



# The Sizewell C Project

## 3.1 Ninth Draft Development Consent Order Addendum - Proposed Changes to the Draft Development Consent Order

September 2021

Planning Act 2008  
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Revision: 1.0  
Applicable Regulation: Regulation 5(2)(q)  
PINS Reference Number: EN010012







HERBERT  
SMITH  
FREEHILLS

**SIZEWELL C (NUCLEAR GENERATING STATION) ORDER  
SCHEDULE OF CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER (Deadline 8)  
FROM REV 9.0 TO REV 10.0**

**Abbreviations**

**ESC – East Suffolk Council**

**ExA – Examining Authority**

**Magnox – Magnox Limited**

**MMO – Marine Management Organisation**

**NDA – Nuclear Decommissioning Authority**

**NWL – Northumbrian Water Limited**

**SCC – Suffolk County Council**

| <b>DCO Ref<br/>(Art/Sched)</b> | <b>Stakeholder/<br/>Applicant</b> | <b>Change made</b>                      | <b>Comment from stakeholder/rationale</b>                                               | <b>DCO<br/>Version</b> |
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| Art 1                          | Applicant                         | Name of Order updated to include "2022" | If the Order is made it will be made in 2022 and so this will be the name of the Order. | Rev 10                 |

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| Art 2                          | Applicant /<br>ESC                | Definition of "ancillary structures"<br>added                                                                                                                                                                            | This definition has been added in connection with<br>the updates to article 4 (see below)                                                                                                                                                                                                                                                                                                                     | Rev 10                 |
| Art 2                          | Applicant /<br>SCC                | Definitions of "footpath" and "NMU"<br>deleted                                                                                                                                                                           | Please refer to DCO Drafting Note 13 (Appendix<br>1) for rationale                                                                                                                                                                                                                                                                                                                                            | Rev 10                 |
| Art 2                          | Applicant /<br>SCC                | Interpretation provisions added for the<br>following terms where they are used in<br>the Schedules to the Order: "highway<br>(all traffic)", "new highway (all traffic",<br>"highway (NMUs)" and "highway<br>(footpath)" | Please refer to DCO Drafting Note 13 (Appendix<br>1) for rationale                                                                                                                                                                                                                                                                                                                                            | Rev 10                 |
| Art 4                          | Applicant /<br>ESC                | Limits of deviation provisions redrafted                                                                                                                                                                                 | To respond to ExA comments and ESC<br>submissions at ISH 14 by providing clarification<br>that the Approved Plans set the 'Rochdale<br>envelope' for the majority of works save for those<br>approved pursuant to Requirement 13 (where the<br>Parameter Plans set the envelope) and Work Nos.<br>11 and 12 (where a vertical limit of deviation of up<br>to 1 metre upwards or 1 metre downwards<br>applies) | Rev 10                 |
| Art 9                          | Applicant /<br>ESC /SCC           | Provisions relating to the consent to<br>transfer the benefit of the Order<br>redrafted                                                                                                                                  | Please refer to DCO Drafting Note 14 (Appendix<br>2) for rationale                                                                                                                                                                                                                                                                                                                                            | Rev 10                 |
| Art 9B                         | Applicant /<br>ESC / SCC          | Provisions relating to modification and<br>discharge of Deed of Obligation<br>redrafted                                                                                                                                  | Please refer to DCO Drafting Note 14 (Appendix<br>2) for rationale                                                                                                                                                                                                                                                                                                                                            | Rev 10                 |

| DCO Ref<br>(Art/Sched) | Stakeholder/<br>Applicant | Change made                                                                                                                                                                                                                | Comment from stakeholder/rationale                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | DCO<br>Version |
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| Art 13                 | Applicant /<br>SCC        | The New Roads and Street Works Act 1991 provisions that were previously disapplied through the operation of article 84 and Schedule 24 have been brought into article 13 subject to some minor alterations and corrections | To respond to SCC's Deadline 7 comments on the draft DCO <a href="#">[REP7-157]</a> in relation to this article and following discussions (which remain ongoing) regarding the structure of the article and which provisions should be disapplied.                                                                                                                                                                                                                                                                                 | Rev 10         |
| Art 14                 | Applicant /<br>SCC        | "footpath" replaced with "public right of way"                                                                                                                                                                             | Please refer to DCO Drafting Note 13 (Appendix 1) for rationale                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Rev 10         |
| Art 15                 | Applicant /<br>SCC        | "footpath" replaced with "public right of way" and interpretation provision removed                                                                                                                                        | Please refer to DCO Drafting Note 13 (Appendix 1) for rationale                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Rev 10         |
| Art 16(1A)             | Applicant                 | Reference to approval of the street authority added to this approval provision                                                                                                                                             | Correction to align drafting with article 19(1)(b).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Rev 10         |
| Art 22(5)              | SCC                       | Updates to the statutes referred to in this provision                                                                                                                                                                      | Changes requested by SCC on the basis that: <ul style="list-style-type: none"> <li>• speed limits are not usually imposed by traffic regulation orders (i.e. orders under s.1 of Road Traffic Regulation Act 1984) but by orders under section 84 of the same Act;</li> <li>• there are no “savings and exemptions” mentioned in Schedule 14 (so references to them are not required);</li> <li>• the provision about savings and exemptions is presumably meant to apply to all the provisions, not just to section 32</li> </ul> | Rev 10         |



