

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

**Compulsory Acquisition Hearing Part 1 (17 August 2021) – (CAH1)**

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

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

**Deadline 7**

**3 September 2021**

**Glossary of Acronyms**

- **2VB** – Two Village Bypass
- **CoCP** – Code of Construction Practice
- **CWTP** – Construction Worker Travel Plan (Revision 2.0) [REP2-055]
- **CTMP** – Construction Traffic Management Plan (Revision 2) [REP2-054]
- **DCO** - Development Consent Order (Revision 4 tracked) [REP2-013]
- **EM** - Explanatory Memorandum to the DCO (version 3) [REP2-016]
- **ESC** – East Suffolk Council
- **HGV** – Heavy Goods Vehicles
- **oLEMP** – Outline Landscape Ecological Management Plan
- **SCC** – Suffolk County Council
- **SLR** – Sizewell Link Road

**Compulsory Acquisition Hearing 1 (17 August 2021) - (CAH1)**  
**Post Hearing Submissions including written summary of Suffolk County Council's Oral Case**

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

Examining Authority's Agenda Item / Question	Suffolk County Council's Response	References
<b>Agenda Item 2 – The statutory conditions and general principles applicable to the exercise of powers of compulsory acquisition</b>		
(a) Whether the purpose for which Compulsory Acquisition powers are sought would comply with section 122(2) of the PA2008?	<p>SCC was asked whether it considered that the permanent retention of the SLR was proportionate having regard to the test in s.122(2) PA 2008 in relation to compulsory acquisition of land. SCC considers that there is some overlap between this question and the question of whether the provision of the SLR as a permanent road would satisfy the test in s.122(3) PA 2008 (addressed below). SCC maintains its view, as rehearsed in its earlier submissions, that there is no adequate justification for the permanent retention of the SLR. Nonetheless, SCC is clear that the provision of the SLR during the construction period is essential mitigation for the construction traffic impacts of the project and its timely delivery is critical to the acceptability of the project.</p> <p>S.122(2) PA 2008 is concerned (in the present context) with whether compulsory acquisition of land is required either for the development which is the subject of the DCO or to facilitate or is incidental to that development. The former MCLG PA 2008 guidance on CA (2013) refers (para 11) to landscaping for a development as land which might fall with</p>	<p>SCC's position on the SLR is set out in REP2-189, REP3-084 (in particular the response to T.1.92), and REP5-173.</p>

	<p>the facilitate/incidental limb, and advises that the amount of land taken for that purpose should be proportionate.</p> <p>SCC acknowledges that, given the applicant's chosen route for the SLR, the land that is subject to compulsory acquisition for the SLR is required in a spatial/physical or geographic sense in order for the provision of the SLR. SCC accepts that, whether the SLR is to be permanently retained or is to be removed at the end of the construction period, a broadly similar quantum of land would be required for the road itself but there may be some areas of associated landscaping that would not be needed or would not be effective (such as the planting of broad-leafed trees within the proposed native tree and shrub planting) if the SLR was only temporary. SCC has not considered that it is its responsibility to formulate a different landscape strategy for a temporary SLR, noting that any such landscaping would fall within (rather than go beyond) the parameters of the landscaping proposed by the applicant in the Landscape Masterplan for the SLR in Part 7 of Schedule 7 to the DCO. The Landscape Masterplan contains inherent flexibility as to the final design of the landscaping (for example, within the areas notated for native tree and shrub planting, the balance between trees and shrubs is at large as are the species of native plants). That flexibility could accommodate a landscape design suitable for a temporary SLR. Requirement 22A already requires the details of the landscape works for the SLR to be subject to approval post-consent.</p> <p>SCC notes that the Statement of Reasons (APP-062) states (para 7.3.6) that, in relation to highway works, the applicant has included sufficient land to allow for the final detailed design to be determined and so includes the full extent of land where works may be undertaken but in practice only the land needed for the highway works would be taken. SCC considers</p>	
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	<p>that a similar approach could be taken in relation to any parcels of land that may not be needed (whether for landscaping or for other reasons), once detailed design had been undertaken, if the SLR was to be provided on a temporary basis.</p> <p>However, if there is no adequate justification for the permanent provision of the SLR and it were to be provided only on a temporary basis (as advocated by SCC), it would not necessarily be required for the land to be the subject of compulsory acquisition in order to provide a temporary SLR, and it would be possible to achieve that result by taking temporary possession of the relevant land (using Article 37 and Schedule 17 of the DCO). Whilst temporary possession would be taken for the duration of the construction period, that is equally true for the applicant's proposals for the sports facilities.</p> <p>An alternative approach would be the permanent acquisition of the land required for the temporary SLR in the same way that the applicant proposes the permanent acquisition of the land required for the two temporary park and ride sites, the temporary freight management facility, and the elements of the temporary green rail line where new rail infrastructure is to be provided. SCC notes (as set out in the Statement of Reasons [APP-062], paras 4.3.6, 4.7.2, 4.8.6) that the applicant intends to remove those facilities/infrastructure and restore such land to its former condition (generally agricultural) at the end of the construction period. The same approach could be taken for a temporary SLR.</p>	
(b) Whether all reasonable alternatives to Compulsory Acquisition have been explored?	<p>SCC notes that the applicant has considered a temporary SLR but rejected that option. SCC does not agree with that conclusion for the reasons already rehearsed in its earlier submissions.</p>	

