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East Suffolk District Council

Stop Sizewell C (TEAGS).

TASC (Together Against Sizewell C)

SAGE-SZCLiaison (mailing)

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Dear Planning Inspectorate,

EDF-NNB Sizewell C Pre-examination process

We are writing to draw attention to provisions of the 2008 (amended) Planning Act in relation to the duties of the Planning Inspectorate in the pre-examination stage of the expected DCO application by EDF-NNB for its Sizewell C project and to raise some related disclosure issues.

S.A.G.E. SZC-Liaison writes as a community support and monitoring group with associates currently involved in various campaigns and organisations engaged with Sizewell C issues.

1 The 2008 Act, associated authorities and disclosure issues

Our enquiries and observations relate to the provisions of the amended 2008 Act, Parts 5 & 6, and Planning Inspectorate Guidance Notes 7 (EIA), 10 (HRA), 13, 14, 15 (Statement of Community Consultation), 17 (Cumulative Effects) and 18 (Water Framework Directive), and the DCLG Guidance to the 2008 Act, Paragraphs 15 and 19 (emphasis on public consultation and important issues to be articulated and considered in public in advance of submission).

The provisions of concern are:

- that the application is of a satisfactory standard - (Part 5 & Part 6, 2008 Act)

- duties where the application made is different to the consulted project and duty to have regard to any relevant responses (Part 5, Ch. 2, Clause 49, para (2))
- the restriction to exclude NPS issues from public examination (Part 6, Chapter 4, Clause 87 (3))
- important issues to be consulted on and articulated in advance of application for DCO (DCLG Guidance above)
- the status of common agreements (Infrastructure Planning Rules SI 2010/103 as amended, the DCLG Guidance (March 2015) in relation to the 2019 Scoping (EIA Regulations 2017).

The disclosure issues concern:

- advice that must be/may be given to the applicant (Part 5, Chapter 3, Clause 51 (4) (b)) being disclosed
- reasons for rejection (Part 6, Chapter 1, Clause 55 (9) (b))
- applicant reasons for changes in final DCO proposals (see above)
- common agreements – statement of common ground (DCLG Guidance).

These varied transparency provisions are, we understand, expressions of fundamental Aarhus consultation rights, qualified and counterbalanced by commercial confidentiality. With consultations and public narrative agendas primarily around EIA issues in this project, not involving any commercial confidentiality issues, full transparency would appear to be a reasonable expectation.

2 “Satisfactory standard” in the Environment Report

Noting the Act’s provision that “the application (including accompaniments) is of a standard that the S.O.S. considers satisfactory” - Part 5, Chapter 1, Clause 37 (3) and repeated in Part 6, Chapter 1, Clause 55 (3) (f) – we are asking how the extensive information deficiencies observed variously in the four stages of consultation and in the 2019 Scoping will be considered at pre-examination stage.

We note here the authoritative and extensive contributions from statutory consultees for the SOS at the 2019 Scoping - most importantly the Environment Agency, the inability of the Suffolk County and Suffolk East District authorities to fully exercise their duties be-

cause of information deficiencies and significant unresolved proposals, and the same experience for many interested parties.

Of particular note is that obvious impact assessment duties have not been pursued beyond Preliminary Environmental Information (PEI) mapping. We cannot recall a single instance in the main consultations where a certified independent professional assessment of a likely significant effect (LSE) has been reported for consultation purposes. If some have been performed, they have not been made available for public consultation. The resulting inability of the various consultees to independently assess likely significant environmental effects/impacts can be seen as a major material defect.

If this substantial deficiency is seen to have been remedied in the submitted DCO and associated documentation, we refer to provisions that “the reasons” for the applicant withholding information from consultation need to be stated in the DCO and examined as such in the pre-examination process. Such reasoning should be made public and be subject to due scrutiny.

3 The Environment Statement

Primacy of EIA duties

EDF-NNB’s defence of reliance on PEI and withholding its LSE-mitigation duties in the 2019 Scoping has been, we understand, that such exercises are not required even if advised as good practise. While that might be a facility in simple projects where there is no obvious LSE’s in the EIA menu, such a view might be sustainable. The facts of the matter are that the applicant has reported variously on its EIA duties in an incomplete, selective, and haphazard manner. Some duty failures in the consultation process are dealt with below. These well-attested characteristics may attract legal scrutiny.

