

The Sizewell C Project, Ref. EN010012

Suffolk County Council's position at the end of the examination

Suffolk County Council Registration ID Number: 20026012

Deadline 10

12 October 2021

PURPOSE OF THIS SUBMISSION

To provide an overview of Suffolk County Council (SCC)'s position at the end of the Sizewell C examination. The document sets out a brief summary of SCC's overall position, and then sets out the issues of substance where agreement could not be reached, followed by outstanding issues of mechanics. SCC requests for these issues to be carefully considered by the Examining Authority and ultimately by the Secretary of State. SCC considers that the issues could still be resolved at this late stage in the process.

For ease of reference, the Appendices set out a summary of the issues, how they can be resolved, and where in SCC's submissions detailed information is set out.

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SUMMARY OF SUFFOLK COUNTY COUNCIL'S POSITION AT DEADLINE 10

1. Suffolk County Council (SCC) started the Examination by stating (at the Open Floor Hearing on 18 May 2021 [[REP2-190](#)]) that it wanted to work with the Applicant to develop its proposals but had to say that at that stage the proposals were not yet ones SCC could fully support as they then stood. SCC indicated that its officers would do everything conceivably possible to improve the development so there could be a Sizewell C which would work for Suffolk. The specific concerns by SCC had been set out at the outset in SCC's Relevant Representation [[RR-1174](#)].
2. Since then, SCC is pleased to report that positive progress has been made on many (but not all) matters of concern to SCC and it welcomes the constructive engagement of the Applicant in helping to achieve that progress.
3. As the ExA is aware, SCC has agreed and executed the Deed of Obligation, and concurs with the Applicant that its contents are an important and relevant consideration, meeting all applicable legal and policy tests. However, SCC considers that the mitigations secured by the Deed of Obligation will not overcome the residual adverse impacts of the proposal on the natural environment and the AONB. In that regard, SCC has welcomed the Applicant's proposal to provide funding for the Environment Trust, secured in a separate Deed ('the Environment Deed') which has now been agreed and executed in parallel to the Deed of Obligation. In simple terms, what is now proposed by the Environment Deed is the future establishment of an environmental charity (or similar non-charitable entity with related objects), which will include representatives of the Applicant, SCC, ESC, and other stakeholders. This body will become responsible for deciding on the allocation of funding that the Applicant has committed to (as described in [[REP7-056](#)], the Applicant's response to ExQ2 LI2.2) in ways which further the objects of the environmental charity/entity. Those objects are "to promote, for the benefit of the public, the conservation, protection and improvement of the physical and natural environment, including the protection and enhancement of Natural Beauty and the advancement of education of the public in the conservation, protection and improvement of the physical and natural environment in and around East Suffolk". For the reasons explained in Appendix C, SCC does not maintain that the Environment Deed (as now executed) should be treated as a material consideration. It has not, therefore been submitted in evidence to the Examination.
4. In addition to the agreement on the Deed of Obligation, SCC acknowledges that, since the start of the examination, a number of substantial improvements have been made to the development proposals by the Applicant.

5. Notwithstanding the above, there still remain important matters that have not been satisfactorily resolved in the Applicant's formulation of the proposals. However, SCC considers that the unresolved matters could still be addressed at this late stage in the process, as set out further in this submission.
6. Below, SCC sets out the outstanding issues, both on the substance of the proposals and on the mechanics of the DCO.

ISSUES ON SUBSTANCE OF THE PROPOSALS

7. With regard to the substance, matters relate to areas with inadequate justification, and to unresolved areas related to surface water drainage.
8. SCC remains unpersuaded that there is an adequate justification for (a) the use of pylons for the power export connection or that a less intrusive technical solution is not feasible, (b) the provision of an outage car park in the AONB (and that shared use of the Sizewell B outage car park is not feasible), and (c) the permanent retention of the Sizewell Link Road after the completion of construction. An issue that has not been fully resolved is (d) that a less intrusive SSSI crossing (of a three-span bridge) would be preferable, albeit it welcomes the improved proposals recently put forward. Appendix A.1-4 provides a summary of the issues, the alternative option SCC seeks to be pursued, how this can be done, and where in the Examination Library the full information of SCC's stance can be found.
9. SCC considers that, if these issues were resolved, the residual impacts of the development on the natural environment and the AONB could be substantially further reduced compared to the current proposals, so better safeguarding those environmental assets and securing them for the longer term.
10. SCC set out in its Deadline 9 submission [[REP9-034](#)] the amendments required to the DCO to allow for the changes to occur. That submission also sets out that, in SCC's opinion, these changes could be achieved within the current DCO application, albeit elements (the removal of the Sizewell Link Road and the change to the SSSI crossing) would require a consultation on revised proposals by the Applicant.
11. SCC invites the Examining Authority, and ultimately the Secretary of State, to carefully consider these suggestions.
12. In addition to these matters of substance with inadequate justification, there are unresolved issues of substance related to surface water drainage. SCC, as the Lead Local Flood Authority (LLFA), considers that the Applicant's Drainage Strategy submitted at Deadline 10 is not acceptable as a certified

control document. This is because the Applicant has not been able in its Drainage Strategy to demonstrate that their primary surface water drainage mitigation is suitable, sufficient, and deliverable within the Order Limits and in accordance with national and local policy, best practice and guidance. The Applicant has not been able to demonstrate at this point that:

- a. The proposals provide for the effective drainage of all development sites;
- b. The proposals do not increase off-site surface water flood risk; and
- c. The proposals do not increase risk of surface water pollution.

See Appendix A.5 for full details.