(c) Whether the Secretary of State could be satisfied that the land proposed to be acquired is no more than is reasonably necessary for the purposes of the Proposed Development?		
(d) Whether having regard to section 122(3) of the PA2008 there is a compelling case in the public interest for the land to be acquired compulsorily and the public benefit would outweigh the private loss?	<p>If the SLR was provided on a temporary basis for the construction period and was then removed and the land restored to its former condition, it would then be possible to return that land to its former owners. Conversely, if the SLR is permanent there is a permanent deprivation of the owners' land. Since SCC does not consider that there is an adequate justification for the permanent retention of the SLR, it follows that SCC does not consider that there is a compelling case for the land to be permanently acquired (and retained) for that purpose.</p> <p>However, if permanent acquisition rather than temporary possession is to be the route to deliver a temporary SLR, with subsequent restoration to agriculture post-construction, which follows the applicant's approach to the other temporary elements (SCC considers either route would be feasible), then SCC does consider that there is a compelling case in the public interest to take that land in order to deliver a temporary SLR as essential mitigation for the effects of construction traffic.</p> <p>The applicant asserted that it would not be possible for a temporary SLR to be delivered in the context of the current DCO and that if its proposals for a permanent SLR were rejected it would be necessary for fresh proposals to be put forward in a different DCO, with consequential delay. SCC does not accept that is the case, albeit SCC notes that steps would need to be taken in the near future to achieve a temporary SLR within the context of the Examination.</p>	

