

9th December 2025

Examining Authority
National Infrastructure Planning
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By email: southeastanglialink@planninginspectorate.gov.uk

RE: Sea Link (EN020026) Nationally Significant Infrastructure Project (NSIP) Application – Comments on submissions received by Deadline 1 and Deadline 1a (Deadline 2) – Kent Wildlife Trust [REDACTED]

SUMMARY

Kent Wildlife Trust (“KWT”) has reviewed the Applicant’s detailed response to our Relevant Representation (“RR”) contained in Section 2.8 of the Applicant’s document ‘*Detailed Responses to Relevant Representations Identified by the ExA*’ (pp. 253 – 268) and the document titled ‘*Thematic Responses to Relevant Representations*’. We remain deeply concerned that the Applicant’s commentary continues to follow a decide-and-defend approach rather than addressing the substantive deficiencies we have raised regarding evidence, alternatives, procedural fairness and ecological risk. We set out below a response highlighting where the Applicant’s explanations remain incomplete, inaccurate, or unsupported by evidence. In this letter, we have also raised concerns that the Applicant has not engaged with KWT to prepare a Statement of Common Ground (“SoCG”). The comments below are representative, not exhaustive, and KWT reserves the right to submit additional comments should further issues become apparent.

1. Misrepresentation of the Mitigation Hierarchy, Alternative Assessment and Cumulative Effects

(Responding to sections 2.8.1 – 2.8.4)

Within responses to paragraphs 2.8.2 and 2.8.3, the Applicant repeatedly asserts that it has “*rigorously applied*” the mitigation hierarchy and that Pegwell Bay represents the “*most appropriate*” landfall option. However, the reasoning presented demonstrates the opposite. The Applicant’s own narrative shows that alternatives became constrained only after key routing decisions had effectively been made, rather than through an open and iterative comparison at the outset.

A clear example is found in the Applicant’s explanation for discounting Broadstairs (K1a). The Applicant acknowledges that, from a marine perspective, Broadstairs presented fewer environmental constraints and avoided interaction with the Goodwin Sands Marine Conservation Zone (“MCZ”). Despite this, Broadstairs was later discarded due to:

“significant constraints associated with the onward terrestrial corridor from the Broadstairs landfall, including existing settlements and further proposed development [...] The Applicant’s findings therefore identify the most appropriate design to comprise a landfall at Pegwell Bay, with an onward cable route towards a converter station site approximately 1 km northwest of Richborough Energy Park.”

This demonstrates that landfall options were not evaluated on a like-for-like basis at the same decision-making stage. Instead, terrestrial routing constraints were introduced only after Pegwell Bay had already emerged as the preferred option, resulting in a retroactive justification rather than a genuine application of the mitigation hierarchy.

KWT emphasises that at no point was KWT consulted on routing, siting or landfall options. Pegwell Bay was already identified as the preferred landfall before any engagement with KWT occurred. The Applicant's assertion that environmental constraints shaped the selection of Pegwell Bay is not supported by evidence or process. The Applicant argues that all landfall locations interact with designated sites, but this is a mischaracterisation of the issue. The fact that all sites have designations does not justify selecting the location with some of the most complex, most sensitive, and least recoverable ecological receptors in Kent, particularly where the Applicant acknowledges Broadstairs (K1a) involved fewer constraints from a marine perspective.

Within the response to paragraph 2.8.2 – *'Interaction with designated sites'*, the Applicant's assertion that the proposed converter station and substation site *"does not directly interact with national or international protected sites (or indeed locally designated sites)"* is incorrect. The converter station site lies within land that has been evidenced through survey data to function as Functionally Linked Land ("FLL") to the Thanet Coast and Sandwich Bay SPA, land outside the designated boundary but ecologically essential for supporting the SPA's qualifying species, particularly golden plover. Loss of FLL constitutes a direct impact on the SPA, as established by Natural England guidance and HRA case law, as removing or degrading land used for feeding, roosting or supporting life-cycle needs undermines the ecological function on which site integrity depends. In addition, for access during the construction phase, the proposed converter station location will result in the direct temporary loss of habitat within Ash Level and South Richborough Pasture Local Wildlife Site ("LWS"), a locally designated site of recognised ecological value. The Applicant's claim of *"no direct interaction"* and *"these [international and locally protected sites] have been avoided in the site selection process in accordance with the mitigation hierarchy"* is therefore false and misrepresents the reality of the ecological impacts and materially downplays the level of harm arising from the siting decision.

