



# The Sizewell C Project

## 9.75 Written Summaries of Oral Submissions made at Compulsory Acquisition Hearing 1 Part 2 (18 August 2021)

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SIZEWELL C PROJECT –  
WRITTEN SUMMARIES OF SZC CO.'S ORAL SUBMISSIONS  
AT COMPULSORY ACQUISITION HEARING 1 PART 2

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## 1 COMPULSORY ACQUISITION HEARING 1: PART 2

### 1.1 Introduction

1.1.1 This document contains the Applicant's written summaries of the oral submissions made at Compulsory Acquisition Hearing 1 (CAH1) Part 2 held on 18 August 2021.

1.1.2 In attendance at CAH1 Part 2 on behalf of the Applicant was:

- Hereward Phillpot QC of Francis Taylor Building (HPQC);
- Ian Cunliffe of Gateley Hamer (Land Programme Manager);
- Alan Lewis of AECOM (Technical Lead (Ecology));
- Jonathan Smith of Dalcour McLaren (Land Lead);
- Mr Alister Kratt of LDA Design (Landscape and Masterplan Lead);
- Richard Jones of Quod (Planning Manager (Main Development Site));
- John Davies of Ideachain Ltd. (Site Operations & Logistics Programme Lead);
- Nick Cottman of WSP (Technical Director, Transport Planning); and
- John Rhodes of Quod (Planning Manager (Strategic)).

1.1.3 Where further information was requested by the Examining Authority (ExA), this is contained separately in the Applicant's **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77).

### 1.2 Preliminary Points

1.2.1 The Applicant dealt with three preliminary points.

1.2.2 Firstly, there was discussion surrounding the acquisition of the Westleton Site. HPQC noted that the Westleton Site has been identified as being potentially required in relation to Marsh Harrier Compensation Habitat. HPQC noted that the Marsh Harrier habitat is referred to as temporary development in paragraph 4.2.6 of the **Statement of Reasons** [\[APP-062\]](#), but that this land is shown correctly on land plans as being for permanent acquisition. In summary, this is temporary development, but permanent freehold acquisition is proposed. HPQC explained that the reason for this

is the duration of the use; as the construction period is lengthy, it is considered more appropriate and proportionate to provide certainty by taking a permanent rather than a temporary interest. HPQC noted that where there is temporary possession for a long period of time, there is uncertainty as to period of occupation and quantum of payment. HPQC noted that the Applicant is in negotiations with the owner of the Westleton Site for acquisition of the rights by agreement. If that is agreed, this would be preferred over compulsory acquisition. Therefore, there is no discrepancy between the nature of the use and the form of the acquisition.

1.2.3 In response to a query from the ExA regarding whether this approach is consistent with other works or is a specific approach for the Marsh Harrier Habitat, HPQC noted that it is consistent with the approach taken for other works and gave the example of temporary rail works where the acquisition was proposed to be freehold. HPQC confirmed that a summary would be provided identifying other plots which are similarly treated which is contained in the Applicant's **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77).

1.2.4 Secondly, HPQC discussed how the Secretary of State is to make a decision as to whether a site should be included, whether the works proposed should form part of the Order and whether compulsory acquisition of land should be sought. HPQC said that a note would be provided which would identify where competing propositions are identified. HPQC noted that the Applicant's primary case is that the Westleton land is not required, but if it were required, then the Applicant's position is that there is a compelling reason for the acquisition of the Westleton land. HPQC noted that the question has been raised of what criteria should be used to determine if the additional compensatory habitat is required. HPQC noted that these points will be covered in the note, but summarised the key criteria by reference to footnote 3 of the **Statement of Reasons** [APP-062], **Appendix 7F of the Responses to the ExA's First Written Questions (ExQ1)** [REP2-110] and the **Shadow HRA Report Volume 4: Compensatory Measures** [APP-152]. The Applicant's documents refer to the criteria in paragraph A.7.5 of Annex A to NPS EN-6, and it was noted that the application of those criteria to the facts required the exercise of judgment based on the expert evidence that was before the examination. In response to a request from the ExA for the note to be provided before the Issue Specific Hearing on 27 August 2021, HPQC committed to provide the note as soon as possible and confirmed a copy would be sent to Mr Michael Horton at the same time as the ExA. *Post hearing note: the Applicant submitted this note on 23 August 2021* [AS-408].

1.2.5 Thirdly, HPQC noted that the best authority dealing with the relationship between the relevant parts of the human rights legislation and the

compelling case test, and establishing that there was no material difference between them for practical purposes is *Clays Lane Housing Co-operative Ltd. v. Housing Corporation* [2005] 1 WLR 2229 at 2236 and offered to provide a copy of this case. A copy of the report of this case is appended to the **Written Summaries of Oral Submissions made at CAH1 Part 1** (Doc Ref 9.74).

### 1.3 Agenda Item 9: Representations from parties who may be affected by the compulsory acquisition provisions in the draft DCO

- a) Affected Persons (APs) including additional APs who have notified a wish to make oral representations at this CAH:

#### *East Suffolk Council (ESC)*

- 1.3.1 In response to ESC noting that they did not have any points to highlight for the purposes of the CAH1 Part 2, HPQC confirmed that he did not have anything to add and noted that the issue in relation to the sports facilities was discussed at the Compulsory Acquisition Hearing 1, Part 1 (**Written Summaries of Oral Submissions made at CAH1 Part 1** (Doc Ref. 9.74)).

#### *Suffolk County Council (SCC)*

#### *Alde Valley Academy*

- 1.3.2 SCC raised concerns that if the Applicant were to exercise powers so the Academy could not use the facility, this would likely constitute a change of use and require consent from the Secretary of State under Section 77 of the School Standards and Framework Act 1998. In response, HPQC noted that this is an entirely theoretical point which will not arise as no change of use has been proposed of the kind described. HPQC noted that if this was an issue, it is something which is capable of being dealt with through drafting and negotiations. HPQC confirmed that an update on negotiations would be provided. This is included in the Applicants **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77)).