Cumulative EIA duty failures

The consultation Reports and 2019 Scoping’s PEI have numerous failings, not least in dealing with “the coverage” of a “matter falling to be dealt with” and, in particular, “sources (*and*) verification” of documentation “(2008 Act, Part 5, Chapter 1, Clause 37 Para 5 (b) and (c)). Verification appears to have been regarded as off-limits for public consultation.

Public/statutory issues not consulted on

Potable Water Potable water supplies – to quality and quantities and 10 to 15 years reliability standards as required for the highest grades of concrete – have not been explored in consultations, and have been addressed in only a nominal manner in the 2019 Scoping, by existing Sizewell EDF site supplier Northumbrian Water (Essex and Suffolk). This

despite questioning, public narratives about drought, low aquifers, farming dependency, and dependent communities should borehole licences be sought at scale. Here we note that the Planning Inspectorate has only very recently published its Guidance on the Water Framework Directive. The major regional water supplier Anglian Water has just set up a partnership working party to tackle regional water supply issues, although their corporate planning publications to date make no mention of the likely significant impact of the massive Sizewell C project.

Unresolved strategic issues

Transport - Transport strategy, revisited at the Stage 4 consultation, with benefit of extensive challenges over now several years from communities and public authorities, is still only sketched in as three variants of road and rail mix. There has been no relevant or demonstrated reasoning against sea-based delivery, piecemeal and limited mitigations on the utterly unsuitable A12 trunk road, no assessment of the large number of housing and commercial developments approved and planned for the A12 and A14 and their transport tributaries.

There has been no publicly declared, professionally accredited assessment of transport impacts either in the declared impact zone or beyond it. Strains on the strategic bottleneck of the A12's Orwell Bridge and the strategic needs of Felixstowe Container Port have not been evaluated or reported on sufficiently to enable proper responses. A new and unpopular and unsuitable link road across country and a limited two village bypass on the A12 – not the required four village bypass – are the sole substantial responses to an impossibly undernourished Suffolk road network.

The failure to disclose aggregate and construction materials sourcing beyond the impact zone in a region sharing acute trunk and tributary road transport challenges contrasts sharply with repeated vaunting of other commercial contracts already in place with their putative positive employment affects. There has been no assessment of non-HGV road traffic, while massive car parking facilities are included in the construction site in addition to the two park and ride schemes whose own feeder traffics remain undisclosed despite mapping and minor road improvement measures. Overall, this strategic matter remains structurally unresolved.

New developments not assessed

Two recent revisions indicate that the applicant has managerial capacities capable of detailed assessment which it has only selectively allowed into public narrative. We cite the announcement that the number of HGVs at peak will likely be 700, or 1000 or 1,150 depending on the unresolved road/rail issue, not the long reported 600, and that the peak workforce will be 7,900, up 40% on the previous 5,600. It seems that the second caravan park facility will now need to be used. There remains no assessment of non-HGV traffic

and secondary generated traffic, however.

Absence of key EIA areas

Tourism - This strategic and complex industry has been the subject only one impact study, by the Suffolk DMO, a marketing survey of impact “opinions” from industry members. The applicant has not disclosed any substantial assessment but rushed in its final consultation to offer to set up a funded support scheme as a form of compensation.

Cumulative effects - The ongoing controversy about a DCO for onshoring a wind farm, others to come, proposals for two interconnectors to the European continent and two between Sizewell and Kent in the much vaunted “Energy Coast” have been mentioned lately or not at all by the applicant, but no assessment has been disclosed. Here we note the requirements of the Planning Inspectorate’s Guidance Note 17 of 2015.

Economic Impact Assessment - The November 2018 report by Hardisty Jones, commissioned by Suffolk County Council, Suffolk Coastal and Waveney Districts is the only substantial attempt to analyse and assess the likely significant impacts of this project. It is a data collecting baseline study, merely setting out scenarios. The applicant should surely submit a comprehensive report independently of the expected Local Impact Report from these authorities accompanying the DCO. It has not consulted in any substance on the many complex issues involved. The annual Economic Impact Report for Hinkley Point C shows what can be done, despite it being high on benefits and very low on negatives run a very different setting to East Suffolk.