13. SCC considers that there remains, post-examination, scope for an agreement on the Drainage Strategy with the Applicant, and whilst the Applicant has recently made some good progress on providing further evidence, it has not been possible to complete this work before close of the examination. Therefore, we request that the ExA in its final report recommend that the Secretary of State consult the Applicant, SCC and other relevant stakeholders as to whether an updated version of the Drainage Strategy has been developed that is acceptable to all parties and that could replace the D10 Drainage Strategy as a control document and be referred to in Schedule 22 to the Order as made, in the list of certified documents.

ISSUES RELATED TO THE MECHANICS

14. SCC requests the ExA to recommend the following changes to the Secretary of State in relation to the DCO:
15. Discharge of Requirement 5 (surface and foul water): Currently, the DCO provides that East Suffolk Council would be the discharging authority for Requirement 5. SCC has asked that this requirement be amended so that SCC, as the Lead Local Flood Authority (LLFA), is the discharging authority for surface water drainage. This change would reflect SCC's statutory responsibility for surface water drainage, and would provide assurance that impacts and related risks to surface water drainage flooding are discharged by the most relevant and competent authority. However, this change in and of itself would not be sufficient to overcome the drainage issues of substance outlined above but rather would ensure that once a satisfactory drainage strategy is in place, the detailed discharge of its requirements is fully and properly considered.
16. SCC has not reached agreement with the Applicant on a small number of DCO articles and other requirements. SCC requests the ExA to recommend SCC's proposed changes, set out in Appendix B, to Secretary of State.

APPENDICES

APPENDIX A: DETAILED SUMMARY ON ISSUES OF SUBSTANCE

1. Alternatives to the use of pylons for the power export connection

Summary of the issue

- 1.1. SCC considers that the Applicant has not made all reasonable endeavours in consideration of alternatives in respect of proposals for the electrical connection between the turbine halls and the NGET (National Grid Electricity Transmission) substation. The proposed pylons and overhead lines substantially increase the adverse residual impacts of the Main Development Site, on the character and special qualities of the Suffolk Coast and Heaths AONB. It is noted that NPS EN-1 (Para 5.9.9) recognises that AONBs have ‘the highest status of protection in terms of landscape and natural beauty’ and that the conservation of natural beauty should be given ‘substantial weight’ when considering DCO proposals within an AONB.
- 1.2. SCC and its consultants AFRY consider that the use of Gas Insulated Lines (GIL) appears to be a viable, and significantly less impactful, alternative to pylons and overhead lines. It is noted that the Applicant raised a number of challenges in implementing GIL technology; however, SCC and its consultant consider, from the information available to them, that these do not appear insurmountable.
- 1.3. SCC has provided in its submission a considerable level of technical detail to show how such a solution could be achieved.

How can the issue be resolved at this stage

- 1.4. A GIL Connection would in SCC’s view be in principle achievable within the parameters already assessed. SCC considers that, subject to technical confirmation, the DCO could simply be amended, with wording as proposed in [\[REP9-034\]](#).

Where to find full information

- 1.5. Local Impact Report [\[REP1-045\]](#); Written Representation including relevant Appendices [\[REP2-189\]](#); SCC’s response to the Applicant’s comments on [\[REP2-189\]](#) [\[REP5-172\]](#), Page 60; post hearing submission for ISH5 [\[REP5-176\]](#); and proposed amendment to DCO wording in [\[REP9-034\]](#).

2. The outage car park at Goose Hill in the AONB

Summary of the issue

- 2.1. The Applicant intends to provide two separate car parks for outage staff, one each for Sizewell B and Sizewell C. Both would be in the AONB, with the Sizewell C one located away from the power station platform at Goose Hill. SCC questions whether there is a sufficient need for an outage car park for Sizewell C in this location at Goose Hill, within the AONB, as this location would override policies set out in EN-1 and EN-6. SCC particularly questions whether this meets the tests set out in EN-1 para 5.9.10, where SCC considers that it is not only the need for the whole development that needs to be assessed, but in this case the need to have two car parks in the AONB that are rarely, if ever, likely to be used simultaneously. It is accepted that there could be occasions on which this is needed, albeit infrequently. However, SCC considers that the risk of this happening is so infrequent that it does not outweigh the construction of a second permanent facility in the AONB, and that there are solutions available to deal with the needs of such occasions.
- 2.2. SCC argues that the occasions when both outage car parks would be needed simultaneously are likely to be extremely infrequent and when this does happen, other arrangements could be made for parking of staff, which do not require additional land-take within the AONB.
- 2.3. SCC's position is supported by, amongst others, the SCHAONB [[REP7-230](#)] and Natural England [[REP7-144](#)], the latter noting that "SCC makes a very clear and compelling case for an alternative solution".

How can the issue be resolved at this stage

- 2.4. SCC considers that the DCO should be changed, to exclude the outage car parking (see proposed amendment to DCO wording in [[REP9-034](#)]).

Where to find full information

- 2.5. Local Impact Report [[REP1-045](#)], Written Representation [[REP2-189](#)], Further considerations on alternatives to the proposed outage car park [[REP5-171](#)], SCC's D8 comments to the Applicant's response to ExQ LI.2. [[REP8-179](#)], Post Hearing Submission to ISH5 [[REP5-176](#)], and proposed amendment to DCO wording in [[REP9-034](#)].