#### *Leiston recycling centre*

- 1.3.3 HPQC responded to SCC's concerns about Leiston recycling centre. HPQC noted that SCC had clarified that despite what had been said on its behalf at CAH1 Part 1 they are not in fact suggesting additional land should be included within the Order limits, but noted that it is not clear what SCC are seeking. HPQC noted that this issue is being resolved by negotiation and it is the Applicant's position that there is no need to relocate the facility. HPQC

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noted that the Applicant has been assisting with this issue by (i) making alterations to the road layout and entrance to ensure practical issues are addressed and (ii) facilitating discussions with the Freeholder to regularise SCC's current tenuous position as occupier.

1.3.4 Mr Cunliffe provided an update on the status of the negotiations. He noted that there have been a series of meetings where a design has been agreed with SCC to ensure that facilities can be accessed. Mr Cunliffe noted that at a meeting on 27 July, a three point approach was agreed to ensure that operations can continue from the site. Firstly, an agreement is to be entered into to regularise the occupation of land. Secondly, an interface agreement is to be negotiated to ensure the site remains operational and continues to operate during the construction period. Thirdly, a form of long interest is to be entered into and the revised interest would reflect the new area accommodating the new access and parking. In terms of the progress of these points, Mr Cunliffe noted that the tenancy has not been advanced further, but that the Applicant is acting as facilitator and is engaging with the parties to ensure that progress is made.

1.3.5 HPQC noted that further information could be provided on the highway position in **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77).

*Sally Watts on behalf of Ms Dyball, Ms Hall and SR Whitwell & Co*

1.3.6 In response to Ms Watts' questions about why the fen meadow land is required for mitigation, HPQC noted that the site is proposed in order to meet the impacts of the proposed development in response to Natural England's advice as to the quantum of replacement habitat that ought to be provided. HPQC noted that the Secretary of State is not obliged to accept Natural England's position, but the Applicant is acting prudently by seeking to ensure that the necessary habitat can be delivered if the Secretary of State does agree with Natural England's approach. In those circumstances the approach adopted is reasonable and proportionate. HPQC noted that the Applicant has explained in some detail in writing why it selected the site and the process followed to narrow down areas within the site which are proposed to be acquired [\[REP4-007\]](#) [\[APP-258\]](#).

1.3.7 Mr Lewis confirmed that a note would be provided on Natural England's requirement for the multiplier in the **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77). Mr Lewis noted that he has asked Natural England to provide an updated position on quantum and would see if they are prepared to make a statement ahead of Issue Specific Hearings. *Post Hearing Note – Natural England commented by email on 18 August that it would not be able to make a further statement.*

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*Natural England stated the following: 'We have already clearly outlined the justification for the 9x multiplier for Fen Meadow in our responses in our Stage 4 Consultation (2019), our Relevant Reps (2020), Written Reps (2021) and in our Oral Summary of the ISH7 (2021), please feel free to refer to any of these in your own responses, obviously if the examiner asks us directly to produce something additional on this then we will.'*

- 1.3.8 Mr Lewis noted that the **Fen Meadow Plan** [\[REP6-026\]](#) and the previous Fen Meadow Strategy details why land is needed. In relation to wet woodlands, Mr Lewis noted that the Wet Woodland Strategy notes that wherever possible, woodland is co-located with fen meadow. Mr Lewis noted that co-location is not possible at the development site as there is no location where compensatory wet woodlands could be combined with existing fen meadow habitats. In response to Ms Watts' concerns about the impact on existing wildlife, Mr Lewis noted that the habitats for wildlife would be improved at all of these sites. Mr Lewis explained there will not be extended disruption or long lasting effects on existing wildlife during the limited period of initial excavation works. In response to questions from the ExA about any impact or increased competition for existing wildlife, Mr Lewis confirmed that there should not be increased competition and noted this would be addressed in the note provided in the **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77).
- 1.3.9 Mr Smith responded to questions of engagement with the affected party and noted that the Applicant has been engaging with the affected party since September 2020. Mr Smith noted that following engagement the affected party had requested more detail on the fen meadow establishment and management to understand the impact on the owner and occupier and wanted to retain ownership. Mr Smith noted that at a meeting the previous week this further detail was supplied by Mr Lewis together with the information included in the **Fen Meadow Plan** [\[REP6-026\]](#). Areas and stocking densities were also discussed at the meeting, but he was not aware of the dramatic decrease of livestock on the holding mentioned by Miss Watts, but that the livelihood and income stream would be protected by the proposed terms being negotiated in any case. Mr Smith confirmed that the Applicant would work with the affected party to see how to mitigate any impacts. Mr Smith confirmed that under heads of terms proposed, there would be an option to lease for the establishment of the fen meadow and the freehold would be retained by the affected party.
- 1.3.10 HPQC noted that once the Application had been changed so as to reflect the reduction in the area proposed to be subject to compulsory acquisition, there would be procedural issues to be addressed if the Applicant later wanted to increase the land to be acquired. HPQC noted that no guarantee could be provided, but confirmed that the plans to be substituted reflect his



understanding of the Applicant's position. HPQC stated that he hoped that formal submission of the substitute plans would provide the landowners with further comfort as to the proposed reduction in land take.

- 1.3.11 In response to questions about compulsory acquisition of a lease, HPQC noted that it was not possible to create a leasehold interest by compulsion, and that temporary possession or the creation of rights or restrictions over land were therefore the alternatives to acquisition of the freehold. Therefore any creation of a leasehold interest would be a matter to be dealt with by private negotiation.

