

## ANNEX 2

### **THE BOARD'S ROLE AND SCRUTINY OF THE FAP**

This Annex sets out a summary of the Board's role and its scrutiny of the FAP.

#### **1. THE BOARD'S ROLE**

- 1.1 The HPC Board is an expert committee which was established for an initial three-year term in March 2009 to provide independent advice to the Secretary of State on the funded decommissioning programme for HPC. The HPC Board published its advice on the HPC funded decommissioning programme in 2016 and was disbanded following the Secretary of State's approval of the programme.<sup>1</sup>
- 1.2 In April 2022, a newly constituted board was established to give independent advice on the FDP for Sizewell C (being the Board).
- 1.3 The Terms of Reference to the Board (which have been reproduced in full at Attachment A to this Annex) set out its responsibilities as follows:
  - (A) the Board will provide independent advice to the Secretary of State on the suitability of the FAP forming part of the FDP submitted by the Operator for approval by the Secretary of State as required by the 2008 Act;
  - (B) the Board is an advisory body and may only provide advice on matters requested under the Terms of Reference or as otherwise requested by officials of DESNZ;
  - (C) subject to the scope set out in the Terms of Reference, where appropriate, the Board shall provide advice to the Secretary of State to support their decision-making as to whether the FAP has met the following factors (as set out in the Guidance):
    - (i) provides a clear structure;
    - (ii) contains robust cost estimates which take due account of risk and uncertainty;
    - (iii) is transparent;
    - (iv) contains clear terms and clear divisions of roles and responsibilities;
    - (v) is a durable arrangement; and
    - (vi) sets out a Fund structure that demonstrates:
      - (a) independence of the Fund;
      - (b) measures to ensure sufficiency of the Fund;

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<sup>1</sup> Please see the publicly available [report](#) produced by the HPC Board.

- (c) restrictions on the use of the Fund Assets; and
- (d) insolvency remoteness.

- 1.4 The Terms of Reference also provide that Sizewell C is intended to be a replica of HPC and will replicate the approach to the HPC FAP where possible. However, unlike HPC, Sizewell C will utilise a RAB funding model and there will be specific features of the FAP that will differ from the HPC FAP. The Board is therefore asked to look at the FAP in its entirety, but with particular focus on the RAB-specific features which relate to the funding of the FDP, and that these meet the requirements set out in the 2008 Act and the Guidance. Subject to the scope set out in the Terms of Reference, the Board has been requested pursuant to the Terms of Reference to look at how the RAB structure interacts with the FDP in certain scenarios set out by DESNZ; these scenarios are not intended to be exhaustive or prescriptive and the Board is free to identify and evaluate alternative scenarios where appropriate.<sup>2</sup> In addition, the Board is asked to look at the structure of the FDP Implementation Company responsible for the management of the Fund. Where appropriate, the Board has been signposted to a marked-up annotation of the FAP where advice is required. The Terms of Reference state that the Board should have in mind that HMG is comfortable with the replication strategy employed between HPC and Sizewell C, when reviewing those aspects of the FAP which are identical to HPC.
- 1.5 For the purposes of assessing the FAP pursuant to the Terms of Reference, the Board received legal advice from Linklaters LLP and Orrick, Herrington & Sutcliffe (UK) LLP. In considering certain matters relevant to the FDP concept of prudence, the Board reviewed and relied on expert King's Counsel advice provided to DESNZ in relation to the same – see paragraph 2 below.
- 1.6 The Guidance is non-prescriptive and contemplates that different operators may satisfy the Objective and Guiding Factors in different ways. The Operator has made its own proposal in respect of the FDP, and the Board has assessed that proposal as a whole when considering the suitability of the FAP. As the various elements of the Operator's proposal interact with each other, a change to an individual element may affect the overall assessment. The Board accordingly emphasises that its advice to the Secretary of State is strictly based on the versions of the documents listed in Annex 20 (*List of documents reviewed by the NLFAB*).
- 1.7 The Board notes that the FAP is structured as a contract between the Operator and an independent fund company (being the FDP Implementation Company). That arrangement is supplemented by various contractual arrangements, such as the FDP Budget and Services Agreement to be entered into between the Operator and the FDP Implementation Company. This is in line with the Guidance, which explains that elements of the FDP may be reinforced through, or may include, contractual arrangements between interested parties.
- 1.8 In accordance with the Terms of Reference, the Board has not advised the Secretary of State or commented on, and has assumed in accordance with paragraph 17 of the Terms of Reference that, for the purpose of the Advice, the Secretary of State is satisfied with the remainder of the FDP including, but not limited to, the terms of the DWMP, the Waste Transfer

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<sup>2</sup> **Note:** The Board however notes that it has not received any specification of scenarios that it is asked to review.

