

# SEA LINK

EN020026

## **Comments on Document 9.154: Approach to Adopting DESNZ Requirement Discharge Unit for Sea Link [AS-167]**

Suffolk County Council

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## Glossary of Acronyms

<i>AILs</i>	<i>Abnormal Indivisible Loads</i>
<i>DCO</i>	<i>Development Consent Order</i>
<i>ES</i>	<i>Environmental Statement</i>
<i>ExA</i>	<i>Examining Authority</i>
<i>ISH3</i>	<i>Issue Specific Hearing 3</i>
<i>LLFA</i>	<i>Local Lead Flood Authority</i>
<i>NSIP</i>	<i>Nationally Significant Infrastructure Project</i>
<i>OWSI</i>	<i>Outline Written Scheme of Investigation</i>
<i>PHM</i>	<i>Population Health Management</i>
<i>PPA</i>	<i>Planning Performance Agreement</i>
<i>RSCF</i>	<i>Regional Skills Coordination Function</i>
<i>SCCAS</i>	<i>Suffolk County Council Archaeological Service</i>
<i>SPR</i>	<i>Scottish Power Renewables</i>
<i>SZC</i>	<i>Sizewell C</i>

*“The Council” / “SCC” refers to Suffolk County Council.*

## Purpose of this Submission

The document has been prepared by Suffolk County Council to provide a written response to Document 9.154: Approach to Adopting DESNZ Requirement Discharge Unit for Sea Link [AS-167]

Examination library references are used throughout this document to assist readers. SCC has not sought to repeat previous representations and has instead taken an approach of providing further information where appropriate.

# 1 **Comments on Document 9.154: Approach to Adopting DESNZ Requirement Discharge Unit for Sea Link [AS-167]**

- 1.1 SCC acknowledges the Fingleton review which SCC, in its capacity as Chair of the New Nuclear Local Authorities Group (NNLAG), has responded to<sup>1</sup>. SCC is disappointed that the Government's response to the Fingleton review ('Building Our Nuclear Nation: Government response to the Nuclear Regulatory Review 2025', as published on 13 March 2026) did not modify or refine the proposed scope of the new DESNZ unit to reflect the concerns raised by NNLAG. However, SCC accepts that this is a matter that has now been decided, albeit that the details of the new DESNZ unit and its working arrangements have not yet been published. However, recognising that the stated rationale for the new unit is to "*speed up decisions on the meeting of post-consent requirements*" (as set out in the Government's response to Recommendation 30 in Annex A of 'Building Our Nuclear Nation', SCC sets out its criticisms of how the Applicant has implemented it into the draft DCO and offers an alternative approach in what follows.
- 1.2 SCC has two fundamental concerns with the Applicant's suggestions. The first is that, whilst SCC welcomes the approach that retains the relevant local authorities as a potential discharging authority, rather than this being always a function of the DESNZ unit, SCC cannot accept that this should be a matter for the Applicant's discretion (as proposed in the Applicant's para 1(1)(a)), so that the choice of the discharging authority "*would be at the selection of the Applicant in each case*" (as stated in para 1.1.6 of [AS-167]. SCC refers to this further below.
- 1.3 The second concern is the lack of precision in the consultation arrangements with relevant local authorities in those cases where the DESNZ unit is to be the discharging authority. SCC provides its suggestions below for ensuring a defined process is set out, including safeguards to ensure that there is adequate time for such consultation and that consultation responses are taken fully into account.
- 1.4 As SCC sees it, there are two benefits of the current regime which risk being undermined by removing discharge of requirements from local authorities. The first is the local knowledge possessed by local authorities and the second is the accountability to the interests of local communities the requirement for local authority approval brings. Each of these concerns are briefly explored in what follows.

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<sup>1</sup> See <https://www.suffolk.gov.uk/asset-library/nnlag-letter-to-minister-of-state-for-sirn-desnz-characterisation-of-local-government.pdf>

