

APPENDIX E: CONSIDERATIONS FOR THE SECRETARY OF STATE

The Table below lists several matters which do not affect the ExA's recommendation based on the evidence available at the close of the Examination, but the SoS may wish to consider them should the decision on the application for development consent differ from the ExA's recommendation.

The Section reference is provided to signpost where more details about the issue can be found.

Section Reference	Unresolved Issue
5.6.413	<p>Biodiversity</p> <p>The SoS should follow the procedure under s.28I Wildlife and Countryside Act 1981</p>
5.6	<p>Biodiversity</p> <p>The SoS may wish to obtain LoNIs in relation to protected species licence application as they were outstanding at the close of the Examination.</p>
5.6.326	<p>Biodiversity</p> <p>The Environment Agency asked for a note to be added to the SLR oLEMP. This has not been done. The SoS may wish to satisfy themself in relation to this.</p>
5.6.393	<p>Biodiversity</p> <p>On-site Marsh Harrier Compensatory Habitat Strategy</p> <p>The SoS may wish to satisfy themself as to any amendments to this strategy which are necessary as result of our conclusions on the timing of the wetland creation in Chapter 6.</p>
5.6.249	<p>Biodiversity</p> <p>In the event that the SoS accepts the ExA's conclusion in relation to the SLR, the conclusion we reach in relation to the SSSI crossing that the urgent need for non-fossil fuel generation outweighs the loss of an extra 200 sq m of SSSI would need to be reconsidered.</p>
5.6 341	<p>Biodiversity</p> <p>The SoS might wish to update themself on whether an alternative translocation site for great crested newt is necessary for translocation from the Northern Park and</p>

	Ride, and if so, the certainty of another site being delivered.
5.8.380	<p>Coastal Geomorphology</p> <p>The SoS may wish to consult with IPs in relation to the Preliminary design and maintenance requirements for the Sizewell C Soft Coastal Defence Feature (Version 4) TR544 [REP10-124] provided by the Applicant at DL10 and obtain confirmation from the Environment Agency that this now meets its remaining concerns in relation to modelling and further analysis for the SCDF including any implications for resilience and the cumulative impact assessment before reaching a final decision.</p> <p>In addition, the SoS may wish to consider if it would assist to have further evidence in relation to the Sizewell B salient and whether the effects of the Sizewell B cessation of operation would render the CPMMP recharging mechanism for the SCDF ineffective.</p>
5.10.166	<p>Cumulative Impact</p> <p>The SoS may wish to seek additional information in relation to the Nautilus Interconnector and/or the Eurolink Connector and, in the light of any new important and relevant information that may now be available in connection with those projects, consider their potential cumulative effects with the Proposed Development.</p>
5.11.296	<p>Water Supply</p> <p>At the end of the Examination, the Applicant was unable to demonstrate that they had secured a permanent potable water supply for the Proposed Development. The Applicant and NWL were both confident that they would find a sustainable water supply solution prior to the commissioning phase of construction. The SoS may wish to confirm the latest position of both parties with respect to outcomes from WINEP modelling process concerning abstraction of water in North/ Central WRZ concerning the identification of a sustainable permanent water supply solution and the means whereby this would be secured.</p> <p>In addition, the ExA has not been able to fully understand or provide a reasoned conclusion in respect of the cumulative environmental effects of the permanent water supply solution. If the Applicant and NWL are able to provide more certainty about the permanent water solution the SoS may also wish to consider further consultation with appropriate statutory bodies and IPs concerning any consequential cumulative environmental effects including the identification of</p>

	appropriate mitigation and the means whereby this would be secured.
5.11.254	<p>Drainage Strategy (DS)</p> <p>The Applicant and SCC (LLFA) were still working on a revised DS at the end of the Examination. The SoS may wish to confirm whether these parties have agreed a revised DS that can replace the DS [REP10-030 to REP10-032] as a Certified Document in Schedule 24 of the Recommended DCO. The SoS may also wish to seek the views of other relevant IPs on any amended DS.</p>
5.11.315 and 5.16.35	<p>Water Framework Directive (WFD)</p> <p>At the close of the Examination, the Environment Agency was unable to complete their consideration of the possible combined effects of the Applicant's outstanding Environmental Permit applications on the Environment Agency's conclusion on the WFD Compliance Assessment. The SoS may wish to seek confirmation that this has been completed and that the Environment Agency are satisfied that the Applicant has demonstrated compliance with the WFD.</p>
5.12	<p>A12 / B1122 – Health and Wellbeing</p> <p>The Applicant introduced road schemes on the A12 in Marlesford and the B1122 in Theberton, these road schemes include crossings. At the end of the Examination assessments of the effects of introducing these crossings in terms of air quality, noise and driver delay had not been carried out. The SoS may wish to confirm that the consequences of such measures have been fully considered and the Councils are satisfied.</p>
5.15.158	<p>Marine ecology – scale of assessment and stock area</p> <p>The SoS may wish to give the Applicant an opportunity to respond to the Environment Agency's DL10 comments in [REP10-187] on the Applicant's seabass assessment [REP8-131] if they are considering refusal on the ground of the cooling system and the effects on fish.</p>
5.15.202	<p>Marine ecology - entrapment, EAV and scale of assessment</p> <p>The SoS may wish to seek further information on the concerns of the statutory consultee referred to in this paragraph.</p>
5.15 para 5.15.298	<p>Marine ecology and Marine water quality – Change 19</p>