Overall nature protection impacts not addressed

The well understood impacts on the variety of protected sites and species in the chosen project impact zone have called out very few proposals and no available full mitigation studies applying for the works site, the site itself, and proximate protected sites and species, including the adjacent RSPB Minsmere Reserve amongst the 52 variously protected nature sites in the zone, and many habitats and species already within the Natura 2000 listing though present and potential nature assets.

The responses so far of the applicant have been a consultation about minor aspects of a conduit under the embanked access road to the eventual site for water voles, otters and bats, the creation across the road from the 10-15 year construction site of the Aldhurst Farm nature area, and last minute, at Stage 4, the outline proposal – no more – to purchase two parcels of land, with no specified locations, for the RSPB’s marsh harriers, a measure reflecting the so-called “People over the Wind” court cases about the foraging rights of hen harriers. There is an important regulatory issues here.

HRA duties and IROPI compensation

The absence of comprehensive reporting of mitigation processes for the Natura 2000 menu violates EIA reporting and assessment requirements both in general and in particular by proceeding directly to propose compensation measures without undertaking mitigation processes and not following the HRA Regulations as they have evolved in case law. We have in mind here that the Planning Inspectorate's Guidance Note 10 is in its 8th revision as of November 2017, providing sufficient time for the applicant to have undertaken dutiful assessment work and to have reported it for consultation at Stage 3 and/or 4, and to declare reliance on the Act's IROPI provision.

Specific items not pursued

The applicant has changed its selected targets for EIA assessment, in particular in nature protection areas. A small but illuminating example concerns the nightjar. The likely impact of the lengthy construction works, hours of work, lighting, noise and dust on this protected species in and around the SSSI being formulated at Stage 1 Report as a matter of their presence and turning on whether they nested on the proposed site. The nightjars have not figured since in subsequent consultation reports. Otters, water voles and protected bats emerged much later in the Stage 3 Consultation Report, inviting public comment that they were like to have been present, and relevant concerns, from day one.

Ecology, geology and climate change – the NPSs and public policy

A set of substantial issues has been raised by consultees which cross regulatory boundaries and involve public policy issues. We look at two substantial examples - (1) geology/site issues and (2) the project's carbon footprint.

1 **Geology** Coastal sea level rise and flooding – the implications for the 3 nuclear sites at Sizewell becoming an island in future years; the adequacy of sea wall defences for the new project and different defences in place for the old A site (now the nuclear waste store) and present B sites; coastal erosion affecting and affected by the large permanent MLF (marine landing facility) and its access road on the dunes and to the beach, and the depth of sea wall armour being out of line with current and future rising tide levels; the impact of building massive tunnels for sea water cooling and the implications for coastal geology; and the sheer limitations of the size of the site, only marginally larger for two nuclear reactor units than the norm in the revised and still to be completed replacement for the out-of-time NPS EN6.

The applicant has not fully consulted about these issues. The applicants have cited experience from the build of Sizewell B. Coastal processes were interrupted, resulting in sand and shingle migration south to Thorpeness and Aldeburgh. Environmental issues were mentioned with harbour porpoise designation in the offshore SPA.

When questions were posed only weeks ago about them to the ONR at a joint Environment Agency - ONR Forum in Suffolk, it was stated that ONR site licensing would cover some of the issues and it was implicit that they were matters of public concern. We therefore suggest that these are matters which should have been consulted about and been subject to EIA standards of impact assessment. They are indicatively covered by Aarhus rights, some of them are already featuring prominently in the ongoing NPS EN6 revision which has itself been subject to public consultation and have been accepted for public discussion by the Environment Agency and, it seems, the ONR.

2 *Net Zero* The overarching issue, at the forefront of public policy narratives, is climate change and the new Net Zero commitment of the UK Government, recently upheld and not challenged by Government, as an overriding imperative in the Heathrow planning case. We suggest (below) that this impacts on the applicant's persistent claim to be a low carbon energy source with an essential role to play in reaching the new GHG reduction targets.

