The Sizewell C Project

9.103 Written Summaries of Oral Submissions made at Issue Specific Hearing 14: DCO, DoO and allied documents (17 September 2021)

Revision:	1.0
Applicable Regulation:	Regulation 5(2)(q)
PINS Reference Number:	EN010012

September 2021

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

SizewellC
Doing the power of good for Britain
EDF CGN

CONTENTS

1 ISSUE SPECIFIC HEARING 14: DEVELOPMENT CONSENT ORDER, DEED OF OBLIGATION AND ALLIED DOCUMENTS

1.1 Introduction

1.1.1 This document contains the Applicant's written summaries of the oral submissions made at Issue Specific Hearing 14 (ISH14) on the Development Consent Order, Deed of Obligation and allied documents, held on 17 September 2021.

1.1.2 In attendance at ISH14 on behalf of the Applicant was:

- Hereward Phillpot QC of Francis Taylor Building (Counsel) ('HPQC');
- John Rhodes of Quod (Planning Manager (Strategic));
- Matthew Sharpe of Quod (Planning Manager (Development Consent Order);
- Mike Humphrey of Quod (Socio-economic Specialist).

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 ISH14** (Doc Ref. 9.107).

1.2 Agenda Item 2: Implications for the content and drafting of the DCO of points raised on the letter of 3 September 2021 from Walker Morris on behalf of Northumbrian Water

1.2.1 HPQC first dealt with the points raised by the Councils. It was explained that Suffolk County Council's point regarding the absence of any legal commitment to delivery of the desalination plant would be best addressed together with the *'reasonable endeavours'* issue at agenda item 8 because it was connected to the general question of delivery of individual items of associated development. In principle, however, no difficulty was thought to arise because the Applicant intends to deliver the desalination plant. Whilst it would be necessary to take instructions on East Suffolk Council's (ESC) request for notice to be given in advance of the location and relocation of the desalination plant, this was an issue that could be picked up and discussed outside the examination.

1.2.2 HPQC confirmed that questions as to the environmental impacts of the proposed desalination plant will be picked up at ISH15.

1.2.3 In response to submissions made by Mr. Keene QC on behalf of NWL, HPQC submitted that there had been very positive and constructive engagement between the parties to seek to reach an agreement on the question that is raised by this agenda item. In view of the position that has now been reached, it was not necessary to spend time in oral submissions to explain why the Applicant does not consider that a Grampian would be appropriate.

1.2.4 HPQC summarised the proposed mechanism that has been put forward by the Applicant to address the concern NWL had expressed about the implications of its duty to provide a domestic supply pursuant to s.41 of the Water Industry Act 1991 (WIA 1991). He explained that there are two main elements in the draft protective provisions, and that they were interdependent.

1.2.5 The first element is a prohibition on SZC Co. from serving notice under s.41 in relation to the proposed development without NWL's consent, and withdrawal of any existing notice served prior to the coming into force of the Development Consent Order (DCO).

1.2.6 The second element is that, subject to the Environment Agency's written confirmation of the relevant quantum of sustainable potable resource being available from NWL's licenced abstraction point at Barsham and/or other relevant water resources, and completion of NWL's WINEP process, NWL will, subject to the terms of any agreement under s.55 or determination under s.56 of the WIA 1991, use its reasonable endeavours to supply SZC with an annual average of 2.2ml/d of potable water and 2.8ml/d peak demand as soon as possible, with the aim of ensuring this supply is available by no later than a particular date (the date is to be agreed).

1.2.7 The two elements were interdependent because the second provided the trigger for NWL to get on with the process of procuring a supply, which would otherwise have been the purpose of the s.41 request. In return for forgoing the right to be supplied under s.41 in relation to the domestic element of Sizewell C's need, NWL agreed to use its reasonable endeavours to address the operational quantum of need for potable water. The temporary desalination plant would provide potable supply during the construction period, allowing time for the process of confirming the longer term source(s) of supply and achieving connection.

1.2.8 The draft protective provision does not affect the Applicant's ability to make use of the s.55/s.56 process in relation to non-domestic supply, because such a request is subject to the caveats to the duty to meet the request in s.55(3), which are agreed to be adequate to protect NWL's position. HPQC explained that s. 55(3) did not operate so as to give NWL a veto on any

request for non-domestic supply, because disputes in respect of the application of those caveats in an individual case were subject to determination by OFWAT under s.56.

1.2.9 HPQC submitted that it was important to note that s.56(4) provides that in any such dispute it shall be for the water undertaker to show that it should not be required to comply with a request made to it for the purposes of s.55. That statutory imposition of the burden of proof on the water undertaker is consistent with the underlying strategic duty on water undertakers under s.37 WIA 1991 to ensure they have made arrangements *'for making supplies available to persons who demand them'*.

1.2.10 In conclusion, it was submitted that there is already a clear and comprehensive set of statutory provisions to resolve any differences in the event that SZC Co. and NWL do not reach agreement on any aspect of the s.55 request for the operational quantum of supply in due course.

