

The Sizewell C Project, Ref. EN010012

Suffolk County Council response to Rule 17 Letter (including Decommissioning of the desalination plant, comments on the ExA's proposed Requirement 8(3))

Suffolk County Council Registration ID Number: 20026012

Deadline 10

12 October 2021

Question to:	Question:
Questions on the DCO and related documents	
Question 6 for the Applicant	<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>
SCC response at Deadline 10	<p>Although SCC is not named as respondents to this question, at ISH15 the ExA suggested that SCC may wish to consider some of the issues raised in the last paragraph of this question.</p> <p>SCC has been in discussions with the Applicant about this and other requirements since ISH15. The Applicant proposes to amend requirement 8(1) so that the reference to Work No. 1 is replaced by a reference to “the authorised development”.</p> <p>SCC is satisfied that this seems to address the point raised by the ExA and it is content with the amendment.</p>

<p>Question 12 for ESC and SCC</p>	<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”. 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. Please will ESC and SCC submit assurances at Deadline 10 that they are satisfied on these issues.</p>
<p>SCC response at Deadline 10</p>	<p>In SCC’s Post Hearing submissions including written submissions of oral case - Issue Specific Hearing 14 [REP8-185] - SCC observed that the entity proposed to enter into the DoO with ESC and SCC is NNB Generation Company (SZC) Limited (“SZC Co”) whose registered office is at 90 Whitfield Street, London W1T 4EZ (Company registration number 09284825) and that this was the entity that is defined as “undertaker” at Article 2 of Revision 8 of the dDCO submitted at Deadline 7.</p> <p>SCC remains of the view that land interests are not relevant to the completion or operation of the DoO as the “Evolving Approach” that the Applicant has adopted and the Councils have negotiated does not bind any land.</p> <p>SCC is content that the DoO will be appropriately enforceable and that relevant elements of the development that may be authorised are bound on the basis of the following. <u>However, at this point SCC stresses that this position relies on certain provisions (detailed below) being included in any final DCO that is made in this case and the form of the legal opinion to be provided to the ExA by the Applicant at Deadline 10:</u></p> <ol style="list-style-type: none"> 1. The DoO is to be entered into by the Councils and the “undertaker” for the purposes of the DCO. 2. The DoO shall remain binding on SZC Co until it has transferred the entirety of its benefit of the DCO at which point (pursuant to Clause 5 of the DoO) SZC Co shall be released from its obligations in the DoO save in respect of antecedent breaches of its obligations in the DoO. <p>The above is a change from the previous draft of the DoO which would have been seen by the ExA as that draft envisaged SZC Co being released once it had transferred the “Undertaking” (being the benefit of the Development Consent Order to construct or operate Work Nos. 1A(a) to (h) as set out in Schedule 1 to the Development Consent Order). SCC had</p>

concerns about this previous wording and the potential for SZC Co to take free of liability under the DoO when it could retain the benefit of some of the DCO if it just transferred the “Undertaking”.

Under Article 9(6A) (of the dDCO submitted at Deadline 8 [REP8-035]) the obligations of the “undertaker” under the DoO would be enforceable against any person to whom the power to construct or operate Work No.1A(a) to (h) has been transferred or granted under Article 9 for so long as they benefit from the power to construct or operate any of those works and such transferee or lessee shall be treated for all purposes as the undertaker who entered into the DoO. This provision would mean that the obligations under the DoO would run with the party that has the power to construct or operate Work No.1A(a) to (h) in the event of future transfers or grants of the benefit of the DCO.