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|                        |                           |                                                                                                                          | <p>parking place orders, so the tailpiece should all be on a new line;</p> <ul style="list-style-type: none"> <li>speeding offences cannot be subject to civil enforcement under Traffic Management Act 2004.</li> </ul>              |                |
| Art 26(2)              | Magnox / NDA / Applicant  | Express reference to Schedule 19 (Protective Provisions) included                                                        | To make it clear that the compulsory acquisition provisions in part (1) are subject to the protective provisions in Schedule 18                                                                                                       | Rev 10         |
| Art 52                 | MMO                       | Article deleted                                                                                                          | There is no need to expressly state that the Marine and Coastal Access Act 2009 applies, or to make provisions with respect to inconsistencies, as any future marine licences will clearly be subject to the marine licensing regime. | Rev 10         |
| Art 53                 | Applicant / MMO           | Work No. 1A(bb) now referred to as a temporary "marine bulk import facility"                                             | Correction                                                                                                                                                                                                                            | Rev 10         |
| Art 53                 | MMO                       | "shall be" replaced with "is"                                                                                            | Correction                                                                                                                                                                                                                            | Rev 10         |
| Art 54                 | MMO                       | In paragraph (1) "must be" replaced with "is guilty of an offence and" and in paragraph (2) "must be" replaced with "is" | Correction so as to ensure consistency with articles 53 and 69                                                                                                                                                                        | Rev 10         |
| Art 69(2)              | MMO                       | Defence provision added,                                                                                                 | Precedented by The Newport (Isle of wight) Harbour Revision Order 2021                                                                                                                                                                | Rev 10         |



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| Art 70                 | MMO                       | "reasonable notice" replaced with "48 hours' notice"                                            | To provide certainty over the length of the notice period                                                                                                                                                      | Rev 10         |
| Art 71                 | MMO                       | "reasonable notice" replaced with "48 hours' notice"                                            | To provide certainty over the length of the notice period                                                                                                                                                      | Rev 10         |
| Art 73                 | Applicant /<br>MMO        | Temporary "beach landing facility" now referred to as a temporary "marine bulk import facility" | Correction                                                                                                                                                                                                     | Rev 10         |
| Art 73A                | MMO                       | New article relating to the termination of Part 6 (Harbour Powers)                              | Article added to address closure of the harbour after the construction phase of the authorised development. This article is based upon article 51 of the Hinkley Point C DCO, but is largely bespoke drafting. | Rev 10         |
| Art 73B                | MMO                       | New article relating to the termination of Part 6 (Harbour Powers)                              | Added in connection with the closure of the harbour. Precedented by art 83 of the Hinkley point C DCO                                                                                                          | Rev 10         |
| Art 85                 | The Crown                 | Crown rights provisions restructured.                                                           | Revised form as requested by the Crown. The Applicant expects the Crown to issue a s135(2) letter shortly now that this form of wording has been agreed in article 85.                                         | Rev 10         |
| Schedule 1             | Applicant                 | Minor updates to Work Nos. 1A(e)(v), 1A(x), (bb), 1B, 2A-D, 3 and 4B                            | Corrections to better align Works descriptions with plans submitted for approval                                                                                                                               | Rev 10         |
| Sch. 2, para. 1(3)     | SCC                       | "agreement" replaced with "approval"                                                            | Correction                                                                                                                                                                                                     | Rev 10         |



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| Sch. 2, para.<br>1(3)        | Applicant                 | "significant" inserted before<br>"environmental effects"                                                                    | Correction to clarify that the threshold relates to<br>significant effects as assessed in the<br>environmental information.                      | Rev 10         |
| Sch. 2, para.<br>1(5)        | Applicant                 | Requirement 14C added to the list of<br>requirements that must be complied<br>with throughout construction                  | Amendment made in response to comment made<br>by ExA at ISH14 and in connection with the<br>amendment made to Requirement 14C itself.            |                |
| Sch. 2, para.<br>1(5)        | ESC                       | "and these requirements apply to all<br>material operations including those<br>excluded from the definition of<br>commence" | Clarification                                                                                                                                    | Rev 10         |
| Sch. 2, Req. 2               | ESC                       | Reference to subsequent plans<br>approved under the Code of<br>Construction Practice added.                                 | Clarification made in response to ExA comments<br>at ISH14                                                                                       | Rev 10         |
| Sch. 2, Req.<br>3(1)         | SCC / ESC                 | "general" deleted before "accordance"                                                                                       | Site-specific written schemes of investigation<br>should be in accordance with the Overarching<br>Archaeological Written Scheme of Investigation | Rev 10         |
| Sch 2, Req.<br>3(2) and (5)  | SCC                       | "with" replaced with "by"                                                                                                   | Correction                                                                                                                                       | Rev 10         |
| Sch. 2, Req.<br>3(3) and (4) | Applicant                 | Reference to Work No. 1A(I) (SSSI<br>crossing) added                                                                        | Correction following review of Overarching Written<br>Scheme of Investigation                                                                    | Rev 10         |
| Sch. 2, Req. 4               | Applicant                 | Updates made to expressly refer to the<br>authorised development and temporary<br>works                                     | Corrections made to align drafting with<br>Requirement 2                                                                                         | Rev 10         |



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| Sch. 2, Req. 6A                | SCC / Applicant                   | Updates made to the heading of the requirement and to the reference to the Rights of Way and Access Strategy                                            | Corrections                                                        | Rev 10                 |
| Sch. 2, Req. 7                 | Applicant                         | Name of control document updated from "Water Monitoring and Response Strategy" to "Water Monitoring and Management Plan"                                | Updated to align with new name of document                         | Rev 10                 |
| Sch. 2, Reqs. 11 and 12        | ESC                               | Updates made to reflect that the two sky bridges and main access control building will be subject to reserved matters applications under Requirement 12 | Correction                                                         | Rev 10                 |
| Sch. 2, Req. 12B               | MMO / Applicant                   | Temporary "beach landing facility" now referred to as a temporary "marine bulk import facility"                                                         | Correction                                                         | Rev 10                 |
| Sch, 2, Req 12C                | ESC                               | Reference in part (1) now made to the relevant part of the Design and Access Statement                                                                  | There is a design principle which applies to the SSSI.             | Rev 10                 |
| Sch, 2, Req 12D                | ESC                               | New requirement.                                                                                                                                        | SSSI method statements now addressed under a separate requirement. | Rev 10                 |
| Sch, 2, Req 14B                | ESC / Applicant                   | Reference to the Draft Wet Woodland Plan added                                                                                                          | To align with similar approach taken in other requirements         | Rev 10                 |

