

**The Sizewell C Project, Ref. EN010012**

**Issue Specific Hearing 14 (17 September 2021)  
– (ISH14) DCO, Code of Construction Practice  
and similar regulatory documents, Deed of  
Obligation, reasonable endeavours**

**Suffolk County Council Registration ID Number: 20026012**

**Deadline 8**

**24 September 2021**

**Issue Specific Hearing 14 (17 September 2021) - (ISH14) DCO, Code of Construction Practice and similar regulatory documents, Deed of Obligation, reasonable endeavours.**

**Post Hearing Submissions including written summary of Suffolk County Council's Oral Case**

**Note:** These Post Hearing Submissions include a written summary of the Oral Case presented by Suffolk County Council (SCC). They also include SCC's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct. The structure of the Submissions follows the order of the Agenda Items but within each Agenda Item, the Submissions begin by identifying the main points of concern to SCC and then turn to more detailed matters.

<b>Examining Authority's Agenda Item / Question</b>	<b>Suffolk County Council's Response</b>	<b>References</b>
	Please note – since ISH14, there have been intense interaction between the Applicant and SCC to aim to resolve issues. We have aimed to reflect progress on matters as well as setting out the case made at the ISH, but we note that in some cases, the representations in this submission may already be overtaking by amendments to the DCO and DoO.	
<b>Agenda Item 1 – Welcome, introductions and arrangements for these Issue Specific Hearings</b>		
Reference will be made in Agenda items to the Applicant's and IP's responses to ExQ1 and ExQ2, the comments on those responses and all written representations up to Deadline 7.		
<b>Agenda Item 2 – Implications for the content and drafting of the DCO of points raised on the letter of 3 September 2021 from Walker Morris on behalf of Northumbrian Water</b>		

	<p>As highways authority the council has the following concerns regarding the water supply strategy:</p> <p><u>B1122 (Early Years)</u></p> <p>Table 3-2 REP7-036 water supply strategy gives details of the 'headroom' between the HGV cap and forecast HGV movements. However, the council notes the applicants commitment that the early years cap was to be in terms of HDVs (inclusive of buses and any SLR construction traffic &gt;3.5t). The council asks that the applicant clarifies this matter, and whether any 'headroom' remains when all HDVs are included.</p> <p>Furthermore, the profile of the potable water demand shown in Figure 3-1 of REP7-036 indicates that demand rapidly rises after December 2023 and it is unclear whether any 'headroom' could accommodate continued reliance on water trucks if the desalination plant was delayed beyond that point. SCC would therefore wish to see a clear commitment to the delivery of the desalination plant prior to the commencement of the more water-intensive construction activities.</p> <p><u>Traffic modelling and unassessed impacts north of Yoxford</u></p> <p>TA (REP4-005) tables 7.1 and 7.7 show that a proportion of 15% HGVs travelling north of Yoxford has been assumed in the transport modelling and Environmental Statement. Appendix 7B to the Transport Assessment (REP2-046) paragraph 1.54 and 2.24 indicate that up to 5% of the HGVs will use the A145 to Beccles. 5% of 600 HDV movements in the early years represents 30 movements compared to the 37 two way (74 movements) assumed in table 3.2 REP7-036 water supply strategy. Thus if, as intimated by the Water Supply Strategy, the water source is expected to be Barsham, the numbers of HGV using the A145 will exceed that assessed in the TA and ES.</p>	
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	<p>SCC notes that at ISH11 the applicant indicated that no decisions had been made on the location of the water source but there needs to be an assessment of the 'worse case' position (which could be Barsham). There are also specific concerns:</p> <ul style="list-style-type: none"> <li>• A12/A145 junction: road safety and junction geometry, HGVs turning out of the A145 onto A12 southbound carriageway have to do so in a single movement due to the narrow width of the central reserve especially in the case of articulated vehicles. Five crashes resulting in injury have occurred at this junction in the past five years (source <a href="https://www.crashmap.co.uk/">https://www.crashmap.co.uk/</a> )</li> <li>• Impacts on communities such as Brampton and Shadingfield</li> <li>• Safety at the bend south of Brampton where two crashes resulting in serious injury have occurred in the past five years including one involving a goods vehicle.</li> <li>• A145/B1062 Junction in Beccles where the northbound turn from the A145 to the westbound B1062 is tight and five crashes resulting in minor injuries have occurred in the past five years (source <a href="https://www.crashmap.co.uk/">https://www.crashmap.co.uk/</a>).</li> </ul> <p><u>Cumulative impact of pipeline construction</u></p> <p>It is noted that this construction would sit outside the scope of the DCO even though the delivery of a pipeline to supply water to the site is an important ancillary part of the project. This means that the cumulative impacts have not been assessed. In terms of traffic this would include, for example, disruption in terms of road closures or temporary traffic management.</p>	
<b>Agenda Item 3 (A) – Articles 9, 9A and 9B of the dDCO and in particular the points made by Suffolk County Council in their response to the Examining Authority's</b>		

commentary on the DCO [PD-038]		
<b>General</b>	<p>SCC's post hearing submissions on agenda items 3(A)(a) to (d) are below. This section deals with general points relating to Articles 9, 9A and 9B which do not fall within these agenda items.</p> <p>SCC also understand that the Applicant is to propose an indemnity under Article 9A in respect of costs of entry onto land and SCC will review this on receipt.</p> <p><u>Article 9B:</u></p> <ol style="list-style-type: none"> <li>1. As a result of SCC's ongoing discussions with the Applicant on these Articles it is understood that the Applicant is prepared to update Article 9B a number of provisions relating to the form of an application to the Secretary of State, notice that must be provided and consultation of ESC and SCC to bring this further into line with the provisions of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 which deal with the procedural requirement of applications to modify or discharge section 106 agreements under section 106A of the Town and Country Planning Act 1990. An early indication of the proposals by the Applicant suggest that these changes may be acceptable to SCC.</li> <li>2. SCC require the five year "relevant period" for applications for modification/discharge to the Secretary</li> </ol>	<p>[REP7-158]</p> <p>[REP5-177]</p> <p>[REP3-047]</p>

