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To the Applicant, MMO, RSPB, Natural  
England, East Suffolk Council and  
Suffolk County Council, Northumbrian  
Water / ESW

Your Ref:

Our Ref: EN010012

Date: 6 October 2021

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Dear Sir/Madam

**Planning Act 2008 (as amended) and The Infrastructure Planning  
(Examination Procedure) Rules 2010 (as amended) – Rule 17**

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

**Request for further information and written comments**

As explained at Issue Specific Hearing 15 (ISH15), the Examining Authority has further questions which are set out at Annex A to this letter. Please respond by Deadline 10, Tuesday 12 October 2021.

There was discussion at ISH15 on what provisions should be included in the DCO and related documentation on the decommissioning of the desalination plant. The ExA had given consideration to a Requirement prior to the ISH. A copy of that draft is included at Annex B. Whilst the Examining Authority heard what was said at ISH15 it has not yet come to a conclusion on how to address the matter and the draft is shared to help the parties on that basis.

Yours faithfully

*Wendy McKay*

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

## Annex A

Questions on Deadline 8 submissions		
1	RSPB – D8 submission, Replies to the ExA’s third written questions, para 1.4 states <i>“In addition, it is our view that All protected species mitigation measures submitted to the Examination and contained within the protected species licence applications must be secured in the TEMMP and the CoCP and therefore also secured within the DCO via Schedule 2 Requirements 2 and 4”</i> . Why can the SofS not rely on licensing by Natural England and other licensing authorities?	RSPB
2	The MMO in their reply to DCO.3.5 (in their Full Submission at Deadline 8) have questioned the coordinates for the desalination headworks which they state lie partly outside the “overall development”. Please will the Applicant comment.	Applicant
3	On a number of occasions in their document “MMO Full Submission” at Deadline 8 the MMO say that their earlier remarks / representations / objections can be “considered closed”. Please will the MMO clarify what they intend the ExA to understand. Are the remarks withdrawn, do they stand (and the MMO has nothing to add), has the matter been resolved in some way and if so how, or is there some other meaning?	MMO
Questions on the DCO and related documents		
4	How are the marine works forming part of the temporary desalination plant and intakes / outfall covered by Req 8 and the CMS? Req 8 only applies to Work No 1 and that does not include marine works – see reply to ExQ DCO.1.20 which said <i>“i) The Applicant has for clarity updated the definition of ‘main development site’ so as to specify each of the Work Nos comprised in the definition and the related Works Plans. The definition now reads, ‘the land within which Work Nos. 1A, 1B, 1C, 1D and 1E may be constructed as shown on Works Plans on sheet nos. 1-5 and 7-8’. This definition comprises all onshore elements of the main development site. The offshore elements (Work Nos 2A-2L) also form part of the main development site but are not included in this definition as they are separately listed as licensable activities within the Deemed Marine Licence in Part 2 of Schedule 20 to the draft DCO (Doc Ref. 3.1(C)). Certain elements are both onshore and offshore (e.g. the permanent beach landing facility) and are therefore listed under Work No 1A and as a licensable activity in Schedule 20”</i> .	Applicant
5	How are the temporary desalination plant intake and outfall tunnels and the intake head shaft and the outfall head,	Applicant

	outfall shaft and diffusers covered by the CMS? Despite the wording of the CMS purporting to cover them they are not part of Work No.1 and Req 8 only applies the CMS to Work No 1.	
6	<p>The ExA notes that the CMS is applied to Work No 1 by Req 8(1). However the CMS is stated on its face to apply to the main development site - see the title and para 1.1.1. The document covers not only the main platform but also four other components – (i) SZB relocated facilities and National Grid land, (ii) Offshore Works area, (iii) Temporary construction area, (iv) LEEIE, and in addition construction activities for the marsh harrier habitat improvement area at Westleton (if to be provided), the Fen meadow compensation sites and the Leiston off-site sports facilities. The offshore works are not in Work No 1. The DCO does not define the temporary construction area. Nor does it refer to National Grid Land. Is that just the area needed for Work No 1A (d), (p), (q) and (s) and is it all of those or some? (They all contain transmission works.)</p> <p>How does the DCO apply the CMS to Works which it claims to cover which are not part of Work No.1? This is a point which may go beyond the desalination plant.</p>	Applicant
7	<p>The Protective Provisions with NW</p> <p>Para 7, there is no such thing as the “Department for Rural Affairs and Agriculture”. The department in question is the “Department for Environment, Food and Rural Affairs”. Please will the Applicant and NW amend the draft DCO accordingly</p> <p>The ExA suggests the Applicant and NW consider this following wording for para 6 “Following satisfaction of paragraph (5), [the Secretary of State for]/[the Department for] Environment, Food and Rural Affairs has granted permission for the publication of ESW's final WRMP24”. It is the ExA’s understanding that in relation to the process in para 6, the final step would be the publication of the final plan by the undertaker, which can only happen with the permission of the SoS. In outline they understand the undertaker prepares a draft plan, consults, there can be an inquiry if the SoS thinks that is necessary, the SoS can direct changes if they are considered necessary, and the end result is that the undertaker prepares a final version of the water resources management plan and publishes it with the permission of the SoS.</p>	Applicant, Northumbrian Water
8	The Compliance & Confirmation Document	Applicant

