues relating to the dDCO not on the agenda but raised by ESC at the hearing]</li> </ul>	<p>Article 2: ESC are concerned with the scope of activities excluded from the definition of 'commence' – items (a), (b), (d), (e), (f), (g), (h) and (j) could have environmental effects that will not be controlled.</p> <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). 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 response), and despite this further amendment these concerns remain. ESC maintains that the removal of 'near' would be more appropriate and clear.</p> <p>Schedule 8: ESC is concerned that some of Schedule 8 does not reflect the conditions in Permissions 1 and 2 correctly. See <b>ANNEX B</b>.</p> <p>Role of ecological clerk of works – ESC wishes to see any report from ECoW alleging potential breaches of CoCP.</p> <p>ESC committed to responding to the ExA on (a) the Applicant's revised drafting of Article 82 (arbitration) and (b) on the suggestion from the ExA that compliance with the Deed of Obligation should be secured as a requirement in the DCO so as to give rise to criminal sanctions should the undertaker fail to comply.</p> <p>As to Article 82, ESC is generally satisfied with the revised drafting, subject to the following suggestion (additional wording proposed by ESC is shown underlined):</p>



	<p>82.—(1) – Any difference under any provision of this Order, unless otherwise provided for in this Order <u>or in the Deed of Obligation</u> or unless otherwise agreed between the parties, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.</p> <p>In response to the question raised by the ExA as to whether an additional requirement should be added to the DCO which obliges the undertaker to comply with the Deed of Obligation, ESC considers this would be a welcome addition to provide for criminal sanctions in the event of breach.</p>
<p><b>3. The s.106 agreement / Deed of obligation [REP3-027]</b></p> <ul style="list-style-type: none"> <li>• The Sizewell Special Arrangements</li> <li>• Securing the participation of third parties</li> <li>• Enforcement practicalities – mechanisms, damages,</li> </ul>	<p>ESC’s starting point is to prefer the conventional route of a section 106 agreement with its existing provisions for liability and enforcement, together with the use of Requirements to secure implementation of components of the project that are critical to mitigation</p> <p>We note the limited land that is currently owned by the Applicant (albeit the group of companies of which the Applicant is part owns the main site, and the Applicant is yet to provide ESC with any title to the order land or any details for the proposed structure of land acquisition for the order land) and are open to consideration of other approaches, in particular binding the undertaker rather than the landowner/prospective landowner, so long as such a vehicle is no less effective and has no fewer remedies than the conventional vehicle provided under section 106. We have set out at <a href="#">[REP3-061]</a> what that proviso is likely to involve, namely:</p> <ol style="list-style-type: none"> <li>1. The powers set out in s106(4) TCPA (modified accordingly) to apply (for ESC to be able to enforce the Deed of Obligation against any transferee of the DCO);</li> <li>2. Confirmation that s106(5) TCPA (modified accordingly) will apply (that any restriction or requirement imposed by the Deed of Obligation is enforceable by injunction against any transferee of the DCO);</li> <li>3. Confirmation that the powers set out in s106(6) TCPA (modified accordingly) will apply (the statutory rights of entry onto the order land and recovery of costs from the beneficiary of the DCO for any works undertaken);</li> </ol>

<p>injunctions and penalties</p> <ul style="list-style-type: none"> <li>Land currently controlled by the Applicant</li> </ul>	<ol style="list-style-type: none"> <li>Confirmation that s106(8) TCPA (modified accordingly) will apply (that any person who wilfully obstructs a person acting in exercise of power of entry shall be guilty of an offence);</li> <li>Confirmation that s106(12) TCPA (modified accordingly) will apply (powers to charge the land);</li> <li>ESC would require to be consulted regarding any transfer of the DCO. The dDCO and clause 4.5 of the Deed of Obligation should be amended to reflect this requirement;</li> <li>No transfer of the benefit of the DCO should be permitted until a Deed of Covenant (in a form approved by ESC) from the proposed transferee (and any future transferees) is provided to confirm that the Deed of Obligation will be complied with, if such Deed of Covenant is deemed necessary by ESC taking into account who the transferee is. The dDCO and clause 4.5 and 5 of the Deed of Obligation would need to be amended to reflect this requirement.</li> </ol> <p>We note the existence of Appendix 26A in <a href="#">[REP3-047]</a> (the Applicant's Obligations Enforcement Note) which proposes or suggests amendments to Article 9(4) to import a deed of adherence provision (paras. 2.3 and 2.4) together with other proposed amendments at paras 3.4, 4.1, 5.4, 7.2 and 9.3. This is in addition to the amendment made at Deadline 4 at Article 9(4)(b) and included in the draft DCO (<a href="#">[REP2-013]</a>, tracked). These changes are in the right direction in seeking to mirror the effect of section 106, adapted to relate to the undertaker, but are not considered to be sufficient in terms of securing such equivalence. In particular, (1) the carve out for the Secretary of State to disapply the requirement for a deed of adherence has no equivalent in section 106 and would not be supported by ESC. It would leave ESC with no redress other than on the narrow grounds of judicial review, resulting in a materially worse position for ESC than under section 106; and (2) there is no comparable provision to that contained in section 106(8). This could potentially be addressed by including a provision in the deed obliging the undertaker not to obstruct or hinder ESC in the exercise of the proposed step-in rights in the DCO (para. 5.4 of Appendix 26A). ESC reiterates that it has not yet reached a concluded view on the most appropriate vehicle(s) for securing the necessary commitments.</p> <p>Although the governance arrangements in the deed could as a matter of principle be incorporated in the DCO as Requirements, ESC is sceptical whether the DCO itself would be suitable to incorporate detailed provisions for the payment of monies. It is recognised that such obligations are closely related to the governance arrangements. The various heads of funds identified in the deed are welcomed as necessary (as acknowledged by the Applicant in the Explanatory Memorandum to the deed: <a href="#">[REP3-028]</a>, tracked). Discussions as to their quantum are under way. ESC's position is that other heads for</p>
---	--