	<p>of State included here. It is understood that the Applicant does not agree with SCC's position on this point.</p> <p>3. This five year period was the period that Parliament considered was appropriate when enacting section 106A(4)(b) TCPA 1990 and this period of time does serve a purpose of ensuring some certainty from SCC's perspective in the obligations that may be agreed in due course in the DoO. Parliament clearly contemplated that this restriction could apply to the modification/discharge of 'development consent obligations' when s.106(14) and s.106A(11)(aa) TCPA 1990 were introduced into that regime by the Planning Act 2008. In so doing, Parliament would have been fully aware of the full range of projects that could be NSIPs, including energy projects of the scale of Sizewell C. Moreover, the Secretary of State has not taken the opportunity to prescribe a different time period for NSIPs, or types of NSIPs, using the power in s.106A(4)(a).</p> <p>4. The Applicant's Obligation Enforcement Note [REP3-047] noted the Councils queries about how the DoO would be varied and before this there was no drafting in the DoO dealing with variations to this (other than a clause requiring any variation of the DoO to be by way of a Deed) and no drafting in the dDCO on this. When the application was made for the DCO, and a section 106 agreement was in contemplation, there was no provision in the DCO to disapply section 106A(4)(b) TCPA 1990. So as with all other DCOs (so far as we are aware) the five year period was inherent in the DCO as applied for. A version of Article 9B was included in the revision 5</p>	
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	<p>version of the dDCO [REP5-029] submitted at Deadline 5.</p> <p>5. It would still be open for the Applicant and the Councils to agree to vary the Deed of Obligation by way of a Deed of Variation during any such period. SCC cannot see any rationale for moving away from the position set out in section 106A(4)(b) TCPA 1990.</p> <p><u>Exclusion of EDF Energy Nuclear Generation Limited ("NGL"), Network Rail ("NR") and National Grid ("NG") from direct liability under the DoO</u></p> <p>1. Firstly, SCC do not consider NGL, NR or NG are relevant to the transfer/grant provisions in Article 9 of the dDCO. These parties are already given the benefit of the Order under Article 8 of the dDCO and do not need to be transferred/granted any benefit of the Order under Article 9.</p> <p>2. For the reason set out above, SCC do not consider the exclusion of NGL, NR or NG from liability resulting from transfers under Article 9 as a reason which justifies limiting which transfers may be binding under Article 9(5A) (which is relevant to Agenda Item 3(A)(b) discussed in more detail below).</p> <p>3. As explained at ISH14, ideally SCC would want NGL, NR and NG all to be parties to the DoO and for the obligations within this document to be enforceable against them (as far as relevant to these parties).</p>	
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	<p>However, SCC acknowledges that these parties cannot be compelled to be parties to the DoO.</p> <ol style="list-style-type: none"> <li>4. SCC commented on this point in its Post Hearing Submissions following ISH1 ([REP5-177]). This followed the Applicant's position that these parties would not be a party to the DoO, even if they received an indemnity from the Applicant. SCC's concerns at that stage were set out on pages 16 and 17 of [REP5-177] and included securing the Key Environmental Mitigation (as defined in Schedule 9 of the DoO) without any compulsion for this to be delivered beyond a reasonable endeavours obligation.</li> <li>5. In this regard, SCC is awaiting the Applicant's proposals for "longstop" dates for the delivery of Key Environmental Mitigation to be incorporated into the requirements in the DCO. Subject to reviewing the detail of what the Applicant proposals, this may provide SCC with comfort as to the delivery of the Key Environmental Mitigation involving NR.</li> </ol>	
<p>Agenda Item 3(A)(a) "Whether it is right not to require the Secretary of State's consent to transfer of the DCO to a person holding a licence under s.3 of the Nuclear Installations Act 1965 and if so whether it should be stated to be a licence to operate Sizewell C"</p>	<p>SCC remains opposed to the inclusion of paragraphs (6) to (10) of article 9. SCC's position is that consent should be required when a transferee/lessee has a nuclear site licence, as with any other transferee. As mentioned above, SCC understands from the Applicant that, since ISH14, their position has changed on this matter, with an indication that this exclusion would be deleted. If this is the case, SCC would be content with the indicated revisions to the dDCO. Notwithstanding this, we are</p>	



	<p>setting out below SCC's position on this matter, as set out at ISH14.</p> <p>At deadline 7, SCC said on this point [REP7-158], point 3.3, page 11:</p> <p><i>"b. SCC observe that under Article 9(6) the Secretary of State's consent is not required when the transferee or lessee is the holder of a licence under section 3 of Nuclear Installations Act 1965 and it is understood that the Applicant will propose at Deadline 7 that the DoO would only continue to be binding on the party authorised to construct or operate the nuclear power station (as discussed in SCC's comments on the ExA observation 2.21 in relation to Article 9). In such a scenario SCC question whether the Secretary of State's consent would be required to any transfers which would result in a transferee being bound by the obligations in the DoO."</i></p> <p>Precedent: Hinkley does not include an equivalent exemption for consent for transfer (article 8 of the Hinkley Point C (Nuclear Generating Station) Order 2013) neither did the draft Wylfa Order (article 9): Secretary of State consent is or would have been required for all transfers for those projects.</p> <p>Secretary of State's position: As was pointed out during the hearing, the decision as to whether paragraphs (6) to (10) should stand will, of course, ultimately be for the very Secretary of State whose consent would otherwise be required for a transfer. Nonetheless SCC remains concerned about the proposal for the following reasons.</p>	
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	<p>The Applicant's justification appears to be that the paragraphs (6) to (10) of article 9 would avoid unnecessary duplication of applications to the Secretary of State. But having a nuclear site licence does not necessarily mean that the licence holder has the experience to construct non-nuclear elements of the scheme, such as the highways works. Nor does it mean that the licensee has the means to comply with the financial and other obligations in the DoO, so SCC considers it to be questionable whether it is appropriate for the requirement for consent of the SoS to be removed.</p> <p>On a drafting point, at ISH14, the Applicant said that the exemption would apply only to the licence holder for the Sizewell C site. That is not what article 9(6) provides. The exemption would apply to any holder of a nuclear site licence holder. That is clearly inappropriate as it would include submarine manufacturers and research establishments, amongst others.</p>	
<p>Agenda Item 3(A)(b)          "Whether it is right to limit the enforceability of the Deed of Obligation to any person to whom the power to construct or operate Work No. 1A(a) to (h) has been transferred or granted under article 9"</p>	<p>SCC remains in discussions with the Applicant regarding Articles 9, 9A and 9B. SCC understands that the deadline 8 version of the DCO will include a further change which is welcomed by SCC. A new paragraph will be included which will set out a number of factors which the Secretary of State will have to take into account before consenting to any transfer of some but not all of the benefits of the Order. Whilst this change is welcomed, SCC has not yet concluded that is satisfied on the issue of partial transfers in the round, with the Deed of Obligation still containing clause 5.1 in the same form as before. This is dealt</p>	