3. Removal of Sizewell Link Road

Summary of the issue

- 3.1. The current proposals in the DCO are to retain the Sizewell Link Road, a 6.8 km long new road between the A12 and the site entrance, as a permanent feature. SCC is seeking the removal of the Sizewell Link Road at the end of construction of Sizewell C – a stance that SCC has already taken well before the start of the examination.
- 3.2. SCC welcomes the intention that a relief for traffic growth along the B1122 is to be provided during the construction period. SCC considers that, during the construction phase, the benefits of such a relief road on the local communities outweigh the damage caused to the environment by the construction of such a road for this phase and that its early provision is essential mitigation for construction traffic impacts.
- 3.3. However, after the Sizewell C construction is complete, and traffic volumes on this route will significantly reduce, the proposed route of the Sizewell Link Road will merely replicate the function of the existing B1122, without having any strategic legacy benefit.
- 3.4. On balance, with the relatively low flows of traffic after the end of construction, SCC does not consider the Sizewell Link Road to have sufficient strategic legacy benefit after construction of Sizewell C (running parallel to the existing B1122) to justify the environmental impact, the impact on local receptors and additional maintenance burden of retaining two routes. SCC would therefore like to see the removal of the road when construction of Sizewell C is complete, and returned to, or improved upon, its original state. SCC would anticipate that the removal of the Sizewell Link Road would not cause greater impact than its construction.

How can the issue be resolved at this stage

- 3.5. As set out in [\[REP7-160\]](#), SCC considers that this change may require additional consultation by the Applicant, which would have to take place in advance of the Secretary of State’s decision. The change would require a number of small amendments to the DCO as set out in [\[REP9-034\]](#).

Where to find full information

- 3.6. Local Impact Report [\[REP1-045\]](#); SCC Written Representation [\[REP2-189\]](#); Implications of removal in context of Compulsory Acquisition [\[REP7-160\]](#); and proposed amendment to DCO wording in [\[REP9-034\]](#)

4. SSSI crossing

Summary of the issue

- 4.1. Pre-submission consultations by the Applicant on the crossing of the SSSI included options that would have provided bridges or causeways. SCC, in common with other stakeholders, made clear that it preferred the proposals for a three span bridge across the remaining width of the SSSI (part having already been taken by the base for the construction of the power station). This was because its footprint on the remaining SSSI would be significantly smaller (in itself, less damaging) than that for a causeway and there was better light penetration beneath the bridge that would more effectively ensure the ecological linkage of important habitats either side of the structure.
- 4.2. SCC acknowledges that the Applicant has made important changes to the originally submitted SSSI crossing proposals, having changed the design from a causeway with culvert to a causeway and single span bridge design. We note that the Environment Agency considers that the revised design has now reduced harm to acceptable levels, but that the alternative of a triple-span bridge would be preferable, as having less ecological impact and reduced SSSI landtake [[REP7-090](#), Table 2.1, MDS_TE2], and that Natural England considers the revised proposal is a best alternative, albeit that there are potentially less damaging alternatives, including a triple-span bridge which would have the least impact ecologically on the SSSI [REP8-094, Summary Table, Items 48 and 49].
- 4.3. SCC recommends to the ExA to consider further whether an alternative SSSI design, with its reduced SSSI landtake and ecological impact, should be pursued.

How can the issue be resolved at this stage

- 4.4. As set out in [[REP7-160](#)], SCC accepts that such a change may require a further consultation and that, if there was a consultation on the removal of the SLR, these could be undertaken in parallel.

Where to find full information

- 4.5. Local Impact Report [[REP1-045](#)], SCC Written Representation [[REP2-189](#)]; Post-Hearing submission for ISH7 [[REP5-178](#)]; REP5-176]; and [[REP9-034](#)],

5. Surface water drainage and flooding

- 5.1. SCC has consistently highlighted the lack of attention given to the matter of surface water management, over many years prior to the start of the examination, as well during the examination. On 8th February 2021, SCC sent SZC Co a document setting out our concerns and clearly stating how we expected these concerns to be addressed. This letter was submitted to the Examination by the Applicant and is included in the Applicant's submission [REP5-120], Appendix A1 of Appendix B/electronic page 48. It is regrettable that these issues have not been resolved by now. It is acknowledged that, particularly following ISH11, the Applicant has taken great effort to provide further information, albeit not meeting the target date for information to be provided that was set out in the Applicant's Action Plan submitted at D8 [REP8-125 Appendix 2 (electronic page 60 onwards)]. SCC only received between 7 October and 10 October 2021 (not 1 October as per Action Plan) a substantial amount of additional technical information for some but not all sites. Given the timescales, it has been impossible for SCC's water engineers to review this information in full.
- 5.2. Not being able to take into account the full amount of information provided since 7 October, SCC cannot be satisfied at this point that the Applicant has demonstrated that their primary mitigation is suitable, sufficient, and deliverable within the Order Limits, and in accordance with national and local policy, best practice and guidance to prevent an increase in surface water flood risk and/or pollution. It is noted that a few sites have not had any surface water drainage strategy progressed at all to date.
- 5.3. **Therefore, SCC, as the Lead Local Flood Authority (LLFA) is at Deadline 10 of the view that the Drainage Strategy is not acceptable as a certified document.** There will be further discussions in the forthcoming days and weeks between SCC and the Applicant to deal with concerns raised by SCC, with the hope of reaching agreement on an acceptable Drainage Strategy. SCC considers that there is scope for an agreement on the Drainage Strategy.
- 5.4. Hence, we request that the ExA in its final report recommend that before making a decision on the application for the DCO the Secretary of State consult the Applicant, SCC and other relevant stakeholders as to whether an updated version of the Drainage Strategy has been developed that is acceptable to all parties and that could replace the D10 Drainage

Strategy as a control document, and be listed as a certified document in Schedule 22 to the DCO.