	<p>SCC notes that, where the applicant wishes to do so, it is continuing to bring forward changes to its proposals, most recently instanced in relation to the consultation on new proposals for a desalination plant. Clearly, the applicant considers that the procedural implications of making such changes can be accommodated within the Examination. SCC sees no reason to take any different approach in relation to the temporary SLR.</p> <p>In terms of land take, a temporary SLR would not entail the use of land outside of the Order limits (but there may be some savings in relation to land required for landscaping, which could be addressed at the detailed design stage). The construction of a temporary SLR may be to a lower specification than a permanent road that was to become an adopted highway but SCC accepts that a temporary SLR which was to be in place for the majority of the construction period would be more than a haul road and would need to be constructed accordingly. The detailed specification for the SLR, whether temporary or permanent, could be addressed by Articles 20 and 21 in conjunction with Requirement 22.</p> <p>In terms of transport assessment, during the construction period there would be no difference in assessment whether the SLR was permanent or temporary. For the operational period, the Consolidated TA [REP4-005] already includes a 2034 Reference Case as well as a 2034 operational traffic scenario. SCC has already provided its assessment of the implications for both total traffic and HDV traffic on the B1122 in the operational period in 2034 without the SLR (Table 3 in REP2-189). SCC does not consider that the flows in the operational period without the SLR would exceed either the practical or the environmental capacity of the B1122. Since the primary purpose of the SLR is to divert traffic from the B1122 SCC does not consider it either necessary or</p>	
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	<p>proportionate to assess the implications for other parts of the network in the operational period (without the SLR). There is no reason to think that other roads would experience changes that would be significant in terms of network performance or environmental capacity. SCC notes that the Consolidated TA [REP4-005] does not provide any assessment of the traffic impacts during the de-commissioning of the park and ride sites, the FMF, and the green rail line, presumably on the basis that significant effects are not anticipated. SCC sees no reason to take a different approach in relation to the decommissioning of the SLR.</p> <p>In terms of environmental impact assessment, during the construction period there would be no difference in assessment whether the SLR was permanent or temporary. If the SLR was removed at the end of the construction period and the land restored, the SLR would have no significant environmental effects during the operational period. The de-commissioning/removal process could have environmental effects but (a) those effects generally would be no greater than the effects already assessed for the construction of the SLR (which generally mirrors the approach that the applicant has taken for the environmental assessment of the likely significant effects of removing the temporary elements of the project such as the park and ride sites, the freight management facility, and the green rail line (see for example APP-541, paras 2.5.90-2.5.96, AS-256 paras 2.4.94-2.4.100, APP-551, paras 6.6.68-6.6.69, APP-555, paras 7.6.78-7.6.79, APP-558, paras 8.6.63-8.6.64, APP-560, para 9.6.46, in relation to the removal of the green rail line which is also a linear component of the project)) and (b) the process could be regulated by Requirement 24 in the same way as the applicant proposes for the two park and ride sites, the freight management facility, and the green rail route.</p>	<p>See for example APP-541, paras 2.5.90-2.5.96 (Description of Rail), AS-256 paras 2.4.94-2.4.100 (Description of Rail), APP-551, paras 6.6.68-6.6.69 (Landscape and Visual), APP-555, paras 7.6.78-7.6.79 (Terrestrial Ecology and Ornithology), APP-558, paras 8.6.63-8.6.64 (Amenity and Recreation), APP-560, para 9.6.46 (Terrestrial</p>
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	<p>As currently worded, Requirement 24(2) calls for a 'scheme for the land restoration works' to be approved, and there is no definition of the scope or ambit of such a scheme. SCC considers it would be appropriate to revise Requirement 24(2) to refer to a 'scheme for the removal, reinstatement and land restoration works' to make it clear that all aspects of the decommissioning should be addressed by that scheme.</p> <p>Notwithstanding that position, in terms of removal of the material used for the construction of the Sizewell Link Road (SLR), it is anticipated that the traffic consequences would be no more than that for the construction of the SLR. It would be likely that the removal would follow on from the restoration of other sites such as the LEEIE, the Green Rail Route, the Accommodation Campus and the MDS Lay-Down Area, and so traffic levels would not be cumulative with these works. Furthermore, at this time when the station is in operation, the number of workers on the site at 900 would be less than the peak of 1500 in the Early Years. Accordingly, it is considered that the traffic volumes, and therefore impact, would be less than those included in the Environmental Statement for the Early Years.</p> <p>In terms of waste, it is considered that all the material from sub-base (inclusive) upwards would be recovered and re-used, at least as aggregate. There is currently a market for recycled aggregate in Suffolk and there are firms locally processing such material. Thus, it is not expected that the removal of the SLR would cause a significant waste issue.</p> <p>Any discharge pursuant to Requirement 24 would be subject to Regulations 22, 23 and 24 of the Infrastructure Planning (EIA) Regulations 2017 in relation subsequent applications</p>	<p>and Historic Environment) in relation to the removal of the green rail line which is also a linear component of the project</p>