The ExA thanks the Applicant for the draft of the legal opinion on due execution of the DoO to be provided by Herbert Smith Freehills.

- (a) The ExA refers the Applicant to [PD-009] Annex B para 27.

The Northampton Gateway Rail Freight Interchange document contained the following:

- 3.4 A search of the public records on the date of this document before execution of the S106 revealed no evidence of any resolutions for the winding up or dissolution of the Applicant company and no evidence of the appointment of any liquidator, administrator or other person, insolvency or event which would deprive the Applicant of any of its assets or of the power and ability to enter into the S106 and perform its obligations thereunder.

The SZC equivalent contains no equivalent. In fact para 3.2.5 expressly assumes solvency without enquiry. Please will the Applicant ensure adequate solvency checks are undertaken and record the result which it is hoped will be no less than that at Northampton Gateway which the ExA referred to in [PD-009] Annex B para 27 from which the above quotation is taken.

- (b) The draft legal opinion contains the following statement at para 3.2.7:

“Validity/enforceable obligations: although we consider that obligations of the Applicant under the Deed of Obligation constitute legal, valid, binding and enforceable obligations, it is not certain that those obligations will necessarily be legal, valid or binding or will be enforced in all circumstances in accordance with their terms, since the existence, effect and enforcement of legal obligations is subject to principles of law, equity, court's discretion, issues of public policy and procedure of general application.”

The ExA is surprised by this. The matters stated in the caveat (from the words “it is not certain” onwards) are ones which the ExA expects the Applicant and its advisers, and also those advising the Councils to have taken into account in drafting the agreement. The ExA can see a case for adverting to the court’s discretion, but otherwise considers the rest of the caveat to be inappropriate; they ask for it to be removed. The Secretary of State will be expecting a fully enforceable agreement to be presented.

- (c) The legal opinion at Northampton Gateway contained assurances that

	<p>1.1.3 all those necessary to be party to the S106 so that the obligations contained therein are complied with throughout the construction and use of the development have been made parties to the document and are party to the S106; and</p> <p>1.1.4 the construction, occupation and use of the development is restricted by the S106 obligations and non-compliance with those obligations would be enforceable.</p> <p>Whilst the agreement at SZC is obviously not, for reasons explored during the examination, a s.106 agreement, assurance of its efficacy in securing the matters contained within it is important, especially given the innovative nature of the agreement and creative legal thinking which has been brought to bear upon it. In addition the “running” of the agreement under Article 9 of the DCO is restricted so that it only runs with undertakers to whom the powers to construct operate Work No. 1A (a) – (h) have been transferred or granted. Accordingly the ExA asks the Applicant to procure clear legal opinion as at paragraphs 1.1.3 and 1.1.4 of the Northampton Gateway opinion applied mutatis mutandis to Sizewell C.</p> <p>(d) Paragraph 4.1 of the draft legal opinion imposes restrictions on the disclosure of the legal opinion.</p> <p>The opinion will be a public document once submitted to the examination and must be entered in the Examination Library. It will be referred to in the ExA’s recommendation report and may also be referred to in the SofS’s decision. These are also public documents.</p> <p>The restrictions on disclosure are accordingly inappropriate and will be confusing. The ExA asks that they be removed.</p> <p>The ExA also reminds the Applicant that there are very limited circumstances in which disclosure of material is restricted in a DCO application, namely matters of defence or national security where disclosure would be contrary to the national interest (PA 2008 s. 95A). Those circumstances clearly do not apply to the legal opinion.</p>	
9	A similar legal opinion to that for the DoO should be submitted for the legal agreement with the Environment Agency referred to in their Deadline 9 submission dated 24 September any other legal agreements being submitted to the Examination.	Applicant
10	The ExA has not seen a similar legal opinion to [REP5-018] at Northampton Gateway. The ExA asked for this also in [PD-009] (same para). Please will the Applicant submit such a document at D10.	Applicant

