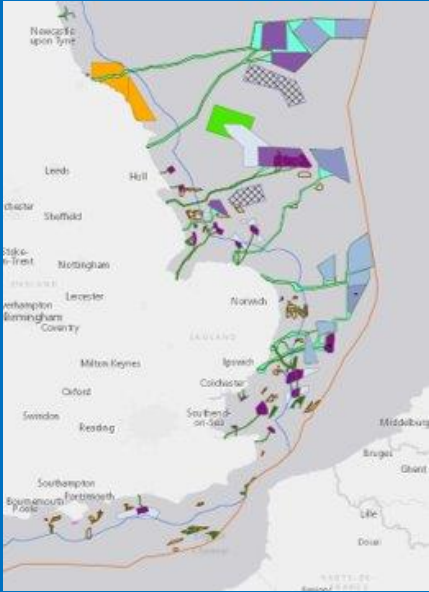


# NSIP Centre of Excellence



## Technical Planning in NSIPs

Friday February 3rd 2023





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**Quod**  
Technical Planning and NSIPs  
Presentation to Local Authorities

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February 2023  
Version 1.0

# Matters

- Need for recognition that not all the details stakeholders would like will be available
- Approach to flexibility and how detail is realised at the delivery stage
- Managing change – during consultation, during examination and post-consent



