

Suffolk County Council (20031377)

Issue-Specific Hearing 4 (ISH4) Post-hearing Submission

Sunnica Energy Farm (EN010106)

Deadline 7

3 March 2023

Preamble:

This submission provides further details on issues and queries raised at Issue-Specific Hearing 4.

Glossary Of Acronyms:

DCO	<i>Development Consent Order</i>
ES	<i>Environmental Statement</i>
ExA	<i>Examining Authority</i>
ISH	<i>Issue Specific Hearing</i>
LVIA	<i>Landscape and Visual Impact Assessment</i>
NPS	<i>National Policy Statement</i>
OFH	<i>Open Floor Hearing</i>
PROW	<i>Public Rights of Way</i>
SCC	<i>Suffolk County Council</i>

“The Council” refers to Suffolk County Council, “The Councils” refers to the four host authorities: Cambridgeshire County Council, East Cambridgeshire District Council, Suffolk County Council, and West Suffolk Council.

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 person:</p> <ul style="list-style-type: none"> - Michael Bedford KC, Barrister, Cornerstone Barristers - Isaac Nunn, Senior Planning Officer (NSIPs), Suffolk County Council - Callum Etherton, Planning Officer, Suffolk County Council - Julia Cox, Senior Transport Engineer (NSIPs & Projects), Suffolk County Council - Isolde Cutting, Senior Landscape Officer, Suffolk County Council 	
Agenda Item 2 – Landscape and visual impact		
	<ul style="list-style-type: none"> • Update from the Applicant on specific impacts on visual amenity around parcels E19, E20, E21 and E22 (south of Elms Road) and potential for mitigation; and <p>SCC Comments on Parcels E19-E22 and Elms Road:</p> <ul style="list-style-type: none"> • The mitigation proposed to date (prior to deadline 7) does not appear robust enough to adequately mitigate the visual effects for neighbouring properties within the short to medium term. Multiple barriers between the traveller's site and the scheme unlikely to give cohesive approach. However, the Council considers that adequate mitigation should be achievable within the landscape. • During ISH4 the Applicant indicated that further detail would be provided at D7, including the following for E19: <ul style="list-style-type: none"> ○ The Applicant assured the ExA and the Councils that the proposed permissive footpath would be separated from the neighbouring property by existing vegetation, which would be strengthened with further hedge and tree planting, and that additional planting would be provided to ensure privacy, while creating a pleasant recreational route. ○ The corridor would be 25m wide. • The proposed permissive route along the north-western edge of E19 needs to be considered in greater detail (this could be done at detailed design stage). It would be essential to ensure that the privacy of the adjacent property as well as the amenity of the footpath users are safeguarded. This could be a woodland footpath. Pines should be included in the species mix. 	

- The Councils suggest that the solar panels of E20, E21 and E22 should be set back no less than thirty meters from the south-eastern boundaries and that a tree belt should be provided, with a hedge line on either side, and including pines.

During ISH4 the Applicant indicated that further detail would be provided at D7, including the following for E20 - E22:

- To strengthen the south-eastern edge of E20 (the Councils consider that this should be continued along E21 and E22)
- The permanent security fence would be on the parcel side of the planting; the temporary hoarding fence would be removed after 24 months.
- The existing hedge along south-western boundary of E19 is not shown on Hedgerow Plan.
- No return planting is proposed to improve screening of access points and around the water reservoir into the parcels at this stage, as requested by the Councils (this is under review by the Applicant).

Further notes on Elms Road:

- Retain and strengthen existing hedgerows and tree lines.
- The proposed access from Elms Road would appear to result in 215m of hedgerow lost on either side to visibility splays. This is not shown on the hedgerow plans. The south-eastern visibility splay is particularly significant for the screening of E18 and the BESS. The loss of the existing hedge in this location would likely increase the adverse visual impact on Elms Road in the short and medium term, until the proposed mitigative planting would be established. A replacement hedgerow or woodland belt is proposed in the latest Environmental Masterplan, but should also be secured in the OLEMP.

General impacts on the landscape of the area; potential for mitigation and impact of mitigation proposals on the landscape.

- **Changes to the local landscape character:**
 - Rapid and, for the purposes of the visual receptors, permanent change of large tracts of rural landscape areas round the settlements of Worlington, Freckenham, West Row, Chippenham, Isleham and Snailwell to a new renewable energy landscape. The Councils concerns were set out in LIR 10.7, 10.10, 10.13, 10.15 and LIR 10.161.

	<ul style="list-style-type: none"> ○ Impact on and partial loss of the largely open character of the project area, including truncation of views, both to landmarks and across the wider landscape, because of the proposed mitigation to screen the solar plant. ○ Change to character of secondary and unclassified roads (Elms Road, U6006, La Hogue Road), resulting from road widening and alteration schemes, and the creation of access and crossing points to enable the development. (U6006 will not be widened but works would be necessary to facilitate crossing.) ○ The Council considers that the accumulation of long-term Minor and Moderate Adverse Effects results overall in long-term Significant Adverse Effects. The Council does not agree with applicant’s assessment that impacts will not be significant by year 15. (LIR 10.156, 10.160, and 10.179, 10.180). A table detailing the residual adverse landscape and visual effects is submitted alongside these post hearing notes as a separate document in response to Action Point No. 1 following ISH4. ● Permanent loss of Landscape features: trees (including TPO trees and potentially, irreplaceable veteran trees), parts of woodlands, hedgerows, scrub, arable flora and arable land, loss of legibility of pine lines <ul style="list-style-type: none"> ○ Protected TPO trees and trees within the Badlingham Lane CWS are shown to be removed at least at two crossing points: <ul style="list-style-type: none"> ▪ U6006 southern point of E12 and south-west of E13 <ul style="list-style-type: none"> - G81 (avenue of Scot pine) fell in part (no number given), subject to TPO - G82 (oak, blackthorn, elm, hawthorn) fell in part (no number given), subject to TPO -TPO/002(2022) W1 woodland. ▪ U6006 Crossing point north of E24 <ul style="list-style-type: none"> -W94 (numerous mature oaks, sycamore, Norway maple, blackthorn, ash, elder, hawthorn) fell in part (no number given), subject to group TPO -TPO/002(2022) G4 group of 72xoak 2xpine ● Impacts on perceptual qualities of the landscape: Temporary impacts on tranquillity during construction; long-term loss of time-depth; ● Impacts on recreation and public use of the area: Temporary closures/diversions of PRowS-Temporary Road closures - Long-term or permanent changes to views and amenity ● The Council does not agree with applicant’s assessment that impacts will not be significant by year 15 (LIR 10.156, 10.160, and 10.179, 10.180). The reasons are that: <ul style="list-style-type: none"> ○ mitigation proposals are not sufficient/robust to come to this conclusion ○ there will be an accumulation of apparent ‘minor’ affects which is not adequately reflected in the applicant’s assessment 	
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- o the perception of large solar farm across this wide area will remain

