



National Infrastructure Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: SizewellC@planninginspectorate.gov.uk

To the Applicant and All Interested
Parties

Your Ref:

Our Ref: EN010012

Date: 10 September 2021

Dear Sir/Madam

Planning Act 2008 (as amended) – Section 89(3) and 89(4), The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) - Rule 8(3), 9, and 13

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

Procedural Decisions, Change to the Examination Timetable, and Notification of an Issue Specific Hearing

I am writing to you to notify you of our Procedural Decisions in relation to the Applicant's proposed additional change submitted on 6 September 2021, together with a change to the Examination Timetable, and notification of the date, time and place fixed for an Issue Specific Hearing.

Procedural Decision relating to Change Request 19

The Applicant's formal Change Request for a further proposed change to the application (Change 19) was submitted to the Planning Inspectorate by letter dated 3 September 2021 [REP7-286] that was received on 6 September 2021.

The Examining Authority (ExA) has decided to accept the additional Change 19 to the application put forward by the Applicant. The ExA considers the proposed change to the original application dated 27 May 2020 to be material. However, it is not so material, when considered either separately or together with the 18 earlier changes which have been accepted [PD-013], [PD-039], as to constitute a new application and the development now being proposed is in substance that which was originally applied for. This Procedural Decision is made under section 89(3) of the Planning Act 2008 (PA 2008). The background to, and the ExA's reasoning for, the Procedural Decision are set out below.

Background

The Applicant's letter submitted to the Planning Inspectorate on 23 July 2021 [REP5-001] gave notice of its intention to propose a change to the application. That letter enclosed a Third Notification of Proposed Changes [AS-397] which identified the nature of the change proposed.

The ExA responded by letter dated 5 August 2021 [PD-041] drawing attention to the requirements of the Planning Inspectorate's 'Advice Note Sixteen: How to request a change that may be material' (AN16)¹, 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 3 September 2021 [REP7-286]. The Applicant requested the ExA to accept for examination the additional proposed change to the application for the Proposed Development for which development consent is sought. The letter explains that the submission is divided into two parts: Part 1 introduces, describes, and justifies the proposed change and Part 2 comprises the updates and addenda to the Application documents which would be appropriate, if the change was accepted. The Navigation document [REP7-002] provides a schedule of the information that was submitted with the Change Request. The documents associated with the Change Request are coloured green to help differentiate between those submitted as part of the Applicant's wider Deadline 7 submission. A further update of the Sizewell C Project's Water Supply Strategy has been provided at Deadline 7 [REP7-036].

The proposed change is set out in Table 1 of the Applicant's Change Request letter of 3 September 2021 [REP7-286], and that also contains a summary of whether the proposed change is assessed to give rise to new or materially different significant environmental effects on businesses or residents. The change is also set out in Table 2.1 of Part 1 – Change Report which accompanied the request [REP7-285]. The latter, at Section 3, sets out the potential changes to the environmental assessment. The Fourth Environmental Statement Addendum [REP7-030], submitted with the Change Request, presents an assessment of any new or materially different significant effects that are likely to result from any additional information that has been submitted by the Applicant over the course of the Examination and from Proposed Change 19 for a temporary desalination plant at the Main Development Site.

The Change Request confirms that the proposed change has been the subject of public consultation and details are set out in the Consultation Report Fourth Addendum and Appendices [REP7-275, REP7-276, REP7-277, REP7-278]. It indicates that Change 19 does not involve any change to the Order limits and no changes to the compulsory acquisition or temporary possession powers sought in the application. It would not therefore engage the requirements of the CA Regs.

The Consultation Report Fourth Addendum [REP7-278] explains that the non-statutory consultation on the proposed additional change involved:

- The publication of notices in local and national newspapers;
- the display of site notices;

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

- the sending of a newsletter to 41,205 homes and businesses within a ten-mile radius of Sizewell, and in parishes neighbouring associated development sites further away, such as the freight management facility site;
- 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 change;
- an e-mail was sent by the Applicant on 3 August 2021 at the start of the consultation to relevant parish councils to offer them the opportunity to meet the Applicant to discuss the proposed change. On 12 August 2021, a meeting was held with Snape Parish Council to discuss Proposed Change 19.
- 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 change but who are not yet participating in the Examination of the application.