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| Sch, 2, Req<br>16      | MMO /<br>Applicant        | Temporary "beach landing facility" now referred to as a temporary "marine bulk import facility"                                     | Correction                                                                    | Rev 10         |
| Sch, 2, Req<br>17      | ESC                       | In paragraph (2) "general" deleted before "accordance" and "unless otherwise approved by East Suffolk Council" added as a tailpiece | Correction                                                                    | Rev 10         |
| Sch, 2, Req<br>20      | ESC                       | Paragraph (3) amended to cross-refer to the details approved pursuant to paragraph (1)                                              | Correction                                                                    | Rev 10         |
| Sch, 2, Req<br>22A     | Applicant                 | Reference to the Associated Development Design Principles added                                                                     | Correction                                                                    | Rev 10         |
| Sch, 2, Req<br>23      | SCC                       | Work No. 14 added to this requirement.                                                                                              | Work No 14 should also fall within the scope of this requirement              | Rev 10         |
| Sch, 2, Req<br>24(1)   | SCC                       | Updates to the Work No references                                                                                                   | To clarify that the requirement applies to the related highway works as well. | Rev 10         |
| Sch, 2, Req<br>24(2)   | SCC                       | "which must include a timetable for the removal and reinstatement works"                                                            | To specify that the scheme must include a timetable.                          | Rev 10         |
| Sch, 2, Req<br>25      | ESC /<br>Applicant        | Updates made to refer to the rail noise mitigation plan and remove reference to the prohibited hours+                               | The relevant details are contained within the rail noise mitigation plan.     | Rev 10         |
| Sch. 3                 | Applicant                 | Updates to the revision numbers                                                                                                     | Corrections                                                                   | Rev 10         |
| Sch. 4                 | Applicant                 | Updates to the revision numbers                                                                                                     | Corrections                                                                   | Rev 10         |



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| Sch. 5                         | Applicant                         | Updates to the revision numbers                                                                                                                                               | Corrections                                                                                        | Rev 10                 |
| Sch. 6                         | Applicant /<br>ESC                | Updates to the revision numbers, inclusion of the Main Development Site Operational Parameter Plan Parameter Heights plan, and inclusion of relevant Work Nos. in subheadings | Corrections and clarifications                                                                     | Rev 10                 |
| Sch. 7                         | Applicant /<br>ESC                | Updates to the revision numbers and inclusion of relevant Work Nos. in subheadings                                                                                            | Corrections and clarifications                                                                     | Rev 10                 |
| Sch. 9                         | Applicant /<br>SCC                | Various updates made                                                                                                                                                          | Corrections following detailed review undertaken by the Applicant and in response to SCC comments. | Rev 10                 |
| Sch. 10                        | Applicant                         | Various updates made                                                                                                                                                          | Corrections following detailed review undertaken by Applicant                                      | Rev 10                 |
| Sch. 11                        | Applicant                         | Various updates made                                                                                                                                                          | Corrections following detailed review undertaken by Applicant                                      | Rev 10                 |
| Sch. 11                        | Applicant                         | In the heading "footpaths" replaced with "public rights of way"                                                                                                               | Please refer to DCO Drafting Note 13 (Appendix 1) for rationale                                    | Rev 10                 |
| Sch. 12                        | Applicant                         | Two rows deleted                                                                                                                                                              | Corrections following detailed review undertaken by Applicant                                      | Rev 10                 |
| Sch. 13                        | Applicant                         | Various updates made                                                                                                                                                          | Corrections following detailed review undertaken by Applicant                                      | Rev 10                 |

| DCO Ref<br>(Art/Sched) | Stakeholder/<br>Applicant | Change made                                                   | Comment from stakeholder/rationale                                                                                                                                                                                                                                                                                                                                                                                                                                        | DCO<br>Version |
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| Sch. 14                | Applicant /<br>SCC        | Various updates made                                          | Corrections following detailed review undertaken by the Applicant and in response to SCC's Deadline 7 comments <a href="#">[REP7-157]</a>                                                                                                                                                                                                                                                                                                                                 | Rev 10         |
| Sch. 16                | Applicant                 | Various updates made                                          | Corrections following detailed review of schedule                                                                                                                                                                                                                                                                                                                                                                                                                         | Rev 10         |
| Sch. 17                | Applicant                 | Deletion of MDS/02/38 and addition of OHI/24/03 and OHI/04/08 | Corrections                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Rev 10         |
| Sch. 17                | Applicant                 | Inclusion of MH/14/01, MH/14/01a, MH/14/01b and MH/14/02      | Parcels changed to temporary possession at Deadline 8 following Compulsory Acquisition hearings                                                                                                                                                                                                                                                                                                                                                                           | Rev 10         |
| Sch. 17                | Applicant                 | Deletion of FM/13/03, FM/28/02 and FM/28/12                   | In accordance with the proposed Order limits reductions submitted at Deadline 8                                                                                                                                                                                                                                                                                                                                                                                           | Rev 10         |
| Sch. 18, Part 9        | Magnox / NDA              | Various minor drafting updates                                | To reflect now agreed position with Magnox / NDA                                                                                                                                                                                                                                                                                                                                                                                                                          | Rev 10         |
| Sch. 18, Part 10       | NWL                       | Placeholder for NWL's protective provisions                   | <p>A placeholder is included at this time for the following reasons:</p> <ul style="list-style-type: none"> <li>Revision 10 of the draft DCO does not contain draft protective provisions for NWL because they are the subject of ongoing and positive negotiation and it is considered preferable to submit them at Deadline 9 on a standalone basis to allow those negotiations to continue outside the examination and hopefully result in agreed drafting.</li> </ul> | Rev 10         |