- 1.5 More often than not, local expertise is required to discharge requirements. This manifests in various ways such as awareness of how a temporary access interacts with the local road network to inform its implementation and what temporary traffic measures are viable to minimise vegetation loss. The responsibilities of the local authority as lead local flood authority provides expertise to collaborate with the applicant to properly evaluate drainage solutions. Close working relationships with other NSIP promoters allows local authorities to identify coordination opportunities to inform discharge of requirement applications. Knowledge of the local landscape and planting conditions informs what mitigation will be effective and how to manage adaptive management of planting. During a project's detailed design stage, the local authority's input informs what choices should be made to minimise impacts where flexibility exists. This is only a brief list and local authorities' expertise plays many more roles.
- 1.6 Importantly, due to the local expertise of local authorities and their accountability to their electorate, their approval can be material to whether a given project is acceptable in planning terms. The approval of local authorities can, for instance, provide confidence that outcomes required by policy are achieved when flexibility is sought by applicants during the application stage. Examples include design of built infrastructure and the detailed implementation of mitigation within final management plans.
- 1.7 Of course, SCC is not suggesting that the DESNZ unit will be unable to fulfil these functions. Rather, due to the lack of local knowledge, especially on site-specific matters, (but with the continued need for sound decision-making, including satisfying the Tameside legal duty of enquiry), the discharge of requirements process is likely to take longer (as opposed to being speeded up) in all those cases where the DESNZ unit has to seek information on site-specific matters to ensure that it is adequately appraised of the local conditions that are applicable to the discharge of the requirement in question.
- 1.8 Where, for example, there is a divergence between the information provided by an applicant in a discharge application and the information contained in the responses of consultees to that application as regards the effects on an environmental asset (such as a veteran tree or a watercourse), the DESNZ unit will have no local knowledge of its own to resolve that divergence. It is hardly practical to envisage that the DESNZ unit will be in a position to make a series of site visits to a variety of locations concerned (for example) with the temporary accesses for construction of a NSIP (or that even if this was done it could be done expeditiously). Instead, resolution of such matters is likely to involve requests for further information and the seeking of agreed facts between the applicant and consultees, all of which would add time to the discharge process.

Certainly, it is unlikely that the unit will be able to replace the local knowledge of local authorities due to the fact that the unit will (most likely) be within central government which contrasts with the nature of officers within local authority being entrenched in their local context.

- 1.9 To address this concern in a way which maintains the Government's wish to ensure that the process of discharge of requirements is expedited, SCC suggests that the default position should remain that discharge of requirements is dealt with by the relevant local authorities, so retaining the benefits and timeliness of local knowledge, but with the ability for the DESNZ unit to step in to recover jurisdiction in any particular case, either of its own volition or in response to representations made to it (whether by the Applicant, by the local authorities, or by others).
- 1.10 SCC also considers it necessary that, in the event that a requirement is discharged by the DESNZ unit, there is no reduction in the provision for named consultees.
- 1.11 For the reasons set out above, SCC does not agree with the Applicant's wording which allows it to make applications to the discharging authority as written or the DESNZ unit at the Applicant's discretion. Instead, SCC considers that the DESNZ unit regime should be akin to the arrangement under section 77 (reference of applications to Secretary of State) of the Town and Country Planning Act 1990 ("**TCPA**") in respect of the Secretary of State's ability to "call in" a planning application. SCC considers the DESNZ unit should be able to step in to deal with the discharge of requirements if they wish but otherwise the default is a decision at local level. That way, decisions would mostly be based on local knowledge, but the unit could take over if it was clear one or more local authority was using the discharge of requirement stage to (say) frustrate the project. Owing to the deeming provisions and strict timelines included in DCOs, SCC would be surprised if such frustration were to occur; however, if it did, this arrangement would be an option.
- 1.12 The ExA will note that, during Issue Specific Hearing 2 of the Norwich to Tilbury project which took place on 29 April 2026 the Norwich to Tilbury ExA stated by way of initial thoughts that they were not keen on the idea that the applicant gets to choose which body to apply to for a discharge of requirement (see the Transcript for Part 1 of Day 2 of that session from 00:22:49:20 - 00:23:28:28 to 00:23:56:10 - 00:24:29:13). The approach suggested by SCC addresses that concern. In the light of the above, SCC would propose the following new paragraph 1A for inclusion in Schedule 4 (discharge of requirements) to the draft DCO, which is based on the drafting of section 77 of the TCPA –

### **Reference of applications or requests to the DESNZ unit**

1A.—(1) Subject to sub-paragraphs (7) and (8), the DESNZ unit may give directions requiring an application for any consent, agreement or approval required by a Requirement to be referred to them instead of being dealt with by the authority mentioned in that requirement.

(2) A direction under this article may relate to a particular Requirement, or to any Requirement.

(3) Any application in respect of which a direction under this article has effect must be referred to the DESNZ unit accordingly.

