



# The Sizewell C Project

## 8.23 Environment Agency - Deed of Covenant

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Revision: 1.0  
Applicable Regulation: Regulation 5(2)(q)  
PINS Reference Number: EN010012

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October 2021

Planning Act 2008  
Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009



## **PART ONE – ENVIRONMENT AGENCY COUNTERPART**

**DATED 8 October 2021**

**(1) NNB GENERATION COMPANY (SZC) LIMITED**

**- and -**

**(2) THE ENVIRONMENT AGENCY**

**DEED OF COVENANT**

relating to  
Sizewell C Nuclear Power Station

Under s37 Environment Act 1995 and s30  
of the Anglian Water Authority Act 1977

**THIS DEED OF COVENANT** is made on 8 October

2021

**BETWEEN:**

- (1) **NNB GENERATION COMPANY (SZC) LIMITED** whose registered office is at 90 Whitfield Street, London, England W1T 4EZ (Company Number 09284825) ("**SZC Co**"); and
- (2) **THE ENVIRONMENT AGENCY**, whose principal office is office is at Horizon House Bristol, BS1 5AH ("**the Environment Agency**"),

(each a "**Party**" and, together, the "**Parties**")

**BACKGROUND:**

- A** SZC Co wishes to construct a nuclear power station at Sizewell and made an application to the Secretary of State on 27 May 2020 for a Development Consent Order to authorise the construction and maintenance of the nuclear power station.
- B** The Environment Agency has statutory duties relating to the protection of eels and migratory fish under the Eels (England and Wales) Regulations 2009 and the Environment Act 1995
- C** The construction and operation of the nuclear power station is likely to have an adverse effect on the populations of eels and migratory fish in the locality
- D** The parties have therefore agreed that SZC Co will pay a financial contribution towards the carrying out of mitigation measures to reduce any such adverse effect, such contribution will be made pursuant to the Principal Deed
- E** This Deed of Covenant is entered into for the purposes of ensuring that the Environment Agency receives the Contribution from SZC Co and applies the Contribution in accordance with the terms of the Principal Deed
- F** This Deed of Covenant is further entered into for the purposes of ensuring that the Environment Agency attends and participates in the meetings of the Governance Groups and performs the obligations of such Governance Groups as set out in the Principal Deed
- G** This Deed is made under the Environment's Agency's powers under s 37 of the Environment Act 1995 and s 30 of the Anglian Water Authority Act 1977

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed unless it is specified to the contrary the following terms shall have the following meanings:

**"Accrued Interest"** means interest at the base lending rate of the Bank of England from time to time;

**“Application”** means the application for a development consent order under section 37 of the 2008 Act submitted to the Planning Inspectorate on 27 May 2020 and given reference number EN010012;

**“Commence”** shall have the same meaning as in the Principal Deed and “commencement” shall be interpreted accordingly;

**“Committed”** means that the relevant Council (or such other person as the money has been paid to under this Deed) has:

- (a) entered into a contract to use the relevant monies in accordance with the terms of this Deed; or
- (b) issued an internal order or generated a financial code for the relevant works or services in question.

**“Contribution”** means the sum of £500,000, inclusive of VAT;

**“Eel and Migratory Fish Mitigation Measures”** means the measures set out in the Schedule to this Deed

**“Order”** means the development consent order to be made pursuant to the Application;

**“Parties”** means the parties to this Deed; and

**“Principal Deed”** means an agreement pursuant to section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 in relation to the development of Sizewell C entered into by (1) East Suffolk Council (2) Suffolk Country Council and (3) NNB Generation Company (SZC) Limited on 8 October 2021.

- 1.2 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed.
- 1.3 References in this Deed to clauses are (unless otherwise expressly provided) references to relevant clauses contained within this Deed.
- 1.4 In this Deed unless a contrary intention is shown in this Deed, all expressions and phrases shall have the meaning ascribed to them in the Principal Deed.

## **2. REPRESENTATIONS ON THE ORDER**

- 2.1 Following completion of this Deed the Environment Agency agrees to:
  - (a) Promptly (and no later than 5 working days from the date of this Deed) inform the Planning Inspectorate in writing that any representations it has made on the subject matter of this Deed in respect of the Application have been addressed by SZC Co; and
  - (b) refrain from making any further representations to the Planning Inspectorate on the subject matter of this Deed in respect of the Application.
- 2.2 Nothing in this Deed shall require the Environment Agency to act or refrain from acting in a way that would unlawfully fetter its statutory discretion.

### **3. CONTRIBUTION**

- 3.1 Prior to the Commencement of Work No. 2A-2F (cooling water works) as described in the draft development consent order submitted at deadline 8 of the examination of the Application on 24 September 2021 SZC Co must pay the Contribution to the Environment Agency in accordance with the terms of the Principal Deed.

