

THE SIZEWELL C PROJECT

(EN010012)

DEADLINE 5

THE HEVENINGHAM HALL ESTATE (HHE)

(INTERESTED PARTY NUMBER: 2002667)

ISH 1 - 6 JULY 2021

THE DCO & s.106

Explanation of abbreviations used and document references

Abnormal Indivisible Load (AIL)	
Associated Development Design Principles (ADDP)	Document 8.3, Revision 2.0, published on PINS website 28.6.21
Associated Development Sites (ADS)	
Code of Construction Practice (CoCP)	Document 8.11, Revision 3.0, published on PINS website 4.6.21 (compliance secured by Req 2)
Construction Traffic Management Plan (CTMP)	Document 8.7, Revision 2.0, published on PINS website 4.6.21 (compliance secured by Deed)
Construction Worker Travel Plan (CWTP)	Document 8.8, Revision 2.0, published on PINS website 4.6.21 (compliance secure by Deed)
Draft Deed of Obligation (Deed)	Document 8.17, Revision 5.0, published on PINS website 28.6.21
Draft Development Consent Order (dDCO)	Document 3.1, Revision 4.0, published on PINS website 4.6.21
East Suffolk Council (ESC)	
Environmental Statement (ES)	
Examining Authority (ExA)	
Implementation Plan (IP)	Document 8.4, Revision 2.0, published on PNS website 4.6.21
Mitigation Route Map (MRM)	Document 8.12, Revision 3.0, published on PINS website 4.6.21

Outline Landscape and Ecological Management Plan (OLEMP)	Document 8.2, Revision 1.0, published on PINS website 25.6.20
Requirement (Req)	dDCO Schedule 2
Schedule 6 (Parameter Plans) and Schedule 7 (Approved Plans)	NPR: Document 2.6 (plans for approval), Revision 2.0, published on PINS website 22.1.21 YR: Document 2.9 (plans for approval), Revision 3.0, published on PINS website 4.6.21
Secretary of State (SoS)	
Sizewell Link Road (SLR)	
Suffolk County Council (SCC)	
Terrestrial Ecology Monitoring and Mitigation Plan (TEMMP)	Document 9.4, Revision 1.0, published on PINS website 14.5.21
Two Village Bypass (TVB)	
Written Representation (WR)	
Yoxford Roundabout (YR)	

The DCO and Deed

Opening comment:

1. The HHE sought not to “reinvent the wheel” with the DCO amendment suggestions it made. By and large the wording was copied from DCO’s that have been approved by the SoS in the recent past. Both the controls, and the level of control proposed has therefore been accepted by the SoS as appropriate and reasonable. The HHE’s WR contains the references to the numbered Requirements in previous DCO’s and these are not repeated here.
2. The HHE advised the ExA at ISH1 that it would specifically address the need for an operational management plan for the NPR in written submissions. These submissions are at pages 19-23 below and highlighted **yellow** for convenience.

Opening remarks resulting from ISH1:

3. The HHE remains very concerned with the current draft of the DCO and Deed and SZC’s approach to these. SZC advocated at ISH1 for an extraordinary level of discretion in carrying out the authorised works. They advocated for “reasonable endeavours” to apply to SZC in delivering key environmental mitigation in the Deed. They use other language such as “practicality”, “feasibility”, “appropriateness” in the Deed, and in their own words only give a “cast iron guarantee” where they consider it to be “necessary”. They seek “general accordant” compliance in the Requirements. They use permissive language in the CoCP such as “could”, “would” and “should”. Their argument appears to boil down to nothing more than:

- they know what they are doing because they are doing it at Hinckley Point C¹;
- they can be trusted;
- they are “incentivised”²;
- allowing ESC or SCC the power of approval of details is unnecessary and unwarranted interference³; and
- most extraordinary of all was John Rhodes’ exclamation that key environmental mitigation is a “nice to have” and that it was more important that nothing got in the way of the programme for this nationally significant infrastructure project’s timetable.⁴

The HHE is concerned that with all the flexibility SZC have given themselves across the DCO, and certified documents (Art 80), that this will effectively amount to “death by a 1000 cuts” in relation to the enforceability and efficacy of environmental mitigation. Key and other environmental mitigation must be delivered before “trigger dates” (not a fixed dates), otherwise the conclusions in the ES on residual effects will be completely wrong. If SZC are struggling to deliver key and other environmental mitigation then it is absolutely right that ESC/SCC are involved in decisions as to whether there are alternative solutions. Allowing SZC to plough on regardless with unmitigated effects could cause reckless environmental damage.

4. The OLEMP ought to apply to the entire development, including the ADS, and not just the main development site. Ideally LEMP’s that come forward under the OLEMP would be prepared for each ADS. The first para of the Executive Summary of the OLEMP states *“longer-term management of the landscape, and ecological mitigation proposals identified for the for the area within the Sizewell C application boundary (hereafter referred to as the site), following construction of Sizewell C power station.”* It should be remembered that the YR is proposed as a permanent feature, long-term management proposals are therefore appropriate, even if this is to be undertaken by SCC as highway authority in future. RNR 197 directly adjoins the YR works, so ecology is of importance at that ADS. Although the NPR is a temporary ADS, there is no good reason why the “landscape” and “ecology” for the 12 years it will be in operation should not be well managed. It should be remembered that SZC has stated in the ADDP, Table 3.1, “Landscape Design Principles, at Rows 10-11 that it will put in ecology mitigation features, and at Row 12 that *“The landscape planting will be maintained and managed as appropriate throughout the operation of the proposed development.”* There is, however, no obligation on SZC to do so, as Req 20 only requires “general accordance” with the ADDP. It should be clear what the landscape management proposals are, and a commitment to deliver these, not a “general accordance” commitment.

¹ Mr Philpott ISH, Session 3, pag3 3, at 09:50; Mr Rhodes at pages 4-5 at 16:51.

² Mr Rhodes ISH1, Session 3, page 4, at 16:51 ; page 6 at 23:54 (twice); page 7 at 23:54; and page 8 at 30:51.

³ Mr. Philpott ISH1, Session 3, page 14, at 57:45 *“a veto has been handed to a third party”*. And Mr Rhodes pages 4-5, at 16:51 *“without seeking approval from one or two local planning authorities at different phases of construction when decisions have to be made in real time”*.

