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Your ref:
Our ref: 12.04.09.04/170c

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Dear Mr Mayson

PLANNING ACT 2008

APPLICATION FOR THE PROPOSED HINKLEY POINT C (NUCLEAR GENERATING STATION) ORDER

I. INTRODUCTION

1.1 On 31 October 2011 NNB Generation Company Limited ("the Applicant") made an application ("the Application") to the Infrastructure Planning Commission ("IPC") under section 37 of the Planning Act 2008 ("the Act") for a Development Consent Order ("the Order" – a draft of which accompanied the Application as required, and further drafts of which were subsequently submitted by the Applicant). The Application was made in respect of the construction of a European pressurised reactor (EPR) nuclear power station with a generating capacity of 3260MW at Hinkley Point in Somerset.

1.2 The Order, if made, would grant development consent for the generating station. Also included in the Application are proposals for several linked items of infrastructure ('associated development'). These comprise temporary accommodation for construction workers (both on the main power station site and in Bridgwater); two park and ride sites in Bridgwater, and one each in Cannington and Williton; two freight handling facilities in Bridgwater (on joint sites with the proposed park and ride facilities); a temporary jetty and harbour at Hinkley Point itself; reconstruction of an existing wharf at Comwich and a new

freight laydown area; a bypass around Cannington and other improvements to roads and road junctions in the area. The Applicant also seeks compulsory acquisition powers over 260 plots of land that are to be used for the generating station or the associated development, as well as other ancillary powers (such as the power to stop up footpaths). In this letter, the sum of the development for which the Applicant is seeking development consent and other facilitation under the Act is referred to as "the HPC project".

1.3 The Application was accepted for examination by the IPC on 24 November 2011.

1.4 On 17 February 2012 the Chair of the IPC appointed a Panel ("the Panel") as the Examining authority for the Application. The Panel initially comprised three members:

- Andrew Phillipson (lead member);
- Frances Fernandes; and
- Emrys Parry.

Two additional members were subsequently appointed to the Panel, namely:

- Lorna Walker on 9 March 2012; and
- Michael Hurley on 11 April 2012.

1.5 Following the abolition of the IPC, it falls to me as Secretary of State for Energy and Climate Change to decide the Application, having received the report and recommendation of the Panel, whose work after 1 April 2012 was supported by the staff of the Planning Inspectorate ("PINS"), into which much of the IPC's work (apart from the task of finally deciding applications for development consent) has been merged as a result of the Localism Act 2011.

1.6 The Panel's examination of the Application began on 21 March 2012 and was completed on 21 September 2012. The examination included a series of accompanied site inspections by the Panel, written evidence presented to the Panel and a series of issue specific hearings and open floor hearings held in Cannington, Otterhampton, Bridgwater and Stogursey. A list of the main events which occurred during the examination is at Appendix A of the Panel's report.

1.7 The Panel sent me their report on the Application under section 83 of the Act on 19 December 2012. Since then, my officials and I have considered the Application, having regard to the matters specified in section 104(2) of the Act, and in particular to the contents of the Panel's report.

1.8 A copy of the Panel's report is attached as **Annex A** to this letter. The Panel's conclusions are set out in sections 6-8 of the report, and their overall conclusions and recommendation are at section 9.

II. SUMMARY OF THE PANEL'S REPORT AND RECOMMENDATION

2.1 The Panel's report included their findings and conclusions on the following:

- Legal and Policy Context;
- Traffic and Transportation Matters - particularly the impact traffic generated during construction would have on the highway network;
- Socio-Economic Effects - particularly the effects on jobs and skills, businesses, tourism, local housing market, public services and the communities affected by the HPC proposal;
- Landscape and Visual Effects - particularly the effect on the Quantock Hills Area of Outstanding Natural Beauty and the appropriateness of the mitigation proposed;
- Stogursey - living conditions of nearby residents;
- Combwich - living conditions of nearby residents;
- Cannington - particularly the effect traffic would have on the living conditions of the residents of Cannington;
- Habitats Regulations Assessment;
- Panel's Conclusions on the Case for Development;
- Request for Compulsory Acquisition Powers; and
- Proposed Development Consent Order and s106 Agreement.

2.2 The Panel's recommendation is as follows:

"9.7 Given our conclusions on the merits of the case for the development proposed and the compulsory acquisition of land and rights, we recommend that an Order granting development consent should be made in the form annexed to this report at Appendix D.

9.8 In reaching our conclusion that development consent should be granted, we have taken into account all other matters raised in the representations. However, we found no relevant matters of such importance that they would individually or collectively lead us to a different recommendation to that above."

2.3 The Panel recommended that the Order be made, based on the final version submitted by the Applicant (dated 31 August 2012) but incorporating a number of modifications specified at various points in their report (notably in Chapter 8 and Appendix C).

III. DECISION

3.1 I have decided under section 114 of the Act to make (and have made) an Order granting development consent for the proposals in the Application. A copy of the Order is attached at **Annex B** to this letter.

3.2 The terms of the Order generally reflect the Panel's recommendations. Any substantial modifications which I have made to the text of the Order as recommended by the Panel are explained in this letter and tables in **Annex C**. Annex C also details other changes that have been made to improve the drafting of the Order without altering its meaning, and to reflect best practice (for example, by re-numbering the Schedules so that they appear in the order of the provisions that introduce them). Changes made to the Order (as against the Applicant's final version of 31 August 2012) are shown in more detail in the attached plain text comparison document at **Annex D**.

3.3 Except as indicated otherwise in section V below and in Annex C, I agree with the findings, conclusions and recommendations of the Panel as set out in their report, and the reasons for my decision are those given by the Panel in support of their conclusions and recommendations. This letter should therefore be read with Annexes A, B and C, the Environmental Summary Document (see section V below and **Annex E**) and the Habitats Regulation Assessment (see section IV below and **Annex F**). This letter, with these Annexes, constitutes both the statement of reasons required by section 116 of the Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

3.4 I confirm that, in reaching my decision, I have had regard to the local impact reports submitted by the relevant local authorities and to all other matters which I consider important and relevant to my decision as required by section 104 of the Act, and, for the purposes of regulation 3(2) of the 2009 Regulations, that I have taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. I also confirm that in making my decision under the Act I have complied with all applicable legal duties on me and that I have not taken account of any matters which are not relevant.