| DCO Ref<br>(Art/Sched) | Stakeholder/<br>Applicant | Change made                                                                                                                                     | Comment from stakeholder/rationale                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DCO<br>Version |
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|                        |                           |                                                                                                                                                 | <ul style="list-style-type: none"> <li>Submission of the protective provisions at Deadline 9 will allow for them to be considered at the desalination plant Issue Specific Hearing if necessary with the final drafting to be incorporated into the draft DCO submitted at Deadline 10.</li> <li>In the meantime SZC Co.'s written summary of oral submissions at ISH14 contains a detailed description of the draft protective provisions as initially provided to NWL as the basis for negotiation, and the suite of Deadline 8 documents includes SZC Co's written submissions as to why a <i>Grampian</i> requirement is not appropriate having regard to the relevant law, guidance and factual context.</li> </ul> |                |
| Sch. 20                | MMO / Applicant           | Various drafting updates                                                                                                                        | The updated drafting reflects the current status of negotiation between the Applicant and the MMO. The Applicant continues to actively engage with the MMO on these provisions and a further updated version will be submitted with the final draft DCO at Deadline 10.                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Rev 10         |
| Sch. 22                | NDA / Magnox              | The 'Access Road Plan' which is referred to in the NDA / Magnox's protective provisions (Sch. 18, Part 9) is now listed as a Certified Document | The 'Access Road Plan' is included as it has been submitted to the Examination at Deadline 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Rev 10         |
| Sch. 23                | Applicant / ESC / SCC     | Detailed fees provisions now included                                                                                                           | Please refer to DCO Drafting Note 15 (Appendix 3) for rationale                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Rev 10         |

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| Sch. 24, para.<br>2            | SCC                               | "with the agreement of the highway<br>authority" inserted.               | To caveat the exemption contained in this<br>provision        | Rev 10                 |
| Sch. 24,<br>para.4             | SCC /<br>Applicant                | Deletion of disapplication of the New<br>Roads and Street Works Act 1991 | These provisions have been moved to article 13<br>for clarity |                        |



**APPENDIX 1**  
**CLARIFICATIONS IN RELATION TO LABELLING AND INTERPRETIVE PROVISIONS**  
**RELATING TO PUBLIC RIGHTS OF WAY AND HIGHWAYS**  
**DCO DRAFTING NOTE 13**

**CLARIFICATIONS IN RELATION TO LABELLING AND INTERPRETIVE PROVISIONS  
RELATING TO PUBLIC RIGHTS OF WAY AND HIGHWAYS  
DCO DRAFTING NOTE 13**

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**1. INTRODUCTION**

- 1.1 There has been some confusion as to the use of the term 'footpath' in the draft DCO and Rights of Way Plans.
- 1.2 This arises from the fact that the Applicant took the decision to refer to all public rights of way as 'footpaths' in the DCO and in the Rights of Way Plans (albeit with a note in the Rights of Way Plans making clear that the term 'footpath' refers to any type of public right of way, and that art 2 of the DCO defined 'footpath' as 'a public right of way on foot only, unless otherwise specified'). Specific articles of the DCO then specified when the term 'footpath' should be interpreted more widely to mean all public rights of way. A more detailed explanation of how the approach in the Rev 8/9 (and previous) versions of the DCO worked is set out in Section 2 of this note.
- 1.3 However, on reflection, we feel that it would be clearer to make some changes to the drafting in the DCO, and the labelling on the Rights of Way plans, to ensure that the term 'footpath' is not misconstrued. Our new proposed approach is set out in section 3 of this note.
- 1.4 It should be noted, however, that we still do not propose to be specific in Schedules 10 and 13 or Schedule 11 column (2) to the DCO about the type of public right of way (footpath, cyclepath, or bridleway) being created to replace rights of way being stopped up. We will, however, be specific about this in Schedule 11 column (3), as its specific purpose is to designate the type of right of way being created or improved. No other Schedules are relevant.
- 1.5 Our position is that the purpose of all references to 'highway (footpath)' in Schedules 10 and 13, and in Schedule 11 column (2), is purely to mirror the key in the Rights of Way Plans to which the reference numbers in these schedules refer. It is important that the description in the schedules matches the key, and it would be overly complicated for the colour-coding of the Rights of Way Plans to seek to deal with the additional layer of complexity posed by representing the type of public right of way being stopped up or created. The purpose of the Rights of Way Plans and the articles and Schedules to which they relate (save for art 15 and Schedule 11 column (3)) is merely to show the contingency<sup>1</sup> between the sections of highway being stopped up or temporarily closed and the sections which must be provided before such stopped up or temporary closure can take place.
- 1.6 We have also used in the Schedules and the Rights of Way Plans, and propose to retain, the terms 'highway (NMU)' and 'highway (all traffic)' as well as 'highway (footpath)'. This is because we think these terms are helpful in showing the particular use of the highway, currently and in future. We are now, however, proposing to be clearer in the interpretive

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<sup>1</sup> ie to explain and show where replacement highway will be provided before sections of highway are stopped up or temporarily closed



provisions and the Rights of Way Plans about what these mean (see explanation in section 3 of this note).

- 1.7 'Highway (NMUs)' does not equate to any type of public rights of way (ie footpath, cyclepath or bridleway). Rather, it denotes that the design of the highway in future will be such that it is suitable and usable only by non-motorised users. There are a number of such instances – where it has been agreed between the Applicant and SCC that small sections of an existing highway used by all traffic will (after creation of the Sizewell Link Road or Two Village Bypass) be usable only by pedestrians/cyclists, but will not be designated as a public right of way. This matter was subject to extensive discussion between SCC and SZC Co., as originally it had been our approach to designate all such small stretches of highway as public rights of way, but we were told by SCC that where these future pedestrian-only stretches are within existing highway boundaries they should not be designated as public rights of way but rather simply shown as changing their usage/status – from all traffic to NMUs. This approach has therefore been adopted and is proposed to be retained.

