



# The Sizewell C Project

## 9.72 Response to ExA's Commentary on the draft DCO and other Documents

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**Appendix C:** Structure of Control Documents and Subsequent Approvals

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Deadline 2



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## 1 INTRODUCTION

1.1.1 This report provides SZC Co.'s response to the Examining Authority's Comments on the draft Development Consent Order (dDCO) and Other Documents issued on 3<sup>rd</sup> August 2021 [[PD-038](#)].

1.1.2 The Examining Authority's commentary was prepared following Deadline 5 and made on the following documents:

- the **dDCO** [[REP5-030](#)];
- Other Written Submissions Responding to Actions Arising from ISH1 [[REP5-113](#)];
- draft Deed of Obligation (**DoO**) [[REP5-083](#)]; and
- the draft Code of Construction Practice (**CoCP**) [[REP5-079](#)], including comments on how mitigation strategies are secured and enforced.

1.1.3 Some of the Examining Authority's commentary is also directed to Suffolk County Council (SCC) and East Suffolk Council (ESC) (the Councils), as well as the Marine Management Organisation (MMO), Natural England (NE) and Trinity House on specific points. Where appropriate, SZC Co. has also provided a response.

## 2 OTHER WRITTEN SUBMISSIONS RESPONDING TO ACTIONS ARISING FROM ISH1 [REP5-113]

**Table 2.1: Response to ExA’s comments on Other Written Submissions Responding to Actions arising from ISH1 [REP5-113]**

ExA Comment	Response
2.1. The ExA thanks the Applicant for this document. It welcomes the change to Requirement (Req) 2 explained in paragraph (para) 1.1.1 so that matters are to be “in accordance” with the CoCP rather than in general accordance. It notes the proposed definition of “general accordance”. On that point, the ExA will need to consider whether that is adequate and looks forward to reading the comments of ESC and SCC in particular.	No response needed by SZC Co.
2.2. The phrase “general accordance” and cognate expressions also appear in the CoCP and related documents. The clarification which appears in the dDCO should, subject to the ExA’s consideration noted in the last paragraph, be carried over to that suite of documents.	<p>The <b>CoCP</b> does not use the term ‘general accordance’. The <b>CoCP</b> includes either clearly defined or expressed limits where that is necessary, or in some instances it refers to good or best practice. The latter does inevitably require wording that is consistent with common practice. For example:</p> <ul style="list-style-type: none"> <li>• ‘Best Practicable Means’, which is defined by Section 72 of the Control of Pollution Act 1974. This is in relation to noise and air quality matters and is considered to be an appropriate commitment for the <b>CoCP</b>.</li> </ul>

ExA Comment	Response
	<ul style="list-style-type: none"> <li>• ‘Practicable’: means that the action should be done unless the degree of risk in a particular situation cannot be balanced against the time, trouble, cost and physical difficulty of taking measures to avoid the risk. In practice this means that not doing something that would avoid a significant impact must be done in almost all circumstances. It would only be acceptable to not do something if there would not be a significant impact, and therefore a low risk.</li> <li>• ‘Where possible’ or ‘as soon as possible’: this is used to ensure that something happens in almost all instances, or as soon as it can be done.</li> </ul> <p>It should be noted that the types of actions that these terms are used to control do not include those controls where a single instance of non-compliance would result in an unacceptable environmental impact. These terms are commonly used terms in the control of construction related mitigation. Nor should these terms be viewed in isolation, as they form part of a wider framework of controls. For example:</p> <ul style="list-style-type: none"> <li>• Noise: the <b>CoCP</b> and <b>Noise Monitoring and Management Plan</b> (Draft at Doc Ref. 9.68A) define clear and enforceable noise thresholds for all construction works. A series of good practice measures then provide an added layer of protection that help ensure that the impact of noisy works is reduced.</li> <li>• Air Quality: the <b>Dust Monitoring and Management Plan</b> will define clear and enforceable dust thresholds, in line with those set out in the <b>Outline Dust Management Plan</b> <a href="#">[APP-213]</a>. A series of good practice measures</li> </ul>

ExA Comment	Response
	<p>then provide an added layer of protection that help ensure that the impact of works is reduced.</p> <ul style="list-style-type: none"> <li>• Amenity &amp; Recreation: public rights of way cannot be diverted or stopped up until alternative provision has been made. The detail of which must be approved by SCC in accordance with Requirement 6A.</li> <li>• Ground and Surface Water: The <b>Water Monitoring and Response Strategy</b> [AS-236] and <b>Water Monitoring Plan</b> (Doc Ref. 9.87) secures a comprehensive water monitoring regime, along with the triggers for when actions would be needed. These provide hard limits that are fully enforceable. The <b>CoCP</b> then sets out the good practice measures that ensure that construction works are undertaken in a manner that reduces the risk of environmental incident. Together these controls are considered appropriate.</li> </ul> <p>A comprehensive review of the <b>CoCP</b> has been undertaken with a view to further refine the controls within it. SZC Co. are of the view that it is right and appropriate for the good practice measures contained within it should in the circumstances used be considered wholly acceptable.</p>
2.3. The ExA notes para 1.1.1 and the change to Req 8 to clarify that the temporary buildings will be in accordance with the construction parameters. However, this paragraph and the reference in Req 8 to the Construction Method	<p>In recognising this challenge, the Applicant has extracted the <b>Construction Method Statement</b> as a separate document as Appendix 3D to Volume 2, Chapter 3 of the ES (Doc Ref. 6.3 3D(B)). The definition in the <b>dDCO</b> has been updated to reflect this.</p>

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ExA Comment	Response
<p>Statement (CMS) illustrates well the ExA’s concern about finding the regulating documents. The definition in the dDCO for the CMS says that it is “section 3.4 of Chapter (Ch) 3 of Volume (Vol) 2 of the Environmental Statement (Book 6.2)”. There is no such section as 3.4 in Chapter 3. If the ExA turns back to para 1.1.1 of the Other Written Submissions document it sees the Examination Library (EL) reference given for the CMS to be [AS-202]. That however is appendices 2.2. A-D of Doc 6.13, Vol 3, Ch2. It does not appear to contain the CMS. There is a version of the CMS at [REP3-015] which is Doc 6.3, Vol 2, Ch3, Appendices 3A – 3D. The CMS is not shown in the title and it is to be found at Appendix 3D on page 38. In addition, the CMS is not listed in the index. Nor is it listed in the Navigation Document.</p> <p>2.4. The Applicant will appreciate that these difficulties in tracking down the documents which are vital to the regulation of the development are not only time consuming to the ExA but will make enforcement difficult if the dDCO is made. It may also delay necessary enforcement. The ExA</p>	<p>An <b>Application Index</b> has been provided as Appendix B to the <b>Navigation Document</b> (Doc Ref 1.3(N)) which sets out where all documents are and the latest version of each document.</p>

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ExA Comment	Response
urges the Applicant to address not only the mis-referencing but also to consider what steps it can take to help the enforcement authorities through the opacity of the naming and findability of its documentation.	
2.5. In relation to <u>limits of deviation and parameters</u> the ExA notes the explanations. The ExA however does not understand why the Applicant is refusing to put a statement into the dDCO that where there are parameter plans the Proposed Development shall be carried out wholly within those plans. The ExA appreciates that not all of the Proposed Development is covered by parameter plans and that there are other verbal expressions of the Rochdale envelope. They are of course welcome and necessary. But Req 11 for example allows construction in accordance with the Approved Plans or alternative designs within the parameter plans. As the ExA explained at ISH1 it is not able to compare the Approved Plans with the Parameters Plans. Further clarification is required.	<p>SZC Co. has been continuing discussions with ESC and SCC and has agreed to clarify Article 4. It is proposed the Article 4 is amended in Revision 8 of the <b>dDCO</b> to read as follows:</p> <ul style="list-style-type: none"> <li>• <i>(1) In constructing Work No. 1, Work No. 2, Work No. 3, Work No. 4A, Work No. 4C, Work No. 5, Work No. 6, Work No. 7, Work No. 8, Work No. 9, Work No. 10, Work No. 13, Work No. 14, Work No. 15, Work No. 16 and Work No. 17 the undertaker may deviate vertically and laterally to the extent indicated on the Parameter Plans, Approved Plans, or as may be otherwise approved pursuant to Schedule 2 (Requirements).</i></li> <li>• <i>(2) In constructing Work No. 4B, Work No. 11 and Work No. 12, the undertaker may deviate vertically from the levels shown or noted on the Approved Plans to a maximum of 1 metre upwards or 1 metre downwards and laterally to the extent indicated on the Parameter Plans, Approved Plans, or as may be otherwise approved pursuant to Schedule 2 (Requirements).</i></li> </ul>

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ExA Comment	Response
	This amendment is intended to help clarify that the project will be constructed in accordance with the approved details, except to the extent ESC or SCC may approve pursuant to Schedule 2 (Requirements).
<p>2.6. In relation to the parameters plans and limits of deviation, expressly Article (Art) 4 the Applicant has helpfully drawn attention to the opening words of the Article which make it subject to the Requirements.</p> <p>(A) Is the Applicant’s point that the right of unlimited vertical deviation in Art 4(1)(a) is limited in the case for example of the borrow pits to a level which leaves an unsaturated zone of at least 2 metres as the CMS is imposed by Req 8?</p> <p>(B) If that is the case, then should not Req 8 be amended so as to apply to all construction work?</p> <p>Borrow pits do not obviously fall within the list at the opening of Req 8. The Applicant should please consider this in relation to the other examples and explanations it gives in section 1.6.</p>	<p>No, this is not the intention. The <b>Construction Method Statement</b> (Doc Ref. 6.3 3D (B)) and the <b>Construction Parameter Plans</b> [REP2-008] secured by Requirement 8 are intended to apply to all construction works undertaken on the main development site. Article 4 would not provide any further limits of deviation than those set out in the <b>CMS</b> or Construction Parameter Plans.</p> <p>In order to clarify this point, Requirement 8 has been updated in Rev 8 of the <b>dDCO</b> to ensure that it is clear that it applies to all construction activities on the main development site.</p>
2.7. Please could the Applicant clarify the statement in para 1.6.8. It reads: “Article 4(1)(b)	The nature of Works No. 4A and 4C mean that a limit on the deviation is not necessary. Work No. 4B is the green rail route track itself which will involve a

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ExA Comment	Response
<p>currently restricts the limits of deviation for Work No. 4C to no more than +/- 1m to the levels stated. Work No.s 4A and 4B do not yet have defined limits of deviation, but it is proposed to also restrict these works to a limit of deviation of +/- 1m to the stated levels”.</p> <p>However, Art 4 gives +/- 1 metre for Work <b>4B</b>. Previously it was <b>4C</b>. It has never covered <b>4A</b>. If all three are now to be limited to +/- 1m the point is academic, but if not, please will the Applicant clarify?</p>	<p>degree of flexibility in its exact level which is why the limit to deviation is necessary.</p> <p>Work No. 4A and 4C are works to existing infrastructure and are limited by their very nature.</p>
<p><u>2.8. The structure of control documents and subsequent approvals – Appendix A.</u> The ExA thanks the Applicant for the explanations in this appendix. The ExA is however unclear as to how the Applicant intends that the documents of Level 2 and below are to be enforced.</p> <p>Whilst it is clear that Level 2 documents are to be approved by ESC, SCC, the MMO or in one case by the Ecology Working Group, unless they are already in existence at the time of the DCO (and in effect final agreed versions at the end of the Examination), are these Level 2 documents to be</p>	<p>Level 2 control documents will be enforced in the same way as Level 1 documents. As explained in the note on Enforcement under the evolving approach (<b>Appendix C to the Written Submissions arising from ISHs1</b> <a href="#">[REP5-113]</a>), any documents secured through the DCO can be enforced through that regime and any documents secured through the <b>DoO</b> can be enforced through that regime.</p> <p>In order to assist with enforcement, however, the governance structure within the <b>DoO</b> sets out specific groups which will receive reporting and monitoring results as agreed through the Level 1 or Level 2 documents.</p> <p>The typographical error in the title of the final column of the table has been corrected to ‘Relevant Governance Groups’.</p>

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ExA Comment	Response
<p>enforceable by ESC/ SCC / MMO? (The Environmental Topic column of Table 1 is not obvious. Groups rather than topics are listed.)</p> <p>From the Applicant’s submissions at ISH1 the ExA understood that the Subject Specific Management Plans (SSMPs) and Construction Environmental Management Plans (CEMPs) are effectively internal documents and are not for the approval by any external body. They were said to be the way the Undertaker passes down obligations which are in the CoCP. Appendix A is silent on this. Please will the Applicant make its position clear in its response to this commentary. If it is not to be ESC / SCC / MMO then please will the Applicant explain who and how, and how this is justified?</p>	<p>The <b>CoCP</b> has been clarified to refer to specific documents and no longer uses the term ‘SSMP’. This now provides clarity over how each Level 2 document would be secured, including how these documents would be approved by the relevant authority. These are required by the <b>CoCP</b> to give the relevant authority approval of the detail of how various activities will be managed and the level of monitoring and reporting.</p> <p>An explanation of the role of CEMPs is set out in response to <b>para 2.9</b>.</p>
<p>2.9. What is the position on CEMPs and other documents which flow from the CoCP and Level 2 documents? The ExA realises from section 1.5 of Other Written Submissions Responding to Actions Arising from ISH1 that CEMPs are to be prepared by contractors and other bodies. The ExA requires further explanation of the statement</p>	<p>CEMPs are internal documents which will be prepared by contractors to demonstrate to SZC Co. how they will comply with the approved Level 1 and Level 2 documents. Sizewell C is a large infrastructure project and will have many contractors working on different elements. It is important for SZC Co. to have systems in place to ensure that the obligations are properly complied with by contractors working on its behalf. SZC Co. referred to CEMPS in the Level 1 and 2 documents within the CoCP and its commentary to provide the ExA and</p>

ExA Comment	Response
in para 1.5.2 that “another body [can be] responsible for the mitigation”. The responsibility for delivering the mitigation for the project lies with the Undertaker. Or is the point being made that under for example the DoO the Undertaker is delivering the mitigation via a new body such as the Accommodation Working Group?	<p>stakeholders with assurance that despite the scale and complexity of the Sizewell C project, SZC Co. has the appropriate measures in place to ensure that all obligations are complied with.</p> <p>The ExA is correct that there are some Level 2 documents which are prepared by other parties. These do include documents prepared by new bodies (for example, the PROW Communications Plan will be prepared by the ROW Working Group). However, there are also Level 2 documents prepared by ESC/SCC committing to how mitigation funds will be spent to deliver specific mitigation. For example, under <b>Schedule 3 of the DoO</b> ESC must prepare a Private Housing Supply Plan and a Tourist Accommodation plan for approval by the Accommodation Working Group.</p> <p><b>Appendix C</b> to this Response is an updated version of the note on the <b>Structure of Control Documents and Subsequent Approvals</b>. It has been updated to show which bodies are responsible for preparing and approving documents. Updates across the suite of control documents will be carried out ahead of Deadline 8 to respond the ExA’s comments. Updated versions will be submitted at Deadline 8.</p>
2.10. It is convenient here to raise some questions about the drafting of some of the documents, taking the Bat Mitigation Strategy as an example. It has been chosen at random by the ExA. It is not clear whether it is a Level 2 or	<p>The note on <b>Structure of Control Documents and Subsequent Approvals (Appendix C)</b> has been updated to describe other documents which are called “plans” or “strategies” and explain what the status of each document is in the examination.</p>



ExA Comment	Response
Level 3 document. Issues on the drafting and practicality of enforcing the document are set out in Appendix A to this commentary. It was drafted in preparation for ISH1 and although some issues will have been addressed by Deadline 5, many remain.	<p>The <b>Bat Mitigation Strategy</b> <a href="#">[APP-252]</a> is an example of a document which was submitted to the examination for information only and appropriate mitigation measures will be secured through a protected species licence from Natural England.</p> <p>A full response has been provided to <b>Appendix A of the Commentary</b> below.</p>
2.11. Framework of Control and Implementation Plan: Appendix B to [REP5-113] – The ExA needs to consider this Appendix and the interaction between the reasonable endeavours obligation for the Implementation Plan and the other controls to which the Applicant refers. The ExA awaits the Applicant’s D6 response on “reasonable endeavours” promised at para 2.1.2 of [REP5-113]. Please will the Applicant include an explanation of the meaning of the phrase “reasonable endeavours” in law, referring to the relevant cases. Whilst the ExA of course has an open mind the Applicant should be in no doubt that at this stage the ExA has considerable concerns about the “reasonable endeavours” approach.	<p>We have provided a legal note on the meaning of 'reasonable endeavours' as <b>Appendix D</b> to this Response entitled 'Meaning of Reasonable Endeavours'.</p> <p>For the reasons explained there and in the <b>Framework of Control and Implementation Plan document</b> <a href="#">[REP5-113]</a> SZC Co. continues to believe that is the appropriate form of commitment.</p> <p>However, SZC Co. is also conscious of the concerns expressed by stakeholders and of the questions raised in this context by the ExA and has developed its position in two particular respects:</p> <ul style="list-style-type: none"> <li>- Greater clarity has been brought to the framework of control created by the measures, parameters and limitations set out in the draft DCO and the draft Deed of Obligation and how these are to be enforced (this is explained above at paragraph 2.2 and further below in the paragraphs that immediately follow this one); and</li> </ul>

ExA Comment	Response
	<ul style="list-style-type: none"> <li>- Mechanisms have been developed to provide greater comfort that the key mitigation measures will be in place by the time they are needed (these are explained in paragraphs 2.14 -2.17 below).</li> </ul>
<p>2.12. Apart from that, the ExA raises the following questions at this stage:</p> <p>2.13. Para 4.1.2 the second bullet explains that the controls “would ensure that the Councils can have the confidence that the project’s delivery must stay within the limits that the ES has assessed and mitigated”. At ISH2 the ExA thought it heard counsel for the Applicant state that there was no legal requirement for this or for there to be no exceedance of effects assessed. Please will the Applicant clarify the submission made and its current position?</p>	<p>See <b>Appendix B</b> to this Response “Response to ExA DCO Commentary on EIA Scope and Monitoring”.</p>
<p>2.14. At para 4.1.8 the Applicant observes that “The principle that the construction process would need to regularly pause and seek consent” is not reasonable or acceptable to the Applicant. Why is seeking the approvals in good time not acceptable?</p>	<p>SZC Co. accepts that it is appropriate for approvals to be sought when it is possible to plan these well in advance, so that these can provide the framework within which the project can be planned and resourced.</p> <p>SZC Co. is more concerned that it must be the role of the contractors to manage the detailed phasing of construction activities to ensure that the project is delivered safely, efficiently and to a high standard within that framework of control set by the <b>DCO</b>. It would be concerned by any suggestion that others should seek to</p>

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ExA Comment	Response
	<p>manage those activities or that multiple additional or alternative consents should be necessary before ‘normal’ project decisions can be taken.</p> <p>Both Hinkley Point C and Sizewell C are single phase construction projects. Funding the construction of nuclear power stations poses unique challenges due to the high cost of construction, the long construction period, their complexity and the perceived risk of programme delays. As much certainty over the “rules” and their governance is necessary in order that contracts can be placed and obligations to contractors passed on with clarity and confidence. SZC Co. would not wish to have to seek consent for the micro phasing of the project and would not consider it necessary to do so, as long as the effects of construction remain monitored and enforced within the boundaries set by the consent.</p> <p>It may be that a greater understanding of these issues has been established through and subsequent to the ISH. For example, SZC Co. welcomes what it sees as a revised emphasis in SCC’s submissions to Deadline 6 <a href="#">[REP6-049]</a>. In particular that:</p> <ul style="list-style-type: none"> <li>- SCC is not seeking to control the construction programme and not seeking rigid limits <a href="#">[REP6-049]</a> at electronic page 31;</li> <li>- that HGV flows do vary and that close fitting caps are not appropriate <a href="#">[REP6-049]</a> at electronic page 42;</li> <li>- that a Grampian requirement on the SLR would not be proportionate <a href="#">[REP6-049]</a> at electronic page 11;</li> </ul>

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	<ul style="list-style-type: none"> <li>- that, whilst monitoring to identify whether the development is exceeding the assessed parameters is reasonable, SCC can accept as a generality that not every element of a development which is assessed needs then to be reflected in either a control or monitoring <a href="#">[REP6-049]</a> at electronic page 17.</li> </ul> <p>SZC Co. also welcomes the statement from SCC that “<i>SCC accepts that there are practical reasons why greater use of marine could not be made into a ‘hard control’ but sees no reason why the FMS should not commit to maximising the use of marine where practicable. By recognising that the objective is subject to what is practicable, operational flexibility would be maintained.</i>”</p> <p>SZC Co. would be pleased to explore that issue further with SCC and through the examination more generally. There are, however, some points to be made at this stage, including:</p> <ul style="list-style-type: none"> <li>- none of the freight transport options are without impact. The ExA, for example, has rightly examined the impact of vessel movements. Night time trains have effects, as do HGV movements;</li> <li>- with the SLR and two village bypass in place, it is not necessarily obvious that maximising marine movements (or rail movements) would always be the right solution;</li> <li>- as Mr Davies explained at ISH1, it is important to retain some practical and competitive tension between procurement options in order to optimise the</li> </ul>

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	<p>efficient project delivery and maintain options for instance over the quality, guaranteed availability and price of materials.</p> <p>Were it to be agreed that an objective to maximise marine transport was appropriate, it would then be necessary to understand how that objective would operate and whether SCC or others wished to have control over how it was exercised.</p> <p>In relation to the <b>Implementation Plan</b> <a href="#">[REP2-044]</a> more generally, SZC Co. continues to consider that the ‘reasonable endeavours’ commitment is appropriate, enforceable and proportionate.</p> <p>However, as explained above, SZC Co. has reached agreement with ESC over a mechanism to give the Council more confidence that the worker accommodation will be delivered when it is required. The now agreed position is explained in response to EXQ. CI.2.1 and CI.2.2 and its associated appendix (Appendix 3B) (Doc Ref. 9.71).</p> <p>SZC Co. has also worked to tighten up and clarify the controls to be exercised through the Deed of Obligation and the DCO over the <b>CTMP</b> <a href="#">[REP2-054]</a>, the <b>CWTP</b> etc. and these are explained in <b>Appendix H to the Comments on Earlier</b></p>