IV. HABITATS REGULATIONS ASSESSMENT

4.1 Council Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and Council Directive 2009/147/EC on the conservation of wild birds ("the Birds Directive") aim to ensure the long term survival of certain species and habitats by protecting them from adverse effects of plans and projects.

4.2 The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance. These sites are called Special Areas of Conservation ("SACs"). The Birds Directive provides for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs are collectively termed "European sites" and form part of a network of protected sites across Europe. This network is called Natura 2000.

4.3 The Conservation of Habitats and Species Regulations 2010 (as amended) (“the Habitats Regulations”) transpose the Habitats and Birds Directives into UK law as far as the limit of territorial waters. The Convention on Wetlands of International Importance 1972 (the Ramsar Convention) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. UK Government policy is to afford Ramsar sites the same protection as European sites.

4.4 The effect of regulation 61 of the Habitats Regulations and the above policy on Ramsar sites in the context of the Application is that before deciding to grant development consent under the Act in respect of the Application, I (as the competent authority within the meaning of the Regulations) must consider whether the HPC project (as a plan or project not directly connected with or necessary to the management of a European site) may significantly affect any European sites (or Ramsar sites). If there are “likely significant effects” on any such sites, I may only grant consent after having made an “appropriate assessment” of the implications for the site(s) concerned in view of its or their conservation objectives, and (unless the requirements of regulations 62 and 66 of the Habitats Regulations are satisfied) after having ascertained as a result of that assessment that the HPC project will not have an adverse effect on the integrity of the European site(s) concerned.

4.5 It is apparent that the HPC project may affect European and Ramsar sites and so a Habitats Regulations Assessment (“HRA”) is required. As noted above, the project consists of a number of different pieces of infrastructure. Some of these are the subject of separate environmental control regimes administered by other regulatory bodies such as the Environment Agency (“EA”), which are also competent authorities under the Habitats Regulations and are therefore also obliged to comply with the requirements of those Regulations before issuing the consents or authorisations for which they are responsible. In such cases it is appropriate for one competent authority to produce an assessment which covers the whole project. My HRA therefore considers all relevant impacts of the construction and operation of HPC. I set out my consideration of the decommissioning phase of HPC in paragraphs 4.6 to 4.8 of the HRA.

4.6 Under Regulation 61(3) of the Habitats Regulations, the competent authority must, for the purposes of the HRA, consult the appropriate nature conservation bodies and have regard to any representations they make within such reasonable time as the authority specify.

4.7 The Panel, with support from PINS, prepared a document entitled “Report on the Implications for European Sites” (“RIES”). The RIES was published on the PINS planning portal website on 26 July 2012 for a period of 21 days for the purposes of Regulation 61(3) consultation. At the time of publication, there were still a number of outstanding items and matters for clarification in the RIES. Written responses were received from Natural England (“NE”), the Countryside Council for Wales (“CCW”), the Marine

Management Organisation (“MMO”), the EA, and the Applicant. The RIES and written responses to it have been taken into account in my assessment, alongside an HRA produced by the EA for its consents and first published in July 2012 (a revised version was published in March 2012 with the same analysis of impacts as in the earlier version) and one produced by the MMO in respect of the temporary jetty published in July 2012.

4.8 At the subsequent issue specific hearing on 23 August 2012 on HRA matters and ecology, NE, the CCW, the MMO and the EA stated that they were content with the sufficiency of the RIES.

4.9 The Panel advised me that they had carefully examined the requirements included in the draft Development Consent Order dated 31 August 2012 (and incorporated into the final Order) that would give protection to the integrity of the European sites and Ramsar sites. They had consulted extensively with the relevant statutory bodies and regulatory authorities. The Applicant has reached agreement with these bodies that these requirements would be sufficient to secure the protection and integrity of the European sites and the Panel found no reason to disagree. Given the opportunities for comment on Habitats and Birds Directives issues arising from the HPC project provided to the general public as a result of the examination process generally and specifically by the publication of the RIES and the hearing of 23 August 2012, I have not considered it appropriate to take further steps to consult on these issues under regulation 61(4).

4.10 The HRA concludes that the HPC project will not have an adverse effect on the integrity of any European site. This conclusion is based on the recommendations of the Panel and takes account of the representations of all interested parties. It gives substantial weight to the opinion of the EA, in view of their expertise and the detailed work which they have undertaken on the project, which finds, in particular, that the technology proposed to be used for mitigation of potential adverse impacts would be effective. I have no reliable evidence on which to base a contrary opinion and the HRA accords with the EA’s assessment. The mitigation measures required by the Order and by the EA permits will ensure that there are no adverse effects on site integrity. The MMO will also play a role in permitting relevant activities as well as approving measures under the DCO. Accordingly, there are no problems with competent authority co-ordination between myself, the MMO (which has yet to issue a marine licence for applied for by the Applicant) and the EA (the question of co-ordination was one on which the Panel, writing in December 2012, could not be certain: I also note that I do not consider that it is necessary for me to wait until another competent authority’s decision has survived, or is beyond the reach of, legal challenge before relying on mitigations included in it).

4.11 With these safeguards in place, I conclude that there would be no adverse effect on any European site as a result of HPC alone and in combination with other plans and projects, as explained in the HRA, a copy of which is attached at **Annex F**.

V. ENVIRONMENTAL IMPACT ASSESSMENT

5.1 I have considered the environmental information supplied in respect of the Application in line with my duties under regulation 3(2) of the 2009 Regulations. In particular, I have considered the likely significant effects identified in the Environmental Statement (“ES”) and the Panel’s report, which includes their assessment of all the environmental information received up to the end of the examination period (for the purposes of clarity in this case, I have produced a brief summary of my consideration of the likely significant effects as reported in the ES, a copy of which is attached at **Annex E**, with the key findings contained in the Panel’s report in respect of those effects), the RIES (my specific conclusions in respect of Habitats and Birds Directives issues are set out above), and representations containing environmental information which were received after the close of the examination.