and 5.16 para 5.16.52	The SoS may wish to consider consulting the EA, NE and the MMO on the DL10 updated BEEMS Technical Report TR552 regarding the updated version of the Sizewell C Desalination Plant Construction Discharge Assessment H1 type assessment [REP10-052] submitted at DL10 as there was not an opportunity for those organisations to respond during the Examination.
5.17 para 5.17.60	Harbour Byelaws and Powers The SoS may wish to consult with DfT on the Harbour Powers.
5.17 para 5.17.50	Justice Impact Test for Harbour Powers The SoS may wish to consult with the MoJ on the need for a Justice Impact Test for the Harbour Order.
5.18 para 5.18.354	B1122 At the end of the Examination the question of whether quiet road surfacing along the B1122 to address the noise generated from construction traffic in the early years had not been resolved. The SoS may wish to confirm that the consequences of such measures have been fully considered and the Councils are satisfied.
5.20 para 5.20.134	Radiological Waste Storage The SoS may wish to satisfy themselves that the safe storage of radioactive waste would be achieved for the life time of the project given the length of time that spent fuel, high level and intermediate level waste are likely to be stored on site, in light of the modelling undertaken of the coastal defences.
5.22.161	A12 Darsham – Level Crossing The Applicant and NR have agreed to each fund 50% of the cost of upgrading this level crossing. This is to take account of NR concerns about the effects created by the traffic increase associated with the Proposed Development. NR’s share of the funding is consequent on funding through their Control Period 7 (CP7) funding settlement. If this funding is not forthcoming, then the Applicant has indicated that they would be willing to discuss with NR about additional funding. In order to try and establish certainty about the improvement to this level crossing, the ExA recommend that the SoS may wish to confirm the availability of funding from the Applicant should NR not receive funding at CP7.
Chapter 6	HRA – in-combination effects

	<p>NE has outstanding concerns regarding the Applicant's assessment of cumulative/inter-project and in combination effects. The ExA agrees with NE that unresolved matters arising from the assessment of effects alone require resolution first.</p> <p>Where the ExA has identified matters that are outstanding from potential effects alone, the ExA has identified these in Chapter 6 (HRA) and recommends the SoS may wish to satisfy themselves with regards to effects alone or in combination.</p>
Chapter 6	<p>HRA – mitigation measures/ controls through the WDA Permit</p> <p>Without prejudice to the subsequent EP process, the ExA considers that on the basis of the material currently available to the ExA and with the mitigation measures secured and controls through the WDA permit, it is possible to conclude no AEOI on relevant European sites and qualifying features from the changes in marine water quality as a result of the Proposed Development alone or in combination with other plans or projects.</p> <p>However, the ExA notes that controls on marine water quality will be addressed by the WDA Permit. The SoS may wish to satisfy themselves in this regard.</p>
Chapter 6	<p>HRA – Effects on Minsmere-Walberswick SPA and Ramsar, Minsmere to Walberswick SAC and Sandlings SPA</p> <p>The ExA is of the view that there is insufficient evidence to support a recommendation of no AEOI on the following European sites and their qualifying features:</p> <ul style="list-style-type: none"> ▪ Minsmere-Walberswick SPA and Ramsar - breeding and non-breeding gadwall and shoveler (as a result of noise and visual disturbance from construction activities); and ▪ Minsmere to Walberswick Heaths and Marshes SAC, Minsmere-Walberswick SPA and Ramsar and Sandlings SPA – all features (as a result of changes in air quality during construction and operation). <p>No information was provided by the Applicant during the Examination in relation to a derogation case for the sites and features listed above. In the absence of an assessment of Alternative Solutions, a case for IROPI, and proposed Compensatory Measures for the European sites and qualifying features listed in the paragraph above, the ExA can only recommend that the requirements for Habitats Regulations are not fulfilled in this regard.</p>