Within response to paragraph 2.8.3 the Applicant states that the proposed solar farm (RBL2) which is proposed immediately adjacent to the golden plover mitigation site *"cannot be meaningfully assessed"* and downplays foreseeable cumulative impacts. As mentioned within KWT's Written Representation:

Both the EIA Regulations and the Habitats Regulations impose a clear and mandatory duty to assess cumulative impacts comprehensively. Schedule 4(5)(e) of the EIA Regulations explicitly requires an Environmental Statement ("ES") prepared under Regulation 14(2) to include:

"A description of the likely significant effects of the development on the environment resulting from, inter alia:

[...] (e) the cumulation of effects with other existing and/or approved projects..."

This requirement is not optional or qualified. It compels the Applicant to assess all existing, approved, and reasonably foreseeable projects whose effects could combine with the proposed development. This necessarily covers:

- Existing projects: Already built and operational developments (e.g., Nemo Link);

- Approved projects: Those with development consent that are not yet built (e.g., KCC/TH/0041/2024 approved ground mounted solar photovoltaic (PV) array with associated infrastructure); and
- Reasonably foreseeable projects: Those that are publicly proposed, at the pre-application stage, or in planning, even if not yet consented but where there is enough certainty, that they may proceed (e.g., RBL Solar 2 land adjacent to Richborough Energy Park).

Under Regulation 63(1)(a) of the Habitats Regulations, any plan or project that may have a likely significant effect on a European site, either alone or in combination with other plans or projects, must be subject to an HRA. This “in combination” clause is central to the statutory test:

- It requires assessing cumulative impacts with other plans or projects, regardless of who is responsible for them.
- Projects do not need to be under the same developer or authority.
- Past projects, like Nemo Link, and ongoing or proposed developments in the same area must be considered if their effects could overlap spatially or temporally.

Crucially, this duty is not confined to the Applicant’s own projects. It extends to any other plans or projects capable of contributing to cumulative or synergistic environmental effects, whether terrestrial or marine. This approach is reinforced in NPS EN-1 and EN-5, which confirm that the Planning Act 2008 establishes a holistic planning regime requiring that cumulative effects be considered together. Paragraph 4.1.5 of NPS EN-1 is explicit in requiring the Secretary of State to take into account cumulative impacts when considering applications for nationally significant energy infrastructure.

KWT strongly retain that the Applicant’s cumulative assessment fails to meet these statutory requirements. There is no robust analysis of how other consented or proposed developments within the same ecological landscape will interact with Sea Link’s impacts, particularly in relation to qualifying features of the Thanet Coast and Sandwich Bay SPA.

Furthermore, the Applicant’s claim that “*overall there will be a net increase in habitat*” is unsubstantiated and does not account for:

- long-term functional loss of FLL (including SPA golden plover habitat);
- disruption of key ecological corridors;
- increased fragmentation from multiple infrastructure layers;
- time constraints on how long new habitats will take to establish; and
- climate resilience impacts.

The cumulative effects assessment therefore remains incomplete and does not meet HRA or EIA regulatory requirements.

Overall, nothing in the Applicant’s commentary demonstrates that avoidance (the first and legally required step of the mitigation hierarchy) was genuinely explored. Instead, the response provides a retrospective justification for an already-fixed design, which is contrary to EN-1, EN-5 and EIA Regulations. This failure is particularly concerning given the acknowledged cumulative effects on internationally designated sites and FLL; without genuine consideration of avoidance at the outset, the Applicant has effectively locked in a design that exacerbates in-combination impacts rather than minimising them.