5.2 Except where I have stated otherwise, either in this letter, the HRA, or the Environmental Summary Document referred to paragraph 5.1, I agree with the way that the ES and the Panel analyse the environmental effects of the project (and – again unless otherwise stated elsewhere – I prefer the Panel’s analysis to that of the ES where the two differ). I do not consider that there is any need for the ES to be further supplemented. Before taking my decision, I weighed against the benefits of the HPC project its potential detrimental impacts (in particular but not exclusively) in respect of socio-economic factors, construction traffic, noise, visual effects, and amenity and recreation as well as specific issues in respect of the European Sites which are dealt with in the HRA.

VI. CONSIDERATION OF THE APPLICATION

6.1 As noted above, the account of my consideration of the Panel’s report below focuses on those matters on which I take a materially different view from that expressed by the Panel. Since neither sub-paragraph (a) or (b) of regulation 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 applies in respect of the view which I have formed on any of these matters, I am not required to notify interested parties and give them an opportunity of making further representations under regulation 19(3) before taking my decision on the Application.

6.2 All paragraph references in this section, unless otherwise stated, are to the Panel’s report and references to requirements are to those in Schedule 2 to the Order.

6.3 Following the closure of the examination on 21 September 2012, representations were submitted which could not be considered by the Panel and are therefore not in their report. The representations have however been considered by me and the manner they have been dealt with is set out later in

this letter. I do not consider that I require further information on which to take a decision with respect to the Application.

6.4 THE CASE FOR DEVELOPMENT

6.4.1 The policy and legal context of the Application

6.4.1(i) It is critical that the UK continues to have secure and reliable supplies of electricity. An increasing proportion of those supplies needs to come from low carbon sources. It is Government policy that new nuclear power should be able to contribute as much as possible to the UK's need for new electricity generating capacity. The policy background to the need for new electricity generating capacity generally, and new nuclear power in particular, is set out in Parts 2 and 3 of overarching energy National Policy Statement ("NPS") EN-1 and in section 2.2 of Volume 1 of the new nuclear NPS EN-6. In particular paragraph 3.5.1 of EN-1 states:

"For the UK to meet its energy and climate change objectives, the Government believes that there is an urgent need for new electricity generation plant, including new nuclear power. Nuclear power generation is a low carbon, proven technology, which is anticipated to play an increasingly important role as we move to diversify and decarbonise our sources of electricity."

6.4.1(ii) Section 2.2 of NPS EN-6 makes it clear that when considering an application for a new nuclear power station that is capable of deployment by a date significantly earlier than the end of 2025, substantial weight should be given to the benefits (including the benefit of displacing carbon dioxide emissions) that would result from the application receiving development consent. Further, paragraph 4.1.1 of NPS EN-6 identifies those sites which the Government has assessed as being potentially suitable for the deployment of new nuclear power stations in England and Wales before the end of 2025. Hinkley Point is one such site.

6.4.1(iii) Also relevant to consideration of the Application are the NPS policies on alternative sites set out in section 4.4 of EN-1; the considerations set out in sections A.2 to A.5 of Volume 2 of NPS EN-6 (notwithstanding, as regards the latter, the finding of no adverse effects on the integrity of European sites set out above in section IV); and the general assessment principles in section 4.1 of EN-1 (in particular, the presumption in favour of granting consent at paragraph 4.1.2).

6.4.1(iv) The NPSs provide very strong policy backing for new nuclear development in general and, in principle, for a new nuclear power station at Hinkley Point. They do so predominantly because of the national and wider benefits of such development. However, the NPSs make clear that consideration of the Application must take full account of the local impacts of such development, and the Planning Act gives me a discretion to refuse to grant

development consent, even where it would otherwise be consistent with the NPSs to grant consent, if I consider that the adverse impact of a proposed development would outweigh its benefits.

6.4.1(v) Taking account of the matters below and in the Annexes to this letter (including in particular the mitigation measures which have been put in place), I have formed the view that it would be consistent with the NPSs to grant consent in respect of the Application on the terms in the Order, and that the adverse impacts of the HPC project would not, in any event, outweigh its benefits. Although the National Planning Policy Framework (“NPPF”) is not the primary point of reference for my decision in policy terms in the same way that the relevant NPSs are, it is a relevant matter and I note that (whilst paragraph 14 of the NPPF does not apply in this case by virtue of paragraph 119), a decision to grant consent in respect of the Application is consistent with the Government’s commitment to sustainable development as explained in the relevant parts of the NPPF.

6.4.2 Traffic and Transportation – Strategic Issues

6.4.2(i) On any view, it is plain that the construction of the HPC project would result in a substantial increase in traffic in the area. The Panel’s conclusions on these issues are at paragraphs 4.18 and 4.45-47 of their report.

6.4.2(ii) It is clear that, even allowing for mitigation (on which see further below), there is the potential for construction traffic associated with the HPC project to have adverse impacts on the local area. It is also clear that residual traffic impacts are likely to be worst in relation to Cannington.

6.4.2 (iii) I take effects on local communities seriously and have given careful consideration to the impact of traffic movements on the heart of Cannington. Overall I am in agreement with the Panel that, even allowing for the mitigation measures to be put in place, traffic will have an adverse impact on local residents until such time as the Cannington bypass is completed. I also note that the construction of the Cannington bypass is scheduled to take approximately 22 months and work on it will start 6 months prior to the construction of the HPC buildings. This effectively means a potential period of some 16 months when the majority of the HPC construction traffic would have to go through Cannington. I have also noted the Panel’s proposed requirement (C3B) which would prevent any traffic associated with the construction of the Combwich freight facility going through Cannington (I give my consideration of this in section 6.4.3 below). However, in my view, significant though they are, the residual adverse impacts on Cannington do not outweigh the urgency of the need for the development, nor are they so severe as to require the construction of a completely new link between the M5 and the HPC site.