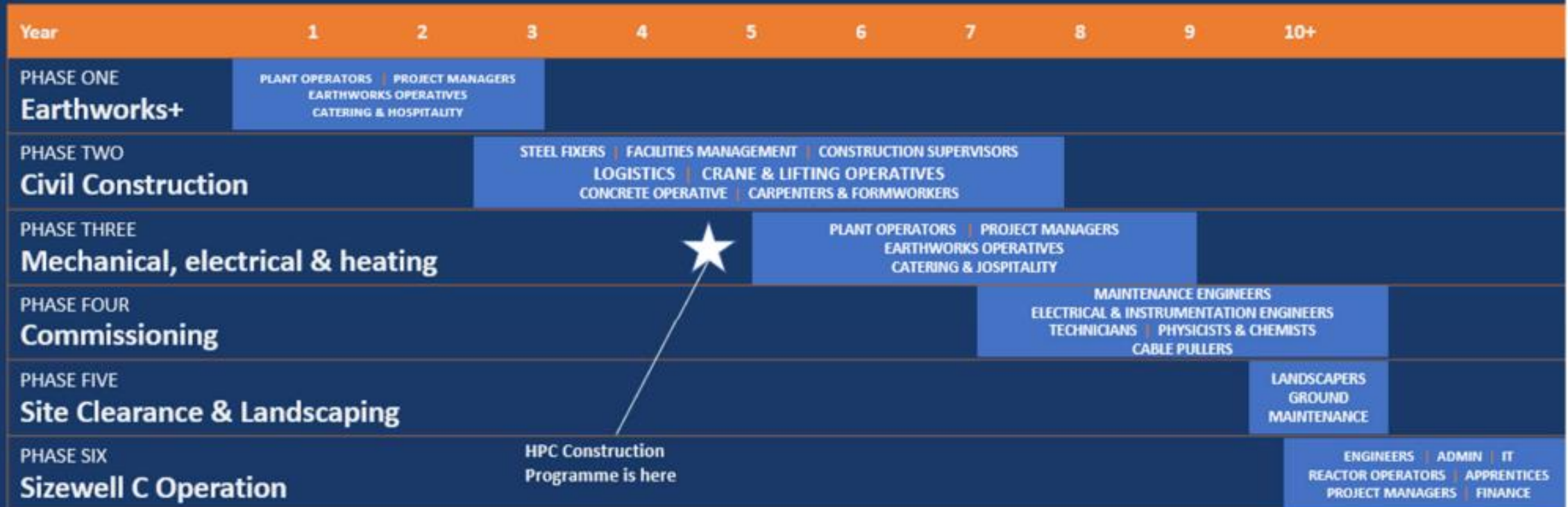




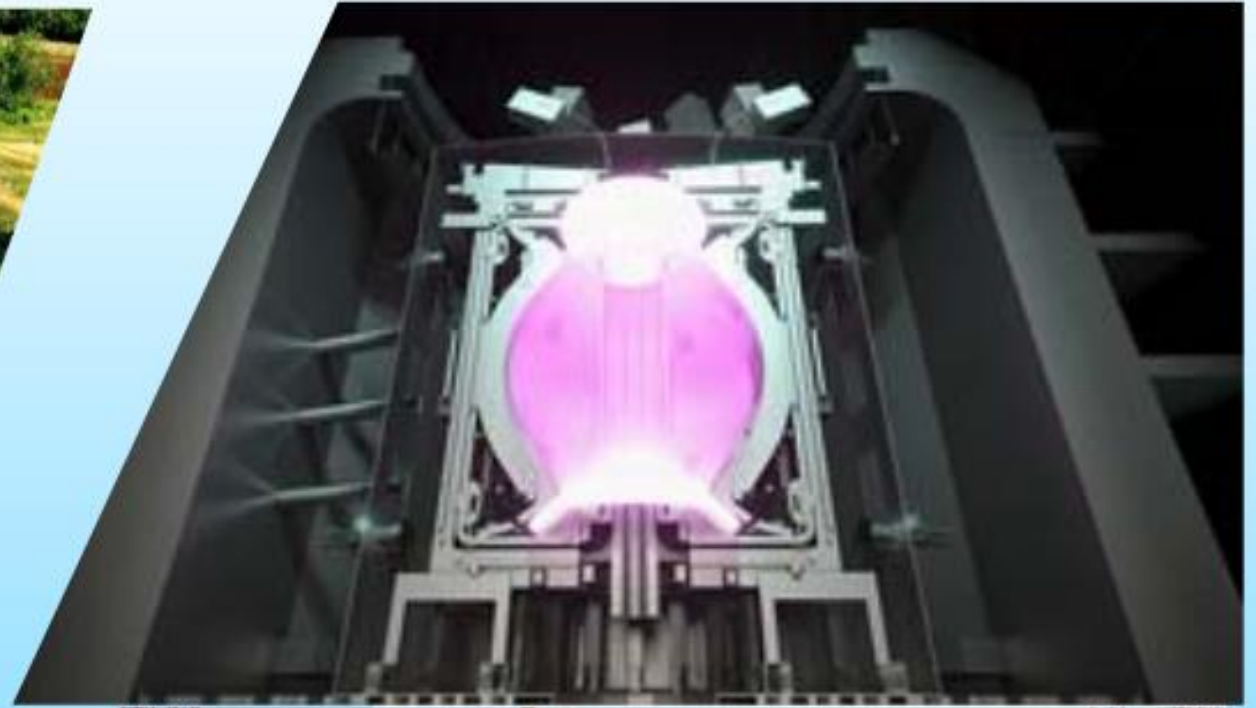




# Workforce Development & Project Phasing



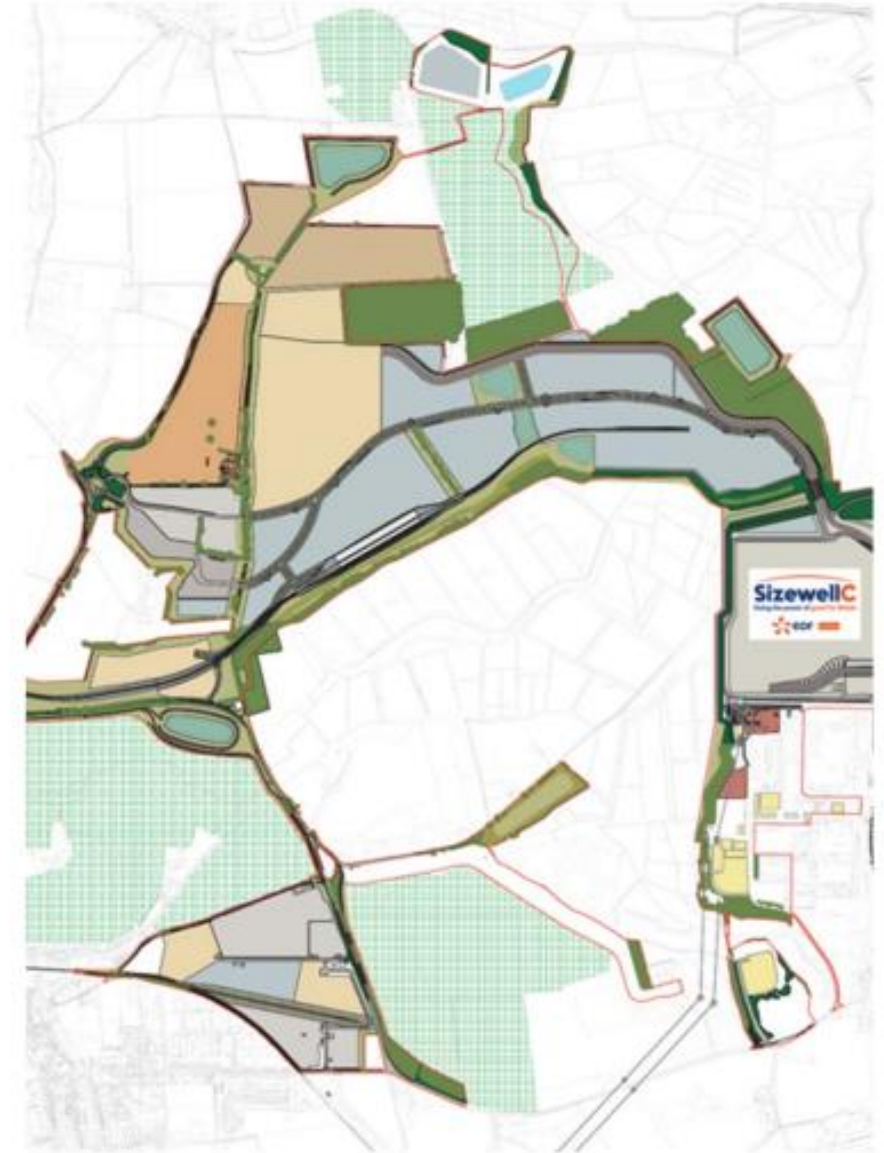




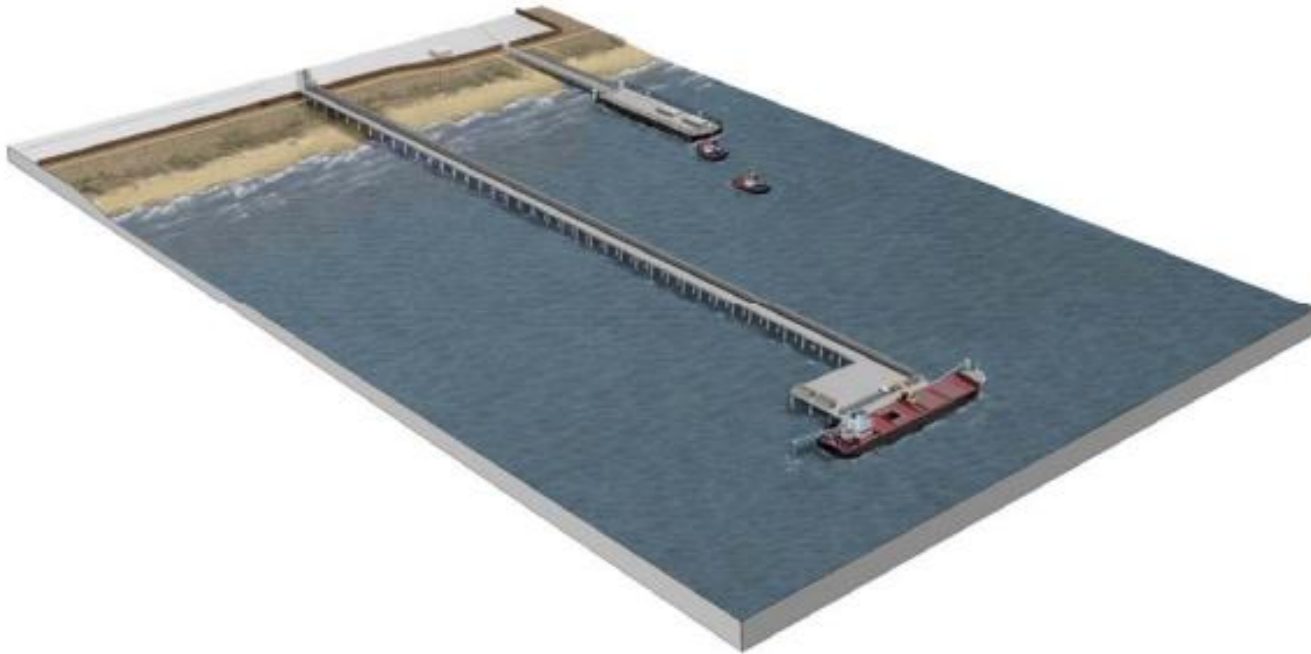


## Approach to detail

- Delivery of infrastructure is critical, and waiting until all the detail available is not reasonable – cost, time, design changes
- It is not necessary – through the construct of the planning regime. Commitments and controls can be put in place
- Proposals evolve over time in response to surveys, design development (which is continual) and consultation