	<p>with in more detail below, reflecting the position in the absence of the proposed new paragraph.</p> <p>SCC notes the following amendments were made by the Applicant at Deadline 7 which post-dates SCC's comments in [REP7-158]:</p> <ol style="list-style-type: none"><li>1. A new Clause 12.1.7 has been added to the D7 DoO which requires SZC Co to notify the other parties to the DoO within 10 Working Days of a transfer of the "Undertaking" (as defined in the DoO) pursuant to the DCO.</li><li>2. Clause 5.1 of the DoO has been updated at D7 to release SZC Co from the obligations in the DoO (save in relation to antecedent breaches) where SZC Co transfer the <i>"entirety of the Undertaking"</i> pursuant to the DoO.</li><li>3. A new definition of <i>"Undertaking"</i> was added to the D7 DoO as follows: <i>"means the benefit of the Development Consent Order to construct or operate Work Nos. 1A(a) to (h) as set out in Schedule 1 to the Development Consent Order"</i>.</li><li>4. Article 9 of the dDCO was updated to include consultation under Article 9(1) and to add new Articles 9(5A) and 9(5B).</li><li>5. A new Clause 18 has been added to the D7 DoO which sets out that SZC Co shall not seek a cross-undertaking in damages from the courts in the event the Councils seek to enforce by injunction any restrictions or requirements imposed under the DoO.</li></ol>	
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	<p>6. Article 9B has been updated to refer to notification and consultation of ESC and SCC under Article 9B(2) and Article 9B(4) respectively.</p> <p>SCC understands that Applicant's intention in the amendments resulting in Article 9(5A) (together with amending Article 9(2)) is to provide for <u>only</u> the entity constructing and operating the nuclear power station to be bound by the DoO. This would be SZC Co until any transfer or grant of the benefit of the Order relating to the construction or operation of Work No.1A(a) to (h) pursuant to the power in Article 9(1) at which point that transferee or lessee would be bound. SCC acknowledges that the release of obligations in Clause 5.1 only applies to transfers (under Article 9(1)(a) and not grants under Article 9(1)(b)) so SZC Co would remain bound by the DoO in addition to any lessee (until it transferred the entirety of the "Undertaking").</p> <p>Article 9(1) of the dDCO continues to allow transfers or grants of the benefit of the Order beyond just Work No.1A(a) to (h). Therefore it would be possible to transfer (or grant) the benefit of the Order other than in relation to Work No.1A(a) to (h) and the relevant transferee (or grantee) would not be bound by the terms of the DoO and it would be SZC Co that would remain liable under the DoO. Conversely, it would be open for SZC Co to transfer the benefit of the Order just in relation to Work No.1A(a) to (h) and thereby free itself from any liability under the DoO (save for antecedent breaches) under Clause 5.1 of the DoO.</p> <p>Taken together with Clause 5.1 of the D7 DoO, SCC remains concerned that if SZC Co were to transfer the benefit of the</p>	
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	<p>order in respect of the power to construct (and operate) one or more associated development sites (retaining the power to construct and operate Works 1A(a) to (h)) or if SZC Co only transferred Works 1A(a) to (h) and retained the power to construct and operate the associated development sites that there would be no direct enforcement action available to SCC against the entity with the power to construct or operate such associated development sites. It is acknowledged that triggers / obligations in the DoO may be structured to apply directly to the entity constructing and operating the main nuclear power station site. However, that is not the case with the current drafting of Schedule 9 of the DoO and the “reasonable endeavours” obligation to comply with the Implementation Plan (referred to further below).</p> <p>SCC is concerned that in either of the scenarios set out above, the entity constructing or operating the main nuclear development site would not have the power under the DCO to acquire, construct or operate any relevant associated development sites which might be critical for delivering Key Environmental Mitigation and this inability may be relevant to the endeavours that the main operator bound by the DoO would be legally required to take to comply with the “reasonable endeavours” obligation. The Applicant may consider that it would put obligations into its arrangements with any potential transferees/lessees under Article 9(1) to ensure that Key Environmental Mitigation is delivered but this is not something which SCC has direct control over and would not be able to directly enforce if there was a failure to deliver these works.</p>	
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	<p>If there is no breach of a “reasonable endeavours” obligation it could not be enforced by the Councils and even if there was a breach, the party that the Councils could legally enforce against may have no power under the DCO to actually deliver the Key Environmental Mitigation if they have not been transferred these powers (or if SZC Co has transferred such powers to another entity).</p> <p>Given Clause 5.1 of the D7 DoO, it is not the case that SZC Co would only be released from its obligations where all of the benefit of the Order powers were transferred. SZC Co would only need to transfer the “Undertaking” (being the benefit of the Development Consent Order to construct or operate Work Nos. 1A(a) to (h)) to be released from liability under the DoO, save for antecedent breaches.</p> <p>SCC also observes (as discussed in relation to Agenda Item 3(A)(a) above) that under Article 9(6) the consent of the Secretary of State to a transfer under Article 9(1) (which is the mechanism by which ESC and SCC would be consulted on a transfer or grant) <u>would not be required</u> where the transferee or lessee is the holder of a licence under section 3 Nuclear Installations Act 1965 (a nuclear site licence). Given the nature of Work No.1A(a) to (h) SCC observes that it may be the case that a transfer or grant that would have the effect of transferring the liability of SZC Co to another entity may not need the consent of the Secretary of State where that entity holds a nuclear site licence and therefore ESC and SCC would not be given an opportunity to make representations on such a transfer or grant.</p>	
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	<p>At ISH14 the Applicant's representative considered that SCC may be raising a "straw man" argument in relation to SCC's concerns about limiting the enforceability of the DoO to any person to whom the power to construct or operate Work No. 1A(a) to (h) has been transferred or granted under Article 9 and it appeared to SCC that this was on the basis that Secretary of State consent would be required for transfers. However, in light of the comments above, SCC is not satisfied that this consent process (including consultation with the Councils) would always apply to transfers/grants of the benefit of the Order under Article 9.</p> <p>SCC do note that under Article 9(7), ESC and SCC (and the Secretary of State) need to be notified by a transferor (but not, as currently drafted, a grantor) before transferring or granting all or any part of the benefit of the Order where consent is not required from the Secretary of State as a result of Article 9(6). However, notification is not the same as consultation and this process would not include a need for Secretary of State consent.</p> <p>It is understood that the Applicant considers that any commercial body would not transfer all or part of the benefit of the Order under Article 9 if it could not control its own liability. This approach would rely on any transferor/grantor taking that approach and, even if such approach was taken, the Councils would have no direct mechanism to enforce any private arrangements between the Applicant and a proposed transferee/grantee. Indeed, as mentioned above, there may be an argument that a party remaining (or becoming) liable under</p>	
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	<p>Article 9(5A) could comply with a “reasonable endeavours” obligation by requesting a third party with the benefit of the Order in respect of a piece of Key Environmental Mitigation to deliver this and, if that was the case, then there would be no breach of the DoO for the Councils to enforce in any event.</p> <p>At this stage SCC are not clear as to why the Applicant only refers to Works 1A(a) to (h) and why other works within Work 1A, 1B to 1E (inclusive), 2A to 2L (inclusive) and 3 (all expressed to be works on the main development site in the dDCO) are not proposed to be referred to within Article 9(5A) (and the definition of “Undertaking” in the DoO) too.</p> <p>The Applicant has indicated that they would be willing to also refer to Work No.2 in Article 9. SCC want to see Work No.2 referred to in Article 9 too but do not consider this addresses the concerns above.</p> <p>SCC also questions whether the Applicant could revisit Clause 5.1 to ensure that SZC Co remains bound by all of the obligations in the DoO until it has transferred all of the benefit of the Order under Article 9 (and not just the benefit relating to Works 1A(a) to (h)).</p>	
<p>Agenda Item 3(A)(c)</p> <p>“Should Art 9 state that the DoO is enforceable against the undertaker named in the DCO?”</p>	<p>Whilst SCC would not have any objection to Article 9(5A) being revised to expressly state that the DoO is enforceable against the undertaker named in the DCO (in a similar way that Section 106(3) of the Town and Country Planning Act 1990 is specific as to the bodies that a section 106 agreement may be enforced</p>	



	against), SCC does not consider this is necessary since that undertaker will be bound directly by the terms of the DoO.	
Agenda Item 3(A)(d) “Whether there should be deeds of covenant by transferees in addition to the provisions of Art 9 as drafted in [REP7-006] (which is revision 8)”	<p>For the reasons SCC set out in [REP7-158], SCC would not be opposed to Article 9 requiring deeds of covenant (or deeds of adherence) from transferees/lessees before transfers or grants under Article 9 could be effective.</p> <p>However, SCC have been in discussions with the Applicant about amendments to Article 9(5A) and would be content not to require such deeds of covenant if Article 9(5A) was revised as set out below, which SCC understand the Applicant is content with.</p> <p><i>(5A) The obligations of the undertaker under the Deed of Obligation 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 this article for so long as they benefit from the power to construct or operate any of those works <u>and such transferee or lessee shall be treated for all purposes as an undertaker who entered into the Deed of Obligation.</u></i></p> <p>In addition to the above, SCC considers that a new provision could also be added to Clause 1.2 of the DoO as follows:  <i>“1.2.XX references to SZC Co shall include any entity who takes a transfer or grant of the Undertaking pursuant to the Development Consent Order”</i> and, again, SCC understands that this amendment is acceptable to the Applicant and will appear in the next version of the DoO that the ExA are provided with.</p>	[REP7-158]

	<p>SCC also acknowledge the new Clause 12.1.7 in the DoO which requires notice to be given within 10 Working Days of a transfer of the “Undertaking” under the DCO. Provided this can be updated to any transfer or grant under the DCO this provision could help address one of SCC’s practical concerns about a lack of deed of covenant (or deed of adherence) – in connection with being aware of which entity could be enforced against at any one time.</p>	
<p>(The ExA notes in passing that Art 9(2) refers to Work No. 1(a) to (h). Should this be Work No. 1A(a) to (h)?)</p>	<p>SCC agree with the ExA on this point and it is understood from comments made by the Applicant’s representatives at ISH14 that this change will be made.</p>	
<p>B) the trust deed referred to during ISH12, item 2(iv)</p>		
<b>Agenda Item 3 (B) – the trust deed referred to during ISH 12, item 2 (iv)</b>		
	<p>SCC has been shared a first draft of the Deed for the establishment of an Environment Trust during the week commencing 13 September 2021.</p> <p>The essence of the proposals look acceptable, but we are, in parallel to the examination, sharing with the Applicant a number of requests for amendments and constructive comments and questions which hopefully will help to refine the document to make it an effective and robust Deed.</p> <p>SCC understands that the ExA have asked for an assurance from SCC that the Trust Deed will work. At present negotiations on the Trust Deed are on-going and we are close to reaching</p>	