*Simon Mellen – not present at hearing, no representations made*

*Michael Horton on behalf of Ward Farming, NJ Bacon Farms, and AW Bacon Will Trust*

- 1.3.12 Mr Horton noted his client's objection to the permanent acquisition of the Westleton site for the Marsh Harrier land and proposed an alternative site at Theberton. In response, HPQC noted that the context for the Westleton Site is that the objector has agreed to purchase the land and completion is due at the end of the month. HPQC noted that the objector intends to purchase the land for commercial use in full knowledge of the proposal for use by the Applicant and with knowledge of the proposed use of compulsory acquisition powers in relation to the land. The objector, presumably in receipt of advice, has evidently formed the view that notwithstanding the risk of imminent compulsory acquisition it is nevertheless content to proceed with its own acquisition of the land for commercial purposes. HPQC noted it is reasonable to infer that the impact of the proposed compulsory acquisition on the soon-to-be owner's private interests has been judged by them to be capable of being adequately offset using compensation from the compensation code or otherwise.

- 1.3.13 In terms of the alternative site, HPQC noted that this has only been put forward by the objector very recently. HPQC noted that the objector's criteria for and evidence of suggested suitability (introduced for the first time orally and in summary form at the CAH1 itself) is to be submitted at Deadline 7, and the Applicant will be able to consider the objector's suggested site-suitability criteria and suitability of the site then.

- 1.3.14 In terms of the approach to the alternative, HPQC made general comments about how the ExA should consider the alternative as and when it was in receipt of the objector's written case in support of it. HPQC noted that the consideration of alternative sites does not occur in a vacuum and must be considered in light of three things: 1) relevant legal principles, 2) by



reference to relevant policy and guidance, and 3) by reference to the factual context.

1.3.15 HPQC confirmed that the first point and the relevant authorities would be covered in the post hearing summary of oral submissions. HPQC summarised the principles involved and noted the need to have regard to all elements of public interest engaged, including delay:

- a) Firstly, HPQC submitted that the use of compulsory powers can be justified to secure a better outcome in the public interest than could be achieved by an alternative scheme or site put forward by an objector which wouldn't require compulsory acquisition. It is not enough for an objector merely to establish that there is an alternative that may also be suitable, and instead it is necessary to look at whether the potential alternative would produce a better outcome having regard to the public interest (see e.g. *Bexley LBC v. SSETR* [2001] EWHC Admin. 323 at paragraph 44).
- b) Secondly, HPQC submitted that the creation of delay and uncertainty is in itself a material consideration when considering the relative merits of an alternative proposal as part of the public interest balance (see e.g. *R v. Secretary of State for Transport, ex parte De Rothschild* (1989) 1 All ER 933 at 939a-d).
- c) Thirdly, HPQC submitted that compulsory acquisition does not have to represent the option which is the least intrusive of landowners' rights (*Hall* [2008] JPL 63, *Pascoe v. First Secretary of State* [2007] 1 WLR 885 at paragraphs 68 to 75).

1.3.16 Therefore, a consideration of the relative merits of an alternative and its implications for the application of the compelling case test must have regard to all material considerations which are relevant to the public interest in this context, including delay and the ability to secure the delivery of the same public interest benefits in the same timeframe and with the same level of certainty.

1.3.17 HPQC then made submissions in relation to the relevant policy and guidance:

- a) The compulsory acquisition guidance at paragraph 15 explains that in practice there is likely to be some overlap between the factors that the Secretary of State must have regard to when considering whether to grant development consent, and the factors that must be taken into account when considering whether to authorise any proposed compulsory acquisition of land. That was the case here, and the NPS policy guidance in relation to the urgency of the need, importance of

early delivery and the approach to the consideration of alternatives in that context was a material consideration.

- b) NPS EN-1 paragraph 4.4.3 sets out certain principles that should guide decision-making where there is a policy or legal requirement to consider alternatives. The reason given for the adoption of these principles is *'the level and urgency of the need for new energy infrastructure'*. HPQC referred to two particular principles in the list at paragraph 4.4.3. Firstly, the second principle is that the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development. HPQC noted that when considering the alternative recently identified by the objector here, and its relative merits, it is also necessary to consider whether the adoption of the alternative would have implications for the timing and certainty of the delivery of the new nuclear power station – a very important public interest objective. HPQC also highlighted the final principle which notes that alternatives should wherever possible be identified before an application is made to the IPC to allow for appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant. Therefore, where an alternative is put forward by third party, the IPC may place the onus on the person proposing the alternative to provide evidence of its suitability as such. This principle is also relevant in terms of the timing of the objector's suggestion of this possible alternative. The practical implications associated with late identification of an alternative were important, going to the likely delay and uncertainty that would be associated with its adoption.

**1.3.18** HPQC then made the following submissions as to the factual context:

- a) The land at Westleton is put forward on the basis that it is needed to satisfy the requirements of the Habitats Regulations. Those Regulations set a stringent test, and confidence is required for the suitability and delivery of any compensatory habitat. Any application to the Planning Inspectorate to change the scheme so as to provide compensatory habitat on a new site, rather than using the Westleton site, would require an update to the Environmental Impact Assessment, the Habitats Regulation Assessment, further consultation and engagement with interested parties (such as Natural England and RSPB) and time would be needed in order to go through all of those steps before deciding whether such an application should be made. HPQC noted that careful consideration would need to be

given as to whether that is all that likely to be achievable without giving rise to significant delay.

- b) HPQC noted that in principle it could be that an alternative site is superior in a number of relevant respects, but that this may not be sufficient to justify refusing to grant powers of compulsory acquisition of the subject land if in fact, it would give rise to significant delay, a matter of public interest importance in this case.
- c) As noted already, the objector is content to buy the Westleton site for commercial purposes notwithstanding its knowledge of the risk that the site is to be compulsorily acquired. It must have formed the commercial judgment that the potential impact on its private interests is acceptable having regard to the availability of compensation under the compensation code. In those circumstances, this is clearly not a situation where the 'relative' impact on the soon-to-be landowner's private interests is likely to be determinative when striking the balance between any such impact and the powerful public interest benefits associated with the proposed acquisition of the subject site.