The ExA's letter dated 5 August 2021 [PD-041] requested the Applicant to explain why it considers that the consultation period of less than the minimum of 28 days recommended by AN16 still provides a fair and reasonable opportunity for those potentially impacted by the proposed change to consider and respond to the proposal. The Applicant's response to that request is set out in the Consultation Report Fourth Addendum, at paragraphs 3.1.5-3.1.8. In summary, the Applicant considers that a shorter period of 24 days is appropriate and proportionate in the circumstances and provides consultees with a fair and reasonable opportunity to consider and respond to the proposal.

The Applicant relies upon the Consultation Report Fourth Addendum in support of its request for the ExA to accept the proposed additional change as part of the application to be examined. In response to the consultation, the Applicant states that it has been careful to ensure that the water trucks could be accommodated within the HGV caps already assessed; it commits to controls over localised environmental effects to ensure that any effects are limited, and has also responded to concerns on localised effects by extending the intake and outfalls further offshore, and into deeper water. The report concludes that overall the proposed changes received mixed reactions, however, no fundamental issues were raised to lead the Applicant to conclude that the change would not improve the Project or that it should not be taken forwards. The Applicant's post-consultation position in relation to the change sought, in summary, is that the change remains broadly 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 Guidance² for the examination of applications for development consent and AN16. Paragraph 113 of the DCLG Guidance makes specific reference to the principles of

² 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>

fairness and reasonableness set out in the *Wheatcroft*³ case. Paragraph 2.1 of AN16 indicates that the test to apply is whether the development now being proposed is not in substance that which was originally applied for. If so, then it would constitute a different project for which a new application would be required. That determination is a question of planning judgment which may be based on criteria including, for example, whether the change would generate any new or different likely significant environmental effect(s). Similarly, whether (and if so the extent to which) a change request involves an extension to the Order land, particularly where this would require additional Compulsory Acquisition powers.

Paragraph 109 of the DCLG Guidance accepts that applicants may need to change a proposal after an application has been accepted for examination and gives examples of reasons why such an application might be made. However, that list is neither exhaustive, nor is it intended to preclude other circumstances that might lead to changes. The formal Change Request letter [REP7-286] explains that as a result of ongoing engagement between the Environment Agency, and Northumbrian Water Limited (NWL, trading locally as Essex and Suffolk Water (ESW)), the Applicant has received information from ESW that an alternative temporary potable water source is necessary during the construction phase of the Sizewell C Project. This is because the Applicant's expectation that ESW would deliver a water supply transfer main early in the construction period, with water balanced locally in the interim period to provide potable water during the early years, has now been confirmed by ESW as no longer feasible.

Materiality of the proposed changes

In the Applicant's view, the further Change 19 to the application when considered either on its own or as an incremental change to the original application is not material.

The proposed change would introduce new infrastructure and construction activities, including within the marine environment. The ExA takes the view, in the light of the scope and nature of the proposed change, that this revision is properly regarded as a material change to the original proposal. However, a distinction must be made between the question of whether the change is material, and the separate question of whether the change would mean that the development now being proposed is not in substance that which was originally applied for.

In considering that specific question, the subject-matter of this application for development consent is a very substantial new nuclear power station together with a range of associated development elements, many of which are intended to support the construction of that NSIP⁴. That position would not alter as a result of the proposed change.

In environmental terms, Table 6.1 of the Consultation Report Fourth Addendum [REP7-278] contains a summary of whether the proposed change is assessed to give rise to new or materially different significant environmental effects. This indicates that the proposed change would not give rise to new or materially different likely significant environmental effects from those reported in the ES [APP-159 to APP-582], as updated by the subsequent ES Addenda [AS-179 to AS-292], [REP5-062 to REP5-069], [REP6-017]. Furthermore, there would be no change to the assessment conclusions presented within Shadow HRA Report (Doc Ref. 5.10 [APP145]) and first Shadow HRA Addendum [AS178], or new

³ *Bernard Wheatcroft Ltd v Secretary of State for the Environment* (1982) 43 P & CR 222

⁴ Nationally Significant Infrastructure Project

European Protected Species licence required. Neither would there be any change to the conclusions presented within Water Framework Directive Compliance Assessment [APP-620, APP-621, APP-622 and APP-623] and the first WFD Compliance Assessment Addendum [AS-277 to AS-279]. Finally, there would be no change to findings presented within Eels Regs Compliance Assessment [APP-332].

