

Sea Link Nationally Significant Infrastructure Project (NSIP) Application**Planning Inspectorate Reference: EN020026****CPRE Kent's Deadline 3A Change Request Written Representation (Unique Reference Number:**
[REDACTED])

Ahead of our formal comments, CPRE Kent again wishes to reiterate and reinforce its ongoing concern that the sheer volume, complexity and ever-changing nature of the documents being submitted by the applicant is creating a near-impossible task for all consultees in terms of being able to robustly review the detail. In this respect, we note that even key statutory consultees such as Natural England are struggling to review the documentation in time (as set out within its Deadline 3 submission).

While we completely get that the NSIP process by design is intended to be fast-paced and necessarily iterative, this only really works if the applicant puts in a robust and complete application at the start of the process. Instead, what we are seeing here is an application that was clearly incomplete at submission now being hastily amended and played around with via multiple sticking plasters. The problem is that none of these sticking plasters overcome the fatal flaw that this is the wrong landfall location for this project. The repeated need to amend, clarify and now formally change elements of the scheme to avoid or reduce further damage to an internationally designated saltmarsh habitat only serves to underscore this.

That aside, the current muddying of waters via the sheer volume of documents is not fair on CPRE Kent or other commentators. It creates a real risk that significant issues are missed, misunderstood or not given the level of scrutiny they warrant. The problem is that this creates real unfairness in the process as organisations such as CPRE Kent, along with the local community, really need to know the position of the statutory consultees to better inform our position. Further compounding the issue, we note that the Applicant has submitted a further 79 documents at Deadline 3, including additional iterations of the Habitats Regulations Assessment and amendments to the draft Development Consent Order.

Notwithstanding the above, CPRE Kent is acutely aware that the present consultation relates to approximately 70 documents submitted by the applicant as part of the change request itself. Our comments below are therefore necessarily limited to these documents. Accordingly, they do not take into account subsequent information submitted, including the new documents submitted at Deadline 3, which of course we have the right to comment on further in due course.

1) Inaccuracies within the Change Request Consultation report (Document 9.76.3(B)).

We note that Table 2.2 on page 19 of the Change Request Consultation report refers to "CBRE" when in fact we believe this should refer to CPRE Kent. Further, it records that no response was received from us. This is plainly incorrect. CPRE Kent did submit a response, and that response is in fact appended to the consultation report itself within Appendix C (page 388 within the pdf document). While we accept this is probably just a typo/admin error, it does just about sum up our experience of the Applicant's approach to consultation thus far.

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More substantively, our real concern is that the report does not meaningfully engage with the substance of the points we and others raised. That is, while the consultation report might look impressive in itself at 474 pages long, the reality is that only a single column of text within a single row of Table 3.2 has been given to responding to all the issues raised regarding the changes in Kent. This follows the pattern CPRE Kent has consistently highlighted, where consultation is undertaken late, framed narrowly and reported without demonstrating how consultees' representations have been taken into account in decision-making.

2) Continued inclusion of the saltmarsh within the Order Limit.

Despite the recognised need to minimise the impact on the saltmarsh, it remains the case that the saltmarsh itself continues to fall within the Order Limits. Therefore, and if nothing else, this change application represents a missed opportunity to ensure that the Order Limit completely avoids the saltmarsh.

It is the applicant's argument that the need to include this area is to allow flexibility to ensure that it can *"access and exit the intertidal area safely while still committing to not impacting the saltmarsh"*. Our response, however, to this would be that if the applicant was genuinely committed to avoiding any impact on the saltmarsh, it would be designing a scheme that completely avoided it and with a significant buffer as per the precautionary mitigation hierarchy approach required by the Habitats Regulations.

Instead, the *"flexibility"* that it is seeking again translates to a reliance on future surveys and deferring the task of harm avoidance to post-consent decision-making. In our view, the avoidance of harm should be being secured with certainty now and at the consent stage. As a minimum, we still need to be convinced that the amended drafting of the DCO is sufficiently robust to ensure any future works or access that could adversely affect saltmarsh habitat will be avoided.

3) Intensified Hoverport use and a 'no new or different significant effects' conclusion.

Under the submitted Development Consent Order and the Applicant's own Planning Statement, access via the Hoverport was originally described as being limited to occasional, light-vehicle maintenance visits using the existing hardstanding. However, it is now clear that the change appears to involve a material expansion of the area and a far more intensive use of the site than was originally envisaged.

It is our view that this represents a significant departure from what was previously assessed and what can reasonably be described as mission creep. Our greatest concern, however, is the fact that, despite this intensification of use and overall increase of the Order Limit within this particularly sensitive area, the Applicant has seemingly been able to conclude that there is no significant effect based on desktop analysis only and without having undertaken any further detailed site surveying. To us, this raises serious questions as to whether the environmental effects associated with this expanded and intensified use have been properly assessed.

As set out in our response to the Applicant's change application consultation, Natural England has consistently advised from the outset that the Applicant should commit to an access route that avoids designated site features in the first instance, with any access across designated sites being on foot unless otherwise agreed with Natural England. Not only does this advice appear to have been ignored, but the Applicant is also still not really providing the evidence to justify its assertion that the proposals would result in no significant effect. Instead, we are simply told that Natural England is now happy with the

changes at the Hoverport (see 9.76.5 Change Request: Addendum to Volume 6 Environmental Statement). However, as noted above, Natural England is struggling to keep up in terms of responding to the ever-changing documentation, so until it is able to consider this, its position remains uncertain.

Our concern therefore is that the true impacts of the change are being missed. By way of illustration, we note that the Environment Agency is now adding its voice to concerns that the Hoverport was constructed on colliery spoil (*ie* see its Deadline 3 response). Given this concern is being raised by a statutory consultee, it takes it beyond a speculative point, so clearly precautionary principles with respect to the HRA assessment must apply. Despite this, we cannot see that the applicant has even undertaken a basic assessment to ascertain whether indeed there is colliery spoil beneath the concrete at the Hoverport site. We can see no assessment as to risk of heavy metal leaching, or secondary effects on the designated habitats that may occur from either the intensified use, or indeed originally proposed use, should colliery spoil be present. Further, we can see no explanation as to why the Applicant has seemingly ruled out such a risk without having undertaken any intrusive investigation or contamination surveys.

The reality is that this is one of many examples where the absence of evidence makes it impossible to rule out a significant effect if a truly precautionary approach is to be taken. For example, KWT's Deadline 3 submissions again make clear that, without targeted invertebrate, botanical and reptile surveys within the Hoverport area, the Applicant cannot presently demonstrate that construction traffic would avoid impacts on protected and priority species. In such circumstances, CPRE Kent would consider it premature and unsafe to conclude that no new or different significant effects would arise.

Conclusion

By way of summary, CPRE Kent remains firmly of the view that:

- 1) The ever-changing and constantly updating documentation is making proper and robust scrutiny unreasonably difficult. It is CPRE Kent's concern that this risks key issues being overlooked and undermining fairness in the process.
- 2) The change application represents a missed opportunity to ensure that the Order Limit completely avoided the saltmarsh.
- 3) Our main concern, however, is the absence of targeted surveys and evidence, which means that when correctly applying the precautionary principles, the Applicant cannot reasonably conclude that the intensified access and enlarged Order Limit results in "*no new or different significant effects*".

CPRE Kent therefore maintains its objection to the scheme and reserves its position on all matters arising from the change request pending further information referred to above.