Potential for mitigation and impact of mitigation proposals on the landscape

- The potential for mitigation and the potential impacts resulting from the mitigation proposals varies greatly across the DCO site.
- In some areas it is not possible (as Sunnica West A – historic landscape with open character) or very difficult (as in E05, E01 to E04, E08-E10 – very open landscape character and U6006, ECO3, E12 and E13 – conflicting mitigation requirements)) to provide mitigation without having a detrimental impact on the landscape’s character or functions.
 - o In other areas mitigation planting needs to be more robust and make greater efforts to integrate the new with the old. Here, additional mitigation could, in the Council’s view, further reduce adverse effects [see LIR 10.189] and a table detailing the residual adverse landscape and visual effects after further mitigation, submitted alongside these post hearing notes as a separate document in response to Action Point No. 1 following ISH4.
- The proposed mitigation would, however, change the open character of the landscape. The wide-open views would become more confined.
- While the proposed significant increase of woodland could have a positive impact on the landscape, it does not appear to be tailored sufficiently to the character of the landscape and is proposed for areas where woodland is otherwise absent. Some of the proposed woodland planting will truncate views to landmarks (local churches, the Ark).
- The currently proposed mitigation (prior to Deadline 7) has the potential to reduce the legibility of landscape features such as the pine lines and Lee Brook.
- Mitigation is required for all aspects of the environment, and once the fragile existing equilibrium between Landscape, Archaeology and Ecology and Recreation is disrupted, the attempts of mitigation will inevitably compartmentalise these needs, resulting in the need of fencing, artificial Stone Curlew Plots and the direction of recreational users of the landscape. The experience for the user is likely to be more restrictive.

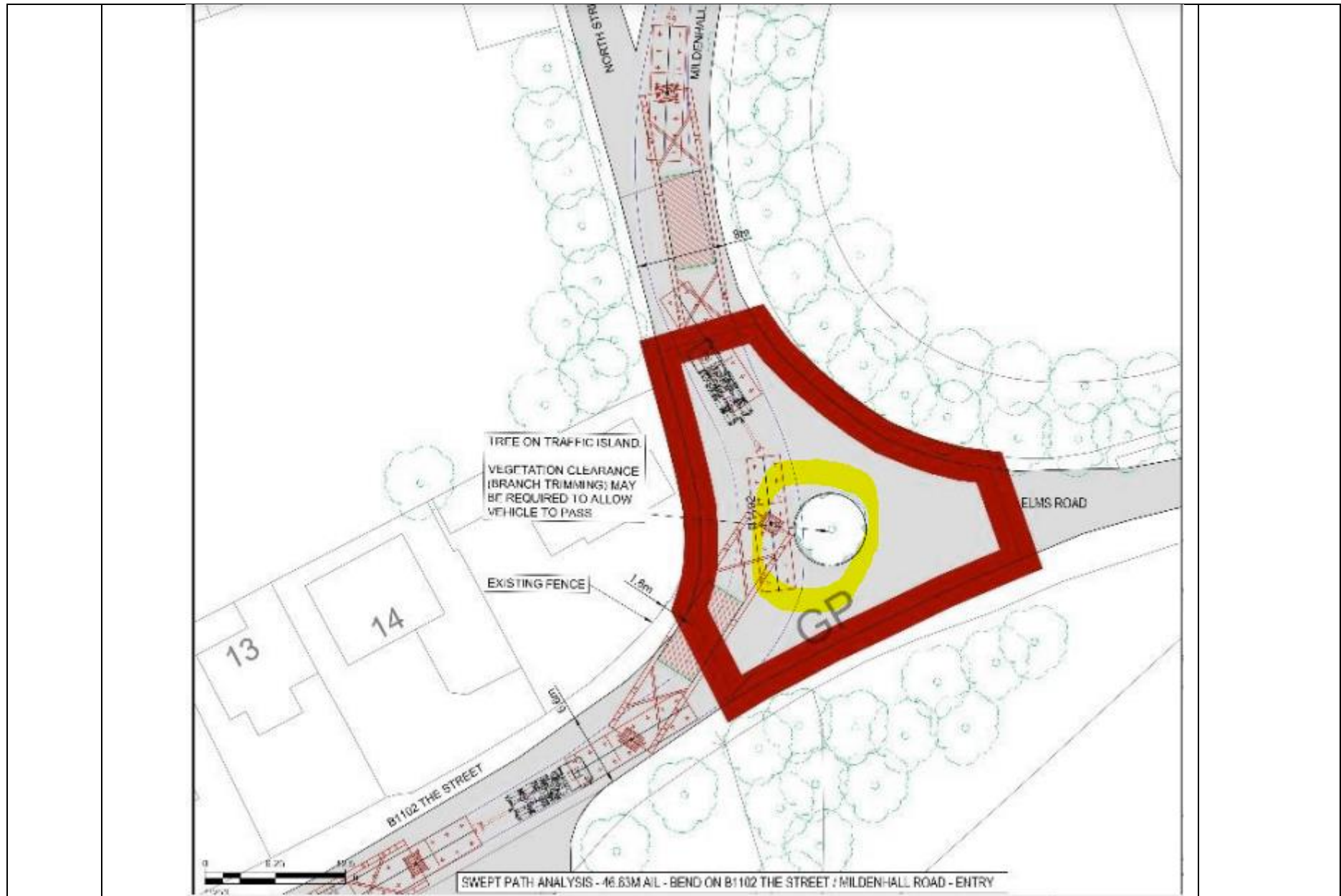
As set last out in the Councils’ comments on the Design Principles and Green Infrastructure Proposals within 6.2 Appendix 10I Outline Landscape and Ecology Management Plan (Clean) - Rev: 02 [REP5-011], the mitigation proposals should seek to incorporate the following:

	<p>Sunnica East A</p> <ul style="list-style-type: none"> • Removal of E05 <p>Sunnica East B</p> <ul style="list-style-type: none"> • Removal of E12 and E13. • The U Road U6006 corridor should not form part of the proposals and should be left intact. Access roads for the solar parcels should be located within the parcels and there should only be one crossing point, where a natural gap in the vegetation presents itself. For any cable route crossing HDD would be expected. This has not been confirmed. • The corner into Golf Links Road (north-eastern corner of E32) has been identified by the Councils as a gateway location in the approach to Worlington and as such requires positive place making. The Councils have previously proposed to accentuate this corner with large trees. The Applicant has responded that this is not possible, because of technical or operational constraints without explaining further what these constraints are. This is unsatisfactory. The proposals of mixed scrub with scattered trees are insufficient in terms of positive place making. The Councils understand the potential constraints resulting from archaeology and required visibility splays, but consider that greater efforts should be made create a sense of place. <p>Sunnica West A and West B</p> <p>These sites are located in East Cambridgeshire.</p> <p>Detailed parcel by parcel proposals for further mitigation are included in the table detailing the residual adverse landscape and visual effects of the current proposals, which is submitted alongside these post hearing notes as a separate document in response to Action Point No. 1 following ISH4.</p>	
<p>Agenda Item 3 – Historic environment</p>		
	<ul style="list-style-type: none"> i. The Avenue (Chippenham Park Registered Park & Garden) ii. Plane crash site, parcel E05 <p>Both sites are located within East Cambridgeshire.</p>	