1.3.19 HPQC confirmed that the Applicant would come back to Mr Horton regarding the nature of the acquisition of the Westleton site, having heard his clients' views as to their preference regarding freehold acquisition or a long period of temporary possession of the site. The ExA would also be informed of the outcome of that consideration.

1.3.20 In response to questions about the landscape mitigation at Therberton Hall and how the compensation code would apply, HPQC submitted that the application of the compensation code is not a matter for the ExA to concern itself with and instead is a matter for working out in due course.

1.3.21 Finally, in relation to the Bacon Settlement, HPQC confirmed the Applicant would respond to questions about the link between the B1122/B1125 roads in writing in the **Written Submissions Responding to Actions Arising from CAH1 Part 2** (Doc Ref. 9.77).

1.3.22 Mr Lewis explained that the criteria used to select the Marsh Harrier site are set out in **Appendix B** of [REP6-002](#). Mr Lewis summarised the criteria. The first criteria is that the site is not designated for existing ecological value on a statutory or non-statutory basis or forming part of the RSPB Minsmere. Mr Lewis noted that sites covered by environmental stewardship schemes were excluded, and that the alternative site suggested is covered by a stewardship scheme. Mr Lewis also noted the other criteria were proximity to Minsmere reedbeds, preference for arable areas, preference for a single contiguous site rather than fragmented land, preference to avoid footpaths

and rights of way and preference for existing hedgerows, ditches and a varied topography. Mr Lewis noted that three sites were identified and Westleton was selected as it is the most contiguous, entirely arable and there were substantially fewer public rights of way than at least one of the alternatives.

*Michael Horton on behalf of David Grant*

- 1.3.23 In response to Mr Horton's and Mr Grant's comments about the Applicant's engagement, HPQC confirmed that a note would be provided setting out a schedule of the Applicant's engagement with affected parties which is contained in the Applicant's **Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing Part 1** (Doc Ref. 9.76).
- 1.3.24 Mr Smith summarised engagement with the affected party. He noted that there have been a number of meetings and he has been working closely with Mr Horton which will be set out in the detailed schedule of engagement with the landowner. In response to Mr Horton's and Mr Grant's comments about the underpass, Mr Smith noted that this is a complex issue and there a number of planning and drainage considerations which mean that it is not easy to provide an underpass with better height clearance. Mr Smith confirmed that the Applicant has provided a plan of the underpass which shows that height clearance would be restricted to 2.8 metres and therefore larger vehicles would need to use the road network. Mr Smith noted that the Applicant has also looked at the provision of a water tank for spray water as part of mitigation of the severance and was waiting for further detail in relation to the water tank from the affected party. Mr Smith confirmed that it was his understanding that Mr Grant was discussing the benefit of the 2.8 metre underpass with his Farm Contractor and advisors. Mr Smith noted that if the underpass is not in place, the fields can be accessed using the SLR and the existing road network and explained the different travelling distances the proposals would lead to. Mr Smith confirmed that meetings are being arranged in next couple of weeks to look at the proposed underpass and landscape mitigation and that where issues cannot be resolved, the signed heads of terms allow for the compensation code to be used. Mr Smith noted it has never been stated that the heads of terms, which were signed on 30 April, restrict the compensation code from being used.
- 1.3.25 Mr Kratt responded to points relating to landscape mitigation. He noted that one of the landscape team met with the Grant estate and following this meeting they had been instructed to explore provision of additional screening measures with the engineering team. Mr Kratt confirmed that matters are in progress.



- 1.3.26 HPQC concluded that the Applicant is seeking to achieve what they can with the accommodation works to mitigate and reduce the impact on the landowner. In response to a question from Mr Horton about when landscaping proposals will be received, HPQC confirmed that a date will be provided to Mr Horton. *Post Hearing Note: the Applicant confirms that this information was provided orally on 20 August and in writing on 24 August.*

*Michael Horton on behalf of Justin Dowley and Emma Dowley*

- 1.3.27 Mr Smith summarised the engagement between the Applicant and the affected party. He noted that the Applicant has been engaging with the affected party since June 2019. Mr Smith confirmed that terms for the land required for the scheme had been put to the affected party on the same basis as the other landowners. Mr Smith confirmed his personal involvement commenced at the start of this year and he has had a number of discussions, telephone calls and meetings with Mr Horton and the affected party. Mr Smith confirmed that the full detail of the engagement, including meetings, would be set out in a detailed schedule to be provided after the hearing which is contained in the Applicant's **Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing Part 2** (Doc Ref. 9.77). Mr Smith noted that some progress has been made towards reducing the impact on the affected party and that the Applicant continues to work with Mr Horton, and is currently awaiting detail of a proposal from the affected party.

Theberton

- 1.3.28 Mr Kratt firstly dealt with Theberton House. Firstly, Mr Kratt confirmed that the documents of relevance would be listed in the hearing note and that he had prepared measurements to support an explanation of various matters for the examination and that this information on would also be provided.
- 1.3.29 The following existing documentation is of relevance to support the examination with reference to lighting effects, loss of vegetation and borrow pit location. The information lies in two primary areas – for SLR matters in the LVIA associated with SLR and for the site access roundabout in the LVIA associated with the MDS:

- a) SLR – Environmental Statement (ES) Volume 6, Chapter 6 LVIA [[APP-457](#)];
- b) SLR – First ES Addendum Volume 1, Chapter 6 LVIA [[AS-185](#)];
- c) MDS ES Volume 2, Chapter 13 LVIA [APP-216] and Appendix 13B [[APP-218](#) and [APP-219](#)];
- d) MDS ES Volume 2, Appendix 2B Lighting Management Plan [[APP-182](#)];
- e) Technical Note on 'Indicative Lighting Modelling' [[REP3-057](#)];
- f) MDS Chapter 3 Description of Construction Appendix 3A- 3D - June [[REP3-015](#)];
- g) Main Development Site Highways Works Proposed General Arrangement Sheet 1 of 9 [[REP5-013](#)];
- h) Main Development Site Main Site Access Roundabout Proposed Lighting Plan Sheet 3 of 22 [[REP5-014](#)];
- i) Sizewell Link Road Site Clearance Plan Sheet 4 of 4 [[AS-138](#)]; and
- j) Landscape proposals for the proposed roundabout Design and Access Statement Figure 8.19 [[REP5- 073](#)].