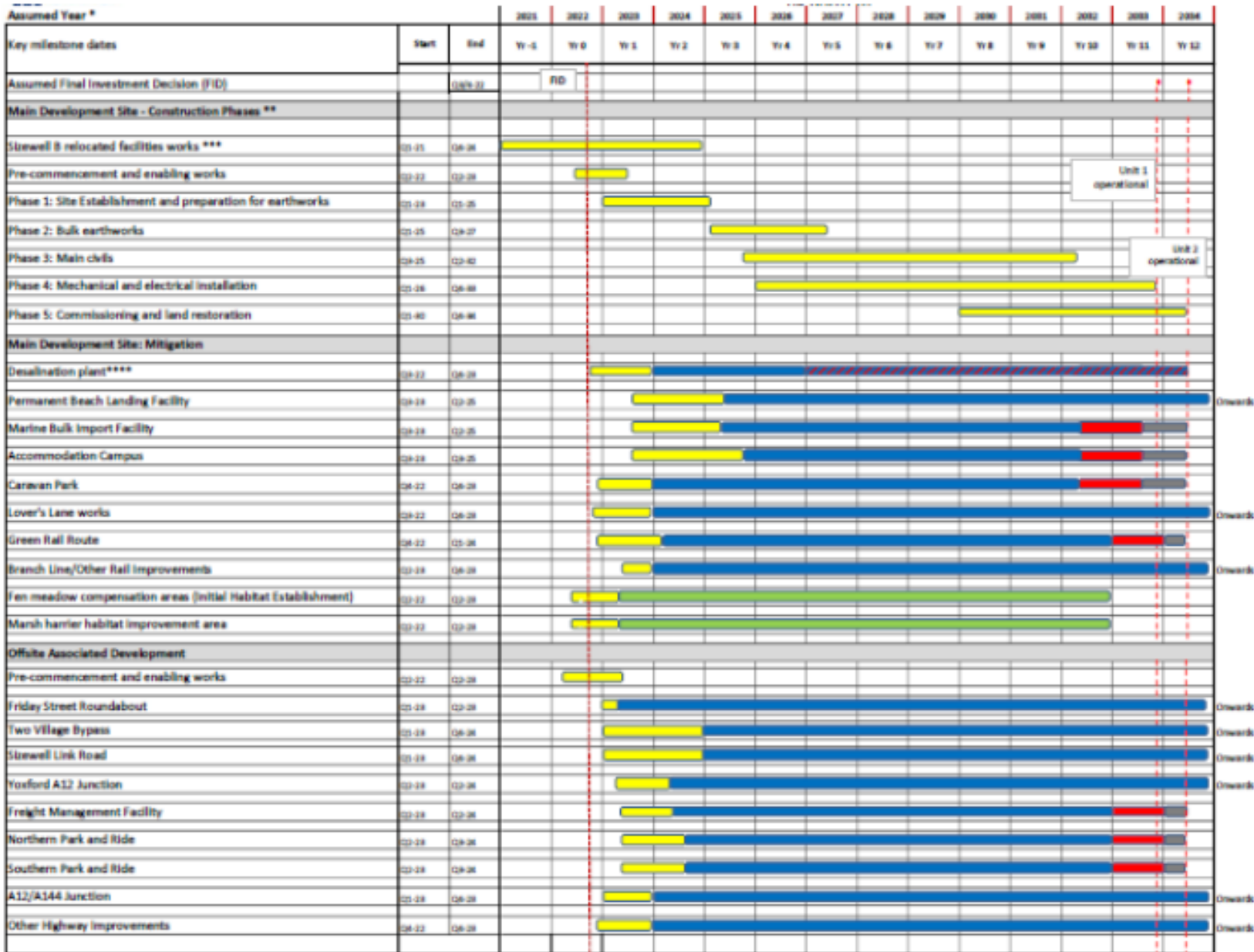
## Level of detail prior to submission



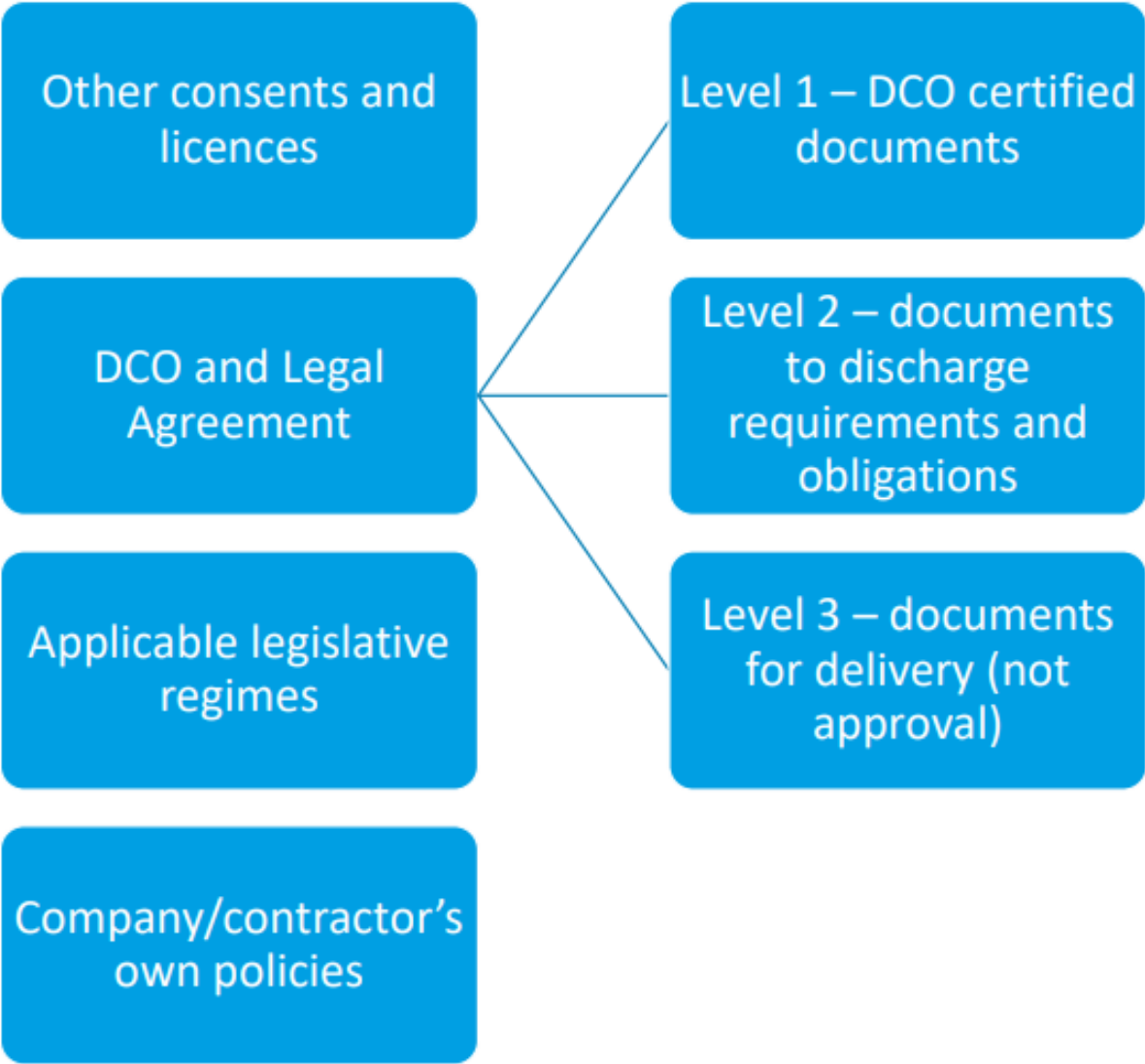
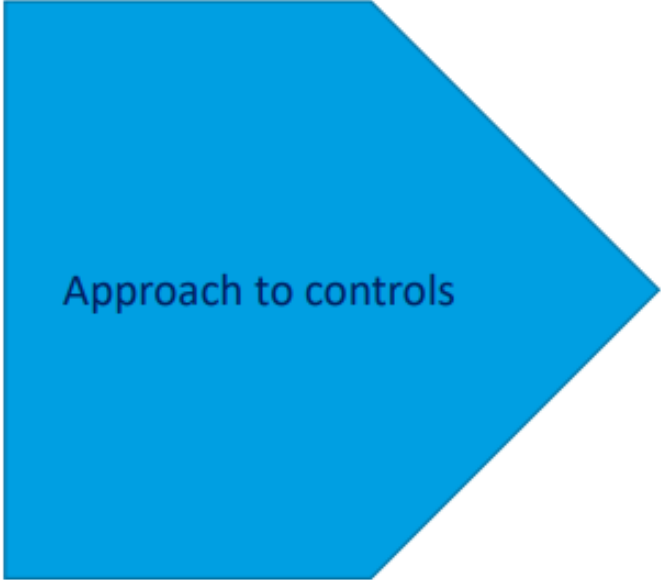
- Detail evolves during the pre-application stage
- It is right to ensure level of detail is commensurate with the legal requirements (EIA, HRA, land interests and other consenting regimes)
- It is right to ensure it is proportionate and appropriate, having regards to receptors, ability to define appropriate commitments and controls and give stakeholders sufficient clarity



# Level of detail during examination



- The level of specificity of some 'certified' documents evolves during the examination.
- The degree of specificity of the DCO and legal agreement also crystallises.





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## DCO Requirements

- Compliance (e.g., adhere to the Estate-wide management plan, unless otherwise agreed)
- Further approvals – commencement or relevant part (e.g., approval of landscaping details prior to relevant works commencing)