	<p>In addition, the ExA considers that the SoS may wish to satisfy themselves on final outstanding matters (as detailed further in Chapter 6) relating to the following potential impacts on relevant qualifying features of Minsmere to Walberswick Heaths and Marshes SAC and/or Minsmere-Walberswick SPA and Ramsar:</p> <ul style="list-style-type: none"> ▪ Alteration of coastal processes/sediment transfer; ▪ Changes in water quality – marine environment; ▪ Damage to notified habitats due to impediment to management practices; ▪ Indirect impacts on birds from disturbance of prey species by underwater noise and vibration; ▪ Disturbance associated with the creation of compensatory measures wetland habitat and flood compensation area; ▪ Physical interaction between species and project infrastructure: indirect impacts from entrapment of prey species on bird qualifying features; and ▪ In combination effects.
Chapter 6	<p>HRA – Effects on qualifying features of the Alde-Ore Estuary SPA ((Little tern (breeding); sandwich tern (breeding); and lesser black backed gull (breeding)) and Alde-Ore Estuary Ramsar ((Ramsar Criterion 3 (breeding and wintering wetland assemblage); and Criterion 6 (species/ populations according at levels of international importance))</p> <p>The ExA considers a conclusion of no AEOI is capable of being reached for these sites and features, but considers that the SoS may wish to satisfy themselves on final outstanding matters (as detailed further in Chapter 6) relating to the following potential impacts before reaching their conclusion:</p> <ul style="list-style-type: none"> ▪ Changes in water quality – marine environment; ▪ Physical interaction between species and project infrastructure: indirect impacts from entrapment of prey species on bird qualifying features; and ▪ In combination effects. <p>In light of the number of unresolved matters at the time of writing and considering the precautionary principle applicable to HRA as to whether no reasonable scientific doubt remains, the ExA is of the view that it cannot confidently exclude AEOI for these sites and qualifying features.</p>
Chapter 6	<p>HRA – Effects on breeding little tern qualifying feature of the Benacre to Easton Bavents SPA</p>

	<p>The ExA considers a conclusion of no AEoI is capable of being reached for this site and feature, but considers that the SoS may wish to satisfy themselves on final outstanding matters (as detailed further in Chapter 6) relating to the following potential impacts before reaching their conclusion:</p> <ul style="list-style-type: none"> ▪ Physical interaction between species and project infrastructure: indirect impacts from entrapment of prey species on bird qualifying features; and ▪ In combination effects. <p>In light of the unresolved matters at the time of writing and considering the precautionary principle applicable to HRA as to whether no reasonable scientific doubt remains, the ExA is of the view that it cannot confidently exclude AEoI for the site and qualifying feature.</p>
Chapter 6	<p>HRA – Effects on sea lamprey and river lamprey qualifying features of the Humber Estuary SAC</p> <p>The ExA considers a conclusion of no AEoI is capable of being reached for these sites and features, but considers that the SoS may wish to satisfy themselves on final outstanding matters (as detailed further in Chapter 6) relating to the following potential impacts before reaching their conclusion:</p> <ul style="list-style-type: none"> ▪ Changes in water quality – marine environment; ▪ Physical interaction between species and project infrastructure; and ▪ In combination effects. <p>In light of the number of unresolved matters at the time of writing and considering the precautionary principle applicable to HRA as to whether no reasonable scientific doubt remains, the ExA is of the view that it cannot confidently exclude AEoI for the site and qualifying features.</p>
Chapter 6	<p>HRA – Effects on qualifying features of the Outer Thames Estuary SPA ((Red-throated diver (wintering); little tern (breeding); and common tern (breeding))</p> <p>The ExA considers a conclusion of no AEoI is capable of being reached for this site and features, but considers that the SoS may wish to satisfy themselves on final outstanding matters (as detailed further in Chapter 6) relating to the following potential impacts before reaching their conclusion:</p> <ul style="list-style-type: none"> ▪ Changes in water quality – marine environment;

