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To the Applicant and All Interested  
Parties

Your Ref:

Our Ref: EN010012

Date: 10 August 2021

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Dear Sir/Madam

**Planning Act 2008 (as amended) – Section 89(3) and 89(4), The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) - Rule 8(3) and 9**

**Application by NNB Generation Company (SZC) Limited for an Order Granting Development Consent for The Sizewell C Project**

**Change to the timetable and Procedural Decision**

I am writing to you to notify you of a change to the Examination Timetable and our Procedural Decision in relation to the Applicant's proposed additional changes submitted on 23 July 2021.

**Change to the timetable**

The ExA has decided, in the light of the additional environmental information and revised/ updated Statements of Common Ground that are anticipated to be submitted to the Examination at Deadline 7, to delay the publication of the Report on the Implications for European Sites (RIES) from Thursday 9 September until Wednesday 15 September 2021. That will allow time for the RIES to better reflect the contents of that information. In addition, the comments on the RIES will now be required at Deadline 10, Wednesday 6 October 2021. This means that it is necessary to amend the Examination Timetable. This letter provides you with the updated Examination Timetable at Annex A. This replaces the one that was included in our letter of 18 June 2021 [PD-027].

**Procedural Decision**

Notification of Procedural Decision in respect of three further proposed changes to the application (Changes 16-18) including Compulsory Acquisition Request in respect of

additional land (the Proposed Provision) submitted by the Applicant to the Planning Inspectorate by letter dated 23 July 2021 [REP5-002].

The Examining Authority (ExA) has decided to accept the three additional changes (16-18) to the application put forward by the Applicant. The ExA does not consider the proposed changes to the original application dated 27 May 2020 to be material. The background to, and the ExA's reasoning for, the Procedural Decision are set out below.

Since Change 18 iii. includes 'additional land', as defined by Regulation 2 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs), those regulations are engaged. However, as all persons with an interest in the land have consented to the inclusion of a provision within the draft DCO authorising the compulsory acquisition of the additional land, the prescribed procedure for the compulsory acquisition of additional land set out in Regulations 5 to 10 of the CA Regs do not apply.

Since no formal acceptance, notice, consultation or related process is required before the ExA commences examination of these changes, it will do so with immediate effect alongside the submitted application, as amended by the 15 earlier changes [PD-013]. This decision does not imply any acceptance of the planning merits or evidence for these changes which will be examined with equal rigour as the original application, as previously amended.

## **Background**

The Applicant's letter submitted to the Planning Inspectorate on 2 June 2021 [REP2-001] gave notice of its intention to propose changes to the application. That letter enclosed a Notification Report [REP2-131] which identified the nature of the changes proposed.

The ExA responded by letter dated 8 June 2021 [PD-026] drawing attention to the requirements of the Planning Inspectorate's 'Advice Note Sixteen: How to request a change that may be material' (AN16)<sup>1</sup>, and the need for appropriate and proportionate non-statutory consultation to be carried out before the submission of the Change Request. It also draws attention to AN16 Figure 3 in relation to the information that should be provided with the formal Change Request.

The formal Change Request was submitted to the Planning Inspectorate by letter dated 23 July 2021 [REP5-002]. The Applicant requested the ExA to accept for examination each of three additional proposed changes to the application for the Proposed Development for which development consent is sought. These changes are set out in Table 3 of the Applicant's cover letter of 23 July 2021 [REP5-001] and in Table 1: Overview of Proposed Changes of the Applicant's Change Request letter of the same date [REP5-002]. The latter also contains a summary of whether the proposed changes are assessed to give rise to new or materially different significant environmental effects on businesses or residents. The Mitigation Route Map Second Addendum [REP5-080], submitted with the Change Request, sets out where the Mitigation Route Map submitted at Deadline 5 [REP5-081] would be updated by any of the changes included in the Change Request. These updates are shown in blue within that document.

The Change Request confirms that all three proposed changes have been the subject of public consultation and details are set out in the Consultation Report Third Addendum

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<sup>1</sup> Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/07/Advice-note-16.pdf>

[REP5-044]. It indicates that Change 18 involves an extension to the Order Limits and would engage the requirements of the CA Regs.