Contracts, the Section 46 Agreement, the RAB structure and ancillary documentation related to the RAB. In particular, the Board has not reviewed, commented or advised the Secretary of State on the following:

- (A) the proposed RAB structure;
- (B) the SZC Economic Licence (other than reviewing the licence provisions to the extent directly relating to the Board's consideration of the FAP);
- (C) the Revenue Collection Contract;
- (D) the proposed financing arrangements (other than reviewing the Financing Heads of Terms to the extent directly relating to the Board's consideration of the FAP);
- (E) the DWMP;
- (F) the Waste Transfer Contracts;
- (G) the Section 46 Agreement (other than reviewing to the extent directly relating to the Board's consideration of the FAP);
- (H) the NASTA (other than reviewing to the extent directly relating to the Board's consideration of the FAP);
- (I) the special administration regime (other than reviewing to the extent directly relating to the Board's consideration of the FAP);
- (J) the GSP, including the Contingent Financing Agreement and the Discontinuation and Compensation Agreement; and
- (K) any ancillary documentation related to the RAB.

- 1.9 As stated above and as required by the Terms of Reference, the Board has not advised or commented on the DWMP. There are however various requirements in the FAP relating to the updating and verification of the DWMP cost estimates and the relevance of certain costs included within the DWMP for the purposes of calculating the End of Generation Target. As such, although the Board is not commenting directly on the DWMP, it has considered the relevant provisions in the FAP that relate to the DWMP.
- 1.10 In order to assist the Board's understanding of these provisions in the FAP, the Board has relied on the detailed review and report in relation to the DWMP undertaken by the NDA as summarised in Annex 15 (*Decommissioning and Waste Management Plan (DWMP) Analysis*). In particular, the Board has relied on the opinion of the NDA that the P80 estimates in the DWMP meet the requirements as set out in the Guidance and has assumed (as set out in the assumptions at Annex 3 (*Assumptions*)) that the P80 + 25% contingency is prudent in the Secretary of State's opinion.
- 1.11 The DWMP is itself underpinned by a Detailed DWMP, which sets out costs and scope in greater detail. The Board understands that, for practical reasons, the Detailed DWMP has not

been included as part of the FDP, but that the FAP requires the Detailed DWMP to be maintained and requires the DWMP to be reconciled to it. The Board understands that the Secretary of State will receive separate advice in relation to the DWMP and the Detailed DWMP.

## **2. CONCEPT OF PRUDENCY AND REMOTENESS**

- 2.1 In the initial stages of its work, the Board considered (i) the statutory requirement for prudent provision, including the degree of certainty as to the availability of funds which this requires and (ii) the need to have regard to the Objective (as set out in the Guidance) that the risk of recourse to public funds must be “remote”.
- 2.2 The Board reviewed and relied on expert King’s Counsel advice provided to DESNZ in respect of the interpretation of “prudent provision”. The Board has set out its analysis on this at paragraph 2 of Annex 10 (*Legislative Background*).
- 2.3 The Board has also set out its analysis of the interpretation of “remoteness” in the context of the risk of recourse to public funds at paragraph 3 of Annex 10 (*Legislative Background*).
- 2.4 The Board considers that the requirements of prudent provision and remoteness are properly understood as independent tests; i.e., it is not a precondition to the FAP making prudent provision for the Technical Matters that all conceivable risks of recourse to public funds are remote. Indeed, as discussed in paragraph 3.3 of Annex 10 (*Legislative Background*), certain risks of recourse to public funds remain within the control of the Secretary of State.
- 2.5 The 2008 Act does not require the Secretary of State to achieve the most risk-free position that they can achieve. Rather, it requires the Secretary of State, when considering an FDP, to be satisfied that the FDP passes certain minimum objective standards as to both the practicalities and the financing arrangements such that it is prudent. Whilst these minimum standards would be applicable to all operators, they could be achieved in different ways by different operators.