1.2.11 HPQC confirmed that a Statement of Common Ground with NWL [REP2-066] will be produced which sets out where they are in terms of the factual position and in terms of what has been agreed in terms of the DCO and its implications.

1.2.12 In response to questions from the ExA, HPQC confirmed that: (a) the desalination plant would produce the water required to make concrete once it was operational; and (b) the quantum of water to which reference is made in the draft protective provisions is the quantum needed for the operational stage, including outages (the peak demand).

1.2.13 In response to questions about the implications of a shortfall in sustainable supply at the Barsham extraction point, HPQC stated that whilst the indications so far were encouraging, if the total quantum available from that source fell slightly short of what was needed it may be that another potable resource could make up the difference. The implications would depend in part on the extent of any shortfall and the options available for meeting it.

1.3 Agenda Item 3: (A) Articles 9, 9A and 9B of the dDCO and in particular the points made by Suffolk County Council in their response to the Examining Authority's commentary on the DCO [PD-038]

a) Whether it is right not to require the Secretary of State's consent to transfer of the DCO to a person holding a licence under s.3 of the

Nuclear Installations Act 1965 and if so whether it should be stated to be a licence to operate Sizewell C

b) Whether it is right to limit the enforceability of the Deed of Obligation to any person to whom the power to construct or operate Work No. 1A(a) to (h) has been transferred or granted under article 9

c) Should Art 9 state that the DoO is enforceable against the undertaker named in the DCO?

d) Whether there should be deeds of covenant by transferees in addition to the provisions of Art 9 as drafted in [REP7-006] (which is revision 8) (The ExA notes in passing that Art 9(2) refers to Work No. 1(a) to (h). Should this be Work No. 1A(a) to (h)?)

(B) The trust deed referred to during ISH12, item 2(iv)

1.3.1 All items were dealt with collectively.

1.3.2 HPQC first dealt with Mr Scott's concern about the implications of re-determination for the Deed of Obligation (DoO). It appeared that the issue related to the procedure following quashing of a decision to grant a DCO and was not relevant to the examination of this Application. On re-determination the decision was taken afresh.

Sub-item (a)

1.3.3 HPQC explained that the proposed drafting set out in Article 9 would exempt the need for the Secretary of State's consent where the transferee holds a nuclear site licence. A nuclear site licence must be held by a body corporate and is not '*transferable*' (section 3(1) of the Nuclear Installations Act 1965). Therefore, if SZC Co. wished to sell Sizewell C to another entity (i.e. transfer the asset), the new owner of the asset would need to have a nuclear site licence (in respect of the Sizewell C site specifically) granted by the Office of Nuclear Regulation under s. 1 of the Nuclear Installations Act 1965 in order to construct or operate the power station.

1.3.4 Given that the requirements for being granted a nuclear site licence are so stringent (for obvious good reasons), it is considered unnecessary for the Secretary of State's consent to be obtained separately for transfer of the DCO powers to such an entity. Nevertheless, this was ultimately a matter that the Secretary of State himself or herself would be best placed to judge. If the Secretary of State felt that there were issues that were relevant to transfer of the benefit of the DCO that went beyond those matters considered when granting a nuclear site licence under the Nuclear

Installations Act 1965, it would be straightforward for the exemption to be removed in the DCO when it was made in its final form.

Sub-item (b)

1.3.5 HPQC submitted that the answer to the question posed in this agenda item was 'Yes' – it is right to limit the enforceability of the Deed of Obligation to any person to whom the power to construct or operate Work No 1A(a) to (h) has been transferred or granted under Article 9.

1.3.6 As the Applicant had explained previously, this approach of only binding the entity with the power to construct and operate the nuclear power station is entirely appropriate and reflects the commercial and practical reality of the project. There is no practical or other purpose served by making the DoO enforceable against anyone else, and no party without the commercial benefit of operating the power station would ever agree to be bound. That element of the approach is not understood to be controversial with the Councils.

1.3.7 The approach that has been taken does not serve to limit the enforceability of the DoO. It simply provides a clear and elegant drafting mechanism to identify the party bound by all of the obligations.

1.3.8 That party will need to take appropriate steps to ensure that where it delegates implementation to any other party – by contractual means – it takes appropriate steps to protect its own interests, because it will remain liable for performance of all of the obligations. In that sense it is no different in principle to the way obligations work for any other big project, where contractors are engaged to undertake the works that have been approved.

1.3.9 The answer to the Councils' concerns about the '*main*' undertaker's ability to deliver the full suite of obligations was twofold. First, for the reasons set out above this was not a practical problem because the main undertaker would remain liable at all times unless it had completely divested itself of the benefit of the nuclear power station – at which point another undertaker would have become liable to perform those obligations. Second, and fundamentally, any transfer of the benefit would be subject to approval by the Secretary of State. No decision on full or partial transfer would be made by the Secretary of State without first consulting both Councils and taking account of any representations they may make. If the particular transfer being proposed gave rise to concerns about an inability of the main undertaker to meet some of the obligations in the DoO, the Councils would no doubt raise it and the Secretary of State would need to consider if those concerns were well-founded. The decision on whether this provision was appropriate or needed to be amended had to be made on the assumption

that both the Councils and the Secretary of State would perform their functions competently and properly, and that the Secretary of State would not fail to take account of any such material consideration. There was no evidence to call the application of that principle into question in this case. The Councils had shown themselves to be alert and aware of enforceability issues, and by the time any such transfer might be in contemplation they would have the benefit of experience in operating and if necessary enforcing the provisions of the DoO.

