



# The Sizewell C Project

## 8.20 Draft Deed of Obligation Explanatory Memorandum - Tracked Changes Version

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**EXPLANATORY MEMORANDUM**  
**SIZEWELL C PROJECT**  
**DRAFT DEED OF OBLIGATION – DEADLINE [35](#)**

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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 was 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 [[REP2-113](#)], which was 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 [s1 of the Localism Act 2011](#) and 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 which it is proposed is updated at Deadline 5 to states~~ that: *"save to the extent agreed by the Secretary of State, a deed of adherence shall be entered into by a transferee or lessee with East Suffolk Council and Suffolk County Council prior to any transfer or grant being made in accordance with this Order"* (~~see 'Obligations Enforcement Note' Doc Ref. 9.30.A~~).
- 1.4 In terms of enforcement, ~~our intention is to include~~ drafting [is included](#) 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, similar to those available in respect of a s106 agreement, ~~may be drafted into the~~ [are included in the dDCO and is subject to ongoing as proposed in the Applicant's 'Obligations Enforcement Note'](#). ~~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. The enforcement powers would have the advantage of applying 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/[s1 LA &](#) 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, subject to further engagement with East Suffolk Council and Suffolk County Council, outlines 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.
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:
- was for a planning purpose;
  - was fairly and reasonably related to the development; and
  - 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 [s1 of the Localism Act 2011](#) and s111 LGA 1972. [Section 1 of the Localism Act 2011 provides that "A local authority has power to do anything that individuals generally may do."](#) 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~~its 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,





~~3.16-13.16.2~~ notify the Councils following acquisition of any freehold or leasehold interest in the Sites.

- 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 an agreed 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 have the right to 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.

**Variation (Clause 19)**





- 3.25 Provides that no variation of this Deed shall be effective unless: (i) it is made in writing and executed as a Deed by, or on behalf of, each of the parties; or (ii) it is determined by the Secretary of State in accordance with the Development Consent Order.

**Good Faith and Approval (Clause 20)**

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

- 3.27 Provides that where agreement, consent or approval is required from SZC Co it will not be unreasonably withheld and will be provided in writing within a specified period.

3.26 —

**Rights of Third Parties (Clause 21)**

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

**Jurisdiction (Clause 22)**

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

**Counterparts (Clause 23) and Date of Delivery (Clause 24)**

- 3.293.30 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**

- 3.303.31 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, that the Deed of Obligation will be registered as a local land charge against land owned by SZC Co. 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.

**Compliance with Newbury criteria?**

- 3.313.32 The obligations imposed on the Councils in this Schedule are ancillary to the obligations concerning payment of certain contributions under this Deed. To the extent that the *Newbury* principles are satisfied in relation to such contributions (outlined, where relevant, in the proceeding paragraphs), the Councils' obligations in this Schedule in their respect similarly satisfy the same.

**Compliance with NPS policy test?**

- 3.323.33 As with paragraph 3.31 above.

**Any other reason for the Secretary of State to take it into account?**

- 3.333.34 N/A.

**Could it be dealt with by way of requirement?**



[3.343.35](#) In addition to the general position set out in paragraph 2.21 above, it is noted that the obligations in this Schedule are ancillary to the obligations concerning the payment of monetary contributions elsewhere in the Deed. SZC Co sets out, where relevant, below why such obligations are more appropriately contained in this Deed as opposed to the draft DCO and it is considered the same applies to the corresponding obligations in this Schedule.

[3.353.36](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

## **SCHEDULE 2 – COUNCILS’ RESOURCING**

[3.363.37](#) Provides for payments to the Councils to fund additional dedicated Council staff to fulfil the additional duties imposed on the Council by the Project.

### **Compliance with Newbury criteria?**

[3.373.38](#) The contributions to be paid under this Schedule are to be applied by the Councils towards the provision of additional dedicated staff resource to fulfil the additional duties imposed on the Councils as a result of the Project and to ensure the efficient operation and management of the Project (in particular in managing the discharge of requirements pursuant to the DCO and the discharge and monitoring of obligations set out in this Deed).

[3.383.39](#) The size of the contributions are still to be finalised, but SZC Co will seek to agree their size with the Councils. The intention, however, is that they would be sized having regard to the level of additional resource required as a result of the duties imposed on the Councils in relation to the Project. In this way, the size of the contributions and the detailed provisions governing their application are for a planning purpose, will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon them.

### **Compliance with NPS policy test?**

[3.393.40](#) As noted in paragraph 2.16 above, the policy set out in EN-1 effectively reproduces the substance of the *Newbury* criteria. Accordingly, SZC Co does repeat the text above in this section but refers to it in its generality to illustrate its compliance with the policy in paragraph 4.1.8 of EN-1, namely that the obligations are relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.

[3.403.41](#) The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are measures which have been identified as being appropriate and necessary to mitigate the Project's impact on the Councils' resourcing. It is also noted that the contributions are, in part, linked to the obligations set out in this Deed and so where such obligations meet the NPS policy test, it is considered that this ancillary obligation facilitating their monitoring and discharge similarly satisfies the same.

### **Any other reason for the Secretary of State to take it into account?**

[3.413.42](#) N/A.

### **Could it be dealt with by way of requirement?**



[3.423.43](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.433.44](#) The detail of the majority of the obligations (for instance the governance arrangements concerning the use of the Contributions by the Councils) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.443.45](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

### **SCHEDULE 3 – HOUSING**

[3.453.46](#) 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.