	<p>funding should include a Natural Environment Fund including mitigation to address ecological losses; an Economic Cost of Congestion to Businesses Contingency Fund and an Economic Development Programme</p> <p>Deemed approval provisions should be deleted as it should not be incumbent on ESC to refuse an application that requires further information.</p>
--	--

**ANNEX A – Additional matters required in Code of Construction Practice (CoCP) to avoid ESC requiring agreeing individual Construction Environmental Management Plan's (CEMP)**

Air Quality:

These apply to MDS and ADs. ESC has sought to make this list comprehensive but there may be unforeseen omissions. This list highlights the importance of control of air quality and dust impacts, and the extent of work and detail that will be needed. Please note that for each emission/dust source listed the detail is required before the proposed mitigation measures can be agreed.

1. Materials stockpiles
  - a. Location
  - b. Type of material stored
  - c. Evaluation of potential impact using IAQM (2014) approach (available [here](#)) and identification of recommended mitigation
  - d. Distance to sensitive receptors
  - e. Proposed mitigation measures
2. Excavation / Demolition / other dust generating activities
  - a. Location
  - b. Type of materials and activities planned
  - c. Evaluation of potential impact using IAQM (2014) approach and identification of recommended mitigation
  - d. Distance to sensitive receptors
  - e. Proposed mitigation measures

3. Site traffic
  - a. Location of haul roads
  - b. Expected numbers of site vehicles using haul roads
  - c. Confirmation of which haul roads will be hard surfaced
  - d. Evaluation of potential impact from unsurfaced roads using IAQM (2014) approach and identification of recommended mitigation
  - e. Distance to sensitive receptors
  - f. Any further proposed mitigation measures
  - g. Location of wheel wash facilities
4. Non-Road Mobile Machinery (NRMM)
  - a. Plant required (stage V plant should be used if available, if not stage IV should be used, and if stage V and IV not available, then highest emission standards to be used) and capacity
  - b. Location of static plant
  - c. Routes of mobile plant
  - d. Distance to sensitive receptors
  - e. Evaluation of potential impact in the light of ES Annex 12A.5 (plant and haul routes should be >200 metres away, if not an air quality assessment should be undertaken if different to ES Annex 12A.5)
  - f. Identification of any further mitigation required / constraints on operation e.g. minimum separation distances; limitation of speed or operational hours
  - g. NRMM will be monitored through a registration process, further information on the reporting is required.
5. HGVs
  - a. Confirmation of maximum % of non-Euro VI HGVs, and emissions standards for non-Euro VI HGVs
  - b. Proposed method of monitoring and reporting on HGV Euro emissions standards
  - c. Proposed method of monitoring and reporting numbers of HGVs and routes taken to Transport Review Group
  - d. Proposed mitigation measures if maximum numbers of HGVs and/or maximum % of non-Euro VI HGVs are exceeded
6. Monitoring
  - a. Confirmation of location of dust, PM10, PM2.5 and NO2 monitoring locations
  - b. Confirmation that baseline surveys will commence 3 months prior to construction activities commencing
  - c. Proposed method of reporting monitoring data to Environment Review Group
  - d. Proposed method of identifying whether monitoring data indicate a potentially significant air quality/dust nuisance issue
  - e. Proposed mitigation measures to be taken if an issue is identified

ESC understands that the Applicant may not have this level of detail at this stage – hence our previous requests to approve the Dust Management Plan (DMP) and CEMPs when the detail becomes available.