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ExA Comment	Response
	<p><b>Submissions</b> (Doc Ref. 9.73). They will be discussed further with the authorities and incorporated into the documents at Deadline 8.</p> <p>The evolved position in relation to the timing of key transport infrastructure is explained below in response to paragraph 2.15.</p>
<p>2.15. Para 5.1.1 The Applicant is unwilling to commit to precise dates. The ExA understands that difficulty. But the way in which developers have avoided that problem for at least three decades is to use triggers, phases and events. Is that not appropriate in this case?</p>	<p>The project does use triggers and limits throughout the framework of controls that are proposed, but only where such controls are consistent with the assumption made within the environmental impact assessment, and which are also then consistent with the project’s deliverability requirements. For example:</p> <ul style="list-style-type: none"> <li>• <b>HGVs:</b> have clearly defined limits for the period before and after the Sizewell link road and two village bypass are available for use set out in the <b>Construction Traffic Management Plan</b> <a href="#">[REP2-054]</a>. These limits ensure that the impacts during construction are no worse than that assessed. The <b>Implementation Plan</b> <a href="#">[REP2-044]</a> then provides additional comfort that SZC Co. will take reasonable endeavours to deliver the highway mitigation to the timescales set out in the <b>Implementation Plan</b><a href="#">[REP2-044]</a>. The combination of these controls gives the Local Authorities a high degree of comfort and control over the impacts of the project, but without risking the funding or delivery of the project. A great (fixed and absolute) commitment that the SLR will be in place by a precise date, for example, is not necessary because the harm that delay would cause is protected against</li> </ul>

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ExA Comment	Response
	<p>by the HGV limit and by the practical knowledge that SZC Co. cannot construct the power station on programme (or on budget) if it is thus prevented from bringing sufficient material to the site.</p> <ul style="list-style-type: none"> <li>• <b>Construction worker travel:</b> the <b>Construction Worker Travel Plan</b> [REP2-055] sets out mode share targets for the period before and after the park and ride sites have become available for use. Requirement 8 also then proposes absolute car parking limits that apply to the periods before and after. Again, the <b>Implementation Plan’s</b> [REP2-044] purpose is to provide additional comfort that the park and ride sites will be delivered in a timely fashion, but allows for some limited degree of flexibility in terms of timing that reflect the projects’ practical deliverability requirements. Again, the combination of parking limits, modal share targets and then the timescales secured by the <b>Implementation Plan</b> [REP2-044] give the Local Authorities a high degree of comfort over the anticipated impacts and control over the project. In this context, SZC Co. recognises that concern has been expressed that the operation of these controls in the draft <b>CWTP</b> [REP2-055] and the <b>draft Deed of Obligation</b> were not sufficiently clear and has prepared a paper summarising proposed changes to these documents – and the <b>CTMP</b> [REP2-054] - to ensure that the wording is sufficiently tight and enforceable. That paper is provided at <b>Appendix H to the Comments on Earlier Submissions</b> (Doc Ref. 9.73).</li> <li>• <b>Noise:</b> the <b>CoCP</b> sets noise thresholds that apply across all construction at either the main development site (<b>CoCP Part B</b>), or for the associated development sites. Specific controls are then identified in the draft Noise</li> </ul>

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ExA Comment	Response
	<p>Management and Mitigation Plan (Doc Ref. 9.68(A)) for noisy activities. These triggers and thresholds require SZC Co. to agree a bespoke mitigation plan for works above a set threshold in advance of those works commencing. The controls in the CoCP then work together with any measures found necessary in the bespoke plans in ensuring that the impacts identified in the ES are not exceeded.</p> <ul style="list-style-type: none"> <li>• <b>Rail Noise:</b> Requirement 25 secures the <b>Rail Noise Mitigation Strategy</b> in advance of overnight rail movements. The approved strategy will then be implemented, monitored and enforced for the duration of overnight rail movements.</li> <li>• <b>Ecology:</b> Requirements 12C, 14A, 14B and 14C are Grampian styled requirements that prevent defined works commencing until certain criteria or events have taken place.</li> <li>• <b>Marine:</b> Requirements 7A and 12B then provide Grampian style controls in relation to the marine works and prevent works taking place until the relevant details have first been approved.</li> </ul> <p>SZC Co. is of a view that this framework of clear limits together with the commitments made to the <b>Implementation Plan</b> <a href="#">[REP2-044]</a> of the necessary control over the impacts of the project. When taken together, the controls in the <b>DCO</b> and <b>DoO</b> will ensure that the effects of the project are no greater than those assessed. Where possible and appropriate, more traditional Grampian controls have been used. The approach uses best practice from the approach commonly</p>

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ExA Comment	Response
	<p>applied to triggers, phasing and controls in a way which enables SZC Co. to manage the construction programme within clearly defined parameters.</p> <p>In addition to the above, SZC Co. has considered the point made by SCC at Deadline 6 <a href="#">[REP6-049]</a> at electronic page 34, that:</p> <p><i>“SCC accepts that pinning delivery to specific dates is unreasonable but considers that delivering key infrastructure should relate to the construction phasing, for example delivery of the SLR, TVB and Green Rail Route should be complete before the Phase 2 Bulk Earthwork commences unless there is an agreed variation to that phasing sequence.”</i></p> <p>In principle, SZC Co. can accept this approach. The principle reflects no more than the reality of the construction programme, i.e. that the volume of materials necessary cannot be delivered unless the enabling infrastructure is in place. Arguably, such controls are not necessary, as the HGV limits protect the position, the <b>Implementation Plan</b> <a href="#">[REP2-044]</a> is enforceable and SZC Co. has no desired or practical alternative.</p> <p>However, if such controls are considered necessary, SZC Co. considers that wording could be drawn up to commit to the following type of controls:</p> <p><b>Road Infrastructure (SLR and 2VBP)</b> Required before the commencement of Phase 3 Main Civils</p>

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ExA Comment	Response
	<p><b>Rail Infrastructure (ACA siding and GRR)</b> Required before the commencement of the diaphragm wall construction (part of Phase 1 Site Establishment)</p> <p><b>Marine Infrastructure (the MBIF)</b> Required six months after the commencement of permanent works backfill (part of Phase 2 Bulk Earthworks)</p> <p>It is recognised that appropriate wording and controls would need to be developed to reflect this infrastructure phasing if it is to be incorporated and SZC Co. will discuss this issue further with the Councils.</p>
2.16. Para 6.1.9 -please will the Applicant explain which provisions of the DoO would be breached in these cases?	Schedule 16 of the <b>DoO</b> secures the <b>Construction Worker Travel Plan</b> <a href="#">[REP2-055]</a> . Not complying with the <b>CWTP</b> would be a breach of the <b>DoO</b> . Measures to enforce the provisions of the <b>CWTP</b> <a href="#">[REP2-055]</a> and <b>CTMP</b> <a href="#">[REP2-054]</a> are explained in <b>Appendix H to the Comments on Earlier Submissions</b> (Doc Ref. 9.73).
2.17. Para 6.1.15, second bullet – the ExA does not understand why construction of the campus before the earlier of 2028 or the engagement of 7,000 workers would be financially ruinous.	Whilst the Applicant is confident in its forecast construction programme, it is also aware that matters can change, for reasons outside its control. Consequently, there is no element of the Project which has a committed calendar date for commencement or completion. To require any element (such as the worker accommodation) to be constructed by a fixed date would cut across this. In the event that the Project suffered significantly delay an irreversible commitment to



ExA Comment	Response
	<p>nevertheless provide the full scale worker accommodation would prove hugely expensive and unnecessary. Instead, SZC Co. intends to deliver the accommodation when it is required, in phases, in line with the timing of the construction programme. That programme is forecast but not fixed.</p> <p>SZC Co. was pleased to see the recognition from SCC <a href="#">[REP6-049]</a> at electronic page 34 that “<i>pinning delivery to specific dates is unreasonable</i>,”</p> <p>Discussions have progressed, however, with ESC since the ISH over the means by which confidence can be created that the worker accommodation will be delivered by the time it is necessary. The position is explained in the <b>Response to EXQ CI.2.1 and EXQ CI.2.2</b> and their associated appendix (Appendix 3B) (Doc Ref. 9.71):</p> <ul style="list-style-type: none"> <li>- Both parties recognise that no one has a greater incentive to deliver the accommodation than SZC Co. On site worker accommodation is a key component of SZC Co.’s workforce strategy;</li> <li>- Necessary site preparation and enabling activities (such as access arrangements and utilities diversions), mean that the accommodation cannot be provided immediately but the phasing shown in the <b>Implementation Plan</b> <a href="#">[REP2-044]</a> reflects the need to bring the accommodation on stream as worker numbers grow – it is the number of NHB workers required that drives the need for the accommodation, rather than fixed dates or even precise construction milestones;</li> </ul>

ExA Comment	Response
	<ul style="list-style-type: none"> <li>- The agreement reached with ESC specifies triggers for the phased provision of both the LEEIE caravan park and the campus by reference to monitored workforce numbers;</li> <li>- If for any reason the trigger dates are missed, SZC Co. would pay a sum into the Housing Fund. This could be seen as a fine (or a further incentive to ensure provision) but it is sized to ensure that ESC could procure an equivalent scale of bed spaces in the community if SZC Co. did not deliver those spaces on site. It is identified as a contingent mitigation payment;</li> <li>- That payment would be made if SZC Co.’s delivery was late, even if the worker accommodation was subsequently provided after the due milestone – and in that sense the provision does work also as a fine and an incentive for timely delivery.</li> </ul> <p>As compared with the suggested measures put forward by ESC at Deadline 3, SZC Co. is content that this agreed approach avoids the danger of a fixed date and also it is SZC Co. that retains the ability to manage its own construction programme, whilst the measures protect against the contingent harm that is of legitimate concern to the Council.</p>
2.18. The RESPONSE TO ENFORCEMENT ISSUES ARISING FROM ISH1 (Appendix C). The ExA thanks the Applicant for this Appendix relating to the DoO.	Noted. No response required of the Applicant.

ExA Comment	Response
2.19. The ExA will need to take legal advice and give fuller consideration in relation to a number of the points made by the Applicant in this Appendix including the submissions on criminal liability. However, in order to move things on the ExA makes the following observations at this stage.	
2.20. Injunctions and cross-undertakings in damages. The ExA’s understanding is that the practice of the Courts in relation to cross-undertakings where injunctions are sought under the Town and Country Planning Act 1990 (TCPA 1990) is generally not to require them. The ExA is simply suggesting that the practice should in TCPA 1990 injunction cases should be made to apply expressly in this very large project. Please will the Applicant and the Councils consider this.	SCC has suggested that the Applicant commits in the <b>Deed of Obligation</b> not to seek a cross-undertaking in damages in the event that either Council applies for an interim injunction. We are content to accept this proposal and have added text to the latest draft of the Deed of Obligation accordingly.
2.21. The ExA notes that in the D5 version of the dDCO (Revision 5) the provision of Clause 9(5)(b) that “the Deed of Obligation completed pursuant to this Order, and any variations to it at the date of transfer or grant, shall be enforceable against the transferee or lessee as they would against the transferor” has been deleted and	We have reverted to drafting in article 9 which makes the ' <i>running with the undertaking</i> ' of the undertaker constructing the power station automatic rather than requiring a deed of adherence. However, for the reasons explained in <b>DCO Drafting Note 12 (Appendix A</b> to this Response), provided as part of this Deadline 7 submission, the drafting limits the party bound at any one time to whoever has the power to construct the power station (being the primary undertaker of the project). Please refer to this Drafting Note for a full explanation.

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ExA Comment	Response
replaced by a procedure needing a deed of adherence. The stated intention of the Applicant when it put forward the DoO was to make the DoO apply to the undertaker, just like the DCO. It is to run with the DCO rather than “with the land”. Accordingly, the ExA strongly suggests a return to the original wording rather than adding the need for another action – the execution of a deed. The ExA also does not see a justification for the “save to the extent” wording, giving the SofS the ability to relieve a transferee undertaker of the obligations in the DoO. No such option is available if the deed were a conventional s106 agreement; no such option is available in the case of any provisions of the DCO. The ExA’s comment applies also to the “unless otherwise agreed” provisions of the DoO in clause 4.5. There are consequential effects to Clause 8.10 of the DoO.	
2.22. The ExA notes the point made at para 5.5 in Appendix C in relation to the position of ENGL, National Grid and Network Rail and will consider it.	Noted. The ExA may find <b>Drafting Note 12 (Appendix A</b> to this Response) useful for a further explanation of the Applicant's position with regard to these parties.

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ExA Comment	Response
<p>2.23. Bonds – the Applicant states at para 7.3 that if the Undertaker had failed financially the project would cease and the triggers for further payment would not arise. This is not the case in at least the matter of the Fen Meadow Contingency Fund, in fact in that case the trigger would be more likely to occur. Please will the Applicant and the Councils give consideration whether there are any other exceptions to the Applicant’s para 7.3 statement to what would be appropriate in those cases and the case of the Fen Meadow Contingency Fund.</p>	<p>The Applicant accepts that in theory there could be circumstances where the need for delivery of the fen meadow or marsh harrier compensation has been triggered despite the project not continuing. We have therefore made provision in the <b>Deed of Obligation</b> for a bond to be put in place in the amount of £2million pounds to cover this possibility.</p>

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### 3 COMMENTS ON THE DRAFT DCO, REVISION 5 [REP5-028]

**Table 3.1: Response to ExA’s comments on the Draft DCO**

ExA Comment	Response
3.1. These comments are made using the track changes version, and references to page numbers are accordingly to that version. There may be other comments made in due course as the ExA gives further consideration to the dDCO. The comments focus on the changes between Revisions 4 and 5.	No response required of the Applicant.
3.2. Definitions – the name of EDF Nuclear Generation Ltd has been amended by the addition of “Energy” after EDF. Whilst this is no doubt simply a correction, please will the Councils check that throughout the DoO the correct entities are correctly described, not only as to their names but also as to registered offices and company registration numbers.	This has been updated in the <b>dDCO</b> and checked by the Applicant in the <b>dDoO</b> .
3.3. Art 9 – see comments above.	See responses to comments above, which refer to <b>DCO Drafting Note 12 (Appendix A to this Response)</b> , submitted alongside this at Deadline 7.
3.4. Arts 9A and 9B – please will the Council’s comment.	The Applicant's latest position in relation to the drafting of these articles is set out in <b>DCO Drafting Note 12 (Appendix A to this Response)</b> .

ExA Comment	Response
3.5. Art 53 – the ExA will, in view of its comments at ISH1 and the Applicant’s response during ISH7, consider these amendments carefully.	Noted and thank you.
3.6. Sch 1, Work No. 13. Is it really correct to move the words “The location of the above works is shown on sheet no. 23 of the Works Plans” above the description of the FMF, even if it is below the words “Work No. 13”? That is not the layout adopted elsewhere in Sch 1.	We have corrected this in Rev 8 of the draft <b>DCO</b> .
3.7. Sch 2, para 1(4) – meaning of “general accordant”; 3.7.1. Please will the Councils comment? 3.7.2. Should not the clarification be carried into the CoCP and other level 1, 2 and below documents?	See <b>Appendix B</b> to this Response “ <i>Response to ExA DCO Commentary on EIA Scope and Monitoring</i> ”.  It should be noted that the Deadline 7 version of the <b>dDCO</b> has been amended to include a revised definition of ‘ <i>general accordant</i> ’. This now reflects the wording suggested by ESC and SCC. The <b>CoCP</b> does not use the term ‘ <i>general accordant</i> ’, but it has been reviewed to ensure that any use of phrases such as ‘ <i>where feasible</i> ’ or ‘ <i>where practicable</i> ’ would not undermine the mitigation proposed and appropriately reflects the scale and complexity of a construction project. The same exercise is being undertaken for the Level 1 and 2 documents and these will be updated as needed at Deadline 8.

ExA Comment	Response
3.8. Sch 2 para 1(3) – Please will the Applicant comment on the case of <u>R v. Bromley ex p Barker</u> [2001] EWCA Civ 1766 in this context. Would it be right and safe to draw support for the Applicant’s approach from the judgment of Lord Hope at paragraphs 19 (the quotations from the CJEU decision paras 100 and 102); 22, the last sentence and 23 “Conditions designed to ensure that the project remains strictly within the scope of that assessment will minimise the risk that those effects will not be identifiable until the stage when approval is sought for reserved matters”?	See <b>Appendix B</b> to this Response “Response to ExA DCO Commentary on EIA Scope and Monitoring”.
3.9. Should not para 1(3) be expressly carried over to similar provisions in other documents regulating the development pursuant to the Application - the DoO, CoCP and other Level 1, 2 and 3 documents?	See <b>Appendix B</b> to this Response “Response to ExA DCO Commentary on EIA Scope and Monitoring”.
3.10. Req 14. Why can the landscape and ecology scheme not be submitted earlier than commencement of operation of Unit 1 or 2? As drafted, a least six months of growing is lost.	A revision to requirement 14 has been included at Deadline 7 to address this point. This seeks to bring forward the submission of an advanced landscape scheme before Work 1A commences. This then allows SZC Co. to agree the landscape works that could be delivered in advance of Unit 1 entering operation.
3.11. Req 14C – there is no definition of marsh harrier compensation land.	There is no need to insert a definition of ‘ <i>marsh harrier compensation land</i> ’ for the purpose of this requirement as the plan to be submitted and approved relating to marsh harrier compensation must be in accordance

ExA Comment	Response
	<p>with the relevant marsh harrier plans, specified in the requirement. The Requirement has been updated to reflect that this plan relates to ‘<i>marsh harrier compensation</i>’ rather than ‘<i>marsh harrier compensation land</i>’.</p> <p>The report which relates to the Westleton marsh harrier site is set out in square brackets in the updated requirement (Rev 8 <b>dDCO</b>) on the basis that the Secretary of State may decide that this site is not required, and therefore wish to grant the DCO with reference only to the marsh harrier sites proposed within the Estate, described in the other plan referred to in this requirement.</p>
3.12. Req 18. Why is Work No. 4A(c) excepted from the need to comply with the plans in Sch 7?	Work No. 4A(c) is the temporary alignment of Buckleswood Road. As this is a highway work, compliance with the Schedule 7 Plans is secured through Requirement 22. The details will be approved by Suffolk County Council.
3.13. Sch 22 – certified documents – the Deed of Obligation; the current revision no. is 6 whereas 2 is stated in the schedule. However, should not the executed version be certified? In the case of execution in counterparts all the execution pages would be certified. The ExA is not encouraging	The executed version of the <b>DoO</b> will be certified and Schedule 22 of the <b>dDCO</b> has been updated for Deadline 7 to reflect this.

ExA Comment	Response
<p>execution in counterpart – with only three parties a single document or perhaps triplicates should suffice.</p> <p>3.13.1. Why has the Rail Noise mitigation strategy been deleted?</p>	<p>The ‘<i>Rail Noise Mitigation Strategy</i>’ was deleted because the version in Examination is a draft and Requirement 25 secures the submission and approval by East Suffolk Council of the final document. However, Requirement 25 has been updated in Rev 8 to require the rail noise mitigation strategy for approval to be in general accordance with the Draft Rail Noise Mitigation Strategy. As such, the Draft Rail Noise Mitigation Strategy has been added to Schedule 22 to be certified.</p>

## 4 THE DEED OF OBLIGATION

**Table 4.1 Response to ExA’s comments on the Deed of Obligation**

ExA Comment	Response
4.1. The ExA notes the submissions in Appendix C of Other Written Submissions Responding to Actions Arising from ISH1. For the present it makes the following comments and observations on the deed Revision 6.0 submitted at D5 [REP5-082]. As before these are made on the tracked version [REP5-083] and any epage numbers given are the numbers in that version.	Noted.
4.2. The ExA notes the changes to the recitals. What is the purpose of the split between the Planning Inspectorate and the Secretary of State in revised recital (A)? Section 37(8) of the 2008 Act says that applications are made to the SofS.	Please see the amendment to Recital A in the <b>draft Deed of Obligation</b> (Doc Ref. 8.17(F)) submitted at Deadline 7.
4.3. Does the definition of Councils need to extend to West Suffolk Council? The ExA notes that SCC is exercising its functions which may be enough.	West Suffolk Council is not a party to the <b>DoO</b> and not bound by its terms, as SCC is exercising its functions. Therefore, references to the Councils throughout the <b>DoO</b> are to ESC and SCC.
4.4. As with the dDCO please will the Councils be alert to the naming of companies and other entities and ensure the details are correct.	No response required from the Applicant.



ExA Comment	Response
4.5. Indexation, clause 10. Please explain the reason for the inclusion of the phrase “(where the Index at Payment Date / Index at today’s date is equal to or greater than one (1)).	<p>This amendment was requested by Suffolk County Council and is to ensure that Indexation only increases the payments due under the <b>DoO</b>.</p> <p>If the Index at the Payment Date is lower than the Index at today's date, then the Index at Payment Date / Index at today's date will be less than one. In such circumstances, the indexation formula should not be used, and the payment should be made without any indexation.</p>
4.6. Third parties and the deed of covenant. Clause 15 and Annex [●] (epage 111). The ExA has some concerns that whilst this is desirable from the point of view of ensuring participation in the various governance bodies in the case of payments it is imposing administrative and accounting obligations which have not been negotiated with the recipients. They may turn out to be onerous in the case particularly of smaller recipients or administratively incompatible. It notes however the provisions of Clause 15.3. The ExA can see the desirability of ring-fencing the payments so that they are used for the purpose for which they are paid. And the ExA can see that the duty in the deed of covenant to repay unused funds is an incentive to ensure that. But if a payment is repaid that would surely mean that the mitigation is not delivered. (A) Please will the Applicant and Councils reflect on the repayment obligation. (B) If clause 15.3.3(a) – alternative arrangements for the relevant mitigation – is engaged should there not be a	<p>(A) The repayment may not mean that the mitigation has not been delivered. The sums paid are by necessity estimates and the Applicant intends to provide some contingency within the payments to ensure that the mitigation can be delivered. In such circumstances, an obligation to repay any unspent monies does not necessarily mean that the mitigation has not been provided. To address the ExA's concern, however, about the possibility of it being too onerous for some smaller recipients to meet the administrative and accounting obligations, we have added the proviso that these must be met unless otherwise agreed with SZC Co and the Councils. This therefore gives the</p>

ExA Comment	Response
covenant by the relevant Council to deliver the mitigation? (C) Please will the Applicant and Councils confirm that quorum and voting arrangements have been adjusted to deal with the possibility that a body which is to participate in a governing body declines to enter into the deed. (D) The ExA also observes that the donee / participating body needs to be added to the execution provisions on pages 114 and 115.	<p>ability to waive these obligations if necessary in a particular case (see revised drafting of Clause 15).</p> <p>(B) We have added an obligation on the Council to deliver the alternative mitigation in these circumstances.</p> <p>(C) None of the governance groups require the participation of third parties for meetings to be quorate.</p> <p>(D) Please see the amendment to the execution provisions in the <b>draft Deed of Obligation</b> submitted at Deadline 7.</p>
4.7. Clause 20 and Approvals. Where in the deed is the equivalent of the dDCO Sch 2 para 1(3) applied to approvals?	Please see the amendments to Clause 20 and Schedule 1 in the <b>draft Deed of Obligation</b> submitted at Deadline 7.
4.8. Sch 1, para 4 – unspent contributions. The comments of the ExA on the third-party deed of covenant apply also here.	See above.
4.9. Schedules 3-17. Comments will be made separately on the substance and form of these schedules.	Noted.
4.10. Annexes. The ExA thanks the Applicant for adding text to some of the formerly blank annexes.	These are the operative terms of reference for the Marine Technical Forum and have been since 2015.