#### **Compliance with Newbury criteria?**

[3.463.47](#) Housing Fund:

[3.46.13.47.1](#) The Housing Fund is proposed to provide additional support for housing in the locality of the Project, to mitigate the effect of the anticipated construction workforce required to deliver the Project on the local housing market and so is considered to be for a legitimate planning purpose.

[3.46.23.47.2](#) The size of the Housing Fund is still to be finalised, but SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that the Housing Fund would be sized having regard to SZC Co's assessment of the scale of the construction workforce required, the likely accommodation sector demand, the existing supply and characteristics of the local housing market and experience (from Hinkley Point C and pre-existing similar measures for grants, loans and housing delivery) of per-bedspace costs. The detailed provisions and parameters governing the application of the Housing Fund will also ensure it is



used appropriately to deliver the intended mitigation. In this way, both the size of the Housing Fund and the detailed provisions governing its application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to the Housing Fund will be reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon them.

#### 3.473.48 Project Accommodation:

3.47.13.48.1 Similar to the Housing Fund, the Accommodation Campus and the LEEIE Caravan Park are proposed to minimise the adverse effects of the construction workforce on the local housing market. As such, their provision is directly linked to the proposed impact of the Project and so for a planning purpose. Indirectly, these mitigations will also support the reduction of the Project's impacts on public services, community safety and transport.

3.47.23.48.2 The sizing of this temporary accommodation is correlative to the forecasted needs of the Project's NHB construction workforce and so, again, fairly and reasonably related in scale and kind to the proposed development and its effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

3.47.33.48.3 The establishment and implementation of the defined Accommodation Co-Ordination and Accommodation Management System will help to ensure the mitigation is delivered to achieve its intended effect. The Accommodation Management System will also provide mitigation in the form of providing information on local accommodation, and supporting prospective landlords to safely and securely accommodate workers.

#### 3.483.49 Governance and Monitoring

3.48.13.49.1 The Accommodation Working Group have an oversight (and in certain instances, approval) role in relation to the application and delivery of the mitigation identified in this Schedule and so provide a further level of scrutiny to ensure it is implemented as intended. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, the obligations concerning their governance and monitoring similarly satisfy the same.

#### **Compliance with NPS policy test?**

3.493.50 As noted in paragraph 2.16 above, the policy set out in EN-1 effectively reproduces the substance of the *Newbury* criteria. Accordingly, SZC Co does not repeat the text above in this section but refers to it in its generality to illustrate its compliance with the policy in paragraph 4.1.8 of EN-1, namely that the obligations are relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.

3.503.51 The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are measures which have been identified through the Project's environmental impact assessment process (see Section 9.8(iv) of Volume 2, Chapter 9 of the Environmental Statement, and summarised in the context of the housing market within the Accommodation Strategy) as being appropriate and necessary to mitigate and minimise the effects of the construction workforce on the local housing market having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project





accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.543.52](#) N/A.

**Could it be dealt with by way of requirement?**

[3.523.53](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.533.54](#) The detail of the majority of the obligations (e.g. the interaction between the payment of the Housing Fund and the provisions detailing its subsequent application by East Suffolk Council) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.543.55](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 4 – EMERGENCY SERVICES**

[3.553.56](#) 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 [as well as to the Royal National Lifeboat Institution and the East Anglian Air Ambulance](#). 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.

**Compliance with Newbury criteria?**

[3.563.57](#) Emergency Services Contribution:

[3.564.3.57.1](#) The Emergency Services Contribution is proposed to contribute to the additional resourcing requirements incurred by the specified emergency services as a result of the Project, particularly during the Construction Period. The financial contributions will mitigate the potential significant impacts of or risks associated with the Project on the provision of services by such bodies which



may otherwise arise. Accordingly, the contribution is considered to be for a legitimate planning purpose.

~~3.56.23.57.2~~ The size of the Emergency Services Contribution is still to be finalised, but SZC Co will seek to agree the size of the fund with key stakeholders. The intention is that it will be sized to reflect the anticipated additional resourcing demand from the specified emergency services as a result of the Project. The intended scope of the Emergency Services will also ensure it is used appropriately to deliver the intended mitigation. Its provision is therefore considered to be fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

~~3.573.58~~ Emergency Services Contingency Contribution:

~~3.57.43.58.1~~ Provision is also made for (additional) contingency payments to be made to the specified bodies to reimburse costs they incur through any protests, demonstrations, evacuations or public safety initiatives carried out in relation to or resulting from the Project.

~~3.57.23.58.2~~ The provision has been drafted to ensure the costs are directly attributable to activities relating to the Project and so, as with the main contribution above, represent mitigation to the potential significant impact of or risk associated with the Project on the provision of emergency services. Accordingly, its provision is for a planning purpose and will be sized to ensure it is fairly and reasonably related to the proposed development in scale and kind, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

~~3.583.59~~ Provision is also made for the establishment of on-site emergency co-ordination, security and fire and rescue services, which supplement the above contributions and are justified against the *Newbury* criteria on the same basis.

~~3.593.60~~ Community Safety Working Group:

~~3.59.43.60.1~~ Provision is made in relation to the membership of the Community Safety Working Group and its working practices and administration. This Group is proposed to exist until the end of the Construction Period and has been identified as part of the mitigation necessary to mitigate the effects of the construction workforce on public services and community facilities. As above, it is considered to be for a legitimate planning purpose, fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

#### **Compliance with NPS policy test?**

~~3.603.61~~ Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph ~~3.49~~ 50 of the preceding Schedule above.

~~3.613.62~~ The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are measures which have been identified through the Project's environmental impact assessment process (see Section 9.8(v) and (vi) of Volume 2, Chapter 9 of the Environmental Statement) as being



appropriate and necessary to mitigate and minimise the effects of the construction workforce on public services, emergency services and/or the local community having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.623.63](#) N/A.