6.4.2(iv) I have been informed that the Applicant has entered into an agreement under section 106 of the Town and Country Planning Act 1990 (“the section 106 Agreement”) which includes provision for a wide range of measures

to mitigate the impacts of traffic on local residents. In particular Annex 12 of the section 106 Agreement details those measures the objectives of which are to minimise the volume of freight traffic associated with the construction of HPC and its associated development and their impacts on local residents and visitors. I welcome these measures, but I am of the opinion that these could be improved upon by introducing a further requirement into the Order which would allow local residents easily to identify HGVs associated with the HPC project and therefore to report any failure by their drivers to adhere to the approved mitigation measures. The Order as made therefore includes a further requirement on this subject (Schedule 2, paragraph 2, requirement PW9(3)).

6.4.2(v) It seems to me that although there will be some significant and adverse traffic impacts both on Cannington and in the wider area affected by the HPC project as a result of the Applicant's proposals, those impacts will not be unacceptable. In reaching that view, I take account of the steps which have been taken to mitigate those impacts (ranging from the proposals for the temporary jetty, which will allow large quantities of materials that would otherwise be delivered by road to Hinkley Point to be delivered by water instead, to the requirements of the Order and the section 106 Agreement); of the character of the remaining extent of those impacts once allowance has been made for those mitigations; and of the benefits that the HPC project would bring (both nationally and locally), to which I attach substantial weight, in line with NPS EN-1. I also have regard to the likely consequences of either refusing to grant the Order on the grounds that a different new road connection is needed, or of taking the only step that would make a significant difference to the traffic impacts on Cannington within the scope of the existing Application by requiring the bypass around the town to be built before the construction works whose traffic would use the bypass are permitted to begin. Either of these options would introduce (at best) a significant delay in construction of the HPC project which I do not think is necessary or desirable.

6.4.2(vi) On the specific question of the resilience of the traffic network in the context of dealing with emergencies, I note paragraphs 4.22 to 4.24 and 4.319 of the Panel's report. In this area, decision-making under the Act has to take account of the fact that emergency planning in relation to nuclear power stations is primarily a matter for the Radiation (Emergency Preparedness and Public Information) Regulations 2001 and for the nuclear site licensing regime (see in particular standard condition 11 of the nuclear site licence, which has been granted in respect of the HPC project since the close of the examination period), under which emergency arrangements require the approval of the Office of Nuclear Regulation ("ONR"). Emergencies should not, by definition, be frequent occurrences, although when they do occur, it is recognised that dealing with them may occasion material inconvenience to, for example, other road users. However, I give weight to and rely on the effective application of the 2001 Regulations to act as a control, from a nuclear safety point of view, that any such inconvenience should not exceed acceptable levels. On that basis I do not agree with the Panel's characterisation of the potential for

congestion in an emergency as “not completely satisfactory” (paragraphs 4.23, 4.30) such that I consider the issue capable of satisfactory resolution.

6.4.3 Combwich Freight Terminal

6.4.3(i) The Panel has recommended that work on the Combwich freight terminal should not start until after the Cannington bypass is available for use (Panel Report Appendix C paragraph 259). Their reason for this recommendation is as follows:

“Construction of the freight laydown would require the ground level to be raised by approximately a metre across an extensive area. This would entail the import of fill materials, potentially generating a considerable amount of heavy goods traffic. We think it highly desirable that this work should be delayed until after the completion of the Cannington bypass, thereby avoiding any risk of this traffic passing through the built-up area of Cannington.”

6.4.3(ii) I accept the principle behind the Panel’s recommendation in as much as their intention is to reduce the avoidable traffic impacts on Cannington (whilst not going so far as to delay the main work of construction on the HPC project until the Cannington bypass has been built). However, I believe that their suggested requirement is unduly restrictive and that it will delay the construction of the freight terminal at Combwich unnecessarily. In my view, it is possible to achieve the Panel’s objective as regards Cannington in a less restrictive manner without impacting on the construction timetable for the HPC project, by amending the requirement C7 to read as follows:

C7	<p>Freight laydown facility</p> <p>Until Work Nos. 6A (Cannington bypass) and 6B (Cannington new road) have been constructed and are available for use, no work shall take place on Work No.8A(2)(a) to (h) (Combwich Freight Laydown Facility) which involves the delivery or removal of bulk filling materials other than via Combwich Wharf and the Combwich Wharf Access Road..</p>
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6.4.3(iii) The revised requirement C7 would avoid the need for additional traffic through Cannington and allow the freight facility to be constructed at the same time as the Cannington bypass by permitting delivery of bulk materials via Combwich Wharf. I have considered whether this change would cause an increase in traffic in Combwich which could be unacceptable or whether for any other reason I should consult interested parties before making it. I have concluded that it would not, and that no such consultation is required, for the following reasons:

1. all deliveries of fill materials from the Wharf to the freight facility will be via an existing access road (owned by the Company);

2. the existing access road does not have any residential properties fronting it, the nearest being some 250 metres from the freight facility and separated by Combwich Ponds (source: section 2.1.51 Combwich Design and Access Statement October 2011); and
3. no traffic will need to be routed via Brookside Road so no additional traffic will be allowed to go through Combwich and therefore the overwhelming majority of residents of Combwich should experience no additional impact.

6.4.4 Noise - Combwich Wharf

6.4.4(i) I welcome the Panel's recommended requirements which would reduce the level of noise on residents of Combwich to an acceptable level. In addition to the Panel's requirements I have included an additional requirement C17(2) which requires advance notice to be given to the residents of Riverside of the arrival and departure of vessels to and from the wharf outside the permitted hours (i.e. during night time depending on operational requirements and with the prior approval of the Sedgmoor District Council).