The Consultation Report Third Addendum [REP5-044] explains that the non-statutory consultation on the proposed additional three changes involved:

- The publication of notices in the local press;
- the erection and maintenance of site notices;
- the sending of a newsletter to 41,205 homes and businesses;
- consultation with all persons identified as section 42(1) (a) to (d) parties including those not originally consulted on the Application but who may now be affected by the proposed changes;
- an e-mail was sent by the Applicant on 11 June 2021 at the start of the consultation to relevant parish councils to offer them the opportunity to meet the Applicant to discuss the proposed changes. A presentation to Middleton-cum-Fordley Parish Council took place on 5 July 2021;
- the consultation documents were also available to be viewed, subject to an appointment, at the Sizewell C Information Office in Leiston and the Council Offices of Leiston-cum-Sizewell Town Council; and
- promotion through the Project website and social media.

The Consultation Report confirms that the Applicant has had regard to whether or not there may be persons who may be affected by the proposed changes but who are not yet participating in the Examination of the application.

The Applicant relies upon the Consultation Report Third Addendum in support of its request for the ExA to accept each of the three proposed additional changes as part of the application to be examined. This report concludes that overall, the proposed changes received mixed reactions, however, no fundamental issues were raised to lead the Applicant to conclude that the changes would not improve the Project or that they should not be taken forwards. The Applicant's post-consultation position in relation to each of the changes sought, in summary, is that the changes remain as set out in the formal proposed Change Request.

### **The Examining Authority's reasoning**

In making this decision, the ExA has taken account of the guidance in paragraphs 109 to 115 of DCLG Guidance<sup>2</sup> for the examination of applications for development consent and AN16. Paragraph 113 of the DCLG Guidance makes specific reference to the principles of fairness and reasonableness set out in the Wheatcroft<sup>3</sup> case. Paragraph 109 of the DCLG Guidance accepts that applicants may need to change a proposal after an application has been accepted for examination.

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<sup>2</sup> The Department for Communities and Local Government Planning Act 2008: Guidance for the examination of applications for development consent, available at: <https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

<sup>3</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 222

## Materiality of the proposed changes

In the Applicant's view, the further proposed Changes 16-18 to the application when considered either separately or together are not material.

The ExA takes the view that these revisions are properly regarded as changes to the original proposal. However, the proposed changes are all relatively localised in their effect. In environmental terms, each of the proposed changes has been reviewed and appraised in the context of the original Environmental Impact Assessment carried out in respect of the Proposed Development and updated assessments have been provided [REP5-062 to 069]. Table 5.1 of the Consultation Report Third Addendum [REP5-044] contains a summary of whether the proposed changes are assessed to give rise to new or materially different significant environmental effects. This indicates that none of the proposed changes would give rise to new or materially different likely significant environmental effects from those assessed and presented in the Application, as updated by the First ES Addendum for the accepted changes [AS-179 to AS-260], and any other environmental information outlined in the ES Signposting Document [REP2-025]. This is due to the relatively minor nature and scale of the works associated with the further proposed changes within the context of the proposed development. They comprise a relatively minor set of design changes aimed at enhancing the safety and amenity of the existing proposals. Furthermore, the proposed changes would not necessitate any amendments to the Shadow Habitats Regulation Assessment or any new or additional European Protected Species licence.

In the light of the Applicant's environmental and other relevant assessments of the proposed changes, the ExA does not consider that the Change Request should be rejected on the grounds of the adequacy of the environmental assessment which accompanied it. That assessment indicates that the likely environmental effects of the proposed changes are such that they would not render the development now being proposed not in substance that which was originally applied for.

On the question of the Order Limit changes, Change 17 ii would result in a reduction to the Order Limits. SZC Co. are not seeking compulsory acquisition powers over the land which would be removed from the Order Limits. The proposed change is to reduce the length of the flood relief culverts through the River Alde overbridge east embankment from 70m in length to 50m in length. The proposed reduction would be minor in extent in relation to the proposed Order limits and is intended to improve the application.

Changes 18 v, vi and vii would result in extensions to the Order Limits over highway land. However, they are limited in extent and no compulsory acquisition powers are sought over this land, only powers to temporarily possess the land, if necessary. Change 18 iii would result in an extension to the Order Limits to allow for a gravity drainage solution to be achieved to the west of the East Suffolk line. There are new compulsory acquisition powers being sought over that land, as indicated on the Land Plans showing the Proposed Land Changes [REP5-004]. However, although additional land is now sought this is limited in extent compared to the original application. Furthermore, the prescribed procedure for compulsory acquisition of additional land set out in Regulation 4 does not apply because all persons with an interest in the additional land have consented to the inclusion of a provision within the DCO authorising the compulsory acquisition of that land.