The proposed change has been reviewed and appraised in the context of the original Environmental Impact Assessment carried out in respect of the Proposed Development and an assessment of the proposed Change 19 is provided within Volume 1, Chapter 3 of the Fourth ES Addendum [REP7-030]. Table 3.1 of that document provides a review of the environmental assessments and also sets out the updated assessments which have been provided. The review concludes that the Proposed Change 19 could have the potential to affect the certain assessments reported within Volume 2 of the ES [APP-178 to APP-347]. Further consideration was therefore required and is presented in sections 3.5 to 3.12 of that document. Section 3.13 presents an update of the cumulative effects assessments for the marine environment topics. The Fourth ES Addendum concludes that whilst the provision of the desalination plant will introduce new effects within the marine environment, each of these effects has been assessed as not significant, with appropriate mitigation in place. A summary of the mitigation proposed for the Proposed Change 19 is provided within the Mitigation Route Map Third Addendum (Doc Ref. 8.12 (D) Ad 3 Ch) [REP7-283].

As regards the responses from statutory consultees, the Environment Agency (EA) states that: "*The consultation document does not contain sufficient detail for us to conduct a thorough review, but it does correctly identify the environmental topics that will need additional assessment in the Environmental Statement.*" There was no response from either the Marine Management Organisation or Natural England.

In the light of the Applicant's environmental updates and other relevant assessments of the proposed change, 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, although there would be different effects including within the marine environment, the likely environmental effects of the proposed change are such that they would not render the development now being proposed not in substance that which was originally applied for.

As noted above, Change 19 does not involve any change to the Order limits and no changes to the compulsory acquisition or temporary possession powers sought in the application. It would not therefore engage the requirements of the CA Regs

The ExA has taken into account the explanation for the proposed change provided by the Applicant, the significance of the change either in the context of the original application as a whole or the incremental changes that have already been accepted, the information submitted regarding the likely environmental impacts, and the fact that no extension would be required to the Order land.

The ExA does not believe that its acceptance would result in a materially different project being considered 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.

The concerns raised by East Suffolk Council and other IPs about the ability to fully assess and examine the subject-matter of the change in the remaining Examination period will be considered below.

Whether the proposed change can be fairly accepted and examined

Paragraph 2.5 of AN16 refers to the case of *Holborn Studios*⁵ and the need for consultation. The ExA recognises that in accepting the proposed material change it needs to act reasonably, in accordance with the principles of natural justice and those arising from the *Wheatcroft* and *Holborn Studios* cases. It must be satisfied that anyone affected by the change should have a fair opportunity to have their views known and to have those views properly taken into account. The key aim is therefore fairness both to the developer in not requiring unnecessary new applications, but also to the public, in particular by ensuring there has been adequate opportunity to make representations on the amended proposal.

In the interests of fairness, the Applicant has undertaken consultation on the proposed change on a non-statutory basis. The scope of the consultation is set out in Section 4 of the Consultation Report Fourth Addendum [REP7-278]. The consultation sought to engage all persons identified in the PA 2008 under section 42(1)(a) to (d) who would be affected by the proposed change, including any section 42 persons not originally consulted on the application but who may now be affected by the proposed change. 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 change and provide this report to the ExA with the formal Change Request.

The ExA notes that AN16, paragraph 3.3, advises that before making a written request applicants are recommended to consult all those persons prescribed in the PA 2008 under section 42 (a) to (d) who would be affected by the change request. As indicated above, the consultation period of 24 days was less than the minimum of 28 days recommended by AN16. Having regard to the factors to which the Applicant had regard in determining a suitable consultation period, the ExA is satisfied it was appropriate and proportionate for a shorter period than the minimum period recommended by AN16 to be utilised in this particular instance.

The ExA has given serious consideration to the complaints and criticisms made by IPs in relation to the duration, and timing during the holiday period, of the non-statutory consultation and the level of detail provided with that consultation. However, 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 and reasonable opportunity to make representations on the proposed change prior to the submission of the formal Change Request. The ExA does not require further non-statutory consultation to be carried out.