Sub-item (c)

1.3.10 HPQC confirmed that the Applicant's position was aligned with that of the Councils on this issue, and that there was no need for Article 9 to state that the DoO was enforceable against the undertaker named in the DCO.

1.3.11 The DoO is already enforceable against the undertaker as defined, because it is the legal entity that has entered into the DoO. The purpose of Article 9 is to govern transfer from the named undertaker to a third party, and not to deal with enforceability of the DoO more generally.

Sub-item (d)

1.3.12 HPQC submitted that there was no need for provision to be made for deeds of covenant by transferees in addition to the provisions of Article 9 as drafted in REP7-006.

1.3.13 The existence of a statutory instrument which makes explicit provision to transfer liability makes any deed of transfer otiose. It was also noted that SCC was now content that the additional drafting provided at Deadline 7 made further provision unnecessary.

1.3.14 HPQC set the context for the consideration of this item by noting that the application for the development of the Sizewell C nuclear power station was not a conventional TCPA 1990 planning application, or even a '*run of the mill*' nationally significant infrastructure project. It was an unusually large and complex project which was urgently needed and benefited from a site-specific NPS, and where much of the content of the DoO was concerned with addressing impacts in the first five years following implementation.

1.3.15 Against that background the question that arose was why it was thought to be necessary to impose a restriction on an application being made to the Secretary of State in the first five years. If the undertaker considered that there was a need to modify or discharge some element of the DoO in that first five year period, and the parties were unable to reach an agreement, it must be sensible and reasonable to enable the Secretary of State to resolve the dispute.

1.3.16 The public interest considerations that are reflected in the TCPA provisions can be adequately policed by the Secretary of State in determining any application. The Councils would be notified and consulted to ensure that any such points can be identified and explained. If in an individual case they weigh against making the change sought, that would be taken into account.

1.3.17 The decision on this point must be made on the assumption that the Councils and the Secretary of State would discharge their responsibilities properly, and that all material considerations would be taken into account. In short, the Secretary of State can safely trust that they would safeguard the public interest in such matters.

Item 3(B): The Trust Deed referred to during ISH12

1.3.18 HPQC explained that the Applicant had provided a first draft Environment Trust Deed to the Councils for comment, and that their comments are awaited.

1.3.19 What was proposed was a simple contract to be entered into by SZC Co. and the two Councils. This was a voluntary commitment made by the Applicant with a view to enhancing the natural environment in Suffolk. As ESC had put it, this was an example of corporate responsibility, but it was not something that was considered a material planning consideration that should be taken into account by the ExA or the Secretary of State.

1.3.20 The Applicant's view was that the purposes for which the funds were to be provided under the Environment Trust Deed went beyond what was necessary to mitigate the impact of the proposed development. The funds necessary for that purpose were contained in the DoO. Thus, the Applicant did not consider the Environment Trust Deed to be a material consideration and did not intend to submit it to the ExA. It would do so if asked, but if that happened it would be accompanied by a clear statement as to its non-materiality.

1.3.21 In response to SCC's stated position that it – unlike ESC – considered that the additional funds to be provided under the Environment Trust Deed were necessary, HPQC made the following points:

- In section 2 of the Explanatory Memorandum to the DoO [REP7-043] the Applicant had set out its understanding of the relevant legal and policy tests to be applied when determining whether a particular obligation was a material consideration, if so whether it was an obligatory material consideration, and the weight to be attached to it having regard to the NPS policy. So far as the Applicant was aware

no party had taken issue with that analysis to date, but if any party did wish to suggest any changes or refinements they should do so in order to assist the Examining Authority in its consideration of the issues.

- Applying the *Newbury* criteria (as explained in the Explanatory Memorandum at paragraphs 2.7 and following), the funds to be paid under the Environment Trust Deed would not be a material consideration because they are not fairly and reasonably related to the development.

- If SCC wished to persuade the Secretary of State to the contrary it would be necessary for it to demonstrate why the evidence showed those funds to be fairly and reasonably related to the development. For this to be given any weight in accordance with the NPS policy on obligations, SCC would also need to show that the funds were necessary to make the development acceptable in planning terms. That would require a consideration of what they would be spent on, and why that additional scale of expenditure was needed on top of the considerable sums which the Applicant was obliged to pay pursuant to the DoO.

1.3.22 ESC had clearly concluded that no additional sums were necessary, taking account of all of the evidence in the ES, the LIR and the response to the LIR.

1.4 Agenda Item 4: Parameter plans and Approved Plans – which take precedence? – Art 4 of the dDCO and Requirement 8

1.4.1 HPQC explained that Article 4 governs the Limits of Deviation (LoD) for all of the numbered works apart from 4B, 11 and 12, which are covered by 4(2). Its main purpose was not the securing of adherence to the parameter plans more generally, and this was achieved through the relevant requirements as had been explained in previous oral and written submissions.