**Could it be dealt with by way of requirement?**

[3.633.64](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.643.65](#) The detail of the majority of the obligations (in terms of their complexity, interaction with other obligations in the Schedule, application to different parties and their governance, e.g. the parameters governing the payments of the contributions and the working group's reporting arrangements in respect of the same, and such group's interaction with subsequent schedules to this Deed) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.653.66](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

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

[3.67](#) 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.

[3.663.68](#) [Provision is made for requiring all members of the Sizewell C Construction Workforce to sign the Worker Code of Conduct.](#)

**Compliance with Newbury criteria?**

[3.673.69](#) Public Services Resilience Fund:

[3.67.13.69.1](#) The Public Services Resilience Fund is proposed to provide funding to ensure resilience for the identified public services to mitigate the impact of the



Project on such services during the Construction Period (as a result of the construction workforce).

~~3.67.23.69.2~~ The Public Services Resilience Fund is to be applied by the relevant Council having taken into account the views of the aforementioned Community Safety Working Group and/or Social Review Group and having considering the extent to which proposed initiatives correspond to certain factors, including their proportionality to the scale and location of the proposed impacts of the Project and whether they seek to prevent reasonably expected effects of the Project from arising (wherever practicable).

~~3.68.3.70~~ School and Early Years Capacity Contribution:

~~3.68.43.70.1~~ Provision is also made for the payment of a financial contribution by SZC Co to Suffolk County Council during the Construction Period to implement the defined School and Early Years Capacity Measures, which are necessary to meet the demand for additional school place/early years provision for children of the construction workforce.

3.71 Both of the abovementioned financial contributions have been proposed to mitigate the impact of the Project on those public services during the Construction Period and so are considered to be for a planning purpose. Their respective amounts remain still to be finalised, but SZC Co will seek to agree them with key stakeholders. The intention, however, is that they will be sized having regard to SZC Co's assessment of the scale of the Project's impact on those public services during the Construction Period. In this way, the size of both of the contributions are fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

3.72 The Worker Code of Conduct has been proposed to minimise the impact of the Project on the local community during the Construction Period. The obligation to ensure all workers sign the Code is considered to be for a legitimate planning purpose, fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

#### **Compliance with NPS policy test?**

~~3.69.3.73~~ Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph 3.49 50 above.

~~3.70.3.74~~ The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are measures which have been identified through the Project's environmental impact assessment process (see section 9.8(v) and (vi) of Volume 2, Chapter 9 of the Environmental Statement and summarised in the context of community safety- within the Community Safety Management Plan) as being appropriate and necessary to mitigate and minimise the effects of the construction workforce on public services and the local community having regard to applicable law and policy (noting also paragraph 5.12.3 of EN-1). When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in



planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.743.75](#) N/A.

**Could it be dealt with by way of requirement?**

[3.723.76](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.733.77](#) The detail of the majority of the obligations (in terms of their complexity, interaction with other obligations in the Schedule, application to different parties and their governance, e.g. the parameters and governance surrounding the application of the contributions, including reference to the Community Safety Working Group defined in Schedule 4 to the Deed (and described above)) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.743.78](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 6 – HEALTH**

[3.753.79](#) 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.

**Compliance with Newbury criteria?**

[3.763.80](#) Sizewell Health:

[3.76.43.80.1](#) Sizewell Health is proposed to provide a package of risk prevention, health promotion and treatment initiatives to the construction workforce in order to minimise the impact of the Project on the local healthcare capacity and manage the healthcare of the construction workforce. Accordingly, the provision of the service is for a valid planning purpose and has been scoped ([to be in accordance with the specification in Volume 2 Appendix 28A of the Environmental Statement]) to be fairly and reasonably related to the proposed



development in scale and kind, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

3.773.81 Residual Healthcare Contribution

3.77.43.81.1 Provision is also made for payment by SZC Co of the Residual Healthcare Contribution during the Construction Period, to be applied towards the cost to clinical commissioning group(s) (or their successors in Suffolk) of providing healthcare to the construction workforce.

3.77.23.81.2 It has been developed to mitigate against the residual impacts on local healthcare capacity as a result of the Project that may nevertheless still arise during the Construction Period after the establishment of Sizewell Health. Thus, it is for a planning purpose and whilst its amount remains to be finalised, it will be sized to reflect the anticipated scale of such residual impact and so be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, it will be reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon it.

3.783.82 Provision is also made to establish a Health Working Group and its membership, decision-making and administration. The Group's functions include an obligation to report to the Social Review Group on (amongst other things) the identified effects of the Project on healthcare demands in East Suffolk and the effectiveness of the Residual Healthcare Contribution. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, the obligations concerning the establishment of the Health Working Group and its governance/scope similarly satisfy the same.

**Compliance with NPS policy test?**

3.793.83 Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph 3.5049 above.

3.803.84 The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are measures which have been identified through the Project's environmental impact assessment process (see Section 28.5 of Volume 2, Chapter 28 of the Environmental Statement) as being appropriate and necessary to mitigate and minimise the effects of the construction workforce on the local healthcare capacity during the Construction Period in particular, having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

3.813.85 N/A.

**Could it be dealt with by way of requirement?**

3.823.86 As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the



DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.833.87](#) The detail of the majority of the obligations (in terms of their level of detail, interaction with other obligations in the Schedule, application to different parties and the governance arrangements, e.g. the establishment of and governance arrangements for the working group and its interaction with the specified contribution) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.843.88](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

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

[3.89](#) 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.