The ExA also notes the position of the EA that it is not clear from the consultation documentation that the Applicant has identified all the additional/outstanding assessments necessary to support the conclusions in the Environmental Statement and its strong recommendation that the Applicant engage with the EA on matters of air quality and marine water quality.

⁵ R.(oao Holborn Studios Ltd) v Hackney LBC [2017] QBD

The ExA is nevertheless content that there will be sufficient opportunity during the remaining Examination process for this change, including those matters identified during the consultation process by the EA and others, to be fairly examined. In that regard, the ExA requests any written submissions in relation to Change 19 to be made at **Deadline 8, Friday 24 September 2021**. The ExA also proposes to hold an additional Issue-Specific Hearing in relation to the proposed temporary desalination plant the subject of Change 19 by virtual means on **Tuesday 5 October**; to require written summaries of oral submissions made at that event by **Tuesday 12 October**, and to postpone **Deadline 10** until that date. The Applicant is requested to submit an updated Mitigation Route Map incorporating the amendments shown in the Mitigation Route Map Third Addendum Revision 1 [REP7-283] by **Deadline 8**. The Examination Timetable will be amended to reflect these changes.

Given the nature of the proposed change, the reasons for that change being put forward, the non-statutory consultation that has taken place, and the opportunities that will be provided during the Examination for oral and written comments on the implications of the change, the ExA does not consider that its acceptance, even at this relatively late stage of the Examination, would be unfair.

Conclusions on the Change Request

The ExA considers that the acceptance of Change 19 would represent a material change 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 believes that there will be sufficient time during the course of the Examination for the merits of the proposed change to be appropriately considered by all. The ExA concludes that the *Wheatcroft* and *Holborn Studios* tests have been met and although Change 19 represents a material change to the original application it can be examined fairly and reasonably within the scope of the original application, as amended, and the statutory timetable, as proposed to be revised.

Change to the Examination Timetable

The ExA has decided, in the light of the acceptance of Change Request 19, to make amendments to the Examination Timetable. The ExA seeks responses to the Change Request by Deadline 8, Friday 24 September 2021. In addition, the comments on the responses to Change Request 19 will now be required at Deadline 10 which will be postponed until Tuesday 12 October 2021. The ExA also proposes to hold an Issue-Specific Hearing (ISH15) in connection with Change 19 on Tuesday 5 October 2021, and requires written summaries of oral submissions made at that event to be submitted by the revised Deadline 10 date. 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].

Notification of an Issue Specific Hearing

The revised Examination Timetable at Annex A to this letter includes provision for an additional Issue-Specific Hearing, ISH15, to be held in connection with the proposed temporary desalination plant the subject of Change Request 19. We now confirm the

arrangements for that hearing to be held under Section 91 of the PA 2008. The ISH15 will take place on Tuesday 5 October 2021 with a start time of 10:00am (Arrangements Conference: 9:30am). The ExA has made a Procedural Decision that this hearing will be held by virtual means, through Microsoft Teams.

Please note that the ExA will aim to publish a detailed draft agenda for ISH15 on the project website at least five working days in advance of the hearing date. However, the actual agenda on the day of the hearing may be subject to change at the discretion of the ExA.

Notification of wish to speak by Interested Parties (IPs)

If you wish to participate and be heard orally at the above hearing please let the Case Team know no later than **Deadline 9 on Thursday 30 September 2021**. Please ensure that you include your Interested Party (IP) reference number in your correspondence. This can be found either in the email covering this letter or on the letter you have received.

Procedure at the Issue Specific Hearing

The procedure to be followed at the hearing is set out in The Infrastructure Planning (Examination Procedure) Rules 2010.

Participation in the hearing will be subject to the ExA's powers of control. It is for the ExA to determine how the hearing will be conducted, including the time allowed at the hearing for the making of a person's representations. IPs may be invited to make oral representations at the hearing, on the specific issues being examined at the event, as set out in the detailed agenda. The hearing will be managed in the interests of ensuring fair access to the event for all parties, and to ensure that the submissions of all invited persons are fully heard within the allotted time.