1.4.2 The reason that it referred to both parameter plans and approved plans was to make clear the purpose and effect of any LoD shown on those plans.

1.4.3 HPQC drew attention to REP7-063, **Appendix K to Comments on Submissions from Earlier Deadlines: Compatibility Schedules**. Paragraph 1.1.2 explains that the schedules in Appendix A demonstrate that in all cases on the Main Development Site (MDS) where buildings and structures are applied for both in detail and in outline, the parameter height exceeds the height for which detailed approval is sought.

1.4.4 In addition to what has been submitted at Deadline 7, the Applicant has agreed with ESC that Schedule 7 (Approved Drawings) will be updated to ensure that the drawing list makes clear which work each drawing relates to.

1.4.5 Mr. Brock had queries relating to three separate Requirements:

- 1) Should the heading to Requirement 8 change? – HPQC confirmed that Requirement 8 deals with the construction parameters only (e.g. heights of cranes) and is correctly labelled.
- 2) HPQC explained that Requirement 11 deals with approved plans whereas Requirement 12 deals with reserved matters, however Requirement 11(2) would need to be referred to if an approved plan were to be changed, and any such alternative detailed plan would have to sit within the parameters identified.
- 3) HPQC explained that there are different categories of buildings across the MDS which are secured in different ways.

1.4.6 Mr. Sharpe gave a detailed explanation of these Requirements stating that there are three approaches to buildings within the MDS. He explained that Requirement 11 is where the Applicant has detailed design which is referred to in Requirement 11(1) and if the designs were to change this is covered in Requirement 11(2). In relation to those elements covered by Requirement 12 Mr. Sharpe explained that there is no detailed design for these elements at this stage, and therefore development consent is sought in 'outline' only. Requirement 13 deals with the balance of the buildings and other structures on the MDS, i.e. the ancillary structures and plant. Therefore, every structure, other building and item of plant is covered by the combination of Requirements 11,12 and 13.

1.4.7 Requirement 12A is concerned with the proposed sports facilities at Leiston, and requires details of the layout, scale and external appearance of those buildings and associated landscape works to be approved by ESC. Those details must be in general accordance with the 'Proposed Site Plan Leiston Leisure Centre Phase (PDB17-033-06-02-P1). This illustrative design has informed the Environmental Statement (set out in Figure 2.12, Volume 2, Chapter 2 of the Environmental Statement [APP-183] and then described in Section 2.9 of Volume 2, Chapter 2 of the Environmental Statement [APP-180]), which confirms that the proposals relate to a 3G pitch and two multi use games areas. The proposals do not include built development and therefore there is no need for a specified parameter plan in relation to that development. Mr. Sharpe confirmed that at Deadline 8 the Applicant will set out in the Written Submissions where sports facilities are

taken into account in the Environmental Statement. *[This is set out in the Applicant's **Written Submissions Responding to Actions Arising from ISH14** (Doc Ref. 9.107)].*

1.4.8 SCC explained that they had looked at Appendix K and that the text was very helpful, however, they would welcome further assistance in understanding some aspects of the schedules. HPQC confirmed that the Applicant was happy to discuss these points with SCC and seek to assist outside the examination.

1.4.9 Questions were raised regarding the Marsh Harrier compensation provision. HPQC explained that the existing works being undertaken to create Marsh Harrier compensation land within the Estate but outside the Order Limits do not constitute '*development*' for the purposes of the planning legislation and development control. They simply involve management of the land through planting etc. without any operational development or material change of use and do not require planning permission.

1.4.10 Management of this land is secured through the Estate Wide Management Plan (Requirement 5C) and the Marsh Harrier Implementation Plan (Requirement 14C).

1.4.11 The creation of the Marsh Harrier compensation land within the MDS is the subject of Work No. 1A(dd) in Schedule 1. Some aspects of this habitat creation may involve development (e.g. earthworks) but some aspects would not. This was not a barrier to the inclusion of the works in Schedule 1.

1.4.12 The creation of the Marsh Harrier Compensation land at Westleton (if needed) was Work No. 8 in Schedule 1.

1.4.13 Both the latter two works are secured by Requirement 14C.

1.4.14 HPQC further explained that the two reports identified in Requirement 14C (i.e. the Marsh Harrier Compensatory Habitat Report and the Marsh Harrier Habitat Report) were to be renamed and that Requirement 14C will be updated accordingly.

1.5 Agenda Item 5: Structure of Control Documents and Subsequent Approvals

a) To consider Appendix C to the Applicant's Response to the Examining Authority's commentary on the DCO [PD-038]

1.5.1 The ExA informed the Applicant that it would be publishing further questions on Monday, seeking a written response.