With regard to future liability under the DCO, the Deadline 8 version of the DCO [REP8-035] included two changes which SCC considers are critical and must be retained in any DCO that is made in due course. These changes are the following:

1. The removal of the previous Article 9(6) which would have allowed for a transfer or grant of the benefit of the DCO to a holder of a licence under the Nuclear Installations Act 1965 without the consent of the Secretary of State (although SCC expect to see the sub-paragraphs of Article 9 following Article 9(6) removed too in the version of the DCO to be submitted at Deadline 10 as these were parasitic on the previous (now removed) Article 9(6)). Following this change, pursuant to Article 9(1) the written consent of the Secretary of State would be required for all transfers or grants of the benefit of the DCO.
2. In addition, Article 9(3A) (of the dDCO submitted at Deadline 8 [REP8-035]) has been inserted which contains provisions which SCC consider are particularly important. Where a transfer of the benefit of some but not all of the powers under the Order are proposed this new wording requires the Secretary of State to take into account the ability of the person bound by the DoO following such a transfer to meet all obligations contained in the DoO and the ability of the Councils to enforce the terms of the DoO when considering whether to grant consent. However, SCC would require any final wording of this part of Article 9 to refer to “grants” as well as transfers of the benefit of the DCO.

For completeness, EDF Energy Nuclear Generation Limited (“NGL”), Network Rail (“NR”) and National Grid (“NG”) are not relevant to the transfer provisions in Article 9 of the dDCO as these parties are already given the benefit of the Order under Article 8 (with the benefit of NGL under Article 8 limited to the Sizewell B relocation works 1 and the Sizewell B relocation works 2) and do not need to be transferred or granted any benefit of the Order under Article 9. Whilst ideally SCC would want NGL, NR and NG to be parties to the DoO and for the obligations within the DoO

	<p>to be binding against them (as far as relevant to these parties) SCC acknowledge that these parties cannot be compelled to be parties to the DoO. SCC do not consider the absence of these entities as parties to the DoO affects the ability of the Councils to enforce breaches of the DoO if necessary in due course.</p> <p>SCC is aware of the draft legal opinion submitted by the Applicant at Deadline 8 [REP8-128] and the ExA's comments on this at question 8 at Annex A of the ExA's Rule 17 letter dated 6 October 2021 [PD-054]. Like the ExA, SCC expects the final legal opinion to be provided by the Applicant at Deadline 10 to include confirmation that adequate solvency checks have been undertaken and for any restrictions on disclosure to be removed.</p>
<p>Decommissioning of the desalination plant, comments on the ExA's proposed Requirement 8(3)</p>	<p>SCC has considered the ExA's proposed new Requirement 8(3) in Annex B to the ExA's Rule 17 letter. The proposal is set out below:</p> <p><i>“Requirement 8(3)</i></p> <p><i>(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.</i></p> <p><i>(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.”</i></p> <p>Since ISH 15, SCC has been discussing the Requirements with the Applicant, including Requirement 16 (Main development site: Removal and Reinstatement). The Applicant has indicated that it will be proposing an amendment to Requirement 16 which will list Work No. 1A(ii) (temporary desalination plant) as one of the specified temporary works which must be removed “following completion of the SZC construction works”.</p>

That proposed amendment would not meet the ExA's concerns in at least two respects. First, it could still, in theory, mean that the desalination plant could be used for operational purposes if part of the development is operational while part of it remains under construction. Secondly, the proposed amendment to Requirement 16 only deals with the removal of Work No. 1A(ii), whilst the ExA's proposed amendment covers a number of other works associated with Work No. 1A(ii).

Nonetheless, SCC is broadly content that its concerns on this subject would be dealt with by the Applicant's proposed change to Requirement 16.

But if the ExA were minded to recommend inclusion of the proposed new Requirement 8(3), SCC would have no objection in principle. If so, there are a few drafting points:

- "commissioning testing" is not a defined term in the DCO and it begs the question testing of what?
- If paragraph (2) were to be included then the Applicant's proposed amendment to Requirement 16, mentioned above, would no longer be required, as there would be a conflict
- Requirement 16 has the benefit of requiring not only removal of temporary works, but also specifically requires landscape restoration works to be implemented in accordance with details approved pursuant to requirement 14 (Main development site: Landscape works). SCC would wish to see that replicated in requirement 8(3)(ii) if it is to be included.