It is noted that in v3 of the CoCP [\[REP2-056\]](#) the following statement is included for noise:

***A Noise Monitoring and Management Plan will be developed to provide a framework for monitoring and managing noise at the site. The Noise Monitoring and Management Plan will be agreed with the relevant local planning authorities.***

However, for Air Quality:

***The measures identified will be implemented by the contractors and the relevant measures set out in detail within the Construction Environmental Management Plan prepared by the contractor for the relevant stage of works***

This is much weaker than the approach adopted in respect of noise and is not considered adequate to ensure appropriate control of the potential impacts of dust and emissions to air. It seems that many of the other topics have Subject Specific Management Plans (SSMPs) for specific sites and work. ESC had assumed that the DMP was a form of SSMP for air quality. However, the Mitigation Route Map appears to confirm that the contractors would prepare CEMPs to include the **detailed** dust management plans which will set out specific measures to be implemented for relevant works in accordance with the CoCP and associated outline DMP. If ESC does not approve the CEMPs, we will not approve, or even see, the detailed DMPs.

ESC is concerned that control and enforcement are going to be difficult for air quality without being ESC being able to approve and enforce against the detailed DMPs/CEMPs. In simple terms we need something to monitor compliance against – this has to have enough detail in it so that if required, enforcement action can be taken without argument. At DCO stage the detail is not yet known to enable commitments for dust control mitigation to be made, although broad statements such as ‘stockpiles should be placed as far from residential properties as practicable’ can be made. At the detailed stage ESC would expect stockpile location to be justified – for example - ‘stockpiles will be placed at position x, which is the furthest point away from residential properties within the area of work y and downwind from all sensitive receptors’.

#### Noise and vibration:

The Noise Monitoring and Mitigation Plan (NMMP) will control noise and vibration outside of the CoCP / CEMP process but within the CoCP expectation is that:

S 2.3.4 All contractors would be required to ensure compliance with Parts A, B and C of this CoCP and other environmental controls, which will be detailed in subject specific management plans (SSMPs) for specific sites and works. SZC Co. will require all contractors to prepare

Construction Environmental Management Plans (CEMPs) which respond to the requirements set out in the SZC Co. SSMPs, including any sensitive receptors, or pathways identified for the main development site and associated development sites.

S2.3.5 Contractors will use the SSMP's and other project requirements provided to them to produce their CEMP. The CEMP will contain a description of their work activities and the appropriate risk assessment and mitigation associated with the activities. The CEMP will show how the contractor intends to implement the associated environmental management measures therefore demonstrating compliance with the requirements of the DCO (including this CoCP), and related permits, consents and licences

S2.3.6 The contractor must then set out in detail, using the methods and measures identified in their CEMP, how they intend to manage their work compliantly in the lower tier method statements and risk assessments for separate tasks they undertake.

But importantly;

S3.1.3 In addition to the controls set out in this CoCP, a Noise Monitoring and Management Plan will be developed to provide a framework for monitoring and managing noise at the site. The Noise Monitoring and Management Plan will be agreed with the relevant local planning authorities.

#### **ANNEX B – Differences between Schedule 8 and the Sizewell B planning conditions**

The Applicant has stated in its comments on ESC's responses to the ExA's 1<sup>st</sup> Written Questions that, *"in many instances the controls that were deemed necessary for RF1 and RF2 [i.e. the planning permissions] would not be the same as those needed in the construction of Sizewell C."* Whilst ESC notes and understands this point, we still have specific concerns detailed below.

**Table below based on draft DCO Revision 4 and draft CoCP Revision 3, both dated June 2021**

ESC comment	Applicant Response	Has ESC's point been addressed / dealt with?
-------------	--------------------	--