## **3. SCRUTINY OF THE FAP**

- 3.1 Prior to initial receipt of the draft FAP, the Board considered various outline proposals made by the Operator and had a number of meetings with the Operator in relation to the same.
- 3.2 The Board has received a total of ten (10) drafts of the proposed FAP including the version received on 31 May 2022 and the version listed in Annex 20 (*List of documents reviewed by the NLFAB*) which this Advice is based on. The Board reviewed each of these drafts and, based on the review, provided DESNZ with its interim views and identified areas of key concern. The Board also worked with DESNZ, the Government Actuary’s Department and the Operator on discrete issues, such as discounting, investment strategy, early closure and payments and disbursements. Throughout the process, the Board considered additional information provided by the Operator, including its detailed responses to questions and issues raised by the Board.
- 3.3 In order to maintain their independence and ensure their role was one of observation and challenge, the Board decided that it should remain detached from the direct negotiation process between DESNZ and the Operator. However, the Board has met regularly with DESNZ (and its

predecessor, the Department for Business, Energy & Industrial Strategy) and with its legal, financial and technical advisers to discuss the issues raised by the FAP and the Ancillary Documents.

- 3.4 As a critical part of preparing this Advice, the Board has worked with its advisers, DESNZ and the Operator on various issues and identified risks to meeting the Objective by way of a risk matrix, as set out in Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*). To assist its thinking and build its capacity to develop an informed position, the Board has also had a number of general and private sessions with its advisers on the detail of the FAP.
- 3.5 Following these continual engagements with DESNZ and the Operator, most of the Board's concerns relating to the FAP have been appropriately addressed. Some of these issues that are now addressed are listed below for illustrative purposes.
- (A) Investment Rules: In the Board's view, the Investment Rules that were included in the earlier versions of the FAP lacked sufficient detail to guide the FDP Implementation Company in its identification of an appropriate investment strategy. The Board provided a detailed set of principles to be addressed in the Investment Rules, which have now been largely incorporated in the FAP.
  - (B) Investment fees: The Board identified that earlier versions of the FAP were unclear as to how the FDP Implementation Company's investment management fees would be met. As set out in Annex 18 (*Table of FundCo costs and costs during the Decommissioning Period*), the position has now been made clear in the FAP and the FDP Budget and Services Agreement.
  - (C) P80: As recommended by the Board, the FAP now provides details and explanatory notes around how the P80 costing values for the End of Generation Target will be determined. In particular, the FAP contains an explanatory note providing for potential changes in the best practice for deriving an appropriate P value, and seeks to align the approaches as between Sizewell C and HPC in such circumstances.
  - (D) Funding Outcomes Report: In order to determine the prudence of the Investment Rules in the FAP, the Board recommended that a statistical model be prepared to assess the likelihood of the Fund Assets being sufficient to fully fund the Designated Technical Matters during the Decommissioning Period. Although DESNZ were unable to provide this modelling ahead of this report, the FAP was amended to include the Funding Outcomes Report process, which provides for such scenario modelling to be done later in the Plant's life (i.e. FYE EPFP – 10, FYE EPFP – 2 and FYE EPFP) for consideration by the Secretary of State who could then choose to modify the FAP if they consider necessary to preserve its prudence or to reduce the risk that would otherwise exist that there will be a shortfall (subject to the provisions of the Section 46 Agreement). This would include the potential to provide for a 'margin of prudence' between the expected investment return during the disbursement period and the long-term discount rate (albeit indirectly, by way of additional contingency, as discussed further in paragraph

5.6 of Part B (*Life Cycle of the FAP*) of Annex 7 (*Funded Decommissioning Programme*)).

