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Examining Authority
National Infrastructure Planning
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RE: Sea Link (EN020026) Nationally Significant Infrastructure Project (NSIP) Application – Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Kent Wildlife Trust ([REDACTED]) response to the Secretary of State's Request for Information

Kent Wildlife Trust ("KWT") welcomes the opportunity to respond to the Secretary of State's Request for Information following the close of the Examination on 5th May 2026.

Our responses below focus on matters within KWT's area of interest, particularly the protection of designated sites and irreplaceable habitats, the adequacy and enforceability of environmental mitigation and monitoring, and the lessons that should be learned from the experience of the Nemo Link project at Pegwell Bay.

Questions 3 – Benthic Ecology

The Applicant, MMO and NE are invited to comment on proposed condition of Schedule 16 (Deemed Marine Licence):

Benthic Mitigation Plans

"Based on pre-construction surveys required in conditions 4(1)(l) and 15 and in agreement with MMO, the Undertaker must prepare a Benthic Mitigation Plan(s). Any necessary Benthic Mitigation Plans must be submitted to and approved in writing by the MMO in consultation with the statutory nature conservation body prior to offshore works commencing and should include a timetable for implementation of the mitigation and details of any necessary monitoring. Any agreed mitigation and/or monitoring must be implemented in accordance with the agreed timetable."

KWT Response to Questions 3

KWT supports the proposed condition in principle, particularly the requirement for Benthic Mitigation Plan(s) to be informed by pre-construction surveys and approved before offshore works commence. However, we believe it important that the Secretary of State ("SoS") considers evidence KWT has gathered regarding Nemo Link's Marine Licence conditions, which we strongly believe is relevant to the Examination and Decision of the Sea Link project as it directly reflects the effectiveness of regulatory controls to secure environmental outcomes.

Throughout the Sea Link Examination, KWT raised concerns regarding the Applicant's reliance on post-consent monitoring and marine licence conditions to manage environmental impacts at Pegwell Bay. These concerns were informed by the experience of Nemo Link, where

significant damage occurred to saltmarsh habitat and questions subsequently arose regarding whether the environmental outcomes secured through the consent process had been achieved. KWT therefore submitted Freedom of Information requests to the Marine Management Organisation (“MMO”) to understand how the relevant Nemo Link Marine Licence condition relating to post-construction monitoring and recovery of saltmarsh had been discharged.

The MMO provided KWT with more than 60 documents associated with the discharge of Condition 5.2.22, including consultation responses from Natural England (“NE”), the Environment Agency (“EA”) and the Centre for Environment, Fisheries and Aquaculture Science (“Cefas”). These documents demonstrated that, across the five-year monitoring period, all three statutory bodies consistently concluded that the saltmarsh had not recovered and that the mitigation measures secured through the consent process had not been successfully delivered.

NE specifically recommended that remedial action and monitoring should continue for up to ten years, together with further surveys and compensation for damage to coastal saltmarsh within the Sandwich Bay to Hacklinge Marshes SSSI. Despite this advice, the MMO discharged the condition without requiring National Grid (“the Applicant”) to undertake the additional monitoring, remedial works, mitigation or compensation recommended by the statutory advisers.

KWT subsequently raised these concerns directly with the MMO. Following engagement with KWT and a review of the licence and advice from the EA, NE and Cefas, the MMO has acknowledged that they consider that they **made an error in approving the discharge of the relevant licence condition**. The MMO have stated within a letter to Sir Roger Gale MP (see Appendix 1) that they are now minded to exercise their powers under the Marine and Coastal Access Act 2009 to vary the Nemo Link licence to require appropriate monitoring, mitigation and remediation of the saltmarsh habitat at Pegwell Bay.

KWT considers this to be highly relevant to the SoS’s consideration of the proposed Benthic Mitigation Plan condition for Sea Link and other mitigation proposals regarding the intertidal habitat at Pegwell Bay. The Nemo Link experience demonstrates that the existence of Marine Licence conditions and subsequent monitoring does not guarantee delivery of the environmental outcomes secured through the consent process. KWT therefore considers that the proposed condition should provide sufficient certainty that mitigation is identified and secured before impacts occur, rather than relying principally on monitoring to identify harm after it has occurred.

Where monitoring is required, the condition should also ensure that there is a clear and enforceable mechanism for requiring additional mitigation or remediation where monitoring demonstrates that the predicted environmental outcomes are not being achieved. This is consistent with KWT’s previous submissions, in which we have highlighted the importance of ensuring that environmental safeguards are secured in practice and are not contingent on assumptions about future controls or post-consent intervention.

