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**RE: Sea Link (EN020026) Nationally Significant Infrastructure Project (NSIP) Application – Written Representations (Deadline 3A – Change Request) – Kent Wildlife Trust (F0B50218B)**

Kent Wildlife Trust's ("KWT") Written Representations for Deadline 3A, Change Request to the Development Consent Order ("DCO") will focus solely on Change 1 – Access at the Hoverport, Kent, which is described in National Grid's, (the "Applicant"), Document 9.76.3: Change Request Consultation Report as:

*"An extension to the width of the Order Limits to provide flexibility in terms of the route of vehicles across the hoverport. The change will enable the final routeing to be selected that avoids encroaching on the saltmarsh, meaning that there will be no significant impact on saltmarsh from driving vehicles on or close to the saltmarsh habitat when accessing the intertidal area during construction, operation and maintenance."*

These Written Representations have been prepared in line with KWT's remit, and therefore primarily focus on impacts to Kent's terrestrial, coastal and marine habitats and the wildlife these habitats support. Due to an absence of ecological surveys, baseline information and mitigation measures, these Written Representations are necessarily high-level in nature. Our concerns and comments raised in our Deadline 1 Written Representations (18<sup>th</sup> November 2025) are still applicable and KWT continues to **strongly object** to the Sea Link project due to its unacceptable environmental risks and its failure to demonstrate compliance with environmental law and relevant national policy.

## **1. ABSENCE OF ECOLOGICAL BASELINE SURVEYS**

### Omission of saltmarsh

KWT recognises, in principle, the stated intention behind this Change Request, namely, to provide flexibility to select an access route that avoids encroachment onto saltmarsh habitat and thereby reduce the risk of direct impacts. However, after reviewing Document 2.9.2: *Habitats of Protected Species and Important Habitats – Kent*, we are concerned as to why saltmarsh has been omitted from the plans. When reviewing this document, in particular plan DCO/K/HA/PS/0810 (sheet 3 of 6), saltmarsh is not a habitat listed under the 'Legend' and is not annotated on the plan. As saltmarsh is both a Section 41 Priority Habitat and a qualifying feature of national and international designated sites, its omission from a document explicitly titled "*Habitats of Protected Species and Important Habitats*" represents a material deficiency in the Applicant's environmental information. This omission undermines confidence in the Applicant's ability to avoid impacts in practice and prevents meaningful scrutiny by the Examining Authority ("ExA") and Interested Parties. Without saltmarsh being accurately mapped and referenced within the relevant plans, there is no clarity that the habitat can be or will be avoided during construction, operation or maintenance.

#### Absence of site-specific ecological data

The proposed change is being advanced in the absence of any site-specific ecological baseline data for the hoverport, nor any safeguards to avoid significant adverse effects on protected species, Priority Habitats and Priority Species, or the integrity of designated sites.

We note that the Applicant has acknowledged that terrestrial invertebrate surveys were not carried out due to lack of access agreement, and no detailed botanical or reptile surveys have been undertaken. Despite this, the Applicant asserts that the use of existing hardstanding means that access can occur without vegetation clearance and without significant ecological effects. KWT strongly disagrees with this position. The former hoverport has been disused for decades and has naturally rewilded, supporting a mosaic of ruderal, coastal and semi-natural habitats. Vegetation, including larval foodplants and rare flora, is known to occur within cracks, margins and thin soil layers across the hardstanding and adjacent areas.

#### Likely adverse impacts

The absence of formal vegetation clearance does not equate to the absence of habitat loss. Machinery tracking, vibration, compaction and ground disturbance associated with construction traffic have potential to cause significant habitat damage and loss, particularly where protected species rely on rootstock, substrate integrity or undisturbed ground conditions.

National Policy Statements (“NPS”) for energy (“EN-1”) (December 2025), paragraph 4.3.3 makes clear that temporary, indirect and construction-phase effects must be fully assessed, including effects arising from access arrangements and construction traffic. Case law confirms that “habitat damage” is not limited to permanent land take or formal clearance. In *R (Morge) v Hampshire CC* [2011] UKSC 2<sup>1</sup>, the Supreme Court recognised that disturbance and degradation of habitat can be sufficient to engage wildlife offences where it affects the ecological functionality relied upon by protected species.