1.3.30 Additional measurements and context to inform understanding are provided on the following drawings as **Appendix A** of the **Written Submissions Responding to Actions Arising From Compulsory Acquisition Hearing Part 2** (Doc Ref. 9.77).

- a) Figure 1 and 2: Plans of the proposed B1122 access roundabout (Construction phase 5 arm) overlayed on an aerial photograph: one showing the immediate context of the roundabout and another showing the location of Theberton House and the character of the intervening landscape, vegetation and distance measurement.
- b) Figure 3: A context plan illustrating the proposed Parameter Plan overlayed on an aerial photograph of the area (along with existing contours), to support understanding of the location of elements in the construction phase in relation to views from Theberton House, Potters

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Farm and Eastbridge Farm including annotations and distance measurements.

- c) Figure 4: A cross section illustrating the distance, visibility and nature of elements in views from Theberton House. Figure 5: A cross section illustrating the distance and nature of elements between Potters Farm and the construction site

- 1.3.31 In relation to the Theberton/B1122 roundabout, Mr Kratt noted that the Main Development Site highway works proposal incorporates the B1122 roundabout and the document reference for this is [REP5-013](#). Mr Kratt noted that there is a lighting plan which is associated with that within document [REP5-014](#). In response to vegetation loss, Mr Kratt noted that the plan referred to in [REP5-013](#) illustrates the vegetation loss associated with the roundabout. He noted that this is a limited area and does not fundamentally impact the integrity of the tree cover (Greenhouse Plantation) of the estate in this area. In terms of the extent of visibility and consideration of distance of main house at approximately 660m to the roundabout, the roundabout is screened from the house by existing tree cover which is from 12 to 20 metres high. Mr Kratt confirmed that the lighting column heights at the roundabout are proposed to be 10 metres and, therefore, tree cover will not be topped by lighting columns.
- 1.3.32 Mr Kratt referred to **Appendix 13B of the Landscape and Visual Impact Assessment** [\[APP-218\]](#) which records the night time effects of lighting during the construction and operational phases.
- 1.3.33 Mr Kratt confirmed the baseline lighting position noting that the area in the vicinity of Theberton House is a relatively dark sky as illustrated in **Volume 2, Figure 13B.2 of the MDS Night-time Appraisal at Appendix 13B to the Environmental Statement** [\[APP-218\]](#). He noted that he considered this to be of Community Value and characterised by an unlit environment as outlined in the **MDS Night-time Appraisal methodology at Appendix 13B para 1.3.4 – 1.3.6**.
- 1.3.34 Mr Kratt confirmed that Theberton House is covered by Receptor Group 10. Mr Kratt referred to the **Technical Note on Indicative Lighting Modelling** [\[REP3-057\]](#) and noted that this provides an indicative spread of light emitted from the roundabout lighting fall rapidly from 10 lux where light focuses on the immediate roundabout, to 0.1 lux at the edge of the existing woodland. Mr Kratt also referred to the design notes on lighting plan document [\[REP5-014\]](#) where full cut of LED lanterns are proposed on the roundabout column lights to limit upward spread of light.

- 1.3.35 Mr Kratt confirmed that the assessment of lighting effects of the proposed B1122 Site Access roundabout is provided in the **MDS Night-time Appraisal at LVIA Volume 2, Appendix 13B to the Environmental Statement** [APP-218]. In summary:
- a) Theberton House lies in Receptor Group 10 and paragraphs 1.6.77 – 81 set out the night-time effects. Mr Kratt confirmed that the worst case scenario effect on individual receptors forms the basis of the Group Receptor judgment recorded as follows:
    - i. Construct-on - Moderate significant and adverse; and
    - ii. Operation – Moderate significant and adverse.
  - b) Mr Kratt confirmed that the written assessment is supported by existing night-time photography and a visualisation of the proposed lighting at the roundabout and referenced the following figures:
    - i. Existing view of access roundabout area shown on representative Viewpoint 8 – Fig 13B.4.04; and
    - ii. Modelled view of access roundabout shown on representative viewpoint 8 - Fig 13B.5.08 and 9 which demonstrates the character of light.
- 1.3.36 In relation to tree loss and the Sizewell Link Road, Mr Kratt noted this is illustrated in the **ES Addendum** [AS-198]. Mr Kratt noted that in looking at alignment, the Applicant sought to minimise the extent of tree loss along the existing B1122 adjoining Theberton House. Mr Kratt noted that the worst case scenario is approximately 16m of loss of tree cover within a 32m wide belt. The extent of vegetation loss to Browns Plantation/ Fishpond Grove which edges the Theberton House land, is indicated in **Volume 2, Figures 6.2.1, Fig 6.2.8 and 6.2.12 of the ES Addendum** [AS-198] and is limited to what is required to allow for the tie in of the new road to the existing including drainage. Mr Kratt noted that woodland is currently being surveyed and that there is significant tree belt remaining. Mr Kratt noted that the ES Addendum Fig 6.2.12 illustrates an area of retained and enhanced planting. Mr Kratt indicated that ongoing design refinement was in progress as part of detailed design with a view to reducing tree loss.
- 1.3.37 Post hearing note: subsequent to giving evidence on this matter Mr Kratt confirms that an additional drawing [SZC-AD0310-WSP-SLRHGN-ZZ0000-DRS-HCN-301041 Rev PO2] was provided to the Dowley's land agent on 23 July illustrating a considerable reduction in land take and tree loss along the boundary comprising a narrow width of shrub understory/hedgerow



removal adjoining the road and some minor tree and shrub understory loss at the B1122 junction with Onner's Lane.