[3.853.90](#) 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.

### **Compliance with Newbury criteria?**

[3.863.91](#) Workforce Delivery Strategy/Strategies:

[3.86.43.91.1](#) The provision of a Workforce Delivery Strategy (including a Sizewell C Skills Prospectus and Apprenticeship Strategy) is designed to set out the strategic approach for developing the Construction and Operational Phase workforce requirements for the Project.

[3.873.92](#) Annual Workforce Delivery Implementation Plans/Regional Skills Co-ordination Function:

[3.87.43.92.1](#) SZC Co is to make a financial contribution at prescribed points during the Construction Period to facilitate the establishment of a Regional Skills Co-ordination Function, who have defined responsibilities, which includes the production of an Annual Workforce Delivery Implementation Plan that is proposed



to translate the relevant Workforce Delivery Strategies for that year into implementation activities with regular agreed key performance indicators.

3.883.93 Sizewell C Outreach Fund/Asset Skills Enhancement and Capability Fund/Sizewell C Bursary Scheme:

3.88-13.93.1 During the Construction Period, SZC Co are obliged to make payments in relation to these defined funds/schemes at particular milestones. The Deed sets out the scope for how these payments are to be applied, but all are designed to enhance the pool of skilled labour in the locality of the Project available to work on its delivery and subsequent operation, as well as other major infrastructure construction projects in the region, where there may be a similar demand for skilled labour.

3.893.94 Sizewell C Jobs Service/Young Sizewell C/Economic Review Group/Employment, Skills and Education Working Group:

3.89-13.94.1 In addition to financial contributions, SZC Co will also establish the Sizewell C Jobs Service and Young Sizewell C prior to Commencement and until the end of the Construction Period, both of which are geared towards facilitating the drive of local employment for the Project (in the case of Young Sizewell C, those aged 16 to 21 in particular).

3.89-23.94.2 The Economic Review Group and Employment, Skills and Education Working Group are provided to implement, monitor and help ensure the effectiveness of the various strategies and initiatives proposed in this Schedule.

3.903.95 Supply Chain:

3.90-13.95.1 SZC Co has developed a strategy for its supply chain that builds on the good progress made at Hinkley Point C and seeks to engage and promote business in the region to gain competency to compete for and win contracts. The core objective of the Supply Chain Strategy is to successfully deliver the construction and commissioning of the Project utilising the expertise and capability within the local and regional supply chain, where possible, and to meet identified estimates for local and regional retention of supply chain value as set out in the assessment. Provision is also made for the observation of outcomes of the Supply Chain Strategy and sharing of details of engagement activities and labour market information by the Supply Chain Working Group.

3.913.96 The above measures have been identified to enhance and promote local and regional economic activity, promote social mobility and aspiration, and create and provide access to a wider talent pool of skilled labour for the Project. The measures will help ensure local employment on the delivery of the Project so maximising benefit where possible. In this way, each of the measures are considered to be for a legitimate planning purpose. Similarly, whilst the size of the monetary contributions remain to be finalised, the intention is that they will be sized having regard to SZC Co's assessment of the Project's impact. In this way, both the size of the monetary contributions and the detailed provisions governing their application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to such measures will be reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon them.

**Compliance with NPS policy test?**





[3.923.97](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.4950](#) above.

[3.933.98](#) The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are measures which have been identified through the Project's environmental impact assessment process (set out in Section 9.8(i) of Volume 2, Chapter 9 of the Environmental Statement, and the Economic Statement including appendices) to reduce the risks of skills shortages and labour market effects (such as vacancies becoming harder to fill) having regard to applicable law and policy (noting also paragraph 5.12.3 of EN-1). When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.943.99](#) N/A.

**Could it be dealt with by way of requirement?**

[3.953.100](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.963.101](#) The detail of the majority of the obligations (in terms of their level of detail, interaction with other obligations in the Schedule, application to different parties and the governance arrangements, e.g. the parameters governing the spends of the specified contributions, and establishment of the various working/review groups who have oversight of the same) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.973.102](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 8 – HERITAGE**

[3.983.103](#) 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.



### **Compliance with Newbury criteria?**

[3.993.104](#) Leiston Abbey Site Enhancement Scheme:

[3.99.13.104.1](#) The contributions for the two Leiston Abbey Enhancement Schemes are proposed to provide for enhancements to the interpretation and management of heritage assets at the two Leiston Abbey Sites and so minimise the impact from loss of significance and change to landscape character as a result of the Project. This mitigation would enhance the historic interests of these assets, addressing the effect presented by the construction and operation of the proposed development.

[3.1003.105](#) Archaeological Monitoring Contribution:

[3.100.13.105.1](#) Further, SZC Co are to pay 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.

[3.1013.106](#) Both of these measures are a result of the Project and either mitigation in their own right (for the reasons set out above), or used to monitor the effectiveness of other committed mitigation. They are for a legitimate planning purpose, and whilst the amount of the monetary contributions remain to be finalised, the intention is that they will be sized having regard to SZC Co's assessment of the Project's impact in this area. In this way, the size of the contributions will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to such measures will be reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon them

### **Compliance with NPS policy test?**

[3.1023.107](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1033.108](#) The obligations discussed above are considered necessary to make the proposed development acceptable in planning terms, in that, they are mitigation measures which have been identified through the Project's environmental impact assessment process (see Section 16.7, of Volume 2, Chapter 16 of the Environmental Statement) as being appropriate and necessary to minimise the impacts from changes to setting and landscape character having regard to applicable law and policy (noting also paragraph 5.8.20 of EN-1). When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

### **Any other reason for the Secretary of State to take it into account?**

[3.1043.109](#) N/A.