Noting the 2008 Act's exclusion of NPS issues - "merits" - from public examination, we look further at these issues, along with other issues of a similar stature, setting them in the context of the government's own NPS EN6 revision on the basis of changes in law and policy. We suggest that the current constellation of public policy considerations and law should be publicly examined and pre-examined for "satisfactory standard".

So important are many environmental issues around this project that we believe there is a case for rejection of the application on these grounds alone. Further, we suggest that there are further areas of public policy where the pre-examination stage can be regarded as an appropriate forum for assessing the standard of application.

4 Role of NPS 6 and its revision & Government "changes in policy and law"

Many of the issues emerging and raised and some relied on by the applicant in the 8 years since the first Sizewell C consultation report (November 2012) would not sit comfortably in public examination if the restrictive provision of the 2008 Act excluding NPS issues is regarded as applicable (Part 6, Chapter 4, Clause 87 (3)).

Here we note the prior provision in Clause 87 (3) that the Examining Authority "may" but is not required, to disregard issues relating to the NPS's merits. We therefore ask for consideration that these issues are so substantive and so much part of the long and established local and national narratives that their presence (or absence) in the DCO submitted be matters for pre-examination.

Further, we note that a different view of the status of these issues has emerged as a result of the ongoing revision process of EN6, and its elaboration of substantial sustainability criteria for new nuclear plants, based on, to quote the EN6 Draft text, "changes in law

and policy” commonly understood to date from 2016.

There are overarching elements to this process concerning energy policy itself, which the draft NPS declared was – and, in fact, is - “freestanding” of NPS EN-1 on energy policy in respect of new nuclear sites. Our understanding is that the main elements of the draft NPS have been accepted as policy by Government after statutory consultation and some interested party contributions, including some from parties engaged with Sizewell C issues.

There are many complex changes in policy and law, a view recorded from Government in a rejected FOI by a local campaign group on grounds of public cost and complexity. Some energy national infrastructure issues have resulted in case law, reflected in the extensive revisions to Planning Inspectorate guides. Other examples come from SOS decisions on planning applications, with a likely important decision awaited from the SOS about the Wylfa nuclear project. Some of these overarching matters fall outside standard EIA menus, as we have indicated in the case of site size suitability with apparently parallel responsibilities vested in the ONR alongside Planning Inspectorate competencies.

We note in particular that energy policy formulations, awaiting a long promised White Paper, have been recently formulated as energy security, affordability and decarbonisation (Drax gas fired power station project, BEIS Oct. 2019). A new overarching consideration results from the recent Appeal Court case involving Heathrow expansion (Feb.2020) which has attracted Government acceptance of the overriding character of Government’s allegiance to the Paris Climate Change Agreement and by extension the new Net Zero climate change target. A consequence, we gather, is that the Airports NPS needs to be revised in this respect.

Prior to this judgement, and partly in response to public narratives from the applicant and occasionally relied on in the consultation reports, have been three areas of argument about

- (1) the overall suitability of the Sizewell site as opposed to the “in principle” suitability of the now out-of-time NPS EN-6
- (2) the necessity or optionality of the project for energy policy
- (3) the sustainability of the project.

We suggest that legal and policy developments cover these three areas, and that they should inform the pre-examination process for the Sizewell C project. We focus on one especially prominent and important dimension of sustainability, that is, the repeated claims of the applicant that the project is low carbon.

Low carbon footprint in policy context Controversy here shows wide disparities around even industry/sector (generic) carbon footprints for nuclear power which are derived from standards covering whole existing fleets of nuclear power stations, not the specific footprint of this project's EPR reactors. The generic design approvals for the EPR date from 2008 to 2012, and do not disclose this metric. The Government's carbon footprint policy stance reveals this wide disparity, opting for a figure of between 7 and 22 grams of CO₂ per kilowatt hour, from life cycle studies on the then existing nuclear fleets across the world up to the publication of the White Paper on Nuclear Power in January 2008. Studies since then continue with wide disparities, recent interventions being the Jacobson's 78 to 178 of 2019, Barham's 2019 'well above 50 average', both on the existing nuclear fleet and for full operating lives and the Van Leeuwen update of 2019, the only apparent study of the EPR reactor, at 78 to 122 gms/kwh. The Financial Times carried an indicative letter (20.11.2019) from prominent experts suggesting that nuclear carbon footprints are 10 to 18 times those of renewables. Questions remain about what exactly is included in "full life cycle" definitions, and what the life cycle of Sizewell C's carbon output would be in the context of Net Zero timelines. Front loaded as a project by massive CO₂ during construction, at key stage run reaching Net zero, it may have at best only a few years to contribute "low carbon" production to the grid. It also needs to be remembered that government figures are from 2008.