2. Saltmarsh and Intertidal Impacts, Trenchless Techniques, and the Nemo Precedent (Responding to section 2.8.5)

The Applicant asserts that no permanent loss of saltmarsh or mudflats will occur because trenchless techniques are secured within the DCO. However:

1. The Applicant has provided no explanation for why its sister company (National Grid Ventures (“NGV”)) abandoned trenchless installation at the same site for Nemo Link, despite assuring stakeholders at the time that horizontal directional drilling (“HDD”) was feasible.
2. The Applicant admitted during Issue Specific Hearing 1 (“ISPH1”) that it has no insight into NGV’s decision-making, meaning it cannot reasonably rely on NGV’s evidence or assert that identical geological settings now guarantee HDD success.
3. The ExA themselves highlighted that any responsible organisation would naturally seek insight from NGV – the Applicant confirmed they did not.

This creates a profound evidential gap. Without understanding why trenchless methods failed for Nemo Link, there is no rational basis for claiming they can be relied upon now.

Additionally, the Applicant’s assertion that “*no permanent effects*” will result from intertidal works is contradicted by the current state of Nemo’s unmitigated and irreversible saltmarsh damage, which KWT and others have documented extensively, and which remains evident eight years later.

Given this precedent, the Applicant’s assurances lack credibility and fall far below the legal threshold required for HRA certainty.

3. Incomplete and Insufficient Ecological Baseline (Responding to sections 2.8.9 – 2.8.11)

The Applicant asserts that its survey programme is “*extensive*” and “*in accordance with guidance*”, despite conducting only one survey season for the majority of terrestrial species. This does not meet CIEEM or Natural England best-practice for baseline sufficiency for high-sensitivity sites. Single-season baselines cannot accurately capture inter-annual variation, breeding success, foraging distribution or seasonal behavioural ecology.

The Applicant’s response claims that two years of wintering/breeding bird data were collected, yet fails to address the fact that key habitats, such as the golden plover mitigation land, received no baseline habitat suitability assessment at all prior to selection.

We strongly disagree with the Applicant’s assertion that “*there is no indication from survey data that the converter station field is particularly notable or otherwise different from the other arable fields in the wider area in terms of suitability for wintering and breeding birds.*” This statement is inconsistent with both the Applicant’s own baseline data and the established understanding of functional linkages within the Thanet Coast and Sandwich Bay SPA. The converter station field has been identified by the Applicant’s surveys as supporting more than 1% of the SPA’s golden plover population, the very definition of FLL under Natural England guidance. The presence of SPA-relevant assemblages in numbers that exceed recognised significance thresholds directly contradicts the claim that this field is no different from surrounding arable land. In reality, the evidence shows that this location is ecologically important, supports qualifying features of the

SPA, and cannot be dismissed as generic farmland without undermining the integrity of the HRA and EIA assessments.

Additionally, the Applicant acknowledges multiple factual errors in its earlier reporting (e.g., the mis-recorded “700 golden plovers”), highlighting further concerns over reliability and quality of the ecological assessment.

The Applicant’s marine mammal assessment remains incomplete. The Applicant’s response again focuses solely on potential disturbance to seals at haul-out sites in the River Stour. The following issues remain unaddressed:

- No assessment of disturbance to seals in transit, foraging/hunting, breeding, or moving between haul-out sites.
- No assessment of impacts to prey availability, despite intertidal disturbance and sediment mobilisation.
- No assessment of breeding season sensitivity, despite known pupping activity in the wider estuarine system.
- Underwater noise modelling is crude and fails to consider cumulative behavioural disturbance.
- The Applicant relies heavily on habituation to vessel traffic in the River Stour, which is irrelevant to the novel, high-intensity, multi-month construction activities proposed at landfall.

Furthermore, the Applicant claims seals will be “screened” by saltmarsh from sound disturbance during low tide. This assertion is unsupported and contradicts their own acknowledgement that airborne sound modelling is being recalculated.

A robust, seasonally comprehensive assessment has been requested by KWT since 2023 and remains outstanding.

Overall, the Applicant’s response does not address the fundamental issue: the evidence base remains incomplete, uneven, and insufficient for assessing impacts on one of the UK’s most sensitive internationally designated sites.

4. Hoverport – Habitat Loss Mischaracterised

(Responding to comments made within the Applicant’s Thematic Responses to Relevant Representations)

The Applicant states that:

“There will be no habitat loss at the former hoverport.”