- (E) Funding Advisory Board (FAB): The Board suggested that there should be an independent body established to represent the interests of the FDP Implementation Company, given that it has not yet been incorporated as at the date of this Advice. As a result of this, the Funding Advisory Board (FAB) was established in early 2023, and that board has made a number of helpful comments in relation to the workability of the FAP from the FDP Implementation Company's perspective.
- (F) Tax position: The tax position of the FDP Implementation Company generally, and that of the Operator during the Decommissioning Period, were unclear to the Board. The Board raised a number of questions and issues in relation to tax, focused on how potential tax liabilities would be funded and avoid such liabilities causing a Funding Shortfall. These were considered by DESNZ and the Operator, who subsequently amended the FAP to acknowledge and provide for potential tax liabilities including through tax assessments at specified points during the operational period (see paragraph 11 of Part B (*Life Cycle of the FAP*) of Annex 7 (*Funded Decommissioning Programme*) and Annex 18 (*Table of FundCo costs and costs during the Decommissioning Period*)).
- (G) Decommissioning strategy post-closure: The Board identified the risk that any transfer of control over the Operator post-closure (for example, to the Nuclear Decommissioning Authority ("**NDA**") or another publicly owned company) may trigger a fundamental change in the decommissioning strategy contemplated in the DWMP with a corresponding increase in decommissioning costs, which may not be recoverable under the SZC Economic Licence. The Board suggested this could be mitigated by seeking to have a cooperation agreement between the Operator and the NDA (or another publicly owned company) to drive continuity and smooth transition as with the decommissioning process for existing advanced gas-cooled reactors. This suggestion was accepted by the Operator and reflected in the FAP.
- (H) Segregation of the Fund Assets post-transfer: The earlier versions of the FAP and the NASTA provided for the FDP Implementation Company to consent to the Secretary of State's ability to transfer its assets under a Nuclear Transfer Scheme in certain circumstances to a publicly owned company and terminate the FAP arrangements, thereby effectively desegregating the independent fund. The Board was concerned that this could undermine the robustness of the FAP, and accordingly recommended that there should be provisions which are designed to promote the continued independence and segregation of the Fund Assets in such circumstances. This recommendation has been reflected in the FAP and the NASTA. See paragraph 2.3 of Annex 12 (*Nuclear Administration and Nuclear Transfer Schemes*) for further details on these provisions.
- (I) Licence revocation: In the event of an early closure of the Plant, the Board identified that the earlier versions of the SZC Economic Licence could automatically expire at the end of the Initial Regulatory Period where that is earlier than the end of the Partial Revocation Period (or while the process is still ongoing to amend the FDP and adjust

the funding contribution profile accordingly). As this would have undermined a key protection with respect to the early closure risks identified in Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*), the Board recommended that the SZC Economic Licence should be amended to clarify that it will not expire whilst there is an FDP Shortfall outstanding. This recommendation has been accepted and reflected in the SZC Economic Licence.

- (J) Quinquennial Review post-closure: Consistent with the Board's recommendation, the FAP has been amended to clarify that the Quinquennial Review process will continue during the Decommissioning Period to determine and review the Investment Strategy.

- 3.6 The Board has assumed that the elements of the RAB structure relevant to the FDP Implementation Company will be as set out in the SZC Economic Licence, as summarised in Annex 4 (*Key Differences with Hinkley Point C relating to the FAP*), Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*), Annex 7 (*Funded Decommissioning Programme*) and Annex 11 (*SZC Economic Licence*). These annexes have been reviewed by DESNZ, the Operator and each of their advisors to confirm their accuracy. Where the arrangements in the SZC Economic Licence do not directly relate to the FDP, the Board has been instructed to treat these areas as settled and not to comment on them in accordance with the Terms of Reference. The Secretary of State has a dedicated team, supported by external advisers, which is negotiating the terms of this document and ensuring its adequacy.
- 3.7 The Board has also assumed that the financing structure will be as set out in the Financing Heads of Terms, as summarised in Annex 9 (*Financing Arrangements*) below.
- 3.8 The Board has set out in Annex 3 (*Assumptions*) certain fundamental assumptions which it has been instructed to make by DESNZ. In giving its advice, the Board has relied on the sufficiency and accuracy of these assumptions.
- 3.9 In particular, in preparing its advice to the Secretary of State, the Board has made certain assumptions as to the terms of the RAB revenue model and their impact on the Operator's ability to make contributions, as set out in Annex 3 (*Assumptions*). As instructed pursuant to the Terms of Reference, the Board has not reviewed the RAB revenue model.
- 3.10 The Board has been provided with a redacted version of the draft Legal and Regulatory Report dated 22 May 2024 prepared by Linklaters LLP in relation to Sizewell C, in connection with the Board's review of the key terms of the SZC Economic Licence relevant to the FAP. In accordance with the non-reliance basis on which the Legal and Regulatory Report was shared, the Board has reviewed the report but has not relied on it.