### **Could it be dealt with by way of requirement?**

[3.1053.110](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure certain of the obligations contained in this Schedule by way of requirement to the



DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1063.111](#) The detail of the majority of the obligations would not generally be appropriate to draft into the DCO (noting that they refer to works on land not controlled by SZC Co) meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1073.112](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

## **SCHEDULE 9 – IMPLEMENTATION PLAN**

[3.1083.113](#) 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.

### **Compliance with Newbury criteria?**

[3.1093.114](#) This Schedule obliges SZC Co to use reasonable endeavours to carry out and complete defined Key Environmental Mitigation in accordance with the Implementation Plan, and sets out various informational requirements in their respect. Accordingly, its purpose is intrinsically linked to those key pieces of environmental mitigation and their delivery milestones set out in the Implementation Plan. Its planning purpose is justified by the same, and for the same reasons, its reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects, and not so unreasonable that no reasonable planning authority could have insisted upon them.

### **Compliance with NPS policy test?**

[3.1103.115](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1113.116](#) The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are ancillary to the mitigation measures set out in the Key Environmental Mitigation and Implementation Plan which have been identified through the Project's environmental impact assessment as being appropriate and necessary to mitigate and minimise the effects of the Project having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore

appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.1123.117](#) N/A.

**Could it be dealt with by way of requirement?**

[3.1133.118](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1143.119](#) The detail of the majority of the obligations (in terms of their level of detail and interaction with other provisions in the Schedules to the Deed) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1153.120](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

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

[3.1163.121](#) 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.

**Compliance with Newbury criteria?**

[3.1173.122](#) Leiston Sports Facilities:

[3.117.43.122.1](#) The provision of the payments relating to and construction and maintenance of the Leiston Sports Facilities are proposed to minimise the effect of the construction workforce on local sports facilities during the Construction Period, when the facilities would be used by the construction workforce, and also to enhance the provision of local leisure facilities and provide a permanent benefit for the community linked to the Project. Accordingly, such obligations are considered to be for a legitimate planning purpose.

[3.117.23.122.2](#) Whilst the size of such monetary contributions are still to be finalised, SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that their amounts will be sized to reflect the necessary construction and maintenance costs of the Leiston Sports Facilities. The detailed provisions and parameters governing the application of such contributions will



also ensure they are used appropriately to deliver the intended mitigation. In this way, both the size of the contributions and the detailed provisions governing their application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to such contributions are reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

3.1183.123 Public Rights of Way/Rights of Way Working Group:

3.118.13.123.1 The PROW Fund is for the purpose of providing financial support for initiatives designed to improve the existing public rights of way network in East Suffolk and to mitigate any potential adverse effects on the existing public rights of way network that might arise from the Project, and so is considered to be for a legitimate planning purpose. The Rights of Way Working Group are to be established to manage and administer the PROW Fund.

3.118.23.123.2 Whilst the size of the PROW Fund is still to be finalised, SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that its amount will be sized having regard to SZC Co's assessment of the Project's impact on the existing public right of way network and potential improvements to the same. The establishment of the Rights of Way Working Group will also ensure that the fund is applied appropriately to deliver the intended mitigation and enhancement. In this way, both the size of the fund and its associated obligations will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

**Compliance with NPS policy test?**

3.1193.124 Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph 3.5049 above.

3.1203.125 The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's environmental impact assessment process (see Section 15.5 of Volume 2, Chapter 15 of the Environmental Statement) as being appropriate and necessary to minimise the effects of the Project on local sports facilities during the Construction Period and on the existing public right of way network and also to deliver enhancements in each respect having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

3.1213.126 N/A.

**Could it be dealt with by way of requirement?**





[3.1223.127](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1233.128](#) The detail of the majority of the obligations (in terms of their level of detail, application to different parties and the associated governance arrangements, e.g. the provisions governing the development and management/maintenance of the sports facilities) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1243.129](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

## **SCHEDULE 11 – NATURAL ENVIRONMENT**

[3.1253.130](#) 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.

[3.131](#) The Schedule provides for payment of the European Sites Access Contingency Fund to fund European Sites Mitigation Measures, and the Minsmere and Sandlings (north) Contingency Fund to pay for the Minsmere and Sandlings (north) Mitigation Measures, as well as sums for the monitoring of certain protected European sites (SPA, ~~and~~ SACs ~~and~~ Ramsar sites). Provision is made for payment of the Recreational Disturbance Avoidance Mitigation Contribution (towards mitigating the in-combination recreational disturbance impacts of the Project on the Suffolk Coast RAMS Zone of Influence Zone B). Provision is also made for the process of applying for any planning permission required to permit the Aldhurst Farm enhancement works which are located beyond the Order limits.

[3.1263.132](#) 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.

[3.1273.133](#) 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.



## Compliance with Newbury criteria?

### 3.1283.134 Natural Environment Improvement Fund:

3.128.43.134.1 The Natural Environment Improvement Fund is proposed to fund measures to mitigate the landscape and visual effects of the Project by employing projects to deliver sustainable and long-term management and maintenance of woodlands, hedges and other established vegetation that contribute to the conservation and enhancement of landscape character and that provide or enhance the size, quality and connectivity of locally characteristic habitats to improve the resilience of wildlife to a changing climate and other pressures such as habitat fragmentation. As such, it is considered to be for a legitimate planning purpose.