⁴ Mr Rhodes ISH1, Session 3, page 4, at 16.51 *“this is deliberately not meant something which requires absolute compliance”* when discussing the IP that delivers “key environmental mitigation”.

5. Reference to “general accordance” in the Requirements. Mr Philpott states⁵ that SZC is trying to avoid a criminal offence if there is a “*minor and non substantive deviation from the control document*”. The HHE recommends that at Schedule 2, Para 1 “Interpretation” of the dDCO there is added after sub-para (4) the following:

“where any requirement identifies that performance is to be in “general accordance” with a document referred to in that requirement then this shall mean that only minor and non-substantive or non-material deviation shall be permissible from that document for the undertaker’s performance to be considered to be in general accordance with it.”

“Minor and non-substantive” were the words used by Mr Philpott and “non-material” is an expression familiar to planners (s.96A Town & Country Planning Act 1990) so would be readily understood by the enforcing authority, even if there was confusion as to what “minor and non-substantive” might mean. SZC’s concern was the creation of criminal liability, but if there was any doubt, then the doubt would be given to the defendant, SZC in this case. It would be a matter for ESC if they considered it in the public interest to prosecute. It is problematic introducing such a broad judgement as “general accordance” in relation to a criminal offence. It could mean SZC could never be prosecuted save for the most flagrant of breaches. Interpreting “general accordance” as “substantively consistent” does not provide sufficient clarity and still introduces too broad a judgement. It should be noted that other DCOs require compliance “in accordance” with documents (including Hinckley Point C) in respect of which SZC seek only performance in “general accordance”.

6. The HHE share the ExA’s concerns in relation to the SSMP’s and the fact that there is no visibility in relation to these. These appear to be documents that pass only between contractors and SZC. These need to be publicly available and available to ESC/SCC. Whilst the HHE understand that these are to be internal documents, the lack of transparency in relation to what contractors are obliged to perform is a concern. If ESC/SCC do not consider that SSMP’s conform with the COCP what is the remedy? None is provided. ESC/SCC should have final approval of SSMP’s.
7. The HHE welcome the confirmation that the TEMMP is to be a certified document (Art 80).
8. The HHE share the ExA’s concerns in relation to the powers of the Ecological Clerk of Works, who plays an important role in terms of ensuring environmental compliance, but has no powers should he/she/they identify an issue of concern. They are touted as “mitigation”, but the reality is they are powerless to stop works if an issue arose. Mr Sharpe stated⁶ *“And so it's essentially to make sure that we only stopped works where, where there's a genuine issue and that when when we're not leading to it to the constant stop start process that may arise if you had to hold works if if every time*

⁵ ISH1, Session 1, page 17 at 1:02:46

⁶ ISH1, Session 2, page 6 at 21:09

the ecological park of works had had a doubt.” The HHE suggest that this leaves far too much discretion for SZC to ignore genuine and reasonable doubts expressed by the Ecological Clerk of Works. If the Ecological Clerk of Works is to genuinely act as “mitigation” then he/she/they need to have appropriate powers identified to pause works whilst doubts are understood and bottomed out before works recommence. ESC/SCC also need to be notified if doubts are raised.

9. The HHE share the ExA’s concerns in relation to the language used in some of the key mitigation control documents such as the CoCP with the use of language such as “would”, “should” and “could” rather than definitives. Given that Req 2 requires the authorised development to be carried out in “general accordance” with the CoCP, breach of the CoCP is a criminal offence. The imprecision of “general accordance” combined with the permissive “would”, “could” and “should” would make it very difficult in practice for SZC to be held criminally liable, and is another example of where they have given themselves too much flexibility. Mr Sharpe explained⁷ that permissive wording was only in the CoCP where there was optionality for the contractor as to how some aspect was executed. This may be the case, but if so, it needs to be made clearer, ESC/SCC need to be advised of the contractor’s elected option, or if necessary approve it, and there then needs to be a definitive commitment to carry out the works in accordance with the (approved) option.
10. There needs to be much more clarity around documents that only provide for monitoring to be carried out, and a mechanism that requires additional mitigation measures, if monitoring reveals that current measures are not working at achieving an objective standard. There should also be enforcement sanctions that “incentivise” compliance available to ESC/SCC. The TEMMP is one such document.
11. The HHE share the concerns of the ExA in relation to the language used in the Deed, such as “practicality”, “feasibility”, “appropriateness”, and the reference to “reasonable endeavours”. The Deed contains key environmental mitigation (and other important environmental mitigation), and if it is not delivered, then it will not deliver the residual effects assessed in the ES. This is another example of where SZC have given themselves too much flexibility. Mr Sharpe advised that SZC had given a “cast iron guarantee” where it was “necessary”⁸. Marsh harriers are given such a guarantee, but not neighbouring residential amenity. The HHE cannot accept that guaranteeing environmental mitigation is in place to protect residents who could be seriously impacted by the ADS’s is not “necessary”. The HHE supports ESC’s case that mitigation has to be in place before the thing that it is there to mitigate causes harm. Trigger points are therefore needed (not defined dates). The HHE supports SCC’s case that there needs to be a proper mechanism for enforcing the IP.

⁷ ISH1, Session 2, page 8, at 29:56

⁸ ISH1, Session 3, page 9, at 36:00

DCO Reference	HHE WR relating to DCO 2.6.21 (summary)	SZC Co. comments on HHE's WR relating to the DCO 28.6.21 (summary)	HHE reply 6.7.21
Works No. 9 – Northern Park & Ride (NPR)	Provide distinction between hard and soft landscaping works in description of Work No.9 since all authorised hard landscaping is to be removed, but some authorised soft landscaping is to remain post site restoration. Reference to “removal of ... landscape works” in (a)(viii) therefore creates confusion.	Proposed amendments not necessary. Landscaping covered under Reqs 20 and 23, forms part of associated development and has to be in general accordance with the landscape masterplans and removal and reinstatement plans (all for approval), and the ADDP.	<u>Proposed amends to (a)(iii), (vii) and (viii)</u> <u>Requirement 20</u> Req 20(1) and (2) are irrelevant to the point being made by HHE which seeks to ensure that soft landscaping to be retained at restoration stage is retained. Req 20(3) requires Work No.9 to be carried out in accordance with Schedule 6 (Parameter Plans) and Schedule 7 (Approved Plans). Schedule 6 is irrelevant to the point being by HHE. It is accepted that one plan in Schedule 7 namely the “Northern Park and Ride Removal and Reinstatement Plan” 100162/Rev 02 does show the landscaping to be retained at reinstatement stage. However, ESC when enforcing the Reqs and the general public when reviewing the DCO should not be required to go on a “treasure hunt” to identify a single plan in Schedule 7 that explains that when Work No. 9 states “removal of ... landscape works” that this doesn’t mean “removal of ... landscape works”, but instead means “removal