11	Please will the Applicant submit at D10 a track change version of the DCO comparing the final version with the version as originally submitted.	Applicant
12	<p>In [PD-009] the ExA wrote the following to ESC and SCC: "the ExA will expect them to have done appropriate title investigations, to ensure that all the right persons and interests in land have been joined into the s.106 agreement as parties and that they do all necessary searches and registrations, remembering that the entry into a s.106 agreement is not a conveyance on sale and that therefore there is no priority period, and to confirm that this has been done".</p> <p>Clearly this is no longer a s.106 agreement. But the need to ensure that the right persons are parties, that all appropriate elements of the authorised development are bound and that the agreement and the matters it secures will be appropriately enforceable notwithstanding any changes in the identity of the undertaker is important, particularly given the innovative and creative approach in this case.</p> <p>Please will ESC and SCC submit assurances at Deadline 10 that they are satisfied on these issues.</p>	ESC and SCC
<b>Question arising from the Applicant's response to ExQ3</b>		
13	The Applicant has not answered the second part of ExQ. DCO.3.1 "Is it inevitable that works to be carried out in general accordance with details etc will, if they are simply consistent with those details etc not give rise to materially new / different effects?" Please will the Applicant remedy this.	Applicant
<b>Question in relation to the Fourth Addendum to the ES</b>		
14	The Fourth Addendum to the ES, para 3.9.117 draws conclusions on sensitivity in a section on magnitude. The following section is headed "sensitivity". Please will the Applicant explain the relevance of sensitivity to the assessment of magnitude in this section.	Applicant
<b>Questions arising from ISH15</b>		
15	Can the applicant provide more detailed explanation of why it considers there is no need for further detailed assessment for Minsmere despite the annual PC/CL for ammonia being over the 1% threshold (1.6% in Table 3-4) and the annual PC/CL for NOx being over the 1% threshold (4.3% in Table 3-1)? Para 3.4.3 gives an explanation but in using rudimentary maths rounding to the nearest whole number makes Ammonia 2% not 1%.	Applicant



16	Should the Desalination Plant Air Impact Assessment be taken as applicable to both the ES and HRA? How have cumulative and in combination effects been considered?	Applicant
17	Can the Applicant explain why increased NOx and ammonia emissions to Minsmere would not undermine the conservation objectives for the Minsmere to Walberswick Heaths and Marshes SAC and Minsmere-Walberswick SPA?	Applicant
18	Natural England (NE) did not attend ISH15 but provided a briefing note on the detailed agenda. Section 3.1 of that note was discussed at ISH15 under item 3(a). NE is requested to respond to what was said by the Applicant at the hearing on that item and also to set out their position in relation to agenda items 3(b) to (j).	Natural England
19	The Shadow HRA Third Addendum only assesses the desalination plant and does not include information regarding the proposed water supply by tankers prior to its installation. Notwithstanding the confirmation provided by the Applicant at ISH15, and in REP8-045, that the HGV movements are included within the 'cap', for the avoidance of doubt could the Applicant identify the documents containing this information to inform the HRA/an appropriate assessment, where required".	Applicant
20	<p>The following questions were posed at ISH15 agenda items 3 and 4 to the government advisers and RSPB. The Environment Agency and RSPB were present and gave their responses. Please will Natural England and the MMO respond in writing. The ExA appreciates that the primary focus of the MMO is marine and that it may not have a view on all the questions.</p> <p>(a) Item 3(b) In relation particularly to terrestrial ecology, are there any submissions you wish to make as to the assessment for HRA of additional HGV movements? If so, what is the problem and what do you want to see? Are you satisfied with the HRA assessment of these matters? For completeness, please address this issue for nationally designated sites as well. Does the HRA assessment properly address the HGV movements arising from Change 19?</p> <p>(b) Item 3(c) Are there any submissions you wish to make as to the assessment for HRA of noise and vibration? So please include disturbance effects. (Natural England's and the MMO's attention is drawn to the Applicant's oral comments on the use of the word "disturbance" during ISH15 at Agenda item 3(a)). Please include disturbance effects on bird, marine mammal and fish qualifying features of relevant internationally and nationally</p>	Natural England, MMO