Agenda Item 4 – In-combination impacts	
	<p>The ecology and biodiversity, historic environment, and landscape and visual impact on:</p> <ul style="list-style-type: none"> i. Land parcels W01, W02 and EC04 These parcels were located within East Cambridgeshire. The landscape and visual effects have been significantly reduced in this area, as it is no longer proposed to develop these parcels. There are still some landscape and visual effects anticipated resulting from the construction of the cable route. Vegetation losses should be avoided (by use of HDD). As no additional planting is proposed in this area, no in-combination effects, or conflicts with the requirements of ecology and biodiversity or historic environment are anticipated. ii. Land parcels W03, W04, W05, W06, W07, W08, W09, W10, W11, W12, W17 and EC05 These parcels are located within East Cambridgeshire. The requirements for visual screening are irreconcilable with the constraints within the historic landscape around Chippenham Park. Intermittent views of the extensive area of solar panels through the roadside hedge would be available from the Suffolk/Cambridgeshire border along the B1506. This would mainly affect footpath users. iii. Land parcel E05 Land parcel E05 is largely located in Cambridgeshire. Conflicting requirements for landscape, public amenity/recreation, historic environment and ecology. In this respect the Councils' preferred option is to apply the mitigation hierarchy and avoid harm, by removal of E05. SCC concurs and fully supports the further detailed comments on Ecology put forward by WSC. iv. Land parcels E12 and E13 Conflicting requirements for landscape and ecology. In this respect the Councils' preferred option is to apply the mitigation hierarchy and avoid harm, by removal of E12 and E13. E12 The option put forward by SCC in response to EXQ2.0.9 [REP5-084] to remove solar panels from this parcel focuses on reduction of landscape impacts [LIR 10.204-5]. This proposal sought to achieve a reduction of the landscape impacts on landscape terms on users of the U6006 road without increasing the impact on ecology. However, irrespective of this, unacceptable residual effects on protected trees which form part of a pine line remain, as would the impacts on Stone Curlew. If solar panels were to be completely removed from Parcel E12, there would be no need for a vehicular access between E13 and E12, and the cable could be directionally drilled avoiding the need to remove protected trees from pine line G81. SCC concurs and fully supports the further detailed comments on Ecology put forward by WSC. E13

	<p>The option put forward for E13 by SCC in response to EXQ2.0.9 [REP5-084] relies on the removal of solar panels from parcel E12. The Council's position is that the U6006 route should not be constrained with solar panels on both sides and that along the length of the route long distance views should be retained on at least one side [LIR 10.204-205].</p> <p>SCC concurs and fully supports the further detailed comments on Ecology put forward by WSC.</p>	
Agenda Item 5 – Traffic and Transport		
	<p>i. Ports, AIL and crane routes: impacts and consents</p> <p>Ports: SCC notes that the nearest port is Ipswich and that whether the AILs are unloaded at the Cliff Quay or the West Bank they will need to use local roads to access the SRN.</p> <p>AIL: SCC notes that the applicant has in 5.4.5 of the latest versions of the CTMP (REP5-015) stated that the largest load may be 200tonnes although in ISH4 16/02/2023 part 3 the Applicant stated that the maximum weight of AIL will be 130 tonnes. If the total weight of the AIL were to be over 150 tonnes (inclusive of load, trailer and tractor) this would be a special-order movement, not a Special Types General Order type 3 (STGO3) movement but SCC welcomes the Applicant's confirmation that the 150 tonnes limit for STGO3 movements will not be exceeded and looks forward to seeing this reflected in the revised CTMP. Previous special-order movements between the Port of Ipswich and Burwell have had to divert onto the local road network to avoid restrictions (weight and / or height) that apply on the A14.</p> <p>To clarify the position stated in ISH4 the local highway between the port and the SRN should not be assumed to be suitable for AIL movements. For example, the bridge on the A137 in Ipswich (Ostridge Creek) required temporary strengthening during past AIL movements.</p> <p>REP6-043 SoCG with NH does not explicitly state that AIL routes on the SRN have been discussed or agreed with NH.</p> <p>Routes: SCC has expressed concern that STGO3 AIL overruns the island on the B1102 The Street / Mildenhall Road (REP5-015: CTMP Fig 27) and that the applicant has not satisfactorily addressed this concern in the documents nor</p>	

	at verbally ISH4 where the Applicant has only referred to vegetation clearance and not addressed the AIL wheel path over-running the island	
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Consents: Special order movements will require consent from National Highways who in turn consult the local Constabulary and Highway Authority.

SCC's main concern with consenting is that the applicant has not until ISH4 acknowledge that issues may arise between the port and the SRN and if the load diverts from the SRN network onto local roads, nor made allowance for the time and resource necessary to validate the route, specifically to identify vulnerable structures or highway infrastructure that obstructs such movements. SCC welcomes the applicants commitment to assess a viable route between a port and the site.

ii. **HGV routes and forecast impacts.**

SCC has made its position clear that the applicant should agree to caps on the HGV routes to ensure that movements remain within that assessed in the ES and TA. Such measures will require appropriate monitoring, reporting, and if necessary, enforcement. The level of information provided within the application (eg APP-117 Transport Assessment Annex E, REP6-006 Works Plans) has not enabled the LHA to validate assumptions made by the applicant (eg size and construction of car park and haul roads, changed location of substation). SCC understands that the applicant has accepted this and will be updating the CTMP.

In Table 10 of the LIR (REP1-024) SCC proposed HGV caps. These were based on the total movements on links used by HGV calculated from the data provided by the applicant in Plate 2 of the Transport Assessment [APP-117]. Note that these figures have not been adjusted to allow for the change request submitted by the Applicant in August 2022.

The Applicant provided the LHAs a table stating the caps at individual site access on Friday 10th February 2023 at 18:05. This would be acceptable to SCC if included within the revised CTMP as the numbers of HGVs reflect those estimated by SCC from the information provided by the Applicant in Appendix E of the Transport Assessment (APP-117).

With regard to diversion of HGVs from the SRN due to changes on the SRN or LHA network drivers are not legally bound to follow the signed diversion. However, SCC would be content if this matter is a contractual requirement secured, monitored and enforced through the CTMP.