	<p>agreement for an approach that we consider will work effectively. SCC will need to confirm at D10 once the Trust Deed is agreed.</p> <p>At ISH14 the applicant outlined its position that the contributions that would be secured by the Trust Deed were not matters it relied on and were not matters that it was seeking to ask the ExA or the Secretary of State to take into account in assessing the merits of the proposals. This was put forward on the basis that in the applicant's view the contributions went beyond what was necessary to mitigate the impacts of the proposals. SCC acknowledges the applicant's position but does not share its view that the contributions are immaterial to the merits of the proposals. SCC also notes that the applicant indicated at ISH14 that it would be for SCC at D8 to explain why it took a different view on the materiality of the contributions in the Trust Deed. Whilst positive discussions on the content of the Trust Deed are ongoing and the documentation has not reached its final form such that there is nothing chaotic that can be submitted into the Examination, SCC can understand that the ExA will have difficulty in engaging with this issue.</p> <p>However, SCC will set out the principles that have informed its approach and it would expect that once the final document has been agreed there will be material available to enable the ExA to form its own view.</p> <p>As a starting point it is worthwhile recalling the applicant's own submissions at ISH12 (when responding to a question from Mr</p>	
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	<p>Humphrey on behalf of the ExA about why there were changes to the proposed mitigation for the B1122) that:</p> <p>“... But in terms of principle, there's nothing unusual in principle about an applicant concluding through the environmental assessment that no further mitigation is needed in relation to particular matter. But then, through the course of an examination, considering the local impact report, negotiation with the Highway Authority responsible for the particular roads, agreeing to provide additional mitigation in response to concerns, that that doesn't necessarily imply any acceptance that the original assessment was wrong or that the conclusions were unsound, but can simply be a recognition that if people have concerns which are material, even if they don't necessarily require or create a necessity for mitigation, that it may be appropriate to offer mitigation, because the applicant's view of what is necessary is not the only view in play, nor is it ultimately the view that is determinative. The view that is determinative is that of the Secretary of State informed by your report. If you were to conclude that concerns that are raised about the impact on the early years, require mitigation above and beyond that which is set out in the environmental statement, then you have it. And if you conclude that it is not necessary, it may still be that it is beneficial, and that benefit, and that alleviation of residual impact would still be a material consideration when you're weighing the pros and cons when striking the ultimate planning balance. So not only is there nothing unusual about it, but indeed it is the sort of appropriate and prudent thing that any promoter would do, faced with consistent calls for mitigation, which it considers are not obviously wrong, and therefore there's</p>	
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	<p>scope for different judgement to be reached.... So that's, that's the underlying approach. And it's not simply confined to this example, we'll find it across the whole of the scheme....”</p> <p>[Sequence begins at 53:04 on pp.12 and 13 of Session 4 of ISH12 Transcript (with editorial corrections by SCC)].</p> <p>SCC considers that the divergence of view between it and the applicant on the materiality of the contributions in the Trust Deed, in terms of whether they play a role in mitigating/offsetting the impacts of the proposal, is simply an illustration of different parties legitimately forming a different view on the extent/degree of impacts arising and the extent of measures that are appropriate to redress those impacts, so far as is reasonable and practicable.</p> <p>SCC does not see that divergence of view as raising any issues of principle, or giving rise to any conflict with the advice in EN-1 on matters that are material to the Examination or with the matters of law that are rehearsed in section 2 of REP7-044.</p> <p>SCC’s approach is informed by its assessment of the overall impacts of the proposals (as set out in the LIR and as rehearsed in its earlier submissions). The magnitude of those impacts is such that SCC does not consider that the embedded mitigation forming part of the proposals and the measures in the DoO are themselves sufficient to fully or satisfactorily resolve all of those impacts, albeit that SCC acknowledges the positive progress that has been made by the applicant to seek to address outstanding concerns. SCC sees the contributions that would be</p>	
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	secured by the Trust Deed as an important and necessary component of the overall package of beneficial elements. From what SCC has seen thus far, it is satisfied that, in terms of principle, the contributions are capable of meeting the legal requirements for materiality. However, SCC acknowledges that this is not yet a matter that the ExA will be able to form a view on. SCC expects to return to this issue at D10.	
<b>Agenda Item 4 – Parameter plans and Approved Plans – which take precedence? – Art 4 of the dDCO and Requirement 8</b>		
	SCC has raised a similar question with the Applicant. SCC would welcome written confirmation from the Applicant that there are no instances where works authorised by the DCO are shown on both the Parameter Plans and one of the Approved Plans, and if so what happens if one shows different vertical or lateral limits from the other.	
<b>Agenda Item 5 – Structure of Control Documents and Subsequent Approvals – to consider Appendix C to the Applicant’s Response to the Examining Authority’s commentary on the DCO [PD-038]</b>		
(a) To consider Appendix C to the Applicant’s Response to the Examining Authority’s commentary on the DCO [PD-038].	<p>SCC is generally content with Appendix C (Structure of Control Documents and Subsequent Approvals). However, as mentioned in other hearings, it is the content of some of the documents referred to in the Appendix that causes SCC concern. As mentioned at ISH 11, one item which causes particular concern is the Drainage Strategy [REP7-017 and 018] and Associated documents.</p> <p>Table 2 of Appendix C sets out which documents are the Level 1 Control Documents (for drainage, it is the Drainage Strategy</p>	

	<p>[REP2-033]) and which are the Level 2 documents for approval (for drainage it is the details of surface and foul water drainage systems) are the level 2 documents. SCC have asked that the technical notes (which themselves are far from agreement as mentioned in ISH11) should be cross-referred in the Drainage Strategy, but this idea has been rejected.</p> <p>Unless the drainage documentation is in a satisfactory state of affairs by the end of the examination, SCC may ask the ExA to recommend to the Secretary of State that before making a decision on the Order, they should consult SCC and the Applicant about the issue.</p>	
(b) To include concerns flagged by East Suffolk Council at ISH11 re: the Code of Construction Practice.	SCC defers to ESC	
(c) To address certain delivery questions including barriers on non-railway land.	SCC has no points on this issue.	
(d) Other issues arising out of ISH12 and 13		
<b>Agenda Item 6 – Other issues arising from responses to the Examining Authority’s commentary on the DCO [PD-038]</b>		
	<p>The following two points were raised at this Agenda Item by Suffolk Constabulary and SCC followed up with submissions.</p> <p><b>Transport Review Group (TRG) Governance</b></p> <p>SCC welcome the addition of a police representative to the TRG but are concerned that the changes proposed by the Applicant to paragraph 3.1.5 of Schedule 16 to the Deed of Obligation by</p>	