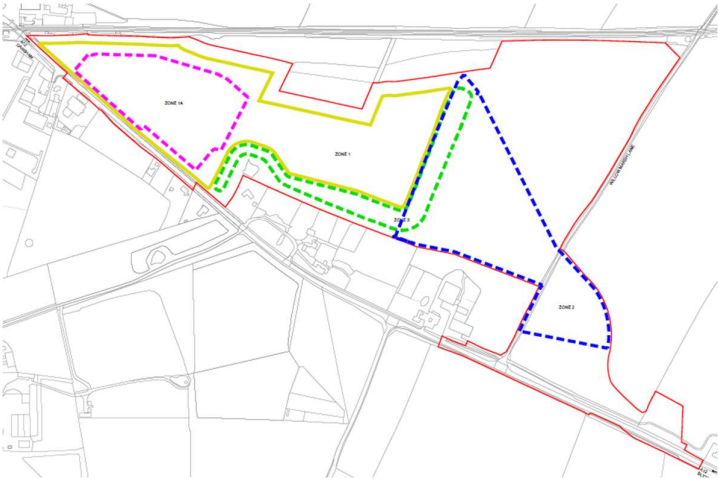
	<p>Sub-para (a)(viii) requires <i>“demolition/removal of ... restoration works”</i>. Move <i>“restoration works”</i> to a new sub-para (ix) so that (a)(ix) reads <i>“A temporary park and ride facility [...] to include –</i> <i>(ix) restoration works”</i>.</p>		<p><i>of ... all hard landscape works, and any temporary soft landscaping works”</i>. In the interests of transparency and clarity the HHE repeats its request for amendments to the description of Work No. 9. HHE supports the concerns raised by SCC at ISH1 that it is unnecessarily difficult to track across different documents to find an answer.</p> <p><u>Requirement 23</u> deals with replacement of diseased/damaged trees/shrubs within 5 yrs of planting so irrelevant to the point being made by HHE.</p> <p><u>ADDP</u></p> <p>The ADDP referred to in Req 20(2) for the NPR are Tables are 2.1 (General Design Principles) and 3.1 (NPR). However, this is irrelevant to the point being by HHE. The Executive Summary (page 1) of the ADDP states:</p> <p><i>“The Design Principles will apply to the operational phase of each associated development site. They do not apply to the construction phase or the removal and reinstatement phase of the associated development sites.”</i></p> <p><u>Proposed (a)(ix)</u></p> <p>SZC Co again rely on Req 20, 23, and the ADDP to say the addition of proposed (a)(ix) to the Work No.9 description is “not necessary”. However, in the interests of clarity is it required, otherwise the wording in (a)(viii) requires the <i>“demolition/removal of ... restoration works”</i>. This is not the intention. Again ESC/the public should not be</p>
--	--	--	---

			required to undertake a “treasure hunt” to correctly interpret this part of (a)(viii). In the interests of transparency and clarity the HHE repeats its request for amendments to the description of Work No. 9.
Req 2 - CoCP	Construction of authorised development should be in “accordance with” not in “general accordance with” the CoCP. If flexibility is required then application to ESC can be made to amend the CoCP	Refers to SZC’s response DCO 1.158. ⁹ Considers “general accordance” is appropriate given the scale and complexity of the construction process. Refers to amends made to next revision of the dDCO.	<p>HHE appreciate that the scheme is complex, but that does not excuse a deviation from the CoCP, which secures important environmental mitigation. Confidence is required that <u>this</u> mitigation will be delivered, not that something generally approximating to it will be delivered.</p> <p>The ExA is reminded of Req PW14 of the Hinckley Point C DCO (an equally complex project where the Promoter agreed to carry out the authorised development “in accordance with” the CoCP and the SoS agreed):</p> <p><i>“Code of Construction Practice</i></p> <p><i>The construction of the authorised project shall be carried out in accordance with the Code of Construction Practice dated 14th September 2012, unless otherwise approved by the local planning authority.”</i></p> <p>The dDCO at Req 2 still refers to “general accordance”. The HHE asks the ExA to note the wording of Req 4 which refers to “in accordance with” (see comment below on Req 4).</p>

⁹ We believe this should be a reference to document 9.11 Responses to the ExA’s First Written Questions (ExQ1) Volume 1 - SZC Co. Responses, rather than 9.30. We cannot trace a response 1.158 in document 9.30.

			<p>The HHE accepts that the procedure for ESC approving a revised draft is set out in Schedule 23 para 1 “Applications made under requirement”.</p> <p>The HHE notes that Req 2 now reads:</p> <p><i>“The construction, of the authorised development and the removal and reinstatement of the authorised development temporary works must be carried out in general accordance with the Code of Construction Practice, unless otherwise approved by East Suffolk Council.”</i></p> <p>“temporary works” is not a defined term. Cross-reference is required to Schedule 1, Parts 1 and 2 where “temporary” is referred to in the description of the relevant Work, or in the case of Work 9(b) there is no reference to “temporary” but instead a reference to “site reinstatement”, the NPR works of course being temporary, with reinstatement required post construction.</p> <p>The HHE note that SCC asks for explanation of “temporary works” at row 49.</p>
Req 4 – terrestrial ecology monitoring plan	The plan should cover the YR works (Work No. 14)	Refer to updated dDCO	<p>The dDCO at Req 4 now covers the YR. The HHE is satisfied with the revised drafting.</p> <p>The HHE notes that the wording of this Req is that the authorised development is to be carried out “in accordance with”, not in “general accordance with” the Terrestrial ecology monitoring and mitigation plan. The HHE acknowledges that important</p>