	<p>designated sites. What is / are the problem / problems you identify and what do you want to see?</p> <p>(c) Item 3(d) Are there any submissions you wish to make as to the assessment for HRA of the air-quality effects of additional on-site diesel generators and of additional HGV movements? If so, what is the problem and what do you want to see? Are you satisfied with the HRA assessment of these matters?</p> <p>(d) Item 3(e) in relation particularly to marine ecology, are there any submissions you wish to make as to the assessment for HRA of the alterations to coastal processes and sediment transport arising from Change 19? If so, what is the problem and what do you want to see? Are you satisfied with the HRA assessment of these matters? And is there anything you want to say about effects of coastal processes and sediment transport on nationally designated sites</p> <p>(e) Item 3(h) The point is often made in the ES fourth addendum that the outfall is in same area as the FRR and that as that was assessed there are no additional issues for the desalination outfall construction, although the nature of what is discharged is different. But the FRR and the CDO would not operate together. The two headworks for the desalination plant will (a) be constructed together but more importantly be operating at the same time as the CDO. So are the comparisons with the FRR alone appropriate?</p> <p>(f) Item 3(h) Migratory fish have been screened out of the Third HRA Addendum at paragraphs 4.1.5 to 4.1.7, referencing an absence of potential effect pathways. However, these paragraphs also include reference to the seawater intake for the desalination plant consisting of a Passive Wedge-Wire Cylinder (PWWC) screen with a mesh size of approximately 2mm. Does this comply with the Sweetman Judgment (People Over Wind), which confirmed that measures to avoid or reduce effects are not permitted to be taken into account at the screening stage. Does the Applicant consider the PWWC to comprise a measure to avoid or reduce impacts to migratory fish?</p> <p>(g) Item 3(h) What submissions do you wish to make about Item 3(h) matters, including chlorination please, on habitat, bird, fish and marine mammals and fish qualifying features of internationally and nationally designated sites? Do you see any damage to qualifying features of internationally designated sites from abstraction?</p>	
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	<p>(h) Item 3(i) Are there any submissions you wish to make, over and above what we have already covered?</p> <p>(i) Item 3(j) Are there any submissions you wish to make, over and above what we have already covered?</p> <p>(j) Item 4 (a) and (b) The ExA did not have anything specific on these headings apart from one item on which see below. Apart that, do Natural England or MMO have any representations they wish to make about agenda items 4(a) and (b) which they have not made before?</p> <p>(k) Item 4(c) Please will Natural England and the MMO set out any further views they wish to express on the third addendum to the Shadow HRA report [REP7-279] and any relevant subsequent HRA material.</p> <p>(l) The one other item at agenda item 4 related to the marine mammal baseline and was directed to the Applicant. It was as follows. In Section 6 of the Shadow HRA third addendum we see that it is noted at Section 6 of the Shadow HRA Third Addendum that the Applicant states the reference populations used in the marine mammal assessments have been updated since the Shadow HRA Report [APP-145] and first Shadow HRA Addendum [AS-178] were prepared. These are outlined in Table 6.1 of the Shadow HRA Third Addendum and the marine mammal assessments in Section 9 "have been based on the updated reference populations, as well as the previous reference populations to allow a like-for-like comparison." Could the Applicant tell the ExA how their original HRA assessments for the Proposed Development as a whole would change if they used the updated reference population counts?</p>	
21	<p>Early Years Transport Clarification</p> <p>(a) The histogram in paragraph 1.9.2 [REP7-071] shows a smoothed HDV profile. It is not possible from this to ascertain any precise details. Provide an update to Figure 1 (The Early Years) of the Material Imports and Modal Split [REP5-114] that clearly annotates the smoothed HDV profile provided at Deadline 7.</p> <p>(b) Additionally, it is noted that in the latest version of the Implementation Plan / Phasing Schedule there are a number of activities, including the desalination plant construction that start in Year 0 and HDV flows in Year 0 should be included in the Early Years assessment.</p>	Applicant