6.4.4(ii) I note in this connection that, as permitted by the Act, the draft Order submitted with the Application provides the Applicant with a defence to proceedings brought under the Environmental Protection Act 1990 in relation to a nuisance caused by noise emissions, and that Otterhampton Parish Council expressed the view that residents of Combwich should be able to seek redress against statutory nuisance caused by the works at Combwich. However, I am satisfied that any potential noise nuisance in this context will either not arise, or, if it does, can be effectively enforced against by means of the relevant requirements, including requirement C18(2) which limits the noise level at 24 Riverside to 45dB LAeq, 8 hour. I therefore agree with the Panel's conclusions at paragraphs 8.62 to 8.65.

6.4.5 Stogursey

In paragraph 4.258 the Panel reaches a conclusion in respect of the impacts on Stogursey and in doing so it appears to include in the planning balance the Property Price Support Scheme ("PPSS") made available by the Applicant and described at paragraph 4.254. I note that since it is not usual to reckon adverse impacts on property values as a planning consideration, and that while I am not reaching a concluded view on the relevance and importance (i.e. materiality) of the PPSS, it may not be appropriate to include a scheme designed to mitigate the effect of such impacts on residents as a planning consideration. However, in my judgment, the other aspects of mitigation referred to by the Panel and the weight to be accorded to the wider benefits of the HPC project would be sufficient to support the conclusion that the impacts on Stogursey are not such as to justify refusal of development consent, even if the PPSS is disregarded.

6.4.6 Bridgwater Bay Nature Reserve

At paragraphs 8.92 to 8.99 of their report, the Panel explain an issue about the Bridgwater Bay Nature Reserve which has arisen between NE and the Applicant, and in which the EA also has an interest. The Applicant proposed to address this issue by a provision in the Order; NE preferred to address it by entering into a Deed of Variation with the EA. The Applicant's approach would generally disapply the existing management framework for part of the Nature Reserve; NE's approach would disapply it simply as against the Applicant, allowing it still to be applied in relation to the activities of third parties. The Panel left the issue open since at the conclusion of the examination period the Deed had not been completed. However, I have now received a copy of the completed Deed, which has been considered in the context of the agreements and byelaws governing the management of the Bridgwater Bay Nature Reserve. In my view, the combined effect of the Deed of Variation and the existing agreements and byelaws strikes a better balance between NE's and the Applicant's interests as regards the nature reserve than the proposed Order provision, for the reasons given by NE in the statement of common ground referred to in paragraph 8.93. I have therefore not included the proposed provision in the Order.

6.4.7 Policing costs

I note what the Panel's report (paragraphs 4.153 and 8.196) says about the subject of financing the policing of protests which may take place in connection with the HPC project and have carefully considered the submissions made to the Panel by both the Applicant and Avon and Somerset Constabulary. I also note the contributions which the Applicant is making towards "community safety" services under the section 106 agreement. I do not consider that there is sufficient certainty about the nature or extent, and therefore cost, of any protests to justify making further provision about this matter in the DCO.

6.4.8 Human Rights

My decision on the Application is one which must be taken in accordance with the relevant requirements of the Human Rights Act 1998. Whilst that applies to the decision generally, it is particularly true of the compulsory acquisition aspects of the Order, which is why the Panel consider Human Rights issues at paragraphs 7.86-7.91 of their report as well as at paragraphs 4.409-4.413. These aspects of the Order are considered further below. At paragraph 4.410 the Panel asserts that it is an independent and impartial tribunal for the purposes of Article 6 of the European Convention on Human Rights ("ECHR") (the right to a fair hearing by an independent and impartial tribunal). No authority is provided for this statement, and to the extent that the position of the Panel is analogous to that of a planning inspector making a report to Ministers in a recovered appeal under the Town and Country Planning Act 1990, it may not be correct or (since they do not decide the Application) necessarily relevant: but it is not necessary to decide these points. Even if the Panel is not such a

tribunal, there is nevertheless no reason to suppose that the process followed under the Act in relation to the Application does not comply with Article 6 ECHR, given both the transparency of the examination procedure and the possibility of my decision being reviewed by a Court, which would satisfy Article 6 ECHR. This point applies to the Panel's work more generally in so far as it leads to conclusions which could be determinative of civil rights within the meaning of Article 6 ECHR (i.e. not just to compulsory purchase matters).

6.4.9 Compulsory Acquisition Powers

6.4.9(i) The Application seeks compulsory acquisition powers and was accompanied by a Statement of Reasons, a Funding Statement, a Book of Reference and Land Plans (as amended in relation to land take at the Pill) showing the plots of land referred to in the Book of Reference.

6.4.9(ii) The Book of Reference identifies 260 plots and these are shown on the Land Plans. The compulsory acquisition powers are sought:

- to remove existing easements, servitudes and other private rights in relation to all plots;
- to acquire the freehold of 85 plots;
- to acquire new rights in 17 plots;
- to take temporary possession of 135 plots; and
- to take temporary possession and acquire new rights in a further 22 plots.

6.4.9(iii) I note that Chapter 7 of the Panel's report considers the Company's Application for the compulsory acquisition powers. I further note that there has been progress in acquiring plots of land outlined above but that all plots or interests marked for compulsory purchase in the Book of Reference remain in the Order. This is to ensure that any overriding easements or other private rights are subject to the power of compulsory acquisition. On whether or not compulsory acquisition powers should be given, the Panel concluded:

"9.6 We have also considered the request for powers of compulsory acquisition to be included in any DCO that is made and conclude that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the Applicant in respect of the CA [compulsory acquisition] Land shown on the Land Plans (as amended)."

6.4.9(iv) There are only three points on which my own conclusions in respect of compulsory acquisition differ slightly from those of the Panel. None of these affects the terms on which I am prepared to make the Order, but it is appropriate to record them here nevertheless.