## ATTACHMENT A

### TERMS OF REFERENCE

1. The Energy Act 2008 creates a framework by which operators of new nuclear power stations are required to make prudent provision to meet the full costs associated with decommissioning and their full share of waste management and disposal costs. To achieve this, the Energy Act 2008 requires any prospective operator of a new nuclear power station to have a Funded Decommissioning Programme (“FDP”) in place before the commencement of construction, which is approved by the Secretary of State, and to comply with this programme thereafter.
2. The FDP submitted by NNB Generation Company (SZC) LTD (“SZC”) is the second submission of an FDP in the UK made to the Secretary of State (“SoS”). The first FDP was presented by NNB Generation Company (HPC) Limited (“HPC GenCo”) in 2015 in respect of its proposed new nuclear power station at Hinkley Point C (“HPC”). It is the responsibility of the SoS to approve or reject the FDP, subject to the statutory obligation to exercise their power with the aim of securing that prudent provision is made for the technical matters (as defined in the 2008 Act).
3. The Government has published [guidance](#) (the “FDP guidance”) in order to assist operators in understanding the provisions of the Energy Act 2008, and what is expected for an approvable FDP. The FDP guidance sets out principles which the Secretary of State would expect to see satisfied in the FDP prepared by the operator. It is noted that the FDP guidance is non-prescriptive and contemplates that different operators may satisfy the objective and guiding factors set out in the FDP guidance in different ways.
4. The NLFAB is an expert committee which was established in 2009 to give independent advice to the SoS on the FDP submitted by HPC GenCo, specifically on the Funding Arrangements Plan (“FAP”). The NLFAB was then disbanded in 2015/2016 following the SoS’ decision to approve the FDP for HPC. The advice which the HPC NLFAB submitted to the SoS is publicly available and is available on the Government website. These Terms of Reference are applicable to the newly constituted NLFAB which have the responsibility for reviewing the FAP submitted by SZC, subject to the “scope” and “Responsibilities” section detailed below. Once the NLFAB have submitted their advice to SoS and the SoS has taken a decision on the SZC FDP, the SoS will consider whether the terms of reference for the NLFAB should be amended with consent of the panel to support other projects, or whether this iteration of the NLFAB should be disbanded.

## NLFAB's responsibilities and scope

### Responsibilities

5. The Nuclear Liabilities Financing Assurance Board (NLFAB) shall be established and maintained by the Department for Business, Energy and Industrial Strategy (BEIS).
6. The Board will provide independent advice to the Secretary of State for Business, Energy and Industrial Strategy ("BEIS"), on the suitability of the FAP forming part of the FDP submitted by SZC for approval by the Secretary of State as required by the 2008 Act, in accordance with the terms set out in this Terms of Reference.
7. The Board is an advisory body and may only provide advice on matters requested under these Terms of Reference or as otherwise requested by BEIS officials.
8. Subject to the Scope set out below, where appropriate, the Board shall provide advice to the SoS to support their decision-making as to whether the FAP has met the following factors as set out in the FDP guidance:
  - Provides a clear structure;
  - Contains robust cost estimates which take due account of risk and uncertainty;
  - Is transparent;
  - Contains clear terms and clear divisions of roles and responsibilities;
  - Is a durable arrangement; and
  - Sets out a Fund structure that demonstrates:
    - i. Independence of the Fund
    - ii. Measures to ensure sufficiency of the Fund
    - iii. Restrictions on the use of the Fund Assets; and
    - iv. Insolvency remoteness.
9. It is an expectation that the Board's advice will be made public, subject to the exclusion of commercially sensitive and national security information where necessary. It is the requirement of the Board to set out clear rationale for its findings and positions.
10. The FAP is expected to set out details of any security to be provided as per the Energy Act 2008 and FDP guidance in relation to meeting the estimated costs of carrying out plans set in the Decommissioning & Waste Management Plan (DWMP).

11. The Board will be expected to provide the following advice to BEIS:

- As requested, progress reports to the Secretary of State on the status of the panel's advice, ahead of submitting final advice to the Secretary of State (further detail in Annex A);
- Final advice to Secretary of State following receipt of the final version of the FAP, to be provided against a timescale as agreed between BEIS and the NLFAB in their engagement timeline; and
- Advice as and when requested by the BEIS Secretary of State or BEIS officials (which will require an open dialogue to be maintained during the NLFAB's performance of its role).

12. Any advice, decisions or inputs required from the Board in accordance with these terms of reference shall be provided efficiently and in a timely manner.

13. For the purposes of assessing the FAP, the Board may commission external advice where appropriate and required. Should the NLFAB consider that advice is required, the Board may inform BEIS to consider and procure as appropriate against the terms of reference as set out above. Further detail on commissioning external advisors can be found in paragraphs 37-38 below.