The questions can be put more specifically: how do public policy metrics fit to the specifics of the Sizewell site and its construction parameters and, most importantly, and not studied, the likely operating life of the station in the context of official climate targets and their dates, namely 50% reduction on 1990 baseline by 2035 and net zero by 2050. The likely 15-year window for a "low" CO₂ contribution would then need to be qualified by the unavoidable life-time operating cycle costs (fuel source, fuel machining, waste storage and "disposal) plus the long, CO₂- heavy construction period.

In principle a quite different picture of the much-vaunted low carbon Sizewell C might emerge. A project heavily front- loaded and end-loaded with CO₂, and only a very short "low carbon" contribution to make - at high cost - which may, in turn, have blocked true low carbon renewables developing to their full potential.

The overarching legal status of these targets and dates has been set by the recent Heathrow legal decision which has set a precedent for project specific foot printing and the need for NPSs to be kept up to date. We suggest that it is incumbent on the applicant in this case to offer a site-specific CO₂ impact assessment.

The applicant's DCO should cover CO₂ sources comprehensively. We suggest;

1 The carbon footprint of the likely 10 to 15 year construction period, its supply chain footprints, HGV and associated traffic and income generation effects from the workforce (direct and indirect) effectively more than doubling the population of Leiston. Generic

foot printing for the transport industries is an established metric, and there are other industry sector equivalents making contributory carbon footprints at the project quite feasible to undertake. The buildings themselves are notably heavy with quality concrete and steel, resulting from massive safety features post Chernobyl and Fukushima accidents and reflecting the fact that these reactors are at the upper limit of design capacity at 1,600 megawatts each. They are one half to double the capacity norm for traditional nuclear power plant reactors. In the absence of applicant disclosure of aggregate sourcing, likely West Country sources and/or even imported sources have been rumoured. The associated works of the project are themselves substantial, with approximately 10 kilometres of undersea tunnelling for reactor cooling, a permanent onshore Marine Landing Facility, a permanent embanked access road, total site excavation and sea wall/dune armour, two park and rides and a link road and village bypass as major features. The carbon footprint needs to reflect the £20 billion plus likely cost, at current and future prices.

2 Information about the planned and likely widely different uranium fuel qualities and sources and fuel processing requirements for this GDA approved but specific EPR which we gather has been designed for a variety of fuel types.

3 The footprint of nuclear waste processing and storage. Here costs estimates are disputed but the physical facilities themselves are well understood in terms of dry storage and, eventually, deep storage, namely, major construction and engineering works with heavy CO₂ footprints. It might be added here that the project as reported is uncertain about its dry storage facility and location, and sufficiency of this capacity, so that further dry storage may well be required if the Government's proposed Geological Disposal Facility is not delivered. It will need to be funded and serviced for at least 160 years. Because new nuclear plants will bear GDA costs through a levy system, the amounts of waste and hence carbon footprint from each likely contributory station should not be difficult to establish.

4 Government policy (BEIS (*draft*) Integrated National Energy and Climate Plan (NECP) January 2019) asserts that new nuclear will take over from gas replacing closed coal-fired stations. This displacement/substitution strategy has a counterpart in the blocking of renewable and (largely) undisputed very low carbon footprints of wind, sea and sun powered energy technologies. These have shown, since the 2008 Government strategies for energy and nuclear power, that they produce at dramatic scale with very impressive cost dynamics. Secondly, the nuclear CO₂ reduction strategy discounts carbon capture and storage gains for gas plants, itself a parallel policy aim of government. In these rapidly changing circumstances with the overarching Net Zero imperative, consideration in the planning process of a specific carbon footprint for the Sizewell C project would reflect public interest and policy and assist in the establishment of a true energy supply mix.