6.4.9(v) The first point is the question whether it would be possible to make less intrusive use of the statutory powers of compulsory acquisition in

respect of those pieces of land which are only required on a temporary basis. For the reasons given in paragraphs 7.32 and 7.33 of the Panel's report, the Applicant took the view that it would have to acquire this land outright and dispose of it once it was no longer needed. In effect the question is whether, absent the offer of a lease by the existing owner, the Act allows the Order to create a leasehold interest which can then be compulsorily acquired. The Panel agree with the Applicant that the answer to this is no, and their conclusions on this point are at paragraphs 7.100 to 7.103 of their report. I share the Panel's view, but would simply add that even if we are both wrong as a matter of law, about the technical possibility of conferring a right to create and compulsorily purchase a leasehold interest, the approach taken by the Applicant would still in my view be justifiable on grounds of practicality and in the absence of any strong case for an alternative approach being made by interested parties.

6.4.9(vi) Another matter of legal debate arising from the compulsory acquisition aspects of the Application is the question of mooring rights on Combwich Pill, considered at paragraphs 7.59 to 7.65 and 7.92 to 7.99 of the Panel's report. While I am not persuaded by all of the legal arguments put forward by the Applicant on this subject, I am nevertheless satisfied that it is appropriate to grant the compulsory acquisition sought here. In broad terms, I agree with the Panel's conclusions on this point, but I would also note in this context, first, that if the alleged mooring rights exist as a matter of law, they would appear to relate to the bank of the Pill which is not covered by the compulsory acquisition; and, second, that it is not the exercise of any compulsory acquisition rights which would restrict navigation in and out of the Pill (navigation being a public rather than a private right and mooring being arguably incidental to that public right – *Attorney-General v Wright* [1897] 2 QB 318).

6.4.9(vii) The third point is in relation to human rights. The making of an Order including provisions for compulsory acquisition engages, most notably, Article 6 of the European Convention on Human Rights ("ECHR") and Article 1 Protocol 1 ECHR. I am satisfied that the procedures followed in relation to the Application are compatible with the Convention rights of interested parties, noting in particular the compensation mechanisms for which provision is made in the Order, both generally as regards compulsory purchase and in individual provisions such as Article 35 which provide for interference with existing rights. (See also the general comments on human rights matters above.) As regards paragraph 7.91 where the Panel states that Article 8 is not engaged by the compulsory acquisition process, I note that in my view this may or may not be the case as a matter of law, but what is more important is that there is nothing to indicate that any interference with Article 8 rights arising from the Order will not have been necessary and proportionate (as the Panel observe at paragraph 4.411).

6.4.9(viii) A final issue relating to compulsory acquisition, into which I have had to inquire a little more closely than the Panel did, is that of land in which there is a Crown interest. The Book of Reference identifies that there are 27

plots of land where the Crown has an interest. In such cases, the Crown interests themselves cannot be compulsorily acquired, and section 135 further provides as follows:

“(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—

(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and

(b) the appropriate Crown authority consents to the acquisition.

(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

(3) The reference in subsection (2) to rights benefiting the Crown does not include rights which benefit the general public.”

6.4.9(ix) In respect of the 27 plots mentioned above, the need for the consents of appropriate Crown authorities required by section 135 has been met either in advance of the making of the Order or by changes to the Order provision on Crown rights (now article 48)..

6.5 SCREENING FOR THE PURPOSES OF THE EQUALITY ACT 2010 (“the 2010 Act”)

6.5.1 In reaching my decision on the Application, I have had regard to the three elements of the public sector duty described in section 149 of the 2010 Act which came into force on 6 April 2011. In respect of certain “protected characteristics” (age; disability; gender reassignment; marriage and civil partnerships¹; pregnancy and maternity; race; religion and belief; sex; and sexual orientation), public authorities must have due regard in the exercise of their functions to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
2. advance equality of opportunity between people who share a protected characteristic and those who do not; and

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

3. foster good relations between people who share a protected characteristic and those who do not.

6.5.2 My assessment of the HPC project in this respect is that it is not likely that there would be a disproportionate impact in relation to any of the protected characteristics. I do not therefore consider that the development and operation of HPC project is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

6.6 MATTERS ARISING SINCE CLOSE OF EXAMINATION ON 19 SEPTEMBER 2012

6.6.1 Northern Ireland

6.6.1(i) On 21 October 2012, the Minister for the Environment, Northern Ireland wrote to the Department and Sir Michael Pitt, Chief Executive PINS asking for his office to be consulted on all applications for new nuclear power stations in England and Wales. He was particularly concerned about the environmental impact the HPC project would have on protected habitats in Northern Ireland. Sir Michael responded that any such concerns should be addressed to the Secretary of State for Energy and Climate Change to consider because the examination of the Application had closed. The Minister did not follow up his concerns with the Department.

6.6.1(ii) However, as noted above (section IV), I undertook a Habitats Regulations Assessment in respect of the Application. I concluded that there would be no adverse effect on any European site as a result of the HPC project. That assessment is further borne out by the facts that the distance between the site of HPC and the range of its likely impacts are such that granting consent would have no impact on a European Site in Northern Ireland (over 300 miles distant) or in the Republic of Ireland (over 155 miles distant). In addition the European Commission carried out an assessment of HPC under the provisions of the Euratom Treaty, which concluded:

“the Commission is of the opinion that, both in normal operation and in the event of an accident of the type and magnitude considered in the General Data, the implementation of the plan for the disposal of radioactive waste in whatever form from the two EPR reactors on the Hinkley Point C nuclear power station, located in Somerset, United Kingdom, is not liable to result in a radioactive contamination of the water, soil or airspace of another Member State that would be significant from the point of view of health.”²

² See the Commission’s opinions under Article 37 Euratom at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:033:0001:0002:EN:PDF> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:154:0001:0001:EN:PDF>.

6.6.2 Austria and the Espoo Convention³

6.6.2(i) On 19 October 2012 the Austrian Government (“Austria”) wrote to the Department indicating that it wished to participate in the process of considering the Application according to the Espoo Convention and the Environmental Impact Assessment Directive (2011/92/EU). The Department sent Austria a set of the Application documents and invited them to comment. Austria responded on 5 March 2013, a copy of their letter and its attachments, comprising an expert report and a number of representations by groups and individuals opposed to the HPC project, are enclosed with this decision letter.