	<p>Caps on workers trips</p> <p>SCC consider that controls are necessary on</p> <ul style="list-style-type: none"> • shift patterns, • total numbers of workers • and total worker vehicles <p>to demonstrate that the values assessed in the ES /TA remain within the worst case assumed and that no additional transport impacts occur. We also consider that the car occupancy ratio of 1.5 (identified in the TA, ES and CTMP) is a necessary control to ensure that the development can be regarded as sustainable in line with national guidance</p> <p>Paragraph 5.13.4 of the NPS EN-1 identifies that ‘the applicant should provide details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal and to mitigate transport impacts. Whilst Paragraph 5.13.8 sets out that ‘where mitigation is needed, possible demand management measures must be considered and if feasible and operationally reasonable, required, before considering requirements for the provision of new inland transport infrastructure’ with paragraph 5.13.9 going on to state that ‘the IPC should have regard to the cost-effectiveness of demand management compared to new transport infrastructure, as well as the aim to secure more sustainable patterns of transport development when considering mitigation measures’.</p> <p>Paragraph 105 of the NPPF sets out that ‘Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making’.</p> <p>Paragraph 110 of the NPPF sets out that it should be ensured that ‘appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.</p> <p>There are limited opportunities to deliver sustainable travel patterns to the site, particularly by more sustainable modes, so ensuring reasonable levels of car sharing is imperative to delivering some measure of sustainable travel by the workforce.</p>	
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iii. **Site accesses**

There are some general matters that remain to be clarified by the applicant:

- What highway or access improvements are to be permanent (widening of Elms Road?) and where temporary accesses are being widened whether this is retained during the operational phase of the development or removed?
- What, if any, additional areas will be offered for adoption as public highway?
- Sufficient detail of traffic management to show that it is deliverable and accords with the relevant codes of practice.
- How access for pre-commencement works will be provided and approved.

There remain some site-specific matters relating to individual accesses, including the temporary and permanent arrangements during the operational phase a response requested by the EXA in ISH4, which are set out in Annex 1 with the key points summarised below:

Access A, Access B and Access C

The visibility for access B to the south in the operational phase has not been included on the plans. The other issues are the deliverability of the traffic management due to the proximity of sites and limited road width at the temporary signal heads.

SCC remains unconvinced that the full impacts of the vegetation clearance necessary for 215m of visibility for Access C during the operational phase has been fully documented.

Access D / Access H

No visibility details provided for Access D during the operational phase (no traffic management). Vegetation removal for Access H under-estimates the depth of woodland / hedges.

Access E

Two way movement of large vehicles entering and leaving access E does not appear to be feasible on the private track nor Feckenham Road due to the restricted width of both. The applicant has stated that movement will be controlled to prevent two large vehicles meeting, but the lack of detail in the plans does not show how this would be achieved in practice.

Access F and Access G

	<p>Narrow width of road at traffic signal heads and HGVs straddling lanes. Interpretation of topography at Access F (track not 6m wide). No details of access G to show existing / proposed visibility. Access G is shown as a secondary access during construction, operation and decommissioning (Fig 7 of CTMP REP5-015). This implies that cars and LGVs can use this access during the construction phase that appears inconsistent with the Applicants assurance that all cars and LGVS only use the car parks.</p> <p>Access I SCC has expressed about the safety of Access I, specifically the reduced visibility to between the access and the A11. The authority's position was expressed in (REP4-141). The applicant has undertaken an additional speed survey which records an 85%ile speed of 25.3mph northbound and 28.1mph southbound immediately north of the end of the splitter island on the A11 slip onto Newmarket Road. This satisfies SCC that visibility of 90m, although a departure from DMRB guidance, is acceptable in these circumstances. The applicants have confirmed the proposal to provide suitable warning signs to make drivers aware of turning traffic at this access is still a commitment.</p> <p>Access J No details of the junction have been provided to assess the layout and safety (eg visibility splays) nor what level of traffic will use this access during the operational phase considering it will be the only access into this part of the site during this phase. Therefore, if the comments made by the applicant in ISH4 are correct there is no HGV access to the area between the C610 Newmarket Road (Worlington) and Golf Links Road during the operational phase.</p> <p>We look forward to assessing data regarding the use of accesses during the operational phase proposed by the applicant in ISH4 which may resolve some of SCC's concerns.</p> <p>iv. Traffic management and regulation SCC is concerned that the lack of information makes it difficult for the authority to agree that the measures are feasible. It appears that no specialist advice has been sought by the applicant and that key issues, such as proximity of two sets of traffic management on Elms Road and road widths being too narrow to allow vehicles to pass at signal heads, have not been addressed indicating that the proposals are not compliant with the relevant codes of practice (TSM Chapter 8, Code of Practice for Street Works). SCC understands that the applicant is engaging with a traffic management specialist to review the proposed measures.</p>	
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Length of signal controlled area is a maximum of 300m according to *Introduction to the Use of Portable Vehicular Signs*:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/509198/introduction-use-portable-vehicular-signals.pdf

Length of controlled area

In general, a long working area (working length) will result in long all-red settings and consequently longer queues. It is recommended that the minimum length necessary is used, with a maximum of 300m. Some traffic authorities have a lower maximum and the working length should be discussed at an early stage.

Figure 1: extract from *Introduction to the Use of Portable Vehicular Signs*

And minimum forward visibility to traffic signal heads is 70m:

Position the signals where needed. For clear visibility of the signal and reliable detector operation, there must not be any obstructions between the signals and vehicles up to 70 metres away.

Figure 2: extract from *Introduction to the Use of Portable Vehicular Signs*

Minimum gaps between works are set out in *Traffic Signs Manual* Chapter 8 part 1 table 3.3:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/203669/traffic-signs-manual-chapter-08-part-01.pdf

Table 3.3 Distance between sites

Type of road	Distance between sites*	
	Standard works (km)	Works with relaxations (km)
Single carriageway road with a permanent speed limit of 30mph or less	2	1
Single carriageway road with a permanent speed limit of 40 mph	5	2
Single carriageway road with a permanent speed limit of 50mph or more	10	5
Dual carriageway road with a permanent speed limit of 40mph or less	5	2
Dual carriageway road with a permanent speed limit of 50mph or more	10	5

*see paragraph D3.5.3

Figure 3: extract from *Traffic Signs Manual*

v. **Protective provisions and side agreements**

Background

SCC is currently engaged in positive discussions with the Applicant on the terms of a highways side agreement which, if concluded in satisfactory form, would make PPs in respect of highways matters unnecessary. However, as a default position, SCC maintains that there will be a need for PPs in the event that no satisfactory agreement is concluded. SCC understands the PPs put forward by the Applicant [AS-319] are based on those included in Part 7 of Schedule 10 to the Port of Tilbury (Expansion) Order 2019 (“**Tilbury**”). Notwithstanding the fact that Tilbury provided for the construction of a port terminal as opposed to an (inland) solar farm, SCC notes the Secretary of State considered the Tilbury PPs to be acceptable.

However, several important provisions which are included in Tilbury have been omitted from the Sunnica PPs and SCC considers they ought to be included in the Sunnica PPs.