ExA Comment	Response
<p>4.10.1. Please will the MMO comment on the Marine Technical Forum terms of reference at epage 135. The ExA notes this is a pre-existing document from 2015 and presumes it is operative at the moment. But please indicate if that is not the case.</p> <p>4.10.2. There are many blanks however and the ExA is concerned that the DoO, which sits with equal status to the DCO as part of the suite of primary documents regulating the proposed development and delivering mitigation, has some way to go, with a busy examination timetable ahead.</p>	<p>The <b>dDoO</b> submitted at Deadline 7 has moved on substantially since the previous version and SZC Co. has had high levels of meaningful engagement with the relevant stakeholders. SZC Co. is confident that a completed <b>DoO</b> will be submitted to the examination at Deadline 10.</p>

## 5 THE CODE OF CONSTRUCTION PRACTICE

**Table 5.1: Response to ExA’s comments on the Code of Construction Practice**

ExA Comment	Response
5.1. A revised CoCP [REP5-079] was issued at Deadline 5 and the ExA notes that it has been tightened up and a number of amendments have been made which appear to respond to some of its comments made at ISH1. The ExA drafted a note on the CoCP in preparation for ISH1. It was obviously on the basis of Revision 3 of the CoCP [REP2-057]. Some of the points in it will have been addressed by Revision 3 [REP5-079]. However, there was not time at ISH1 to go through all the ExA’s concerns. The note is attached at Appendix B to this commentary and the Applicant is requested to consider it and to amend the CoCP in the light of it. There may be points which have subsequently been dealt with (for example the issue about the applicability of the oLEMP to the entire development) or with which the Applicant disagrees. It would be helpful if the next revision of the CoCP could be accompanied by a brief note explaining the purpose of the changes which were made between Revision 3 and 4, likewise for changes from Revision 4 to 5 and the reasons why any of the ExA’s comments in the note are rejected.	Please refer to <b>Appendix E of this response</b> explains the changes to the <b>CoCP</b> since Deadline 2.
5.2. In relation to the changes effected by Revision 4, the ExA would like to know the Councils’ and (in relation to marine matters) the MMO’s views on them. To save the need for multiple documents and exchanges please will the Applicant, the Councils and the MMO submit a Statement of Common	The SoCGs with the MMO, ESC and SCC are being updated to specifically include the CoCP.

ExA Comment	Response
Ground on the CoCP. It may be possible for that to address the next revision and for it and the SoCG to be submitted simultaneously. The ExA requests the next version of the CoCP and the SoCG at Deadline 7.	
<p>5.3. The ExA has read Revision 4 quickly and has some comments and questions on it which are set out below. They cannot address the substantive detail. Comments on that will, if necessary, be made in due course.</p> <p>5.3.1. Applicant, Councils – objectives – para 2.3.2 says the CoCP measure must be implemented in “a way which aims to ensure the project minimises its adverse environmental impacts”. There is wording elsewhere in the regulatory suite of documents which refers to the aim of (to paraphrase) ensuring effects are no worse than residual impacts. Would this be more appropriate?</p> <p>5.3.2. Applicant, Councils – Monitoring – para 2.4.10 says monitoring will be look at the effectiveness of measures in the “CoCP and related construction controls”. Could it be clarified that this includes and extends to all of the Level 1, 2 and 3 documents?</p> <p>5.3.3. Applicant, Councils – There are many references to the draft DCO and draft DoO. The Applicant will of course need to update these to simply the made and executed versions before the end of the examination.</p>	<p><b>5.3.1:</b> The wording in paragraph 2.3.2 seeks to ensure that the contractors seek opportunities to reduce adverse environmental impacts. It is therefore different to a commitment that seeks to ensure the effects are not material worse than those set out in the ES. A commitment of this nature is already secured by the <b>DCO</b> in the determination of potential variations from approved or certified documents. When taken together, the framework of controls would ensure that the project would not lead to significant environmental effects over and above those predicted in the ES.</p> <p><b>5.3.2:</b> As set out in <b>Appendix C (Structure of Control Documents and Subsequent Approvals)</b>, monitoring and reporting will be provided to ESC, MMO, SCC, the Ecology Working Group, the Environment Review Group and Delivery Steering Group, as relevant. The governance groups would be established by the <b>DoO</b>.</p>

ExA Comment	Response
5.3.4. Applicant, Councils – Part B Appendix A Monitoring – aquatic invertebrates and fish. Why have the criteria for success been removed?	<p>Through the Level 1 and Level 2 documents SZC Co. has or will set out detailed monitoring and reporting regimes. As the construction period is 9 to 12 years it is not inconceivable that the environmental setting may change and the potential harms identified in the EIA either do not come to pass or are different from what was predicted. The monitoring regimes have been carefully designed to ensure that data is captured on sensitive receptors and identified areas of harm. It has been designed to provide appropriate oversight of the implementation of the project in order for the discharging authority and other relevant statutory bodies to review the effectiveness of mitigation and have regard to remedies that would be agreed with and implemented by SZC Co.</p> <p>The <b>DoO</b> sets out a comprehensive governance structure (see <b>Figure 2</b> in <b>Appendix C (Structure of Control Documents and Subsequent Approvals)</b>) which will review monitoring results and reports and agree any additional mitigation which is necessary as a result. The monitoring results will be reported to the relevant governance groups and the <b>DoO</b> gives authority to the groups to consider that data and instruct/agree particular actions in the event that</p>



ExA Comment	Response
	<p>certain triggers are reached. These triggers are set out in either the <b>DCO</b>, <b>DoO</b> or the Level 1 control documents; or there are situations where it is most appropriate for the governance group to agree the triggers as part of their approval of Level 2 documents.</p> <p><b>5.3.3:</b> Complete versions of the documents for certification with the correct references will be submitted to the examination at Deadline 8.</p> <p><b>5.3.4: Table 4.1 of the Terrestrial Ecology Monitoring and Mitigation Plan (TEMMP)</b> <a href="#">[REP5-088]</a> sets out the monitoring proposals for aquatic invertebrates and fish, along with the defined targets and effectiveness measures. Similar commitments were contained in Appendix B of the <b>CoCP</b> Part B and have therefore been deleted in order to avoid duplication.</p>

## 6 APPENDIX A: COMMENTS ON BAT MITIGATION STRATEGY

**Table 6.1: Response to ExA’s comments in Appendix A on Bat Mitigation Strategy**

ExA Comment	Response
<p>1. Begin at e-page 36, para 14.4.7 of the ES [AS-033], bullet at the bottom of the page:</p> <p>“A Bat Mitigation Strategy (Appendix 14C1A of this volume) has been provided as part of this ES (Doc Ref. Book 6) as well as a draft Bat Method Statement (Appendix 14C1B of this volume).”</p> <p>2. The CoCP, originally [REP2-057] Table 6.1 at e-page 79 that there are bat protection measures. Among these “Trees containing bat roosts will felled under a Natural England licence in accordance with the Bat Mitigation Strategy provided in Appendix 14C1A of Volume 2 of the ES (Doc Ref. 6.3) [APP-252]”.</p> <p><b>Q.1 Is the strategy a document which must be followed in order to comply with Req2, or is it something else?</b></p>	<p>The <b>Bat Mitigation Strategy</b> [APP-252] is an example of a document which was submitted to the examination for information only and outlines the mitigation approach to bats at the main development site. The specific measures in relation to licensable activities will be secured by a protected species licence from Natural England. Details of all measures relating to non-licensable activities at the main development site are detailed in the <b>Bat Non-Licensable Method Statement</b> [APP-254] which is secured by the <b>CoCP</b>.</p> <p>The <b>CoCP</b> has been updated to clarify the commitments secured by the <b>CoCP</b> itself and commitments secured by other consents and licences. The note on <b>Structure of Control Documents and Subsequent Approvals (Appendix C)</b> has been updated to describe other documents which are called “plans” or “strategies” and explain what the status of each document is in the examination.</p>

ExA Comment	Response
3. The CoCP must be followed – Req 2 “The construction, removal and reinstatement of the authorised development must be carried out in accordance with the Code of Construction Practice, unless otherwise approved by East Suffolk Council”.	<p>Note: Requirement 2 was updated in the <b>dDCO</b> submitted at Deadline 5 [<a href="#">REP 5-029</a>] as follows:</p> <p><i>“The construction of the authorised development and the removal and reinstatement of the temporary works must be carried out in accordance with the Code of Construction Practice, unless otherwise approved by East Suffolk Council”.</i></p>
4. The reader turns to the Bat Mitigation Strategy at [APP-252]. That is part of a 474 page document containing mitigation strategies for several species, including bats. At para 1.1.3 of the Bat Mitigation Strategy (e-page 7) we read: “This document has been drafted to form part of the Development Consent Order (DCO) submission. This document will be subject to future updates prior to and during each phase of the proposed development to ensure the recommended mitigation remains relevant”.	<p>4. The <b>Bat Mitigation Strategy</b> [<a href="#">APP-252</a>] has been submitted to Natural England and will be considered by natural England in their preparation of the protected species licence conditions. Any updates will be managed in accordance with the processes set out in the Wildlife and Countryside Act 1981.</p> <p>For context, the non-licensable bat method statements are secured by the <b>CoCP</b> and any updates will be approved by EWG. This will be clarified in the D8 version of the <b>CoCP</b>.</p>

ExA Comment	Response
<p>5. <b>Q.2 How is the updating to be regulated?</b> The ExA cannot see any part of the dDCO obliges the Undertaker to obtain the approval of the local planning authority, nor any obligation to review during each phase.</p>	<p>As explained the <b>Bat Mitigation Strategy</b> <a href="#">[APP-252]</a> is submitted to Natural England as part of the protected species licence application. Any changes required to the protected species licence will be applied for under the process set out in the Wildlife and Countryside Act 1981</p> <p>For context, any updates to the non-licensable bat method statements will be approved by EWG. This will be clarified in the D8 version of the <b>CoCP</b>.</p> <p>Under the <b>DoO</b> and <b>DCO</b>, SZC Co. is required to comply with the full suite of Level 1 and Level 2 control documents. Any proposed changes to these documents must be approved in accordance with the securing mechanism for that document. For example updates to the <b>TEMP</b> <a href="#">[REP5-088]</a> must be approved by East Suffolk Council under Requirement 4. Equally, updates to Level 2 documents must be approved by the same body and through the same procedure as the original approval of that Level 2 document.</p>

6. Para 1.1.4 on the same e-page states that the strategy must be read alongside three other documents. They are:

- Arcadis. 2020. Sizewell C Project, main development site, Environmental Statement. Chapter 14.21 Bats.
- Arcadis. 2020. Sizewell C Project, main development site, Ecology Technical Appendix 14A8 Bats (in draft); and
- Arcadis. 2020. Sizewell C Project, main development site, Bat Non-licensed Method Statement (in draft).

7. Apart from the reference in the second bullet to Appendix 14A8, none of these documents is referenced in the Applicant’s numbering system for the application documents. **Q.3 What are the other two documents and where are they to be found?**

8. The reader turns to the navigation document (Book 1, 1.3 Rev 6.0. [AS-283]) page 42 where Appendix 14A8 is listed. It is in five parts, [APP-242] – [APP-246]. Opening [APP-242] yields a 560 page document. The actual appendix, leaving aside the annexes, is only 77 pages long. The executive summary states that the appendix is to describe the bat baseline. It appears to be a finished, not draft document as stated in the para 1.1.4 bullet point. It is not attributed to Arcadis, as stated in the bullet, but as it is clearly document “Appendix 14A8 Bats” it seems safe to treat it and the supporting data in [APP-243] – [APP-246] as the document referred to in the bullet.

9. **Q.4 What of the other two documents listed in the Bat Mitigation Strategy at [APP-252]?** There is no Chapter 14.21 in the environmental

The applicant notes the typographical errors, and omissions within paragraph 1.1.4 as identified above. The applicant can confirm the following:

- Reference to “Arcadis. 2020. Sizewell C Project, main development site, Environmental Statement. Chapter 14.21 Bats”. This is incorrect and should read **Section 14.13 of Volume 2, Chapter 14** of the **ES** [AS-033]. This has now been superseded by the **Updated Bat Impact Assessment** submitted as **Chapter 2, Appendix 2.9.B** of the **ES Addendum** [AS-208].
- Reference to “Arcadis. 2020. Sizewell C Project, main development site, Ecology Technical Appendix 14A8 Bats (in draft)”; is correct and available at [APP-242] save for the that it is no in draft. Therefore “(in draft)” is incorrect.
- Reference to “Arcadis. 2020. Sizewell C Project, main development site, Bat Non-licensed Method Statement (in draft)” is correct and is included within the **ES** as **Volume 2, Chapter 14, Appendix 14C1B** [APP-252], starting at e-page 36.

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statement. The ExA can find one reference to a “Bat Non-licensed Method Statement” in the Bat Mitigation Strategy, at Table 1.2 which states that a specification for bat boxes is to be found in it. Locating the Bat Non-licensed Method Statement is important.

The note on **Structure of Control Documents and Subsequent Approvals (Appendix C)** has been updated to describe how the ecology draft licences, method statements and mitigation strategies relate to each other and how they are secured.

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ExA Comment	Response
<p>10. The reader returns to the Bat Mitigation Strategy [APP-252]. It is to be used by the consultant ecologist, SZC Co (presumably this should read “the Undertaker”) and any relevant subcontractors (para 1.1.2). Reference is again made to Appendix 14A8 the results of which and the subsequent assessment are explained by para 1.2.2 to be areas of key importance, are presented in Figure 14C1.1. In the list of figures in the index (on e-page 5) there are 14 figures, but they do not include a Figure 14C1.1. <b>Q.5 Where is Figure 14C1.1?</b></p>	<p>As part of the review of the Level 1 and Level 2 control documents, the Applicant will review the use of “SZC Co.”, “undertaker” and “contractor”.</p> <p><b>Q5.</b> The applicant can confirm that this was a typographical error and the figure reference should have been <b>Figure 14C1A.1</b>. This figure can be found on e-page 2 of <a href="#">[APP-253]</a>.</p>
<p>11. Section 1.6, at e-page 16 of the Bat Mitigation Strategy [APP-252] explains the Mitigation and Enhancement Proposals. After first referring the reader to the “non-licensed Reasonable Avoidance Measures Method Statement presented in SZC Ecology Technical Appendix 14A8 Bats” (which it will be noted is a different title from the “Bat Non-licensed Method Statement” – <b>Q.6 is it the same document?</b>), it is stated that Table 2 shows “the proposed Construction and Operational Phases in relation to bat mitigation and includes both primary and tertiary mitigation measures”. There is no Table 2 in the Bat Mitigation Strategy. A word search of [APP-242] which is Part 1 of Appendix 14A8 does not yield a Reasonable Avoidance Measures Method Statement. Nor does reading the index of the documents in the Appendix group, set out at the opening of [APP-242].</p>	<p><b>Q6.</b> This is a typographical error and the applicant can confirm that the reference to the “<i>non-licensed Reasonable Avoidance Measures Method Statement</i>” is to the <b>Bat Non-licensable Method Statement</b> <a href="#">[APP-254]</a> The reference provided in Section 1.6, at e-page 16, should have included reference to <b>Volume 2, Chapter 14, Appendix 14C1B</b> of the <b>ES</b> rather than <b>Appendix 14A8</b>. For context, the <b>Bat Non-licensable Method Statement</b> <a href="#">[APP-254]</a> describes and secures the “reasonable avoidance measures” (RAMs) and is therefore has sometimes been described as a RAMs method statement.</p> <p>The note on <b>Structure of Control Documents and Subsequent Approvals (Appendix C)</b> has been</p>

ExA Comment	Response
	<p>updated to describe how the ecology draft licences, method statements and mitigation strategies relate to each other and how they are secured. To clarify bat protection measures are secured in the following way:</p> <ul style="list-style-type: none"> <li>• <b>Project Wide Bat Licence (Doc Ref. 9.73)</b> – this is the draft protected species licence which has been submitted to the examination for information only. Natural England will consider the licence application and issue protected species licences with conditions it considers appropriate in its capacity as regulator.</li> <li>• <b>Main Development Site Bat Mitigation Strategy [APP-252]</b>– this document is submitted to the examination for information only. Natural England will consider this as part of the licence application and issue protected species licences with conditions it considers appropriate in its capacity as regulator.</li> <li>• <b>Bat non-licenced method statements</b> – a series of these method statements have been produced in relation to the Main development site [APP-252], northern park and ride [APP-364], southern park and ride [APP-395], two village bypass</li> </ul>

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ExA Comment	Response
	<p>[APP-426], Sizewell link road [APP-462] and freight management facility [APP-502] sites. These method statements include commitments about how activities which are related to bats but are not licensable activities under the Wildlife and Countryside Act 1981 are to be carried out to minimise effects on bats. These are secured through the <b>CoCP</b>.</p>

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12. Table 2 of the Bat Mitigation Strategy is stated by para 1.6.2 to include the primary and tertiary mitigation measures. Para 14.13.516 of the ES [AS-033] states that there are no secondary mitigation measures so that is to be expected. That paragraph also states that full details of the mitigation measures for bats are provided in the Bat Mitigation Strategy, Appendix 14C1A (which is within [APP-252]).

13. Reading Table 1.2 of the Bat Mitigation Strategy [APP-252] turns up a number of references to a “non-licensed method statement”. A word search in Appendix 14C [APP-252], which is the Protected Species mitigation strategies, and is not Appendix 14A8, for “non-licensed method” does take the reader to para 1.2.1 of a “Bat Method Statement” (e-page 45 of [APP-252]). It will be seen that the cross-references are incorrect. The titles and terminology are inconsistent. The “non-licensed Reasonable Avoidance Measures Method Statement” is not in Appendix 14A8; it is in Appendix 14C; it is also known as the “non-licensed method statement” and as the “Bat Method Statement”. It is not obviously the “Arcadis. 2020. Sizewell C Project, main development site, Bat Non-licensed Method Statement (in draft)” listed at para 1.1.4 of the Bat Mitigation Strategy.

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14. The language of Table 1.2 is, on occasions, tentative. It states that measures are “proposed”. For example: “It is proposed that for every tree with medium or high roosting potential which is to be lost (this will be minimised through micro-siting), a minimum of one bat box will be erected”, and “As it is not possible to accurately estimate the likelihood of roost abandonment, it is proposed to provide precautionary mitigation including the provision of a bat house (or comparable mitigation within an existing structure) likely to be at Lower Abbey Farm”. The ExA expects that the intention is not to seek approval of a proposal but that this is a firm commitment, but in documentation which creates criminal liability (whether under the DCO or a bat licence) the language should be clear.

15. There are other examples of tentative language. For example: “In the event of confirmed bat roosts being lost, subject to further agreement with Natural England the following ratios for roost re-provision may be appropriate:” (*italics added*). **Q.7 How are the correct ratios to be determined? Cannot the appropriate ratios be stated now? If not, why not?**

16. Turning to the tentative ratios which are:

- 1:1 potential roosting features
- 2:1 low status roost of common species
- 4:1 maternity roosts of common species
- 4:1 low status roost of Annex 2 species

14. Where documents are submitted to the examination for information, conditional language is considered appropriate because the protected species licences (as granted) and the conditions therein will be the firm commitments. That process of determination of the licences is ongoing. Language in the documents which are secured through the **DCO** will be reviewed and updated as appropriate as part of the Applicant’s review of the suite of control documents ahead of Deadline 8.

**Q.7** The rationale for roost re-provision as specific in the **Bat Mitigation Strategy** [APP-252] were specified by Natural England via email correspondence on the 24th February 2020 prior to the DCO submission.

Appropriate ratios cannot be stated at this stage for the loss of a maternity roost of Annex 2 species. The roost re-provision ratio, should this situation arise, would be covered by a separate licence application and agreed with Natural England.

**Q8.** In response to paragraph 16, the applicant can the ratios are presented in the form re-provision:loss. For example for a lost low status roost of common species, 2 replacement roosts would be provided.