14. The Chair shall also report the Board's conclusions, in writing, to the relevant operators.

## **Scope**

15. Certain terms of the FAP are dependent on the proposed terms of the RAB licence conditions and the proposed financing arrangements for SZC. The Board has been provided with a detailed explanation of the proposed RAB structure and financing arrangements (which remain subject to negotiations and all relevant approvals). Where these explanations do not directly relate to the FDP, the Board shall treat these as settled and not comment on them unless BEIS or the Secretary of State specifically requests this.

16. The Board's remit is to advise only on the suitability of the FAP (in accordance with the Responsibilities section above and this Scope section).

17. The Board will not advise or comment on, and will assume for the purposes of their advice that the Secretary of State is satisfied with, the remainder of the Sizewell C FDP including, but not limited to, the terms of the DWMP, the Waste Transfer Contracts, Section 46 Agreement and ancillary documentation related to the RAB.

18. BEIS have formally instructed the Nuclear Decommissioning Authority ("NDA") to provide advice to the Secretary of State pursuant to section 7(4) of the

Energy Act 2004 on the DWMP sent to BEIS from SZC. As part of this review, the NDA are also responsible for engaging with BEIS on the proposed Waste Transfer Contract. The NDA are responsible for the cost estimates that sit within these documents. The DWMP and Waste Transfer Contract will be made available to the NLFAB when and if appropriate. It is beyond the scope of the NLFAB to review these documents, except where these have relevance to the NLFAB's assessment of the FAP against these terms of reference.

19. The SZC project is intended to be a replica of the Hinkley Point C ("HPC") project and will replicate the approach to its FAP. However, the SZC project will utilise a RAB funding model and there will be specific features of the SZC FAP which will differ from HPC. The Board is therefore asked to look at the SZC FAP in its entirety, but with particular focus on the RAB related features which relate to the funding of the FDP, and that these meet the requirements set out in the Energy Act 2008 and FDP Guidance. Subject to scope, the Board will be asked to look at how the RAB structure interacts with the FDP in certain scenarios which will be set out by BEIS, these scenarios are not intended to be exhaustive or prescriptive and the Board are free to identify and evaluate alternative scenarios where appropriate. In addition, the Board will be asked to look at the structure of the independent Fund Company ("FundCo") responsible for the management of the Fund. Where appropriate, the Board will be signposted in a marked-up annotation of the SZC FAP where advice is required. The Board should have in mind that the Government is comfortable with the replication strategy employed between HPC and SZC, when reviewing those aspects of the FAP which are identical to HPC.
20. Any advice which the NLFAB provides to the Secretary of State will be used to support the SoS's overall decision-making process when deciding whether to approve (including with modifications or conditions if considered appropriate) or reject the FDP submitted by SZC. When making this decision, the Secretary of State will take into account all relevant information, including (but not limited to) the advice provided by the NLFAB.

## Assumptions

21. The Board may be asked to provide advice to the Secretary of State on the basis of certain assumptions with regards to the RAB structuring. It is outside the scope of the NLFAB to comment on these matters, for example, on the special administration regime or the limbs of the GSP apart from where they directly relate to the NLFAB's consideration of the FAP. The expectation is that the Board will consider these matters as settled as per the evidence provided by BEIS. In any circumstances when these assumptions no longer apply, the Secretary of State will seek further advice, if appropriate, as to the suitability of the FAP.

## Membership

22. The Chair and Members of the Board are nominated by the Secretary of State for Business, Energy & Industrial Strategy.
23. There shall be 3 members including one Chair. The Board will be composed of personnel with a range of relevant skills and expertise such as energy law and regulation, infrastructure finance and nuclear decommissioning. Members will be appointed through an open and competitive process that is in line with good practice for public appointments.
24. BEIS will provide the NLFAB with a dedicated Secretariat, consisting of one FTE, who will take minutes of the meetings which will be approved by the Board.
25. As set out in their terms and conditions, Members of the NLFAB will be appointed on a part-time basis. Initial appointments of all members, including the chair, will be for one year. Contracts can be renewed by BEIS as deemed appropriate. Sponsoring Ministers retain the right to terminate appointment at any time in light of individual members' performance, changes in the Board's work requirements or completion of the work required.
26. In order to maintain the Department's high standards of public life, any appointments made by the Secretary of State may be terminated in the event that an appointee is convicted of a criminal offence and/or where the Secretary of State believes that the appointee's conduct means that he/she is no longer a suitable person for the office of the NLFAB.
27. The Department for Business, Energy & Industrial Strategy will remunerate the Chair and Members for their work for the Board.