These include –

	<p><u>Indemnification</u></p> <p>The Sunnica PPs do not include an indemnity for the local highway authority against losses etc. which may be incurred because of, amongst other things, the construction or maintenance of highway works. The Tilbury PPs include a detailed indemnity provision (paragraph 103) and SCC considers, as a matter of principle, an indemnity ought to be provided in the Sunnica PPs. It is essential the indemnity covers third party claims (as Tilbury does).</p> <p>SCC notes the following recent DCOs include an indemnity for the highway authority –</p> <ul style="list-style-type: none"> • A303 Sparkford to Ilchester Dualling DCO 2021 (Schedule 8, Part 4, paragraph 45); • Port of Tilbury (Expansion) Order 2019 (Schedule 10, Part 7, paragraphs 103 to 105); and • Silvertown Tunnel Order 2018 (Schedule 13, Part 6, paragraph 74). <p>SCC does not understand why an indemnity should not be included in the Sunnica PPs for the local highway authority.</p> <p>It will be noted that Part 9 of Schedule 12 to the Sunnica dDCO includes PPs for National Highways and paragraph 104 concerns indemnification. Since SCC and NH are both highways authorities, SCC can see no sensible reason from the departure from recent precedents or the departure from other PPs contained in the same dDCO.</p> <p><u>Notice of commencement of specified works</u></p> <p>The Tilbury PPs require the undertaker to give to the local highway authority (i) 3 months’ notice of its intention to commence construction of each highway work and (ii) notice of the completion of each highway work not later than 7 days after the date on which the work was brought into use.</p> <p>SCC considers this provision should be included in the Sunnica PP for administrative convenience (e.g. to manage other works in the area at the same time etc.).</p> <p><u>Deposit of materials on highways</u></p> <p>The Tilbury PPs prohibit the deposit of soil and other materials, or the standing of any vehicle or plant on any highway, so as to obstruct the use of the highway without the highway authority’s consent.</p> <p>Again, SCC considers this provision should be included in the Sunnica PPs.</p> <p><u>Payment mechanism</u></p> <p>The Sunnica PPs include a payment mechanism which is based on that included in the Tilbury PPs.</p>	
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Put simply, they require the undertaker, on submission of the plans for a specified (highway) work, to pay the local highway authority 2% of the anticipated cost of constructing the specified work to cover the authority's reasonable fees etc. in approving the plans for and in supervising construction of the specified work (paragraph 11). Subsequent provisions allow this amount to be increased to up to 6% of the anticipated cost in certain circumstances.

SCC would prefer that, on submission of the plans, the undertaker pays £5,000 to the local highway authority and, before approval of the plans is granted, pay 7.5% of the anticipated cost mentioned above. (The £5,000 will be discounted from the 7.5%). [This point was explained in SCC's Responses to ExQ2: Annex A; LIR Ref. 13.142 [**REP5-084**]].

SCC would prefer this payment mechanism because it is consistent with the mechanism used by SCC for its s.278 agreements and so, as a tried-and-tested mechanism for Suffolk, is more relevant than the mechanism agreed in 2019 between Port of Tilbury London Limited and Thurrock Council in respect of Thurrock's highways.

These points, together with other drafting points have been discussed with the applicant's solicitors (at meetings held on 17 February 2023 and 24 February 2023) and SCC's amended version of the draft PPs was shared with Sunnica on 23 February 2023. Sunnica's solicitors confirmed at the meeting of 24 February that they were taking instructions on the draft shared on 23 February and SCC looks forward to hearing from Sunnica's solicitors as soon as possible.

SCC's highways officers have considered the PPs in the context of the PPs provided for National Highways in the draft DCO. SCC's comparison of both sets of PPs is set out below –

Draft protective provisions for the LHA were published as AS-319. Whilst welcoming this commitment SCC was not consulted in drafting of these but considers that the current drafting of the protective provisions does not satisfy all of the authority's requirements. SCC has reviewed the draft protective provisions and responded to the applicant. As noted above, SCC is awaiting the Applicant's response to those matters. In the circumstances, SCC has not put forward its proposed protective provisions at this Deadline 7 but would propose to do so at Deadline 8.

SCC would welcome further discussion with the applicant to agree which mechanism (side agreement or protective provisions) should be taken forward and agree its drafting, preferably prior to Deadline 8 but in any event before the end of the examination.

	<p>Comparison with dDCO (REP6-014) Schedule 12, Part 9 For the Protection of National Highways Noted that NH protective provisions include:</p> <ul style="list-style-type: none"> • Protection of powers and duties of highway authority (HA 1980, NRSWA 1991). Not included in LHA protective provisions. • Definitions that include ‘as built’ and ‘detailed design’ information. Limited definitions in LHA protective provisions. • Prior approvals including programme, detailed design information, contact and deemed refusal in the event of NH has not responded (4). <i>LHA provisions include submission of ‘sufficient plans’ but there is deemed approval if nor response received within 28 days.</i> • Keeping highway free of mud or otherwise damaging the highway. <i>Maintenance clause included in LHA protective provisions but only following notice (except in an emergency)</i> • Rectification of damage or if necessary recovery of cost for doing so. <i>Maintenance clause included in LHA protective provisions but only following notice (except in an emergency)</i> • Payments (calculated fully itemised sum) including recalculation and final account. <i>Staged payments in LHA protective provisions with repayment of surplus.</i> • Completion. Not included in LHA protective provisions • Indemnification of the highway authority. Not included in LHA protective provisions • Arbitration (article 39 of dDCO). <i>Same</i> • <i>Commutated sums included in LHA protective provisions</i> <p>Noted that Sunnica and NH started discussions on protective provisions in May 2021 (SoCG REP6-043) and were completed in September 2022</p> <p>The draft protective provisions do not include:</p> <ul style="list-style-type: none"> • Costs included by SCC for the condition survey and remedial works • Commitment to pay SCC reasonable costs if additional TROs or other legal orders are required or if those in the dDCO are modified. • Recovery of costs for role of LHA in management of the CTMP • Cost recovery for validation of highway structures on ALL routes and alterations to highway infrastructure to allow their passage. 	
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SCC notes that without clarity on such matters issues can arise when such a project is constructed. Typically, few of the personnel involved in delivery were involved in the dDCO examination phase.

vi. **Outstanding matters**

Sunnica has provided an Additional Submission – Schedule of Changes to Framework CTMP and Travel Plan - Accepted at the discretion of the Examining Authority (AS-325). SCC’s comments regarding these specific point are given below. We would encourage any early dialogue with the applicant.

REF 01: Highway boundary to be shown on the site access drawings.

SCC welcomes this commitment (see below for current position on this matter)

Ref 02: Clarification on that land is to be adopted by the LHAs:

SCC welcomes this commitment noting that adoption of land as highway maintainable at public expense is a permanent change to access over land and must be reflected in any arrangements for temporary position of land.

Ref 03: Engagement of Haulier to assess feasibility of AIL Routes:

SCC welcomes this commitment

Ref 04: Commitment to undertake Stage 1 Road Safety Audits (RSAs) at the staff site accesses and the accesses to the substations.

SCC welcomes this commitment and will review the RSA and designers comments once available.

Ref 05: Concerns regarding the signage strategy to be provided at the Newmarket Road site access (between Golf Links Road and A11).

This remains a matter of dispute pending additional speed survey data.

Ref 06: Commitment to construction staff and HGV signage within the F-CTMP.