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**Q.8 please will the Applicant clarify which figure is the loss and which is the re-provision.**

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ExA Comment	Response
<p>13. The Bat Method Statement. Now that this document has been located (Appendix 14C.1B, to be found at e-page 36 of Appendix 14C, [APP-252], <b>Q.7 how is it secured and enforced?</b> The Bat Mitigation Strategy para 1.6.2 refers to “the non-licensed Reasonable Avoidance Measures Method Statement” as giving “further details” of the main proposals contained in the Bat Mitigation Strategy. Given the terminological confusion, the ExA suggests that the Bat Method Statement is specifically referenced in the CoCP. This would also put beyond doubt any concern as to whether or not the Bat Method Statement is part of the Bat Mitigation Strategy by giving it equal status.</p>	<p>The <b>Bat Method Statement</b> [APP-254] is one of a series of Bat Method Statements which each relate to different sites. The <b>CoCP</b> has been updated to secure these documents directly and clarify the status of the ecology documents.</p>
<p>14. <b>Q.9 Is the Bat Mitigation Strategy actually secured by the CoCP?</b> A word search for it returns only one reference to it in the CoCP. This is in Table 6.1 on e-page 73 of [AS-273] where it is stated that: “Trees containing bat roosts will felled under a Natural England licence in accordance with the Bat Mitigation Strategy provided in Appendix 14C1A of Volume 2 of the ES (Doc Ref. 6.3) [APP-252]”. This is limited to tree felling. Unless there are other ways in which it has been incorporated into the CoCP, the Bat Mitigation Strategy will have been neither secured nor given effect, except in relation to tree felling, and then only on the Main Development Site.</p>	<p>No – the <b>Bat Mitigation Strategy</b> is submitted to the examination for information only and defines the approach to mitigation for bats at the main development site. It is identified by the <b>Project Wide Bat Licence</b> (Doc Ref. 9.73) and non-licensable method statement which have been prepared in accordance with the principles set out within the mitigation strategy. A licence is required from Natural England for roost resources which will be informed by the <b>Bat Mitigation Strategy</b>. A draft of the license has been submitted to examination at Deadline 7 following issue to Natural England to obtain a letter of no impediment.</p>



ExA Comment	Response
<p>15. Language of the CoCP. In some cases this is conditional, rather than imperative. For example in Table 6.1 we read “Appointment of an Ecological Clerk of Works (ECoW) who would be an experienced ecologist, or similarly competent person, responsible for overseeing on-site ecological mitigation ...”. (Italics added.) This is in contrast to “Toolbox talks and briefings will be held ...” in the following line. (Again, italics added.) Statutory drafting convention is now that “must” should be used for imperatives, though many lawyers have been content with “shall” for some considerable time. There is also a view that “will” is an expression of hope. <b>Q.10 How does the Applicant propose to address these language issues across the suite of Level 1, Level 2 and below documents?</b></p>	<p>Level 1 and Level 2 documents which are currently in draft are being reviewed and updated to reflect the stage of the examination. Most of the documents have been drafted using conditional language reflecting the early stage of the application in which they were drafted. For Deadline 8 the suite of control documents will be submitted as versions suitable for certification.</p> <p>The language will be reviewed and updated as appropriate across the suite of control document to reflect the imperative commitments through the documents and only leaving flexibility where it is necessary for delivery and acceptable within the parameters assessed in the <b>ES</b>. Imperative terms within all Level 1 control documents will be reviewed as part of the update for Deadline 8.</p>
<p>16. The Applicant will see that documents referred to are difficult to find, inconsistently referred to, that it is not clear by whom they are to be enforced or how. The ExA has not conducted reviews to the same level of intensity on all the documents, but it is concerned that these examples, whether in the Bat Mitigation Strategy or elsewhere in the suite of regulatory documents</p>	<p>The Applicant will review the suite of control documents in response to these comments from the ExA and updated versions will be submitted at Deadline 8.</p> <p>The note on <b>Structure of Control Documents and Subsequent Approvals (Appendix C)</b> has been updated to describe other documents which are called</p>

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ExA Comment	Response
they may undermine the enforceability and effectiveness of the documents and the mitigation they help to deliver.	“plans” or “strategies” and explain what the status of each document is in the examination.

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## 7 APPENDIX B: SECURING MITIGATION – ISSUES IN THE CODE OF CONSTRUCTION PRACTICE

**Table 7.1: Response to ExA’s comments in Appendix B on securing mitigation – issues in the CoCP**

ExA Comment	Response
<p>1. Req 2 makes it an obligation to comply with the CoCP in the construction of the authorised development and the removal and reinstatement of temporary works (unless otherwise approved by ESC). This is a project-wide obligation.</p> <p>2. The CoCP (Doc 8.11) was updated at D2 with Revision 3 [REP2-057]. This note takes into account the changes made by Revision 3, using the tracked changes version. E-page numbers are accordingly to that version. Normally this note uses paragraph and table numbers.</p> <p>3. The CoCP is in three parts, A, B and C relating to the whole project, main development site and associated sites respectively. Paper page numbering restarts at 1 for each part. The ExA does not use the paper numbering. The CoCP is designated in the ES as Tertiary mitigation, being controls applied by other legislation and normal industry practice.</p>	Noted.
<b>Part A – Project Wide</b>	

ExA Comment	Response
<p>4. In relation to part A there are no changes between Revision 2 and 3 which are of significance to this note.</p> <p>5. Each part has its own introduction. In the part A executive summary we read that: “The aim of this CoCP is to provide a clear and consistent approach to the control of Sizewell C construction activities on the main development site and the associated development sites, to minimise impacts on people and the environment.” The same formulation is used for parts B and C.</p> <p>6. We learn at para 2.2.3 that: “This CoCP also requires a number of subsequent plans and documents to be prepared during the construction process, setting out further details of how additional mitigation measures would be applied during the construction phase. Where such details are set out, the CoCP details who would prepare such details, along with the securing mechanism proposed.”</p> <p>7. The ExA is not clear that this has in fact been done, or at least not in all cases. There is no indication for example of how the Two Village Bypass oLEMP nor the Sizewell Link Road oLEMP are secured, nor how they are implemented. There are similar concerns in relation to the overall oLEMP. All three oLEMPs are listed in the CoCP so para 2.2.3 ought to apply to them. Other documents are listed at para 2.3.13 of Part A, para 1.4.1 of Part B and 1.2.1 of Part C. The Applicant is asked to give the details of the Reqs or other mechanisms which are used.</p>	<p>The Applicant has updated Part A of the <b>CoCP</b> to describe with greater clarity the environmental control framework and how the <b>CoCP</b> and related documents fit within that.</p> <p>An explanation of the status of the <b>CoCP</b> and other documents referred to within it has been added to Part A of the <b>CoCP</b>. However, a version of the <b>CoCP</b> will be submitted at Deadline 8 with reference to the final requirement numbers of the DCO.</p>

ExA Comment	Response
<p>8. Para 2.3.4 explains that there will be further details in subject specific management plans (SSMPs). The ExA has not been able to locate how these will be prepared and approved, nor by whom they will be approved. Word searches in the dDCO for “subject specific” and “subject specific management plans” return no results.</p> <p>9. The CoCP does not appear to have further details. Plate 2.1 suggests they flow from the Environmental Management and Monitoring Plan. Is that the Terrestrial Ecology Monitoring and Mitigation Plan (TEMMP) which is obligated by Req 4? If it is, will it deal with the production and approval of SSMPs nor the subjects to be covered. The Terrestrial Ecology Monitoring and Mitigation Plan only appears in Req 4 and is not defined. Is it meant to be [REP1-016]? Why is it not referenced in the D2 revision of the dDCO? Is document [REP2-016] agreed by Natural England and the host authorities? A word search of Document [REP2-016] does not return any results for “subject specific management plan” nor for “SSMP”.</p> <p>10. This is important for a number of reasons and particularly that the contractors “will use the SSMPs and other project requirements provided to them to produce their CEMP” (Part A para 2.3.5).</p>	<p>The <b>CoCP</b> has now been updated to clarify how all subsequent approvals set out in the <b>CoCP</b> would be secured. The Level 2 documents required by the <b>CoCP</b> will be submitted for approval using the process set out in Schedule 23 of the <b>dDCO</b> unless otherwise specified. This clarification has been added to Part A of the <b>CoCP</b>. For clarity references to the terms ‘<i>subject specific management plans</i>’ has been removed from the <b>CoCP</b> and instead plans have been referred to by name.</p> <p>The <b>TEMMP</b> <a href="#">[REP5-088]</a> sits outside and alongside the <b>CoCP</b> and is secured through Requirement 4. The <b>CoCP</b> secures measures and methodologies which must be complied with in carrying out particular activities. The <b>TEMMP</b> secures the monitoring for terrestrial ecology that must be carried out through the construction and operation of Sizewell C and any potential interventions required as a result of that monitoring. The <b>CoCP</b> has been updated to clarify the relationship between the <b>TEMMP</b> and the <b>CoCP</b>. The <b>TEMMP</b> is a certified document and has been defined</p>

ExA Comment	Response
	<p>in Rev 8 of the dDCO. <b>Plate 2.1</b> has been removed for clarity.</p> <p>The <b>TEMMP</b> <a href="#">[REP5-088]</a> is agreed with ESC, subject to it being updated as per the ESC Deadline 6 comments <a href="#">[REP6-032]</a>. These changes will be made at Deadline 8.</p> <p>The <b>TEMMP</b> <a href="#">[REP5-088]</a> is not yet fully agreed with Natural England or SCC.</p> <p>Contractors will prepare CEMPs in accordance with all relevant Level 1 and Level 2 control documents as well as other legislation, guidance and other project requirements. Part A has been updated to remove reference to ‘SSMPs’ and refer to specific plans by name.</p>
<p>11. Para 2.3.8 states that “The documents will be produced, reviewed and approved by SZC Co”. For SZC to do all three sounds pointless. Presumably it is only the review and approval function which is with SZC.</p>	<p>The <b>CoCP</b> has been updated to clarify that SZC Co. has included information about how it will ensure that commitments are carried out by its many contractors and the internal monitoring and reporting which will</p>

ExA Comment	Response
Please will the Applicant confirm. However, is that appropriate? The Applicant would appear by that to be setting its own regulatory standards.	occur. This is separate to the monitoring and reporting which is necessary to make the project acceptable in planning terms and SZC Co. has committed to share externally. However it has been included to provide comfort to the ExA that on a project of this scale and complexity, SZC Co. has clear process for ensuring the commitments SZC Co. is responsible for delivering will be complied with.
12. The SSMPs may change with the project – para 2.3.12. How will ESC know what the changes are so that they can ensure they are complied with? How can ESC approve the changes?	SZC Co. must carry out the project in accordance with the <b>CoCP</b> , including any Level 2 documents produced and approved pursuant to the <b>CoCP</b> . Any change to an approved document would need to be approved by ESC. The process for approving the changes will be the same as that for approving Level 2 documents in the first place. An explanation of this has been added to Part A of the <b>CoCP</b> .
13. There appears to be more self-setting of standards in relation to environmental monitoring reports which are mandated by para 2.3.10; they are to be “in line with SZC Co’s requirements”. What are those requirements? Are they appropriate and suitably rigorous? Would it not be better for monitoring reports to be submitted to ESC and publicly available? Similarly, there are to be event-based checks following significant events such as heavy rainfall or high winds, complaints, a non-compliance report or	There are two types of monitoring and reporting in the <b>CoCP</b> : external and internal audit. The <b>CoCP</b> has been updated to clarify which type each is. SZC Co. has committed to monitoring and reporting to the governance groups established under the <b>DoO</b> . SZC Co. has included some of the obligations it will put on its contractors to monitor and report. The defined



ExA Comment	Response
exceedance in monitoring results. Whilst these are valuable, how is the enforcing authority to know of the relevant event, check and result?	monitoring will be reported to the Ecological Working Group and Environment Working Group as set out. These clarifications are intended to provide greater clarity for the ExA.
14. It is noted that a number of plans are to be secured by s.106 obligations (Revision 2) or the draft Deed of Obligation (Revision 3). A separate discussion is under way in the examination on the appropriateness of a separate contractual agreement.	Noted. No further response from the Applicant.
<b>Part B – Main Development Site</b>	
15. The Ecological Clerk of Works (ECoW), Table 6.1 and elsewhere. The ExA asked in ExQ1s what would be the powers of the EcoW. In particular, would the EcoW have the power to halt work? The functions of the EcoW listed in Table 6.1 include: “overseeing on-site ecological mitigation and ensuring that the ecological measures in this CoCP are implemented”; “EcoW will advise and assist the contractor in avoiding, minimising and mitigating adverse ecological effects”; overseeing the Installation of overhead lines above the SSSI “to ensure impacts on retained habitats are minimised”; overseeing coastal defence works to ensure appropriate layers, i.e. (sic) those likely to include seedbanks are safeguarded”; to advise on appropriate courses of action to protect badgers, natterjack toads, reptiles, otters, water voles, newts; and so on. Many of these functions involve	The ExA is correct in stating that the EcoW is a method to monitor and provide oversight for the construction works. The EcoW would also help the contractors to avoid and minimise ecological effects. Where the EcoW believes that a potential breach of the DCO may be taking place, then they would report this to the SZC Co.’s Environment Manager. This function would together provide ESC confidence that the measures in the <b>CoCP</b> to protect and avoid ecological impacts will be effectively implemented throughout the course of construction.

ExA Comment	Response
<p>judgment calls on matters which are not necessarily mandated by law but are desirable. The ES specifically calls in aid the EcoW as mitigation.</p> <p>16. However the powers of the EcoW are, by line 1 of Table 6.1, limited to matters which are a breach of the law. The table states: “Where the EcoW disagrees with works being undertaken by the contractor, which could lead to a breach in the CoCP, or DCO Requirement, or measures detailed in the ES, or a protected species licence, the EcoW will inform SZC Co. or the SZC Co. Environment Manager immediately. On advice of the EcoW, the SZC Co. Environment Manager may halt the works or parts thereof”.</p> <p>17. Breaches of the law are matters the contractors (and the Undertaker) ought to be avoiding of their own volition. The EcoW appears to be simply a policeman. The EcoW cannot stop the works even for breaches of the law. That decision lies elsewhere, with SZC Co (or presumably with the Undertaker at the time). The matters involving the application of judgment, discretion and good practice but which are not unlawful, are not ones where the EcoW has any power. The EcoW is therefore not an agent of mitigation, but a monitor.</p>	
<p>18. Para 6.2.2 – mitigation at the Sizewell Marshes SSSI to be agreed with local site managers. What if they won’t agree?</p>	<p>Noted. It has been reviewed so that agreement is sought from the Ecology Working Group, following consultation with the local site managers.</p>
<p>19. Responsibility for monitoring – para 6.2.4 distinguishes between monitoring which is the responsibility of the undertaker (or SZC Co as the</p>	<p>The <b>CoCP</b> has been updated to clarify the relationship with the <b>TEMMP</b><a href="#">[REP5-088]</a>. A review of the <b>TEMMP</b></p>

ExA Comment	Response
Applicant says) and the contractor. It should be understood that the whole responsibility is with the undertaker. The CoCP is telling the contractor what the undertake expects it to do. A breach by the contractor will be just as much a breach by the undertaker and the CoCP should not seek to change that.	will be carried out to ensure clarity that SZC Co. as the undertaker is responsible for compliance and to define the scope of monitoring and reporting requirements to governance groups.
20. Standard of duty. There are several references which qualify the duty by making it “where feasible and practical” (e.g.Table 9.1 row 2, soils, table 12.1, Piling and UXO detonation) or simply “practical”. These qualifications could come into play for a wide range of avoidable reasons. For example, if the right machinery is not ordered in time, then to perform the task to standard may not be feasible or practical. But the failure to procure the machine should not be an excuse. Is this watering down of the standard really appropriate? In Table 12.1 we see that the 5m bund is not to be altered “where possible”. Are not precautions to be put in place if it is altered? How is it appropriate to alter a defence?	<p>The use of the terms ‘<i>where feasible</i>’ explained in response to Response 2.2, above. The use of practical is intended to be uses in the common reading of the word, in that a measure that would be applied providing that it was sensible or realistic to do so. In response to the points raised:</p> <ul style="list-style-type: none"> <li>• ‘<i>Where feasible and practical, the contractors will ensure soils are stripped and handled in the driest condition possible</i>’:</li> <li>• Feasible is also used in two additional instances where the actions would help reduce potential impacts but are not essential in avoiding significant environmental effects.</li> <li>• ‘<i>where practical</i>’ is used in a single instance in relation to noise which states ‘<i>to achieve the lowest noise and/or vibration emission levels from the site wherever practical</i>’. This is in</li> </ul>

ExA Comment	Response
	<p>relation to the commitment to Best Practicable Means and is a good practice measure that would reduce impacts, rather than avoiding a significant impact. The key limit here are the noise thresholds, which are expressed in clear terms and are the most relevant mitigation measure that seeks to avoid significant impact.</p> <ul style="list-style-type: none"> <li>• UXO: it should be noted that paragraph 10.2.1, first bullet clarifies that <i>‘Additional assessment of the moderate WWII UXO bomb risk identified across the site and in areas not previously covered by the 2010 report would be undertaken in the form of a detailed UXO desk study and risk assessment. Where required, mitigation measures would then be implemented as appropriate’</i>. This is the absolute commitment. The measure in Table 11.1 is then an additional consideration that would be in addition to this.</li> <li>• <i>‘Avoid altering the 5m bund wherever possible’</i>, Table 12.1: this should be read in conjunction with the row above, which defines the only instance where the bund would be altered. No further alterations are expected.</li> </ul>

ExA Comment	Response
	It is accepted that these qualifications do allow some limited and defined instances where actions might not need to apply, but they relate to items where noncompliance could lead to significant environmental effects. This is because of there are always hard limits that sit alongside these measures.
21. “Measures contained in relevant Defra and Environment Agency best practice guidance on the control and removal of invasive weed species will be implemented where appropriate.” Table 9.1 e-page 85. Why would they not be appropriate?	‘ <i>where appropriate</i> ’ was intended to clarify that the guidance would apply where such species were found to be present. The <b>CoCP</b> has been updated to clarify this commitment.
22. Watching brief, Table 11.1, row 2. What action is taken as a result of what is observed? There are many instances of monitoring but without any action to be taken on the basis of what is observed. No thresholds, no tests.	See <b>Appendix B</b> to this Response “Response to ExA DCO Commentary on EIA Scope and Monitoring”.  Para 2.1.8 of the <b>CoCP</b> clarifies that ‘ <i>Contractors will ensure that a watching brief for contamination is maintained by trained personnel during the construction works to deal with potential additional ‘chance finds’ of contamination. In the event that ‘chance finds’ of additional contamination are discovered, the measures outlined in <b>Table 10.1</b> will be implemented. Excavation of areas of higher contamination risk will be completed by suitably qualified and experienced personnel, to ensure that</i>

ExA Comment	Response
	<p><i>mitigation measures are effective, and that residual impacts will not be significant.’</i></p> <p>The CoCP has now been reviewed to ensure that where commitments are made to monitoring there are appropriate actions defined that clarify what would need to be undertaken should that monitoring identify the potential for significant environmental effects to occur.</p>
23. Marine environment and the conditions of the DML. Para 12.1.3 gives examples, but does not say which conditions on the DML relate to them. Please say which they are.	Specific references to the DML conditions have been inserted.
24. Table 12.1 – Piling and UXO detonation, the references to feasibility should not water down the maxima which have been assessed by the ES.	See response to para 22.
25. Greenhouse gas emissions – para 14.1.2 “The contractors will be required to specify measures to reduce greenhouse gases from construction activities, such as: ... “. The use of “such as” means none of the six measures which are listed is obligatory. The contractor can pick and choose.	<p>The Applicant assumes that “para 14.1.2” is a typographical error and should refer to “para 15.1.2”.</p> <p>The obligation on SZC Co. is to seek to control and manage greenhouse gas emissions during construction, where possible. SZC Co. has explained how it intends to ensure compliance with this commitment through obligations it will likely place on its contractors. This wording reflects the diverse nature of</p>

ExA Comment	Response
	works carried out by contractors and that not all measures will be appropriate for all contractors to ensure compliance with SZC Co's obligation.
<p>26. The Freshwater Fish and Aquatic Invertebrates Mitigation Strategy at Part B Appendix A</p> <p>26.1. Para 5.1.6 – should the ref be to para 5.1.1. and 5.1.2?</p> <p>26.2. Section 7 – criteria for success – what is Natural England’s view on this?</p>	<p>The ref in Para 5.1.6 is a typographic error ‘Paragraph 5.1.25.1.1 ‘. The reference should be taken to be to 5.1.2 and to the list of measures which will be deployed to mitigate the impacts on both invertebrates and fish which starts at paragraph 5.1.2. There is a further typographic error here in that no paragraph number is assigned to the list of bullets for fish, but this can be taken to be a continuation of 5.1.2, despite the presence of a sub-heading.</p>
<b>Part C – Associated Sites</b>	
<p>27. At para 1.2.1 the ref to the oLEMP – but not the TVB and SLR oLEMPs – has been removed from the list of relevant EMS and Plans. Given that from its introduction, para 1.1.1 the oLEMP [APP-588] is supposed to be project-wide, can this be right?</p>	<p>The <b>oLMEP</b> <a href="#">[REP1-010]</a> is project wide and is secured by Requirement 14. Therefore the reference to the <b>oLEMP</b> <a href="#">[REP1-010]</a> in the original <b>CoCP</b> was incorrect.</p>
<p>28. Headings in section 6.1 (overview) are not giving clarity. Is the first heading – (i) - is needed; what does it achieve, especially as it is not referenced in the previous para (this info is probably the ecological measures which are outside the CoCP) and there is no section (ii). Instead</p>	<p>The <b>CoCP</b> has been updated to remove the heading of “a) Overview” and restructured to reflect these comments.</p>



ExA Comment	Response
we go to section (a). Would it be clearer to refer to paras 6.1.2 - 6.1.4 in para 6.1.1.	
<p>29. Historic environment,</p> <p>29.1. Tertiary mitigation. It is said that none have been identified. But the ES chapters all say the CoCP is tertiary mitigation. Please explain what is the status of the “Additional Mitigation, Monitoring and Management” in the Primary, Secondary, Tertiary classification we find at para 8.2. This is a question which goes across the whole suite of the CoCP.</p> <p>29.2. Para refers to measures to be secured by reqts, including that it will be an Archaeological Contractor which does the archaeological fieldwork. That is not yet in Req 3.</p>	<p>Noted. The <b>CoCP</b> Part C has been updated to clarify this point. The draft was seeking to confirm that the principal mitigation measure is the <b>Overarching Archaeological Written Scheme of Investigation [REP3-022]</b>, secured by requirement 3. The <b>OAWSI</b> then includes the commitments relating to the Archaeological Contractor. The <b>CoCP</b> Part C has been updated to clarify these points.</p>
30. Table 9.1: Control measures to mitigate soils and agriculture impacts – line 3 “Measures contained in relevant Defra and Environment Agency best practice guidance on the control and removal of invasive weed species will be implemented where appropriate.” How could they not be appropriate?	See response to para 21.
31. Table 10.1 Control measures to mitigate impacts on geology, soils and land contamination – “If unidentified contamination is encountered, works will be temporarily suspended in the area and appropriate investigations and remediation will be discussed and agreed with stakeholders ... “. What if they disagree?	Noted. This has been updated to refer to ESC and the Environment Agency.

ExA Comment	Response
32. Table 11.1: Control measures to mitigate groundwater and surface water impacts, row 7 “Construction works for activities within or adjacent to surface water flood routes / zones should employ weather monitoring”. Will they? An extreme example of conditional language. Same problem in Row 11.	Noted. This has been updated to refer to ‘will’.
33. Language. The CoCP is a regulatory document, breach of which gives rise to criminal sanctions. Some aspects are clearly set out as obligations, using the word “shall”. There are also a number of uses of “will”. However, there are many instances of “would”, sometimes there is “should” and there is even an “is to” and the odd “could”. These words are conditional. There are evidently several draftspersons at work on the document. The ExA expects that in most cases the words used should be imperative, that is to say “shall”. The convention is that where a different word is used, that is for a reason. The ExA suggests that the Applicant standardises the obligatory matters with “shall”.	The use of these terms is explained in response to Response 2.2 and 20 above.
34. Standards. In part C at Table 6.1 line 6 – nesting birds – we read that “The removal of scrub and trees and ground clearance works will generally be undertaken outside of the breeding bird season”. The line goes on to say what will happen when removal is outside the nesting season and prescribes an “estimated 10 metre standoff” within works must cease. Can more precision and criteria be given for the standoff? Also, the ExA questions whether “generally” is appropriate here. In a prescriptive document (which is forward looking to what ought to be done), as opposed	Noted. This has been updated to refer to use imperative terms.