			<p>mitigation is secured by the plan in the same way as important mitigation is secured by the CoCP. The HHE cannot see that a distinction is justified between the approach taken in Req 2 and Req 4.</p> <p>The HHE notes the that text of Req 4 now reads:</p> <p><i>“The construction, operation and removal and reinstatement of authorised development must be carried out in accordance with the Terrestrial Ecology Monitoring and Mitigation Plan unless otherwise approved by East Suffolk Council following consultation with Natural England.”</i></p> <p>The Deed, Sched 11, page 62, definition of “TEMMP” states:</p> <p><i>““TEMMP” means the Terrestrial Ecology Monitoring and Mitigation Plan submitted to and approved by East Suffolk Council pursuant to Requirement [4] of the Development Consent Order;”</i></p> <p>There is therefore a mismatch between the Deed and the dDCO. The dDCO will need to be amended if ESC is to approve the plan, not just approve amendments to the plan. The procedure for ESC to approve the plan or amends to it is set out in Schedule 23 para 1 “Applications made under requirement”. The CoCP also refers to the approval of the TEMMP being a Req (see para 6.1.2, Part C, page 32).</p>
--	--	--	---

<p>Req 20 (associated development sites)</p>	<p>Detailed design approval sought for NPR etc. ADDP insufficient to control the detail of the design to ensure the environmental impact of the NPR is properly mitigated.</p>	<p>Changes not considered necessary. Parameters (Sched 6), approved plans (Sched 7) and ADDP considered appropriate level of control. Parameters and design principles agreed with ESC and SCC. Limited flexibility needed. HHE'S additional details covered in dDCO or CoCP.</p>	<p><u>Req 20(1)</u></p> <p>ESC and SCC may well have agreed to the “principles” in the ADDP, but these are just principles, and not detail. The may have also agreed the parameters. The parameter plan for the NPR is just coloured shapes on a plan (see Schedule 6 plan 100047/ Rev 02) and provides no detail (see extract below):</p>  <p>The HHE maintains that it is appropriate for a greater level of detail should be approved to ensure that there is no greater environmental impact than that assessed. Points raised in the HHE's WR not addressed. See the HHE WR.</p>
--	--	---	---

			<p>Amends made to Table 3.1 ADDP, Building Design Principles, new para 7 is welcomed giving max size parameters, but how many shelters are proposed? If there is a proliferation of shelters, the site will be cluttered and visually detracting.</p> <p>SZC Co state that a limited amount of flexibility is required to response to <i>“on site constraints and issues, should any arise during the construction period.”</i> The HHE find this comment curious. If the NPR site has been properly assessed there should be no need for such flexibility.</p> <p>However, the HHE’s concern is that Req 20 allows for too much flexibility. If it is accepted that Req 20 should require SZC Co. to produce a statement to be approved by ESC demonstrating that it has “incorporated the relevant tables in the ADDP” relating to a particular Work then the ADDP should be expanded to include a greater level of detail. See also the HHE’s comments on ISH2 and ISH3 – if workers are being allocated to the NPR, then there is no need for SZC to have flexibility in parking space numbers, the number of workers parking there is absolutely in their control.</p> <p><u>Req 20(3)</u></p> <p>HHE repeats its comments in relation to Req 2 that SZC Co should carry out Works “in accordance with” and not “in general accordance with” Schedule 6, Schedule 7.</p>
--	--	--	--

			<p>If ESC is approving a “statement of compliance” pursuant to Req 20(1), the requirement at Req 20(3) should be to carry out the Works “in accordance with” the “statement of compliance” so approved rather than carrying out the Works in general accordance with the relevant tables of the ADDP. The “statement of compliance” presumably contains a level of detail explaining how the ADDP have been incorporated into /interpreted as part of the detailed design. If the current drafting is accepted, SZC Co would have no obligation to carry out the Works in accordance with the detailed design so approved but only in “general accordance” with the more loose ADDP. Certainty of delivery of the approved detail is required.</p> <p><u>Typos</u></p> <p>Req 20(1): reference should be to “demonstrating” or “demonstrates” rather than “demonstrate”</p> <p>Req 20(3) and 20(4): change references from “relevant <u>sections</u> of the ADDP as set out in paragraph 2” to “relevant <u>tables</u> of the ADDP as set out in paragraph 2”. This is the wording used in Req 20(1) and 20(2).</p>
Req 22 (highway works)	Detailed design approval sought for highway works.	Detailed design of highway works will be developed through engagement with SCC.	<p>The HHE will be guided by SCC in relation to its requirements. The HHE notes that:</p> <p><u>Art 20</u>: requires “any street” (which would include the YR) to be “completed to the reasonable satisfaction of the highway authority”. This may be sufficient to enable SCC to require agreement of detailed design.</p>

			<p><u>Art 21</u>: is permissive; “a street authority and the undertaker may enter into agreements with respect to:</p> <p>(a) The construction of any new street authorised by this Order” [emphasis added]</p> <p>SCC will need to be satisfied that it could oblige SZC Co. to enter into an agreement if one was required.</p> <p>The HHE repeats its argument that the reference should be to “in accordance with” rather than “in general accordance with”. The HHE will be guided by SCC as to whether this level of flexibility afforded SZC Co. is acceptable to it as highway authority.</p> <p><u>Typos</u></p> <p><u>Req 22(2)</u>: insert “the”: “The relevant tables in the Associated Development Design Principles”.</p> <p><u>Req 22(3)</u>: change “sections” for “tables” to mirror the wording in Req 22(1) and (2): “in general accordance with the relevant tables....”</p>
Req 23 (associated developments: landscape planting)	Requested diseased/damaged landscape planting should be replaced within 10yrs of planting (not 5yrs)	No response. dDCO note amended.	The HHE repeats its submission that the period for the replacement of any landscaping that dies/is diseased/damaged should be 10 years not 5 years given the length of the construction programme (12 years) and the fact that some landscaping particularly at the associated developments e.g. the NPR is required to mitigate the impact of that development by providing visual screening, noise attenuation and ecological mitigation.