3.128.23.134.2 Whilst the size of the Natural Environment Improvement Fund is still to be finalised, SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that its amount will be sized having regard to SZC Co's assessment of the scale of the Project's impact. The detailed provisions and parameters governing the application of the fund will also ensure it is used appropriately to deliver the intended mitigation. In this way, both the size of the fund and the detailed provisions governing its application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

3.128.33.134.3 Provision is also made in this Schedule for the creation of certain groups and positions with associated responsibilities for the oversight and application of this fund. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, the obligations concerning their oversight similarly satisfy the same.

### 3.1293.135 European Sites Access Contingency Fund/Recreational Disturbance Avoidance Mitigation Contribution/Fen Meadow Contingency Fund:

3.129.43.135.1 The European Sites Access Contingency Fund and the Minsmere and Sandlings (north) Contingency Fund are proposed to deliver the associated mitigation measures to reduce the impacts of additional recreational disturbance as a result of the Project at the specified protected sites. Further sums are also payable for the monitoring of potential impacts at certain protected sites.

3.129.23.135.2 The Recreational Disturbance Avoidance Mitigation Contribution is to be used for the purposes of mitigating the in-combination recreational disturbance impacts of the Project in accordance with the Recreational Avoidance Mitigation Strategy.

3.129.33.135.3 The Fen Meadow Contingency Fund is proposed to mitigate the permanent loss of fen meadow habitat from the Sizewell Marshes SSSI.

3.129.43.135.4 As such, each of these funds are considered to be for a legitimate planning purpose. Whilst their size is still to be finalised, SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that their amount will be sized having regard to SZC Co's assessment of the scale of the Project's impact on the protected sites. The detailed provisions and parameters governing the application of those contributions will also ensure they are used appropriately to deliver the intended mitigation. In this way, both the size of the contributions and the detailed provisions governing their application will be



fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

[3.129-53.135.5](#) Provision is also made in this Schedule for the creation of particular groups with associated responsibilities for the oversight and application of these measures/funds. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, the obligations concerning their oversight similarly satisfy the same.

[3.1303.136](#) Provision is further made in this schedule for the payment by SZC Co of a sum to the Councils for the purpose of establishing and carrying out the Land Management and Skills Scheme. The size of the contribution is still to be finalised, but SZC Co will seek to agree the size of the fund with key stakeholders, having regard to the Project's impact and the mitigation measures described above. In this way, both the size of the contributions and the detailed provisions governing their application are considered to be for a valid planning purpose, fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

#### **Compliance with NPS policy test?**

[3.1313.137](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1323.138](#) The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's assessment process as being appropriate and necessary to mitigate the landscape and visual effects of the Project and to reduce the impacts of additional recreational disturbance as a result of the Project at the specified protected sites, in each case having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

#### **Any other reason for the Secretary of State to take it into account?**

[3.1333.139](#) N/A.

#### **Could it be dealt with by way of requirement?**

[3.1343.140](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1353.141](#) The detail of the majority of the obligations (in terms of their level of detail, application to different parties and the governance arrangements, e.g. the parameters governing the spends of the specified contributions, and establishment of the various working/review groups who have oversight of the same and also those which refer to works being carried out on land which SZC Co does not control) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete,

and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1363.142](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach

## **SCHEDULE 12 – NOISE**

[3.1373.143](#) Provision is made to secure the implementation and observation of the Noise Mitigation Scheme.<sup>3</sup>

### **Compliance with Newbury criteria?**

[3.1383.144](#) The Noise Mitigation Scheme is proposed to mitigate residual noise and vibration effects on properties resulting from the construction and operation of the Project, subject to eligibility criteria. Such criteria would be applied in determining whether those properties affected by the residual noise and vibration effects of the Project would qualify for an offer of noise insulation or an offer of temporary rehousing. Accordingly, it is considered to be for a legitimate planning purpose.

[3.1393.145](#) SZC Co will continue to consider and develop the obligations relating to the Noise Mitigation Scheme in consultation with East Suffolk Council; however, the intention is that will be developed having regard to SZC Co's understanding of the potential residual noise and vibration impacts which may arise as a result of the Project once the other mitigation has been taken into account. In this way, it will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to the Noise Mitigation Scheme will be reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

### **Compliance with NPS policy test?**

[3.1403.146](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1413.147](#) The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's environmental impact assessment process (see Section 4.5 of Volume 3, Chapter 4 of the Environmental Statement) as being appropriate and necessary to mitigate residual noise and vibration effects on properties resulting from the construction and operation of the Project once all other mitigation and compensation commitments are taken into account having regard to applicable law and policy (noting too paragraphs 5.9.11 and 5.9.13 of EN-1). When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is

<sup>3</sup> Note: SZC Co continues to consider and develop the obligations relating to the proposed Noise Mitigation Scheme ([APP-210](#)). A separate Rail Noise Mitigation Scheme will be secured through a requirement in the Development Consent Order.



placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.1423.148](#) N/A.

**Could it be dealt with by way of requirement?**

[3.1433.149](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1443.150](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 13 – THIRD PARTY RESILIENCE FUNDS**

[3.1453.151](#) Provision is made for the payment of monies to the National Trust, Pro Corda and the RSPB to mitigate the impacts of the Project.

**Compliance with Newbury criteria?**

[3.1463.152](#) The specified contributions are proposed for the purposes of mitigating the Project's impact on their associated geographic locations and so are considered to be for a valid planning purpose.