- 1.3.38 Finally, in relation to the borrow pits, the landscape and visual impact assessment records the construction phase effects. The daytime construction effects are recorded as Major to Major - Moderate, significant adverse for Group Receptor 10.
- 1.3.39 The views from the front elevation of the house are aligned broadly east with intervening garden and associated mature specimen trees, open grassland with maturing avenue/specimen trees backed by a tree belt (Greenhouse Plantation) of approximately 20m high with oblique views north deflected by trees within the estate and 18m high on the boundary.
- 1.3.40 Whilst the agreed methodology for the LVIA is not individual receptor based, reference to additional measurements confirms the distance from the dwelling to the Accommodation Campus is 650m and to the stockpile is 1.0km. Mr Kratt indicated that there is no view to proposed borrow pits from Theberton House and that any views to the southern area of the stockpile (at 1.0km distance) would be substantially deflected/screened by existing trees (including the Green House Plantation which is 20m high) and the Accommodation Campus.
- 1.3.41 The **Technical Note on 'Indicative Lighting Modelling' - Dwg 000041 [REP3-057]** indicates that the borrow pits and stockpiles have no lighting. Mr Kratt noted that mobile task lighting is identified in the **MDS Description of Construction Appendix 3A-3D [REP3-015]**. The task lighting would comprise lighting towers up a 8m high and may be used for specific operations and for the safety of operatives and would be controlled in accordance with Lighting Management Plan. Mr Kratt noted that the **Initial Statement of Common Ground with ESC/SCC [REP2-076]** notes that the **Lighting Management Plan** for the construction phase **[APP-182]** is appropriate to control lighting during the construction phase.

*Potter's Farm and Eastbridge Farm*

- 1.3.42 Mr Kratt referred to additional figures to support understanding comprising:
- Figure 3: A context plan illustrating the proposed Parameter Plan overlayed on an aerial photograph of the area (along with existing contours), to support understanding of the location of elements in the construction phase in relation to views from Theberton House, Potters Farm and Eastbridge Farm including annotations and distance measurements.

- Figure 5: A cross section illustrating the distance and nature of elements between Potters Farm and the construction site

- 1.3.43 Mr Kratt confirmed that both properties lie within Receptor Group 10. The effects are recorded in **ES Volume 2, Chapter 13 LVIA** [APP-216] including the **MDS Night-time Appraisal at Volume 2, Appendix 13B to the Environmental Statement** [APP-218]. Mr Kratt noted that day time effects are recorded as Major to Major to Moderate significant adverse, and night time as Major to Moderate significant adverse. The borrow pits lie to the north of the site and are closer to Potter's Farm and Eastbridge Farm than Theberton House. Mr Kratt confirmed that the borrow pits and stockpiles will not be lit, but lit by lighting towers as described for Theberton House and controlled by the Lighting Management Plan. Mr Kratt set out the distances of each property from the borrow pit and noted where the properties may have views of the borrow pits and stock piles.
- 1.3.44 Mr Kratt noted that the borrow pits are not 30m high as expressed in past written submissions by the Dowleys. The height of borrow pits in the northern portion of the construction area are 5m above ground level (Areas C6 to C8 - see the **Parameter Plan at Volume 2, Figure 2.2.2 of the first ES Addendum** [AS-190] - 20m AOD on 15m AOD existing ground level).
- 1.3.45 Mr Kratt sought to provide clarity on distances between the dwellings and the borrow pits, which were not accurately reported in written representations. The borrow pits are located approximately 300m from Potters Farm dwellings (borrow pit C8 - see the **Parameter Plan at Volume 2, Figure 2.2.2 of the first ES Addendum** [AS-190]) and approximately 400m from Eastbridge Farm dwelling (C7 see the **Parameter Plan at Volume 2, Figure 2.2.2 of the first ES Addendum** [AS-190]).
- 1.3.46 The height of the stockpile C5 at its highest point is 35m (**Parameters Plan Area C5** [AS-190]) and is approximately 430m distant from Potter's Farm dwelling (not visible) and approximately 780m from Eastbridge Farm dwelling (possibly obliquely visible).
- 1.3.47 Mr Kratt noted that he did not think the house or garden of Potter's Farm had views to these features due to orientation and screening and that Eastbridge Farm may have oblique views to the borrow pits with intervening hedgerow/tree cover providing screening.
- 1.3.48 In relation to advance planting, Mr Kratt noted that some advanced planting has already been undertaken on EDF land to support future screening of the borrow pits and planting associated with the boundaries of the borrow pits which currently lie within the control of EDF is ongoing. Mr Kratt noted

that boundary planting on the north and west boundary of borrow pit C7 would be undertaken early in the project following securing land control.

- 1.3.49 In relation to the ExA's question about whether advance planting is to be secured in the DCO, HPQC confirmed that an answer will be provided at Deadline 7 and is contained in the Applicant's **Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing Part 2** (Doc Ref. 9.77).
- 1.3.50 HPQC confirmed that in relation to the listed properties on the Dowley's land, a summary of the position on this will be provided at Deadline 7 and is contained in the Applicant's **Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing Part 2** (Doc Ref. 9.77). Mr Jones discussed the need and location for the main site access roundabout. Mr Jones noted that since the inception of the project, the need for two accesses has been known and well established. In response to Mr Horton's point regarding reducing the number of arms of the roundabout from five arms to four, Mr Jones noted that this would only result in a difference in the size of the roundabout of about 10–15m.
- 1.3.51 Mr Davies noted that there are three principle reasons for need for a fifth arm to the roundabout. The first reason is safety – the Applicant has learnt from Hinkley Point C that it is critical to have a separate access for pedestrians/buses and that for freight movements. This removes the risk of contact between HGVs and pedestrians. The second reason for the fifth arm relates to the capacity/vehicle flow/network impact. Having the fifth arm allows freight vehicles to be processed on the freight specific arm, separate to where bus arrivals are processed so there is no impact on the main highway. By integrating the arms, there would be a potential risk for the combination of freight vehicles and buses to queuing back onto A12 highway due to the quantum of vehicles needing to be processed. The fifth arm removes the risk of delays with processing freight vehicles through the same security checkpoint and is crucial from a capacity perspective. Resilience is also important with up to 350 incoming HGVs per day. The third reason for the fifth arm is as a contingency. In the event of a collision, vehicle breakdown or maintenance works, the other arm could be used to divert traffic to ensure vehicle flow in to the site continues. In response to the ExA's question of whether the contingency would be expected on a regular basis, Mr Davies noted that although collisions are not a regular occurrence, they can happen and having contingency is a sensible/practical precaution.
- 1.3.52 In relation to the question of borrow pits, Mr Jones noted that these have been subject to consultation since 2016. The overall need for the borrow pits lies on the benefits it brings in reducing the amount of material that