- 5.5. SCC and the Applicant are in principle in agreement that the final drainage strategy must, for all development sites:
- a. Demonstrate that proposals provide for the effective drainage of those development sites;
 - b. Demonstrate that the proposals do not increase off-site surface water flood risk; and
 - c. Demonstrate that proposals do not increase risk of surface water pollution.
- 5.6. We note that the Applicant is proposing, at D10, an amendment to Requirement 5, a new paragraph (1):
- “(1) No part of the authorised development may be commenced until a final drainage strategy has, following consultation with the Lead Local Flood Authority, been submitted to and approved by East Suffolk Council. The final drainage strategy must be in general accordance with the Drainage Strategy.”*
- 5.7. SCC considers that, particularly if an agreed drainage strategy is not included as a certified document as proposed above, it would be essential for SCC as the Lead Local Flood Authority to be the discharging authority for approval of the “final drainage strategy” mentioned in the proposed new paragraph, as the drainage strategy is core to SCC’s statutory responsibility. This accords with the position taken by SCC throughout the examination that it should be the discharging authority in relation to surface water drainage under requirement 5 generally.
- 5.8. Also, SCC consider that there should be greater clarity as to what the “final drainage strategy” should contain, rather than just saying it should be in general accordance with the certified version. This is particularly important given that, as mentioned above, there will be a number of key provisions missing from the certified version.
- 5.9. This Appendix sets out in summary a recommended approach to the Examining Authority, and ultimately the Secretary of State, as to how these matters can be resolved. The most important aspect is that there needs to be evidence that the proposals will not result in increased flood risk or in pollution, but equally, consideration needs to be given to policy compliance.

How can the issue be resolved at this stage

5.10. SCC considers that the issues can still be resolved at this late stage, and that there is scope for an agreement on the Drainage Strategy.

5.11. The issues to be resolved are to be considered in four categories: a) additional evidence to demonstrate, and potential changes to the proposals to ensure, that suitable, sufficient drainage can be delivered, which would be required to make the Drainage Strategy fit for purpose as a certified document; b) the requirements to be set out in the Drainage Strategy as to the evidence that needs to be provided to the LLFA, in advance of submission to the discharging planning authority, to demonstrate that the detailed mitigation is suitable and sufficient; c) changes to the proposals to reduce and mitigate the risk of additional pollution or flooding and to make them policy compliant, and d) given these substantial unresolved issues, there is an even stronger case to ensure that the drainage proposals are to be discharged by SCC as the experts on drainage issues, to ensure that proposals do not result in an increase of surface water flooding or pollution.

5.12. Further detail on each of these concerns is included below:

a) additional evidence to demonstrate, and potential changes to the proposals to ensure, that suitable and sufficient drainage can be delivered, which would be required to make the Drainage Strategy fit for purpose as a certified document:

5.13. The Examining Authority is requested to assist in ensuring that the final version of the Drainage Strategy that is listed in the DCO as a certified document is one which is acceptable to SCC (as was originally intended by the Applicant). The Applicant has indicated, and SCC welcomes this, that it will continue to further develop the Drainage Strategy in consultation with SCC during the period leading to the submission of the ExA's report to the Secretary of State. On the basis that further work on the agreed Action Plan is to take place in succeeding months, the Secretary of State is recommended to invite the Applicant, SCC and other stakeholders to comment on whether the revised Drainage Strategy following this work is suitable to be used as the certified document is replacement for that submitted at D10. In summary, to become suitable as a certified document, the following needs to be addressed:

- i. Demonstrate that proposals provide for the effective drainage of all development sites;

- ii. Demonstrate that proposals do not increase off-site surface water flood risk for all proposed development sites; and
- iii. Demonstrate that proposals do not increase risk of surface water pollution for all proposed development sites.

5.14. The level of information required by SCC is shown in the third column of Table 1 below (which is the equivalent to that for an Outline application as shown in the table contained on pages 9 & 10, [Suffolk Flood Risk Management Strategy, Appendix A – Sustainable Drainage Systems \(SuDS\) a Local Design Guide](#)). This table is based on guidance previously developed by Local Authority SuDS Officer Organisation (LASOO) and is supported by the CIRIA SuDS Manual (Section 7.6.) This approach is consistent with both current and draft NPS EN-1.

5.15. A drainage strategy is required for all development sites, including those that to date have not yet been considered for drainage by the Applicant (relevant locations are, Campus, Green Rail Route, Leiston Sports Pitches and that part of the Operational Infrastructure that is not subject to Office for Nuclear Regulation (ONR) Nuclear Safety Assessment)

b) the requirements to be set out in the Drainage Strategy as to the evidence to demonstrate that the detailed mitigation is suitable and sufficient:

5.16. The Examining Authority / Secretary of State should seek to ensure, that before any drainage designs are submitted for discharge, the Drainage Strategy should make provision that SZC Co. must provide detailed designs which are consistent with the level of information expected for a Reserved Matters or Discharge of Conditions application, as shown in the fourth column of Table 1 below (which is from the table contained on pages 9 & 10, [Suffolk Flood Risk Management Strategy, Appendix A – Sustainable Drainage Systems \(SuDS\) a Local Design Guide](#)).

5.17. In order to ensure that, in the event that the drainage strategy is not agreed as envisaged above, SCC requests that the Applicant’s proposed new paragraph (1) in requirement 5 be amended as follows:

(1) No part of the authorised development may be commenced until a final drainage strategy ~~has following consultation with the Lead Local Flood Authority,~~ been submitted to and approved by ~~East Suffolk Council~~ **the Lead Local Flood Authority**. The final drainage strategy must be in general accordance with the Drainage Strategy **and must ensure that the details of the surface and foul**

water drainage system for each part of the authorised development are consistent with the level of information expected for a Reserved Matters or Discharge of Conditions application, as shown in the table contained on pages 9 and 10 of the Suffolk Flood Risk Management Strategy, Appendix A – Sustainable Drainage Systems (SuDS) a Local Design Guide) or such other document as may be agreed by the Lead Local Flood Authority.

c) changes to the proposals to reduce risk of additional pollution and make them policy compliant:

5.18. We note that the designs of drainage systems in two locations do not comply with national and local policy, best practice and guidance.