	given length of construction period.		<p>The HHE accepts that Req 23 would also apply to reinstatement landscaping at the NPR and in that respect 5 years is considered sufficient. It may be appropriate to draw a distinction in Req 23 between construction / operational phase landscaping and reinstatement landscaping.</p> <p>It is noted that the Req is entitled “landscape planting”, but the Req only refers to trees and shrubs being replaced. It is clear that the proposed landscaping comprises more than just trees and shrubs, therefore all landscaping should be covered by the Req. See for example, Schedule 7 plan relating to the NPR: “Northern Park and Ride Proposed Landscape Masterplan and Finished Levels” number 100161/Rev 02. The plans shows “retained and enhanced trees and shrubs” in green, and separately “retained and enhanced other vegetation” in green hatched black.</p> <p style="text-align: center;">(REMOVED REQUESTED 1001)</p> <div style="display: flex; align-items: center;"> <div style="width: 20px; height: 10px; background-color: green; margin-right: 5px;"></div> RETAINED AND ENHANCED TREES AND SHRUBS </div> <div style="display: flex; align-items: center;"> <div style="width: 20px; height: 10px; background: repeating-linear-gradient(45deg, transparent, transparent 2px, black 2px, black 4px); margin-right: 5px;"></div> RETAINED AND ENHANCED OTHER VEGETATION </div> <p>The HHE had requested that Work No.14 was added to Req 23 so that the important mitigating landscaping associated with that Work was also subject to a 10 year replacement requirement. If it is not so added then SZC Co. pursuant to Art 20(2) only have to look after the landscaping at the YR for 12 months post completion. The HHE will be guided by SCC as to whether that is considered sufficient, or whether a bespoke</p>
--	--------------------------------------	--	--

			requirement for the maintenance of such landscaping is required such as has been inserted at the new Req 22A relating to the maintenance of landscape works at the TVB and SLR.
Req 24 (removal and reinstatement)	More detail required in relation to removal and reinstatement.	Not necessary. Already controlled by CoCP, CTMP, CWTP, Deed.	<p>These documents do not address the issues raised by the HHE^{10, 11}</p> <p>HHE suggested a reinstatement scheme was submitted to the LPA for approval 6 months prior to completion of the SZC construction works. See HHE WR.</p> <ul style="list-style-type: none"> • HHE acknowledge that the CWTP would apply to the reinstatement phase. However, the HHE did not refer to transport worker movements during reinstatement so SZC Co's reference to this as addressing HHE's concerns is irrelevant. • HHE acknowledge that the CTMP would apply to the reinstatement phase. However, the HHE did not refer to construction traffic during reinstatement so SZC Co's reference to this as addressing HHE's concerns is irrelevant.

¹⁰ HHE requested a preliminary risk assessment. The CoCP deals with contamination found during construction/reinstatement, but given that the operation of the NPR isn't controlled, there is nothing to prevent contamination (particularly from vehicles) arising during operation, so it's important that the LPA be aware of the state of the ground at the end of the use of the NPR.

¹¹ HHE requested that details of soft landscaping to be retained were submitted. This is shown on the NPR Removal and Reinstatement Plan (Sched 7, plan ref 100162/Rev 02) (compliance secured by Req 20(3)), but the LPA may prefer a greater level of detail. There will have been 12 years of growth of landscaping at the end of the NPR's use and the situation may have changed somewhat on the ground.

			<ul style="list-style-type: none"> • HHE acknowledge that the CoCP would apply to the reinstatement phase. The word “reinstatement phase” occurs only 3 times in the document: table 4.1, pg 28 (Part B), and pg 24 (Part C) (use of modular buildings to minimise dust when removed in reinstatement phase); table 11.1, pg 54 (Part C) (control measures to protect ground and surface water during reinstatement phase). • Part C of the CoCP relates to the associated developments including the NPR. It details <u>how</u> the NPR will be constructed and deconstructed and what controls will be in place during those works; it does not advise <u>what</u> will be left on completion e.g. landform, condition and grade of land etc. • The Deed does not obviously address the issues raised by the HHE. The NPR is defined, and is included in the definition of “Park and Ride Sites” and the “Sites” but there are no specific obligations that pertain to the NPR or its reinstatement. • Note Req 14 relates to the submission of a landscape restoration scheme, for main development site, not clear why not required for the associated development sites. <p>There is a mismatch between the Northern Park and Ride Removal and Reinstatement Plan (Sched 7 plan ref 100162/ Rev 2) which identifies soft landscaping to be retained, and in respect of which compliance is secured by Req 20(3); and the wording of Req 24 with states “<i>Within 12 months of completion of the SZC construction works, Work No. 9 (northern park and ride including highway works) ... must be demolished</i>” clearly</p>
--	--	--	---

			indicating that all the works undertaken at the NPR are to be “demolished”. This is unsatisfactory and leads to confusion. As a minimum Req 24 should refer to “ <i>save to the extent that works are shown as retained on Schedule 7 (Approved Plans).</i> ”
Req 26 – proposed new scheme requirements Req - provision of landscaping	Detailed landscaping scheme requirements	Not accepted. Landscaping works are secured by Req 20 and 22 ¹² .	<p>The HHE’s issues are not addressed by Req 20, 22 or 23.</p> <p><u>Req 20(3)</u>: secures the landscape masterplan (Sched 7, plan ref 100161/Rev 2) for the NPR. The YR (Work No. 14) is excluded from Req 20. The NPR landscape masterplan is at a very high level, it identifies locations for planting, but not species, density of planting, maturity of specimens.</p> <p>The ADDP Table 2.1, para 6 (secured via Req 20(1)) states “<i>all proposed tree and shrub planting will use native species</i>”; the Landscape Design Principles in Table 3.1 are generic e.g. “new hedgerow”, “supplementary hedgerow”, “soft landscaping”, “buffer zone”; these are the only details that will be the subject of the “statement of compliance”, but as noted there is no requirement for SZC Co to actually comply with the approved “statement of compliance”.</p> <p>As noted, there is “other vegetation” secured by the landscape masterplan so these could, hypothetically, be non-native species, and would not be covered by Req 20(1).</p>

¹² Assume this should be a reference to Req 23 “Associated Developments: Landscape Planting”