	<p>increasing the number of representatives nominated by the Applicant from 3 to 4, means that the potential deadlock in decision making is maintained.</p> <p>SCC have previously suggested that it have a casting vote on the TRG to deal with deadlock. It would be equally satisfied if there were an uneven number of members, with a majority of representatives from public bodies.</p> <p>In its D7 response to question TT.2.0 the Applicant said that in light of the TRG's wide powers, SZC Co. does not consider that any one TRG member should have a casting vote. It said that imposing a potentially uncapped liability on a developer, at the discretion of a third party such as SCC, is not fair or reasonable and does not comply with national policy in NPS EN-1 paragraphs 4.1.7 – 4.1.8 that obligations should be fair and reasonable. It said that giving a casting vote to SCC could be akin to writing a blank cheque for wide ranging mitigation or operational changes.</p> <p>SCC sees the issue differently. The TRG has a wide ranging remit, set out in paragraph 3.4 of Schedule 16 to the DoO. Its functions are not just about requiring additional mitigation under paragraphs 3.5.1 and 3.5.2 where the "potentially uncapped liability" lies. <del>In any event, paragraph 3.5.3 provides the Applicant with a safeguard in additional mitigation cases, by requiring deadlock to be addressed by either the Delivery Steering Group or an appointed Expert.</del></p>	
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	<p>At the hearing, SCC set out its position as stated in [REP7-293] that a reasonable solution would be for either</p> <p>(1) the voting rights of the TRG to be unequal in favour of SCC, ESC, Suffolk Constabulary and National Highways ; or</p> <p>(2) SCC given a casting vote on the TRG.</p> <p>This would remove the authorities concerns about the lack of majority voting fettering the performance of the TRG.</p> <p>Recognising the Applicant's concerns that the TRG could stipulate uncapped expenditure resultant from 3.5.1 and 3.5.2 SCC would accept suitable wording that any recommendations by the TRG for funding beyond the scope of the contingent fund ie of a material difference (DoO Schedule 16 3.5.6) should be referred to the Delivery Steering Group for decision. If approved by the DSG SZC should implement any such measures as obligated in 3.5.4.</p> <p>Mr Rhodes stated that the HPC experience has been positive, and that the TRG was based on consensual decisions with the TRG "not meant to operate by voting".</p> <p>In the light of these comments, if the balance of members was to remain as proposed by the Applicant, SCC considers that a more transparent alternative (albeit perhaps less effective decision-making body) would be that the TRG is set up as a non-voting group that would seek consensus, and, in the exceptional circumstance where there is a dispute, the issues should be resolved by referral to seniors and ultimately expert dispute resolution.</p>	
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	<p><b>Requirement 5A: Emergency Planning</b></p> <p>SCC maintains its position in respect of Requirement 5A. The DCO application includes a complex construction proposal that is set largely within the existing Sizewell B Detailed Emergency Planning Zone, arrangements for which are detailed in the Suffolk Resilience Forum Radiation Emergency Plan (SRF REP), and for which SCC is responsible.</p> <p>This will affect the existing off-site radiation emergency arrangements made under the Radiation (Emergency Preparedness and Public Information) Regulations 2019. Owing to this, it is essential that those arrangements are updated to take account of the DCO's impacts before works are commenced.</p> <p>In respect of the East Anglia ONE North and East Anglia TWO Offshore Wind Farms DCO, the applicant proposed a requirement which SCC supports. The requirement provides that the SRF REP be reviewed to take account of the Sizewell C works before any of those works commence. SCC considers consistency in this regard is required in both applications and therefore will ask the ExA to replace Requirement 5A with what has been agreed on the other two orders.</p> <p>SCC understands that the Applicant resists this on the basis that because Sizewell itself is a nuclear site, emergency measures should be covered by the construction emergency plan prepared by the Applicant and referred to in existing requirement 5A. But the issue for SCC is that the SRF REP is a separate document</p>	
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	<p>that covers a much wider area than just the nuclear station site itself, that many of the works proposed under the DCO will be carried on outside that site, including the associated development and highways works, and many of the impacts from the construction of the power station (including for example, impact on traffic and on substantial new worker accommodation areas, will need to be taken account of in the SRF REP, whatever arrangements the Applicant puts in place in its own plan.</p> <p>Unless a satisfactory resolution is achieved, SCC will request at deadline 9 or 10 that requirement 5A be replaced by SCC's preferred drafting, which is set out in the list of proposed amendments in the <b>Appendix</b> below. As counsel for SCC acknowledged, the requirement is in the form of a Grampian style condition, but as mentioned above, this has been accepted on the East Anglia orders, and SCC would suggest that the requirement is not particularly onerous. It should also be noted that the Office for Nuclear Safety was involved in the drafting of the East Anglia provisions and approved the final version.</p> <p>In that regard, the ExA asked for information about what bodies are involved in the SRF REP, how long it would take to carry out the review, and what sort of compulsion would be needed to get members of the forum to agree to the review.</p> <p>The organisations that would be consulted for agreement of the revised Annex for the SRF REP would comprise the following:</p> <ul style="list-style-type: none"><li>• Suffolk County Council and East Suffolk District Council</li></ul>	
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	<ul style="list-style-type: none"><li>• Suffolk Fire &amp; Rescue Service</li><li>• Suffolk Constabulary</li><li>• East of England Ambulance Service Trust</li><li>• NHS Suffolk, NHS England and Public Health England.</li><li>• Environment Agency (EA)</li><li>• Magnox (Sizewell A)</li><li>• EDF (Sizewell B)</li><li>• Anglian Water and Northumbrian Water</li><li>• Office for Nuclear Regulation (ONR)</li><li>• Health &amp; Safety Executive</li></ul> <p>Some are also members of the Suffolk Local Resilience Forum (SRF) and some, Emergency Planning Consultative Committee, the forum for organisations with responsibilities for preparing emergency arrangements in response to an event at Sizewell B. A list of the membership of both groups can be provided.</p> <p>The review process would be relatively simple as the revised Annex for the SRF REP would follow the format and broadly the content of previous Annexes which have been drawn up. As a consequence, SCC considers that this could be completed in the order of 4 weeks.</p> <p>As an aside, the Applicant's proposed Requirement 5A is defective in that paragraph (3) mentions approval, but there is no indication as to who is to give the approval or by when. If there is to be an approval body then SCC would suggest it be approved [or agreed] by Suffolk County Council in consultation with the Suffolk Resilience Forum. This comment should not be</p>	
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	<p>taken to mean that SCC would agree with the Applicant's proposal were it to be so amended.</p> <p><b>Outstanding points raised by SCC in its response [REP7-158]:</b></p> <p>The paragraph numbering below is as in the response:</p> <p>2.23: Bonds: While the reasonable endeavours provision remains in the DoO, the question of whether bonds are required to secure implementation of mitigation also remains, so the position is as expressed in SCC's response. Bonds will be required by SCC in the highways agreements under article 21 or s278.</p> <p>3.2: Is "EdF Energy Nuclear Generation Limited" referred to in the DCO correct: SCC are confident it is, but there would be more certainty if the DCO mentioned the registered number (as is the case with National Grid, in the definition of that company in article 2).</p> <p>4.3: Definition of Councils and lack of reference to West Suffolk Council: SCC are satisfied on this issue as SCC will act on West Suffolk Council's behalf.</p> <p>4.6: Third parties: SCC is continuing to discuss this with the Applicant. SCC is in favour of the Deed of Covenant approach subject to appropriate repayment timescales and a mechanism to agree alternative delivery of mitigation in the event such a Deed of Covenant cannot be agreed with a relevant third party.</p>	
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	<p>SCC would be content to an obligation on the SCC to deliver the mitigation if such alternative was required but subject to SCC's absolute discretion to do this.</p>	
<b>Agenda Item 7 – Issues arising from responses to ExQs2 on the DCO, DoO and related matters</b>		
<b>Outstanding issues on the drafting of the DCO</b>	<p>In this section, SCC set out outstanding issues on the drafting of the DCO. It is to be noted that constructive dialogue continues to take place with the Applicant in order to resolve the majority of issues, and this will continue beyond D8.</p> <p>A full list of proposed amendments to the DCO to meet these points will be prepared at a later deadline, but proposed amendments addressing the current state of play on most of the outstanding areas are set out in the <b>Appendix</b> below</p> <p><b>Changes to the DCO that would be required to address key matters raised by SCC</b></p> <p>SCC have asked the ExA to consider four changes to the proposals which, if accepted by the ExA, would require changes to be made to the DCO. They are (a) changing the status of the SLR so that it is temporary (b) removing the second outage car park (c) replacing the 4 new pylons and overhead cables in the MDS with gas insulated lines (d) changing the design of the SSSI crossing.</p> <p>SCC will provide its formulation of what those amendments would be at deadline 9. It has already provided an outline of</p>	