5.19. With regard to the Freight Management Facility, the current proposals are for a below ground attenuation approach. This compromises the ability to adequately treat surface water on a site with a high pollution hazard. Both geography and scale of the site easily allows for the provision of above ground Sustainable Drainage Systems (SuDS). Whilst this would possibly take some land away from other land uses, suitable drainage and pollution control proposals are an important matter, so it is recommended for the Secretary of State to order a change to the proposals that above ground SUDS should be incorporated, either within the red line, or by agreement with adjacent landowners offsite on adjacent land, to ensure that surface water treatment through natural processes can be prioritised, as per NPS EN-1. Treating surface water solely with below ground (proprietary) solutions is unlikely to be sufficient for a site of this hazard level.

5.20. It is accepted that, for the Southern Park and Ride Site, this cannot be achieved without a complete redesign of the proposals, which would require changes to the red line boundaries, so whilst it is disappointing that policy compliance has not been achieved, we accept that it is difficult at this stage of the process to make the desired changes.

5.21. We note that there are other sites where no information has been made available (referred to in a)), therefore it is possible additional mitigation measures will be required.

d) Change of discharging authority

5.22. As set out in the amendments in Appendix B (and the proposed alterations set out above to proposed new requirement 5(1), it would be important and beneficial for SCC as the statutory body for surface water

drainage to, most importantly, approve the final drainage strategy, but also the detailed design in relation to surface water.

Where to find full information

5.23. In a separate D10 submission, SCC is setting out in full the shortcomings of the draft Drainage Strategy and related proposals, based on the information available by 1 October 2021 (however, not taking into account the information provided at last minute by the Applicant between 7 and 10 October 2021 and which it has not been possible to assess in the time available).

Table 1: Documentation required for certified Drainage Strategy and for discharging			
Document Submitted	Document Description	Outline/ Certified document	Discharge Condition/ Requirement
Flood Risk Assessment (FZ3 or Site >1Ha)	Evaluation of flood risk (fluvial, pluvial & groundwater) to the site – will guide layout and location of open spaces. (SCC may require modelling of ordinary watercourse if EA Flood Maps not available)	x	
Drainage Strategy/Statement (less detail required for Outline)	Document that explains how the site is to be drained using SuDS principles. Shall include information on:- <ul style="list-style-type: none"> • Existing drainage (inc adjacent roads) • Impermeable Area (Pre and Post Development) • Proposed SuDS • Hydraulic Calculations (see below) • Treatment Design (i.e. interception, pollution indices) • Adoption/Maintenance Details • Exceedance Paths 	x	
Contour Plan	Assessment of topography/flow paths/blue corridors	x	
Impermeable Areas Plan	Plan to illustrate new impervious surfaces	x	
Preliminary Layout Drawings (including landscaping details)	Indicative drawings of layout, properties, open space and drainage infrastructure including:- <ul style="list-style-type: none"> • Discharge location (outfall) • Conveyance network • Form of SuDS and location on the site 	x	
Preliminary Site Investigation Report	3 or more trial pits to BRE 365 and associated exploratory logs (check for groundwater)	x	
Preliminary hydraulic calculations (Use of SCC proforma encouraged)	<ul style="list-style-type: none"> • Discharge Rates (using suitable method i.e. FEH, IH124 (ICPSUDS) or modified rational method (brownfield sites)) • Storage Volume • Long Term Storage (if required) 	x	
Evidence of any third party agreements to discharge to their system (i.e. Anglian Water agreement or adjacent landowner)	Evidence of any permissions or permits being obtained.	x	
Detailed Development Layout and SuDS Provision Plan (including landscaping details)	Dimensioned plans showing the detailed development layout including SuDS components, open spaces and exceedance corridors.		x
Full SI Report	Detailed assessment of ground conditions – leading on from initial testing <ul style="list-style-type: none"> • Widespread coverage of trial pits to BRE 365 • Contamination/Pollution check • Groundwater Monitoring 		x
Detailed Drainage Scheme Plan	Dimensioned plan showing main aspects of the drainage infrastructure. Plans should ref:- <ul style="list-style-type: none"> • SuDS details (size/volume) • Pipe Numbers/Sizes/Levels • Outfall & Permitted Discharge (if applicable) 		x
Detailed SuDS Drawings (Open SuDS)	Dimensioned plans of proposed SuDS components i.e. scaled cross sections/long sections		x
Full hydraulic calculations (MicroDrainage “Network” output)	At this stage, SCC require simulations of the drainage network inc SuDS components. MicroDrainage Network should be submitted for 1,30 and 100yr+CC storms. (Source Control files are useful but not enough on their own)		x
Discharge Agreements	Evidence of any permissions or permits being obtained.		x
Health and Safety Risk Assessment	Where deep open SuDS (water level >0.5m) are proposed a H&S file will be required.		x
Surface Water Construction Plan	Plan of how surface water runoff is to be attenuated and treated during the construction phase. Including plans of any temporary drainage.		x

APPENDIX B: DETAILED SUMMARY ON ISSUES OF MECHANICS: SCC’S FINAL COMMENTS ON THE DRAFT DCO (REVISION 10 VERSION)

SCC has not reached agreement with the Applicant on a small number of DCO articles and requirements. SCC requests for the ExA to consider recommending SCC’s proposed changes, set out in the table below, to Secretary of State.

This Annex does not include amendments that would be required to meet SCC’s concerns about the permanent SLR, the main development site pylons, the second outage car park and the SSSI crossing, which are addressed elsewhere in this document.

Note: SCC understands the Applicant has updated the numbering of articles and requirements in the final draft version of the dDCO. Since SCC has not seen that document, the articles and requirements in this Annex are those referred to in the Revision 10 version of the dDCO.