The ExA has taken into account the explanation for the changes provided by the Applicant, the significance of the changes in the context of the original application as a whole, the

information regarding the environmental impacts and the limited nature of the extension that would be required to the Order land.

Having regard to the nature and scope of the proposed changes, the ExA concludes that they represent non-material changes to the application, and the development now being proposed would remain in substance that which was originally applied for. What is proposed can therefore still be considered under the existing application, provided that issues of fairness can be satisfactorily addressed.

### **Whether the proposed changes can be fairly accepted and examined**

The ExA recognises that in accepting the proposed non-material changes it needs to act reasonably, in accordance with the principles of natural justice. It must be satisfied that anyone affected by the changes should have a fair opportunity to have their views known and to have those views properly taken into account.

In the interests of fairness, the Applicant has undertaken consultation on the proposed non-material changes on a non-statutory basis. The scope of the consultation is set out in Section 5 of the Consultation Report Third Addendum [REP5-044]. The consultation sought to engage all persons identified in the Planning Act 2008 under section 42(1)(a) to (d) who would be affected by the proposed changes, including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes. The consultation process invited those persons notified to submit their responses direct to the Applicant who, in turn, was required to compile any responses to the notification about the proposed changes and provide this report to the ExA with the formal Change Request. The ExA is satisfied that the non-statutory consultation that has been carried out has provided those entitled to be consulted or who were consulted on the original application with a fair opportunity to make representations on the changed application. The ExA does not require further non-statutory consultation to be carried out.

The ExA is also content that there will be sufficient opportunity during the remaining Examination process for these changes to be fairly examined. In that regard, the ExA requests any written submissions in relation to Changes 16, 17 and 18 to be made at **Deadline 7, Friday 3 September 2021**. The Applicant is requested to submit an updated Mitigation Route Map incorporating the amendments shown in the Mitigation Route Map Second Addendum Revision 1 [REP5-080] by **Deadline 7**.

### **Conclusions**

The ExA considers that the acceptance of the Changes 16-18 (inclusive) would represent non-material changes to the original application, as amended. In the interests of fairness, the Applicant has undertaken non-statutory consultation and opportunities will be provided within the Examination Timetable for those with an interest in the Proposed Development to make their views known and for those views to be taken into account as part of the Examination process. The ExA concludes that the non-material Changes 16-18 (inclusive) can be examined fairly and reasonably within the scope of the original application, as amended, and the statutory timetable.

Yours faithfully

*Wendy McKay*

**Lead Member of the Examining Authority, on behalf of the Panel**

## Amendment to Examination Timetable

19	<b>Compulsory Acquisition Hearings (CAH)</b>	<b>From Tuesday 17 August 2021 to Friday 20 August 2021</b>
20	<p>Dates reserved for:</p> <ul style="list-style-type: none"> <li>• <b>Accompanied Site Inspections (ASI)</b> (if COVID-19 public health restrictions allow and if required)</li> <li>• <b>Open Floor Hearings (OFH)</b> (if required)</li> <li>• <b>Issue Specific Hearings (ISH)</b> (if required)</li> <li>• <b>Compulsory Acquisition Hearings (CAH)</b> (if required)</li> </ul>	<b>From Tuesday 24 August 2021 to Friday 27 August 2021</b>
21	<p><b>Deadline 7 (D7)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Post Hearing submissions including written submissions of oral case</li> <li>• Responses to the ExA's Second Written Questions (ExQ2) (if required)</li> <li>• If needed, revised draft s.106, accompanying draft Explanatory Memorandum and draft Confirmation and Compliance Document</li> <li>• Response to ExA's commentary on, or schedule of changes to, the draft DCO and s.106 documentation (if required)</li> <li>• Applicant's revised draft DCO</li> <li>• Updated DCO Signposting Document</li> <li>• Any revised/updated SoCG (if any)</li> <li>• Updated NPS tracker</li> <li>• Updated Navigation Document</li> <li>• Updated Book of Reference and Schedule of Changes to the Book of Reference (BoR)</li> <li>• Updated Statement of Reasons (SoR) Appendix B 'Status of Negotiations with Owners of the Order Land'</li> <li>• Updated SoR Appendix C 'Status of Negotiations with Statutory Undertakers'</li> <li>• Comments on any additional information/submissions received by D6</li> <li>• Written submissions in relation to Changes 16, 17 and 18</li> <li>• Updated Mitigation Route Map</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	<b>Friday 3 September 2021</b>
22	<b>Publication by the ExA of:</b>	<b>Thursday 9 September 2021</b>