ExA Comment	Response
to a review document (which looks backwards at what has been done) generally is of little help in setting the standard.	
<b>Overall</b>	
35. It is not clear how some subsidiary documents are required or are created. Nor is there a clear external approval process. For example it is not clear how the Two Village Bypass oLEMP, the Sizewell Link Road oLEMP are secured, nor how they are implemented. There are similar concerns in relation to the overall oLEMP (on which see the separate note on securing mitigation issues in the oLEMP). All three oLEMPs are listed in the CoCP so para 2.2.3 of Part A ought to apply to them. Other documents are listed at para 2.3.13 of Part A, para 1.4.1 of Part B and 1.2.1 of Part C. Are there adequate mechanisms securing these; the Applicant is asked to give the details of the Reqs or other mechanisms which are used.	<p>The <b>CoCP</b> has been updated to clarify how subsidiary documents would be approved, including the timing and the body who would be responsible to determine each.</p> <p>It should be noted that the Main Development Site <b>oLEMP</b> <a href="#">[REP1-010]</a> is secured by Requirement 14 (MDS: Landscape works), which obliges a MDS LEMP to be prepared as part of the landscape and ecology scheme for the MDS. LEMPs have been submitted to the examination at Deadline 5 for both the Sizewell link road and the two village bypass, which are secured by requirement 22A. The <b>Sizewell Link Road LEMP</b> <a href="#">[REP5-076]</a> and <b>Two Village Bypass LEMP</b> <a href="#">[REP5-077]</a> include all relevant details needed for the implementation of the works.</p> <p>These are considered to provide appropriate and robust securing mechanisms.</p>

ExA Comment	Response
36. There are similar concerns about SSMPs. This is important for a number of reasons and particularly that the contractors “will use the SSMPs and other project requirements provided to them to produce their CEMP” (Part A para 2.3.5).	As set out in 2.2 above, the <b>CoCP</b> has been clarified to refer to specific documents and no longer uses the term ‘SSMP’. This now provides clarity over how each Level 2 document would be secured, including how these documents would be approved by the relevant authority. These are required by the <b>CoCP</b> to give the relevant authority approval of the detail of how various activities will be managed and the level of monitoring and reporting.
37. In many cases the Applicant appears to be setting its own regulatory standards, and for there to be no external scrutiny.	As set out in our responses above, the <b>CoCP</b> has been reviewed to clarify how the measures in the <b>CoCP</b> would be secured, along with clarifications to how subsequent approvals are secured.
38. Provisions for revision of the documents required by or deriving from the CoCP appear to exclude ESC, and it is difficult for ESC to tell whether the triggers for revision have occurred and whether revisions have occurred.	As above.
39. These and other aspects will make enforcement of req 2 – that the CoCP is complied with – difficult.	As above.
40. The ECoWs enforceable powers are limited to breaches of the DCO, requirements and the CoCP, measures detailed in the ES or protected species licences. These are all breaches of the law (subject on to the	Please refer to our response to 15, above.

ExA Comment	Response
assumption that the Applicant has successfully translated all the measures in the ES into requirements, Articles of the DCO, the CoCP and its subsidiary documents being correct, as it should be) and there are already enforcement mechanisms for that. However the ECoW’s power is simply to alert SZC (who may themselves be a perpetrator of the breach). The ECoW cannot halt work. The ECoW’s judgment calls and advice cannot be enforced if they are ignored. Given that these powers are part of mitigation, this needs to be addressed. As it stands, the ECoW is therefore not an agent to deliver mitigation, but a monitor.	
41. Many duties are diluted by references to practicality, feasibility, appropriateness and other qualifications. Many things go to practicability and these qualifications, and they include human error, and failure to plan ahead. In principle, mitigation is required, come what may, or environmental effects will be worse than what is concluded in the ES. It is difficult to see that the qualifications are appropriate.	The use of these terms is explained in response to Response 2.2 and 20 above.
42. Similarly, some standards are vague, as in the case of the discovery of nesting birds.	Please refer to our response to 34, above.
43. Monitoring and watching briefs. It is rare for the CoCP to specify what is to be done if the monitoring reveals failures. This should be remedied.	Please refer to our response to 13, above.
44. Some measures require the agreement of stakeholders or landowners. But what is to happen if they do not consent? The environmental effect will	As set out in our responses above, the <b>CoCP</b> has been reviewed to clarify how the measures in the <b>CoCP</b>

ExA Comment	Response
not be mitigated and the ES – which relies on tertiary mitigation of which the CoCP is an important part – will have incorrect conclusions.	would be secured, along with clarifications to how subsequent approvals are secured. Schedule 23 of the DCO then sets out the appeals process should a submission be refused.
45. Identity. The CoCP identifies SZC Co as the person with overall responsibility for compliance. However, the DCO can be transferred to another person. The references to SZC Co should surely all be to the undertaker.	Yes, this is correct. The <b>CoCP</b> Part A has been updated to clarify this point.
46. Language. Mitigation duties are often expressed in conditional rather than imperative language. The ExA has made observations about this in other commentary on documents in the suite of regulatory documentation. These documents create criminal liability, so the language needs to be clear. “Should”, “could” and “would” are inappropriate. They are used inconsistently. In most cases they ought to be replaced with “shall” or “must”.	The use of these terms is explained in response to Response 2.2 and 20 above.

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## APPENDIX A: DRAFTING NOTE 12 – ARTICLE 8, 9, 9A AND 9B



**DRAFTING NOTE 12**  
**ARTICLES 8, 9, 9A AND 9B – BENEFIT AND TRANSFER OF THE UNDERTAKING**  
**AND**  
**ENFORCEMENT AND MODIFICATION OF THE DEED OF OBLIGATION**  
**Deadline 7**

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**1. PURPOSE**

- 1.1 This note addresses issues:
- 1.1.1 raised by the ExA's Commentary on the draft DCO
  - 1.1.2 SCC's Written summary of oral case at ISH1, provided at Deadline 5
  - 1.1.3 ESC's Written summary of oral case at ISH1, provided at Deadline 5
  - 1.1.4 Further comments received by the Applicant directly through further engagement in relation to Rev 5 of the dDCO.
- 1.2 It is worth noting that SCC and ESC's Deadline 5 Written Summaries of Oral Submissions post-ISH1 were written without having seen the Applicant's Deadline 5 submissions and in particular without having seen the Applicant's further developed drafting of these articles in Rev 6 and Rev 7 of the dDCO, which benefitted from the Applicant's further thinking on enforcement set out in its 'Response to Enforcement Issues Arising from ISH1', submitted by the Applicant at Deadline 5 which we believe satisfies a large number of the Councils' concerns with regard to enforcement issues.
- 1.3 This note therefore addresses the ExA's Commentary as well as such issues raised by ESC and SCC in relation to article 9 and 9A as we consider have not already been addressed in the Rev 7 version of the DCO submitted at Deadline 6. We note that the ExA has asked the Councils to comment specifically on art 9A and 9B, and this note therefore also seeks to address as far as possible the concerns the Councils has raised in relation to art 9A. We await comments from the Councils in relation to art 9B.

**2. ARTICLE 8**

- 2.1 Following the suggestion of the Councils [and the ExA], we have moved to article 8, the drafting previously in article 9A(3) in relation to the benefit of the Order empowering the Councils in the event that they wish to enter the land to carry out operations in an enforcement scenario. Article 8 now provides as follows (new drafting shown in track changes):

**Benefit of Order**

8. Subject to article 9 (Consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of NNB Generation Company (SZC) Limited save for:

- (a) the Sizewell B relocation works 1 and the Sizewell B relocation works 2, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and EDF Energy Nuclear Generation Limited;
- (b) in respect of any rail works, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and Network Rail; and
- (c) in respect of any grid works, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and National Grid.



(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

(3) For the purpose of exercising the power to carry out operations under paragraph (2)(a) of article 9A, East Suffolk Council and Suffolk County Council are deemed to have the benefit of this Order.

### 3. ARTICLE 9

- 3.1 The Rev 7 version of article 9 of the dDCO is set out below, showing in track changes the changes put forward in Rev 8 submitted at Deadline 7. An explanation for the changes, having regard to the comments of the ExA, SCC and ESC is set out below:

#### Consent to transfer benefit of Order

9.—(1) The undertaker may, with the written consent of the Secretary of State following consultation with East Suffolk Council and Suffolk County Council—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licence, in whole or in part) and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licence, in whole or in part) and such related statutory rights as may be so agreed.

(2) The undertaker may not authorise the operation or use of the Work No.1(a) to (h) power station by another person without transferring the benefit of the Order to that person.

(3) The Secretary of State must consult the Marine Management Organisation before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed marine licence.

(4) Where a transfer or grant has been made in accordance with this article, references in this Order to the undertaker, except in paragraph (5), (6) and (7) include references to the transferee or the lessee.

(5) Where the undertaker has transferred any benefit (“transferor”), or for the duration of any period during which the transferor has granted any benefit, under paragraph (1) –

~~(a) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations under this Order as would apply if those benefits or rights were exercised by the transferor; and~~

(5A) (b) save to the extent agreed by the Secretary of State The obligations of the undertaker under the Deed of Obligation<sup>1</sup> are enforceable against any person to whom the power to construct or operate Work No. 1A(a) to (h) has been transferred or granted under article 9 for so long as they benefit from the power to construct or operate any of those works. , 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.

(5B) The obligations of parties to the Deed of Obligation, other than the undertaker, are enforceable by any person to whom the power to construct or operate Work No. 1A(a) to (h) has been transferred under article 9 for so long as they benefit from the power to construct or operate those works.

(6) The consent of the Secretary of State is required for the exercise of powers under paragraph (1) except where—

<sup>1</sup> “Deed of Obligation” is defined as: “means the document certified by the Secretary of State as the Deed of Obligation under article 80 and identified in Schedule 22 for the purposes of this Order and (i) any modification variations to it made from time to time pursuant to article ~~9A or~~ 9B; and (ii) any deeds of covenant or other agreements entered into pursuant to Clause [15] of it from time to time;



~~(a) the transferee or lessee is the holder of a licence under section 3 Nuclear Installations Act 1965; or~~

~~(b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—~~

~~(i) no such claims have been made;~~

~~(ii) any such claim has been made and has been compromised or withdrawn;~~

~~(iii) compensation has been paid in final settlement of any such claim;~~

~~(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or~~

~~(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.~~

(7) Where the consent of the Secretary of State is not required under paragraph (6), the transferor must notify the Secretary of State, East Suffolk Council and Suffolk County Council in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(8) The notification referred to in paragraph (7) must state—

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph (9), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (4), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) must be signed by the transferor and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

#### 4. THE EXA'S COMMENTARY ON ARTICLE 9

4.1 At paragraph 2.21 of the ExAs Commentary, the ExA notes that: *"in the D5 version of the dDCO (Revision 5) the provision of Clause 9(5)(b) that "the Deed of Obligation completed pursuant to this Order, and any variations to it at the date of transfer or grant, shall be enforceable against the transferee or lessee as they would against the transferor" has been deleted and replaced by a procedure needing a deed of adherence. The stated intention of the Applicant when it put forward the DoO was to make the DoO apply to the undertaker, just like the DCO. It is to run with the DCO rather than "with the land". Accordingly, the ExA strongly suggests a return to the original wording rather than adding the need for another action – the execution of a deed."*

4.2 *"The ExA also does not see a justification for the 'save to the extent' wording, giving the SofS the ability to relieve a transferee undertaker of the obligations in the DoO. No such option is available if the deed were a conventional s106 agreement; no such option is available in the case of any provisions of the DCO. The ExA's comment applies also to the "unless otherwise agreed" provisions of the DoO in clause 4.5. There are consequential effects to Clause 8.10 of the DoO."*

4.3 The use of a deed of adherence approach was in response to the preference of the Councils. However, the Applicant is content to revert to an approach of automatic adherence to the Deed of Obligation (which is defined to include variations thereto). In Rev

8, art 9(5)(b) has been deleted and replaced with new standalone sub-paragraphs 9(5A) and 9(5B) to provide for this.

- 4.4 This drafting would ensure that the company with the powers to build or (once built) to operate the power station will be bound by the Deed of Obligation. Under the nuclear safety regime, there could only ever be one such company at any one time, authorised to construct or operate the power station. By virtue of clause 5 of the Deed of Obligation, that company will be bound by all of the obligations in the Deed of Obligation until such time as it has transferred all of powers to another company (with the Secretary of State's consent). It is also clearly important that the new undertaker is able to enforce the terms of the deed against its signatories, and therefore this is also provided for in art 9.
- 4.5 This drafting achieves the position the Applicant has put forward as appropriate under the Evolving Approach. The ExA's characterisation of the Applicant's position as being that the Deed of Obligation should '*apply to the undertaker, just like the DCO*' is slightly over-simplified. The Applicant's position is that the Deed of Obligation should bind the main undertaker of the project - the undertaker who is funding and will commercially benefit from the project. We have explained in previous submissions that we do not consider it appropriate for ENGL, National Grid or Network Rail to be bound by all of the liabilities in the Deed of Obligation – nor would they agree to enter into such obligations under either the Deed of Obligation or a s106 agreement, even with an indemnity.
- 4.6 These parties are essentially sub-contractors to the Applicant, delivering works required for the project at the Applicant's request, for the Applicant's benefit, and funded by the Applicant. They are essentially no different from the other sub-contractors who the Applicant will be entering into contracts with to build elements of the project who will benefit from the DCO powers of the Applicant by acting as its agent in carrying out the works they are contracted for.
- 4.7 We have taken the step of drafting the DCO in a way which gives ENGL, Network Rail and National Grid their own powers to carry out elements of the project infrastructure which they will own or control in the long-term as part of their own asset base. We have done this purely to ensure there is no legal argument in future about whether such parties are carrying out works on their own behalf rather than as SZC Co's agent. However, they are fundamentally in the same position as the Applicant's other sub-contractors, with regard to their interest in carrying out the works.
- 4.8 It is for this reason that we consider it reasonable that these parties should not be bound by the Deed of Obligation.
- 4.9 In the unlikely event that these 'undertakers' wished to transfer the power to carry out the works to another company, we would consider it equally unnecessary and unreasonable that such a company should be automatically bound by the Deed of Obligation.
- 4.10 We cannot envisage any other circumstances where the Applicant would need or wish to transfer powers to carry out any elements of the 'associated development' to third parties. As explained, we expect the 'sub-contractor acting as agent of SZC Co model' to be sufficient legally for all other elements of the project. In any event, our position is that only the main undertaker of the project, being the party building or operating the power station, should be bound - regardless of which other parties may carry out particular elements of the works at their behest from time to time.

## 5. EXPLANATIONS OF OTHER CHANGES MADE TO ARTICLE 9 IN REV 8 DCO

- 5.1 SCC has raised a concern (p8) that the Secretary of State's consent should be required for a transfer of DCO powers even where all liability in respect of compulsory acquisition powers has been met. There are numerous precedents for such drafting in recent DCOs. However, we are content to remove it if this is SCC's preference.



- 5.2 Furthermore, we have added provision that the Secretary of State must consult both Councils before transferring the benefit of the DCO and have added drafting accordingly to art 9(1). The only circumstances therefore in which the Secretary of State's consent to transfer of the benefit of the Order powers is not required (and therefore the Councils will not be consulted) is where the new undertaker holds a nuclear site licence. We believe this is appropriate, and was not challenged by the ExA in relation to the Wylfa DCO. The Office for Nuclear Regulation in awarding nuclear site licences carries out a thorough due diligence exercise on the incoming company, including in relation to its financial standing, and therefore SCC can have comfort that an incoming undertaker with a nuclear site licence would have the ability to meet all financial obligations under the Deed of Obligation.

6. **OTHER POINTS RAISED BY SCC IN RELATION TO ART 9 IN THEIR WRITTEN SUMMARY OF ISH1**

- 6.1 In this section we comment where we consider it helpful on the other key concerns raised by SCC in relation to article 9 in their deadline 5 Written Summaries following ISH1. Page references are to that document.

**Application of s111 LGA 1972 and s1 LA 2011 where tests under s106(1) not met**

- 6.2 We note SCC's comment (p16) that it is possible for planning agreements to be entered into pursuant to s111 Local Government Act 1972 and s1 Localism Act 2011 as well as under s106 Town and Country Planning Act 1990, in order to ensure that all commitments are binding regardless of whether they fulfil the tests for 'planning obligations' under s106(1)(a) to (d) TCPA 1990. We recognise that this is common practice, however, the ExA has expressed the view that since only true 'planning obligations' meeting the s106 (1) test will run with the land, the commonly used practice of referring to these other empowering Acts is insufficient to ensure that all obligations in the agreement run with the land. It is this early comment, among others from the ExA, which has led the Applicant to propose the 'Evolving Approach', which we continue to consider most appropriate in all the circumstances.

**Network Rail, National Grid and ENGL**

- 6.3 SCC states (p17) that it would welcome *"the Applicant's views as to what, if any, further drafting the Applicant would propose to the draft Deed of obligation to ensure that any breach of the triggers relating to obligations in the Deed of Obligation by [Network Rail, ENGL or National Grid] would be enforceable directly against the Applicant and how does the Applicant intend to ensure that these three entities comply with the terms of the Deed of Obligation."* On p18 there are further comments relating to concerns SCC has about enforcing against these parties directly for breach of the Deed of Obligation.
- 6.4 The Applicant will pass down to all of its contractors, through the many contracts it enters into, the duties to deliver the infrastructure required for the project to the timetable required to meet the Applicant's commitments in both the DCO and the Deed of Obligation. It will similarly pass down to contractors all requirements and obligations to carry out the authorised development in accordance with the methods and restrictions set out in both documents in order to ensure that the Applicant is not put in breach by the manner of their execution of the works.
- 6.5 Network Rail, National Grid and ENGL are (as explained above) essentially just three parties contracted to deliver elements of the project, among many others. All such sub-contracts will be drafted to incentivise timely delivery. If for some reason any party is later in delivering the required infrastructure than contracted, the Applicant would be able to take action under its contracts if there has been a breach. No one is more incentivised than the Applicant to ensure timely delivery, given the huge expense of delay to the project programme. If, however, the delay is unavoidable and/or not something for which the Applicant could take action for under the terms of its contracts then we see nothing useful that SCC could do to speed up delivery regardless of what enforcement powers were



provided for. The three named 'undertakers' should not be treated differently in terms of enforcement in this regard than any other contractors.

- 6.6 On pages 19 and 20, SCC makes a number of comments questioning why the Applicant could not use the more conventional approach of binding such small parcels of land as it currently owns, and then subsequently signing up to further deeds of adherence as and when new land is acquired, coupled with a DCO requirement not to carry out any development on land not so bound. The Applicant has already provided comprehensive written submissions as to why it favours the 'Evolving Approach', which deal with this issue. They are not repeated here. If SCC and ESC have any improvements to suggest to the drafting which encapsulates the 'Evolving Approach' SZC Co. would be grateful to receive them as soon as possible.
- 6.7 Further comments are made by SCC on article 9 at pages 27 to 31 under the heading 'Transfer pursuant to Article 9 of the DCO and liability under the Evolving Approach'. These comments have either been superseded or addressed through the drafting in Rev 8 as explained in this note.
- 6.8 While we have not provided for the 'written approval' of SCC to the transfer of the undertaking, we have provided that the two Councils must be consulted by the Secretary of State. We feel it is not appropriate or necessary to go further and provide the Councils with an effective veto over transfer of the DCO powers, even if the Secretary of State considered such a transfer to be appropriate and acceptable in the public interest. There is no good reason to justify such a provision.

## 7. ARTICLE 9A - ENFORCEMENT OF DEED OF OBLIGATION

- 7.1 The drafting below shows art 9A from the Rev 7 version of the dDCO, with changes submitted in the Rev 8 version shown in track changes.

### Enforcement of the Deed of Obligation

**9A.**—(1) ~~The terms of Restrictions or requirements imposed under~~ the Deed of Obligation ~~and deeds of adherence~~ are enforceable by injunction.

(2) Without prejudice to paragraph (1), if there is a breach of a requirement in the Deed of Obligation to carry out any operations in, on, under or over the land to which the requirement relates, East Suffolk Council or Suffolk County Council may:

- (a) enter the land and carry out the operations, and
- (b) recover from the undertaker any expenses reasonably incurred by them in so doing.

~~(3) For the purpose of exercising the power to carry out operations under subsection 2(a), East Suffolk Council and Suffolk County Council will be deemed to have the benefit of the Order under article 8 (Benefit of Order) to carry out those operations<sup>2</sup>.~~

(4) Before exercising their power under subsection 2(a) East Suffolk Council or Suffolk County Council shall give not less than twenty-one days' notice of their intention to do so to any owner or occupier of the land.

(5) Following receipt of the notice given in accordance with subsection (4) in relation to land in its possession, the undertaker shall not refuse or hinder entry to such land by East Suffolk Council or Suffolk County Council provided that such entry is in accordance with any reasonable requirements of the undertaker.

(6) If entry to the land by East Suffolk Council or Suffolk County Council is refused or hindered by the undertaker, the owner or occupier, they may issue a warrant to—

- (a) the sheriff, or

<sup>2</sup> This drafting has been moved to article 8 (Benefit of the Order)





(b) the enforcement officer,  
to allow entry to it by the person appointed in the warrant to receive it.

(7) On receipt of the warrant the person to whom it is issued shall allow entry to the land accordingly.

(8) If, by virtue of paragraph 3A of Schedule 7 to the Courts Act 2003, the warrant is issued to two or more persons collectively, the duty in subsection (5) of this section shall apply to the person to whom the warrant is allocated in accordance with the approved arrangements mentioned in that Schedule.

(9) The Deed of Obligation shall be a local land charge in respect of all freehold or leasehold interests in land owned by the undertaker within the Order limits and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

(10) In this article—

"undertaker" means the undertaker authorised to construct or operate Work No. 1A(a) to (h), being the undertaker bound by the Deed of Obligation.

"the enforcement officer", in relation to a warrant to under this article, means the officer or officers identified for that purpose in paragraph 3A of Schedule 7 to the Courts Act 2003, and

"sheriff" includes an under sheriff or other legally competent deputy, and means the sheriff for the area where the land is situated, or if land in one ownership is not situated wholly in one such area the sheriff for the area where any part of the land is situated.

