



ID Number: 20031377

Sunnica Energy Farm EN010106

Suffolk County Council ISH1 Post-hearing Submission

Deadline 2

11 November 2022

GLOSSARY OF ACRONYMS

<i>ANOB</i>	<i>Area of Outstanding Natural Beauty</i>
<i>DCO</i>	<i>Development Consent Order</i>
<i>ExA</i>	<i>Examining Authority</i>
<i>HGV</i>	<i>Heavy Goods Vehicle</i>
<i>ISH</i>	<i>Issues Specific Hearings</i>
<i>LVIA</i>	<i>Landscape and Visual Impact Assessment</i>
<i>PROW</i>	<i>Public Rights of Way</i>

"The Council" refers to Suffolk County Council

PREAMBLE

1. This submission provides further details on issues and queries raised at Issue-Specific Hearing 1 on the draft DCO.

THE COUNCIL’S COMMENTS ON ISH1

Topic	Suffolk County Council’s Summary of Oral Case and responses to questions	References
Agenda Item 1 – Welcome, introductions and arrangements for the Issue Specific Hearing		
	<p>Suffolk County Council were represented by the following team in virtual attendance:</p> <ul style="list-style-type: none"> - Michael Bedford KC, Barrister, Cornerstone Barristers - Isaac Nunn, Senior Planning Officer (NSIPs), Suffolk County Council - Emyr Thomas, Partner and Parliamentary Agent, Sharpe Pritchard LLP 	
Agenda Item 2 – Purpose of the Hearing		
	<p>SCC asked that the timetable should be kept under review to allow sufficient time for further Issue Specific Hearings to be held between December 2022 and February 2023 if necessary, including a further ISH to consider the draft DCO, especially in case any further changes to the Application would be forthcoming to meet SCC (and the other local authorities) concerns as set out in the Joint Local Impact Report (REP1-024).</p>	
Agenda Item 3 – Articles and Schedules of the dDCO		
	<p>In the ExA’s initial comments, the ExA asked SCC (as a joint author of the Joint LIR, REP1-024) to clarify whether the Joint LIR was commenting only on the Application as submitted or whether it also took into account the changes to the Application as put forward in the Changes Application which has now</p>	