(4) Subject to sub-paragraph (5), where an application to which this paragraph applies is referred to the DESNZ unit, Schedule 3 (requirements) applies, with any necessary modifications, as it applies where such an application is to be determined by the relevant planning authority or discharging authority.

(5) Before determining an application to which this paragraph applies the DESNZ unit must consult –

(a) the relevant planning authority, relevant highway authority or other discharging authority mentioned in the Requirement; and

(b) any person named in that Requirement as a consultee.<sup>2</sup>

(6) Notwithstanding the provisions of this paragraph, the undertaker must provide the relevant planning authority with the written notice mentioned in Requirement 4 (stages of the authorised development) in accordance with the provisions of that Requirement.

(7) The power of the DESNZ unit under this paragraph cannot first be exercised until they have served notice on the relevant planning authority, the relevant highway authority and other discharging authority confirming –

(a) they have been established by the Secretary of State;

(b) they are capable of determining an application to which this paragraph applies; and

(c) the date from which they are so capable.

(8) In this paragraph, “DESNZ unit” means a unit established within the Department for Energy Security and Net Zero by or on behalf of the Secretary of State for the purpose of determining any application for consent, agreement or approval required by a Requirement contained in a development consent order.

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<sup>2</sup> A consequence of this drafting would be if the DESNZ unit were to determine (say) requirement 3, per requirement 3(1)(a), “the relevant planning authority” would be consulted (as the discharging authority mentioned in that provision) and Historic England and Dover District Council would as well (as the consultees mentioned in requirement 3(1)(a)).

1.13 It is recognised that, for DCOs promoted by National Highways, it is standard for the Department for Transportation, the government department to which National Highways is accountable, to discharge certain requirements and that there is no default for local authorities to retain that function. However, this is not comparable to the relationship between the Applicant and DESNZ, as the Applicant is a private company primarily accountable to its shareholders. For the Lower Thames Crossing application, the ExA noted the following in their recommendation to the Secretary of State following objections from parties to the discharge of requirements by DfT:

*“23.4.11. GBC raised a matter of general concern and debate, about the identity of the discharging bodies for Requirements under this and indeed other highways DCOs. It is fair to observe that practice for highways is not the same as it is for NSIP development proposed by promoters who are private companies. This DCO is promoted by a wholly publicly owned company, National Highways, accountable via its parent body, the Department for Transport (DfT) to Ministers and Parliament. This is a very different context from (for example) a private company energy NSIP developer accountable primarily to its shareholders. In relation to the energy developer, it is normal and appropriate for accountability in relation to the discharge of most requirements to be provided to a locally accountable authority, the local planning authority. This reflects circumstances in which there is no other substantial accountability for the delivery of the development and the standards that it must meet. However, in highways development there has been a longstanding approach that most requirements are discharged by the final publicly accountable body responsible for transport development in the public interest: the SoST.”*

1.14 As should be clear, the continued involvement of local authorities in the discharge of requirement process will be necessary even if the discharging authority is the DESNZ unit. However, the Applicant’s proposals do not provide any detail on the consultation arrangements (save to say that there should be such consultation in proposed para 1(1)(b)). As a result, SCC considers that the DCO should be written such that the involvement of local authorities is retained as far as possible. One way to promote this would be to ensure procedural provisions for consultation are strengthened. This could be secured with some form of Requirement 23 from the Lower Thames Crossing DCO which reads as follows:

*“Details of consultation*

23.—(1) *Where any paragraph in this Schedule requires the undertaker to consult with any person or body, the undertaker must—*

*(a) notify the person or body of the effect of paragraph 22(3) (applications made to the Secretary of State under Part 1) of this Schedule;*

*(b) subject to sub-paragraph (2), provide that person or body with not less than 28 days from the provision of any documents being consulted upon for any response to the consultation;*

*(c) give due consideration to any representations made by that person or body about the proposed application; and*

*(d) include with its application to the Secretary of State copies of any representations made by that person or body about the proposed application, and a written account of how any such representations have been taken into account in the submitted application.*

*(2) The undertaker may consent, such consent not to be unreasonably withheld, to an extension of period in sub-paragraph (1)(a) so that a person or body has not less than 42 days from provision of any documents being consulted upon to provide a response to the consultation following a request made by a person or body no later than 21 days from receipt of any documents being consulted upon.*

*(3) Where sub-paragraph (2) applies a person or body must provide a response to the consultation as soon as reasonably practicable.”*