- 7.2 SCC provides comments on enforcement under the Evolving Approach on pages 24 to 27. Such comments were made prior to seeing our proposed drafting of art 9A. We hope that the further note provided at Deadline 5 in relation to enforcement ("Response to Enforcement Issues Arising from ISH1"), and the additional article 9A to the draft DCO will have served to address SCC's main concerns. However, we note that the ExA has asked the councils to comment on this article and look forward to receiving those comments.
- 7.3 In summary, in relation to key points raised by SCC in their Written Summary of Oral Submissions at ISH1 (submitted at Deadline 5):
- 7.3.1 **Local land charges (p25):** Art 9A(9) of Rev 8 dDCO provides: *"The Deed of Obligation shall be a local land charge in respect of all land owned by the undertaker within the Order limits and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge"*. We have included in the Deed of Obligation a duty on the undertaker to inform ESC each time land is acquired, in order for it to be registered as a local land charge. We have also added clarification in relation to the meaning of land 'owned' by the undertaker (see art 9A(9) reference to 'freehold or leasehold interest').
- 7.3.2 **Charging orders (p25):** We consider it unnecessary to provide for these. If the Secretary of State has not provided for these since the enactment of the Town and Country Planning 1990, it suggests that the enforcement regime works adequately without them.
- 7.3.3 **Injunction (p26):** As requested, we have amended the text of art 9A(1) to refer to the 'terms' of the Deed of Obligation' rather than 'restrictions or requirements'. We see no substantive difference but are content to make this change. Please note that the definition of 'Deed of Obligation' now refers to variations, but does not refer to the deed of adherence since we have moved away from that approach given the ExA's preference for automatic binding.
- 7.3.4 **Entry onto land:** The currently proposed drafting is based on precedent DCO entry to land provisions where land has been compulsorily acquired and entry is





resisted. We considered this a good precedent and do not see the need to consider an alternative process. We confirm that if our proposed drafting is accepted, we are willing to provide an indemnity to the Councils in relation to the cost of taking such action, and that we will provide for this in the Deed of Obligation.

- 7.3.5 **Cross-undertaking in damages (p33):** We note SCC's request for a commitment from the Applicant in the Deed of Obligation not to seek a cross undertaking in damages in the event that ESC or SCC seek an interim injunction. A new clause has been added to the Deed of Obligation to this effect.

7.4 ESC has provided comments on enforcement of the Deed of Obligation at pages 9 to 10 of ESC's Written Summary of Oral Submissions at ISH1 (provided at Deadline 5). We believe that art 9B caters for all of the types of enforcement set out by ESC in its points 1- 6, as explained in our Deadline 5 note 'Response to Enforcement Issues Arising from ISH1'. Point 7 is no longer relevant given the Applicant's adoption of the ExA's preferred approach of automatic binding of future undertakers rather than a deed of adherence approach.

7.5 We have added to art 9A a definition of 'undertaker' for the purpose of enforcement of the Deed of Obligation, which refers expressly to the undertaker who is bound by the agreement from time to time. This was always the intention of the Applicant's approach and the omission of this definition was an oversight.

## 8. **ARTICLE 9B – MODIFICATION AND DISCHARGE OF DEED OF OBLIGATION**

8.1 We look forward to receiving any comments that SCC or ESC may have in relation to this article. The drafting put forward in Rev 7 dDCO is shown below, with changes proposed by the Applicant in Rev 8 shown in track changes.

### **Modification and discharge of Deed of Obligation**

**9B.**—(1) An obligation in the Deed of Obligation may not be modified or discharged except—

(a) by agreement between the undertaker ~~against whom the obligation is enforceable~~ and the beneficiary of the obligation, executed as a deed; or

(b) further to a determination by the Secretary of State under this article.

(2) The undertaker ~~against whom an obligation in the Deed of Obligation is enforceable~~ may apply to the Secretary of State for the obligation—

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged

and must notify East Suffolk Council and Suffolk County Council as soon as any such application is made.

(3) An application under subsection (2) for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.

(4) Where an application is made to the Secretary of State under subsection (2), the Secretary of State must consult East Suffolk Council and Suffolk County Council and may determine—

(a) that the obligation shall continue to have effect without modification;

(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications,

and shall give notice of his or her determination to the applicant within three months of the application.



(5) Where the Secretary of State determines under this article that an obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

(6) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to an obligation in the Deed of Obligation.

(7) In this article "undertaker" means the undertaker authorised to construct or operate Work No. 1A(a) to (h), being the undertaker bound by the Deed of Obligation.

- 8.2 The changes proposed in Rev 8 dDCO as set out above address the request by the Councils that they should be notified or any application to the Secretary of State and consulted by the Secretary of State before any determination is made.
- 8.3 A definition of 'the undertaker' has been added, identical to the definition added to art 9A, and the words 'against whom the obligation is enforceable' have been deleted from paragraphs (1) and (2). The purpose of these changes is to reflect the approach set out in this Drafting Note, which is that only the undertaker empowered to construct and operate the power station will be directly liable for the obligations in the Deed of Obligation. This approach ensures there can be no fragmentation of liability, and clarity that only one body will have the power at any time to vary the Deed of Obligation.

**Herbert Smith Freehills LLP**

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## APPENDIX B: RESPONSE TO EXA DCO COMMENTARY ON EIA SCOPE AND MONITORING

**RESPONSE TO EXA'S COMMENTARY ON THE DRAFT DEVELOPMENT CONSENT ORDER  
PARAGRAPHS 2.13, 3.7, 3.8, 3.9, 22, 43 AND EXQ2 BIO 2.34**

**SCOPE OF DCO, ENVIRONMENTAL IMPACT ASSESSMENT, AND MONITORING**

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**1. INTRODUCTION**

- 1.1 This note sets out the Applicant's response to a number of comments the ExA has raised in relation to the draft DCO in the ExA's Commentary of 3 August 2021. The comments relate to common themes around the scope of the DCO, its relationship to the EIA and monitoring. A related question in the ExA's second round of questions (relating to Biodiversity) is also addressed.

**2. RESPONSE TO EXA'S DCO COMMENTARY PARAGRAPH 2.13**

- 2.1 Paragraph 2.13 of the ExA's Commentary on the dDCO states as follows:

Para 4.1.2 the second bullet explains that the controls "would ensure that the Councils can have the confidence that the project's delivery must stay within the limits that the ES has assessed and mitigated". At ISH2 the ExA thought it heard counsel for the Applicant state that there was no legal requirement for this or for there to be no exceedance of effects assessed. Please will the Applicant clarify the submission made and its current position?

- 2.2 There is no requirement in law or policy for a project to be constructed or to operate so as to ensure that the effects identified in the environmental impact assessment are not exceeded.
- 2.3 Regulation 14 (2) (b) of the Infrastructure Planning Environmental Impact assessment Regulations 2017 (the 2017 Regulations) requires the ES to describe the '*likely significant effects on the environment*', whilst Regulation 14 (2) (c) requires a description of any "*features of the proposed development or any measures envisaged in order to avoid, prevent, or reduce and if possible offset likely significant effects on the environment*".
- 2.4 The legal duty is, therefore, limited to setting out what are considered to be the 'likely' effects as envisaged at the time of application where they are anticipated to be 'significant', and to describe proposed mitigation measures for those 'likely significant' effects.
- 2.5 There is no legal duty to describe in the environmental impact assessment mitigation measures which would mitigate effects which according to the environmental statement are either unlikely, or likely but not significant. Related to this, there is no general duty on the decision-maker to seek through the wording of the consent to ensure that no effects described in the environmental statement are exceeded – even those unlikely or not significant. Where a proposed development would be unacceptable in the event that a specific predicted effect was exceeded (e.g. a particular level of noise, having regard to the policy requirements relating to noise), then it may be appropriate to impose a requirement that seeks to ensure the effect does not exceed that level. Such a requirement could be justified on the basis that it was necessary to make the development acceptable, provided



that it also met the other tests for the imposition of requirements in EN-1 paragraph 4.1.7 (see also the equivalent tests for obligations in paragraph 4.1.8). It is not, however, necessary or appropriate to impose requirements which simply to seek to ensure that predicted effects are not exceeded. Such a requirement would fail the test of necessity, as well as not being “reasonable in all other respects”.

- 2.6 Such requirements are to be contrasted with those which seek to ensure that the development that is consented does not exceed the parameters used for the purposes of EIA. It is necessary and appropriate to ensure that the development consented is consistent with the development that has been assessed. That principle is well-established, and reflected in the *Rochdale* line of authority. In *R v. Rochdale MBC, ex p Milne (No.2)* [2001] Env. L.R. 22, Sullivan J (as he then was) found that it was lawful to grant an outline (as opposed to detailed) planning permission for EIA development provided that the EIA took full account of the implications for the environment of the flexibility sought within the relevant consent. In explaining why that was appropriate, the following points were made about what needed to be done in terms of the consent itself in order for the approach to be effective:

“... provided the local planning authority in granting outline planning permission imposes conditions to ensure that the process of evolution keeps within the parameters applied for an assessed ...” [95]; and

“In addition, the development which is described and assessed in the environmental statement must be the development which is the subject of the development consent and not some other development ...” [105]<sup>1</sup>.

In other words, the legal requirement is to frame the consent so as to ensure the development assessed is the development approved, rather than trying to limit the effects that arise to those which are predicted.

- 2.7 Similarly, where mitigation measures are relied upon in the EIA, it is appropriate to ensure that those mitigation measures are secured in the development consent.
- 2.8 There can sometimes, however, be a temptation on the part of decision-makers and others to go beyond what the law requires, and instead seek to constrain all impacts to those described in the environmental statement.
- 2.9 SZC Co. has only proposed the use of this type of provision within the draft DCO where there are specific reasons to make it appropriate, in particular there might otherwise be scope for the carrying out of development which was never assessed. This is the case, for example, in defining the scope of the term 'unless otherwise agreed' and 'in general accordance' as used in Schedule 2 (Requirements) (see also the response to ExA Commentary on the dDCO paragraph 3.8 below, and DCO Drafting Note 5 (Appendix 14E) [REP2-111]).
- 2.10 However, a more blanket imposition of the requirement to ensure that environmental effects do not differ from those assessed would be unnecessary for the reasons summarised above, and would also be unreasonable because SZC Co. would be unnecessarily constrained in its ability to carry out the project. There is no policy or legal requirement to impose it – if there were it would be a necessary feature of every consented EIA development. Environmental Statements set out the applicant's attempt to forecast the effects of their project (often as in this case, years in advance of the proposed works being carried out), and proposals for the mitigation measures needed to mitigate its 'likely significant' impacts. The views of stakeholders are also sought through the consent

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<sup>1</sup> See also what was said in *Barker*, as set out below in response to paragraph 3.8 of the ExA's Commentary on the dDCO, which reflects and is consistent with this approach.

process, including through the production of a Local Impact Report, to ensure the environmental information before the decision-maker is as complete and robust as possible. Nevertheless it may transpire that not all of the effects are exactly as anticipated at the time of assessment (some may be less and some more). This should not lead the decision-maker to impose on all consents a duty on developers to seek to ensure all effects are assessed. As explained above, any such requirement would fail the tests of necessity and reasonableness

- 2.11 For reasons explained at the ISH, therefore, it is not necessary, reasonable (or established practice in DCO decision-making) to limit the development to the precise pattern of traffic that was forecast. For example, if [x] vehicles from the proposed development are predicted to use a particular roundabout at peak hours, there would be no need to consider imposing a requirement or other control to seek to ensure that no more than [x] vehicles use that roundabout. Instead, a judgement will be made on what controls and mitigation are necessary in order to be able to conclude that the development is acceptable, applying the requirements of the relevant policy.
- 2.12 In some instances, it may be appropriate to secure monitoring arrangements so as to provide a means of assessing effects as they occur and, where necessary, define triggers that identify appropriate steps to be taken to ensure that impacts are mitigated to acceptable levels, in line with the tests set out in EN1. The approach taken has sought to ensure that monitoring and the associated adaptive measures are focused on areas of the project where there is particular uncertainty of effect, a greater likelihood of unanticipated or potentially unacceptable effects. For most issues on most applications, however, such measures are not required and are not put in place.
- 2.13 At SZC, the applicant has chosen to propose this approach in three principal areas: the approach taken to the TEMMP, the Noise Monitoring and Management Plan (secured by the CoCP) and the approach proposed for unexpected traffic impacts. In the former case, monitoring and remedial measures are proposed and in the second instance, a contingent fund would be triggered and drawn upon to address unforeseen impacts. In both cases, however, these only address new or different 'significant' effects, not any effects.
- 2.14 These measures are sufficient to *"ensure that the Councils can have the confidence that the project's delivery must stay within the limits that the ES has assessed and mitigated"* in relation to traffic impacts, noise and ecology but they are not a template for every assessed effect across all topic areas.
- 2.15 Those controls are proposed exceptionally, partly in response to stakeholder requests and partly to ensure that the ExA and the Secretary of State can reach clear conclusions on those issues, in case doubt exists about the project's ability to meet the relevant policy tests for those topics. That does not mean, however, that the same approach needs to apply to all effects or all topics. For the reasons set out above, there is no requirement to do so.

### 3. RESPONSE TO EXA'S DCO COMMENTARY PARAGRAPH 3.7

- 3.1 Paragraph 3.7 of the ExA's Commentary on the dDCO provides as follows in relation to Schedule 2 of the DCO (Requirements):

3.7 Sch 2, para 1(4) – meaning of "general accordance";

3.7.1. Please will the Councils comment?

3.7.2. Should not the clarification be carried into the CoCP and other level 1, 2 and below documents?



- 3.2 Paragraph 1(4) of Schedule 2 (Requirements) of the DCO provides: "*Where any requirement provides that the authorised development or any part of it is to be carried out in 'general accordance' with details, or a scheme, plan or other document that is listed in Schedule 22 and certified under Article 80 of this Order, this means that the undertaker will carry out such work(s) in a way that is substantively consistent with the information set out in those details, schemes, plans or other document and in a manner that does not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.*"
- 3.3 With regard to question 3.7.2, the CoCP does not use the term 'in general accordance'. The CoCP and other control documents include either clearly defined or expressed limits where that is necessary, or in some instances refer to good or best practice. For example:
- 3.3.1 **'Best Practicable Means'**, which is defined by Section 72 of the Control of Pollution Act 1974<sup>2</sup>. This is in relation to noise and air quality matters and is considered to be an appropriate commitment for the CoCP.
- 3.3.2 **'Practicable'**: means that the action should be done unless the degree of risk in a particular situation cannot be balanced against the time, trouble, cost and physical difficulty of taking measures to avoid the risk. In practice this means that taking a step that would avoid a significant impact would be required in almost all circumstances. It would only be acceptable not to take the step specified if there would not be a significant impact, and therefore a low risk.
- 3.3.3 **'Where possible'** or **'as soon as possible'**: this is used to ensure that something happens in almost all instances, or as soon as it can be done.
- 3.4 It should be noted that the types of actions that these terms are used to control do not include those controls where a single instance of non-compliance would ordinarily result in an unacceptable environmental impact. These terms are commonly used terms in the control of construction related mitigation. Nor should these terms be viewed in isolation, as they form part of a wider framework of controls. For example:
- 3.4.1 **Noise**: the CoCP and NMMP define clear and enforceable noise thresholds for all construction works. A series of good practice measures then provide an added layer of protection that help ensure that the impact of noisy works is reduced.
- 3.4.2 **Air Quality**: the DMMP will define clear and enforceable dust thresholds, in line with those set out in the Outline Dust Management Plan. A series of good

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<sup>2</sup> 72.— "**Best practicable means**"

- (1) This section shall apply for the construction of references in this Part of this Act to best practicable means.
- (2) In that expression "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications.
- (3) The means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and acoustic structures.
- (4) The test of best practicable means is to apply only so far as compatible with any duty imposed by law, and in particular is to apply to statutory undertakers only so far as compatible with the duties imposed on them in their capacity of statutory undertakers.
- (5) The said test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.
- (6) Subject to the preceding provisions of this section, regard shall be had, in construing references to "best practicable means", to any relevant provision of a code of practice approved under the preceding section.





practice measures then provide an added layer of protection that help ensure that the impact of works is reduced.

- 3.4.3 **Amenity & Recreation:** public rights of way cannot be diverted or stopped up until alternative provision has been made, the detail of which must be approved by SCC in accordance
- 3.4.4 **Ground and Surface Water:** The Water Monitoring Strategy and Water Monitoring Plan secures a comprehensive water monitoring regime, along with the triggers for when actions would be needed. These provide hard limits that are fully enforceable. The CoCP then sets out the good practice measures that ensure that construction works are undertaken in a manner that reduces the risk of environmental incident. Together these controls are considered appropriate.

- 3.5 A comprehensive review of the CoCP and other level 1 and 2 control documents is being undertaken in order to clarify as far as reasonable and appropriate the measures set out within them. Revised versions of these documents will be submitted at Deadline 8 following completion of this review. However, reference to terms such as those set out in 3.3 above and in some cases 'in general accordance' will remain, where considered appropriate, and without reference to environmental impacts. For the reasons set out in responses to paragraph 2.13 of the ExA's Commentary (see above), SZC Co. is of the view that there is no legal need to tie an applicant to delivering a project in accordance with the environmental impacts as set out at the environmental statement provided at the time of the application.

#### 4. **RESPONSE TO EXA'S DCO COMMENTARY PARAGRAPH 3.8**

- 4.1 Paragraph 3.8 of the ExA's Commentary on the dDCO provides as follows:

"Sch. 2 para 1(3) – Please will the Applicant comment on the case of *R v. Bromley ex p Barker* [2001] EWCA Civ 1766 in this context. Would it be right and safe to draw support for the Applicant's approach from the judgment of Lord Hope at paragraphs 19 (the quotation from the CJEU decision paras 100 and 102); 22, the last sentence and 23 "Conditions designed to ensure that the project remains strictly within the scope of that assessment will minimise the risk that those effects will not be identifiable until the stage when approval is sought for reserved matters"?"

#### **Preliminary**

- 4.2 Lord Hope gave the leading Judgment in *R (Barker) v. Bromley LBC* when the case came before the House of Lords, and the correct citation is [2006] UKHL 52; [2006] 3 WLR 1209. Whilst the citation given in the Commentary relates to the earlier decision of the Court of Appeal, both the question and this response are directed to what was said by the House of Lords.

#### **Sch. 2 para 1(3)**

- 4.3 Schedule 2 paragraph 1(3) of the dDCO provides as follows:

*"Where an approval of details or other document is required under the terms of any requirement or where compliance with a document contains the wording "unless otherwise approved" by the discharging authority, such approval of details or of any other document (including any subsequent amendments or revisions) or agreement by the discharging authority is not to be given except in relation to changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought*



*does not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.”*

#### **DCO Drafting Note 5**

- 4.4 In response to question DCO.1.73 in the ExA’s first round of written questions, which concerned the drafting of paragraph 1(3), the Applicant produced DCO Drafting Note 5 (Appendix 14E [\[REP2-111\]](#)).
- 4.5 Section 1 of DCO Drafting Note 5 explained that the purpose of this paragraph was to place a constraint on the ability of a discharging authority to approve details or other documents which would give rise to materially new or materially different environmental effects to those which have been assessed and found to be acceptable at the time of making the DCO.
- 4.6 The effect is also to limit the extent of the flexibility otherwise provided by the use of ‘tailpieces’ in various requirements, having regard to case law relating to their use in the context of the Town and Country Planning Act 1990.
- 4.7 Section 3 explained why it would not be appropriate for importing the more onerous requirements associated with the making of a “subsequent application” as defined in the 2017 EIA Regulations. In short, it was said that those requirements are intended to cater for circumstances in which the original ES is not adequate to assess the environmental effects of the development for which approval is sought in the subsequent application.

#### **Issue Specific Hearing 1**

- 4.8 This issue was subsequently addressed in more detail in oral submissions at ISH1 under Agenda Item 2. As set out in section 1.7 of SZC Co.’s summary of oral submissions [\[REP5-106\]](#), the following points were made in support of the Applicant’s position:
  - 4.8.1 The subsequent application procedure is intended to provide a safeguard against new likely significant effects emerging at a secondary decision-making stage and not being assessed when deciding to approve those details.
  - 4.8.2 The subsequent application procedure does not comprise a prohibition on the approval of such details, but instead ensures that any likely significant effects are assessed and taken into account when making the decision.
  - 4.8.3 The inclusion of paragraph 1(3) so as to prevent approval of details in those circumstances means that the underlying rationale for that process and procedure does not exist.

#### **The implications of the Judgment of Lord Hope in *ex p Barker***

- 4.9 The decision in *ex p Barker* supports the Applicant’s position as expressed in DCO Drafting Note 5 and at ISH1.
- 4.10 The House of Lords held that the procedure whereby outline planning permission could be granted subject to a later approval of reserved matters was to be regarded as a multi-stage development consent and that since the then current version of the EIA Regulations precluded an assessment at the later approval stage they failed fully to implement the Directive. It followed that where it had not become apparent until after outline planning permission had been granted for a development falling within the ambit of the Directive that the project was likely to have significant effects on the environment, an assessment would



have to be carried out at the reserved matters stage before consent could be given for the development.

4.11 It was the identification of this failure adequately to transpose the requirements of the Directive which led to the addition of the subsequent application provisions in the later iterations of the EIA Regulations.

4.12 As the ExA's Commentary notes, paragraph 22 of the Judgment and in particular the final sentence is particularly relevant:

*"It does not follow, however, where planning consent for a development takes this form [i.e. a multi-stage development consent], that consideration must be given to the need for an EIA at each stage in the multi-consent process. The first recital in the Directive indicates that the competent authority must take account of the effects on the environment of the project in question at the earliest possible stage in all the technical planning and decision-making processes ... In the case of a Schedule 2 development the competent authority must decide at the outset whether an EIA is needed because the development is likely to have significant effects on the environment. An application for outline planning permission should be accompanied by sufficient information to enable that question to be answered and an EIA, if needed, to be obtained and considered before outline planning permission is granted. The need for an EIA at the reserved matters stage will depend on the extent to which the environmental effects have been identified at the earlier stage" (emphasis added).*

4.13 As explained above, the drafting included in Schedule 2 paragraph 1(3) is intended to ensure that any details and documents approved pursuant to the tailpiece provisions at that later stage cannot give rise to materially new or materially different environmental effects to those which have been assessed and found to be acceptable at the time of making the DCO. Hence the potential need for EIA at that second stage (pursuant to an equivalent to the subsequent approvals process now contained in the EIA Regulations) does not arise.