	<p>been accepted. In response SCC indicated that the Joint LIR was intended to address the effects of the Application as now changed. Any references in the LIR to elements of the proposal as originally submitted should be understood as providing historic context rather than as comments on the Application as now changed.</p> <p>In reviewing the Joint LIR, SCC has noted a typographical error in paragraph 1.2 where the final sentence should be replaced by: “In Sunnica East parcels E05, E12, E13, and E31 (in part) should be removed from the developable area.”</p> <p>Chapters 8 (Ecology and Biodiversity) and 10 (Landscape and Visual Amenity) of the Joint LIR contain the text which sets out the Councils’ concerns in relation to the above parcels.</p> <ul style="list-style-type: none"> • <u>whether the battery energy storage systems would be Associated Development or an aim in itself;</u> <p>SCC is neutral on this issue.</p> <ul style="list-style-type: none"> • <u>whether imposing an upper limit on the capacity of the proposed development would be desirable or necessary;</u> <p>SCC is neutral on this issue.</p> <ul style="list-style-type: none"> • <u>extent and assessment of permitted preliminary works;</u> <p>Background</p> <p>There are several key Requirements which impose a need for details to be approved prior to commencement of the authorised development (e.g. Requirements 3, 6 and 16) but the definition of “commence” (article 2, interpretation) excludes (unless the DCO says otherwise) “the permitted preliminary works” (also article 2), which are defined as all or any of—</p> <ul style="list-style-type: none"> “(a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery; (b) above ground site preparation for temporary facilities for the use of contractors; 	
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	<p>(c) remedial work in respect of any contamination or other adverse ground conditions; (d) diversion and laying of services; (e) the provision of temporary means of enclosure and site security for construction; (f) the temporary display of site notices or advertisements; or (g) site clearance (including vegetation removal, demolition of existing buildings and structures)”</p> <p>Some of these permitted preliminary works would in practice be irreversible and would limit or constrain options for undertaking the authorised development.</p> <p>Some drafting points on the definition of the permitted preliminary works Paragraph (a) includes “demolition of buildings” and (g) includes “demolition of existing buildings and structures”. Since a “building” is presumably the same as an “existing building” we assume, on a drafting point, the reference to “demolition of buildings” in paragraph (a) can be deleted. (We also assume that the word “existing” can be removed from paragraph (g) because if the building doesn’t “exist”, why would anyone wish to demolish it?). We also note that the definition of “building” (art.2) includes “any structure or erection or any part of any building, structure or erection”. Since the definition of “building” includes “structure”, we assume the words “and structures” can also be deleted from paragraph (g). We note that the Applicant intends to address some of these drafting points in the updated draft DCO at Deadline 3.</p> <p>The Applicant’s justification for “the permitted preliminary works” The Explanatory Memorandum justifies the inclusion of the “the permitted preliminary works” as follows (emphasis ours) – “ This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the “permitted preliminary works” include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above</p>	
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	<p>ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the works identified as “permitted preliminary works”, there may be a requirement to submit details to the Relevant Planning Authority. Where this is the case, the requirement expressly prevents the “permitted preliminary works” from being carried out until those details have been approved”. [Paragraph 5.2.2(d), emphasis added].</p> <p>Requirements</p> <p>The requirements (schedule 2) which prevent the permitted preliminary works from being carried out until those details mentioned in the EM have been approved are –</p> <ul style="list-style-type: none"> • Requirement 11 (fencing and other means of enclosure). By requirement 11(1) the undertaker is required to obtain the written approval from the relevant planning authority (or authorities) for any proposed permanent and temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for each phase prior to commencement of the phase in question of the authorised development. By requirement 11(3), for the purposes of requirement 11(1), ““commence” includes any permitted preliminary works”. So, none of the permitted preliminary works can be carried out under requirement 11 without the written approval of the planning authority. • Requirement 18 (ground conditions), in part. By requirement 18(1), no phase of the authorised development may commence (including permitted preliminary works comprising “demolition or decommissioning of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only”) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order Limits for that phase has been submitted to and approved by the relevant planning authority (or authorities, as applicable). <p>So, under requirement 18(1), the Applicant would still be able to carry out certain of the “permitted preliminary works” without “commencing” the authorised development and without submitting the written strategy mentioned in the preceding paragraph. The “permitted preliminary works” not captured by requirement 18(1) are –</p>	
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	<p>(a) intrusive archaeological surveys and, demolition of buildings and removal of plant and machinery; [Contrary to what we say above, the inclusion of “demolition of buildings” here assumes there is a difference between “demolition of existing structures” and “demolition of buildings”].</p> <p>(b) above ground site preparation for temporary facilities for the use of contractors;</p> <p>(c) remedial work in respect of any contamination or other adverse ground conditions;</p> <p>(d) diversion and laying of services;</p> <p>(e) the provision of temporary means of enclosure and site security for construction;</p> <p>(f) the temporary display of site notices or advertisements; or</p> <p>(g) site clearance (including vegetation removal, demolition of existing buildings). [Again, the inclusion of “demolition of buildings” here assumes there is a difference between “demolition of existing structures” and “demolition of buildings”].</p> <p>On a drafting point, we note that requirement 18(1) refers to “demolition or decommissioning of existing structures”; however the word “decommissioning” does not appear in the definition of “permitted preliminary works” and so should probably be deleted.