			<p>Landscaping is a key environmental mitigation, it is important that there is confidence that what is delivered will be delivered and provide the anticipated mitigation function.</p> <p><u>Req 22</u>: not relevant to NPR / YR.</p> <p><u>Req 23</u>: see comments above, only secures replacement tree/shrub planting in the event of disease/damage for limited period.</p>
<p>Req 27 – proposed new management, maintenance and operational plan</p> <p>Req –</p>	<p>Operational management plan vital for associated development sites to reduce environmental effects.</p>	<p>Not accepted. ADDP includes relevant commitments needed for design and operation of associated development sites. HHE's requests duplicate commitments secured by ADDP.</p>	<p>The HHE considers SZC Co's response to be more than slightly disingenuous. The HHE advised the ExA at ISH1 that it would address this point specifically in written submissions.</p> <p>The HHE requested that a maintenance, management and operational plan was submitted to the LPA for approval, and the facility operated thereafter in accordance with the plan as approved. This is a perfectly usual requirement, see further below.</p> <p>The ADDP <u>DOES NOT</u> address the HHE's concerns to ensure that the NPR is properly managed, maintained and operated. Tables 2.1 and 3.1 of the ADDP refer to the NPR, these contain specific references to maintenance as follows:</p> <ul style="list-style-type: none"> • Tbl 2.1, row 7: management and maintenance of drainage infrastructure.

		<ul style="list-style-type: none"> • Tbl 3.1, “Building Design Principles”, row 4: long-term appearance, including exterior finishes of buildings will be maintained until removed. • Tbl 3.1, “Landscape Design Principles”, row 12: landscape planting will be maintained and managed throughout the operation of the development. • Tbl 3.1, “Sustainability Principles”, row 7: active management and maintenance of drainage infrastructure. <p>These are secured by Reg 20(1) and the “statement of compliance” although as noted there is no requirement for SZC Co. to build out or operate the NPR in accordance with the approved “statement of compliance”.</p> <p>The HHE were careful not to duplicate these controls. None of the issues raised by the HHE are secured by SZC Co. in the Reqs or Deed. It is vital that the NPR is properly maintained, managed and operated, without proper controls the NPR has the potential to have a serious effect on neighbouring residential amenity. For example, the HHE notes that at the moment there is nothing to stop the NPR operators from having loud amplified music. However, the CoCP provides that during construction of the NPR <i>“no amplified sound will be generated at any time within the site or at any time during any phase of works for the development. This constraint will not apply in the event of emergencies or emergency drills to the extent necessary to deal with an emergency or drill, or other health and safety requirements.”</i> (Part C, Page 17, Tbl 3.1). The HHE can see absolutely no reason</p>
--	--	---

			<p>why such a requirement would not also be relevant and appropriate during the operation of the NPR. The same consideration applies to the other controls suggested by the HHE.</p> <p>The HHE also notes that for standalone park and ride facilities that have been granted planning permissions by LPA's that these usually include operational compliance requirements; what the HHE have requested is not unusual, see for example:</p> <ul style="list-style-type: none"> • Permission reference 201149, granted 13.8.20 by Wokingham BC for <i>"Full planning application for a park and ride facility comprising access, car and motorcycle parking spaces, bicycle storage, bus stops, landscaping, drainage and ancillary development."</i> <p>Conditions:</p> <p><u>Parking Management Strategy</u></p> <p>8. Prior to the operation of the development, a Parking Management Strategy for the management of the parking arrangements shall be submitted to and approved in writing by the local planning authority. The submitted Parking Management Strategy shall include details of the management of all parking spaces; including operational hours, control of</p>
--	--	--	--

			<p>overspill parking and the monitoring and the delivery of additional electric vehicle charging spaces when required.</p> <p><u>Lighting – residential amenity and ecology</u></p> <p>10. No floodlighting or other form of external lighting scheme shall be installed unless it is in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. Such details shall include hours of use, location, height, type and direction of light sources. Details shall also specify intensity of illumination for all external lighting strategies including details of lighting for all principle highways, cycleways, footpaths, public areas and any non-residential buildings. Any lighting, which is so installed, shall not thereafter be altered without the prior consent in writing of the Local Planning Authority other than for routine maintenance that does not change its details.</p> <p><u>CCTV</u></p> <p>11. Prior to the site being opened for public use as a park and ride facility, a CCTV scheme shall be submitted to and approved in writing by the Local Planning Authority. Details shall include the type of camera / quality of image (which should be identification, recognition and observational quality) and location of the cameras. The camera system shall be installed as per the approved details and maintained as such during the lifetime of the development.</p>
--	--	--	--

			<ul style="list-style-type: none"> Planning permission reference 18/06677/FU, granted 1.4.19 by Leeds City Council for <i>“The development of a Park and Ride facility with car parking for up to 1,200 cars; associated single storey terminus building, landscaping, CCTV, lighting, fencing and associated infrastructure”</i>. <p>Conditions:</p> <p>20. The development shall not be brought into use until a Car Park and Servicing Management Plan (including timescales) has been submitted to and approved in writing by the Local Planning Authority. The plan shall be fully implemented, and the development thereafter operated, in accordance with the approved details and timescales.</p> <ul style="list-style-type: none"> Planning permission reference P20/16166/R3F, granted 30.11.20 by South Gloucestershire Council for <i>“Change of use of land and formation of Park and Ride facility with new access, landscaping and associated works.”</i> <p>Conditions:</p> <p>11. <u>Car Park Management Plan</u> The submitted Car Park Management Plan (Jacobs 27th August 2020) shall be implemented and monitored in accordance with the details therein. It shall be reviewed annually (as a minimum) to ensure the Park & Ride site operates in accordance with objectives set out in the Planning Application.</p>
Req 28 - proposed new Req - YR	Amendments to the YR sought post construction to make it smaller and remove the AIL route	Not accepted. Art 21 applies. The YR forms part of HE’s “heavy load route 100”.	SZC Co. state and the HHE accept that a 55m diameter roundabout will be required during the operation and decommissioning of Sizewell B and Sizewell C “from time-to-time” i.e. its use will be required occasionally. Given the visual impact that such a large roundabout has, particularly the heritage impacts on the Cockfield Hall complex and the Yoxford Conservation Area, the HHE suggest that the YR is reduced in size, but the