6.6.2(ii) The expert report focuses on nuclear safety issues and as such has been reviewed by the Office of Nuclear Regulation (“ONR”). It draws heavily on documents published by the ONR during the Generic Design Assessment of the EPR. Although broadly technically sound, it tends to overemphasise the significance of those areas where ONR has in any event determined that more work needs to be done during any subsequent construction and commissioning of a power station based on the EPR (i.e. such as at Hinkley Point) as part of its own regulatory processes.

6.6.2(iii) The Austrian expert contends that in assessing the likely environmental effects of HPC project, I should take into account the effects of very low probability, extreme (or severe) accidents. Effectively the report says that unless it can be demonstrated that a severe accident (involving significant radiological release) cannot occur, then no matter how unlikely it is, I must consider its consequences as part of the development consent process, having regard, in particular, to the possible deleterious effects on Austria. However, in my view such accidents are so unlikely to occur that it would not be reasonable to “scope in” such an issue for environmental impact assessment purposes.

6.6.2(iv) Certain of the attachments rehearse points which are not for my consideration for an application made for a planning decision and are essentially high level policy arguments against nuclear power based on claims about costs or alleged associated health risks to children etc. In view of what is said on these points elsewhere in this letter, I do not consider them further here.

³ The Convention on Environmental Impact Assessment in a Transboundary Context (informally called the Espoo Convention) is a United Nations Economic Commission for Europe (UNECE) convention signed in Espoo, Finland, in 1991 that entered into force in 1997. The Convention sets out the obligations of Parties - that is States (of which the UK is one) that have agreed to be bound by the Convention - to carry out an environmental impact assessment of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

6.6.2(v) One of the attachments argued that the cooling system for the HPC proposal should be by means other than direct cooling, for example an evaporative system rather than discharging directly into the sea. The Applicant's ES considered alternative approaches to cooling infrastructure and refers to work done by the EA⁴ which concluded that direct cooling could still be "best available technology" for a generating station in an estuarine location provided that best practice in planning, design, mitigation and compensation are followed. As the discharge of the cooling water would be into a European site, I undertook a Habitats Regulations Assessment (see section IV above) which concludes there will be no adverse impact on the European sites or their constituent features.

6.6.2(vii) On a procedural level, a number of respondents have raised as a point of "discrimination" that the materials made available for the purposes of the transboundary consultation were in English and no German translation was offered. Translation is not required under the Espoo Convention and therefore was not undertaken.

6.6.3 Other representations in the Planning Act context

6.6.3(i) It is apparent to me that the Panel received representations from various parties which they disregarded under section 87(3) of the Act as they are entitled to do, for example, where representations relate to the merits of the policy set out in the NPSs (see paragraphs 1.5 and 1.6). Since the close of the examination period, a number of further representations from various parties have been made to me about the Application, either directly or relayed by PINS.

6.6.3(ii) Except as noted elsewhere in this letter, these post-examination representations raised issues that either had already been considered by the Panel in their report or that I consider it is appropriate for me to disregard using the discretion given to me under section 106 of the Act on the same grounds as the Panel are entitled to disregard representations under section 87(3).

6.6.4 Geological Disposal Facility

6.6.4(i) On 7 March 2013, Greenpeace wrote informing me that in their view the decision by Cumbria County Council of 30 January 2013⁵ effectively means that it is no longer possible or lawful for me to make the Order for the HPC proposal. A copy of Greenpeace's letter is enclosed.

6.6.4(ii) The Government is satisfied that it is technically possible to dispose of new higher-activity radioactive waste and legacy waste in a geological disposal facility ("GDF"), and that this is the right approach for managing waste from any new nuclear power stations. Our policy is that,

⁴ <http://cdn.environment-agency.gov.uk/scho0610bsot-e-e.pdf>

⁵ http://www.cumbria.gov.uk/news/2013/January/30_01_2013-150007.asp

before development consents for new nuclear power stations are granted, we will need to be satisfied that effective arrangements exist – or will exist – to manage and dispose of the waste they produce. Our policy also recognises that the creation of a GDF will take a considerable amount of time, and that geological disposal will be preceded by safe and secure interim storage (such as is provided for in the context of the HPC project proposals). Our policy is set out in Volume II of NPS EN-6, at Annex B, and in Volume I of NPS EN-6 at section 2.11.

6.6.4(iii) I am satisfied that effective arrangements will, in due course, exist to manage and dispose of the higher-activity radioactive waste produced by the HPC project in a GDF.

6.6.4(iv) I am further satisfied that the recent decision of Cumbria County Council not to support progressing to the next stage of the GDF site selection process in respect of possible sites in Cumbria does not constitute a reason why I should not be satisfied as indicated above. My reasons for taking this view are set out in a Written Ministerial Statement which I made to Parliament on 31 January 2013 (the text of which is available at <https://www.gov.uk/government/speeches/written-ministerial-statement-by-edward-davey-on-the-management-of-radioactive-waste>). In my view, there is no basis for the assertion that the grant of development consent for the HPC project would be in breach of any legal requirement, domestic or international.

6.6 OVERALL SUMMARY

I recognise that many people, both local residents and others, profoundly disagree with the Government's policy on new nuclear power stations and/or with some or all of the Applicant's proposals in respect of the HPC project. As noted elsewhere in this letter, not all of their objections are relevant or required to be taken into account for the purposes of the decision I am taking in respect of the Application, but I do not expect that will commend my decision any more to them. I do not by any means underestimate the extent of the adverse impacts which will be felt by many in their daily lives in the areas where HPC project works are to be carried out. The range of mitigations and controls provided for in the Order, the section 106 agreement and elsewhere (for example in applicable statutory regulatory regimes) is wide and I expect them to be effective in reducing the local impacts of the HPC project to an acceptable level, but residual adverse impacts from a planning point of view will remain and they will no doubt sometimes be keenly felt. To these residual impacts, both collectively and (as the evidence and the Panel's conclusions warrant, as in the case of traffic in Cannington, for example), I give substantial weight. However, in the final analysis, they are in my view significantly outweighed by the HPC project's potential to bring local benefits and the vital contribution which it would make to the achievement of energy and climate change policy objectives, which, as the NPS sections cited above make clear, are of crucial national importance.