</p> <p>Moreover, the breadth of the permitted preliminary works could allow the formation of construction accesses or changes to existing accesses for example as part of “above ground site preparation for temporary facilities for the use of contractors” or as part of the “diversion and laying of services” but there would be no need to seek the consent of the local highway authority before making such changes to access to the highway. SCC considers that all works involving the formation of or change to any vehicular access, whether on a temporary basis or not, needs to be subject to a prior approval process. Either such works should be excluded from the definition of permitted preliminary works, or those works need to be included in the definition of “commence” in Requirement 16.</p> <p>SCC’s position on “permitted preliminary works”</p> <p>SCC is concerned by the wide-ranging nature of the definition of “permitted preliminary works” particularly since it is not clear what certain of the terms – for instance, “intrusive archaeological surveys” – might, in practice, entail.</p> <p>The Applicant has committed to “identify and provide additional information on the nature and extent of the permitted preliminary works, where available, specifically in relation to above ground site</p>	
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	<p>preparation and site clearance” and SCC has requested that information about “intrusive archaeological surveys” is also provided.</p> <p>The Applicant has asked SCC to consider where else in the requirements the definition of “commence” should include the permitted preliminary works. As noted above, SCC does have particular concerns in relation to the formation of/changes to vehicular accesses and the issue of intrusive archaeological works.</p> <p>Finally, it is also not clear whether the effects of these proposals have been assessed.</p> <ul style="list-style-type: none"> • Article 6(3), clarification of disapplication of legislation, including enforceability of planning conditions on Worlington Quarry; Worlington Quarry Background <p>Article 6(3) says –</p> <p>“To the extent that there is an inconsistency on the land coloured yellow identified on the restoration overlap plan between any provision of this Order and the Worlington Quarry planning permission there is deemed to be no breach of the Worlington Quarry planning permission and no enforcement action can be taken following the commencement of permitted preliminary works, commencement or operation of the authorised development”.</p> <p>Its inclusion in the dDCO is justified in the Explanatory Memorandum as follows –</p> <p>“Article 6(3) is included in the Order to address the overlap between the Order and an extant planning permission relating to works to, and the restoration of, Worlington Quarry (original permission ref: F/04/0227 and subsequent variations of conditions ref: F/15/1386 and ref: SCC/0273/16F). The land to which the overlap relates is coloured yellow on the Restoration Overlap Plan [EN010106/APP/2.11] submitted with the DCO Application. The undertaker has reviewed the permission and subsequent variations and an inconsistency is likely to arise between the Order and the planning permission in respect of conditions 44, 48 and 50. The planning permission also still technically permits mineral extraction within the overlap area identified on the Restoration Overlap Plan.</p>	
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	<p>Given that this permission has the potential to interfere with the authorised development, the Applicant deems it necessary to disapply the planning permission over the area identified on the Restoration Overlap Plan to the extent that there is an inconsistency between the permission and the Order.</p> <p>The term “statutory provision” used in section 120(5) of the 2008 Act is defined in section 120(6) as meaning “a provision of an Act or of an instrument under an Act.” Section 120(5) is therefore wide enough to exclude conditions attached to a planning permission granted under the 1990 Act, as is being sought under Article 6(3). Planning permission F/04/0227 and subsequent variations of conditions ref: F/15/1386 and ref: SCC/0273/16F are instruments made under the 1990 Act and their provisions, i.e. conditions, are “statutory provisions” for the purposes of section 120(5)(a) and can therefore be modified or excluded”.</p> <p>Clarification of disapplication of legislation</p> <p>In principle, SCC does not object to this provision but is concerned about the stated statutory justification in the Explanatory Memorandum (para 5.2.18).</p> <p>Turning to the power to “disapply”, we do not agree with the Applicant’s conclusion that planning permissions are “instruments” and their conditions are “statutory provisions” for the purposes of section 120(5)(a). Whilst a planning permission is a document, SCC is not persuaded that it constitutes an “instrument” for this purpose.</p> <p>By section 120(6) of the Planning Act 2008, a “statutory provision” is a “provision of an Act or of an instrument made under an Act”. A statutory instrument, such as a DCO, is made under an Act, and says so in the introductory text. Similarly, rules (e.g. Infrastructure Planning (Examination Procedure) Rules 2010) and regulations (e.g. Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2021) are made under an Act and, again, say so in the introductory text. In the usual way, these instruments are “made” when signed by the relevant Minister or Department official.</p> <p>A planning permission, however, is not an instrument made under an Act, but granted, whether by a development order, a local development order, a Mayoral development order, a neighbourhood</p>	
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	<p>development order, or by the local planning authority or by the Secretary of State (section 58(1) of the Town & Country Planning Act 1990). In the case of a planning permission granted by a local planning authority or by the Secretary of State, the grant is preceded by an application from the party seeking the permission.</p> <p>For instance, the Worlington Quarry planning permission (F/04/227) says (in the usual way) that “permission is hereby GRANTED by Suffolk County Council as Local Planning Authority for the purposes of the [Town and Country Planning Act 1990] above and [Town And Country Planning (General Development Procedure) Order 1995] for the development ...”.</p> <p>However, SCC does not see this issue as creating a difficulty for the DCO itself or for Article 6(3) because the DCO cites s.120 PA 2008 as a whole as an enabling power. There are elements of s.120 PA 2008 that in SCC’s view would be wide enough to embrace Article 6(3) in relation to Worlington Quarry: in particular s.120(3) re “matters ancillary” and/or s.120(5)(c) re a provision that the Secretary of State considers to be “necessary or expedient for giving full effect” to any other provision.</p> <p>Thus, SCC simply asks the Applicant to give further thought to para 5.2.18 of the Explanatory Memorandum and, potentially, to broaden the scope of the statutory authorisations relied on.</p> <p>In addition, SCC notes and welcomes the Applicant’s intention, in response to questions from the ExA, to look further at the scope of Article 6(3) as regards whether precluding “enforcement action” was the most effective mechanism to address the question of inconsistency between the authorised development and the restoration plans for Worlington Quarry.</p> <ul style="list-style-type: none"> • Articles 18 et seq, scope of compulsory acquisition powers; SCC is neutral in respect of the compulsory purchase provisions. • Article 43, scope of compensation guarantees; and SCC is neutral in respect of this article, which is related to the compulsory purchase provisions. • Article 44, scope and proportionality of traffic regulation measures. 	