			full 55m retained as highway land and soft landscaped. TPA the HHE's transport consultant have done a preliminary sketch for a 40m diameter roundabout (still very substantial), which indicates that AIL's of the size proposed would still be able to navigate it quite satisfactorily. See also the HHE's written submissions on ISH2 and ISH3.
Req 29 - proposed new Req – protected species	Seeks protection for unexpected protected species	Not accepted. Duplicated existing controls, see Req 4, and CoCP.	<p>On balance, the HHE accepts SZC Co's position.</p> <p>The HHE accepts that an <i>“unexpected discovery made of protected species”</i> is covered in the CoCP at para 2.2.8 (Part C, page 10) and that this is to be notified to Natural England <i>“in the event of the identification and disturbance to a suspected protected species of animal, plant or habitat.”</i> And that <i>“SZC Co. will consult with the relevant stakeholders on the appropriate course of action, including advice on further remediation”</i>. This doesn't go quite as far as the HHE had requested in Req 29, but it is accepted that SZC Co could not undertake works without a protected species licence if one was required. This is recognised at CoCp para 6.1.4, Part C, page 34.</p> <p>The HHE is aware on its own estate of protected species that SZC Co. do not necessarily have a remediation plan in place for in relation to the NPR and YR, and are anxious that appropriate remediation is secured as required.</p>
Req 30 – proposed new	Requires authorised works to be carried	Not accepted. Duplicates existing	The HHE considers the MRM to be a useful document, but it has its limitations; the HHE maintains that the controls identified are inadequate for reasons previously set out, for example, in relation to the NPR the MRM states at page 42, ref “NPR-NV2”

Req – ES compliance	out on accordance with the ES	controls, see Mitigation Route Map.	<p>that “operational plant selection” will “minimise noise impacts”, and states that this is secured by Req 20.</p> <p>As noted above, Req 20(1) requires a “statement of compliance” to be submitted and approved, but there is no requirement on SZC Co. to then select operational plant in accordance with the approved “statement of compliance”. Further, even if Req 20(3) was reworded to require that the authorised development is carried out in accordance with the “statement of compliance”, there is no requirement for the operational plant so installed to be subject to a maintenance regime such that it is maintained to a standard whereby the noise mitigation provide by the plant is maintained. There is no management, maintenance and operational plan that would require this. It is common knowledge that poorly maintained plant can be noisy and affect neighbouring residential amenity.</p> <p>The ADDP at Tbl 3.1 “Building Design Principles” row 6 simply provides that <i>“all mechanical services plant ... will be selected to ensure that noise emissions are reduced within acceptable limits”</i>. This is all that Req 20(3) covers. The details of the plant, the housing for it, the screening for it, and the maintenance of it are nowhere covered.</p> <p>If SZC Co. are committed to ensuring that the assessed effects in the ES are achieved then the HHE consider that a catch-all requirement such as Req 30(1) is required to ensure this is achieved given the gaps that the HHE have identified.</p>
------------------------	----------------------------------	--	---

Deed of Obligation

Deed Reference	HHE WR relating to Deed 2.6.21 (summary)	SZC Co. comments on HHE's WR relating to the Deed 28.6.21 (summary)	HHE reply 6.7.21
Clause 15 – payments to third parties	Discretion for councils to pay out monies in absence of a deed of covenant	Not agreed. The Deed includes a default position if deed of covenant not entered into.	The HHE maintains that it would be appropriate to enable the Councils to have some element of discretion in the payment of funds, but is happy to be guided by ESC/SCC on this point.
Clause 20 (no clause 21) – rights of third parties	Carve out from third parties clause to allow for direct enforcement	Not agreed. Enforcement is a matter for the councils.	Where the Councils are simply a post box for £ and are passing it across, they may prefer for a third party beneficiary to be able to enforce payment from SZC Co. without using their resources to enforce payment. This is a perfectly usual carve out in planning obligations. The HHE is, however, is happy to be guided by ESC/SCC on this point.
Sched 1 para 4.1	Repayment should extend beyond 5 yrs.	Not agreed.	The HHE repeats its comments that for a project with 12 year construction duration, repayment after 5 yrs is too short. Payments by SZC Co. may well be staggered, but this does not warrant SZC Co. receiving back £ not spent in an earlier phase that may

			<p>be needed in a later phase. The £ is provided as essential mitigation and should be available as such.</p> <p>The HHE maintains that funds that are committed but not spent should be returned if the repayment date has arrived. This is a perfectly usual position to be draft into planning obligations. If ESC has entered into a contract with a contractor to deliver mitigation reliant upon SZC Co. funding ESC should not be at risk of having a shortfall in funding just because the contract provides for stages payments to the contractor. If staggered payments is a sensible commercial position then ESC should be able to provide for such in its contracts.</p> <p>The HHE notes that the ESC also asks for committed / allocated expenses to be excluded.</p>
Sched 1 para 6	Default approval provisions not acceptable.	Not agreed.	<p>The Deed includes a dispute resolution mechanism at clause 8, and there is an approval mechanism at Sched 23 of the dDCO that would also be appropriate. Either could be used here.</p> <p>It is unclear why if approval of a plan/scheme by ESC/SCC is required pursuant to a Requirement that this is subject to a detailed approval and appeal mechanism, but if a similar plan/scheme is to be approved by ESC/SCC pursuant to the Deed then deemed approval provisions are included.</p>

			<p>It is to be noted that Mr Philpott said¹³ that there was no public interest reason why the process for the approval of a detail pursuant to a Requirement should be different from the process for the approval of a detail pursuant to the Deemed Marine Licence. The same point can be made here in relation to the Deed and DCO. The approval of an amended IP for example. This secures key environmental mitigation, it is unreasonable that this essential mitigation is subject to a deemed approval process.</p>
Sched 8 para 1.1	Heritage Mitigation Contribution Requested	Not agreed. Refers to Community Fund.	<p>SZC Co. refer to the fact that the Community Fund established by Sched 14 <i>“does not preclude money being allocated to heritage related schemes or project, provided the bid meets the criteria of the Fund, however, it is not intended as mitigation for settings effects”</i>.</p> <p>This is precisely why the HHE suggested a ring-fenced pot within the Community Fund for heritage effects. The project will have a detrimental impact on the setting of numerous designated and non-designated heritage assets; although not recognised by SZC Co. the effect of 12 years of heavy construction traffic rumbling past these assets and affecting their setting should not be underestimated. There are Grade 1 listed churches that fall within this category that are places of quiet contemplation, reverence and prayer; the HHE considers that it would be entirely appropriate for the Churches to apply to the fund for money for additional planting or screening to mitigate the visual impact of HGV’s as well as noise and intrusion of same within their setting. At present this would be prohibited.</p>

¹³ ISH1, Session 2, page 15, at 5:07.