	<p>what the SLR amendments would be in its D7 submissions (CAH1 Post Hearing Submissions including written summary of Suffolk County Council's Oral Case, Part 1) [REP7-160]</p> <p><b>Main points still at issue on the DCO</b></p> <p><i>Various articles with "deemed agreement" provisions: 11(3), 12(2), 12(3), 17(5)(b), 19(1)(b) and 22(2):</i></p> <p>In a number of cases, SCC are under a requirement to approve various documents, and provision is made to say that approval must not be unreasonably withheld or delayed <u>and</u> there is also a provision that it is deemed to be given after a certain period, sometimes relatively short. In a number of cases this appears to be unprecedented in DCOs or not well preceded. SCC will be receiving considerable numbers of requests for approval and will of course ensure that they are dealt with as quickly as possible. With the deeming provisions included there is no need to say that the approvals must not be unreasonably withheld or delayed, and in some cases the deeming provisions are unprecedented and unnecessary.</p> <p><i>Article 13 (application of the New Roads and Street Works Act 1991).</i></p> <p>There are technical detailed discussions ongoing on this article. A revised version of the article has been produced by the Applicant since the hearing and it is under consideration.</p> <p><i>Schedules 10, 11 and 13 and Rights of Way Plans:</i></p>	
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	<p>There are detailed technical discussions in relation to this issue and proposals for amendment have made by the Applicant since the hearing. These are under consideration.</p> <p><i>Article 20 (maintenance of highways) and Article 21 (agreements with street authorities).</i></p> <p>These articles, and the associated potential need for highways protective provisions remain under discussion. SCC has raised two issues of particular concern which could be addressed either in these articles or in a separate document such as the Deed of Obligation or the Construction Traffic Management Plan. They are (a) the ability to recover of an uplift on certain professional fees incurred by the Council for highways related matters and (b) the recovery of the cost of repairing damage to SCC highways caused by Sizewell construction traffic. If these issues are not resolved then SCC may request that protective provisions be included in the DCO. A draft of such provisions has been provided to the Applicant.</p> <p><i>Article 22 and Schedule 14 (traffic regulation measures):</i></p> <p>SCC considers that some of the details in Schedule 14, which sets out speed limits on certain stretches of road, are incorrect, both in the descriptions of some of the stretches of roads and the speed limits. Examples were set out in SCC's D7 response and elaborated on in emails.</p>	
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	<p>SCC is keen that the details should be correct in the DCO from the outset, so that when they are implemented, there will be no difficulties in enforcement.</p> <p>The Applicant sent a revised version of Schedule 14 on 22 September 2021 and it is under consideration.</p> <p>SCC has also suggested some drafting amendments to article 22 to the Applicant, set out in the Appendix below.</p> <p><i>Article 22 (traffic regulation and consultation)</i></p> <p>SCC consider that article 22 should be amended so as to bring the consultation and publicity requirements of the DCO as regards traffic regulation measures more into line with the requirements that SCC has to comply with when making traffic regulation orders under the Road Traffic Regulation Act 1984. See the proposed amendment in the Appendix below. This will ensure for example, that bus service operators, ambulance and fire services, freight transport industry representative bodies would be consulted.</p> <p>There are other drafting amendments in the Appendix below, which SCC understand are agreed.</p> <p><i>Schedule 23 (procedure for approvals etc)</i></p> <p>Paragraph 3(5) sets a time limit by which written representations have to be made by parties to an appeal in response to further information which in turn is provided in response to a request by</p>	
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	<p>the appointed person dealing with an appeal. The relevant PINs advice note indicates that the period should be 20 business days, which SCC supports. The DCO says 10 working days.</p> <p><i>Schedule 24 (disapplication of various legislation)</i></p> <p>SCC is concerned about the disapplication of section 141 of the Highways Act 1980, which prohibits the planting of trees and shrubs within 15 feet of the centre of the carriageway of the highway. SCC understands that the reason is to ensure that mitigation planting is not frustrated. SCC is obviously concerned about highway safety. It is in discussions with the applicant about the issue, including a possible modification to the provision, set out in the Appendix below.</p> <p><i>Requirements</i></p> <p><i>Requirement 2 (CoCP)</i></p> <p>SCC is awaiting a reply in writing to a query related to whether as drafted, the requirement to comply with the CoCP applies to all temporary works. Hopefully this will be resolved.</p> <p><i>Requirement 5 (drainage)</i></p> <p>This was also dealt with at ISH 11. SCC's preference is that it should be the discharging authority, and drafting to that effect (two alternatives) is set out in the Appendix. This drafting has been provided to the Applicant.</p>	
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	<p>If the ExA does not agree, then in any event, there are some drafting amendments that need to be made in consequence of the change to R5 already made which provides that SCC must endorse details of the approved management and maintenance arrangements.</p> <p><i>Requirement 5A (emergency planning)</i></p> <p>See Agenda Item 6 above</p> <p><i>Requirements 22A and 23 and Yoxford Roundabout</i></p> <p>These are the requirements about highway landscape works and landscape planting. SCC request that they be extended to include the Yoxford Roundabout. It is understood that this is agreeable to the Applicant.</p> <p><i>Requirement 24: Associated development sites: removal and reinstatement</i></p> <p>This requirement should be amended so it is clarified that the highway works at the southern park and ride and at the freight management facility should be removed along with that temporary infrastructure when it is no longer required. It is understood that this is agreed.</p> <p><b>ExQ2s: SCC's responses consisted of commentary on the responses of the Applicant to ExQ1s. These are selected responses where there is an update.</b></p>	
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	<p>DCO 2.6: The question of fees is under discussion. Specific levels of fees for dealing with applications for approval have not yet been agreed.</p> <p>DCO 2.7: SCC has nothing further to add in relation to its reply about the status of the A12 as a principal road, not a strategic road.</p> <p>DCO 2.15: Given the size of the ES, the potential use of a guide to it: SCC is supportive of the idea in principle.</p>	
<b>Outstanding issues on the Deed of Obligation</b>	<p>SCC continues to work with the Applicant towards agreement on the DoO, and good progress has been made. The aim remains to sign the Deed by Deadline 10. In the event that specific elements are not agreed these will be specified in detail in a submission at Deadline 9 or 10.</p> <p>For context, key areas that remain under discussion include County Council resourcing/fees, 'reasonable endeavours' (see below), Implementation Plan (see below), monitoring provisions and some matters relating to governance, including the TRG (see above) and provisions for accessing non-contingent and contingent funds. This is in addition to detailed drafting.</p> <p>Not all plans, drawings and annexes to the DoO have been shared yet by the Applicant with SCC (e.g. drawings for the highway improvement schemes). We understand that these will be submitted at D8, and we will review these once received to provide comments.</p>	

	As the Deed of Obligation secures obligations on behalf of third party organisations that are not signatories to the Deed, SCC as a signatory, in entering the Deed, seeks confirmation from the Applicant that they have fully engaged with those third party organisations, and that any issues between the Applicant and those organisations have been resolved.	
<b>Agenda Item 8 – Reasonable endeavours</b>		
	<p>SCC shared the concerns of the ExA expressed in the ExA's further commentary on the draft DCO issued on 9 September 2021 and is continuing to discuss the wider issues which it brings in with the Applicant.</p> <p>At the ISH14 hearing, Counsel for the Applicant introduced a proposal that there should be a longstop arrangement, secured by a commitment in requirement 8(1) and therefore tied in to the Construction Method Statement (CMS). The CMS will contain an identical plan to the implementation plan, and will include the longstops, and there will be a "hard" requirement to meet the longstops. The longstop points for delivery of associated works would be linked to identified phases of works.</p> <p>This would sit alongside the existing "reasonable endeavours" commitment in the DoO to comply with the implementation plan. The implementation plan would no longer be labelled as indicative (which SCC welcomes).</p> <p>In principle, subject to seeing what is submitted at D8, SCC welcomes the longstop proposal but it has a number of remaining concerns with the overall regime.</p>	[PD-042]