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	<p>Article 44 (traffic regulation measures) provides the undertaker with powers to regulate temporarily traffic on the roads and to the extent specified in Schedule 14 (traffic regulation measures).</p> <p>Part 1 of Schedule 14 specifies the extents of roads that would be subject to temporary speed limits, Part 2 specifies a prohibition of entry and no right turn prohibition in relation to a temporary access to the authorised development (not in SCC's area), and Part 3 specifies the roads that are to be temporarily closed to traffic.</p> <p>SCC notes that Article 44(1) applies to identified locations but the scope of the measures authorised is broad and the quality and level of detail of the supporting traffic information is poor (for the reasons set out in chapter 13 of the Joint Local Impact Report (REP1-024)). SCC does not consider that sufficient information has been provided to enable the effects of the authorised measures to be fully assessed, either by SCC as local highway authority/traffic authority or by affected highway users. It also appears that the measures could be introduced on successive occasions (as per Article 44(7)). The absence of any definition of "temporary" heightens these concerns. Unless adequate information is provided, SCC considers that the safeguard of requiring the prior consent of the traffic authority to the exercise of these powers needs to be included in Article 44(1).</p> <p>SCC notes that the measures are to be capable of enforcement under Article 44(8) as if they were provisions of a traffic regulation order (TRO) but the protections of a TRO as regards prior consultation with affected highway users and the consent of the traffic authority are not present in Article 44.</p> <p>Whilst the Applicant has suggested (at para 5.6.19 of the Explanatory Memorandum) that precedents can be found elsewhere, SCC notes that for the precedents cited:</p> <ul style="list-style-type: none"> (i) Great Yarmouth Third River Crossing DCO was promoted by Norfolk County Council as local highway authority, so the promoter was already the traffic authority for the affected roads; (ii) Network Rail (Norton Bridge Area Improvements) DCO included a need for the undertaker to obtain the consent of the traffic authority (Article 38(1)); 	
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	<p>(iii) National Grid (Hinkley Point C Connection Project) DCO included a need for the undertaker to obtain the consent of the traffic authority (Article 40(1)).</p> <p>Extracts from the latter two DCOs are provided in Annex 1 (rows 1 and 2, respectively).</p> <p>In addition, at the Sizewell C DCO Examination, the Applicant's initial proposals in relation to a power to alter speed limits did not include a need for the consent of the traffic authority but after representations from SCC the ExA recommended the inclusion of the need for such consent (Table 9.4, p.389 of Volume 4 of 4 of the ExA's report) and the DCO as made by the Secretary of State included that requirement in Article 24. Extracts from the ExA's report and the Sizewell C DCO are provided at Annex 1 (rows 3 and 4, respectively).</p> <p>By article 44(1), these measures are required for the purposes of the construction, maintenance and decommissioning of the authorised development.</p> <p>Since decommissioning will not take place for several decades, SCC also objects to the Applicant being able to execute these powers without its consent many years from now.</p> <p>Owing to these concerns, SCC has requested that article 44(1) be amended as follows –</p> <p style="padding-left: 40px;">“Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated, the undertaker may, for the purposes of the construction, maintenance and decommissioning of the authorised development— ...”</p> <p style="padding-left: 40px;">“Prior to any application for the consent of the traffic authority, the undertaker shall carry out 21 days' consultation with affected highway users by means of site notices and local advertisement and shall include a consultation report presenting the results of that consultation as part of its application for consent.”</p> <p>Paragraph (2) enables the undertaker to place temporary traffic signals in the locations specified in Part 4 of Schedule 14. To ensure that correct signals are placed, SCC considers the Applicant should first obtain SCC's consent.</p>	
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	<p>Owing to this, SCC has requested that article 44(2) be amended as follows –</p> <p>“Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated, the undertaker may for the purposes of the construction, maintenance and decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of Part 4 of Schedule 14 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016”.</p> <p>SCC consider that this request is no more onerous than the duties imposed on a statutory undertaker by section 65 of the New Roads and Streetworks Act 1991 and resolves any ambiguity between this Act and the dDCO regarding approval and inspection of traffic management measures.</p> <p>SCC also raised similar concerns about the lack of any requirement for its consent in the provisions in relation to Street Works in Part 3 of the dDCO, in particular in Article 9(1) as regards the works in Schedule 5 and in Article 11(1) as regards interferences with public rights of way. SCC reiterates its general concern (as elaborated in the Joint LIR) as to the insufficiency of the information provided by the Applicant to enable the effects on the local highway network and the public rights of way network to be fully assessed. In the absence of further information, the powers sought by the Applicant to undertake works affecting these networks should be subject to a requirement for consent from SCC.</p>	
Agenda Item 4 – Schedule 2 of the dDCO – Requirements and Schedule 13 Procedure for Discharge of Requirements		
	<p><u>• Clarification of relationship to each other of all plans and documents to be secured by the DCO;</u> <u>SCC has no comment on this item.</u></p> <p><u>• Need for supplementary outline plans and related requirements, for example on highway access, individual aspects of construction practice and light emissions;</u></p> <ul style="list-style-type: none"> • R16 (construction traffic management plan) – as mentioned elsewhere, SCC is concerned that the detail included in this document is not sufficient to show that the Applicant’s proposals are 	