DCO provision	Proposed Amendment	Justification for Proposed Amendment
<p>Art. 9B (modification and discharge of deed of obligation)</p>	<p>Amend paragraph (2) as follows (i.e.to include the underlined words):</p> <p>(2) The undertaker may, <u>at any time after the expiry of the period of five years beginning with the date on which the Deed of Obligation was entered into</u>, apply to the Secretary of State for the obligation—</p> <p>(a) to have effect subject to such modifications as may be specified in the application; or</p> <p>(b) to be discharged,</p> <p>and must notify East Suffolk Council and Suffolk County Council as soon as any such application is made.</p>	<p>SCC require the five year “relevant period” for applications for modification/discharge to the Secretary of State included here.</p> <p>This five-year period was the period that Parliament considered appropriate when enacting section 106A(4)(b) of the Town & Country Planning Act 1990 (“TCPA 1990”) and this period of time does serve a purpose of ensuring some certainty from SCC’s perspective in the obligations agreed in the Deed of Obligation. Parliament clearly contemplated that this restriction could apply to the modification/discharge of ‘development consent obligations’ when s.106(14) and s.106A(11)(aa) TCPA 1990 were introduced into that regime by the Planning Act 2008. In so doing, Parliament would have been fully aware of the full range of projects that could be NSIPs, including energy projects of the scale of Sizewell C. Moreover, the Secretary of State has not taken the opportunity to prescribe a different period for NSIPs, or types of NSIPs, using the power in s.106A(4)(a).</p>

<p>Art. 9B (modification and discharge of deed of obligation)</p>	<p>On 11 October 2021, the day before D10, the Applicant’s solicitors wrote to the County and District Councils’ solicitors and informed them that they intended to remove paragraph (3) from Article 9B. Paragraph (3) says:</p> <p>“(3) An application under paragraph (2) for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.”</p> <p>The effect of its removal would be to remove a limitation on the types of application that could be made for modification of the DoO. Without the paragraph, applications could be made so as to specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.</p> <p>It was explained that the removal of the paragraph addressed a concern that its retention may be unduly restrictive given the nature of the Deed of Obligation, which features many governance arrangements, collaborations and commitments by various parties in the Deed and the deeds of covenant under it. It was explained that in circumstances where the Applicant were seeking to go to the Secretary of State to seek a variation, the sort of variation needed could require modifications of existing arrangements which could be said to constitute the imposition of new/varied arrangements on parties other than SZC Co. It seemed important that the Secretary of State has that ability otherwise art 9B(2) may be of little value in practice. It was said that the TCPA drafting works for most standard s106 agreements – where a developer just wants to remove a payment or move trigger date, but the Deed of Obligation is obviously more complex.</p> <p>SCC considers that the 9B(3) should remain in the DCO.</p>	<p>Article 9B(3) is identical to s.106A(5) of TCPA 1990. Parliament has specified that the limitation in that subsection should apply to all section 106 agreements in relation to schemes of whatever magnitude or complexity and irrespective of the number or nature of parties involved.</p> <p>In SCC’s view, 9B(3) reflects the safeguards embedded in the TCPA regime for planning obligations (which is also applied to the DCO regime without amendment) and is to be interpreted so as to prevent the SoS from varying the DoO if the variation would impose an obligation on Party B in place of Party A, or if the variation would impose an obligation on Party B in circumstances where Party B was not previously subject to any obligation in relation to the subject matter of the variation.</p> <p>SCC question why that should be allowed to happen without Party B’s agreement.</p> <p>Although the Applicant has followed up by saying there is no intention of the above happening, there is nothing in the DCO to preclude this outcome.</p> <p>These are matters that it is appropriate to deal with by agreement under a deed of variation, with the undertaker having recourse to judicial review challenge if it considers that SCC has unlawfully refused to agree to a variation of the DoO. Such an approach retains parity with the statutory regime that Parliament has put in place for both planning obligations and development consent obligations, and SCC is not persuaded that any departure from those arrangements is warranted in this case.</p>
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<p>Article 21(2) (additional routine/cyclic maintenance costs)</p>	<p>Amend article 21(2):</p> <p>(2) Such an agreement may, without prejudice to the generality of paragraph (1)—</p> <p>(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;</p> <p>(b) specify a reasonable time for the completion of the works; and</p> <p>(c) contain such terms as to payment and other matters as the parties consider appropriate, including such matters as may be included in agreements made pursuant to section 278 or section 38 of the 1980 Act, <u>and including payment for additional costs for routine and cyclic maintenance works done outside of normal working hours as a consequence of the carrying out of the authorised development.</u></p>	<p>The County Council’s external highways works contractors are responsible for carrying out certain routine maintenance works, including cutting grass, emptying gullies, refreshing road markings and filling-in potholes.</p> <p>On the A12, which is traffic sensitive, the contractors usually do these works during the daytime “off peak” period; however, if they are done during the “overnight” as there is too much traffic in the daytime off peak times, there is an uplift in the costs payable to the contractors. There are also uplifts if the work is done at night, on a Sunday, or on a bank holiday. On the B1122 there are no restrictions on working in the peak hours but is considered that the SZC construction traffic will prevent this and these works will also need to be undertaken at night or at weekends.</p> <p>Since it would likely be impractical for such routine maintenance works in or around the Works areas to be done during the “off peak” daytime period, the Council wants any additional costs incurred (i.e. the additional expenditure for shifting from daytime “off peak” to either daytime peak, night, or Sunday / bank holiday) to be met by the Applicant. The proposed amendment seeks to capture this.</p> <p>SCC confirms it is no longer pursuing highways protective provisions.</p>
<p>Art. 22 (Traffic regulation measures)</p>	<p>Amend Article:</p> <p>22.—(1) <u>Subject to the consent of the traffic authority in whose area the road concerned is situated,</u> the undertaker may at any time, for the purposes of the authorised development make provision, in respect of those streets specified in columns (2) and (3) of Schedule 14 (Traffic regulation measures), as to the speed limit of those streets as specified in column (4) of that Schedule.</p>	<p>In other cases where undertakers who are not themselves traffic authorities are given traffic regulation powers, the consent of the traffic authority is required before a traffic regulation order can be made. See, for instance, the National Grid (Hinkley Point C Connection Project) Order 2016 (article 40), the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 39), and the</p>