This statement is not credible. The hoverport has been rewilded and now supports species-rich vegetation, including food plants of the fiery clearing moth, a fully protected species under Schedule 5 of the Wildlife and Countryside Act. Common sorrel, curly and clustered dock, key larval plants, are present throughout the site, including on areas the Applicant describes as “hardstanding”. Machinery tracking over these areas would constitute habitat loss, even if no formal vegetation clearance were proposed.

KWT therefore requests confirmation that:

- No vegetation will be tracked over, crushed, or disturbed;

- Habitat suitability for fiery clearwing and Sussex emerald moth has been properly assessed by appropriate experienced and licensed ecologists; and
- Construction methods will avoid harm to rewilded vegetation.

At present, the Applicant's assessment is not supported by sufficient evidence.

5. Absence of a Statement of Common Ground ("SoCG") with Kent Wildlife Trust

KWT wishes to raise serious concerns that, despite being a landowner and the long-term land manager of Sandwich and Pegwell Bay National Nature Reserve ("NNR"), the Applicant has not engaged with KWT to prepare a SoCG.

Planning Inspectorate ("PINS") Advice Notes make clear that SoCG are expected to be jointly prepared documents that record areas of agreement and disagreement between applicants and relevant stakeholders. This applies particularly to statutory consultees, landowners, and parties with specialised technical knowledge directly relevant to the assessment, and to ensure they have an opportunity to verify the accuracy of how their position is represented. The PINS *'Examination Guidance'* further emphasises that SoCG are intended to reflect the agreed position of both the applicant and stakeholder. They cannot perform this function if developed one-sidedly.

KWT is one of several landowning parties at Sandwich and Pegwell Bay and is the lead conservation body responsible for the management, monitoring and ecological protection of the very habitats directly affected by the Kent landfall location. The Applicant has explicitly acknowledged our land interest by issuing Heads of Terms seeking right of access, occupation, working areas, restrictions, and indemnities for the seven-year construction period. It is therefore inconsistent for the Applicant to treat KWT as a significant enough landholder to negotiate long-term land occupation yet exclude KWT from the SoCG process.

KWT is aware that at least one SoCG submitted, purportedly representing the position of another environmental NGO, was produced without their involvement. This raises serious concerns about the Applicant's approach to SoCG preparation more broadly, including whether other SoCGs accurately reflect stakeholders' positions and whether PINS procedural expectation is being followed.

Although no single case expressly requires consultation on SoCGs, the courts have consistently held that procedural fairness is a fundamental requirement in NSIP examinations. Relevant authorities include:

- *R (Plant) v Secretary of State for Transport* [2014] – decision-makers must ensure fairness, transparency and meaningful participation in DCO processes.
- *R (Holborn Studios) v Hackney LBC* [2017] – consultation must occur at a formative stage and provide stakeholders real opportunity to influence outcomes.
- *R (Mott) v Environment Agency* [2016] – consultees must have the chance to comment on substantive matters directly affecting them.
- *R (Friends of the Earth) v North Yorkshire CC* [2020] – public bodies must show that expert environmental input has been properly considered.

The principle derived from these cases is clear: where a party has a direct land interest and specialist ecological knowledge, they must be given a fair and meaningful opportunity to contribute to documents that will carry weight in decision-making, including SoCGs.

The failure to involve KWT in SoCG preparation, against a backdrop of un-consulted SoCGs from other stakeholders, raises significant procedural concerns and undermines confidence in the accuracy of the Applicant's submissions.

KWT respectfully requests the Examining Authority ("ExA") to:

- Request an explanation from the Applicant for why KWT was excluded from SoCG preparation;
- Require the Applicant to prepare a SoCG jointly with KWT, consistent with PINS guidance; and
- Consider the implications for the evidential weight of SoCGs that were produced without stakeholder involvement.

KWT confirms its willingness to engage constructively in producing a SoCG provided the process is transparent, collaborative, and procedurally compliant.

6. Summary Position

KWT remains firmly of the view that the evidence base submitted by the Applicant contains significant gaps, unsupported assumptions, premature conclusions and unsecured or unquantified mitigation.

This leaves substantial scientific doubt regarding major impacts on internationally and nationally designated sites, FLL, protected species and priority habitats including mudflats, saltmarsh and grazing marsh.

Our detailed concerns and requests for further information are set out in full in our Written Representations.

If you require any further information, please do not hesitate to contact me.

Kind regards,

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