	<p>The first is that SCC remains concerned about the use of “reasonable endeavours” in regard to compliance with the implementation plan for the reasons previously set out by SCC. In particular, by limiting its obligations to reasonable endeavours, the Applicant will be able to rely on commercial factors, including not sacrificing its own commercial interests, in its decision making. This point is abundantly confirmed by the Applicant’s own commentary on the legal implication of ‘reasonable endeavours’ obligations in Appendix D of REP7-058 (in particular at paras 2.1 and 2.3).</p> <p>There is a particular concern to ensure that the HDV caps in Schedule 16 to the Deed of Obligation are not breached and that the Applicant delivers on what was said at ISH1 (e.g. “We know that the HGV limit can't be breached. We know we have to manage the construction programme within that limit” [Mr Rhodes in session 3] and ISH3 (e.g. “So if one's concerned about the impact of HGVs, for instance, there are absolute limits, not only on numbers, but on time, on routes and on peak hours as well.” [Mr Rhodes in session 1]).</p> <p>Those statements do not chime with a reasonable endeavours obligation. Whilst SCC has previously suggested a stronger obligation, such as ‘all reasonable endeavours’, which it understands case law has equated to ‘best endeavours’, SCC could in principle accept the use of ‘reasonable endeavours’ to achieve the timeline of the applicant’s intended construction programme, provided (importantly) that was not the limit of the applicant’s obligations and was coupled with a clear and</p>	
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	<p>enforceable commitment to deliver the key environmental mitigation by clearly defined 'longstop' milestones and before other specified works could commence.</p> <p>SCC's second main concern is that the stages by which key mitigation measures must be delivered and the backstops must set so as to ensure that the purposes of those key mitigation measures are met. At [REP7-058] the Applicant said that it considered that wording could be drawn up to commit to the following type of controls (as regards the stages by which key transport mitigation measures could be met):</p> <p>Road Infrastructure (SLR and 2VBP)</p> <ul style="list-style-type: none"> <li>• Required before the commencement of Phase 3 Main Civils</li> </ul> <p>Rail Infrastructure (ACA siding and GRR)</p> <ul style="list-style-type: none"> <li>• Required before the commencement of the diaphragm wall construction (part of Phase 1 Site Establishment)</li> </ul> <p>Marine Infrastructure (the MBIF)</p> <ul style="list-style-type: none"> <li>• Required six months after the commencement of permanent works backfill (part of Phase 2 Bulk Earthworks)</li> </ul> <p>SCC does not consider that the stages mentioned above are appropriate because they are too late in the construction programme. SCC is considering what those alternative stages will be, will continue discussions with the Applicant and will report the outcome at D10. Similarly, SCC will continue discussions with the Applicant about what the backstop events should be and report at D10.</p>	
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	<p>SCC's third concern is similar to that expressed by one of the other participants in the ISH14 that longstops could default to targets, meaning that the key mitigation is delivered later than expressed in the current implementation plan, if the reasonable endeavours approach is maintained. Great care will be needed in drafting the backstop provisions so all parties are clear on what is being proposed and the need to ensure that the focus of the Applicant should be on the milestones in the implementation plan being delivered, rather than on avoiding the consequences of missing the backstops.</p> <p>In conclusion, SCC considers that the Applicant has gone a long way to meeting its concerns over the reasonable endeavours approach and the serious concerns it has over the delivery of the key mitigation, and in particular the transport mitigation by such time that it will be effective. However, SCC still considers that a stricter obligation in the Deed of Obligation is appropriate, and it considers that the phases and backstops suggested above would best ensure that the key mitigation would be delivered at the appropriate time.</p> <p>Finally on this topic, the ExA asked the Councils to comment on the ExA's adequacy assessments in Tables 1 and 2 [PD-042]. This has been done in a separate document submitted at D8 (the responses to the EXA's second commentary on the DCO) SCC has carried out a brief review of Table 1 and considers that the assessment of the ExA of the DCO and Deed of Obligation at the time appears to be accurate. The position may change, of course at D8, particularly with the longstop provisions. SCC</p>	
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	does not have a significant interest in the matters listed in Table 2, which relates to the deemed marine licence.	
<b>Agenda Item 9 – Practical arrangements for submission and form of the Applicant’s preferred draft DCO, executed DoO and allied documentation</b>		
	In regard to the DoO, SCC, ESC and the Applicant are in contact regarding the practical arrangements for execution of this document once this is agreed. SCC understands that the intention of the parties is to all sign four engrossed copies of an agreed form of DoO but in the event this is not achievable the parties may agree to proceed by way of counterparts and note that Clause 24 in the D7 DoO caters for this possibility.	
<b>Agenda Item 10 - The Examining Authority reminds the Applicant and the Councils of point 27 of Annex B “Observations on the draft section 106 agreement” to [PD009] of 22 December 2020 – the need for the Confirmation and Compliance Document and the confirmations from the councils that the right parties and land interests are bound and that the s.106 agreement (now DoO) has been properly executed.</b>		
	<p>SCC acknowledges the ExA’s reminder on point 27 of Annex B to [PD-009] of 22 December 2020.</p> <p>The entity currently proposed to enter into the DoO with ESC and SCC is NNB Generation Company (SZC) Limited whose registered office is at 90 Whitfield Street, London, England W1T 4EZ (Company Number 09284825). This is the entity that is defined in the “undertaker” at Article 2 of Revision 8 o the dDCO</p>	

	<p>submitted at Deadline 7. SCC will review this ahead of engrossment and completion of the DoO.</p> <p>SCC does not consider land interests to be relevant to the DoO in light of the Applicant's Evolving Approach so does not propose to provide any confirmation on the binding of land interests.</p> <p>Evidence will be sought from NNB Generation Company (SZC) Limited that the proposed method of execution is binding on that company.</p>	
<b>Agenda Item 11 - Any other matters relevant to the subject matter of this ISH</b>		

### Appendix A: Amendments to the DCO Proposed by SCC

**Not including amendments that would be required in order to meet SCC's concerns about the permanent SLR, the main development site pylons, the second outage car park and the SSSI crossing**

<b>DCO provision</b>	<b>Proposed Amendment</b>
<b>Art. 9(5A)</b>	(5A) The obligations of the undertaker under the Deed of Obligation 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 this article for so long as they benefit from the power to construct or operate any of those works and such transferee or lessee shall be treated for all purposes as an undertaker who entered into the Deed of Obligation.
<b>Art. 9 (consent to transfer of benefit of Order)</b>	Delete paragraphs (6) to (10)
<b>Art. 9B (modification and discharge of deed of obligation)</b>	Amend paragraph (2) as follows:  (2) The undertaker may, at any time after the expiry of the period of five years beginning with the date on which the Deed of Obligation was entered into, 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.
<b>Art 13 (Application of the New Roads and Street Works Act 1991)</b>	The Applicant provided an alternative draft article on 20 September 2021. This is under consideration.
<b>Schedules 10, 11 and 13 (Streets and PRow closures etc)</b>	The Applicant provided amendments on 20 September 2021. These are under consideration.

<b>Articles 20 and 21 and highways protective provisions</b>	SCC may provide detailed protective provisions at a later deadline if outstanding concerns are not met.
<b>Art. 22 (Traffic regulation measures)</b>	<p>22.—(1) Subject to the consent of the traffic authority in whose area the road concerned is situated, the undertaker may at any time, for the purposes of the authorised development make provision, in respect of those streets specified in columns (2) and (3) of Schedule 14 (Traffic regulation measures), as to the speed limit of those streets as specified in column (4) of that Schedule.</p> <p>(7) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1) or (2), that authority is deemed to have granted consent.</p> <p><i>Reason: Precedent and necessary control: in other cases where undertakers who are not themselves traffic authorities are given traffic regulation powers, consent is required. See Hinkley Connection, Abergelli Power and Richborough Connection. SCC see no need for Sizewell to be any different and that it is entirely appropriate for the traffic authority to be able to exercise this level of control over a private company taking on traffic regulation functions.</i></p>
	<p>(3) Before complying with the provisions of paragraph (4) the undertaker must consult-</p> <p>(a) the chief officer of police and the traffic authority in whose area the street is situated; and</p> <p>(b) any other person who the undertaker would be required to consult under regulation 6 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 if the exercise of the power in question would have the effect of an order in a case specified in column (2) of an item in the table in paragraph (1) of that regulation.</p> <p>(4) Before complying with the provisions of paragraph (4) the undertaker must comply with the provisions of regulation 7 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 as though the exercising of the powers under paragraphs (1) or (2) as the case may be were the making of an order to which those regulations apply</p>