	<p>(7) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1) or (2), that authority is deemed to have granted consent.</p>	<p>Abergelli Power Gas Fired Generating Station Order 2019 (article 15).</p> <p>SCC see no need for Sizewell to be any different and that it is entirely appropriate for the traffic authority to be able to exercise this level of control over a private company taking on traffic regulation functions.</p>
<p>Schedule 23 (procedure for approvals, consents and appeals)</p>	<p>Amend paragraph 4(5) of Schedule 23:</p> <p>(5) Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 40 working of the date mentioned in sub-paragraph (3).</p>	<p>Paragraph 4(5) of Schedule 23 sets a time limit by which written representations must be made by parties to an appeal in response to further information which in turn is provided in response to a request by the appointed person dealing with an appeal. The relevant PINs advice note indicates that the period should be 20 business days, which SCC supports. (Since the Applicant refers to “working days” in the dDCO, SCC is content for “20 working” (rather than “business” days to be referred to here).</p>
<p>Various (articles 11(3) (power to alter layout, etc., of streets), 12(2) (street works), 12(3) (street works), 17(5)(b) (temporary closure of streets and private means of access), and 22(2)) (traffic regulation measures)</p>	<p>Amend the following provisions (articles 11(3), 12(2), 12(3), 17(5)(b), and 22(2)) as follows:</p> <p>Art. 11(3) (power to alter layout, etc., of streets):</p> <p>(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority which may not be unreasonably withheld or delayed.</p> <p><i>Reason: The struck-through words are unnecessary because there is a deeming provision in paragraph (4).</i></p> <p>Art. 12(2) (street works):</p> <p>(2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent must not be unreasonably withheld or delayed, the undertaker may, for the purposes of the authorised development, enter on so much of any other</p>	<p>In a number of cases, SCC is under a requirement to approve various documents, and provision is made to say that approval must not be unreasonably withheld or delayed and there is also a provision that it is deemed to be given after a certain period, sometimes relatively short. In several cases this appears to be unprecedented in DCOs or not well preceded.</p> <p>SCC will be receiving considerable numbers of requests for approval and will of course ensure that they are dealt with as quickly as possible. With the deeming provisions included there is no need to say that the approvals must not be unreasonably withheld or delayed, and in some cases the deeming provisions are unprecedented and unnecessary. Moreover, by section 161(1)(b) (breach of terms of order granting development consent) of the Planning Act 2008, it is</p>

	<p>street whether or not within the Order limits, for the purposes of carrying out the works set out at paragraph (1) above.</p> <p>Reason: The struck-through words are unnecessary. The precedent (for example the equivalent provision in the Thames Water Utilities (Thames Tideway Tunnel) Order 2014) does not include these words.</p> <p>Art. 12(3): Delete the paragraph</p> <p>Reason: Unnecessary and precedent (not included in the equivalent article in the Thames Tideway)</p> <p>Art. 17(5)(b) (temporary closure of streets and private means of access) (5) The undertaker must not temporarily close, alter or divert— (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed.</p> <p>Reason: Unnecessary: there is a deeming provision in paragraph (10).</p> <p>Art. 22(2) (Traffic regulation measures) (2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the traffic authority in whose area the street is situated, which consent may be subject to reasonable conditions, the undertaker may, for the purposes or in connection with the authorised Development</p> <p>Reason: Precedent: this does not appear to be in other DCOs. SCC makes clear that there is no intention to unreasonably withhold</p>	<p>an offence for a person to fail to comply with the terms of a DCO. SCC considers it excessive for it to potentially face criminal liability in these circumstances.</p>
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	<p><i>consents, but it sees these words as creating an unnecessary additional requirement in a subject area of great importance to SCC.</i></p>	
<p>Req. 5 (Project wide: surface and foul water drainage):</p> <p>SCC as discharging authority</p>	<p><u>Previously requested amendments</u> <u>5. Project wide: Surface and foul water drainage – option 1</u></p> <p>Replace Requirement 5 with:</p> <p>(1) No part of the authorised development (save for Work No. 1B, 1C, 4A(c), 9(b), 10(b), 11, 12, 13(b), 14, 15, 16 or 17) may be commenced until details of the foul water drainage system for that part (including projected volume and flow rates, management and maintenance arrangements, means of pollution control, sewage treatment works and a programme of construction and implementation) have been submitted to and approved by East Suffolk Council, following consultation with the Environment Agency, the relevant Statutory Nature Conservation Body, the East Suffolk Internal Drainage Board and the sewerage undertaker.</p> <p>(2) No part of the authorised development (save for Work No. 1B, 1C, 4A(c), 9(b), 10(b), 11, 12, 13(b), 14, 15, 16 or 17) may be commenced until details of the surface water drainage system for that part (including management and maintenance arrangements, means of pollution control, and a programme of construction and implementation) have been submitted to and approved by Suffolk County Council in its capacity as the Lead Local Flood Authority and the drainage authority, following consultation with the Environment Agency, the relevant Statutory Nature Conservation Body, the relevant Internal Drainage Board and the sewerage undertaker.</p> <p>(3) The details of the foul water drainage system and the surface water drainage system must be based on sustainable drainage principles and must be in accordance with the Drainage Strategy.</p> <p>(4) Any approved foul water drainage system or surface water drainage system must be constructed and maintained in accordance with the approved details.</p>	<p><u>Background</u></p> <p>Given the unresolved issues concerning surface water drainage (as described in the main body of this document) SCC, as the statutory body for surface water drainage, consider it would be preferable if it was the discharging authority for the surface water element of this requirement.</p> <p><u>Previously requested amendments</u></p> <p>The amendments to Requirement 5, which SCC has previously requested from the Applicant, are set out as options 1 and 2 in this Annex.</p> <p>SCC understands the Applicant intends to amend Requirement 5 so that the undertaker must consult with SCC before submitting details under Requirement 5(1). SCC considers such an amendment would be a step in the right direction; however, SCC’s position on the Drainage Strategy is that it is still fundamentally flawed. (For instance, concerns with detail remain – see SCC’s D10 submission regarding outstanding concerns at Deadline 10 re Flood Risk and Surface Water Drainage).</p> <p><u>Since, at the end of the examination, the Drainage Strategy is not in a satisfactory state, SCC requests that the ExA recommend to the Secretary of State that before making a decision on the Order, the SoS should consult SCC and the Applicant about the Drainage Strategy. In any event, SCC anticipates the Applicant will work with SCC during the post-examination period to make the Drainage Strategy fit for purpose.</u></p>