## 2. REVISION 8/9 DRAFT DCO

- 2.1 Set out below is an explanation of how the term "footpath" was used in the rights of way schedules in the Rev 8/9 and previous versions of the DCO.
- 2.2 On the Rights of Way Plans the existing status of any given public right of way was labelled as either: (i) highway (all traffic); or (ii) highway (footpath). The notes on each of the Rights of Way Plans explained that: (i) "all public highways, including those with adjacent footways and cycleways, shown on this drawing are referred to as highway (all traffic)"; and (ii) "all footpaths, cyclepaths, bridleways, byways and restricted byways are referred to as highway (footpath)". **See Appendix to this note for an example of a key to the previous Rights of Way Plans.**
- 2.3 The Rights of Way Plans have always differentiated between (i) and (ii) but originally (i) was referred to as "highway" and (ii) was referred to as "footpath". The change in labelling approach was intended to reflect the legal reality that footpaths are also a form of highway – highway being a general term which applies to any defined route over which the public can pass and repass (see e.g. *Poole v Huskinson* (1843) 11 M&W 827 and *Fernlee Estates v City and Council of Swansea* and *National Assembly for Wales* [2001] P&CR 19). The change in labelling approach was agreed with SCC and there is more detail on this in DCO Drafting Note 7 [REP2-111].
- 2.4 Article 2 (interpretation) of Rev 8/9 DCO (and previous Revs) provided that:
  - 2.4.1 "footpath" means a public right of way on foot only; unless otherwise specified; and
  - 2.4.2 "street" means, irrespective of whether it is a thoroughfare, the whole or any part of any highway, road, lane, footway, alley, passage, square, court and any land laid out as a way whether it is for the time being formed as a footpath or not, together with land on the verge of a street or between two carriageways, and includes part of a street and any bridge, viaduct, overpass or underpass which a street passes over.
- 2.5 Rev 8/9 of the DCO used the terms "footpath" or "street" to describe (i) and (ii) depending on the article/context: in articles 14 and 17 the term "street" is used; in article 15 the term "footpath" was used.
- 2.6 Article 15 included an interpretation provision at 15(2) which explained that for the purposes of article 15 and Schedule 11, the definition of "footpath" under article 2 (Interpretation) was extended to also include any other public right of way. Articles 14 and 17 include similar



interpretation provisions at 14(10) and 17(11) respectively, which explain that for the purposes of articles 14/17 and Schedules 10/14 (as appropriate), the definition of "street" under article 2 (Interpretation) is extended to also include any other public right of way. These interpretation provisions were necessary to widen the definitions of "street" and "footpath" to include other types of public rights of way such as cyclepaths and bridleways to which these articles relate.

- 2.7 In schedules 10, 11 and 13 the terms "highway (footpath)" and "highway (all traffic)" appeared throughout where they directly correspond to the labels shown in the Rights of Way Plans. It would be problematic if in schedules 10, 11 and 13 the term "footpath" were to be replaced with the actual status of the public right of way (e.g. "bridleway" in relation to Bridleway 19) as this would create inconsistencies with the labels within the Rights of Way Plans and to expand the colour coding of the Rights of Way Plans yet further would be overly complicated.
- 2.8 Article 15(1) provided that with effect from the date on which the highway authority has confirmed that the footpaths specified in column (2) of Schedule 11 have been created or improved to the standard specified in a public rights of way implementation plan, the 'footpaths' in question would be deemed to have the status specified in column (3) of that Schedule. As such, the specific status of each newly created/improved public rights of way was stated in column (3) of Schedule 11 - but that was always considered appropriate because the power in article 15(1) requires this, and the information in column (3) is not associated with the Rights of Way Plans labels.

### 3. **CLARIFICATORY CHANGES TO APPROACH IN REV 10 DCO AND REVISED RIGHTS OF WAY PLANS**

- 3.1 Our revised approach, which has been shared with SCC, is as follows:

- 3.1.1 We have deleted the definition of 'footpath' from art 2.
- 3.1.2 We have deleted the definition of 'NMU'
- 3.1.3 We have changed article 15 so that the title and all references to 'footpaths' in art 15(1) are changed to 'public rights of way'. We had gone part way towards this in Rev 8/9 anyway in re-naming the 'footpath implementation plan' a 'public rights of way implementation plan'.
- 3.1.4 We have deleted art 15(2).
- 3.1.5 Schedule 11 has been renamed 'Status of public rights of way created or improved'
- 3.1.6 We have added the following new interpretive provisions in article 2 (interpretation)
- (A) "A reference in the Schedules to this Order to "highway (all traffic)" or "new highway (all traffic)" is a reference to a highway, other than a public right of way or a highway used only by non-motorised users"
  - (B) "A reference in the Schedules to this Order to "highway (NMUs)" is a reference to a highway which is not a public right of way, but over which only non-motorised users may travel"
  - (C) "A reference in the Schedules to this Order to "highway (footpath)" refers to any route used as a public right of way, including footpaths, cyclepath,



bridleways, byways and restricted byways, but reference to 'footpath' in column (3) of Schedule 11 refers to a public right of way on foot only."