4.14 The ExA is also right to refer to paragraph 23 as being directly supportive of the Applicant's position:

*"If sufficient information is given at the outset it ought to be possible for the authority to determine whether the EIA which is obtained at that stage will take account of all the potential environmental effects that are likely to follow as consideration of the application proceeds through the multi-stage process. Conditions designed to ensure that the project remains strictly within the scope of that assessment will minimise the risk that those effects will not be identifiable until the stage when approval is sought for reserved matters. In cases of that kind it will normally be possible for the competent authority to treat the EIA at the outline*



*stage as sufficient for the purposes of granting a multi-stage consent for the development ..."*

- 4.15 In this case paragraph 1(3) of Schedule 2 ensures that the tailpieces of the relevant requirements do not operate so as to enable details to be approved which go beyond the scope of the assessment undertaken at the DCO approval stage.

#### **Conclusion**

- 4.16 For the reasons set out above, it would be both right and safe for the ExA to conclude that the submissions made on behalf of the Applicant in respect of Schedule 2 paragraph 1(3) are supported by what was said by Lord Hope in *ex p Barker*.
- 4.17 In particular, the passages to which the ExA refers confirm the correctness of the Applicant's submissions as to the nature and purpose of the "subsequent application" procedure in the EIA Regulations, and why the effect of paragraph 1(3) as drafted is to make it both unnecessary and inappropriate to apply that procedure to the approvals to which that paragraph relates.

#### **5. RESPONSE TO EXA'S DCO COMMENTARY PARAGRAPH 3.9**

- 5.1 Paragraph 3.9 of the ExA's Commentary on the dDCO provides as follows:

Should not para 1(3) [of Schedule 2 (Requirements) of the DCO] be expressly carried over to similar provisions in other documents regulating the development pursuant to the Application - the DoO, CoCP and other Level 1, 2 and 3 documents?
--

- 5.2 Paragraph 1(3) of the Requirements (Schedule 2) provides: "*Where an approval of details or other document is required under the terms of any requirement or where compliance with a document contains the wording "unless otherwise approved" by the discharging authority, such approval of details or of any other document (including any subsequent amendments or revisions) or agreement by the discharging authority is not to be given except in relation to changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.*"
- 5.3 In relation to the DoO, the great majority of references to 'unless otherwise agreed' relate to administrative arrangements, particularly around the governance group arrangements (eg frequency of meeting etc), rather than any matters directly relating to the implementation of the development which could influence the environmental effects. It would be inappropriate to apply a test based on the assessment of effects as set out in the environmental statement to such variations of administrative and governance arrangements.
- 5.4 The only instances in the DoO where the term 'unless otherwise agreed' is used to control the carrying out of the project itself, are the handful of references to the timing of delivery of certain elements of the development: the Accommodation Campus (Schedule 3), the LEEIE (Schedule 3), Leiston Sports Facilities (Schedule 10), Kenton Hills Carparks (Schedule 11), and the Aldhurst Farm Carparks (Schedule 11). We do not consider that the flexibility afforded by the use of the term 'unless otherwise agreed' relating to delivery of these elements in these contexts opens up the possibility of material differences to the likely significant effects as assessed. Furthermore, the ExA and the Secretary of State are

entitled to assume that the local authorities will act reasonably in the decisions that they make in respect of these matters (see e.g. *ex p Milne (No. 2)* at paragraph 128).

- 5.5 Some of the control documents do allow an element of flexibility, in that they contain drafting which envisages that some actions may be carried out differently from the manner set out in the document or not carried out at all, where agreed by a particular stakeholder. In most cases it is clear that there is no scope for such agreed variations to lead to significant and unassessed environmental effects, and therefore we believe it would be disproportionate to require SZC Co. to 'demonstrate' to the approving body in each such case (through submission of information) that the environmental effects are not materially new or different. Instead we suggest that a positive obligation is placed on SZC Co. in the introduction to each control document, providing that any requests for approval under provisions within the control document may only be made by SZC Co. where they would not lead to 'materially new or materially different environmental effects to those assessed in the environmental information.' We will further provide that in the event that the approving body considers there may be 'materially new or materially different effects' (which would therefore take the request outside the vires of the control document) they may request evidence from SZC Co. in order to properly consider whether this is the case. Text to this effect will be set out in the control documents submitted in revised form at Deadline 8.response to exa's dco commentary paragraph 22.
- 5.6 Paragraph 22 of the ExA's Commentary on the dDCO provides as follows in relation to the CoCP:
- Watching brief, Table 11.1, row 2. What action is taken as a result of what is observed? There are many instances of monitoring but without any action to be taken on the basis of what is observed. No thresholds, no tests.
- 5.7 Para 2.1.8 of the CoCP clarifies that 'Contractors will ensure that a watching brief for contamination is maintained by trained personnel during the construction works to deal with potential additional 'chance finds' of contamination. In the event that 'chance finds' of additional contamination are discovered, the measures outlined in Table 10.1 will be implemented. Excavation of areas of higher contamination risk will be completed by suitably qualified and experienced personnel, to ensure that mitigation measures are effective, and that residual impacts will not be significant.'
- 5.8 The CoCP has now been reviewed to ensure that where commitments are made to monitoring there are appropriate actions defined that clarify what would need to be

undertaken should that monitoring identify the potential for significant environmental effects to occur.

**6. RESPONSE TO EXA'S DCO COMMENTARY PARAGRAPH 43**

- 6.1 Paragraph 43 of the ExA's Commentary on the dDCO provides as follows in relation to the CoCP:

Monitoring and watching briefs. It is rare for the CoCP to specify what is to be done if the monitoring reveals failures. This should be remedied.

- 6.2 As above.

**7. RESPONSE TO EXA'S SECOND ROUND OF QUESTIONS – BIO 2.34**

- 7.1 Question Bio 2.34 provides as follows:

A number of the ExA's questions in ExQs1 on biodiversity and ecology were about monitoring, the criteria for further action depending on the results of the monitoring and what steps should be taken. Considering the answers, is the ExA correct to conclude that the Applicant's overall approach, at least in relation to biodiversity and ecology, is that where monitoring shows that the effects are more significant than shown by the ES, remedial measures to restore matters to no worse than that level of significance are to be taken? Are there any exceptions to that approach?

- 7.2 The ExA summary of the approach is correct and this is the approach set out in the TEMMP [\[REP5-088\]](#). The TEMMP provides for an extensive programme of monitoring of habitats, sites and species and will be secured by Requirement. In most cases, the ES concludes that the effects on these receptors will not be significant (or in the sHRA report, that there will be no adverse effects on Integrity). However, it is recognised that in order to provide reassurance to stakeholders, monitoring is required, alongside an outline of possible corrective actions, in the event that an adverse impact is detected, with a governance approach around this to reduce the effects to not significant. This should provide reassurance that for the great majority of ecological receptors, there will be no significant adverse effects, in accordance with the assessments in the ES.
- 7.3 There are however several ecological receptors, including barbastelle bats (habitat fragmentation effect), the Deptford Pink and two County Wildlife Sites for which the ES did predict a significant adverse effect, even with the mitigation embedded in the proposals. Extensive monitoring for these receptors is also proposed within the TEMMP. For example, the additional monitoring (including radio-tracking) for barbastelle bats, alongside additional lighting controls and the creation of a new dark corridor linking Kenton Hills and Ash Cottages, may reduce the significance of effects below the level predicted in the ES.
- 7.4 The monitoring proposed in each instance sets out the scope, frequency, or where it has not been provided in full, how that monitoring would be approved. Wherever relevant, adaptive management measures are then specified which seek to address identified matters.

**Herbert Smith Freehills LLP**

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## APPENDIX C: STRUCTURE OF CONTROL DOCUMENTS AND SUBSEQUENT APPROVALS

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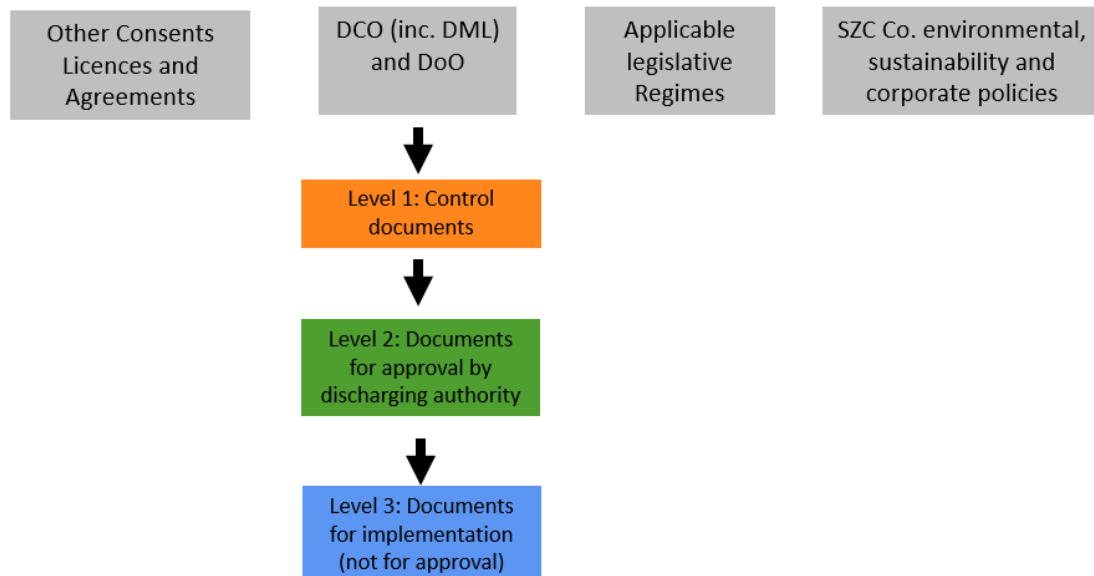
# 1 STRUCTURE OF CONTROL DOCUMENTS AND SUBSEQUENT APPROVALS

## 1.1 Overview

1.1.1 This note responds to the questions raised in ISH1 and subsequent hearings about the status of the various “strategies” and “plans” relied on in the DCO Application. It sets out the levels of documents within the application and the status of each level. **Figure 1** sets the **Development Consent Order (DCO)** (Doc Ref. 3.1(G)) and **Deed of Obligation (DoO)** (Doc Ref. 17(F)) in the context of other controls on the Sizewell C Project and demonstrates how the different levels of documents relate to each other. **Table 1** lists out the plans and strategies referred to throughout the application, showing which level the document is, the documents it relates to, where it is secured and the relevant governance group.

1.1.2 The principles behind the consenting strategy are set out in Chapter 10 of the **Planning Statement** [\[APP-590\]](#). The **DCO Explanatory Memorandum** (Doc Ref. 3.2(F)) and the **DoO Explanatory Memorandum** (Doc Ref. 8.20(E)) both explain the obligations within each document and the consenting approach that has been taken. The **Mitigation Route Map** (Doc Ref. 8.12(D)) sets out in full the commitments which are required to mitigate the impacts identified in the **Environmental Statement** and where these are secured. This note does not replace the **Mitigation Route Map** but instead focuses on the “plans” and “strategies” within the application.

Figure 1: Structure



## 1.2 Updates in response to the ExA Commentary on the DCO and Other Documents

1.2.1 In response to the ExA's comments on the DCO, Bat Mitigation Strategy and CoCP this document has been updated to provide more clarity about how the control documents are structured and relate to each other.

1.2.2 To that effect the following tables are below:

- **Table 1** lists the ecology control documents and shows the status each of those documents have in the examination.
- **Table 2** has been updated to reflect the DCO and DoO submitted at Deadline 7 which respond to comments and questions from the Examining Authority and developments in conversations with stakeholders.

1.2.3 More detailed explanation of the ecology control documents has been added to section 1.4 to explain the Bat Mitigation Strategy in the context of the full ecology consents regime.

1.2.4 In response to the ExA's comments across the suite of control documents, SZC Co. has committed to reviewing and updating the full suite of Level 1 control documents for submission at Deadline 8. The content of these plans and strategies, however, has been the subject of discussion with the

relevant stakeholders for a long period of time and in most cases are agreed. Therefore this exercise is not intending to change the commitments as set out but it to clarify the context of the commitments and provide more clarity on the commitments.

1.2.5 An executive summary will be added, or if existing, amended to:

- Explain that this is a Level 1 control document with specific reference to how it is legally secured;
- Describe the relationship of this document with any related Level 1 control documents; and
- List any Level 2 or subsequent documents which are required for approval by this Level 1 document and describe how they will be approved and by whom;
- Explain that references to SZC Co. should be read as “the undertaker” and Standard text will be added to explain that.

1.2.6 Reviews and updates will be made in regard to:

- Any references to contractors will be checked and clarified where necessary to ensure DCO obligations are clearly the responsibility of the undertaker.
- Add specific references to securing mechanisms where other plans or strategies are mentioned.
- The use of “will”/ “would”/ “shall” will be checked in all control documents and updated to “must” where appropriate. Any use of phrases such as “where feasible” or “where practicable” will be checked to ensure that the lack of an imperative absolute does not undermine the mitigation proposed but appropriately reflects the scale and complexity of a construction project.

## 1.3 Legal framework

1.3.1 The DCO would grant SZC Co the authority and necessary powers to deliver the authorised development. The Articles and Schedules of the DCO mandate the scope and limit of those powers as well as controls which must be complied with through the construction and operation of Sizewell C.

1.3.2 Schedule 2 (requirements) sets out a series of commitments and controls that relate to the terrestrial works. The marine licence (DML) is Schedule 20 of the DCO and will be deemed if the Sizewell C DCO is granted. The

DML authorises certain activities within the marine environment but again includes limits and controls on those activities and how the activities are carried out. The **draft DoO** commits SZC Co to a further level of control and includes obligations on SZC Co to act in a certain way to minimise the impact of any harm resulting from the construction and operation of Sizewell C. SZC Co will be legally bound by all of the obligations listed in these documents as explained in **Appendix C** (Enforcement under the Evolving Approach) to the Written Submissions arising from ISH1 [\[REP5-113\]](#).

1.3.3 The DCO and DoO do not govern the delivery of Sizewell C in isolation. The **Schedule of other consents, licenses and agreements** [\[REP3-011\]](#) sets out the main relevant controls, license and agreements which are required to construct and operate Sizewell C which are required and enforced through different legal regimes. Some of these have their own structures of control document e.g. the Water Discharge Activities Permit will require a chlorination strategy. SZC Co will also be bound by all relevant legislation at the time of construction and operation which includes environmental and health and safety legislation.

1.3.4 Draft protected species licences (and accompanying ecology mitigation strategies) and ecology method statements have been submitted to the examination, which have informed the monitoring and mitigation measures set out within the **Terrestrial Ecology Monitoring and Mitigation Plan (TEMMP)** [\[REP5-088\]](#). These draft license applications and supporting strategies have been submitted to provide visibility to all stakeholders and they will be submitted to Natural England under the Wildlife and Countryside Act 1981 and consented and enforced under that legislation. Where a species is not protected under this regime, SZC Co. has committed to the appropriate protection through the **Code of Construction Practice (CoCP)** (Doc Ref. 8.11(D)) and the **TEMMP**.

## 1.4 Level 1: Control Documents (Strategies and Plans Secured by the DCO and DoO)

1.4.1 The **Level 1 Control Documents** will either be certified under the **DCO** at grant or annexed to the **DoO** at the point of signing. They are either by topic or by site and set out the controls required over the project to ensure that the works are implemented within the limits of the environmental impact assessment. Some Level 1 Control Documents specify all measures assumed and needed by the EIA and therefore do not have Level 2 documents underneath them and works must be carried out in accordance with these documents.

1.4.2 There are some documents which are secured through the **DCO** which control the design of the Sizewell C Project. These documents are not

included in this note but approach to parameters and securing design approval is set out in Section 2.6 of the **Written Submissions Arising from ISH1** (Doc Ref. 9.48).

1.4.3 The **CoCP** is a Level 1 control document. Although there are a number of “strategies” or “outline plans” which have informed the obligations included in the **CoCP**. These documents are listed in **Table 2** and include:

- Outline Soil Management Plan [\[REP3-018\]](#);
- Conventional Waste Management Strategy [\[APP-194\]](#);
- Materials Management Strategy [\[AS-202\]](#);
- Outline Dust Management Plan [\[APP-213\]](#); and
- Dredge Disposal Site Characterisation Report [\[APP-328\]](#).

#### Ecology consenting regime

1.4.4 A number of ecological mitigation strategies, draft licences and licensable and non-licensable method statements for protected species at the main development site are appended to **Volume 2 Chapter 14** of the **ES** [\[APP-224\]](#) and **Volume 1, Chapter 2, Section 2.9** of the **ES addendum** [\[AS-181\]](#) and have been submitted at subsequent deadlines. These two sets of documents have a different status within the examination.

- **Draft licences and licensable method statements and mitigation strategies** – these are submitted to the examination for information only. They form the applications to Natural England under the Wildlife and Countryside Act 1981 for protected species licences. The documents describe the species and activities which are licensable and the measures the applicant proposes to take to make these activities acceptable. Natural England will issue protected species licences with conditions that they consider appropriate as the regulator. These are included in the **Schedule of other Consents, licences and Agreements** [\[REP3-011\]](#). These are:
  - Project wide Bat Licence (Doc Ref. 9.92) and MDS Bat Mitigation Strategy [\[APP-252\]](#);
  - MDS Badger Licence Method Statement [\[REP5-049\]](#) and MDS Badger mitigation strategy [\[APP-225\]](#);
  - MDS Water Vole Licence [\[REP5-50\]](#) and MDS Water Vole Mitigation Strategy [\[APP-252\]](#);

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- MDS Natterjack Toad Licence [[REP5-053](#)] and MDS Natterjack Toad Mitigation Strategy [[APP-252](#)];
- MDS Deptford Pink Licence [[REP5-052](#)];
- MDS Otter Draft Method Statement [[REP5-051](#)];
- NPR Great Crested Newt Licence (Doc Ref.6.4 7A.5(A);
- TVBP Badger Method Statement [[REP5-054](#)];
- TVBP Water vole Method Statement [[REP5-055](#)];
- SLR Great Crested Newt Licence (Doc Ref. 6.7 7A.5(A)); and
- RAIL Great Crested Newt Licence (Doc Ref. 9.93).
- **Non-licensable method statements and mitigation strategies** – these cover activities and species which are not protected by the Wildlife and Countryside Act 1981 but require particular construction practices or mitigation measures. The majority of these secured through the **CoCP** and are therefore Level 1 control documents and must be complied with under Requirement 2. Any changes to these statements and strategies must be approved and will be submitted to the Ecology Working Group for approval. These are:
  - MDS Bat Non-licensable Method Statement [[APP-252](#)];
  - MDS Reptile Mitigation Strategy (Appended to the **Estate Wide Management Plan** (Doc Ref. 9.88) (Requirement 5C).
  - MDS Reptile Non-licensable Method Statement [[APP-252](#)];
  - MDS GCN Method Statement [[AS-209](#)]
  - MDS Otter Method Statement [[REP5-051](#)].
  - MDS Freshwater Fish and Aquatic Invertebrates Mitigation Strategy (Doc Ref. 8.11 A(D));
  - NPR Bat Non-licensable Method Statement [[APP-362](#)];
  - NPR Reptile Non-licensable Method Statement [[APP-362](#)];
  - SPR Bat Non-licensable Method Statement [[APP-395](#)];

- SPR Reptile Non-licensable Method Statement [[APP-395](#)];
- TVBP Bat Non-licensable Method Statement [[APP-426](#)];
- TVBP Great Crested Newt Non-licensable Method Statement [[APP-426](#)];
- TVBP Otter Non-licensable Method Statement [[APP-426](#)];
- TVBP Reptiles Non-licensable Method Statement [[APP-426](#)];
- SLR Bat Non-licensable Method Statement [[APP-462](#)];
- SLR Reptile Non-licensable Method Statement [[APP-462](#)];
- FMF Bat Non-licensable Method Statement [[APP-524](#)];
- FMF Reptile Non-licensable Method Statement [[APP-524](#)]; and
- RAIL Reptile Non-licensable Method Statement [[APP-556](#)].

1.4.5 The **TEMMP** is secured by Requirement 4. This Level 1 control document sets out the monitoring regimes that SZC Co. is committed to in relation to terrestrial ecology. This monitoring will be in addition to any monitoring required by Natural England as part of the protect species licence process.

## 1.5 Level 2: Subsequent Approvals (submitted post DCO/DoO)

1.5.1 On a project of this scale and complexity, it is not always possible for the Level 1 control documents to include the detail necessary to ensure that the correct practices and limits are applied in every context. Therefore, where appropriate, Level 2 documents must be produced for a further approval. In most cases the Level 2 documents submitted for approval must be in general accordance with the relevant Level 1 document. In their approval of Level 2 documents, the relevant discharging authority will consider compliance with the Level 1 control documents and whether any deviations are appropriate.

1.5.2 The **CoCP** includes requirements for a series of Level 2 documents which will demonstrate how the controls in the **CoCP** for particular environmental topics will be controlled across the project. These were collectively referred to as “subject specific management plans” however for clarity reference to this term has been removed and replaced by the specific names of the plans. These Level 2 plans will be subject to approval from the local planning authority and are to demonstrate to the relevant local authority



how the measures within the **CoCP** will be implemented throughout the construction of the project. These are:

- Main Development Site Noise Monitoring and Management Plan (Draft: Doc Ref. 9.68(A));
- Associated Development Site Noise Monitoring and Management Plan;
- Soil Management Plan;
- Dust Monitoring and Management Plan; and
- Fire prevention plans.

1.5.3 The **CoCP** also refers to Level 2 documents which are secured and approved directly under the **DCO** or the **DoO** for completeness (e.g. the **Coastal Processes Monitoring and Mitigation Plan** [\[REP5-059\]](#). For deadline 8 specific references will be added to the CoCP to added clarity on where these Level 2 documents are secured.

## 1.6 Level 3: Implementation Documents

1.6.1 SZC Co. will require its contractors to prepare Construction Environment Management Plans (CEMPs) for its approval. These plans will demonstrate to SZC Co. how the specific works will be carried out in accordance with all relevant legislation and guidance: including the relevant Level 1 and Level 2 documents (most notably the **CoCP**, **OWSI** [\[REP3-022\]](#), **TEMMP** and the **Construction Method Statement** (Doc Ref. 6.3 3D(B))). The **CoCP** sometimes refers to particular elements of the CEMPS which are relevant to a particular topic to give context to SZC Co's confidence that the measure in the **CoCP** will be complied with. The CEMPs will include, among other things:

- Environmental Incident Response Plan;
- Soil Resources Plan;
- Site waste management plan;
- AIL delivery and logistics plan;
- Emergency Flood Action Plan;
- Community Engagement Strategy;
- Construction Emergency Plan;



- Biosecurity control procedures plan; and
- Communicable disease management plan.