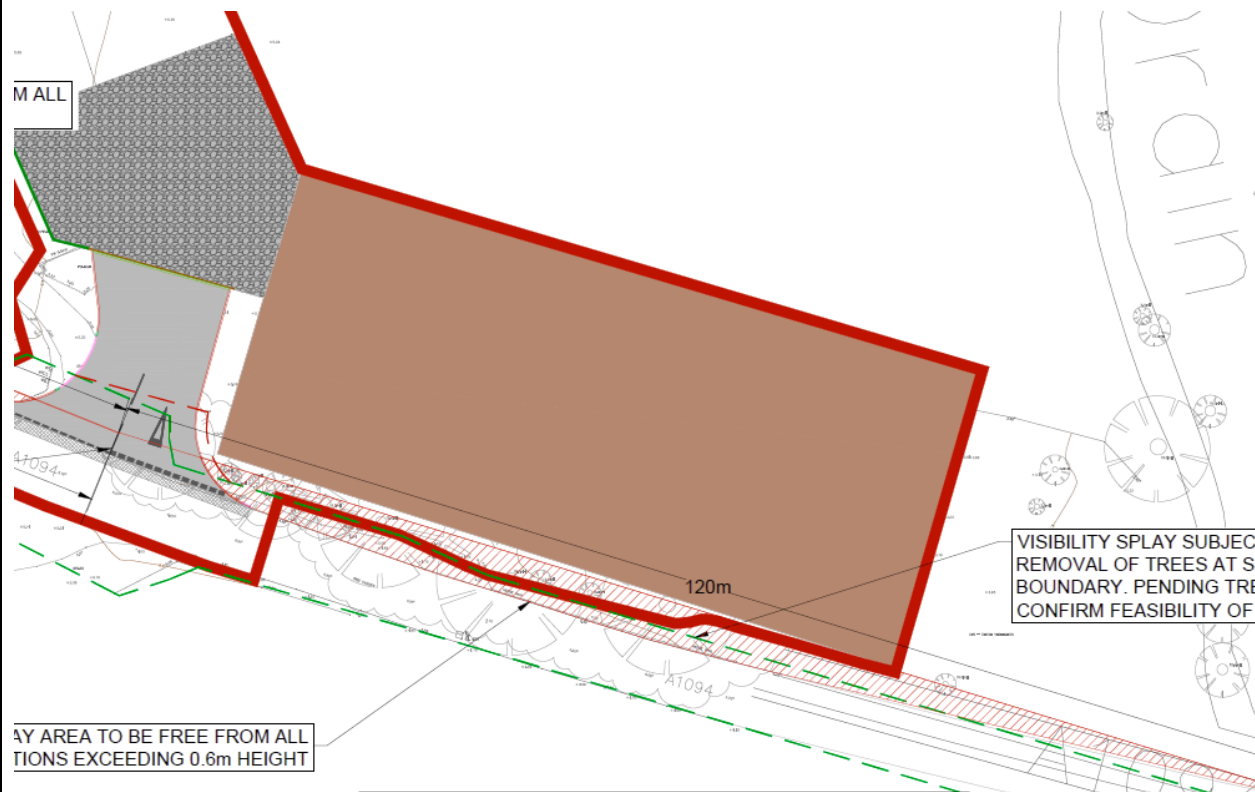
SCC welcomes this commitment but would expect Applicant to agree such signing with the relevant highway authority.

Ref 07: see ref 05.

	<p>Ref 08: The Applicant will provide TTM layouts at key locations e.g. Elms Road (3 site accesses across two TTMs) and La Hogue Road, Newmarket Road between Worlington and Red Lodge (two site accesses opposite each other), Chippenham Road (3 site accesses across two TRMs) to demonstrate temporary traffic management can be accommodated. SCC welcomes this commitment and will comment on layouts when provided.</p> <p>Ref 09: Clarification regarding proposals for Sunnica East Site A: Site Access F on Beck Road. The Applicant will provide swept path analysis, indicative junction layout and visibility splay for the site access on the site access drawings. These accesses are in Cambridgeshire.</p> <p>Ref10: Clarification regarding the site access layout during the construction and operational phase at the Sunnica West Site A: Site Access A on La Hogue Road These accesses are in Cambridgeshire.</p> <p>Ref 11: Concerns at the A142 for Cable Route Site Access J on A142 and the swept path analysis shown crossing over onto the opposite side of the carriageway and the current site access arrangement, given the location to the A142 roundabout (circa 100m to the east), and the rear shunts with HGV turning into the site access. This access is in Cambridgeshire.</p> <p>Ref 12: Control mechanisms on vehicles: While welcoming this commitment SCCs position with regard to additional control mechanisms was stated in ISH4 and above.</p> <p>Other Matters arising from ISH4</p> <p>Highway Boundary SCC can confirm that Sunnica applied for the public highway boundary information on the 15th February 2023. This was despite necessity of this information being highlighted to Sunnica on the 15th July 2021 and a number of occasions afterwards verbally and in writing. SCC is concerned that on a number of occasions Sunnica during the examination gave the impression that such a request had been made to the ExA and SCC Highway officers. For several roads such boundary information does not currently exist, and the highway records team will need to</p>	
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research maps and other documents to identify these. This is likely to take 12 to 16 weeks and thus is unlikely to be available at the end of the examination.

In terms of importance SCC notes that it is currently dealing with an example below where delivery of an DCO access is compromised by the highway boundary (dashed green line) not being coincident with the order limits (solid red line) and hence third-party land is required to provide the necessary visibility splay (hatched red).



Signing for construction traffic

SCC would welcome inclusion of signing of the Construction Traffic Management Plan (REP5-015) although, as with other signing for temporary traffic management CTMP 6.4.2) this should be agreed with the LHA or in the case of signs on the SRN National Highways.

	<p>Road Safety Audit</p> <p>SCC can confirm that the authority has been contacted on the 23rd February 2023 by the applicant with an invitation to the safety audits together with CVs of auditors and the RSA brief and has responded accepting the applicants proposals.</p> <p>Documentation</p> <p>Reliance on the SoCG to include information such as RSAs would not be SCC’s preference. We consider that the robust process is to include all relevant data within the CTMP, TA or EA (summarised in main document with full details in an appendix). The authority is concerned that without a comprehensive record of the agreed mitigation measures this will cause confusion during the construction phase as experience with other NSIPs is that the people and organisations involved at this stage will not be those involved in the examination.</p>	
Agenda Item 6 – Draft Development Consent Order and related matters		
	<ul style="list-style-type: none"> i. Compensation package(s), s106 agreement(s) and side agreement(s) <ul style="list-style-type: none"> a. Progress b. Relationship to DCO <p>SCC and the applicant continue to make good progress towards conclusion of the highways side agreement, subject to details.</p> <ul style="list-style-type: none"> ii. Procedural aspects of any eventual removal of parcels <ul style="list-style-type: none"> a. E05, E12 and E13 b. W03-W12 <p>In Appendix 1 to SCC’s response to Action Point No. 7 following ISH4, SCC has prepared a proposed amendment to Schedule 1 of the draft DCO which has the intention of restricting the relevant Works so in particular land plans plots the provision of solar panels or other above ground infrastructure works are not included. The intention is to interfere with the DCO drafting as little as possible to achieve this removal, so that the applicant can continue to use these plots for any other necessary Works. This is a proportionate way to reduce the most impactful parts of the scheme while not fettering the ability of the applicant to develop the scheme as a whole.</p>	<p>2.2 Works Plans – Revision 4 [REP6-006]</p> <p>8.87 Design Principles [REP6-037]</p>