[3.1473.153](#) Whilst the size of these monetary contributions are still to be finalised, SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that their amount will be sized having regard to SZC Co's assessment of the scale of the Project's impact in their respective areas. The detailed provisions and parameters governing the application of those contributions, which also remain to be agreed, will also ensure they are used appropriately to deliver the intended mitigation. In this way, both the size of the contributions and the detailed provisions governing their application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

**Compliance with NPS policy test?**

[3.1483.154](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1493.155](#) The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's assessment process as being appropriate and necessary to mitigate the impacts of the Project in the specified locations having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is



therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.1503.156](#) N/A.

**Could it be dealt with by way of requirement?**

[3.1513.157](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1523.158](#) The detail of the majority of the obligations (in terms of their level of detail and application to different parties) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1533.159](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 14 – SIZEWELL C COMMUNITY FUND**

[3.1543.160](#) 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.

**Compliance with Newbury criteria?**

[3.1553.161](#) The Community Fund is proposed for the purpose of mitigating the intangible and residual impacts of the Project on the communities within the administrative boundary of the Project.

[3.1563.162](#) Whilst mitigation has been tailored to address specific impacts of the Project identified through the environmental and other assessments, SZC Co recognises that there may be other intangible and residual impacts on the general quality of life locally from the presence of such a major construction project that are still material in planning terms.

[3.1573.163](#) Accordingly, it is considered appropriate to provide for a Community Fund to provide compensatory enhancements to the local quality of life to seek to address such potential intangible impacts resulting from the construction of the Project and so is considered to be for a legitimate planning purpose.

[3.1583.164](#) The size of the Community Fund and the detailed arrangements for its administration are still to be finalised, but SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that the Community Fund would be sized



having regard to SZC Co's understanding of the nature and scale of residual impacts which may arise in the local area as a result of the Project once all other mitigation and compensation commitments are taken into account. The detailed provisions and parameters governing its application will also ensure it is used appropriately to deliver the intended mitigation. In this way, both the size of the Community Fund and the detailed provisions governing its application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to the Community Fund will be reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

#### **Compliance with NPS policy test?**

[3.1593.165](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1603.166](#) The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's assessment process (see Section 10.5 of the Planning Statement for further information) as being appropriate and necessary to mitigate the residual impacts which may arise in the local area as a result of the Project once all other mitigation and compensation commitments are taken into account having regard to applicable law and policy. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

#### **Any other reason for the Secretary of State to take it into account?**

[3.1613.167](#) Further justification in relation to the relevance of the Community Fund is provided in Section 10.5 of the Planning Statement.

#### **Could it be dealt with by way of requirement?**

[3.1623.168](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1633.169](#) The detail of the majority of the obligations concerning the Community Fund (in terms of their level of detail, application to different parties and governance arrangements, including for example, provisions concerning the Deed of Transfer and Administration Agreement) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but

SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1643.170](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

## **SCHEDULE 15 – TOURISM**

[3.1653.171](#) 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.

### **Compliance with Newbury criteria?**

[3.1663.172](#) The Tourism Fund is proposed to mitigate the potential and perceived impacts of the Project on the tourist/visitor economy, particularly to tackle perceived changes to certain sensitivities that existing and potential visitors to the area may be concerned about, and to ensure that the residual effect of the Project on tourism is not negative. As such, it is considered to be for a valid planning purpose.

[3.1673.173](#) The size of the Tourism Fund and the detailed arrangements for its administration are still to be finalised, but SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that the Tourism Fund would be sized having regard to SZC Co's assessment of the Project's impact on the tourism sector and having regard to SZC Co's and stakeholder views on how the Tourism Fund could be applied to effectively reduce such impact. The detailed provisions and parameters governing its application will also ensure it is used appropriately to deliver the intended mitigation. In this way, both the size of the Tourism Fund and the detailed provisions governing its application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to the Tourism Fund will be reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

[3.1683.174](#) Provision is also made in this Schedule for the creation of particular working groups and specific roles with associated responsibilities for the oversight and application of the Tourism Fund. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, the obligations concerning their oversight and application similarly satisfy the same.

### **Compliance with NPS policy test?**

[3.1693.175](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above.

[3.1703.176](#) The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's environmental impact assessment process (see Section 9.8(ii) of Volume 2, Chapter 9 of the Environmental Statement, and the Economic Statement) as being appropriate and necessary to mitigate the impact on the

tourism sector as a result of the Project having regard to applicable law and policy (noting too paragraph 5.12.3 of EN-1). When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.1713.177](#) N/A.

**Could it be dealt with by way of requirement?**

[3.1723.178](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1733.179](#) The detail of the majority of the obligations (in terms of the parameters restricting the use of the fund and its governance arrangements) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1743.180](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 16 – TRANSPORT**

[3.1753.181](#) 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.

[3.1763.182](#) 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.



[3.1773.183](#) 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 and Bus Infrastructure Improvement Fund are<sup>4</sup> 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.

[3.184](#) Two Contingency Funds are provided for, to cover the mitigation of specific additional transport effects of the Project in the event that they arise.

[3.1783.185](#) [Provision is made for the entry into further highways agreements as needed in accordance with Article 21 of the development consent order.](#)

#### **Compliance with Newbury criteria?**

[3.1793.186](#) Transport Management Plans and Operational Travel Plan:

[3.179.43.186.1](#) The Transport Management Plans are proposed to minimise and mitigate the construction traffic impacts from workforce travel and on road safety as a result of the Project.

[3.179.23.186.2](#) Similarly, the Operational Travel Plan is proposed to minimise and mitigate the effects of operational workforce traffic as a result of the Project.