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

<p>foul water drainage):</p> <p>Drafting amendments</p>	<p>“(5) Schedule 23 (procedure for approvals, consents and appeals) applies in relation to cases where an endorsement is sought under paragraph (2) as it applies to cases where an application for an agreement is made to a discharging authority, with the following modifications—</p> <p>(a) references to the discharging authority mean Suffolk County Council in its capacity as the Lead Local Flood Authority and the drainage authority;</p> <p>(b) references to the day on which an application is received mean the day on which details are provided under paragraph (2);</p> <p>(c) any fees payable under paragraph 3 are payable by the undertaker.”</p>	<p>Requirement 5, as drafted by the Applicant, requires SCC to “endorse” certain information and these amendments ensure that such endorsement falls within the approvals etc. regime in Schedule 23.</p>
<p>Req. 5 (Project wide: surface and foul water drainage):</p> <p>Amendments to proposed new Req 5(1)</p>	<p>(1) No part of the authorised development may be commenced until a final drainage strategy has following consultation with the Lead Local Flood Authority, been submitted to and approved by East Suffolk Council the Lead Local Flood Authority. The final drainage strategy must be in general accordance with the Drainage Strategy <u>and must ensure that the details of the surface and foul water drainage system for each part of the authorised development are consistent with the level of information expected for a Reserved Matters or Discharge of Conditions application, as shown in the table contained on pages 9 and 10 of the Suffolk Flood Risk Management Strategy, Appendix A – Sustainable Drainage Systems (SuDS) a Local Design Guide) or such other document as may be agreed by the Lead Local Authority.</u></p>	<p>If Requirement 5 is not amended per option 1 or option 2 above, SCC requests it is amended to respond to the points made in Para 5.22 of the main document above.</p>
<p>Schedule 14 (Traffic Regulation Measures)</p>	<p>In Schedule 14, under the heading “Temporary traffic regulation measures” insert the following note:</p> <p>“Note: Where the undertaker has exercised the power to impose a temporary traffic regulation order (“TTRO”) relating to speed limits on any of the specific sections of road identified below, the undertaker must</p>	<p>SCC considers the speed limit which applies in respect of a section of road before any TTRO is made should apply after the works associated with the TTRO have been decommissioned. It is reasonable that the burden and cost for arranging for this to be done should fall on the undertaker and not on SCC.</p>

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	change that speed limit back to the speed limit which applied immediately before the TTRO came into force after the relevant work associated with the TTRO has been decommissioned”.	
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APPENDIX C: CONSIDERATION OF MATERIALITY OF THE ENVIRONMENT TRUST

1. When the Environment Deed was first proposed by the Applicant, it was envisaged by SCC that it would be capable, in principle, of being a material consideration that could be taken into account as an element of offsetting for the residual impacts of the proposal on the natural environment and the AONB. SCC's submissions at Deadline 8 (REP8-185, Agenda Item 3(b)) were formulated on that basis.
2. However, in its final form SCC recognises that the Environment Deed provides a funding regime for achieving environmental measures that at the present time are too diffuse and non-specific for it to be clearly demonstrated that those measures, taken as a whole, necessarily would be reasonably related to those residual impacts.
3. SCC has considered that the flexibility of the funding regime, allowing an iterative and evolving response to environmental issues arising over the life of the proposals is one of its virtues and strengths, as is the inclusion of a wide range of stakeholders in its work. However, SCC recognises that a consequence of that flexibility is that it could not be robustly demonstrated at the present time that all of the funds would necessarily be devoted to measures that are reasonably related to offsetting the residual impacts of the project, so as to satisfy the legal tests (as explained by the Supreme Court in *R Wright v Resilient Energy Severndale Ltd & Forest of Dean District Council* [2019] UKSC 53) in order for there to be no doubt that the Environment Deed (as now executed) was a material consideration.
4. Consequently, taking a cautious approach, SCC does not invite the ExA or the Secretary of State to have regard to the Environment Deed in their evaluation of the proposals and does not consider, for that reason, that it needs to be submitted in to the Examination. That said, SCC confidently expects that the greater proportion of the funds will in practice be devoted to measures which in whole or in part offset residual impacts and that SCC will be able to use its role within the entity to promote that outcome. SCC is also confident that the scale of the funds available will make a meaningful contribution to addressing those residual impacts.