needs to be imported to backfill the deep excavation works on the main platform and to provide an onsite home for excavations. Mr Jones noted that the materials and locations have been carefully considered over a number of years and that alternative options were considered.

1.3.53 HPQC confirmed that the Applicant would clarify the position in relation to the difference in land take between the four as opposed to five arms of the roundabout in writing, and said that a plan may be provided and is contained in the Applicant's **Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing Part 2** (Doc Ref. 9.77).

1.3.54 In response to Mr Horton's question about the planning associated with the Theberton roundabout, Mr Kratt noted that the **Design and Access Statement** illustrates the planting proposals (figure 8.19, [REP5-073](#)). Mr Kratt noted that the proposal seeks to tie in a new hydro planting and hydro tree planting back into the corner of greenhouse plantation.

1.3.55 In response to Mr Horton's question about the loss of planting with the Sizewell Link Road, Mr Kratt referred to the **ES Addendum** [\[AS-138\]](#) and noted that this identified the area of planting to be removed, but also the area to be retained and enhanced.

*Michael Horton on behalf of the Boden family*

1.3.56 In response to Mr Horton's comments on engagement, Mr Smith noted that Heads of Terms were agreed on 30 April 2021 and noted that Mr Horton was first instructed in June 2021. Mr Smith noted that the Applicant continues to engage with Mr Horton and the affected party and a meeting was held the previous week. Mr Smith noted that a potential underpass is currently being investigated by the Applicant. Mr Smith noted that further meetings are planned to look at the accommodation works and landscape mitigation.

1.3.57 HPQC noted that active discussions are taking place about access issues and confirmed that the ExA would be kept informed about the access. HPQC noted that the proposals would not involve a change to the scheme, but the Applicant recognised the importance of minimising impacts where that is possible. HPQC noted that he is not aware that there are written representations on behalf of this particular objector but that the Applicant has engaged with Mr Horton and is seeking to mitigate impact.

1.3.58 In relation to landscape and visual impact, Mr Kratt confirmed that his colleague attended the site and is looking at further screening measures. Mr Kratt noted that the land taken in by redline is generous and he expects there to be opportunities to address the concerns raised. Mr Kratt confirmed



this is being considered at the moment and advised that timing for the publication of this information will be confirmed by the end of week. *Post hearing note: the Applicant has arranged a meeting on site with Mr Bowden on 2 September 2021 to discuss draft proposals for enhancements. These will be forwarded to Mr Bowden in advance of the meeting.*

*Nathaniel Bacon*

- 1.3.59 In response to the question of why the Applicant has not mentioned the taking of a lease instead of permanent acquisition, HPQC noted that the Applicant cannot compulsorily acquire a leasehold because this is not possible by means of compulsory acquisition. It is possible to take a temporary possession of land, to acquire rights over land or to acquire the freehold, but it is not possible to acquire a lease. This is why the option of compulsorily acquiring a lease has not been referred to.
- 1.3.60 In relation to the question of the alternative, HPQC noted that Mr Bacon did not cast any doubt on the factual position that he had outlined as to the circumstances and timing of the objector's intended acquisition of the site, or as to the timing of its identification of the suggested alternative site. HPQC noted that the practical and procedural points that he had identified, and their consequences in terms of delay and uncertainty were important matters with which the objector will need to grapple when considering the merits and implications of its recently suggested alternative.
- 1.3.61 In response to Mr Bacon's question regarding the connection between the B1125 and the Sizewell Link Road, Mr Cottman noted that the highway link is included within the scheme to minimise effect of traffic on the B1122. Without the 'B1125 link' to the Sizewell Link Road, significantly more traffic would travel through Theberton, eroding the mitigation benefits of the Sizewell Link Road for this community. Mr Cottman noted that the bypass of Theberton was introduced at Stage 3 consultation as described in [\[APP-450\]](#). In relation to the B1122 and B1125 Junction, Mr Cottman noted that a staggered form of junction is proposed, rather than a crossroads. Mr Cottman noted that the proposed staggered junction is safer. Mr Cottman noted that further work is ongoing in relation to mitigation along the B1125 as discussed at the Traffic and Transport hearings (ISH3) [\[REP5-108\]](#). Mr Cottman also noted that the ExA has asked a question in the second round (ExQ2 HW.2.1) about consideration for mitigation along the proposed transport corridor. The Applicant will provide a response to that question, including an update on proposals on the B1125 at Deadline 7.
- 1.3.62 In relation to timing of discussions, HPQC noted that consent to speak to the Bacons as a proposed new owner of the land was given to the Applicant's representatives on 20 May 2021 by the current owner. HPQC

noted that this was after the terms signed for the land owned by the Bacons, required for the Sizewell Link Road, had been signed by the Applicant and the Bacons. It was only after the Applicant was made aware of who the proposed new owner of the Westleton land was, and after consent to engage to with the proposed landowner from the existing landowner had been secured, that contact could be made with the Bacons.