	<ul style="list-style-type: none"> ▪ Physical interaction between species and project infrastructure: indirect impacts from entrapment of prey species on bird qualifying features; ▪ Indirect impacts on birds from disturbance of prey species by underwater noise and vibration (little tern and common tern only); and ▪ In combination effects. <p>In light of the number of unresolved matters at the time of writing and considering the precautionary principle applicable to HRA as to whether no reasonable scientific doubt remains, the ExA is of the view that it cannot confidently exclude AEOI for the site and qualifying features.</p>
Chapter 6	<p>HRA – Effects on harbour porpoise qualifying feature of the Southern North Sea SAC</p> <p>The ExA considers a conclusion of no AEOI is capable of being reached for this site and feature, but considers that the SoS may wish to satisfy themselves on final outstanding matters relating to in combination effects (as detailed further in Chapter 6) before reaching their conclusion.</p> <p>In light of the unresolved matters at the time of writing and considering the precautionary principle applicable to HRA as to whether no reasonable scientific doubt remains, the ExA is of the view that it cannot confidently exclude AEOI for the site and qualifying feature.</p>
Chapter 6	<p>HRA – water supply strategy</p> <p>In view of the uncertainty around the permanent water supply solution, the ExA cannot preclude the potential identification of LSE or AEOI on European sites and qualifying features during construction and operation of the Proposed Development, either alone (if considering the solution such as the preferred pipeline/transfer main as part of the project) or in combination with solutions such as the preferred pipeline/transfer main. The ExA does not have sufficient information or certainty and advises that the information required to inform the HRA is incomplete in this regard. The SoS may therefore wish to satisfy themselves further in this regard.</p>
Chapter 6	<p>HRA - compensatory measures</p> <p>The ExA considers it is necessary for the wetland element of habitat creation in the Marsh Harrier Compensatory Habitat Area to be in place and functional prior to the onset of disturbance to marsh harrier from construction activities. The SoS may wish</p>

	to satisfy themselves further as to how this would be achieved in practice.
Chapter 6	<p>HRA – compensatory measures</p> <p>In light of the conclusions reached in Section 5.11 and Chapter 6 the ExA cannot preclude the potential need for additional compensation relating to other European sites and qualifying features at this time. The ExA does not have sufficient information or certainty and advises that the HRA is incomplete in this regard. The SoS may therefore wish to satisfy themselves further in this regard.</p>
Chapter 8	<p>Compulsory Acquisition</p> <p>The Article numbering in Table 2.1 of the final BoR should be corrected to reflect the recommended DCO before certification of the final BoR.</p>
Chapter 8	<p>Compulsory Acquisition</p> <p>NE's position at the end of the Examination is that it is not yet possible to ascertain that the Proposed Development would not have adverse effects on European and/ or nationally protected species and therefore letters of no impediment (LONIs) cannot currently be provided. The SoS may wish to seek LONIs from NE together with confirmation that the extent of any such letters is considered to be sufficient for the purposes of the matters considered during the Examination.</p>
Chapter 9 para 9.1.14	<p>Development Consent Order</p> <p>This concerns the use of phrases such as "where practicable" and "where possible / as soon as possible" in control documents. Clarification of what is intended by these phrases is given in the Updated Planning Statement [REP10-068]. However, the Updated Planning Statement does not regulate the control documents. The SoS may wish to consult with the Applicant and Host Authorities with a view to the Applicant placing that clarification in a more appropriate document such as the Code of Construction Practice.</p>
Chapter 9 para 9.1.37	<p>Development Consent Order</p> <p>The SoS may wish to satisfy themselves as to what should occur at the end of the determination periods for applications under conditions in the DML following the deletion of Sch22 – appeals. Neither the Applicant nor the MMO made any submissions on this aspect.</p>
Chapter 9	Development Consent Order

	<p>Table 9.4 of Ch 9 and para 5.15.188 Table 1 of Ch 15 Marine ecology</p> <p>The SoS may wish to satisfy themselves on the additional wording to DML Conditions 44 and 45 on which we were unable to consult.</p>
Chapter 9 , Table 9.4	<p>Development Consent Order</p> <p>Art 11 – The SoS may wish to satisfy themself on our amendment to this late change made by the Applicant which we have proposed to protect the Environment Agency.</p>
Chapter 9 Para 9.1.3	<p>Development Consent Order</p> <p>The phrase “main development site” has a different meaning in the DCO from its meaning in the ES. For clarity in the future the SoS may wish to adopt a different phrase in the DCO.</p>
Schedule 24	<p>Development Consent Order - Certified Documents</p> <p>The SoS may wish to verify the following document references as there appears to be discrepancy with those in the Exam Library (EL), Appendix B:</p> <p>Access Road Plan, Ref 2.14 – Ref 2.13 in EL;</p> <p>Draft Water Monitoring and Management Plan, Ref 10.12 – Ref 9.87 in EL;</p> <p>Environmental Statement, Ref 6.1 to 6.18 – In EL the last reference in 6.20 [REP10-053];</p> <p>Parameter Plans, Ref 2.5 to 2.12 – These plans in EL are only Ref 2.5;</p> <p>Wet Woodland Strategy Ref 10.31 – Ref 9.8 in the EL Possibly DL10 version not submitted, see Section 5.6</p>