	<p>feasible or deliverable. SCC hopes to discuss with the Applicant how the document can be improved and/or additional information and safeguards for highway interests provided. We have suggested as a specific point that the definition of “commence” here should include any permitted preliminary works.</p> <ul style="list-style-type: none"> • R22 (decommissioning and restoration) – the applicant is to confirm how SCC will know that the undertaker has “decided” to decommission any part of the development under r22(1). <p><u>• Approval of battery fire safety management plan.</u></p> <p>Requirement 7 provides for the approval of the battery safety management plan by “relevant planning authorities” (i.e. East Cambridgeshire DC and West Suffolk Council). SCC consider the “relevant county authorities” (i.e. Cambridgeshire CC and SCC) should approve the plan, as SCC is the Fire and Rescue Authority for Suffolk and we understand that Cambridgeshire CC hold the same position in respect of Cambridgeshire (though jointly with Peterborough City Council). SCC considers that making the discharging authority the body with the most relevant technical expertise and responsibility for the subject matter of the Requirement is more appropriate than placing that responsibility on the relevant planning authority. SCC also notes that West Suffolk Council does not object to SCC being the discharging authority for Requirement 7.</p> <p><u>Schedule 13 (procedure for discharge)</u></p> <p>SCC has requested that Schedule 13 is amended as follows –</p> <ul style="list-style-type: none"> • Paragraph 2(a) provides that a decision in respect of any consent, save for a consent under a requirement, must be made within 28 business days. PINS Advice Note 15 gives 42 days (i.e. a slightly longer period). SCC has requested that the longer period be provided. • Paragraph 4 concerns appeals and paragraphs 4(2)(d) and (e) say that SCC must submit its appeal written representations to the appointed person within 10 business days of the start date of the appeal and the undertaker must then send any counter-representations within a further 10 business days. This is different from Advice Note 15 where both parties submit their representations at the same time and both parties may then submit counter-representations in response to the other party’s representations. SCC has requested that the regime (and timeframe) under Advice Note 15 be adopted. 	
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	<ul style="list-style-type: none"> • Unlike Advice Note 15, there is no provision under Schedule 13 for the payment by the undertaker to the discharging authority of a fee. SCC would expect such a provision to be included. (The Applicant has confirmed that this provision will be provided). <p>Paragraph 2(3) includes a deeming provision. It states that if the discharging authority does not determine an application within the required timeframe, the authority is deemed to have granted the application without condition or qualification at the end of that timeframe. SCC has requested that the following provision be added at the end of paragraph 2 –</p> <p>“(5) An application to which this paragraph 2 applies must include a statement that the provisions of sub-paragraph (3) apply and, if the application fails to do so, it shall be null and void”.</p> <p>SCC understands that the applicant intends to make this amendment.</p> <p>SCC has also requested that the following provision be added –</p> <p>“(6) In the case of requirements in respect of which Cambridgeshire County Council is the discharging authority, Cambridgeshire County Council must consult with East Cambridgeshire District Council, and vice versa. In the case of requirements in respect of which Suffolk County Council is the discharging authority, Suffolk County Council must consult with West Suffolk Council and vice versa”.</p> <p>SCC notes that at ISH1 the Applicant suggested that such a consultation requirement would place an undue burden on the undertaker but, with respect, this misunderstands the nature of the suggestion by SCC. What is suggested, for two tier authorities (as is the case in both Suffolk and Cambridgeshire) is that where the upper tier authority is the discharging authority, it must consult the lower tier authority before discharging a requirement and where the lower tier authority is the discharging authority, it must consult the upper tier authority before discharging a requirement. This consultation process places no burden on the undertaker.</p>	
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	<p>SCC also notes that such a consultation provision was included in the Sizewell C DCO (Schedule 24, para 1(4)). An extract from that DCO is provided at Annex 1, row 5.</p>	
Agenda Item 5 – Article 38 and Schedule 10 of the dDCO – Documents and Plans to be Certified		
	<p><u>To review the documents to be certified and seek views as to whether the list is complete and, if not, what additional documents would need to be included.</u></p> <p>SCC is concerned about the Framework Construction Traffic Management Plan [APP-118] and considers more work needs to be done to it. Based on experience on other DCOs, SCC considers it unlikely that the applicant will be able to provide sufficient technical detail during the examination to address SCC's concerns and so, as explained below, SCC considers it will be necessary for the Applicant to enter into a side agreement to deal with SCC's highways concerns. Feedback on Heads of Terms for a highways side agreement has been provided to the Applicant since ISH1.</p>	
Agenda Item 6 – Article 40 and Schedule 12 of the dDCO – Protective Provisions		
	<p><u>To understand and obtain an update on progress between parties regarding protective provisions; an explanation of any important differences of view and a timescale for resolution</u></p> <p>Part 8 includes Protective Provisions for drainage authorities. SCC notes that paragraphs 94 and 95 provide for the payment of the drainage authority's "reasonable compensation for costs" by the Applicant in certain circumstances.</p> <p>SCC is concerned that the current language may allow for payments amounting to less than actual costs. The Applicant has committed to provide an explanation for the new drafting used. SCC would wish to see as a minimum that all its actual costs, charges, and expenses incurred are recovered, provided they were reasonably incurred. SCC considers that the Southampton to London Pipeline DCO provides a suitable precedent. An extract is included at Annex 1, row 6.</p> <p>SCC mentioned that it considers a side agreement will be needed to address its highways concerns. SCC hopes to make progress with the Applicant on a side agreement to protect its interests and its</p>	