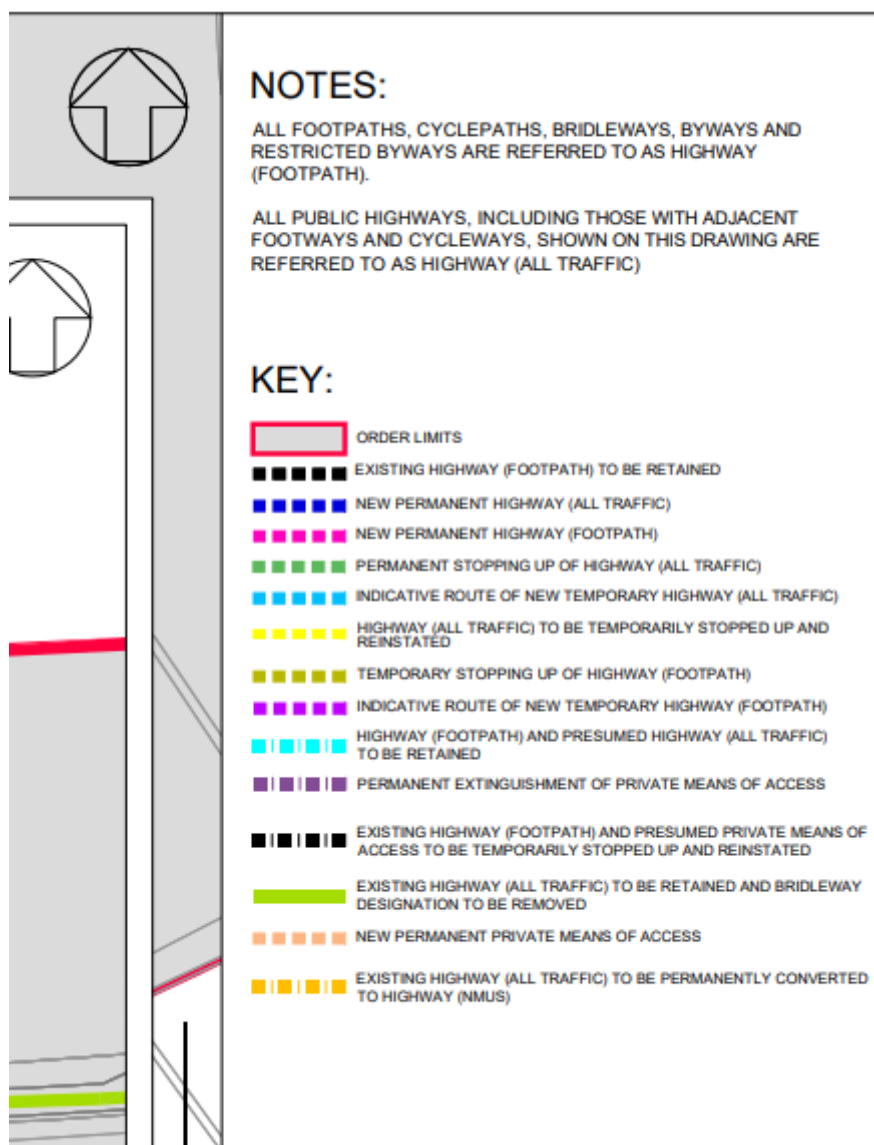
- 3.1.7 The following notes have been set out in the updated Rights of Way Plans submitted at Deadline 8 to align with the new interpretive provisions. The previous notes to these plans have been deleted:
- (A) "highway (all traffic)" is a reference to a highway, other than a public right of way or a highway used only by non-motorised users"
  - (B) "highway (NMUs)" is a reference to a highway which is not a public right of way but over which only non-motorised users may travel"
  - (C) "highway (footpath)" refers to any route used as a public right of way (footpaths, cycleways, bridleways, byways or restricted byway)"
  - (D) "Notwithstanding reference to 'highway (footpath)' in these plans, the types of new public rights of way to be created are set out in Schedule 11 of the Order"
- 3.1.8 None of the reference numbering/lettering on the Rights of Way Plans or in the Schedules is changed.
- 3.1.9 For consistency of approach we will change back the term 'Highway (bridleway)' in Schedule 13, Part 2 to 'Highway (footpath)'.
- 3.1.10 The changes in Rev 10 of the DCO and corresponding proposed changes to the notes in the Rights of Way Plans do not change the substance of the Order powers, but are clearer than our former approach.

**Herbert Smith Freehills LLP**





## APPENDIX: EXAMPLE KEY FROM PREVIOUS VERSION OF RIGHTS OF WAY PLANS



**APPENDIX 2**  
**ARTICLE 9 DCO AND CLAUSE 5 OF THE DEED OF OBLIGATION**  
**DCO DRAFTING NOTE 14**

**ARTICLE 9 DCO AND CLAUSE 5 OF THE DEED OF OBLIGATION**  
**DCO DRAFTING NOTE 14**

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**1. ARTICLE 9 OF THE DRAFT DCO**

- 1.1 At ISH14 there was discussion as to whether it is appropriate for the Secretary of State's consent not to be required where the undertaker wishes to transfer the power to construct or operate the main power station works (Work No. 1A(a) to (h)). The Rev 8/9 DCO drafting required such consent except in the case of a person with a nuclear site licence. We explained at ISH14 why we considered this to be reasonable and appropriate.
- 1.2 However, also at ISH14 the Councils raised concerns that there could be circumstances where:
- 1.2.1 the benefit of the Order in relation to Work No.1A(a) to (h) were to be transferred to a new undertaker,
  - 1.2.2 that new undertaker was then unable to implement the remainder of the authorised development as required by its commitments under the Deed of Obligation, and
  - 1.2.3 the Councils would be unable to enforce the Deed of Obligation directly upon the person with the benefit of the Order powers to carry out those other parts of the authorised development because article 9 says that the Deed can only be enforced against the person with the Work No 1A(a) to (h) powers.
- 1.3 The Applicant explained at ISH14 why there were in fact no realistic circumstances where this concern would arise (please refer to **Written Summary of the Applicant's Oral Submissions for ISH14** for full details).
- 1.4 Part of the case made by the Applicant at ISH14 was that the Secretary of State would have oversight of any transfer, and would therefore be able to prevent a transfer of the benefit of part of the Order powers in circumstances where this would leave the undertaker unable to comply with the terms of the Deed of Obligation.<sup>1</sup>
- 1.5 While the Applicant remains confident that no change to the drafting of article 9 is necessary to address the concern raised by the Councils for the reasons explained at ISH14, it has

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<sup>1</sup> It is worth noting that (i) the duty to attend governance groups set up under the Deed of Obligation; and (ii) the duty to pay monies under the Deed of Obligation, would not be affected by a partial transfer of DCO powers to carry out works. The Councils' concern can only be in relation to the ability of the 'main' undertaker to ensure that all parts of the authorised development required by the Deed of Obligation to be put in place are in fact put in place and within the timescales committed to.

nevertheless offered two changes to the drafting of article 9 in revision 10 of the draft DCO submitted at Deadline 8, in order to provide further reassurance on this point.