Sched 9 para 1 and 2.1	Key Environmental Mitigation misses mitigation needed for e.g. NPR/YR	Refers to updated IP.	<p>The IP does not refer to the NPR as an environmental mitigation measure at para 1.1.3 (which is curious), it is however referred to in plate 1.1 “Indicative Phasing Schedule”. The IP should be updated to refer to the NPR at para 1.1.3. The NPR is referred to in Sched 9 as “Key Environmental Mitigation”.</p> <p>The HHE note that ESC ask for definition of “Key Environmental Mitigation”.</p> <p>The HHE repeats it point that the key mitigation needed for the “Key Environmental Mitigation” itself needs to be the subject of the SZC Co’s endeavours obligation at para 2.1.</p> <p>The HHE maintains that SZC Co’s obligation should be “best endeavours”, but will defer to ESC as they have also raised this point with SZC Co.</p> <p>The HHE note that ESC ask for Req for IP; the HHE support this.</p> <p>The HHE note that ESC ask for absolute obligation not endeavours obligation; the HHE support this.</p>
Sched 11 Natural Environment para 1.1 and 11	Terms of reference of Ecology Working Group to include associated development sites	TEMMP includes SLR and TVB. Smaller sites to be addressed in the next revision of the plan to be submitted	The HHE welcomes SZC Co.’s indication and looks forward to reviewing the next draft of the TEMMP.

		during the Examination.	<p>TEMMP refers to the NPR and YR in generic terms in terms of ecological mitigation / monitoring. More specific mitigation and monitoring measures are required. Generic references only to (i.e. not location specific):</p> <ul style="list-style-type: none"> • Great crested newts: monitoring identified • Bats: reference to retention of bat roots in trees and provision of bat boxes • Reptiles: no specific mitigation and monitoring identified <p>Given presence of RNR 197 at YR the HHE would expect there to be specific monitoring / mitigation measures for the rare and protected sandy stilt puffball.</p> <p>The HHE notes that the ESC ask for remit of Ecology Working Group to be clarified. Needs teeth. The HHE supports this.</p>
Sched 16 Transport para 4.1	Level crossing report required	SZC Co, the Councils and Network Rail are discussing the mitigation of risks at level crossings.	<p>The HHE notes that the principal parties are in discussions in relation to level crossing mitigation. Unless a conclusion is reached before the end of the Examination, and can be reported in that forum, and the conclusion (if mitigation is required) included in the SoCG's / dDCO / Deed, it is appropriate that there is public visibility following the end of the Examination as to the conclusion reached.</p> <p>The HHE has suggested that the Community Safety Working Group receives the concluded report on the need for /details of level crossing mitigation, as being the</p>

			most appropriate forum, but the HHE is content for the report to be provided by some other means that provides public visibility.
Sched 16 para 1.1 and 9	Level crossing contribution	Premature to conclude obligation necessary.	<p>Add definition to the para 1.1 of “Level Crossing Contribution”. The definition can include a fixed sum (if one has been costed by the end of the Examination), or can include for the calculation of the sum at a later date, and if not agreed the value thereof can be the subject of dispute resolution.</p> <p>Even if the parties are still discussing the need for upgrades to level crossings, the HHE considers that it would be appropriate to put a marker down in the Deed that a contribution may be required. This can be updated during the course of the Examination as the parties reach agreement, or if the mitigation is not required then the obligation falls away.</p> <p>Another alternative would be to amend Sched 18, part 3 (Network Rail’s Protective Provisions).</p> <p>The HHE notes that Network Rail’s protective provisions at Schedule 18 provide that the “specified works” include “any of the authorised development ... within 15 metres of ... railway property”. The HHE is very concerned about the operation of the Darsham level which has a high risk rating as explained in its WR. The southbound platform of Darsham Station is considered to be within 15m of the red line boundary of the NPR, (see Sched 6, 7 plans).</p>

			<p><u>Does SZC Co. accept that the NPR is within 15m of railway property?</u></p> <p>If so, then any safety upgrades required to the Darsham level crossing MAY fall within Sched 18, Part 3, para 27 of the dDCO, which provides that:</p> <p><i>“if any ... alterations ... to railway property are reasonably necessary in consequence of the construction of a specified work ... in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations ... may be carried out by Network Rail and if Network Rail gives the undertaker reasonable notice of its intention to carry out such alterations ... and has agreed such alterations with the undertaker, the undertaker must pay to Network Rail the reasonable cost of those alterations...”</i></p> <p><u>The HHE requires confirmation the Darsham level crossing works (if required) would fall within para 27?</u></p> <p>Darsham level crossing could be made more dangerous because of the 10.3% increase in HGV traffic SZC Co. will pass across it, and the greater attendant delays, queue lengths and clear times that will occur as a consequence when the barriers are down, in addition to the additional SZC Co. freight trains causing increased barrier down time. The HHE queries if the increase in SZC Co. traffic could be described as <i>“in consequence</i></p>
--	--	--	--

			<p><i>of the construction of a specified work” as such traffic it is not specifically related to the NPR. The HHE notes that a pedestrian running for a taxi was injured crossing the level crossing in April 2021 when the barriers were down.</i></p> <p>If para 27 <u>DOES NOT</u> cover the cost of upgrades to Darsham level crossing, then para 27 could be amended, OR the funds for level crossing upgrade works could be included as an obligation in the Deed. The HHE notes that NR is still assessing what mitigation may be required for Darsham level crossing. The HHE will be guided by NR as to its preference.</p>
--	--	--	--