<p>Schedule 8, Part 1, row 3, and Part 2, row 3:</p> <p>There appears to be no equivalent of conditions 7, 9, 10, 12, or 13 in the CoCP (or other control documents or in the Requirements themselves).</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>Condition 7: Access to the main development site during construction: the DCO includes the Construction Traffic Management Plan [REP2-054] which sets out the controls that would be put in place for construction vehicles entering and leaving the site. A requirement relating to Condition 7 is therefore not required.</p> <p>Condition 9: Schedule of Plant: On a construction site of the scale and complexity of the Sizewell C project it would clearly not be practicable for the LPA to review and approve all plant and equipment to be used on the main development site. In order to ensure that the LAs have appropriate oversight of the construction process in so far as they relate to noise, the CoCP includes a commitment to prepare a Noise and Vibration Management Plan, which would be a separate and more comprehensive management plan than RF2 requires. Deemed approval or replication of this condition is therefore not required.</p> <p>Condition 10: Construction Working Hours: the working hours for the main development site are set out within the CoCP Part B [REP2-056]. These working hours are consistent with those assumed in the ES and the mitigation measures set out in order to minimise</p>	<p><u>Condition 7:</u></p> <p>ESC can see no mention of the Construction Traffic Management Plan in the draft DCO. The CoCP states at paragraph 2.3.13 that the Construction Traffic Management Plan will be secured by the draft Deed of Obligation. Although the Deed of Obligation is listed in Schedule 22 of the draft DCO as a certified document, its contents are far from being agreed. Until that point, an obligation to draft and comply with the CTMP, as approved by ESC, should be committed to explicitly in the draft DCO.</p> <p><u>Condition 9:</u></p> <p>Paragraph 3.1.3 of the CoCP states that, “a Noise Monitoring and Management Plan will be developed to provide a framework for monitoring and managing noise at the site. The Noise Monitoring and Management Plan will be agreed with the relevant local planning authorities.”</p> <p>ESC assumes that this is the same plan as that referred to as the ‘Noise and Vibration Management Plan’ in the preceding column. It would be preferable for the Applicant to confirm that this is the case.</p> <p>Requirement 2 of the draft DCO states that, “The construction of the authorised development and the removal</p>
---	---	---

	<p>and reduce noise impacts. Deemed approval or replication of this condition is therefore not required.</p> <p>Condition 12: Landscape plan: Requirement 14 of the Draft DCO [REP2-015] relates to the detailed design of the landscape restoration works. This includes the commitment to prepare a Landscape and Ecological Management Plan, which would set out the long-term management arrangements for the works. ESC have noted that this does not include a specific timescale, with 5 years mentioned in RF2 Condition 12. This omission is deliberate, as the LEMP would cover the maintenance of the landscape for the duration of the operation of the project. Deemed approval or replication of this condition is therefore not required.</p> <p>Condition 13: Ground Contamination: the CoCP Part B [REP2-056] includes the relevant ground contamination measures that are necessary to avoid and limit impacts from potential ground contamination. No further measures are considered necessary. Deemed approval or replication of this condition is therefore not required.</p>	<p>and reinstatement of the temporary works must be carried out in general accordance with the Code of Construction Practice, unless otherwise approved by East Suffolk Council.” How can ESC be sure that, “in general accordance” does not mean that the content of the CoCP in relation to The Noise Monitoring and Management Plan will be complied with? It would be much clearer that such a Plan needs to be formulated by the Applicant and approved by the local authority if the commitment to produce such a plan was specifically set out in Requirement 2 of the draft DCO.</p> <p><u>Condition 10:</u></p> <p>Paragraph 1.1.6 of the CoCP states, “Construction activities would take place Monday to Saturday and between the hours of 07:00 to 19:00 hours for all associated development sites. Where possible, noisy works will be avoided on Saturday afternoons between 13:00 and 19:00 hours. Working on Sundays or bank holidays is not expected and will not be undertaken without prior notification to East Suffolk Council (ESC). Some activities may require 24 hour working and where this is the case, ESC will be notified in advance, including details of any noise control measures that may be necessary.”</p> <p>As per a previous comment, how can ESC be sure that these working hours will be adhered to if the commitment in</p>
--	---	---



	<p>requirement 2 of the draft DCO is only that works must be carried out in 'general accordance' with the CoCP?</p> <p><u>Condition 12:</u></p> <p>Requirement 14 provides that ESC is to approve a landscape and ecology scheme for the landscape restoration area, and that this scheme is to include a landscape and ecology management plan which is to be prepared in general accordance with the measures set out in the Outline Landscape and Ecology Management Plan. If ESC is the approving body for this scheme, then, as part of its review and approval of the plan and wider scheme, it should be able to ensure that an appropriate maintenance period is included. ESC would prefer to see a specific maintenance timescale set out in this requirement. The Applicant in its comments has stated that this, "omission is deliberate, as the [plan] would cover the maintenance of this landscape for the duration of the operation of the project". How can the Applicant be sure that this is the case if no such reference is made on the face of the DCO or even in any of the certified documents? This comment also relates to Schedule 8, Part 1, row 4 and Part 2, row 4.</p> <p><u>Conditions 13:</u></p> <p>Agreed that the CoCP does contain mitigation measures in relation to ground contamination measures, and I think these are appropriate. However, as per a previous comment: how</p>
--	--

		<p>can ESC be sure that these mitigation measures will be adhered to if the commitment in requirement 2 of the draft DCO is only that works must be carried out in 'general accordance with' the CoCP?</p> <p>ESC reserves its right to comment on Schedule 8, Part 2, row 6, Condition 21 until such a time as the Applicant's discussions with Suffolk County Council are further progressed.</p>
--	--	---