	<p>infrastructure as local highway authority, but in default of such an agreement being concluded, SCC reserves the right to argue that Protective Provisions should be included within Schedule 12 of the DCO in relation to the protection of highways infrastructure. SCC notes that the Applicant has already included such Protective Provisions (in Part 9 of Schedule 12) in relation to highways infrastructure that is the responsibility of National Highways. SCC is also aware that other DCOs have included protective provisions in favour of local highway authorities (such as the A303 Sparkford to Ilchester DCO) and can provide further details if it becomes necessary to pursue the argument for Protective Provisions.</p>	
Agenda Item 7 – Consents, Licences and Other Agreements		
	<p><u>Planning obligations</u></p> <p>SCC considers that the Applicant’s proposed mitigation is underdeveloped at this stage. Owing to this, SCC considers it is currently too early to determine whether any planning obligation will be necessary, though discussions with the Applicant could start on whether further mitigation is necessary based on impacts anticipated in the LIR.</p> <p><u>Side agreements</u></p> <p>SCC considers the highways information provided is currently insufficient to allow it to assess the safety, practicality and quality of the temporary or permanent works.</p> <p>Based on experience on other DCOs, SCC considers it unlikely that the applicant will be able to provide sufficient technical detail during the examination to address this issue.</p> <p>SCC considers, however, that, with additional design work to demonstrate the feasibility of the works, together with an acceptable agreement requiring the applicant to seek technical approval, this issue can be resolved. This would be similar to the arrangement made with Scottish Power Renewables for EA1(N) –</p> <p>https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-004580-ExA.AS-37.D8.V1%20EA1N%20Section%20278%20Agreement%20with%20Suffolk%20County%20Council.pdf</p> <p>SCC would expect any agreement to contain provisions in respect of the following topics: the design of the highway works; inspection of the highway works; testing of materials; protection of the public;</p>	