	<p>Consequent changes to other documents may be necessary – in particular the Works Plans and the Design Principles. SCC could, in principle, offer prepare a tracked changes version of the Design Principles with the consequent changes if requested by the ExA but a revised version of the Works Plans would need to be supplied by the applicant. SCC does not consider that any changes would be needed to the Land and Crown Land Plans which define the extent of the Order Land because the terms of Article 18(1) of the draft DCO already limits the exercise of the powers of compulsory acquisition only to “so much of the Order Land as is required for the authorised development or to facilitate it or as is incidental to it.” Thus, if no Works were authorised to be undertaken on an area shown to be part of the Order Land on the Land and Crown Land Plans, and that area was not otherwise required for incidental activities, the Applicant would not be able to take that land. Similar considerations would apply to the exercise of the powers of temporary possession and temporary use in Article 27(1) of the draft DCO.</p> <p>Articles</p> <p>c. <u>General - temporary use of land</u></p> <p>SCC has not commented on the principle of the temporary use of land.</p> <p>d. <u>Article 2, permitted preliminary works</u></p> <p>As mentioned in SCC’s comments on <i>the Applicant’s Schedule of Change to the draft DCO from Change Request application to Deadline 2</i> [REP3A-042] and as repeated in its comments on the Applicant’s draft Development Consent Order (Rev. 03, dated 18 December 2022, Deadline 4) [REP5-076] SCC considers all works involving the formulation of or change to any vehicular access, whether or not on a temporary basis or not, needs to be subject to the prior approval process. SCC seeks confirmation that none of paragraphs (a), (c), (e), (f) or (g) within the definition of “permitted preliminary works” could require the formulation of or change to any vehicular access, whether or not on a temporary basis.</p> <p>SCC would be grateful if the Applicant could confirm the position – Applicant confirmed that they had no issue in altering the definition to satisfy concerns identified during the hearing if that was necessary but it may be addressed by the highways side agreement or the PPs.</p> <p>e. <u>Article 5, power to “maintain” authorised development, replacement of Work(s)</u></p>	<p>8.81 Public Rights of Way Closure Note [REP5-068]</p> <p>CCC response to ExQ2 [REP5-079]</p> <p>SCC response to ExQ2 [REP5-084]</p>
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Article 5 says –

Power to maintain authorised development

- 5.(1) The undertaker may at any time maintain the authorised development.**
- (2) This article only authorises the carrying out of maintenance works within the Order limits.**
- (3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.**

The version of article 5 in the Rev.04 (Deadline 6) DDCO is the same as that included in the Rev.00 (Application version). SCC did not raise concerns about article 5 in ISH1 Post-hearing Submission [**REP2-085a**], or in its comments on the Applicant’s *Schedule of Change to the draft DCO from Change Request application to Deadline 2* [**REP3A-042**] (because the Applicant did not propose changes to article 5 in that document), or in its comments on the Applicant’s draft Development Consent Order (Rev. 03, dated 18 December 2022, Deadline 4) [**REP5-076**]. If there are any points arising from the discussion at the ISH regarding this provision, SCC will need to deal with them in writing.

f. Article 10, construction /maintenance of altered street

SCC did not raise concerns about article 10 in ISH1 Post-hearing Submission [**REP2-085a**], or in its comments on the Applicant’s *Schedule of Change to the draft DCO from Change Request application to Deadline 2* [**REP3A-042**] (because the Applicant did not propose changes to article 10 in that document), or in its comments on the Applicant’s draft Development Consent Order (Rev. 03, dated 18 December 2022, Deadline 4) [**REP5-076**]. If there are any points arising from the discussion at the ISH regarding this provision, SCC will need to deal with them in writing.

g. Articles 9 and 11, consent for street works

SCC stated in its ISH1 Post-hearing Submission [**REP2-085a**] –

“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”.

This point was repeated in SCC’s comments on the Applicant’s Schedule of Change to the draft DCO from Change Request application to Deadline 2) [REP3A-042] and in SCC’s comments on the Applicant’s draft Development Consent Order (Rev. 03, dated 18 December 2022, Deadline 4) [REP5-076]. SCC maintains this position.

h. Articles 9 and 11, PRoW closures, (inc Schedule 6, Part 2)

The public right of closure note only covers routes that the applicant is proposing to close, although this is welcomed it does not cover other routes affected by the DCO or those that are able to be managed by banksman during construction.

For routes included in schedule 6, part 2 for temporary use by motor vehicles we would require a full survey of public rights of way prior to construction as part of the site preparation works and appropriate searches. This is referenced in our deadline 5 submission 8.8.1 .

Schedule 2 Requirement 16: Construction Traffic Management Plan should be amended as follows:

Requirement 16(3): “No part of the permitted preliminary works for each phase comprising above ground site preparation for temporary facilities for the use of contractors, site clearance (including vegetation removal,op demolition of existing buildings and structures) and the diversion and laying of apparatus so far it relates to works in the highway **(including public rights of way) and the crossing of highways (including public rights of way) for construction purposes** may start until a permitted preliminary works traffic management plan for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.”

The CTMP should be amended as follows:

6.3.4 **Over** the course of the construction period a number of PROW **may** need to be temporarily closed for a maximum of three weeks. **This is a worst-case scenario: PROW will only be closed as a last resort. The local highway authority will be consulted on any proposed closures in accordance with article 11 of the DCO.**

Paragraph 6.3.10 to be replaced as follows:

The contractor will provide its proposed programme of all proposed temporary diversions and/or closures of PROW to the relevant LHA and will agree the appropriate diversionary routes. Through discussions with the Local Highway Authorities, it is understood that their preference is to avoid PROW closures where they are required for vehicles to cross the PROW, with the preferred method to be the use of marshals (banksman/banks person) to enable **usage** of the PROW to cross the point **at which** the Page 43 of 43 **management** is required. **Solutions may include diversion within the redline boundary, where space allows.** This is supported by the Applicant, however, the contractor will make the final decision as to whether marshals (banksman/banks person) can be used, and this will be decided on case-by-case based on health and safety of workers and the nature of users of the public rights of way.