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	<p>and if the environmental information available at that time was insufficient to allow ESC to assess whether there would be any significant environmental effects from the decommissioning, ESC would have the ability to require the provision of further information as part of that discharge process.</p> <p>SCC notes that the applicant has contended that one of the benefits of a permanent SLR is that it assists the applicant's earthworks strategy by providing a source of fill for the Main Development Site. This point was also raised by the applicant at ISH2 and in REP5-173 SCC sought clarification and further information on the movements concerned. SCC understands that the applicant intends to response to SCC's D5 submissions at D7 and is not aware of any further information being provided on the earthworks strategy at the present time. SCC therefore reserves the right to comment further on this stated benefit when it has seen the applicant's response at D7.</p> <p>In terms of consultation, SCC notes that in the Stage 4 consultation [APP-082, Appendix F.2, section 2.6] the applicant consulted on whether the SLR should be a temporary or permanent feature. In the applicant's summary of Section 42 consultee responses the applicant has reported that "With regards to the proposals to remove the Sizewell link road and Theberton bypass following the construction phase, some PILs were supportive of returning the land to its original state. Others opposed restoration and felt it would be a waste of time and money whilst creating further disruption for residents during its removal" [APP-092, para 2.6.7]. In other words, there were mixed views on this issue. SCC's understanding of the Relevant Representations submitted to</p>	
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	<p>the Examination is that Interested Parties in the vicinity of the B1122 and the SLR continue to have mixed views on this issue and there is neither unanimity nor a majority view in favour of either option. The issue has, however, been widely rehearsed and in the circumstances SCC considers that a proposed change to the application so that the SLR would be a temporary rather than a permanent feature would need only a short period of consultation, which could be accommodated within the timeframe of the Examination if it was undertaken in the near future. It would be open to the ExA to ask the applicant to undertake such consultation (without prejudice to the applicant's position) so that the ExA could be informed on the community's views on this issue before making its recommendations.</p> <p>In terms of application documents that would need to be amended to accommodate such a change, SCC considers these could be limited, as follows.</p> <p>The following provisions of the DCO and related plans have been considered. It is not considered that any provisions not mentioned below would require alteration:</p> <p><b>General power to remove works</b>  Article 6 (maintenance of authorised development) enables the undertaker to maintain the authorised development. "Maintain" is defined in article 2 (interpretation) so as to include "remove" subject to such removal not giving rise to any materially new or materially different significant environmental effects (as to which see above).</p> <p><b>Description of works and works plans</b></p>	
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	<p>In Schedule 1, the description of Work Nos. 12B to Work No. 12D would need to be amended to make clear that they are temporary, in the same way work No. 4B (green rail route) is. It does not appear that the Works Plans would need to be altered.</p> <p>SCC does not consider that this would constitute a material change, having regard to Advice Note 16 (How to request a change which may be material).</p> <p><b>Stopping up and change of status of highways and means of access</b></p> <p>Article 14 (Permanent stopping up of streets, change of status, and extinguishment of private means of access) and Schedule 10 (Streets to be permanently stopped up, changed in status or private means of access extinguished) are relevant, as are the rights of way plans.</p> <p><i>The SLR: stopping up</i></p> <p>The Order provides (although it is not entirely clear) that the SLR will have highway status. On its removal, it would need to be stopped up by a statutory mechanism of some sort. For obvious reasons, the SLR is not one of the highways listed in Schedule 10 as a street to be permanently stopped up. Solutions include:</p> <ul style="list-style-type: none"><li>• Add a stand alone provision in article 14 to allow for the stopping up of the SLR and any associated means of access after completion of construction (no change to Schedule 10 would be needed); or</li></ul>	
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	<ul style="list-style-type: none"> <li>Amend the description of Work No. 12A to make clear that the SLR is not to be a highway.</li> </ul> <p>SCC does not consider that either of these would constitute a material change, having regard to Advice Note 16</p> <p><i>Other streets and footpaths: stopping up</i>  The 17 streets and footpaths listed in Schedule 10 (Streets to be permanently stopped up, changed in status or private means of access extinguished) which would no longer need to be stopped up permanently (with a replacement), but still needed to be stopped up temporarily (with a substitute) would be moved to Part 2 of Schedule 13 (Streets and private means of access to be temporarily closed).</p> <p>The Rights of Way Plans would need to be amended to alter the status shown for the SLR and the various street and footpath diversions from permanent to temporary.  SCC does not consider that these would constitute material changes, having regard to Advice Note 16.</p> <p><i>Change of status</i>  The status of 12 sections of highway will be changed, for the purposes of the SLR, from highway (all traffic) to highway (NMUs): see article 14(1)(b), Part 3 of Schedule 10 and the rights of way plans. Article 14 to contain a stand alone provision to say that the status of would be changed temporarily.</p> <p>Also the descriptions of the 16 new footpaths listed in Schedule 11 (status of footpaths created or improved) to be created for the purposes of the SLR could be altered so that</p>	