All Examination events, whether virtual or physical are recorded. The recordings of ISH15 will be made available on the project page of the National Infrastructure website as soon as practicable following the event. The recordings allow any member of the public who is interested in the application and the Examination to find out what has been discussed at a hearing. It is therefore important to note that anyone speaking at the hearing will need to introduce themselves, including any organisation or groups that they represent, each time they speak to ensure that someone listening to the recording after the event is clear who was speaking.

As the recordings are retained and published, they form a public record that can contain personal information to which the General Data Protection Regulation (GDPR) applies. Please refer to our Privacy Notice for further information. Participants must do their best to avoid making public any information which they would otherwise wish to be kept private and confidential. If there is a need to refer to such information, it should be in written form. Although this will also be published, personal and private content can be redacted or removed before it is made publicly available. Any person who is unclear on this point should ask the Case Team for guidance before they place personal and private information into the public domain. The Planning Inspectorate's practice is to publish the recordings and retain them for a period of five years from the SoS's decision on the Development Consent Order (DCO). If you actively participate in the hearing, it is important that you

understand that you will be recorded and that the recording will be made available in the public domain. If you prefer not to have your image recorded, you can switch off your camera at any point.

For those parties who do not wish to participate in this hearing, it will be available to view on the Livestream or the recordings which will be published as soon as practicable after the hearing.

Yours faithfully

Wendy McKay

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

Amendment to Examination Timetable

23	<ul style="list-style-type: none"> • Issue Specific Hearings (ISH) ISH11 on flooding, water and coastal processes ISH12 on community matters ISH13 on landscape, visual impact, design and terrestrial heritage ISH14 on the Development Consent Order, Deed of Obligation and allied documents 	Tuesday 14 September 2021 to Friday 17 September 2021
24	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • Report on the Implications for European Sites (RIES) 	Wednesday 15 September 2021
25	<p>Date reserved for issue by the ExA of:</p> <ul style="list-style-type: none"> • Any request for further information under Rule 17 of the Examination Rules (if required) 	Monday 20 September 2021
26	<p>Deadline 8 (D8)</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post Hearing submissions including written submissions of oral case (if required) • Responses to the ExA's third Written Questions (ExQ3) (if required) • Responses to ExA's commentary on, or proposed schedule of changes to, the draft DCO and s.106 documentation (if required) • If needed, comments on revised draft s.106, accompanying draft Explanatory Memorandum and draft Confirmation and Compliance Document • Updated Navigation Document • Comments on any revised/updated SoCG • Updated Book of Reference and Schedule of Changes to the Book of Reference (BoR) • Updated Statement of Reasons (SoR) Appendix B 'Status of Negotiations with Owners of the Order Land' • Updated SoR Appendix C 'Status of Negotiations with Statutory Undertakers' • Updated NPS tracker • Comments on any additional information/submissions received by D7 • Responses to any further information requested by the ExA for this deadline • Responses to Change Request 19 • Updated Mitigation Route Map incorporating the amendments shown in the Mitigation Route Map Third Addendum Revision 1 	Friday 24 September 2021

27	<p>Deadline 9 (D9)</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to any further information and notifications requested by the ExA for this Deadline 	<p>Thursday 30 September 2021</p>
28	<p>Issue Specific Hearing (ISH 15) relating to proposed desalination plant the subject of Change Request 19</p>	<p>Tuesday 5 October 2021</p>
29	<p>Deadline 10 (D10)</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on the RIES • Comments on responses to the ExA's third Written Questions (ExQ3) (if required) • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final DCO Signposting Document • Final updated Book of Reference • Final SoCG • Final Statement of Commonality of SoCG • List of matters not agreed where SoCG could not be finalised • Final Navigation Document • Final Statement of Reasons (SoR) Appendix B 'Status of Negotiations with Owners of the Order Land' • Final SoR Appendix C 'Status of Negotiations with Statutory Undertakers' • Final NPS tracker • Final signed and dated s.106, final s.106 Explanatory Memorandum and final Confirmation and Compliance Document • Final ES signposting document • Final Mitigation Route Map • Comments on any additional information/submissions received by D8 and D9 • Responses to any further information requested by the ExA for this Deadline • Comments on responses to Change Request 19 received by D8 • Written summaries of oral submissions made at ISH15 	<p>Tuesday 12 October 2021</p>
30	<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>Thursday 14 October 2021</p>

This communication does not constitute legal advice.

Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.