	<p>(c) Ensure that it is possible to read the numerical values on the histogram and it clearly identifies the following –</p> <ul style="list-style-type: none"> <li>(i) HGV by size as previously in Figure 1 [REP5-114];</li> <li>(ii) Water tankers; and</li> <li>(iii) Buses</li> </ul> <p>(d) To supplement this, provide a spreadsheet of the background data for the histogram of daily proportion by week, that shows the following –</p> <ul style="list-style-type: none"> <li>(i) HGV to the Main Development Site (MDS), including the accommodation campus and the LEEIE;</li> <li>(ii) HGV for the Associated Development sites, this is assumed to be the Sizewell Link Road (SLR) (and the Two Village Bypass to/from stockpiles on MDS prior to completion of the rail bridge on the SLR – Please confirm this is a correct assumption and confirm the point on the histogram where the SLR haul road is available.</li> <li>(iii) The HGV numbers using the SLR as a haul road</li> <li>(iv) Both direct and park and ride bus services</li> <li>(v) Water tankers</li> <li>(vi) Assumed HGV flows for the Scottish Power application. (it is understood that this will not appear on the histogram and this is not included in the proposed cap level but is required to have an overall picture of the HDV movements for the cumulative assessment.</li> </ul>	
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## Annex B

### Draft Requirement 8(3)

The fourth addendum to the environmental statement [REP7-030] states at para 3.2.21 that *"The proposed change to the Application is therefore for a temporary construction-phase desalination plant"*. At para 3.2.22 it states: *"The desalination plant would be decommissioned once the transfer main is fully available, prior to the commencement of operation of the proposed nuclear power station."*

Paragraphs 3.3.14 and 3.3.15 of the Construction Method Statement [REP8-054] are as follows:

*"3.3.14 The fish return tunnels and associated headworks are not required until the operation of the power station and use of the seawater intake pipe must cease before they begin any commissioning tests towards the end of the construction period. There must be no interaction between the temporary desalination plant and operation of the cooling system for Sizewell C.*

*3.3.15 The seawater intake headworks must be decommissioned and removed once the permanent water supply is fully available. The buried intake pipeline must be grouted (or similar), capped and will remain in-situ. A jack-up barge will be necessary during both construction and decommissioning of the headworks and associated infrastructure."*

It is clear that the desalination plant is only required for the construction phase. It has been assessed on that basis. It has not been assessed for the operational phase and the ExA does not understand the Applicant to be suggesting that the plant would be used for the operational phase.

In some places the CMS states that parts of the desalination plant and tunnels would not be decommissioned until the permanent water supply is available. If permanent water supply is earlier than the beginning of operation of the power station that would be acceptable. But the desalination plant is to be temporary, has been assessed on the basis and must not be used for the operation of the power station. Accordingly, provision in clear and unambiguous terms that the desalination plant may not be used after and must be decommissioned before operation of the power station is essential. The draft requirement set out below is based on paras 3.3.14 and 3.3.15 of the CMS submitted at Deadline 8 and takes into account that the Applicant is committed to the restoration of the temporary construction area following completion of the construction phase – see para 3.4.63 of the CMS. ESC, SCC, the Applicant and other IPs are invited to comment on the drafting to ensure its efficacy. [Comments on the principle may also be made, though the ExA doubts this is controversial.]

Comments should be made, titled "Decommissioning of the desalination plant, comments on the ExA's proposed Requirement 8(3)" at Deadline 10. If the comments are not made as part of submissions clearly arising from ISH15, they should be a document which is separate from any other submissions.

### Requirement 8(3)

(i) The use of the temporary desalination plant and associated works (Work No. 1A (jj), (kk), (ll), Work No. 2M, Work No. 2N, Work No. 2O and Work No. 2P) must cease

before either (a) commissioning testing begins or (b) the availability of the permanent water supply [to be defined], whichever event occurs first.

(ii) Within 3 months of either (a) commissioning testing beginning or (b) the availability of the permanent water supply, whichever event occurs first, the temporary desalination plant (Work No 1A(jj)) must be removed and the intake head and shaft (Work No 2N) and outfall tunnel diffusers and shaft (Work No 2P) must be removed and decommissioned, and the outfall and intake pipelines (Works No.s 2M and 2O) must be grouted and capped

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