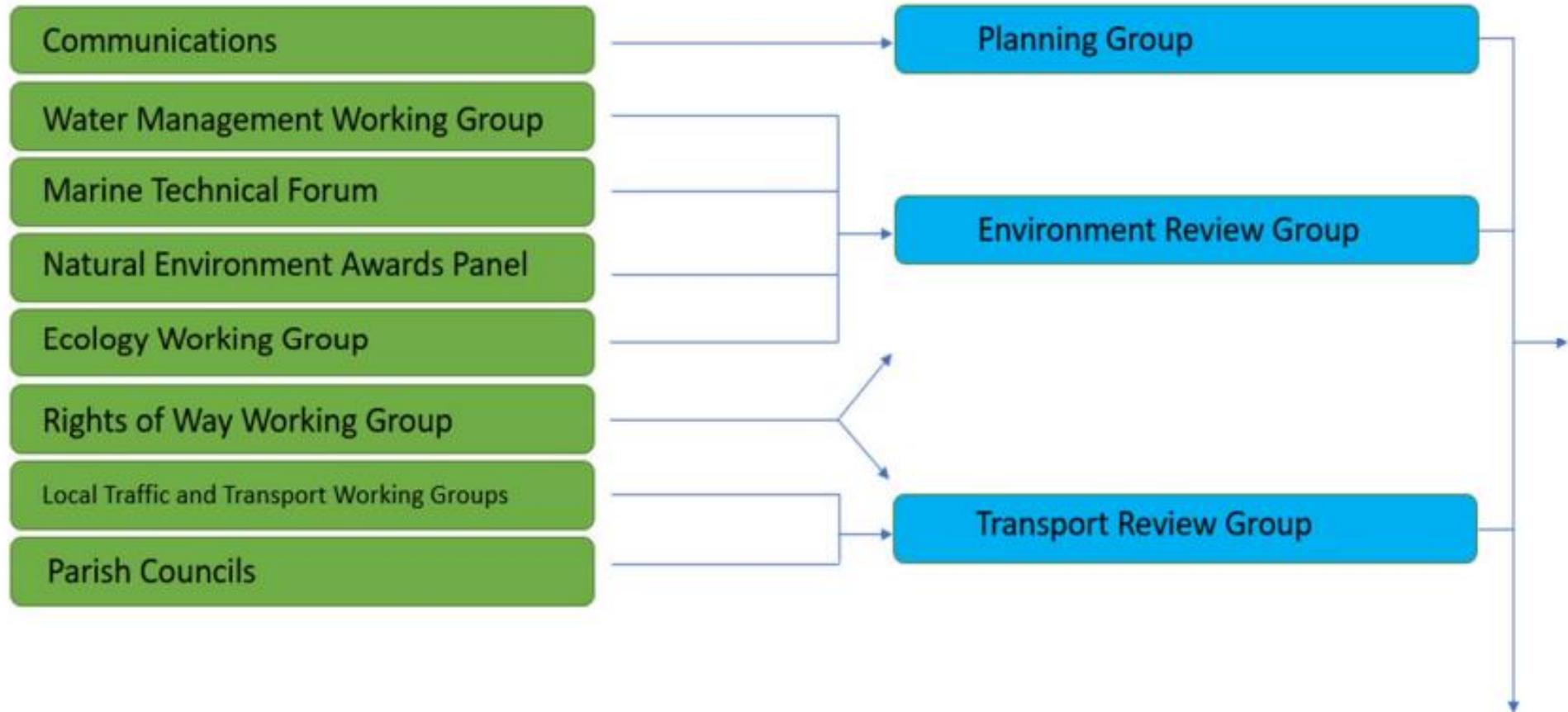
## Legal Agreements

### Deed of Obligation

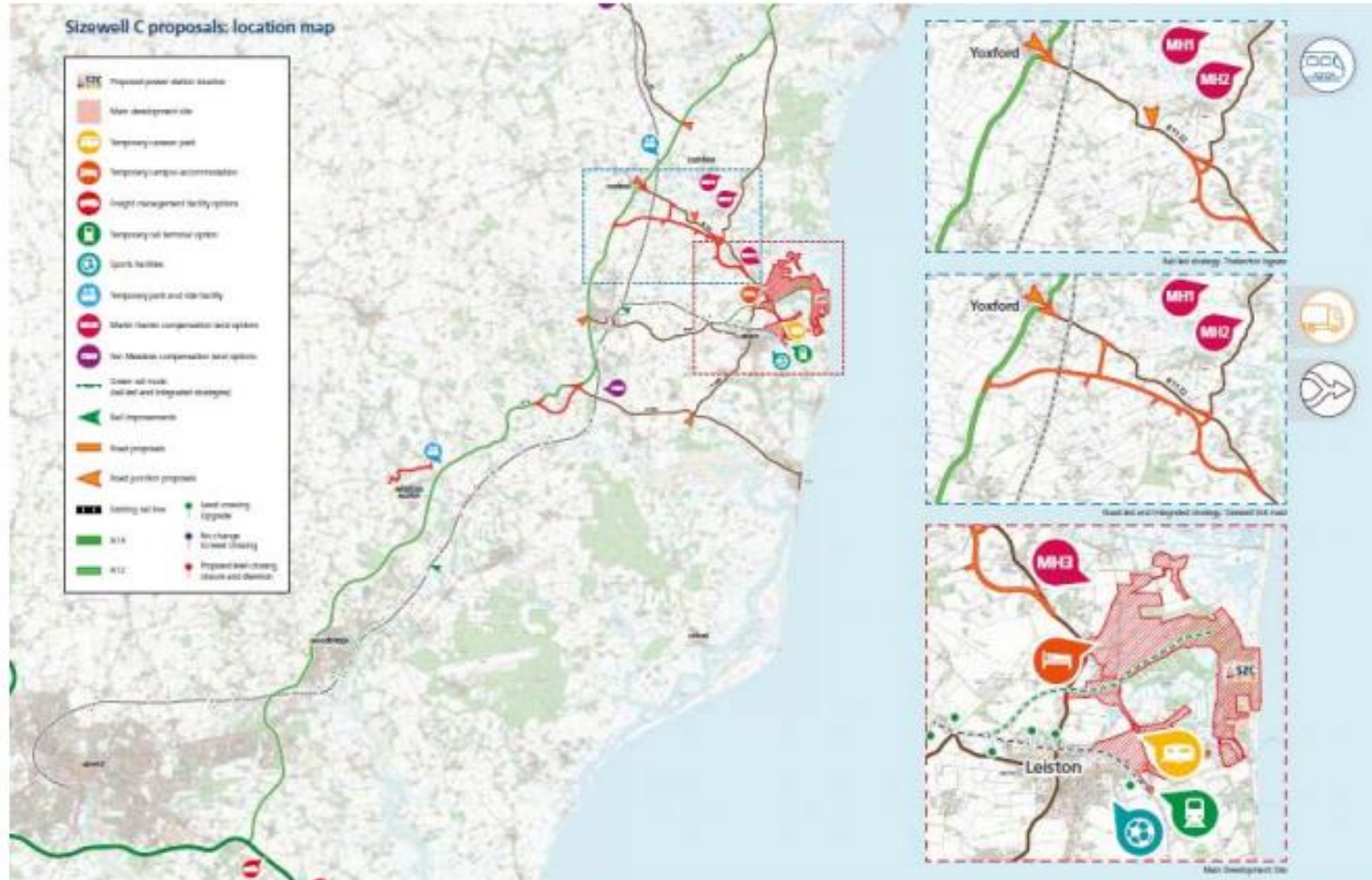




## Governance



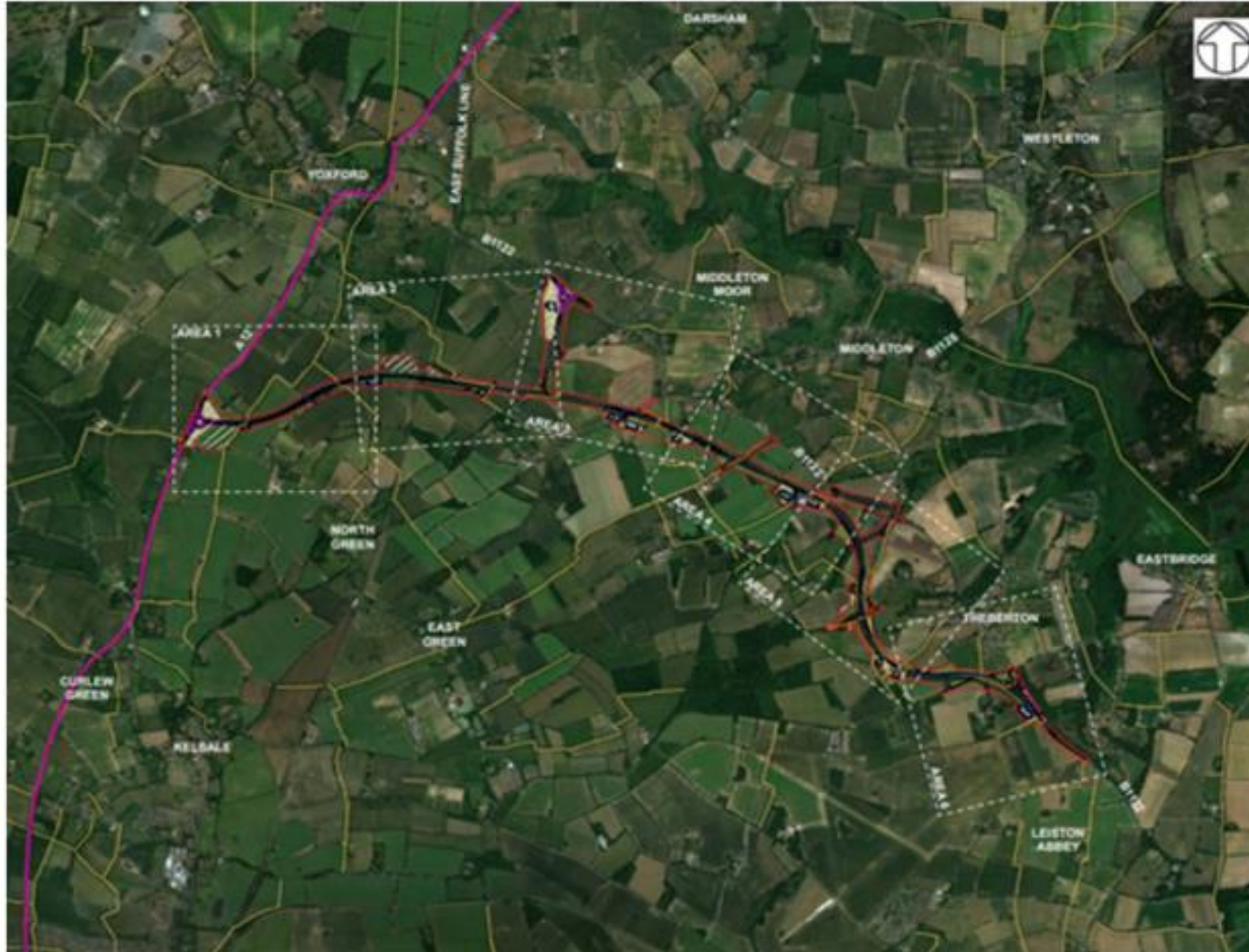
# Change



- Pre-application
- Pre-examination
- During examination
- During delivery



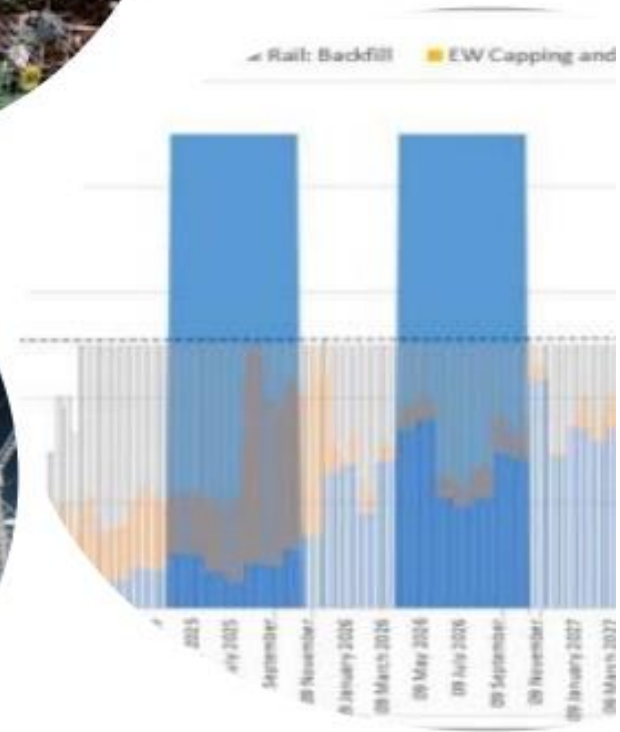
## Pre-examination/during examination



- Recognised as a positive step – to secure buy-in from stakeholders
- Formal steps to be undertaken by applicant, interested Parties and Examining Authority

## During Delivery

- There is a need for expediency from all stakeholders involved
- To be dealt with: via the DCO/legal agreement, change to the DCO (material or non-material), separate planning application
- Engagement is critical to success







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**Thank you**

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# NSIP CENTRE OF EXCELLENCE

## Technical planning matters in NSIPs

Angus Walker, partner, BDB Pitmans

3 February 2023

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# FLEXIBILITY

- At one extreme, a permission could allow anything to be built
- At the other, every precise detail would be fixed at the time of consent
- These are both impractical!

# TOO FLEXIBLE

- If an application is too flexible then it would have to assess every possible environmental effect to be valid (and appear worse than it really would be)
- Consultation would either also have to cover too many options or be misleadingly based on a particular proposed project when something completely different could be built
- No-one would know what they were getting and the developer would have too much freedom

# TOO RIGID

- On the other hand if a proposal is too rigid it could be unimplementable because:
  - Physical things such as ground conditions will not have been established across the entire site and this may require minor adjustments
  - Pre-construction surveys may reveal recent species habitation requiring adjustments
  - Baselines change, other projects come forward
- Also
  - Applications take a long time and technology may have improved but such benefits could not be realised
  - ‘Value engineering’ may find cheaper solutions costing less public money (if publicly funded)



## A BALANCE?

- The best solution for all is to balance reasonable certainty with reasonable flexibility
- ‘Limits of deviation’
- ‘Rochdale envelope’ assessment
- Allow changes if no significant environmental impact
- Allow changes pursuant to discharge of requirement with significant environmental impact accompanied by further EIA (allowed but never tried – give it a go!)
- Use of permitted development and ‘slot-in’ planning permission

# LIMITS OF DEVIATION EXAMPLE (SIZEWELL C)



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# CHANGES BEFORE A DCO IS DECIDED

- The timing of pre-decision changes can be broken down into
  - Changes made before the application is made
  - Changes made before the examination starts
  - Changes made during the examination
  - Changes made after the end of the examination



# CHANGES MADE BEFORE THE APPLICATION IS MADE

- Developers are of course at liberty to make changes to their own projects before they make applications. However:
  - There is a duty to consult on a proposed application so it can't have changed too much since the last statutory consultation
  - There is a duty to assess the environmental effects of the application in the Environmental Statement, so it should correspond to the application that is actually made, not a previous iteration – this is often the cause of applications not being accepted for examination