1.6.2 There are other Level 3 implementation documents which will be prepared by other bodies or groups under the **DoO**. These will explain how particular mitigation will be implemented where another body is responsible for the mitigation. These are as follows:

- Flood Risk Emergency Plans – prepared by the contractor and approved by SZC Co. in consultation with the Environment Agency;
- Private Housing Supply Plan - prepared by ESC and approved by the Accommodation Working Group;
- Tourist Accommodation Plan - prepared by ESC and approved by the Accommodation Working Group;
- PROW Communications Plan - prepared by ROW Working Group;
- Annual Tourism Fund Implementation Plan - prepared by ESC and approved by Accommodation Working Group; and
- Annual Workforce Delivery Implementation Plan - prepared by Regional Skills Co-ordination Function (SCC).

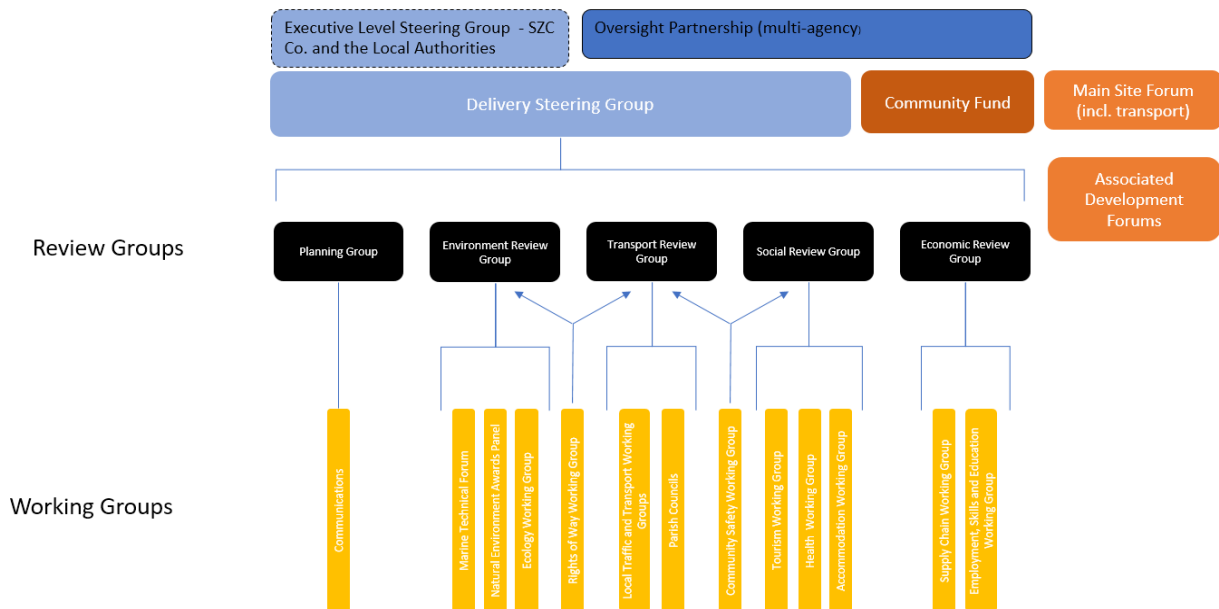
## 1.7 Monitoring, Reporting and Governance

1.7.1 Monitoring and reporting will be provided to ESC, MMO, SCC, the Ecology Working Group, the Environment Review Group and Delivery Steering Group, as relevant. The governance groups would be established by the **DoO**.

1.7.2 Through the Level 1 and Level 2 documents SZC Co has or will set out detailed monitoring and reporting regimes. As the construction period is 9 to 12 years it is not inconceivable that the environmental setting may change and the potential harms identified in the EIA either do not come to pass or are different from what was predicted. The monitoring regimes have been carefully designed to ensure that data is captured on sensitive receptors and identified areas of harm. It has been designed to provide appropriate oversight of the implementation of the project in order for the discharging authority and other relevant statutory bodies to review the effectiveness of mitigation and have regard to remedies that would be agreed with and implemented by SZC Co.

1.7.3 The **DoO** sets out a comprehensive governance structure (see **Figure 2**) which will review monitoring results and reports and agree any additional mitigation which is necessary as a result. The monitoring results will be reported to the relevant governance groups and the **DoO** gives authority to the groups to consider that data and instruct/agree particular actions in the event that certain triggers are reached. These triggers are set out in either the **DCO**, **DoO** or the Level 1 control documents; or there are situations where it is most appropriate for the governance group to agree the triggers as part of their approval of Level 2 documents.

Figure 2 Visual Representation of Governance Structure



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Table 2: Strategies and Plans Secured by the DCO and DoO

Level 1 Control Document	Level 2 Documents for Approval	Approval by	Securing Mechanism	Relevant Governance Group
CoCP (Doc Ref. 8.11(D))	Dust Monitoring and Management Plan Soil Management Plan Main Development Site Noise Monitoring and Management Plan (Doc Ref. 9.68(A)) Associated Development Sites Noise Monitoring and Management Plans	ESC	Rqt. 2	Environment Review Group
Overarching Archaeological Written Scheme of Investigation <a href="#">[REP3-022]</a>	Site-specific written schemes of investigation Site-specific post-excavation assessments Archaeological updated project design	SCC	Rqt. 3	Environment Review Group
Peat Strategy <a href="#">[APP-275]</a>	Peat archaeological written schemes of investigation	SCC	Rqt. 3	Environment Review Group
	Site-specific archaeological management plan	SCC	Rqt. 3	Environment Review Group
Terrestrial Ecology Monitoring and Mitigation Plan <a href="#">[REP5-088]</a>		EWG	Rqt. 4	Ecology Working Group
Drainage Strategy <a href="#">[REP2-033]</a>	Details of surface and foul water drainage systems	SCC and ESC N/A	Rqt. 5, 13A, 22	Environment Review Group
	Construction emergency plan	N/A	Rqt. 5A	Planning Group
Estate Wide Management Plan (Doc Ref. 9.88)			Rqt. 5C	Planning Group

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Level 1 Control Document	Level 2 Documents for Approval	Approval by	Securing Mechanism	Relevant Governance Group
Rights of Way Strategy (Doc Ref. 6.3 15l(C))	Public rights of way implementation plans	SCC	Rqt. 6A	Rights of Way Working Group
Main Development Site Water Monitoring and Response Strategy <a href="#">[AS-236]</a> Draft Water Monitoring Plan (Doc Ref. 9.87)	Water monitoring plan	ESC	Rqt. 7	Environment Review Group
Draft Coastal Processes Monitoring and Mitigation Plan <a href="#">[REP5-059]</a>	Coastal Processes Monitoring and Mitigation Plan	ESC/ MMO	Rqt. 7A, DML 17	Marine Technical Forum
Construction Method Statement (Doc Ref. 6.3 3D(B))		N/A	Rqt. 8	Planning Group
Section 1.3 Lighting Management Plan <a href="#">[APP-182]</a>		N/A	Rqt. 9	Environment Review Group
	SSSI flood risk monitoring and adaptive defence plan	ESC	Rqt. 12C	Environment Review Group
Chapter 8 Main Development Site Design and Access Statement <a href="#">[REP5-070]</a>	Landscape and ecology scheme	ESC	Rqt. 14	Planning Group
Outline Landscape and Ecology Management Plan <a href="#">[REP1-010]</a>	Landscape and ecology management plan	ESC	Rqt. 14	Environment Review Group
Fen Meadow Strategy <a href="#">[AS-208]</a> Draft Fen Meadow Plan <a href="#">[REP6-026]</a>	Fen meadow plan	ESC	Rqt. 14A	Ecology Working Group
Wet Woodland Strategy <a href="#">[REP1-020]</a>	Wet woodland plan	ESC	Rqt. 14B	Ecology Working Group

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

Level 1 Control Document	Level 2 Documents for Approval	Approval by	Securing Mechanism	Relevant Governance Group
Marsh Harrier Compensatory Habitat Report <a href="#">[REP3-053]</a> Marsh Harrier Habitat Report <a href="#">[REP2-119]</a>	Marsh harrier implementation plan	ESC	Rqt. 14C	Ecology Working Group
Section 1.4 Lighting Management Plan <a href="#">[APP-182]</a>		N/A	Rqt. 15	Environment Review Group
Two Village Bypass Landscape and Ecology Management Plan <a href="#">[REP5-077]</a>		N/A	Rqt. 22A	Ecology Working Group
Sizewell Link Road Landscape and Ecology Management Plan <a href="#">[REP5-076]</a>		N/A	Rqt. 22A	Ecology Working Group
Draft Rail Noise Mitigation Strategy	Rail noise mitigation strategy	ESC	Rqt. 25	Environment Review Group
	Marine Environment Management Plans	MMO	DML 18	Marine Technical Forum
	Marine Archaeological Written Scheme of Investigation	MMO	DML 19	Marine Technical Forum
	Fisheries and Liaison Co-existence Plan	MMO	DML 20	Marine Technical Forum
Outline Vessel Management Plan (Doc Ref. 9.65A)		MMO	DML 31a	Marine Technical Forum
	Maintenance Activities Plan	MMO	DML 34	Marine Technical Forum
	Sediment Sampling Plan	MMO	DML 36	Marine Technical Forum
	Aids to Navigation Management Plan	MMO	DML 38	Marine Technical Forum

NOT PROTECTIVELY MARKED

## SIZEWELL C PROJECT – STRUCTURE OF CONTROL DOCUMENTS AND SUBSEQUENT APPROVALS

**NOT PROTECTIVELY MARKED**

Level 1 Control Document	Level 2 Documents for Approval	Approval by	Securing Mechanism	Relevant Governance Group
Draft Marine Mammal Mitigation Protocol <a href="#">[REP3-019]</a>	Marine Mammal Mitigation Protocol	MMO	DML 40	Marine Technical Forum
Draft Site Integrity Plan <a href="#">[AS-178]</a>	Site Integrity Plan	MMO	DML 40	Marine Technical Forum
Draft Sabellaria Reef Management and Monitoring Plan (Doc Ref. 9.90)	Sabellaria Reef Management and Monitoring Plan	MMO	DML 45	Marine Technical Forum
Draft Fish Impingement and Entrainment Monitoring Plan (Doc Ref. 9.89)	Fish impingement and entrainment monitoring plan	MMO	DML 50	Marine Technical Forum
	Smelt monitoring and mitigation plan	MMO	DML 51	Marine Technical Forum
	Private Housing Supply Plan (prepared by ESC)	AWG	DoO Sch 3	Accommodation Working Group
	Tourist Accommodation Plan (prepared by ESC)	AWG	DoO Sch 3	Accommodation Working Group
Workforce Delivery Strategy	Apprenticeship Strategy	ESEWG	DoO Sch 7	Employment, Skills and Education Working Group
Workforce Delivery Strategy	Annual Skills Implementation Plans (prepared by Regional Skills Co-ordination Function (SCC))	ESEWG	DoO Sch 7	Employment, Skills and Education Working Group
Supply Chain Strategy <a href="#">[APP-611]</a>	Supply Chain Work Plan	SCWG	DoO Sch 7	Supply Chain Working Group

**NOT PROTECTIVELY MARKED**

NOT PROTECTIVELY MARKED

Level 1 Control Document	Level 2 Documents for Approval	Approval by	Securing Mechanism	Relevant Governance Group
Implementation Plan <a href="#">[REP2-044]</a>		N/A	DoO Sch 9	Planning Group
	Sports Facilities Management Plan (prepared by ESC)	SZC Co	DoO Sch 10	N/a
	Land Management Skills and Scheme (managed by ESC and SCC)	N/A	DoO Sch 11	Employment, Skills and Education Working Group
Monitoring and Mitigation Plan for Sandlings (Central) and Alde-Ore Estuary <a href="#">[REP5-122]</a>		N/A	DoO Sch 11	Environment Review Group
Monitoring and Mitigation Plan for Walberswick and Sandlings (North) <a href="#">[REP5-105]</a>		N/A	DoO Sch 11	Environment Review Group
Noise Mitigation Scheme (Doc Ref. 6.3 11H(C))		N/A	DoO Sch 12	Environment Review Group
	Annual Tourism Fund Implementation Plan and subsequent Tourism Fund Implementation Plans (prepared by ESC)	TWG	DoO Sch 13	Tourism Working Group
Construction Traffic Management Plan <a href="#">[REP2-054]</a>		N/A	DoO Sch 16	Transport Review Group
Construction Worker Travel Plan <a href="#">[REP2-055]</a>		N/A	DoO Sch 16	Transport Review Group

NOT PROTECTIVELY MARKED



## SIZEWELL C PROJECT – STRUCTURE OF CONTROL DOCUMENTS AND SUBSEQUENT APPROVALS

**NOT PROTECTIVELY MARKED**

Level 1 Control Document	Level 2 Documents for Approval	Approval by	Securing Mechanism	Relevant Governance Group
Traffic Incident Management Plan <a href="#">[REP2-053]</a>		N/A	DoO Sch 16	Transport Review Group
	Operational Travel plan	SCC	DoO Sch 16	Transport Review Group
	PROW Communications Plan (prepared by the Rights of Way Working Group)	N/A	DoO Sch 16	Rights of Way Working Group

**NOT PROTECTIVELY MARKED**

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## APPENDIX D: MEANING OF “REASONABLE ENDEAVOURS”

**RESPONSE TO EXA'S COMMENTARY ON THE DRAFT DCO – PARAGRAPH 2.11**

**Meaning of 'reasonable endeavours'**

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**1. INTRODUCTION**

- 1.1 This note responds to the ExA's request to the Applicant as part of paragraph 2.11 of its commentary on the draft DCO to "*include an explanation of the meaning of the phrase "reasonable endeavours" in law, referring to the relevant cases.*"

**2. WHAT CONSTITUTES 'REASONABLE ENDEAVOURS'?**

- 2.1 The question was framed in *Minerva (Wandsworth) Ltd v Greenland Ram (London) Ltd* 2017 EWHC 1457 as "*what would a reasonable and prudent person acting properly in their own commercial interest and applying their minds to the contractual obligation have done...*"<sup>1</sup>

- 2.2 *Minerva* also observed that in considering what steps were reasonable, the court has to consider whether any steps would have been successful. If the party can show that it would have been useless for it to have taken those steps because they would not have achieved the desired result of the contractual obligation, then that would give an answer to a claim of breach of contract. The judgment in *UBH (Mechanical Services) Ltd v Standard Life Assurance Company* is relied upon for support for this principle, which stated when considering this question:

*"..reasonable endeavours" first of all must mean something appreciably less than "best endeavours"... It really comes down to a balancing act whereby, in the present case, Standard Life were obliged to put in one scale the weight of their contractual obligation to UBH, and in the other they were entitled to place all relevant commercial considerations, including the question of their relationship with their tenants, their local reputation as landlords; the ease or otherwise with which new tenants might be procured; the cost and uncertainties of any proposed litigation, and the expense to them occasioned by the continued operation of the tenants' covenant to take UBH heating and none other. In relation to any proposed course of action, the chances of achieving the desired result would also be of prime importance."*<sup>2</sup>

- 2.3 In addition, a "reasonable endeavours" obligation does not require the obligor to sacrifice their own commercial interests and they may be entitled to consider the impact on their own profitability. This can be seen from *Phillips Petroleum Co UK Ltd -v- Enron Europe Ltd*<sup>3</sup>, which concerned a contractual obligation for the parties to use reasonable endeavours to agree a delivery date for natural gas. Due to a severe fall in the market price of the gas, *Phillips* refused to negotiate an earlier delivery date than the specified fall-back date, arguing that they were permitted to take their financial position into account in interpreting their duty

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<sup>1</sup> Para 255, 2017 (EWHC) 1457

<sup>2</sup> TLR Nov 13, 1986, upheld by Court of Appeal, 1988

<sup>3</sup> [1997] C.L.C. 329



under the reasonable endeavours obligation. The Court agreed, finding that the agreement did not require *Phillips* to disregard its own financial position.

2.4 In the context of this case-law, some common principles around the interpretation of a reasonable endeavours obligation can be seen:

2.4.1 In discharging such an obligation, the company will be required to:

- (A) balance its contractual obligation with all relevant commercial considerations;
- (B) take into account the chances of achieving the desired result via the proposed action,

2.4.2 The obligation will be interpreted against the position of a reasonable and prudent person in light of the obligor's particular circumstances and interests.

2.5 It is therefore the case that a 'reasonable endeavours' obligations has a clear meaning, weight and value in terms of its enforceability, which has been recognised by the courts. In terms of the Deed of Obligation therefore, any 'reasonable endeavours' obligations are considered to provide the necessary certainty to both Councils, while still recognising that in certain cases other factors may appropriately be weighed in the balance when considering any non-compliance.

**Herbert Smith Freehills LLP**

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## APPENDIX E: SCHEDULE OF CHANGES FOR THE CODE OF CONSTRUCTION PRACTICE SINCE DEADLINE 2

## Appendix E: Schedule of Changes to the Code of Construction Practice since Deadline 2

Section	Topic	Summary of Change
<b>CoCP Part A</b>		
1	Intro	Would to will
2.3	Objectives	Objective of the CoCP have been defined to ensure that the overall purpose of the document is clear and the documents role as part of the wider framework of controls for the project
2.4	Environmental Management System	The EMS has been updated to provide greater clarity. The term 'SSMP' has been replaced with the specific plans and commitments that are being made. This has allowed each relevant plan to be scoped and secured in an appropriate way. Clarifications and refinements have been proposed for monitoring to ensure that commitments are clear and secured.
	Related Management Plans	A section has been added to ensure that the relationship between the CoCP and other control documents is clear and overlap and duplication is avoided.
3	Communication and Engagement	This has been updated to reflect comments and responses from the ExA, ESC and SCC. This has sought to make the roles and responsibilities of each party clear.
<b>CoCP Part B: main development site</b>		
1.1	General Requirements	Work number references have been added, as requested by ESC.
1.2	General Site Arrangements	'Should's, 'would's and 'will's have been amended to 'must'. Cross reference to the Listing Management Plan has been added.
1.3	Working Hours	Clarification has been added to reflect ESC's comment relating to 24 hour working. This now clarifies that 24 hour working only applies after commencement and that excluded 'pre-commencement' activities would not be undertaken 24 hours a day.
1.4	Other Relevant Environmental	This has been updated to reflect the Level 1, 2 and 3 approach set out in Deadline 7.

Section	Topic	Summary of Change
	Management Strategies and Plans	
2	Environmental Incident Controls	The wording has been reviewed to ensure that measures are appropriately secured.
3	Noise	This section has been updated to secure the Noise Monitoring and Management Plan. The measures in Table 3.1 have then been updated to reflect discussions with ESC and SCC. The measures have been reviewed to ensure that they are appropriately secured.
4	Air Quality	<p>This section has been updated to secure the Dust Monitoring and Management Plan. The measures in Table 3.1 have then been updated to reflect discussions with ESC and SCC. The measures have been reviewed to ensure that they are appropriately secured.</p> <p>PM2.5 monitoring has also been included, along with clarifications to Euro VI commitments.</p>
5	Landscape Visual	The measures have been reviewed to ensure measures are clearer and reflect ESC comments.
6	Terrestrial Ecology & Ornithology	The measures have been updated to be more precise and respond to comments from the ExA, ESC and the RSPB.
7	Amenity and Recreation	The measures have been updated to be more precise and respond to comments from SCC
8	Historic Environment	The measures have been reviewed to avoid duplication with those set out in the Overarching WSI. The measures included in Table 7.1 are secured by Requirement 3 and have therefore been removed from the CoCP to avoid duplication. A cross reference has been provided to ensure that the measures are clear.
9	Soils	The measures have been reviewed to ensure that they are appropriately secured.
10	Geology and Land Quality	The measures have been reviewed to ensure that they are appropriately secured. The relevant best practice and guidance for each measure has been added.



Section	Topic	Summary of Change
11	Groundwater and Surface Water	Links to the Water Monitoring Plan have been clarified. The measures have been reviewed to ensure that they are appropriately secured.
12	Marine Environment	The measures have been reviewed to ensure that they are appropriately secured. Links to DML conditions have been included.
13	Marine Navigation	Has been added to set out the measures to mitigate impacts on the marine environment.
14	Waste Management and Resource Use	The measures have been reviewed to ensure that they are appropriately secured.
15	Greenhouse Gas Emissions	No changes.
<b>CoCP Part C: Offsite Associated Developments</b>		
1.1	General Requirements	Work number references have been added, as requested by ESC.
1.2	General Site Arrangements	'Should's, 'would's and 'will's have been amended to 'must'. Cross reference to the Listing Management Plan has been added.
1.3	Working Hours	Clarification has been added to reflect ESC's comment relating to working hours.
1.4	Other Relevant Environmental Management Strategies and Plans	This has been updated to reflect the Level 1, 2 and 3 approach set out in Deadline 7.
2	Environmental Incident Controls	The wording has been reviewed to ensure that measures are appropriately secured.
3	Noise	This section has been updated to secure the Noise Monitoring and Management Plan. The measures in Table 3.1 have then been updated to reflect discussions with ESC and SCC. The measures have been reviewed to ensure that they are appropriately secured.

Section	Topic	Summary of Change
4	Air Quality	This section has been updated to secure the Dust Monitoring and Management Plan. The measures in Table 3.1 have then been updated to reflect discussions with ESC and SCC. The measures have been reviewed to ensure that they are appropriately secured.
5	Landscape Visual	The measures have been reviewed to ensure measures are clearer and reflect ESC comments.
6	Terrestrial Ecology & Ornithology	The measures have been updated to be more precise and respond to comments from the ExA, ESC and the RSPB.
7	Amenity and Recreation	The measures have been updated to be more precise and respond to comments from SCC.
8	Historic Environment	The measures have been reviewed to avoid duplication with those set out in the Overarching WSI. The measures included in Table 7.1 are secured by Requirement 3 and have therefore been removed from the CoCP to avoid duplication. A cross reference has been provided to ensure that the measures are clear.
9	Soils	The measures have been reviewed to ensure that they are appropriately secured.
10	Geology and Land Quality	The measures have been reviewed to ensure that they are appropriately secured. The relevant best practice and guidance for each measure has been added.
11	Groundwater and Surface Water	Links to the Water Monitoring Plan have been clarified. The measures have been reviewed to ensure that they are appropriately secured.
12	Waste Management and Resource Use	The measures have been reviewed to ensure that they are appropriately secured.
13	Greenhouse Gas Emissions	No changes.