6.7 OTHER DECISIONS BY GOVERNMENT AND REGULATORS AFFECTING THE HPC PROJECT

6.7.1 My decision to make the Order is only one of a number of decisions that need to be made by Government or regulators before the HPC project can go ahead, and it is only concerned with one aspect of approval for that project (albeit an important one), namely, whether it should be given development consent under the Act. It is essentially a decision about the use of land.

6.7.2 The nuclear safety aspects of the HPC project are regulated by the ONR and EA. Since the close of the examination the ONR has issued the nuclear site licence⁶ (26 November 2012) for Hinkley Point C, and the two agencies have finalised the non-site specific aspects of the Generic Design Assessment (“GDA”) process⁷ (13 December 2012). In keeping with the policy set out in section 2.7 of Volume I of NPS EN-6, the Panel has not sought to duplicate consideration of nuclear safety matters in its consideration of the Application. Although it would have been lawful, and consistent with that policy, to grant development consent without a nuclear site licence having been granted or the GDA process having reached the stage that it has in this case, it may be noted here for the sake of public confidence that such progress has been achieved with respect to the nuclear safety approvals processes at the point when development consent is granted for the first new nuclear plant to be granted development consent for many years.

6.7.3 Also relevant from the nuclear safety point of view is the Secretary of State’s Regulatory Justification decision of 2010. I note that NPS EN-6, paragraphs 3.12.9 and 3.12.11 state that I should have regard to this when considering potential effects on human health and well being and act on the basis that the risk of adverse effects resulting from exposure to radiation for workers, the public and the environment will be adequately mitigated because of the need to satisfy the requirements of the UK’s strict legislative and regulatory regime as well as the ONR’s implementation of the Government’s policy on demographics. I am satisfied that, in the light of the Justification decision and the further work done by ONR and EA as nuclear safety regulators in connection with the HPC project, there is no need to consider these issues further in the context of the Application.

6.7.4 It may also be noted, for the sake of completeness, that the EA has issued various non-nuclear safety authorisations for which it is responsible in respect of the HPC project, most recently the Environmental Permit⁸ issued on 13 March 2013.

⁶ Available at <http://www.hse.gov.uk/nuclear/hinkley-point-c/index.htm>

⁷ Available at <http://www.hse.gov.uk/newreactors/reports/step-four/close-out/epr70475n.pdf>

⁸ Available at <http://www.environment-agency.gov.uk/homeandleisure/132474.aspx>

6.8 FURTHER DECISIONS TO BE MADE BY GOVERNMENT

6.8.1(i) In addition to the outstanding marine licence application yet to be determined by the MMO, two further decisions, which are not related to the development consent process, remain to be made by Government in relation to the HPC project. The first of these concerns the approval of a funded decommissioning programme (“FDP”) under the Energy Act 2008. The purpose of FDP approval is to ensure that operators of new nuclear power stations will have secure financing arrangements in place to meet the full costs of decommissioning and their full share of waste management and disposal costs. Failure by the Operator or an Associated Company which has obligations under the FDP, to comply with an approved FDP is a criminal offence under section 57 of the Energy Act 2008.

6.8.1(ii) The Nuclear Liabilities Financing Assurance Board (NLFAB) was established to provide impartial scrutiny and advice on the suitability of FDPs submitted by prospective new nuclear operators. The Board will advise me on the financial arrangements that operators submit for approval. I understand the Applicant is currently developing its FDP.

6.8.1(iii) Until the FDP is approved, the Applicant will not be able to carry out any activities on the site which is subject to the nuclear site licence, that it is permitted to carry out by virtue of that licence: this is enforceable by criminal penalties. The FDP approval process is entirely separate from and has no bearing on my consideration of the Application.

6.8.1(iv) The second decision Government will have to make relates to the “strike price” that would form part of the new regime to support investment in low carbon generating technologies under the Energy Bill that is currently before Parliament. I received a representation suggesting that these proposals, in so far as they relate to the HPC project, would be inconsistent with the Government’s policy that there will be no levy, direct payment or market support for electricity supplied or capacity provided by a private sector new nuclear operator, unless similar support is also made available more widely to other types of generation. I have also received representations to the effect that the overall costs, either of nuclear power generally, or of the HPC project specifically are, or are likely to be too high to represent good value for money, as compared with other technologies or energy policy options. However, none of this has any bearing on my consideration of the Application. The Government’s position is that new nuclear power would benefit from any general measures that are in place or may be introduced as part of wider reform of the electricity market to encourage investment in low carbon generation. This is about creating a level playing field for all forms of generation, not subsidising nuclear. More generally, I note that the possible costs, in particular as represented by any potential strike price, are matters for a separate decision-making process: from the point of view of a decision on the Application, I must have regard to the NPS policies which state that new capacity in all varieties of

electricity generation is urgently needed, and that, for example, measures to reduce demand or increase energy efficiency, while they will make an additional and very important contribution to achieving our energy and climate change objectives, are not substitutes the contribution that new nuclear plant can make to meeting that need.

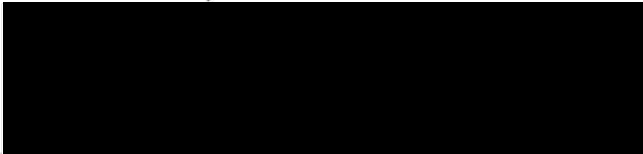
7. CHALLENGE TO DECISION

The circumstances in which my decision may be challenged are set out in the note attached to this letter.

8. PUBLICITY FOR DECISION

My decision on this Application is being publicised as required by section 116 of the Act and regulation 23 of the 2009 Regulations.

Yours sincerely

A large black rectangular redaction box covering the signature of Edward Davey.

Edward Davey
Secretary of State for Energy and Climate Change

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an Application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The Hinkley Point C (Nuclear Generating Station) Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).