### **4. EEL AND MIGRATORY FISH MITIGATION MEASURES**

- 4.1 In consideration of SZC Co paying the Contribution the Environment Agency covenants to apply all of the Contribution towards the carrying out of the Eel and Migratory Fish Mitigation Measures.
- 4.2 The Environment Agency covenants with SZC Co not to spend the Contribution other than to implement the Eel and Migratory Fish Mitigation Measures.
- 4.3 The Environment Agency shall on request and within 10 Working Days of receiving such request, provide SZC Co with such evidence as SZC Co may reasonably require in order to confirm expenditure of the Contribution has been made in accordance with clause 4.1.
- 4.4 Notwithstanding clause 4.3, SZC Co shall in any event have the right to audit all expenditure funded from the Contribution or other amounts secured under this Deed and the Environment Agency covenants with SZC Co to provide access to all such information and evidence to enable SZC Co to carry out any such audit.
- 4.5 If any amount of money paid to the Environment Agency under this Deed remains unspent or not Committed within 5 years of the date that amount was paid by SZC Co, the Environment Agency shall pay any such unspent monies together with any Accrued Interest on those monies to SZC Co or its nominee within 60 Working Days of a request from SZC Co.
- 4.6 Reference in this Deed to the Environment Agency undertaking the Eel and Migratory Fish Mitigation Measures includes the scope for the Environment Agency to appoint a suitable third party to undertake these works and actions on behalf of the Environment Agency.
- 4.7 The Contribution shall be Index Linked in accordance with the Principal Deed.
- 4.8 Interest shall be applied to the Contribution as provided for in the Principal Deed.

### **5. GOVERNANCE GROUPS**

- 5.1 The Environment Agency covenants with SZC Co (i) to nominate a representative to attend (or nominate an alternate to attend) meetings of the Governance Groups as defined in the Principal Deed; and (ii) to procure that where reasonably practicable its representative attends and participates in the meetings of the Governance Groups and performs the obligations of such Governance Groups as set out in the Principal Deed.

### **6. COMMUNICATIONS**

- 6.1 The Parties agree that where particular mitigation works, projects or benefits are funded from any of the Contributions secured under this Deed, the Parties shall each

use reasonable endeavours to agree appropriate acknowledgement of SZC Co having funded such mitigation works, projects or benefits.

## **7. DISPUTES**

- 7.1 Clause 8 (Resolution of Disputes) of the Principal Deed shall apply to this Deed as if references therein to “this Deed” were references to this Deed.

## **8. THIRD PARTY RIGHTS**

- 8.1 Only the parties to this Deed may enforce its terms and no third party may enforce such a term under the Contracts (Rights of Third Parties) Act 1999 provided always that any successors to the Parties shall be entitled to the benefit and burden of this Deed.

## **9. LEGAL FEES**

- 9.1 SZC Co shall within 30 days of receipt of an invoice pay to the Environment Agency its reasonable and proper costs in connection with the preparation and completion of this Deed up to but not exceeding the sum of £2,000.

## **10. GOVERNING LAW AND JURISDICTION**

- 10.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 10.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

## **11. ENTIRE AGREEMENT**

- 11.1 This Deed constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior agreement and understandings whether oral or written with respect to its subject matter.
- 11.2 No variation of this Deed shall be effective unless it is reduced to writing and is signed by or on behalf of a duly authorised representative of each of the Parties.

## **12. COUNTERPARTS**

This Deed may be executed in counterpart, each of which is an original and all of which may together evidence the same agreement.

## **13. DATE OF DELIVERY**

This Deed is delivered on the date of this Deed.

Executed as a Deed by  
**NNB GENERATION COMPANY  
(SZC) LIMITED** acting by  
Humphrey Cadoux-Hudson  
in the presence of

.....  
**(Signature of director)**

.....  
**(Name of witness)**

.....

.....

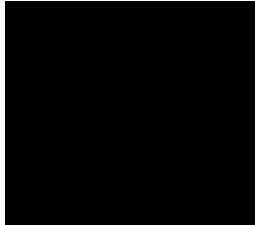
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**(Address of witness)**

.....

**(Signature of witness)**

**SIGNED for and on behalf of th  
ENVIRONMENT AGENCY**

**Name**.....Christopher Hayball



**Position**.....Senior Managing Lawyer (on assignment)



## **SCHEDULE**

### **EEL AND MIGRATORY FISH MITIGATION MEASURES**

Construction of an eel and migratory fish pass at Snape Sluice, National Grid Reference TM3908757631.

Construction of an eel and migratory fish pass at Blyford Bridge Sluice, National Grid Reference TM4247676447.

**PART TWO – NNB GENERATION COMPANY (SZC) LIMITED COUNTERPART**

DATED 8<sup>th</sup> October 2021

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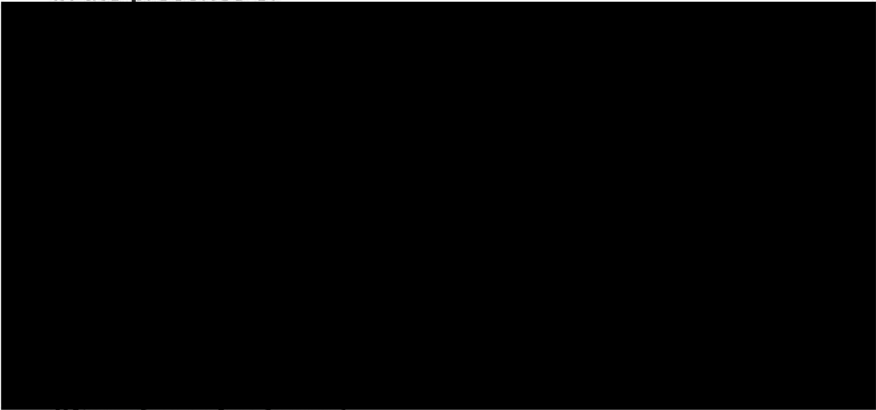
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in the presence of



(Signature of director)



(Signature of witness)

**SIGNED for and on behalf of the  
ENVIRONMENT AGENCY**

**Name.....**

**Position.....**



**SCHEDULE**

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