1.6 Agenda Item 8: Reasonable Endeavours

1.6.1 Agenda Item 8 was taken out of order at this point in the ISH.

1.6.2 HPQC referred to paragraph 2.15 of REP7-058, SZC Co's response to the DCO Commentary. That paragraph addressed the use of triggers and limits, responding to SCC's suggestion at Deadline 6 [REP6-049] about delivering key infrastructure by reference to construction phasing. This identified the type of controls that were to be considered, linking specific infrastructure to relevant phases of construction, and indicated an intention to discuss this with the Councils. At Deadline 7, SZC Co. had explained that adopting this approach was considered acceptable in principle, albeit not strictly necessary for the reasons canvassed extensively in oral and written submissions during the examination.

1.6.3 It was explained that the Applicant had been considering this further since submission of the Deadline 7 documents to determine if there is more that could be done to address the ExA's concerns as to the level of certainty with which the delivery of key mitigation in the form of Associated Development is secured.

1.6.4 For the reasons that have been addressed, there is an acknowledged need for flexibility to reflect the fact that there may well be circumstances beyond the undertaker's control which serve to prevent achievement of the phasing currently anticipated in the Implementation Plan, even though they have acted reasonably in seeking to deliver in accordance with that plan.

1.6.5 It is circumstances such as those for which the reasonable endeavours approach is best suited, and the attendant flexibility is addressed by other controls and mitigation measures which ensure that the effects are no worse than those which have been assessed. This is summarised in the written note of oral submissions made at ISH1 [REP5-106] at paragraphs 1.3.16 to 1.3.46.

1.6.6 Nevertheless, the Applicant is proposing to supplement this suite of provisions at Deadline 8 with the use of long-stop points for delivery of the

relevant Associated Development, linked to timing of identified phases of the works. This builds on the concept identified at Deadline 7, set out within our response to question 2.15 in [REP7-058], and by using long stop dates incorporates some element of flexibility which was acknowledged by SCC in ISH13 to be appropriate.

1.6.7 This will be set out within the Deadline 8 version of the **Construction Method Statement** (Doc Ref. 6.3 3D(D)), compliance with which is secured by Requirement 8(1).

1.6.8 The commitments will be based on a phasing schedule within the Construction Method Statement, which is the same programme as that included the Implementation Plan. The Construction Method Statement will be amended at Deadline 8 to confirm the longstop dates for identified mitigation. This would sit alongside the obligation to use reasonable endeavours to achieve the phasing which is currently anticipated, and hence to do better than the long-stop dates.

1.6.9 The Construction Method Statement will also assist in bringing greater clarity and certainty to the reasonable endeavours obligation by explaining what it would mean in practical terms in this case.

1.6.10 As an overall package, that would provide a level of certainty far exceeding what was judged necessary at Hinkley Point C and more than sufficient to assuage any reasonable concerns about securing the mitigation.

1.6.11 Mr. Mike Humphrey responded to the ExA's questions regarding:

- Whether, with all mitigation in place, significant effects on the housing market and accommodation supply would be mitigated?; and
- If Project Accommodation is delivered late, and further mitigation relies on the private housing market which is already well-incentivised by the market, what can the Council do with the contingency fund that would actually alleviate the problem?

1.6.12 Mr. Mike Humphrey first explained (in response to (a)) that the mitigation provided via the Housing Fund (at Schedule 3 of the Draft Deed of Obligation) which has been developed in collaboration with East Suffolk Council is sufficient to fully mitigate effects on the housing market.

1.6.13 Further to this, he stated that in terms of the measures that it would provide for, the Housing Fund is precautionary and conservative in its approach and that the cost per bedspace within the Housing Fund was more than sufficient to ensure delivery of the amount of bed spaces that would be needed in terms of latent accommodation and private rented

accommodation to mitigate the effect before the housing contingency fund is triggered and the long stop is reached.

1.6.14 In response to (b), Mr. Humphrey noted that the Applicant intends to set the entirety of the position out in writing formally through the responses to ExA written questions (CI.3.0), and also through subsequent written submission to this hearing.

1.6.15 Mr Humphrey first explained first that there is no evidence of increasing rental prices as a result of the Project, based on the experience at Hinkley Point C and the existing delivery of housing bed spaces through the housing fund at Hinkley Point C.

1.6.16 Additionally, he confirmed that the amount of bed spaces that the Housing Fund assumes would be brought forward through the fund is highly conservative.

1.6.17 Mr Humphrey noted that the **Implementation Plan** [REP2-044] shows the Accommodation Campus being delivered after 30 months – Q3 Year 3 – when the peak NHB workforce is estimated to be at 2,320. The assessment at **Volume 2**, **Chapter 9** of the **ES** (Socio-economics) [APP-195] and the **Accommodation Strategy** [APP-613] assumes that the Accommodation Campus is delivered at the start of Y4.

1.6.18 As such, the assessment already considers the effects and mitigation for a worse scenario than the Project is committed to mitigate. In effect, delay to delivery of the Project Accommodation would result in a deviation from the Implementation Plan, but not a change in the impacts assessed by the ES.

1.6.19 This is in the context of a very conservative assessment in terms of the demand for accommodation in the private rented and latent sector, the supply available for workers coming in and looking for that type of accommodation, and the amount of additional bed spaces that can be bought forward through the Housing Fund, as set out at **Chapter 31** of **SZC Co's Response to the Councils' Local Impact Report** [REP3-044].