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	prevention of mud being carried on the public highway; recovery of expenses due to extraordinary traffic; traffic control; safety; accommodation works; Construction (Design and Management) Regulations 2015; site clearance; adoption of highway by agreement; certificate(s) of substantial completion; defects correction period and certificate of final completion; performance bond; access and liability for maintenance; commuted sums for maintenance; legal and administrative costs; the level of information on assets to be provided to SCC on handover; damage to the local road network; and noise regulations.	
Agenda Item 8 – Statements of Common Ground relevant to the DCO		
	Suffolk County Council continues to have discussions with the aim of progressing an SoCG.	
Agenda Item 9 – Review of issues and actions arising		
	<p>SCC had two actions arising from ISH1:</p> <p>2. Higher-resolution versions of the minerals plans are supplied as part of the same submission as this document. It should be noted that these are based on scans of physical documents which were published in a non-standard paper format published some time ago, and there are therefore limits to how clearly they can be presented (for example, it is not possible to ensure the scale displays accurately on a digital screen). It may be possible to provide physical access to the original documents at our Ipswich office if the ExA considers it necessary.</p> <p>4. Extracts from the Sizewell C DCO and the other DCOs mentioned by SCC have been included by references to Annexes to this Submission at the relevant point. A full copy of the Sizewell C DCO as made by the Secretary of State is available on the PINS project page: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010012/EN010012-011165-SZC-DCO.pdf</p>	
Agenda Item 10 – Close of hearing		