	<ul style="list-style-type: none"> <li>• ExA's further commentary on, or schedule of changes to, the dDCO and s.106 documentation (if required)</li> <li>• Third Written Questions (ExQ3) (if required)</li> </ul>	
<b>23</b>	<p>Dates reserved for:</p> <ul style="list-style-type: none"> <li>• <b>Accompanied Site Inspections (ASI)</b> (if COVID-19 public health restrictions allow and if required)</li> <li>• <b>Open Floor Hearings (OFH)</b> (if required)</li> <li>• <b>Issue Specific Hearings (ISH)</b> (if required)</li> <li>• <b>Compulsory Acquisition Hearings (ISH)</b> (if required)</li> </ul>	<p><b>From Monday 13 September 2021 to Friday 17 September 2021</b></p>
<b>24</b>	<p><b>Publication by the ExA of:</b></p> <ul style="list-style-type: none"> <li>• Report on the Implications for European Sites (RIES)</li> </ul>	<p><b>Wednesday 15 September 2021</b></p>
<b>25</b>	<p><b>Date reserved for issue by the ExA of:</b></p> <ul style="list-style-type: none"> <li>• Any request for further information under Rule 17 of the Examination Rules (if required)</li> </ul>	<p><b>Monday 20 September 2021</b></p>
<b>26</b>	<p><b>Deadline 8 (D8)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Post Hearing submissions including written submissions of oral case (if required)</li> <li>• Responses to the ExA's third Written Questions (ExQ3) (if required)</li> <li>• Responses to ExA's commentary on, or proposed schedule of changes to, the draft DCO and s.106 documentation (if required)</li> <li>• If needed, comments on revised draft s.106, accompanying draft Explanatory Memorandum and draft Confirmation and Compliance Document</li> <li>• Updated Navigation Document</li> <li>• Comments on any revised/updated SoCG</li> <li>• Updated Book of Reference and Schedule of Changes to the Book of Reference (BoR)</li> <li>• Updated Statement of Reasons (SoR) Appendix B 'Status of Negotiations with Owners of the Order Land'</li> <li>• Updated SoR Appendix C 'Status of Negotiations with Statutory Undertakers'</li> <li>• Updated NPS tracker</li> <li>• Comments on any additional information/submissions received by D7</li> <li>• Responses to any further information requested by the ExA for this deadline</li> </ul>	<p><b>Friday 24 September 2021</b></p>
<b>27</b>	<p><b>Deadline 9 (D9)</b></p> <p>For receipt by the ExA of:</p>	<p><b>Thursday 30 September 2021</b></p>



	<ul style="list-style-type: none"> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
<b>28</b>	<p><b>Deadline 10 (D10)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the RIES</li> <li>• Comments on responses to the ExA's third Written Questions (ExQ3) (if required)</li> <li>• Final DCO to be submitted by the Applicant in the SI template with the SI template validation report</li> <li>• Final DCO Signposting Document</li> <li>• Final updated Book of Reference</li> <li>• Final SoCG</li> <li>• Final Statement of Commonality of SoCG</li> <li>• List of matters not agreed where SoCG could not be finalised</li> <li>• Final Navigation Document</li> <li>• Final Statement of Reasons (SoR) Appendix B 'Status of Negotiations with Owners of the Order Land'</li> <li>• Final SoR Appendix C 'Status of Negotiations with Statutory Undertakers'</li> <li>• Final NPS tracker</li> <li>• Final signed and dated s.106, final s.106 Explanatory Memorandum and final Confirmation and Compliance Document</li> <li>• Final ES signposting document</li> <li>• Final Mitigation Route Map</li> <li>• Comments on any additional information/submissions received by D8 and D9</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	<p><b>Wednesday 6 October 2021</b></p>
<b>29</b>	<p>The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p>	<p><b>Thursday 14 October 2021</b></p>

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