New para 6.3.11

Appropriate signage for any diversions or closures will be agreed with the Local Highway Authority through the detailed CTMP/the preliminary works traffic management plan under Requirement 12 of Schedule 2 to the DCO, including the locations at which signage is to be placed in order to provide users with adequate notice to make appropriate decisions for their journeys.

i. Article 18(1), post-decommissioning environment

SCC has provided a response to Action Point 8 as a separate submission at Deadline 4. At ISH 4 SCC explained that there had been productive discussions with the Applicant on achieving a mechanism to provide for the retention and regulation of landscape and ecological measures in the post-decommissioning environment and it appeared that the principle of such control was accepted. The Applicant indicated that revisions to the DEMP would be an appropriate means of addressing this issue and that the Applicant would put forward its proposals to the local authorities for consideration. The Applicant did share draft proposals with the local authorities on 21 February 2023, to which SCC responded on 23 February 2023, proposing revisions. The Applicant indicated on 24 February 2023 that a further draft would be forthcoming but that has not yet been seen by the local authorities. SCC will respond to any matters now proposed at Deadline 7 by the

Applicant in its response at Deadline 8, and if nothing is proposed, SCC will set out its position in any event on how the post-decommissioning environment should be secured, at Deadline 8.

j. Article 27, removal of vegetation

Article 27(1)(b) provides the undertaker may, in connection with the construction of the authorised development, enter on and take temporary possession of certain land and remove vegetation from that land.

SCC did not raise concerns about article 27 in ISH1 Post-hearing Submission [REP2-085a], or in its comments on the Applicant’s *Schedule of Change to the draft DCO from Change Request application to Deadline 2* [REP3A-042] (because the Applicant did not propose changes to article 27 in that document), or in its comments on the Applicant’s draft Development Consent Order (Rev. 03, dated 18 December 2022, Deadline 4) [REP5-076]. If there are any points arising from the discussion at the ISH regarding this provision, SCC will need to deal with them in writing.

k. Articles 36 and 37, trees and trees subject to TPO

Article 36(2)(b) states –

“(2) In carrying out any activity authorised by paragraph (1) or (4) [i.e. (1) fell or lop trees or shrubs or (4) remove any hedgerows within the Order limits] the undertaker must—

...

(b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards, except for where not practically possible;”

SCC commented on article 36(2)(b) of the dDCO in its comments on the Applicant’s draft Development Consent Order (Rev. 03, dated 18 December 2022, Deadline 4) [REP5-076] as follows –

“SCC considers the inclusion of sub-paragraph (2)(b) is an improvement on the previous draft; however, SCC considers the words “except for where not practically possible” should be removed. While sub-paragraph (2)(b) is preceded, the words “except for where not practically possible” do not appear in the precedents and SCC is not aware of any explanation

for their inclusion. SCC considers the inclusion of these words would compromise the effectiveness of the provision. SCC considers sub-paragraph (2)(b) should read –

“In carrying out any activity authorised by paragraph (1) or (4), the undertaker must –

...

(b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards, ~~except for where not practically possible;~~”

The Secretary of State considered this drafting to be appropriate in the recently made A47/A11 Thickthorn Junction Development Consent Order 2022. Article 39(2)(b) of that Order states –

“(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must—

...

(b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards; ...”

l. Article 44, traffic regulation measures

SCC has already secured amendments to article 44(1) which now requires the prior consent of the traffic authority before exercising the powers under 44 and to article 44(2) which enables the undertaker to place temporary traffic signals in the locations specified in Part 4 of Schedule 14, having first obtained SCC’s consent.

Article 44(5) now states –

“(5) Prior to any application for the consent of the traffic authority under paragraphs (1) and (2), the undertaker must carry out 21 days consultation with affected highway users by means of site notices and local advertisement circulating in the area in which the traffic regulation measures are proposed and shall must include a consultation report presenting the results of that consultation as part of its application for consent”.

SCC assumes the word “newspaper” should be inserted between “local” and “advertisement”. It would then be consistent with the regime under (7)(b), it is clearly desirable to have consistency within the article.

iii. **Schedule 2, Requirements**

- a. R6, detailed design approval, inc. avoidance of landscape impact of structures
Requirement 6 should secure an Environmental Colour Assessment to inform and demonstrate how the colour finishes of the built structures have been selected to integrate with surrounding landscape [see LIR 10.171].
- b. R10, contingency fund
- c. R23, Schedule 10, crash site exclusion area

iv. **Other Schedules**

a. **Schedule 12, protective provisions – general**

Please see above regarding the highways PPs

b. **Schedule 12, Part 8, drainage authorities: time limits, indemnities**

SCC’s position on the draining PPs is set out in its Deadline 2 submission *Suffolk County Council ISH1 Post-hearing Submission* [REP2-085a] under ‘Agenda Item 6 – Article 40 and Schedule 12 of the dDCO – Protective Provisions’. In that document, SCC stated –

“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.

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.”

If paragraph 94 were changed in line with the Southampton to London Pipeline DCO it would state –

“94. The undertaker must **repay to the drainage authority all** ~~make reasonable compensation for~~ 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**

<p>(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”.</p> <p>Paragraph 95 of the Sunnica PPs states –</p> <p>“95.—(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of— (a) the construction of any specified works comprised within the authorised development; or (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development”.</p> <p>This provision is the same as the equivalent provision in the Southampton to London Pipeline DCO and SCC did not ask for it to be changed in the Deadline 2 submission. The Deadline 2 submission arguably gives the impression that the equivalent provision in the Southampton to London Pipeline DCO is satisfactory. Despite that, having taken instructions from SCC, on 14 February 2023 Sharpe Pritchard requested that paragraph 95 be amended as follows –</p> <p>“95.—(1) The undertaker must make reasonable compensation compensate the drainage authority for all liabilities, costs and losses which may be reasonably incurred or suffered by reason of— (a) the construction of any specified works comprised within the authorised development; or (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development”.</p> <p>c. Schedule 13, discharge of Requirements</p> <p>Paragraph 2(5) states –</p> <p>“The undertaker must include in any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order a statement that the provisions of sub-paragraph (3) apply and, if the application fails to do so, it is to be null and void”.</p>	
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	<p>A drafting point: for certainty, the underlined and highlighted words (“to be”) should be deleted. Their inclusion suggests nullity will occur at an indeterminate time in the future. Without those words, the meaning is certain: “... if the application fails to do so, it is null and void”.</p> <p>Similarly, paragraph 5 (fees) states –</p> <p>“Where an application is made to the relevant authority for consent, agreement or approval in respect of a requirement only, a fee is to be paid to that relevant authority as follows— ...”</p> <p>Here, “is to” has been inserted in the latest draft DCO instead of “shall”. SCC suggests that “is to” is itself replaced with “must”, again for certainty.</p> <p>d. Fees schedule</p> <p>A draft fee schedule has already been submitted by the local authorities, and an updated proposal is included in the Councils’ joint submission in response to ExQ3.</p>	
Agenda Item 7 – Any other matters the ExA may wish to consider		
	<p>The ExA did not raise any other matters.</p>	
Agenda Item 8 – Next Steps		
	<p>Actions arising from ISH4:</p> <p>Action Point 1. – This is addressed by means of a separate document submitted also at Deadline 7.</p> <p>Action Point 4. – On review of the response to ExQ2.0.9, it appears that Figure 1 is drawn correctly. The accompanying text highlights that the success of proposals for E13 are dependent on measures for E12 – including a set-back on the E13 side of the U6006. The text does not refer to an additional set-back for E13.</p> <p>Action Point 7. – This is addressed by means of a separate document submitted also at Deadline 7.</p>	
Agenda Item 9 – Close of the Hearing		