	<p><i>Reason: this would bring the traffic regulation making powers into line with the general law as regards consultation and publicity requirements for the making of new traffic orders (as set out in the 1996 regulations referred to). It would mean, for example, that bus service operators, ambulance and fire services, freight transport industry representative bodies would be consulted.</i></p>
	<p>(5) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) and or (2) has effect as if duly made by—</p> <p>(a) the traffic authority in whose area the street is situated as-</p> <p style="padding-left: 40px;">(i) <u>an order under section 84 of the 1984 Act, in the case of paragraph (1);</u> or</p> <p style="padding-left: 40px;">(ii) a traffic regulation order under the 1984 Act <u>in the case of paragraph (2) (except paragraph (2)(c));</u> or</p> <p>(b) Suffolk County Council as an order under section 32 of the 1984 Act (Power of local authorities to provide parking places) <u>in the case of paragraph (2)(c),</u></p> <p>and the instrument by which it is effected may specify savings and exemptions <del>(in addition to those mentioned in Schedule 14)</del> to which the prohibition, restriction or other provision is subject, and <u>(in the case of paragraph (2))</u> the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (Road traffic contraventions subject to civil enforcement).</p>
<p><b>Req. 5 (Project wide: surface and foul water drainage):</b></p> <p><b>SCC as discharging authority</b></p>	<p>5. Project wide: Surface and foul water drainage – <b>option 1</b></p> <p>(1) No part of the authorised development (save for Work No. 1B, 1C, 4A(c), 9(b), 10(b), 11, 12, 13(b), 14, 15, 16 or 17) may be commenced until details of the foul water drainage system for that part (including projected volume and flow rates, management and maintenance arrangements, means of pollution control, sewage treatment works and a programme of construction and implementation) have been submitted to and approved by East Suffolk Council, following consultation with the Environment Agency, the relevant Statutory Nature Conservation Body, the East Suffolk Internal Drainage Board and the sewerage undertaker.</p> <p>(2) No part of the authorised development (save for Work No. 1B, 1C, 4A(c), 9(b), 10(b), 11, 12, 13(b), 14, 15, 16 or 17) may be commenced until details of the surface water drainage system for that part (including management and maintenance arrangements, means of pollution control, and a programme of construction and implementation) have been submitted to and approved by Suffolk County Council, following consultation with the Environment Agency, the relevant Statutory Nature Conservation Body, the relevant Internal Drainage Board and the sewerage undertaker.</p>

	<p>(3) The details of the the foul water drainage system and the surface water drainage system must be based on sustainable drainage principles and must be in accordance with the Drainage Strategy.</p> <p>(4) Any approved foul water drainage system or surface water drainage system must be constructed and maintained in accordance with the approved details.</p> <p>5. Project wide: Surface and foul water drainage – <b>option 2</b></p> <p>(1) No part of the authorised development (save for Work No. 1B, 1C, 4A(c), 9(b), 10(b), 11, 12, 13(b), 14, 15, 16 or 17) may be commenced until details of the surface and foul water drainage systems for that part (including projected volume and flow rates, management and maintenance arrangements, means of pollution control, sewage treatment works and a programme of construction and implementation) have been submitted to and approved by East Suffolk Council, following consultation with the Environment Agency, the relevant Statutory Nature Conservation Body, the sewerage undertaker and East Suffolk Internal Drainage Board.</p> <p>(2) Following approval pursuant to (1) above, the undertaker must, as soon as possible, provide details of the approved surface water drainage system to Suffolk County Council.</p> <p>(3) The surface and foul water drainage systems must be based on sustainable drainage principles and must be in accordance with the Drainage Strategy.</p> <p>(4) Any approved surface and foul water drainage system must be constructed and maintained in accordance with the approved details.</p> <p>(5) Details of the surface and foul water drainage system must not be submitted to East Suffolk Council for approval pursuant to (1) above until Suffolk County Council has approved the additional details in support of the Drainage Strategy.</p> <p>(6) The additional details referred to in (5) above must include information (consistent with national and local policy and based upon best practice and guidance) in respect of the surface water mitigation to be provided, and its location.</p>
<b>Req. 5 (Project wide: surface and foul water drainage):</b>	<p>Add the following in Requirement 5:</p> <p>“(5) Schedule 23 (procedure for approvals, consents and appeals) applies in relation to cases where an endorsement is sought under paragraph (2) as it applies to cases where an application for an agreement is made to a discharging authority, with the following modifications—</p>

<b>Drafting amends</b>	<p>(a) references to the discharging authority mean Suffolk County Council;</p> <p>(b) references to the day on which an application is received mean the day on which details are provided under paragraph (2);</p> <p>(c) any fees payable under paragraph 3 are payable by the undertaker.”</p>
<b>Req. 5A (Project wide: Emergency planning)</b>	<p>For existing requirement 5A substitute:</p> <p>“Project wide: Emergency planning</p> <p>(1) No part of the relevant works may be commenced until the Suffolk Resilience Forum Radiation Emergency Plan (“the Plan”) has been reviewed to account for the relevant works, or any part of them, and reissued in accordance with the Regulations.</p> <p>(2) Emergency planning arrangements specified in the Plan in respect of the relevant works must be implemented in accordance with the Plan, unless otherwise agreed with Suffolk County Council following consultation with the Sizewell Emergency Planning Consultative Committee or Suffolk Resilience Forum as appropriate.</p> <p>(3) For the purposes of this requirement –</p> <p>(a) “relevant works” means permanent works related to site preparation and construction; and</p> <p>(b) “the Regulations” means the Radiation (Emergency Preparedness and Public Information) Regulations 2019.”</p>
<b>Req 6A</b>	<p>Change heading:</p> <p>Project wide: Public Rights of Way</p> <p><i>Reason: some of the PRowS to which it applies are outside the MDS</i></p>

<b>Req 22A (Associated developments: Highway landscape works)</b>	<p>Add the following paragraph (as agreed with the Applicant)</p> <p>(2) Before submitting details under paragraph (1) the Applicant must consult the highway authority regarding any proposals within the proposed highway boundary.</p>
<b>Req 22A</b>	<p>(1) Work No. 11, Work No. 12 and Work No. 14 must not be commenced until details of the landscape works for that work have been submitted to and approved by East Suffolk Council in consultation with the Environment Agency.</p> <p><i>Reason: to include Yoxford roundabout</i></p>
<b>Req 23 (Associated developments: Landscape planting)</b>	<p>If any tree or shrub is removed, dies or becomes seriously damaged or diseased within five years of planting as part of Work No. 9, 10, 11, 12, or 13 or 14 it must be replaced with suitable replacement plants or trees to the specification referred to in the Associated Developments Design Principles during the next available planting season.</p> <p><i>Reason: to include Yoxford roundabout</i></p>
<b>Req 24 (Associated development sites: Removal and reinstatement)</b>	<p>(1) Within 12 months of the completion of the SZC construction works, Work No. 9 (northern park and ride including highway works), Work No. 10-(southern park and ride including highway works), Work No. 13 (freight management facility including highway works), Work No. 4B (green rail route), and Work No. 4D (rail spur) must be demolished.</p>
<b>Schedule 23 (procedure for approvals, consents and appeals)</b>	<p>(5) Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business of the date mentioned in sub-paragraph (3).</p>
<b>Schedule 24 (miscellaneous controls)</b>	<p>Section 141 of the 1980 Act (Restriction on planting trees etc. in or near carriageway) does not apply to any tree or shrub planted with the agreement of the highway authority in the course of the authorised development before completion of construction.</p>



<p><b>Various</b></p>	<p>“Deemed agreement and consent” amendments:</p> <p>Art. 11(3) (Power to alter layout, etc., of streets):  (3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.  <i>Reason: Unnecessary: There is a deeming provision in paragraph (4)</i></p> <p>Art. 12(2) (street works):  (2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out at paragraph (1) above.  <i>Reason: precedent (for example Thames Tideway) and unnecessary</i></p> <p>Art. 12(3): Delete the paragraph  <i>Reason: Unnecessary and precedent (not included in the equivalent in Thames Tideway)</i></p> <p>Art. 17(5)(b) (Temporary closure of streets and private means of access)  (5) The undertaker must not temporarily close, alter or divert—  (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and  (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.  <i>Reason: Unnecessary: there is a deeming provision. Also limited precedent</i></p> <p>Art. 22(2) (Traffic regulation measures)  (2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the street is situated, which consent may be subject to reasonable conditions, the undertaker may, for the purposes or in connection with the authorised</p>
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	<p>Development ....</p> <p><i>Reason: Precedent: this does not appear to be in other DCOs. SCC makes clear that there is no intention to unreasonably withhold consents, but it sees these words as creating an unnecessary additional requirement in a subject area of great importance to SCC</i></p>
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