1.6.20 As set out in **Schedule 3** of the **Draft Deed of Obligation** (Doc Ref. 8.17(G)) by the end of Year three (when the Accommodation Campus is due to open), East Suffolk Council will have received at least £3.1m and SZC Co (and ESC) expect that to have delivered at least 550 bedspaces using this money.

1.6.21 That, again, is a conservative estimate. During the early years at Hinkley Point C, the Housing Fund has delivered in excess of 2,000 bed spaces against an original target of 1,000 (by the peak) at a quarterly rate of delivery of three times the rate that we're assuming at Sizewell C. Hinkley

Point C has been very successful experience of bringing bed spaces forward in a relatively inexpensively way, especially utilising latent accommodation through minor improvement grants and loans that are set out in detail in **Schedule 3** of the **Draft Deed of Obligation** (Doc Ref. 8.17(G)).

1.6.22 If the speed and level of delivery at Sizewell C follows that of Hinkley Point C then there we could have delivered over 1,500 bed spaces by the time the **Implementation Plan** [REP2-044] identifies the campus as being opened.

1.6.23 He explained that at that point, the NHB workforce is predicted to be 2,320. Of those NHB workers, 600 are expected to be in the LEEIE caravan site leaving around 1,700 in existing accommodation. The Housing Fund will have provided between 550 and 1,500 bedspaces leaving between 220 and 1,180 in currently existing accommodation (of all types). This is unlikely to have significant residual effects based on our assessment at **Volume 2**, **Chapter 9** of the **ES** (Socio-economics) [APP-195].

1.6.24 Further to this he explained that during that time there is funding for four officer posts in ESC secured by the DoO to deliver those bedspaces to make sure that the very best attempt has been made to ensure the minimum is exceeded.

1.6.25 This all demonstrates that because of the conservative approach to assessment and mitigation, in reality should the Project Accommodation be delayed and contingency funds triggered, the contingency payments despite needing to be payments after the fact, can still address the impacts as they arise and shouldn't be seen in isolation.

1.6.26 Mr Humphrey set out that at that time when the additional bed spaces are required, the uplift to the delivery rat of bedspaces would still be well within the difference in terms of the conservative estimate that we've assumed for Sizewell C, and the rate of delivery per quarter we've achieved at Hinkley Point C.

1.6.27 In respect of the Housing Fund Mr. Humphrey explained that in terms of governance, the Accommodation Working Group will be able to pre-empt issues and address the delivery of the Housing Fund to bring forward more bedspaces earlier that would otherwise have been delivered later to deal with delays to Project Accommodation.

1.6.28 The group will have sight of the Project's recruitment and on-boarding data and its ability to forecast workforce early in the project, as well as regular reporting on the progress being made on procurement, commissioning and delivery of the Project as a whole, and Project Accommodation within that.

1.6.29 Mr Humphrey then responded to a query raised by Mr Maund that a lot of comparison is made with Hinkley Point C, and that this is a different area, and Leiston is smaller than the town next to Hinkley Point C.

1.6.30 Mr Humphrey noted that **SZC Co's Written Submissions in Response to Oral Submissions made at Open Floor Hearings 18-21 May 2021** [REP2-130] from **Paragraph 4.2.18** (electronic page 19) sets out how the quantum of accommodation within the area that we anticipate workers predominantly to b searching for accommodation in at Sizewell C is very similar in the overall quantum of accommodation, and the characteristics of that accommodation in terms of tenure, at Hinkley Point C.

1.7 Agenda Item 5: Structure of Control Documents and Subsequent Approvals

a) To include concerns flagged by East Suffolk Council at ISH11 re: the Code of Construction Practice.

1.7.1 Mr. Sharpe responded to the concerns by confirming that at Deadline 8 there will be a submission of a revised version of the CoCP that will address the points of concern put forward in relation to how the subsequent approvals would be secured, along with defining clear triggers for when such approvals would be required. It was also clarified that the approval process set out in Schedule 23 of the dDCO would be used to approve any subsequent approvals.

b) To address certain delivery questions including barriers on non-railway land.

1.7.2 HPQC explained that there would be a process to identify where noise barriers might be appropriate and proportionate in planning terms. HPQC clarified that SZC Co. is committing to carry out this process with ESC, rather than committing at this stage to the delivery of barriers on other people's land – for which landowner consent would need to be obtained. The need for consent arises whether or not there is a leasehold interest in the land in question. This was one of the reasons why the Applicant's assessment of noise effects did not rely on the provision of barriers (in addition to doubts as to their appropriateness in planning terms)

1.7.3 HPQC confirmed that SZC Co. have accepted ESC's suggested amendment to Requirement 25(1), to address the concern raised about the reference to hours of operation.

c) Other issues arising out of ISH12 and 13

1.7.4 In relation to the timing of the installation of acoustic barriers, HPQC and Mr Rhodes explained that SZC Co. would be committing to work with ESC to seek to achieve the installation of barriers where that was agreed to be beneficial, appropriate and practical. Whether occupiers were lessees or owners of affected properties should not detract from the expectation that those with an interest in the amenity of the property should want to support barriers if they were agreed to be acceptable and beneficial. SZC Co. cannot insist that parties agree but that is not a fundamental issue for the reason explained above and because the Environmental Assessment does not rely on the installation of barriers.