5 A further support for this view comes from the emerging Environment & Social Governance agendas across the world and recently in the UK. ESG agendas are evolving for corporations and financial investors such as pension funds requiring transparency for clients of the green credentials of investments' contributions to climate change targets. Secretary of State for Work & Pensions and Sizewell MP Therese Coffey, writing with (former) Bank of England Governor, Mark Carney, announced jointly in February 2020 that " This week the Government is legislating so that we can mandate disclosures by large pension schemes" arising from steps already taken to require companies to report their GHG emissions. (Daily Telegraph 12.2.2020). The Sizewell C project looks to count on both measures.

Project Sustainability In the light of the range and scope of public narratives that have emerged since the Sizewell C project was first envisaged, and law and policy evolution, including explicit sustainability issues in the replacement NPS EN-6 and implicit sustainability issues in public policy on energy security and value for money, we suggest that the proposed and much publicised external funding needs of Sizewell C (via consumer and taxpayers where supports are needed through new nuclear contracts for difference, and consumer levies, for example) should be publicly examined as part of the project. If these core issues of sustainability are not supported in the applicant's actual application, and (disclosed) reasoning is not forthcoming, this should be a further ground for rejecting the application as of unsatisfactory standard.

5 Statements of Common Ground

We note here that DCLG Guidance clearly indicates that these should be in place before a DCO is applied and that they should be available for examination through record in the DCO. Since statutory consultations, and especially contributions from the Environment Agency and the local authorities, have registered repeated dissatisfaction with the informational standard of the project both as reported and recorded in the Scoping PEI, it would be surprising if there are any substantial common grounds. Should that not be the case, their standard of satisfaction to be publicly examined will presumably be examined at pre-examination stage and duly report on.

6 Statement of Community Consultation

This long saga since 2012 has been characterised by process, not substance, especially in the community reports back. The lack of substantive information has been noticeable to the extent that public authorities have been unable to carry out their own duties and exercise their own rights as consultees. Regulatory requirements under EIA, for example, have not been reported on fully even where impact assessment work of an acceptable professional quality may have been conducted. Many issues remained unresolved prior to the announcement of the intention to submit a DCO. Occasional changes to proposals, such as the late adoption of a link road to relieve but not replace pressure on the B1122, were

not presented with any EIA regulatory assessment support, despite responses raising these matters. The second Scoping exercise in 2019 was carried out in parallel and without due public notification during a substantial and at the time the final consultation, and when public pressure produced a further delay and consultation, this did not address the many issues raised in the Scoping by the statutory consultees. Issues across a spectrum of national energy need and policies, impacts on other energy projects in the area, on sustainability and climate change have not been addressed with any specificity, and the information disclosure rights of the consultation process have not been respected, while the project improvement objectives of consultation have been limited.

Consultation exercises have also taken the form of long but unsatisfactory reports and then assistive questionnaires of selected issues with choices directed to secondary options without provision for structured commentary e.g. whether a new link road should be continued after construction, or the land restored, not its location, impacts and consequences. Being consulted on two versions of a culvert to “via” otters, water voles and bats under the embankment of the strategic access road to the station, without reasoned explanation of a mitigating alternative road route, is a manipulation, not a consultation, and ignores HRA regulatory requirements.

There has been ample time for regulatory requirements on impacts to be carried out and consulted on, ample time to incorporate changes in public policy and law, but there has been little productive response.

From a respectful commencement, the consultation process has become an experience of disquiet, disorientation and disadvantage to many interested parties in the communities.

The perceived rush to DCO during the Covid19 crisis is indicative, as is the offer of extended registration time for interested parties, offered as compensation for an unsatisfactory termination of consultation.

7 Summary We suggest that in many important respects the likely DCO will not be of satisfactory standard. Should it have been sufficiently amended in these respects to be accepted for progress to public examination, the project being examined will not by definition be the project on which consultation has taken place over the 7 years since commencement. That should be sufficient for the applicant to be required to resubmit the application for consultation should there be no adequate reasons to explain the difference. Such reasoning should be disclosed in the public interest, as should any reasons for disregarding the many substantive arguments which have been voiced and submitted from many quarters over the 7 years or so.

Yours sincerely,

Regan Scott & Laurence Moss