Proceeding with a change to the Order Limits without first establishing an adequate ecological baseline is contrary to the precautionary principle, undermines the integrity of the environmental assessment, and conflicts with Regulation 14 of the Environmental Impact Assessment (“EIA”) Regulations and goes against NPS EN-1, which states in paragraph 3.3.77 that:

*“Precise routing and siting decisions will need to be made as project design is refined and in accordance with appropriate surveys and consultations.”*

This requirement reflects established case law that environmental assessment must be based on sufficient, up-to-date baseline information to enable a lawful decision to be taken. In *R (Blewett) v Derbyshire CC* [2003] Env LR 29<sup>2</sup>, the Court confirmed that environmental information must be sufficient to allow the decision-maker to understand the likely significant effects of a proposal. Where baseline data is absent or materially incomplete, the assessment is inherently flawed.

Schedule 4 (3) of the EIA Regulations 2017 requires Environmental Statements (“ES”) to include “a description of the current state of the environmental (baseline scenario)” and an outline of how that environment may evolve without the development. In the absence of any site-specific surveys at the hoverport, this requirement has not been met.

As outlined within our Deadline 3, EXQ1 response (8<sup>th</sup> January 2026), KWT strongly recommends that full ecological baseline surveys including botanical surveys, reptile surveys, invertebrate and targeted

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<sup>1</sup> *Morge (FC) (Applicant) v Hampshire County Council (Respondent)*

<sup>2</sup> *Blewett, R (on the application of) v Derbyshire County Council* | [2003] EWHC 2775 (Admin) | England and Wales High Court (Administrative Court) | Judgment | Law | CaseMine

invertebrate surveys for protected and Priority Species must be undertaken before any access route is designed or agreed. Additionally, any access route should not be agreed without consultation with, and approval by, relevant statutory and non-statutory bodies such as Natural England, KWT and Butterfly Conservation.

## 2. PROTECTED AND PRIORITY SPECIES AT THE HOVERPORT

Annual monitoring surveys organised and conducted by Butterfly Conservation and Kent Moth Group, have identified the hoverport as an important ecological habitat for invertebrates, and is known to support a range of protected and Priority Species, including, but not limited to:

- **Fiery Clearwing Moth** – fully protected under Schedule 5 of the Wildlife and Countryside Act 1981, with a confirmed breeding colony present. Larvae feed within dock rootstock from August through to the following May and may overwinter for up to two years. Any ground disturbance during this period, including machinery tracking, would constitute habitat loss and would be likely to kill larvae directly.
- **Sussex Emerald Moth** – also fully protected under Schedule 5, with repeated recent adult records indicating a possible resident breeding population. The species overwinters as a very small larva on wild carrot and ragwort, both of which are present on and adjacent to the hoverport hardstanding. Disturbance of these plants or their root zones during the overwintering period would be highly likely to result in mortality.
- **Oblique Striped Moth** – Nationally Scarce, with a stronghold along the Sandwich–Pegwell Bay coastline.
- **Bright Wave Moth and Rest Harrow Moth** – both Red Data Book and Section 41 Priority Species.
- **Common Lizards** – a protected reptile species known to use the hoverport’s disturbed coastal habitats and hardstanding margins. Other species of reptile such as **slow worm** are likely to also be present onsite.
- **Rare Orchids** – including Man and Lizard Orchids, which are both Section 41 Priority Species.
- Numerous **Micro-Moth species** of conservation concern, nationally scarce and Red Data Book species such as *Oxypteryx wilkella*, *Gelechia hippophaella*, *Acroclita subsequana* and *Lobesia occidentis*.

Ground disturbance, even along hardstanding routes, would present a clear risk of killing or injuring these species, or damaging their habitats. For example, clustered dock, curled dock and common sorrel are the larvae foodplant species for Fiery Clearwing Moths. These plant species grow within cracks, margins and thin soil layers associated with hardstanding and ruderal substrates of the hoverport. Any ground disturbance, including machinery tracking, would constitute habitat loss and would be likely to kill larvae directly. As such, a licence would be required from Natural England, and strict seasonal constraints would apply to any works affecting these areas. No such licensing pathway can be defined or secured in the absence of appropriate surveys and detailed mitigation strategies.