1.7.5 HPQC explained that so far as any question arises as to the timing of delivery of the desalination plant, the proposed mechanism for securing key mitigation described earlier in relation to agenda item 8 and '*reasonable endeavours'* would be an obvious vehicle for addressing such matters.

1.7.6 In response to Ms. Bassinette's concern that the proposed long-stop dates might effectively turn into the target, HPQC drew attention to the provisions of paragraphs 2.2 to 2.7 of Schedule 9 of the DoO [REP 7-040], which identified the detailed procedure for updating the Councils on progress in achieving the programme set out in the Implementation Plan, notifying them of any delay, and identifying the steps to be taken in response. This was important context in understanding the practical working out of the reasonable endeavours obligation in paragraph 2.1, which could not be considered in isolation. Having regard to those provisions, it was clear that the long-stop dates were precisely that, and could not be regarded as a target.

1.8 Agenda Item 6: Other issues arising from responses to the Examining Authority's commentary on the DCO [PD-038]

1.8.1 In response to the RSPB's concerns about the TEMMP, HPQC submitted that the Applicant would speak to the RSPB outside the examination because it believed that these concerns are not well founded and that an explanation of how the TEMMP operates would hopefully provide reassurance on that matter.

1.8.2 The RSPB also referred to the Applicant's commentary on the law relating to EIA in Appendix B of REP7-058. In response, HPQC explained the reasoning behind what was said at paragraph 2.2 of that document and why it reflected the correct position in law.

1.8.3 In response to the Suffolk Constabulary's concern about being outvoted within the Transport Review Group (TRG), Mr. Rhodes mentioned that it was never the Applicant's intention to vote within the groups and most definitely was not their intention to out vote.

1.8.4 In response to the RSPB, Mr. Rhodes explained that the TEMMP should be welcomed by all as it guaranteed the outcomes of the environmental assessment regardless.

1.8.5 Mr Rhodes responded to concerns from Suffolk Constabulary and also from SCC in relation to the administration of the TRG. He started by explaining:

- in response to concerns that had been expressed that SZC. Co may be able to use its four votes in circumstances where, for instance, National Highways or Suffolk Constabulary did not attend or vote, SZC. Co would be willing to make clear that it would "cancel" one or more of its votes in order to retain an equilibrium;

- SZC. Co had no intention of not attending all meetings but, if it did fail to attend, it recognised that the business of the meeting should proceed and would consider the wording in the DoO to ensure that was reflected in its terms.

1.8.6 In response to suggestions that SCC should have a casting vote on the TRG, Mr. Rhodes explained that SZC. Co was not happy to agree to that and suggested that the suggestion indicated a misunderstanding as to the intended nature and functions of the TRG. The TRG was not intended to be confrontational, and that had not been the experience at Hinkley Point C. It was intended to enable partnership working with SZC. Co bringing its delivery experience and the public authorities bringing their expertise in order to jointly achieve the most effective delivery of this important piece of national infrastructure in line with the provisions and mitigations set out in the DCO. SZC Co. did not anticipate that it would be necessary often to vote at all, as the parties' interests should be aligned.

1.8.7 He suggested it was also necessary to understand the significant powers being given to the TRG, including powers to enforce the provisions of the CTMP and CWTP with an un-capped liability but also powers to amend the CTMP and CWTP if that was considered appropriate through monitoring and even to amend caps on HGV numbers as a result. The TRG also had the ability to draw on the contingency fund where it considered that the relevant tests had been met. He suggested that it would clearly not be appropriate to work so hard through the examination to agree the detailed terms of these provisions, balancing the various factors relevant to the public interest in this regard, simply to allow the public authorities to amend

them after the Secretary of State had made the DCO by outvoting the undertaker on the TRG using the casting vote mechanism. The drafting allowed for any disputes to be escalated rapidly but it should not be anticipated that there would be significant disputes if the parties recognise the intended partnership approach to the delivery of the Project.

1.8.8 In response to suggestions from SCC that Requirement 5A (Project wide: Emergency Planning) should be expressed as some form of Grampian requirement, Mr Rhodes explained that SCC would have more than sufficient time to review its plan, particularly given the resources being made available for it to do so by SZC Co.

1.8.9 In response to concerns raised by the RSPB, Mr Rhodes suggested that SZC Co. had perhaps not sufficiently explained its intended approach to adaptive monitoring and management. , The TEMMP represented a commitment consciously made by SZC Co. to continue to monitor all relevant terrestrial ecology effects (even though likely significant effects were not identified) and to commit to put in place mitigation agreed by the Environment Review Group. Understood in this way, the TEMMP effectively represented a guarantee of the outcome of the environmental impact assessments in a manner which he thought was exceptional and which he hoped would be supported by the RSPB. HPQC indicated that SZC Co. would be pleased to speak with the RSPB to make sure the approach to monitoring and management was fully understood, noting that a meeting was arranged for w/c 20 September 2021.