SUNNICA ENERGY FARM – SUFFOLK COUNTY COUNCIL – DEADLINE 2 SUBMISSION

	SCC has no comment to make on this agenda item.	
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Annex 1 (extracts from other DCO documents referred to in this submission)		
No.	Agenda item [and relevant dDCO provision]	Extract
1.	3 (articles and Schedules of the dDCO) [Article 44, scope and proportionality of traffic regulation measures].	<p>Article 38(1) (traffic regulation) of the Network Rail (Norton Bridge Area Improvements) Development Consent Order 2014</p> <p>“Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, regulate vehicular speed indefinitely or temporarily in the manner specified in Schedule 12 (traffic regulation) on the roads specified in column (1) by imposing the speed limit corresponding to those roads in column (2) to the extent described in column (3) of that Schedule”.</p>
2.	3 (articles and Schedules of the dDCO) [Article 44, scope and proportionality of traffic regulation measures].	<p>Article 40(1) (traffic regulation) of the National Grid (Hinkley Point C Connection Project) Order 2016</p> <p>“Subject to the provisions of this article, and 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 construction of the authorised development—</p> <p>(a) prohibit vehicular access, prohibit waiting of vehicles and regulate vehicular speed by imposing a speed restriction on vehicles of 30 mph or such other speed as may be agreed in writing with the traffic authority in the manner specified in Part 1 of Schedule 13 (traffic regulation) on a road specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule;</p>

		<p>(b)prohibit vehicular access and prohibit waiting of vehicles in the manner specified in Part 2 of Schedule 13 on a road specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule; and</p> <p>(c)prohibit waiting of vehicles in the manner specified in Part 3 of Schedule 13 on a road specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule”.</p>		
3.	3 (articles and Schedules of the dDCO) [Article 44, scope and proportionality of traffic regulation measures.]	Extract from Table 9.4 (page 389) of the Examining Authority’s Recommendation to the Secretary of State for Business, Energy and Industrial Strategy, Volume 4 of 4		
		Provision	Examination Issue	Recommendations
		Article 24	SCC [REP10-210] requested that the power to alter speed limits is subject to the consent of the traffic authority in whose area the road concerned is situated. We agree that given the traffic authorities statutory duties that this is a reasonable request and recommend that Article 24 should be amended accordingly.	Insert after (1): “Subject to the consent of the traffic authority in whose area the road concerned is situated” And in (7) after the word ‘paragraph’ insert: “(1) or”
4.	3 (articles and Schedules of the dDCO) [Article 44, scope and proportionality of traffic regulation measures.]	Article 24 (traffic regulation measures) of the Sizewell C (Nuclear Generating Station) Order 2022 “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”.
5.	4 (Schedule 2 of the dDCO – Requirements and Schedule 13 Procedure for Discharge of Requirements) [Schedule 13 (procedure for discharge)]	Paragraph 1(4) of Schedule 24 (procedure for approvals, consents and appeals) of the Sizewell C (Nuclear Generating Station) Order 2022 “In the case of requirements in respect of which East Suffolk Council is the discharging authority under Schedule 2 of this Order, East Suffolk Council must consult with Suffolk County Council. In the case of requirements in respect of which Suffolk County Council is the discharging authority under Schedule 2 of this Order, Suffolk County Council must consult with East Suffolk Council.”
6.	Agenda Item 6 – Article 40 and [Schedule 12 of the dDCO (protective provisions)]	Paragraphs 59 and 60 of Schedule of Part 5 (for the protection of the drainage authority) of Schedule 9 (protective provisions) of the Southampton to London Pipeline Development Consent Order 2020 “The undertaker must repay to the drainage authority all reasonable costs, charges and expenses which the drainage authority may reasonably incur— (a) in the examination or approval of plans under this Part of this Schedule; and (b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and (c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work”.