The current approach taken by the Applicant is inconsistent with established case law on protected species. In *Morge v Hampshire CC* [2011] UKSC 2, the Supreme Court confirmed that a competent authority must be satisfied, at the point of consent, that a development can be carried out lawfully and without committing offences under wildlife legislation. Where protected species are reasonably likely to be present, as is the case at the hoverport, sufficient survey information must be available to inform that conclusion (*Prideaux v Buckinghamshire CC and FCC Environmental UK Limited* [2013]<sup>3</sup>).

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<sup>3</sup> *Prideaux, R (on the application of) v Fcc Environment UK Ltd* | [2013] PTSR D39 | England and Wales High Court (Administrative Court) | Judgment | Law | CaseMine

Proceeding in the absence of baseline surveys, and relying instead on future route selection or licensing, represents an unlawful deferral of assessment (*Woolley v Cheshire East BC* [2009]<sup>4</sup>) and fails to apply the precautionary principle.

### 3. FAILURE TO APPLY THE MITIGATION HIERARCHY

NPS EN-1 establishes a clear and binding requirement that environmental harm must be addressed through the Mitigation Hierarchy, with paragraph 4.2.24 stating “*Applicants must apply the mitigation hierarchy and demonstrate that it has been applied.*” Due to an absence of ecological baseline data for the hoverport, the Applicant cannot assess likely impacts or demonstrate that avoidance has been prioritised. This approach is fundamentally inconsistent with both policy and law.

KWT considers that the Change Request does not demonstrate proper application of the Mitigation Hierarchy. Rather than avoiding impacts through early design decisions informed by ecological evidence, the Applicant is seeking flexibility first and assessment later. Avoidance is the first step of the Mitigation Hierarchy. This requires understanding what ecological receptors are present before access routes are defined. Designing an access corridor without knowing where protected species, rare plants or sensitive habitats occur reverses this process and risks embedding avoidable harm into the project design. Failure to apply the Mitigation Hierarchy correctly is not a technical omission but a substantive flaw. In *Champion v North Norfolk DC* [2015] UKSC 52<sup>5</sup>, the Supreme Court confirmed that compliance with environmental assessment duties must be approached with substance rather than form. An approach that defers avoidance and assessment until after consent has been granted does not meet that standard.

Overall, the Applicant’s approach fails to comply with the Mitigation Hierarchy as required by EN-1 and EN-5 for the following reasons:

- Avoidance has not been prioritised or demonstrated;
- Routing and access decisions have not been informed by baseline ecological data;
- Impacts are understated by excluding machinery tracking as habitat loss;
- Mitigation is deferred to post-consent stages rather than secured upfront; and
- There is no certainty that protected species offences can be avoided.

KWT supports, in principle, efforts to avoid impacts on saltmarsh at Pegwell Bay. However, the proposed extension of the Order Limits at the hoverport is premature, inadequately evidenced, and risks facilitating ecological harm rather than preventing it. The absence of baseline ecological surveys fundamentally undermines the Applicant’s claim that no vegetation loss or species impacts will occur. Machinery tracking over rewilded hardstanding must be treated as habitat loss, particularly for protected invertebrates and reptiles. Until surveys are undertaken and an evidence-led access route is designed and consulted upon, KWT considers the Change Request to be unacceptable.

KWT therefore urges the ExA to require that:

- Saltmarsh habitat is clearly annotated on all plans and documents to ensure that no areas of saltmarsh fall within the proposed access route;
- Comprehensive ecological surveys of the hoverport are undertaken prior to any approval of revised access arrangements;
- Any access route is survey-led, avoids impacts to protected species and their habitats, and is subject to consultation with relevant bodies; and

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<sup>4</sup> *Woolley (Applicant) v Cheshire East BC (Respondent)* [2009]

<sup>5</sup> *R (on the application of Champion) (Appellant) v North Norfolk District Council and another (Respondents)*

- The Change Request is assessed in line with the precautionary principle and the Mitigation Hierarchy.

In the absence of these requirements being met, KWT considers that the Change Request cannot lawfully be accepted, as it would enable construction activities to proceed without sufficient environmental information, contrary to the EIA Regulations, the Mitigation Hierarchy, and established case law. Without these safeguards, the proposed change risks compounding uncertainty, undermining environmental protection, and repeating the mistakes of previous infrastructure projects at Pegwell Bay.

If you require any further clarification regarding our comments, please do not hesitate to get in touch.

Kind regards,

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