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	<p>they refer to “Temporary highway (footpath)” rather than “New highway (footpath)” where appropriate. A new paragraph could be added to article 15 to explain the nature of the temporary status.</p> <p>SCC does not consider that these would constitute material changes, having regard to Advice Note 16.</p> <p><b>Traffic Regulation</b>  There are 5 proposals for speed limits relating to the SLR works set out in Schedule 14 (traffic regulation measures). They could, as appropriate, be moved into the section of Schedule 14 headed “temporary traffic regulation measures”</p> <p>SCC does not consider that this would constitute a material change, having regard to Advice Note 16.</p> <p><b>Compulsory acquisition</b>  Sheets 19 to 22 of the Land Plans and the book of reference demonstrate which plots of land are required for the SLR permanently and which temporarily. Schedule 17 lists those plots which may only be acquired temporarily. In the case of the SLR, the purpose for which temporary possession may be taken is “Working areas in relation to construction of Work No. 12”.</p> <p><i>Plots already subject to permanent acquisition</i>  The status of the plots that are required permanently for the SLR could, where appropriate, be altered by listing them in Schedule 17, with a suitable description of the purpose for temporary possession. These plots could already be occupied temporarily by virtue of article 37(1)(a)(ii), so the only change would be that they could <i>only</i> be occupied temporarily.</p>	
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	<p>Potentially, some land could be taken out of the Order limits completely if it is not needed for mitigation that would otherwise be required because the SLR is a permanent feature.</p> <p>SCC does not consider that these would constitute material changes, having regard to Advice Note 16.</p> <p><i>Plots subject only to temporary possession</i> As for the plots already listed in Schedule 17, the purpose for which temporary possession may be taken could be altered to “Working areas in relation to construction <u>and/or removal</u> of Work No. 12”.</p> <p>Article 37(3)(a) says the undertaker may not remain in possession of Schedule 17 plots longer than a year after completion of the work mentioned in Schedule 17. Article 37(11) says that nothing in the article prevents the taking of temporary possession more than once in relation to any specified land. Article 38(1) (time limit for exercise of authority to temporarily use land for carrying out the authorised development) says that the authority to enter onto land under article 37 ceases to apply to any land 5 years after the date the DCO is made, but article 38(2) says that does not prevent the undertaker remaining in possession after the end of that period if the land was entered and possession taken before then.</p> <p>It may be argued that changing the description of the purpose for which possession may be taken represents a change in status which increases the scope of the powers in a way which constitutes a material change.</p>	
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	<p>On this issue, Advice Note 16 says:</p> <p>“There is no legal definition of ‘material’ but the tests to apply are whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for. The former constitutes a material change which – provided there is sufficient time remaining in the Examination stage – can be accommodated as part of the Planning Act 2008 (PA2008) process. The latter constitutes a different project for which a new application would be required. Whether a proposed change falls within either of these categories is a question of planning judgment which may be based on criteria including, for example, whether the change would generate a new or different likely significant environmental effect(s). Similarly, whether (and if so the extent to which) a change request involves an extension to the Order land, particularly where this would require additional Compulsory Acquisition powers eg for new plots of land and/ or interests.”</p> <p>SCC submits that changing the description of the purposes for which temporary possession may be taken for the SLR plots in Schedule 17 would not constitute the addition of a new plot of land or interest.</p> <p>It is inevitable that the duration of the period for which the land might be required would be longer if it were to be used for the removal of the road. But the following points should be borne in mind. First, subject to article 37(3)(a), the period for which a plot may be taken is open ended. It is not unknown for land to be taken under these powers for many years. Secondly, there would be nothing to prevent the undertaker coming to an</p>	
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	<p>arrangement with the land owner allowing the landowner to occupy the land (if that is what the landowner wished to do) between the end of the first construction period and the beginning of the next.</p> <p>The position of SCC is that the change of description of works in Schedule 17 would not constitute a material change, bearing in mind in particular Advice Note 16. However, a short period of consultation (as already suggested above) would enable any matters of concern to affected landowners to be raised by them and then taken into account by the ExA.</p> <p><b>Requirement 24</b></p> <p>As noted above SCC considers that the scope of Requirement 24(2) should be revised to refer to a 'scheme for the removal, reinstatement, and land restoration works'. On a point of detail, in any event this provision lacks an appropriate trigger and needs to be amended to incorporate one, such as 'Prior to any demolition'.</p>	
<b>Agenda Item 3 – Whether there is a reasonable prospect of the requisite funds becoming available</b>		
(a) The resource implications of both acquiring the land and implementing the project for which the land is required.		
(b) Whether adequate funding is likely to be available to enable the Compulsory Acquisition to proceed within the statutory period following the draft DCO being made?		
<b>Agenda Item 4 – Whether the purposes of the proposed compulsory acquisition are legitimate and would justify interfering with the human rights of those with interest in the land affected</b>		