1.9 Agenda Item 7: Issues arising from responses to ExQs2 on the DCO, DoO and related matters

1.9.1 No matters covered.

1.10 Agenda Item 9: Practical arrangements for submission and form of the Applicant's preferred draft DCO, executed DoO and allied documents

a) DCO finalisation process and programme

1.10.1 HPQC explained that the final draft of the DCO will be submitted at Deadline 10. The Applicant expects that the final draft will be revision 11 (on the basis that revision 10 is being submitted at Deadline 8 and it will not be submitting a further revision at Deadline 9).

1.10.2 The Applicant is currently undertaking a thorough proofreading exercise of both the technical and legal detail within the draft DCO. This exercise will not be complete by Deadline 8 and as a result some corrections will be

made in revision 10 (at Deadline 8) and others will be made in revision 11 (at Deadline 10). As ever, the Applicant will make it clear in the DCO Schedule of Changes why each amendment has been made, so it will be clear to the ExA where a change has been made merely as a correction.

b) Statutory Instrument validation process

1.10.3 At the start of the examination process the Applicant submitted with each new revision of the DCO a Statutory Instrument (SI) validation report. When the Applicant started introducing unconventional numbering styles (e.g. 9A, 9B) the draft SI would not validate. As such, it was agreed with the case team that a validation report would only be required when the Applicant submitted the final revision. The Applicant will therefore be submitting a SI validation report with revision 11 at Deadline 10.

c) Unconventional numbering and cross-references

1.10.4 To validate the draft DCO at Deadline 10 the Applicant will have to replace all unconventional numbering with conventional numbering. So, for example, article 9A will become article 10. As a consequence the numbering of many articles and requirements within the draft DCO will change.

1.10.5 Between Deadlines 8 and 10 the Applicant will be undertaking an exercise of ensuring that all Certified Documents and other control documents reference the correct articles/requirements. The Applicant will of course also be ensuring that all cross-references within the draft DCO are updated accordingly.

d) Deed of Obligation

1.10.6 The completed DoO will be submitted at Deadline 10 (12 October), along with the final issued compliance document.

1.10.7 It has been agreed between the Applicant and ESC/SCC that hard copy engrossments of the Deed(s) will be executed during the week commencing 4 October 2021, with completion due to take place on 8 October 2021.

1.10.8 A director of the Applicant with the appropriate authority will execute on behalf of the Applicant.

1.10.9 Each party shall sign all plans as well as the Deeds.

1.10.10 The Applicant's lawyers (HSF) will be responsible for arranging the engrossments and execution.

1.10.11 Draft Deeds of Covenant have been prepared by the Applicant and provided to relevant third parties to review.

1.10.12 In the event that any Deeds of Covenant have been completed prior to Deadline 10, these will be submitted to the ExA at that deadline.

e) Documents for certification

1.10.13 In response to a question regarding certification of the ES, HPQC explained that at Deadline 7 in response to ExQ2 DCO.2.15(ii) and (iii) [REP7-056] the Applicant had set out why it was considered to be inappropriate for the Environmental Statement to be certified as multiple documents, and for the associated Signposting Document, the DCO Signposting document or the Navigation Document to be made certified documents. That reasoning was summarised and maintained.

1.11 Agenda Item 10: The Examining Authority reminds the Applicant and the Councils of point 27 of Annex B "Observations of the draft section 106 agreements" to [PD-009] of 22 December 2020 – the need for the Confirmation and Compliance Documents and the confirmations from the councils that the right parties and land interests are bound and that the s.106 agreement (now DoO) has been properly executed

1.11.1 The Applicant confirmed that it would be submitting at Deadline 8 a draft Legal Opinion, which provides confirmation by Herbert Smith Freehills LLP of the following:

- **Status:** The NNB Generation Company (SZC) Limited ("**SZC Co.**") is a company duly incorporated with limited liability under English law.
- **Capacity:** SZC Co. has the power and legal capacity to enter into and perform its obligations under the DoO.
- **Authority:** SZC Co. has taken all necessary corporate actions to authorise the execution, performance and delivery of the Deed of Obligation.
- **Due Execution:** The DoO has been duly executed.
- **Validity:** The obligations of SZC Co. under the DoO constitute legal, valid, binding and enforceable obligations of SZC Co.

1.11.2 The Legal Opinion will be addressed to the Secretary of State and the other parties to the DoO (ESC and SCC).

1.11.3 [This is contained in the Applicant's Written Submissions Responding to Actions Arising from ISH14 (Doc Ref. 9.107)].

1.12 Agenda Item 11: Any Other Matters

1.12.1 HPQC confirmed that it was content to respond in writing to the MMO's written submissions sent in lieu of attendance at the ISH. *[This is contained in the Applicant's **Written Submissions Responding to Actions Arising from ISH14** (Doc Ref. 9.107)].*