# CHANGES MADE BEFORE THE EXAMINATION STARTS

- Changes can be made between the making of an application and the start of the examination. However:
  - If the underlying project has changed one wonders why the application was made so recently for the wrong project
  - If it is just supplementing some survey work and assessment of that work that wasn't finished at the time of the application that is inconvenient but probably OK
- The timing of any change proposal should be considered carefully and discussed with PINS, including when interested parties would be able to comment on the new information
- PINS prefer changes before the Preliminary Meeting invites have gone out as the timetable is still flexible; developers do not for the same reason

# CHANGES DURING THE EXAMINATION

- These are governed by Advice Note Sixteen (so are pre-examination changes, strictly speaking)
- Changes that are so substantial that the application would be for a different project are not allowed (you would have to stop and re-apply from scratch)
- Changes that are 'material' require consultation, changes that aren't generally don't (but still might require some)
- The material/non-material boundary is not hard and fast, but factors suggesting it is material are:
  - Are there new or different environmental effects?
  - Is new land involved?
  - Are there impacts for protected natural sites?



## CASE STUDY: SIZEWELL C

- There were no fewer than 19 changes made to the Sizewell C application during its examination, grouped into three change requests
- The first change request was made before the start of the examination and contained 15 changes, the ExA decided they were material when taken together
- The second change request was made about 2½ months into the examination and contained three more changes; the ExA decided they were not material
- The third change request was made about 4½ months into the examination (albeit notified that it was coming a month earlier) and was for one change, the addition of a temporary desalination plant; the ExA decided this was material (even though EdF submitted that it was not); consultation was shortened due to the lack of time and a special hearing was held on it

# POST-DECISION CHANGES

- There are four types of post-decision change:
  - An application for a correction order, must be made within 6 weeks, for very minor changes (but more than purely typographical ones)
    - Around 50% of DCOs have one of these – fairly quick, all in writing
  - An application for a ‘non-material change’
    - Around 25% of DCOs have one – or more – of these – no time limits, all in writing
  - An application for a material change
    - One DCO has one of these – it is like a 2/3 application
  - An application for a new project
    - No duplicate DCO for the same site has yet been applied for