[3.179.33.186.3](#) Each of these plans are considered to be for a legitimate planning purpose, fairly and reasonably related in scale and kind to the proposed development and its predicted effects, reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

[3.1803.187](#) Provision is also made in this Schedule for the creation of particular review groups and specific roles with associated responsibilities in relation to these plans. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation

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<sup>4</sup> Note: Discussions on the detail regarding these funds are on-going and further updates will be provided to this Explanatory Memorandum in their respect in due course.





identified above, the obligations concerning their oversight and application similarly satisfy the same.

3.181.3.188 In addition, the following monetary contributions are proposed to mitigate the Project's traffic impacts:

3.181.43.188.1 two separate Transport Contingency Funds have been proposed to mitigate potential traffic impacts resulting from the Project;

3.181.23.188.2 the Leiston Transport Contribution to fund the design and implementation of the Leiston Improvement Scheme to deliver transport improvements in Leiston;

3.181.33.188.3 the B1078 Road Safety Contribution to fund the specified road safety improvements; and

3.181.43.188.4 the B1122 (pre- and post-) SLR Contributions to mitigate the Project's construction traffic impact on the B1122 prior to the opening of the Sizewell Link Road.

3.182.3.189 The size of these contingency funds and the detailed arrangements for their application are still to be finalised, but SZC Co will seek to agree the size of the fund with key stakeholders. The intention, however, is that they would be sized having regard to SZC Co's assessment of the Project's traffic impacts. They are proposed for a valid planning purpose, and their detailed provisions and parameters governing their application will also ensure they are used appropriately to deliver the intended mitigation. In this way, both the size of the funds and the detailed provisions governing their application will be fairly and reasonably related in scale and kind to the proposed development and its predicted effects. For the same reasons, the obligations relating to the contributions will be reasonable in all other respects and not so unreasonable that no reasonable planning authority could have insisted upon them.

3.183.3.190 Provisions have also been included in this Schedule for the submission of information for approval in relation to AIL Routes, [entry into highways agreements](#), and for the payment of Highway Design and Supervision Fees, in each case to Suffolk County Council. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, these obligations are considered to similarly satisfy the same considering their subject matter.

#### **Compliance with NPS policy test?**

3.184.3.191 Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph 3.504.9 above.

3.185.3.192 The obligations discussed above are necessary to make the proposed development acceptable in planning terms, in that, they are they are mitigation measures which have been identified through the Project's environmental impact assessment process (see section 10.7 of Volume 2, Chapter 10 of the Environmental Statement) as being appropriate and necessary to mitigate the Project's traffic and transport impacts. When the Secretary of State carries out the planning balance to determine whether the Project accords with relevant policy and whether the effects of the Project are acceptable, account will need to be taken of the measures proposed to mitigate and minimise those effects. Insofar as reliance is placed on those measures in deciding that the development is

acceptable in planning terms and that it is therefore appropriate to grant development consent, it is necessary to ensure that they are adequately secured.

**Any other reason for the Secretary of State to take it into account?**

[3.1863.193](#) N/A.

**Could it be dealt with by way of requirement?**

[3.1873.194](#) As discussed in paragraph 2.21 above, whilst in principle it could be possible to secure the obligations contained in this Schedule by way of requirement to the DCO instead, it is considered that this would be unnecessary and introduce a layer of complexity and administrative challenge that would not be helpful for any of the parties involved.

[3.1883.195](#) The detail of the majority of the obligations (for instance, in terms of the parameters governing the application of the monetary contributions and associated governance arrangements and interaction with different parties) would not generally be appropriate to draft into the DCO, meaning those which are more succinct and discrete, and so potentially capable of inclusion by way of requirement would be the exception. This would in all likelihood lead to duplication of drafting and potential, actual or apparent overlap and ambiguity by consequence. Such an approach is considered unnecessary and undesirable for all parties involved in the circumstances, particularly in terms of subsequent implementation and enforcement, but SZC Co would be pleased to provide further explanation on this matter if the ExA considers this required.

[3.1893.196](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

**SCHEDULE 17 – GOVERNANCE**

[3.1903.197](#) 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.

**Compliance with Newbury criteria?**

[3.1913.198](#) This Schedule provides further detail on the governance arrangements in relation to certain of the obligations in the preceding Schedules. To the extent that the *Newbury* principles are satisfied in relation to the substance of the mitigation identified above, the obligations concerning their governance similarly satisfy the same.

**Compliance with NPS policy test?**

[3.1923.199](#) Insofar as the policy criteria in EN-1 effectively reproduces the substance of the *Newbury* criteria, the provision accords with both for the reasons set out in paragraph [3.5049](#) above. Similarly, as this Schedule concerns the governance of specified obligations in the Deed, to the extent that such obligations satisfy the NPS policy test, the obligations concerning their governance similarly satisfy the same.

**Any other reason for the Secretary of State to take it into account?**

[3.1933.200](#) N/A.

**Could it be dealt with by way of requirement?**



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[~~3.194~~3.201](#) In addition to the general response provided in paragraph 2.21 above, as this Schedule concerns governance provisions in relation to certain of the obligations set out in the preceding Schedules, it would not be considered appropriate or practicable to include their governance arrangements separately in the DCO.

[~~3.195~~3.202](#) **Compliance with s106(1)?** Not relevant under the Evolving Approach.

### **Conclusion**

[~~3.196~~3.203](#) For the reasons set out above, SZC Co considers that the obligations in the Schedules satisfy the legal and policy tests (being the *Newbury* criteria and paragraph 4.1.8 of EN-1 respectively). However, it is recognised that ultimately this is a matter for the Secretary of State to consider in reaching their decision. SZC Co would be pleased to provide further explanation in this Explanatory Memorandum if the ExA considers this required.

**Herbert Smith Freehills LLP**



## ANNEX

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