1.5.1 **Change 1:** We have deleted paragraph (6) of article 9, which had exempted nuclear site licence holders from the need to obtain the Secretary of State's consent for a transfer; and

1.5.2 **Change 2:** We have added the following new paragraph (3A) to article 9:

(3A) Where the undertaker seeks to transfer the benefit of some but not all of the Order powers, the Secretary of State shall take into account whether such partial transfer can take place without prejudicing:

- (a) delivery of the authorised development as a whole;
- (b) the ability of the person bound by the Deed of Obligation following such transfer to meet all obligations contained therein;
- (c) the ability of East Suffolk Council and Suffolk County Council to enforce the terms of the Deed of Obligation

1.6 Together these changes ensure that any transfer of the Order powers would be subject to obtaining the consent of the Secretary of State, and that where the proposed transfer is a partial transfer, the Secretary of State is obliged take into account the matters set out in paragraph (3A) above.

1.7 We reiterate that we do not consider this additional drafting to be necessary, because it is appropriate to assume that the Secretary of State would have regard to this issue where relevant in any event. Nevertheless, in discussions with SCC we understand that insertion of the additional paragraph would assist in satisfying their concerns.

## 2. **CLAUSE 5 OF THE DEED OF OBLIGATION**

2.1 The interaction between Clause 5 and article 9 was discussed at ISH14.

2.2 Clause 5 of the Deed of Obligation deals with the release of the person bound from time to time by the Deed of Obligation. It states that:

### **RELEASE**

5.1 SZC Co shall, upon transfer of the entirety of the Undertaking pursuant to the Development Consent Order, be released from all obligations in this Deed but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.

['Undertaking' is defined as means the benefit of the Development Consent Order to construct or operate Work No.s 1A(a) to (h) as set out in Schedule 1 to the development Consent Order"]

2.3 We propose no change to this wording from previous drafts of the Deed of Obligation. As explained at ISH14, we consider that this mechanism works as a means of 'tagging' the duty to comply with the Deed of Obligation to the right person – the person who is building or operating the power station at any particular time. That person will be bound by all of the obligations under the Deed of Obligation. It will be, therefore, primarily a matter for them to

ensure that they have the contractual arrangements in place to meet all obligations under the Deed of Obligation<sup>2</sup>.

- 2.4 However, we hope that the proposed revisions to article 9 outlined in section 1 of this note provide additional comfort to the Councils and the ExA that the Secretary of State will turn his or her mind to the point which concerns them in relation to partial transfer before giving consent to transfer Order powers.

**Herbert Smith Freehills LLP**

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<sup>2</sup> And we understand that this principle has been accepted in relation to Network Rail, National Grid and ENGL, with whom SZC Co will have contractual relationships to deliver infrastructure, without these parties being directly bound by the Deed of Obligation to deliver such infrastructure. Similarly it would not be usual to have the sub-contractors of a developer directly bound by a s106 agreement.



**APPENDIX 3**  
**FEES FOR DISCHARGE OF REQUIREMENTS IN SCHEDULE 23 OF THE DRAFT DCO**  
**DCO DRAFTING NOTE 15**

**FEES FOR DISCHARGE OF REQUIREMENTS IN SCHEDULE 23 OF THE DRAFT DCO**  
**DCO DRAFTING NOTE 15**

**1. REVISED APPROACH TO FEES**

- 1.1 Rev 8/9 of the draft DCO included the form of drafting from Hinkley, as set out in the Appendix to this note.
- 1.2 Following further consideration we propose the following approach, which we consider to be clearer. The footnotes in this section below refer to the equivalent fee requirements under Schedule 1 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 as amended in 2017 ("**TCPA Fee Regs**").
- 1.3 This drafting is still under discussion with Suffolk County Council and East Suffolk Council.

**Fees**

**3.—**(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement, a fee shall be paid to that authority as follows—

| <b>Requirement</b>                                               | <b>Fee</b>                                        |
|------------------------------------------------------------------|---------------------------------------------------|
| <b>Category 1: reserved matters (major)</b>                      | In accordance with sub-paragraph (2), (3) and (4) |
| Requirement 12: Main development site reserved matters           |                                                   |
| <b>Category 2: minor reserved matter and other details</b>       | £2,028 <sup>1</sup>                               |
| Requirement 5: Project wide: surface and foul water drainage     |                                                   |
| Requirement 10: Main development site: outage car park           |                                                   |
| Requirement 12A: Sports facilities: reserved matters             |                                                   |
| Requirement 12B: Main development site: marine infrastructure    |                                                   |
| Requirement 12C: Main development site: SSSI Crossing            |                                                   |
| Requirement 13A: Main development site: highway works            |                                                   |
| Requirement 14: Main development site: landscape works           |                                                   |
| Requirement 22: Highway works                                    |                                                   |
| Requirement 22A: Associated development: highway landscape works |                                                   |
| <b>Category 3: re-approvals and 'unless other agreed'</b>        | £462 <sup>2</sup>                                 |

<sup>1</sup> This is the upper limit for 'Category 10 (Other works)' under the TCPA Fee Regs, which are otherwise calculated as £195 for each 0/1 hectare of site area, but we are content to offer the maximum for each discharge