(a) What regard has been had to Articles 8 and 6 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol?		
(b) The degree of importance attributed to the existing uses of the land proposed to be acquired.	Whilst SCC does not suggest that the human rights implications of the proposed compulsory acquisitions give rise to any issues not already embraced within the application of the tests in s.122 PA 2008, SCC does note (as a prelude to its concerns in relation to the Alde Valley Academy and the Leiston Household Waste Recycling Centre, as addressed in CAH2) that both the educational value of the Academy recreational land and the community value of the HWRC should attract a high degree of importance as existing uses.	
(c) The weighing of any potential infringement of ECHR rights against the potential public benefits if the draft DCO is made.		
<b>Agenda Item 5 – Consideration of duties under the Equality Act 2010</b>		
The Applicant to provide an update in relation to compliance with any duties under section 149 of the Equalities Act 2010.		
<b>Agenda Item 6 – Sections 127 and 138 of the PA2008 – the acquisition of statutory undertaker's land and the extinguishment of rights and removal of apparatus of statutory undertakers</b>		
(a) The current position in relation to negotiations with Statutory Undertakers		
(b) Whether Protective Provisions have been agreed with all Statutory Undertakers.	SCC continues to consider that there is a need for protective provisions in relation to its highways assets and infrastructure if suitable alternative arrangements cannot be agreed. SCC is in dialogue with the applicant on this matter but has provided in the appendix to REP6-050 the protective provisions it would seek to be included in Schedule 18 of the DCO if a satisfactory agreed position is not reached.	
(c) In the event that agreement is not reached with all Statutory Undertakers, whether the relevant tests for the exercise of powers pursuant to sections 127 and 138 PA2008 would be met.		
<b>Agenda Item 7 – Section 135 of the PA2008 – Crown Land</b>		

The Applicant to provide an update in relation to the position on Crown Land.		
<b>Other detailed points on or relating to the CAH1 agenda</b>		