



The Sizewell C Project Case Team
National Infrastructure Planning
sizewellc@planninginspectorate.gov.uk
(By email only)

12 April 2022

Planning Inspectorate Reference: EN010012
Our Identification Number: 20025459

Dear Sir or Madam,

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by NNB Generation Company (SZC) Limited (“the Applicant”) for an Order granting Development Consent for the proposed Sizewell C Nuclear Power Station (“the proposed Development”)

Paragraph 8.12 (detailed below) of your letter dated 31 March 2022 requested comments from the Marine Management Organisation (MMO):

“In relation to changes to coastal processes/sediment transfer impacts on the Minsmere to Walberswick Heaths and Marshes SAC and the Minsmere-Walberswick SPA and Ramsar site, **Natural England**, the **MMO**, the **EA**, the **RSPB** and the **Suffolk Wildlife Trust** and **ESC** are invited to comment on the Applicant’s updated submissions in relation to changes to coastal process and sediment transport made at the final examination deadline:

- *Deadline 10 Submission – 9.12 Preliminary Design and Maintenance Requirements for the Sizewell C Coastal Defence Feature [REP10- 124]; and*
- *Deadline 10 Submission – 6.14/10.5: Environmental Statement Addendum, Volume 3, Chapter 2, Appendix 2.15.A: Coastal Processes Monitoring and Mitigation Plan [REP10-041].”*

The MMO has reviewed this request and notes that you have also approached Natural England (NE) for comments on this issue. The provision of advice regarding potential impacts on Walberswick Heaths and Marshes SAC and the Minsmere-Walberswick SPA and Ramsar site falls within the remit of NE as the Government’s adviser for the natural environment in England, and the MMO therefore defers to the advice provided by NE on this matter.



Although you have not specifically asked for comments from the MMO in relation to **paragraph 4.2** of your letter, the MMO wishes to provide comments in this regard. Your request in **paragraph 4.2** of your letter is as follows:

“The Secretary of State invites the **MCA** to provide their comments on the Applicant’s proposal to remove article 58 (lights on marine works etc. during construction), article 59 (provision against danger to navigation), and article 60 (permanent lights on marine works) from the draft DCO. The Applicant has instead included a condition on Aids to Navigation within the deemed marine licence of the draft DCO (condition 35 of Schedule 21 [REP10-009]).”

The MMO would like to reiterate our comments made at Deadline 10 to the Planning Inspectorate on this matter (sections 3.1.7 – 3.1.14 of REP10-195). The MMO does not agree with the Applicant that Articles 58, 59, and 60 should be removed from the Harbour Powers in Part 6 of the Development Consent Order (DCO).

The Articles relate to the following provisions:

- Lights on marine works etc. during construction
- Provision against danger to navigation
- Permanent lights on marine works

The MMO previously advised that there should be a Deemed Marine Licence (DML) condition to ensure that the appropriate Aids to Navigation for the project are approved by the MMO and implemented by the undertaker. As a result of this comment the Applicant removed these provisions from the Harbour Powers and inserted Condition 38 within the DML instead. The Applicant considered that it was not necessary to have both a DML condition for Aids to Navigation and requirements to the same effect within the Harbour Powers.

While the MMO agrees with the wording of Condition 38 in the DML and considers that this should remain, the MMO also considers that Articles 58-60 should be reinserted into the Harbour Powers, and also carry a penalty for non-compliance, for the reasons explained below.

In seeking Harbour Powers in the DCO, the undertaker is seeking to empower themselves as a harbour authority. If this were a ‘stand alone’ application to become a Harbour Authority it would be consented via a ‘works’ Harbour Empowerment Order under the Harbours Act 1964 and would contain all of the relevant provisions, including an obligation to light the harbour.

If the undertakers require status as a Harbour Authority – then in the MMO’s view, all of the statutory obligations of a harbour authority should come with it, including provisions for:

- Lights on marine works etc. during construction
- Provision against danger to navigation
- Permanent lights on marine works



The Harbour Authority has a statutory obligation to light the harbour in accordance with the Port Marine Safety Code (Department for Transport (DfT) policy document) (PMSC): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918935/port-marine-safety-code.pdf

The MMO understands that adherence to the PMSC is monitored by the Maritime and Coastguard Agency (MCA) and DfT to ensure levels of safety. The MCA is responsible for supporting DfT in developing and implementing the Government's maritime safety and environmental protection strategy and is responsible for monitoring the compliance of Harbour Authorities against the code. The above document sets out that potential exposure from failing to comply with the code could result in:

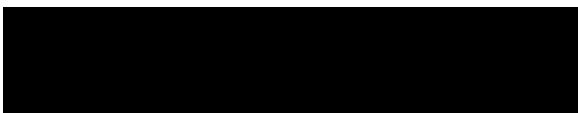
- a prosecution under Health and Safety at Work Act 1974 (undertaken by HSE);
- an incident or accident could involve the Marine Accident Investigation Branch.

Given that the responsibilities for monitoring and enforcement of statutory duties of a Harbour Authority are the responsibility of the above Government Departments and Agencies (i.e. primarily DfT and MCA), the MMO is concerned that the consequences of placing the obligations on lighting the harbour facilities solely in the DML means that the MMO will bear sole responsibility for the monitoring and enforcement of the statutory duties to light the harbour. These are not within the remit of the MMO.

Whilst it is correct that the MMO should ensure the harbour facilities are safely lit during the various phases of the project – and have this conditioned in a licence, as referred to DML Condition 38 – it is the MMO's view that this should not be seen as a substitute for a statutory obligation, which falls to the undertaker and should therefore be on the face of the DCO.

The MMO are not responsible for monitoring and enforcing harbour powers, it is a matter for the Statutory Harbour Authority to regulate its own harbour operations at their own harbour facilities using its own powers (set out in Part 6 of the DCO), and if any enforcement action is considered appropriate, this may be taken by other bodies, including DfT and MCA. By removing the provisions from the DCO which relate to lighting of the harbour facilities, this removes the ability of those agencies to take any appropriate action for a failure to comply with the statutory obligations of a Harbour Authority.

Yours faithfully,



Graham Richardson
Marine Licensing Case Officer