## Ways of working

### General working

28. The NLFAB will fulfil its functions by convening over video conference, as required, to give careful consideration to matters brought before it by BEIS.
29. A majority decision is required for the Board to form an official view. The Chair should determine and document a process they deem to be transparent, effective and efficient.
30. Where the full board cannot be convened and urgent action is required, the Chair has the authority to act in conjunction with any other NLFAB member(s) as they deem fit to address the matter. In the absence of the Chair, another

member (chosen by the available members) may chair the meeting. The Chairperson of the meeting shall exercise any power or duty of the Chair of the NLFAB in relation to the conduct of the meeting.

31. Each member shall have the right to vote in a debate where a vote is deemed necessary. In the event of a no majority decision, the Chair shall have a second or casting vote, whether or not he/she has previously voted on the matter.

#### Engagement with FDP negotiations and reviews

32. NLFAB's engagement with review processes will be set out in an engagement plan, developed by BEIS, before the commencement of such events. The engagement plan will define the requirements of the NLFAB members with respect to notice periods to convene meetings and timing to prepare the progress update report and final NLFAB advice to the SoS.
33. The expectation is that the Board will not be involved in any negotiations of the FAP between BEIS and the operator but will be asked to review the final or near final version of the FAP and prepare the progress update report and final NLFAB advice. The NLFAB may call upon the Operator to seek clarification of content within its FAP. BEIS will facilitate and attend any conversations as required. This will be set out in more detail in the engagement plan. Notwithstanding this, BEIS may request the Board's advice prior to the submission of the final or near final version of the FAP to assist in its development.
34. The engagement plan will be prepared with the aims of ensuring the NLFAB is able to provide independent scrutiny of the FDP proposals, whilst ensuring that negotiations and review events can continue apace and the NLFAB can remain agile.
35. Board engagement and meetings will be agreed well in advance and papers submitted ahead of meetings, albeit the Board will be expected to demonstrate a degree of flexibility in order to incorporate negotiation and review timetables.

#### Commissioning external advice

36. To preserve its independence, the Board should not engage with parties involved in the reviews processes, except where engagement is required in order to provide advice on instructed matters. All engagements should be arranged through the NLFAB Secretariat, which in turn must ensure it follows the relevant BEIS governance processes and documents such engagements appropriately.

37. The Board may also commission external advice as it deems reasonably appropriate. This must be agreed in advance with the secretariat, including the costs of said advice and how this will be paid for. Should this be necessary, BEIS will consider the request of the NLFAB and procure as appropriate as set out in paragraph 14 of these terms of reference. Commissioning of any such work must be executed through the NLFAB Secretariat which in turn must ensure it follows the relevant BEIS governance processes and documents the process appropriately.

#### Declaration of interest

38. The members of the Board must declare any personal or business interests which may, or may be perceived to, influence their judgements in performing their functions. The NLFAB Secretariat will keep a register of interests which members must ensure is kept up to date.

39. If a particular matter gives rise to an actual or potential conflict of interest, members are required to inform the Secretariat in advance and withdraw from discussions or consideration of the matter where this is considered necessary.

### **Annex A.**

#### **Ask of Panel – Request for Progress Update**

40. In accordance with the Responsibilities and Scope section of this document, the NLFAB will, in addition to final advice submitted to Secretary of State, be expected to provide BEIS with a progress update report.

#### Progress Update Report

- This report will be provided by the NLFAB once they have had opportunity to commence an initial review of documentation received from BEIS. It is expected that this will include a draft FAP submitted by the Operator.
- It is not expected that the NLFAB will have conducted their review in detail, nor at this point are the NLFAB expected to have begun drafting their final advice to the SoS.
- The purpose of this report is to update BEIS on the progress made by the NLFAB, flag if there are any immediate concerns with the documentation received and if anything additional is required in advance of submitting final advice to the Secretary of State.
- The NLFAB will be expected to look at the prudence of the RAB arrangements and those elements of the FAP which are specific to SZC

when producing the progress update report. The Board will not be asked to provide a view on the totality of the FAP at this point.

- It is expected that this report will be used by BEIS to feed back through our internal governance structure and update key departmental stakeholders on the progression of the NLFAB's work.
- The NLFAB may produce this report in a style and format that they consider most appropriate.