1.3.63 In relation to the impact of the Sizewell Link Road on historic assets, Mr Kratt noted that this has been assessed in accordance with agreed EIA methodology. Mr Kratt noted that the Sizewell Link Road scheme is properly informed by this work. Mr Kratt noted that the route alignment, both its horizontal and its vertical alignment is an important part of route selection and route design and integration along with planting and earthwork proposals.

1.3.64 In relation to the question of why Route Z was selected over Route W, Mr Rhodes noted that this was discussed in the Compulsory Acquisition Hearing 1, Part 1. Mr Rhodes noted that the suitability of alternatives had been assessed five or six times, and it has been consistently concluded that Route W would have a greater impact in terms of landscape and other issues than routes which parallel or immediately bypass the B1122. Mr Rhodes noted that the Applicant will respond in writing on heritage and landscape grounds in the **Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing Part 2** (Doc Ref. 9.77). Route Z was the preferred route that emerged from reviews undertaken and was also the most relevant route for the Applicant to propose. Mr Rhodes noted that different routes could achieve different purposes and may have been supported by other parties for those reasons. However, the SLR is proposed as associated development to serve and support SZC and mitigate its effects. A route which parallels the B1122 provides a direct route to site but is also going to be the most effective means of bypassing the most affected communities of Middleton Moor and Theberton, whilst the design of the road with the Middleton link provides the opportunity to relieve traffic in Yoxford. Mr Rhodes concluded by noting that the Applicant's position is that there are significant benefits that flow from the Route Z selection compared to other routes.

1.3.65 In response to the question about how traffic will be discouraged from travelling down the B1125, Mr Cottman noted that a signage strategy has been developed. Yellow-backed construction phase signage will be placed at key locations, including Blythburgh on the A12, to encourage traffic to follow appropriate routes. Mr Cottman noted that HGV routes are fixed onto the A12 and will be tracked and monitored. Mr Cottman concluded that from the Applicant's modelling, the link from the B1125 onto Sizewell Link Road

does not make B1125 materially more attractive for Sizewell C or background traffic.

*Mr Richard Griffiths of Pinsent Masons on behalf of Magnox and the Nuclear Decommissioning Authority (NDA)*

- 1.3.66 HPQC confirmed that his understanding of the Applicant's position as to what should be avoided so as to protect the position of Magnox and the NDA is consistent with the essential substance of what was being said on their behalf by Mr Griffiths. The difference was simply that the Applicant considered that the concerns Mr Griffiths had identified in respect of the first group of land parcels could be addressed satisfactorily by means of protective provisions and did not require the removal of those parcels of land from the Book of Reference. In terms of agreeing the protective provisions, HPQC noted that good progress has been made and there is no reason to believe they will not be agreed. The Applicant's view is that once those protective provisions are in place, then all of the concerns that are raised by Magnox and the NDA will effectively be addressed by them.
- 1.3.67 HPQC noted that the ExA does not currently have the draft protective provisions and therefore there was a limit to which it was helpful to articulate and examine the differences as to their implications for Magnox/NDA's interests in this hearing. He did not therefore intend to address those matters in detail now. This could more effectively be done in writing once the ExA had been given the protective provisions and could understand the issues in the light of what they said.
- 1.3.68 By way of overview, HPQC noted that protections are currently built into the DCO through Article 26 to protect Magnox and the NDA so interests in land cannot be acquired without their consent. HPQC noted that any other interests which might exist in the land would be cleansed effectively from the title. HPQC submitted that it is not the Applicant's intention that the order will take or purport to take the interests of Magnox and the NDA, and the Applicant expects that the protective provisions can actively overcome the need for this element of Article 26. Nevertheless, if there is a good case for its retention even with the protective provisions in place, the drafting can be amended to reflect the existence of the protective provisions as needed. Provided that it is clear that the DCO does not authorise interference with the interests of Magnox and the NDA, the Applicant does not consider that there is any in principle reason why those interests should not be identified in the book of reference. Subject to the protective provisions and (if needed) the relevant parts of Article 26, the Applicant does not consider there is any legal basis for saying that section 151(a) of the Planning Act is infringed. If Magnox and the NDA are safeguarded by Article 26 and/or the protective provisions, control would remain with Magnox and the NDA and the

acquisition of land would be by negotiation. It was not clear which provision or provisions of the Nuclear Installations Act 1965 were said to be excluded or modified by the DCO in those circumstances, or exactly how the DCO was said to have that effect. HPQC noted that negotiations are taking place between Sizewell B and Magnox to seek to acquire the land.

1.3.69 In summary, HPQC noted that the Applicant does not accept that there should be an in principle reason for objecting to the inclusion of Plots [MDS/05/06 and MDS/05/07 provided that there is appropriate protection on the face of the order that ensures that there is no interference with the proper interests of Magnox and the NDA.

1.3.70 HPQC noted that all other matters raised by Mr Griffiths are all within the scope of the protective provisions and that the appropriate thing to do is to let the discussion continue and then, so far as any differences might remain, deal with this by written exchange.

1.3.71 In response to the point raised by Mr Griffiths about whether there is a compelling case for the inclusion of Plots [MDS/05/06 and MDS/05/07], HPQC discussed the regular and conventional use of compulsory acquisition where there is a voluntary agreement in order to ensure that no unanticipated interests in the land arise at a later date to frustrate the project. HPQC suggested that there is no in principle difficulty with establishing a compelling case to avoid this outcome, bearing in mind the implications of the potential frustration of the implementation of the works if that eventuality were to arise.

1.3.72 HPQC noted Mr Griffiths reference to there being a compelling case for ensuring there is no interference with the decommissioning, but pointed out that that this would not be affected provided appropriate protections are clear on the face of the Order.

b) Any section 102 or Category 31 persons wishing to make oral representations

1.3.73 No oral representations were made.

## 1.4 Agenda Item 10: Representations from Statutory Undertakers

1.4.1 Network Rail did not attend the hearing, no representations made.