<sup>2</sup> This is the same as for the re-submission of a reserved matters application under the TCPA Fee Regs

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- (i) In respect of any Category 1 or Category 2 requirement where an application is made for discharge in respect of which an application has been made previously
  - (ii) Approval of variations pursuant to the 'unless otherwise agreed' provisions of the following requirements

Requirement 2: project wide: code of construction practice  
 Requirement 4: project wide: terrestrial ecology monitoring and mitigation plan  
 Requirement 5C: project wide: estate management  
 Requirement 6: project wide: site clearance  
 Requirement 8: main development site: temporary construction-related development  
 Requirement 9: main development site: construction lighting  
 Requirement 11: main development site: approved buildings, structure and plant  
 Requirement 13: main development site: ancillary structures, other buildings and plant  
 Requirement 15: main development site: permanent operational lighting  
 Requirement 18: rail infrastructure  
 Requirement 19: associated development: site clearance

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**Category 4: discharge of condition**

£116<sup>3</sup>

Requirement 3: Project wide: archaeology and peat  
 Requirement 5A: Project wide: emergency planning  
 Requirement 5B: Project wide: navigation lighting  
 Requirement 6A: Main development site: public rights of way  
 Requirement 7: main development site: water ,monitoring and response strategy  
 Requirement 7A: main development site: coastal processes monitoring and mitigation plan  
 Requirement 14A: main development site: fen meadow  
 Requirement 14B: main development site: wet woodland  
 Requirement 14C: main development site: marsh harrier  
 Requirement 17: accommodation campus: buildings and structures  
 Requirement 20: associated development site: buildings and structures and landscape  
 Requirement 24: associated development sites: removal and reinstatement  
 Requirement 25: rail noise

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**Calculation of Category 1 fees<sup>4</sup>**

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<sup>3</sup> This is the fee for a condition discharge under the TCPA Fee Regs

<sup>4</sup> These fees reflect the TCPA Fee Regs. But we have deleted the first element in those Regulations because it related to fees 'where no floor space is created by the development', which is not relevant to Requirement 12



(2) Subject to sub-paragraph (3) and (4) below, applications for discharge of requirement 12 shall be calculated as follows:

(i) where the area of gross floor space to be created by the development does not exceed 40 metres, £234;

(ii) where the area of the gross floor space to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £462;

(iii) where the area of the gross floor space to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £462 for each 75 square metres of that area;

(iv) where the area of gross floor space to be created by the development exceeds 3750 square metres, £19,049; and an additional £115 for each 75 square metres.

(3) For the purpose of the calculation of fees pursuant to paragraph 3(2) -

- (a) the area shall be taken as consisting of the area of land to which the application relates;
- (b) the area of gross floor space created by the development shall be ascertained by external measurement of the floor space, whether or not it is bounded (wholly or partly) by external walls of a building;
- (c) the gross floor space to be created by the development exceeds 75 square metres and is not an exact multiple of 75 square metres, the area remaining after division of the total number of square metres of gross floor space by the figure of 75 shall be treated as being 75 metres.

(4) The maximum total fee payable for discharge of requirement 12 shall be £300,000<sup>5</sup>.

#### **Refund of fees**

(5) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 1, unless within that period the undertaker agrees, in writing, that the fee shall be retained by the discharging authority and credited in respect of a future application

*[delete definitions of 'major detailed requirements' and 'minor detailed requirements' from the Definitions section at the end of Schedule 23]*

#### **Herbert Smith Freehills LLP**

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<sup>5</sup> This reflects the TCPA Fee Regs

## Appendix

### Fees drafting as set out in Revision 8/9 DCO (reflecting Hinkley Point C DCO)

#### Fees

4.—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement, a fee shall be paid to that authority as follows—

- (a) where the application relates to a major detailed requirement, fees shall be calculated in accordance with the following table—

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category 1 | <p>The erection of buildings—</p> <p>(i) where no floor space is to be created by the development, £[ ];</p> <p>(ii) where the area of gross floor space to be created by the development does not exceed 40 metres, £[ ];</p> <p>(iii) where the area of the gross floor space to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £[ ];</p> <p>(iv) where the area of the gross floor space to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £[ ] for each 75 square metres of that area;</p> <p>(v) where the area of gross floor space to be created by the development exceeds 3750 square metres, £[ ]; and an additional £[ ] for each 75 square metres</p> |
| Category 2 | <p>The carrying out of any operations not coming within Category 1, £[ ] for each 0.1 hectare of the site area, up to a maximum of £[ ]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

- (b) where an application is made for discharge of a major detailed requirement (“current application”) in respect of which an application has been made previously, the fee payable in respect of the current application shall be £[ ]; and
- (c) where the application relates to a minor detailed requirement, £[ ] for each application.

(2) For the purpose of the calculation of fees pursuant to paragraph 3(1)(a)—

- (a) the area shall be taken as consisting of the area of land to which the application relates;
- (b) where the application relates to development within Category 1, the area of gross floor space created by the development shall be ascertained by external measurement of the floor space, whether or not it is bounded (wholly or partly) by external walls of a building;
- (c) where the application relates to development within Category 1 and the gross floor space to be created by the development exceeds 75 square metres and is not an exact multiple of 75 square metres, the area remaining after division of the total number of square metres of gross floor space by the figure of 75 shall be treated as being 75 metres; and
- (d) where the application relates to development within Category 2 and the site area exceeds 0.1 hectares and is not an exact multiple of 0.1 hectares, the area remaining after division of the total number of hectares by the figure of 0.1 hectares shall be treated as being 0.1 hectares.

(3) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of—

- (a) the application being rejected as invalidly made; or





- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 1, unless within that period the undertaker agrees, in writing, that the fee shall be retained by the discharging authority and credited in respect of a future application.