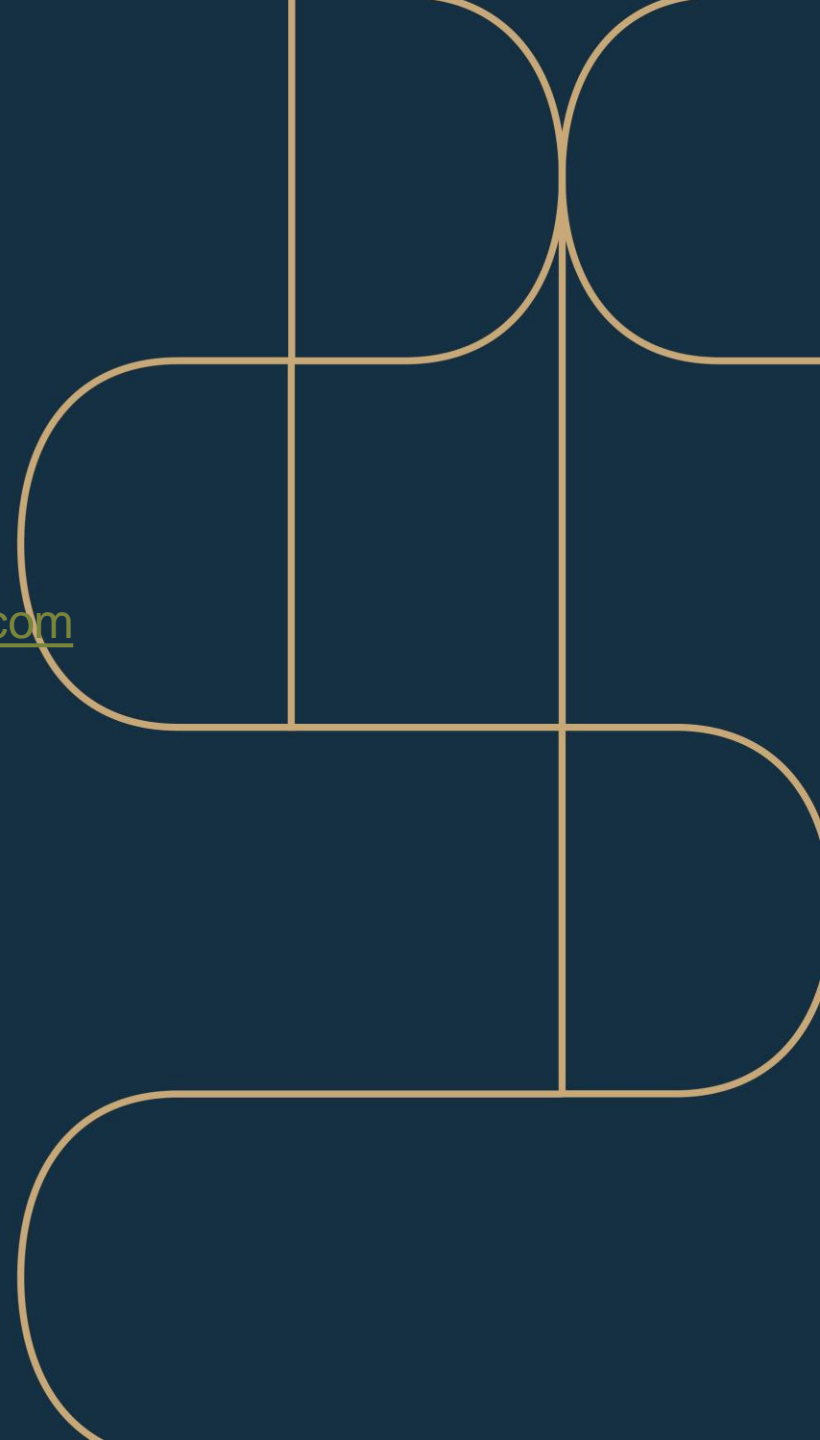
# RESOLVING IMPLEMENTATION CONFLICTS

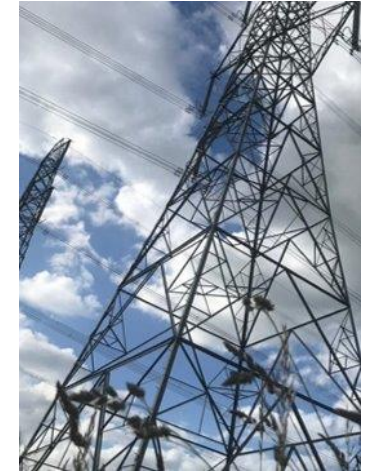
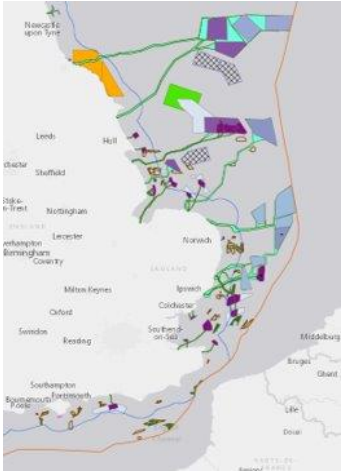
- DCOs usually have an appeal mechanism for refusal or non-determination of sign-off of requirements (ask for one during examination if not)
- Failing that, DCOs usually have arbitration provisions
- Those are the legal routes but given the long-term relationship that an infrastructure developer and a local authority must perforce have, negotiation is generally better
- Trying to revisit areas of objection that have been resolved in the developer's favour is not recommended unless underlying circumstances have clearly changed



# THANK YOU FOR PARTICIPATING

Drop me a line if you have any further questions: [anguswalker@bdbpitmans.com](mailto:anguswalker@bdbpitmans.com)



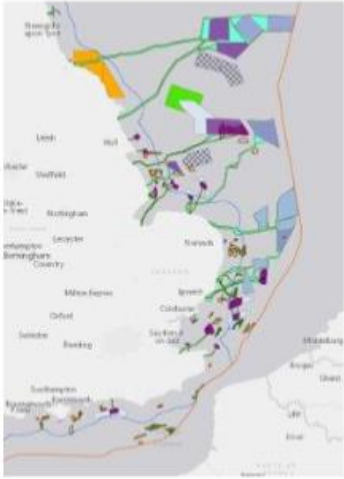


## NSIP Centre of Excellence – Coming up

### **NSIPs and the Natural Environment**

- Biodiversity and net gain in NSIPs
- Specific examples of environmental impacts in NSIP design
- Adequacy of Environmental Impact Assessments and what follows EIA regs
- Speakers – Sue Hooton (Essex Place Services), Ian Houston (LDA Design), Alison Farmer and Martin Broderick (Oxford Brookes University)

**Wednesday February 22nd, 9.30am**



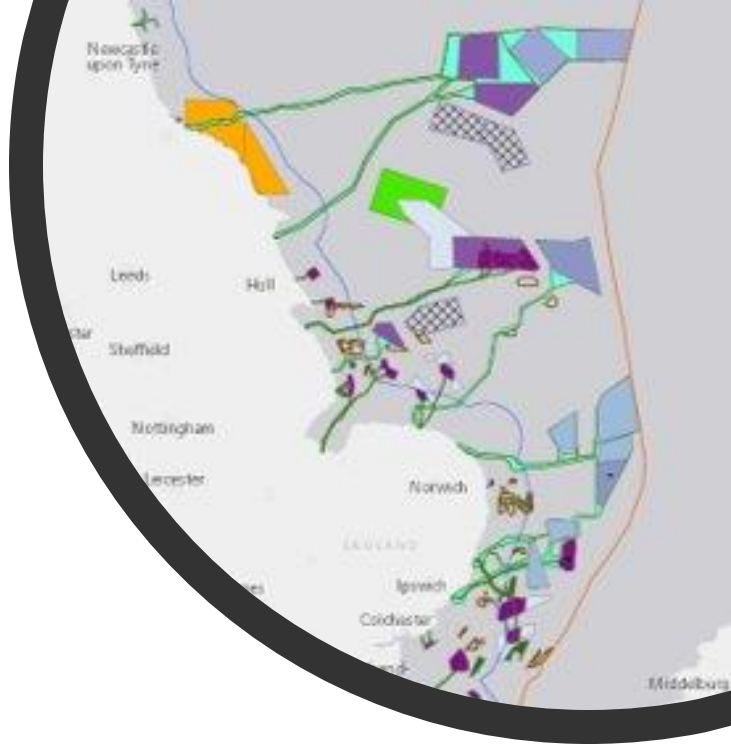
## NSIP Centre of Excellence – Coming up

### **NSIPs East of England Centre of Excellence Conference The Apex, Bury St Edmunds**

- Free of charge conference for local authority officers
- More information and booking details can be found in today's session brochure

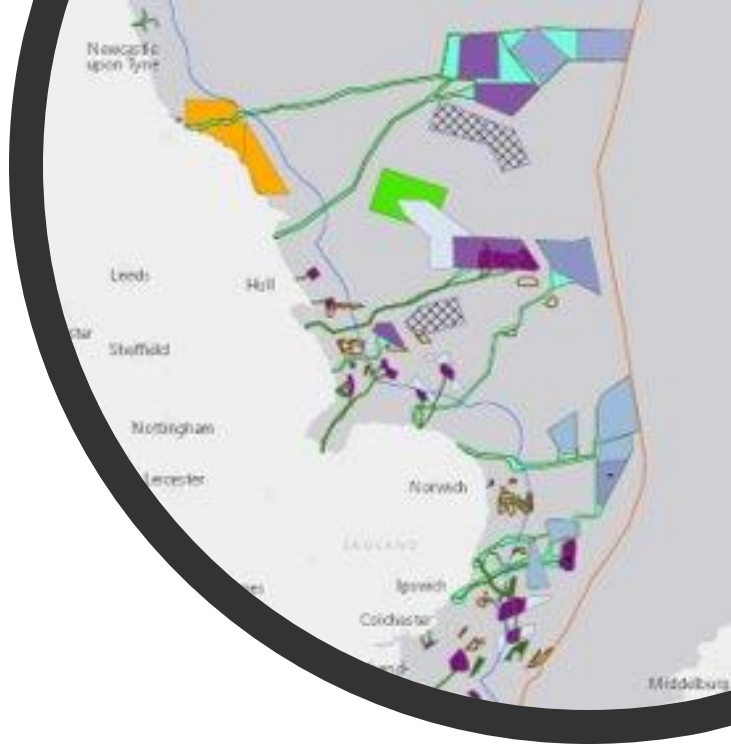
**Wednesday March 15th 2023**





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QUESTIONNAIRE***

*NSIP Centre of Excellence*



*Please remain on the call if  
you wish to attend the  
networking session!*

*NSIP Centre of Excellence*