KWT therefore requests that the final drafting should provide a robust and enforceable framework for ensuring that the necessary benthic mitigation is delivered and that monitoring can trigger effective remedial action where required. This approach should also be applied consistently across all ecological mitigation measures, including terrestrial mitigation, to

ensure that monitoring can identify failures in nature recovery and trigger timely and enforceable remedial action.

Question 4 – Intertidal benthic features of Sandwich Bay and Hacklinge Marshes SSSI

NE is invited to confirm whether [REP7-258] provides sufficient information as to the nature of the impacts to intertidal benthic features of Sandwich Bay and Hacklinge Marshes SSSI. Noting Deadline 7 updates such as [REP7-099] and [REP7-258], NE is invited to confirm whether it considers this and any other outstanding issues in [REP7-364] to be resolved.

KWT Response to Question 4

KWT considers that the evidence obtained from our FOI request to the MMO provides important additional information relevant to the consideration of impacts on the intertidal benthic features of the Sandwich Bay and Hacklinge Marshes SSSI.

The information provided by the MMO included the advice of NE, the EA and Cefas throughout the five-year monitoring period associated with Nemo Link. Importantly, all three statutory bodies consistently concluded that the saltmarsh had not recovered and that the mitigation measures agreed as part of the consent process had not been successfully delivered. NE's advice recommended 10-years of post-construction monitoring, as well as further quadrat, soil and invertebrate surveys, alongside compensation for damage to coastal saltmarsh within the Sandwich Bay to Hacklinge Marshes SSSI.

The annual post-development monitoring undertaken for Nemo Link also identified an ongoing deterioration of saltmarsh beyond the areas originally affected by the construction works. The monitoring identified continued erosion associated with the failure to repair the bank, resulting in further areas of saltmarsh outside the original impact area being progressively lost. This is particularly significant because it demonstrates that the effects of the development were not confined to the initially identified construction footprint. Rather, the condition of the saltmarsh continued to deteriorate year-on-year, with increasing areas of habitat being affected. The monitoring therefore provides evidence of a continuing decline in the condition and extent of the saltmarsh following the Nemo Link works.

KWT considers that this evidence is particularly important in the context of Sea Link because the current condition of the SSSI and the extent to which its intertidal habitats have recovered following Nemo Link are directly relevant to understanding the likely effects and resilience of those habitats in relation to a further major infrastructure project. The documented damage caused by Nemo Link, the failure of the saltmarsh to recover as anticipated, and particularly the subsequent erosion of additional areas of saltmarsh outside the original impact zone do not appear to have been appropriately reflected in the assessment of Sea Link. This evidence should be considered when determining whether the baseline condition of the SSSI, the cumulative effects of the two projects, and the ability of the affected habitats to recover have been appropriately assessed. The fact that saltmarsh continues to deteriorate following the previous development means that the effects of Sea Link cannot necessarily be assessed against a baseline which assumes that the habitat is in a stable condition. A further disturbance to habitats that remain in a degraded and declining state could result in greater, more prolonged or potentially irreversible ecological effects than those predicted on the basis of an assumed stable condition.

KWT therefore considers that the SoS should require the Applicant to demonstrate that the current condition of the intertidal habitats, including the documented effects of Nemo Link, the failure of the saltmarsh to recover as anticipated, and the continued erosion and loss of saltmarsh beyond the original Nemo Link impact area, has been appropriately taken into account in the assessment of Sea Link. This should include consideration of whether the existing condition and ongoing decline of the SSSI alters the predicted magnitude, duration or significance of Sea Link's impacts and whether the cumulative or sequential effects of the two projects have been adequately assessed. The SoS should also consider the implications of the MMO's proposed variation of the Nemo Link marine licence condition, including what this indicates about the adequacy of the mitigation and monitoring previously secured and whether any resulting requirements for further monitoring, mitigation or remediation alter the current baseline, residual effects or cumulative assessment for Sea Link. The outcome of the MMO's review and any subsequent variation to the licence should therefore be taken into account in determining whether the potential impacts of Sea Link on the SSSI have been adequately assessed and appropriately mitigated.

Question 5 – Chalk habitat

ES Part 4 Chapter 2 [REP7-099] assesses disturbance and permanent loss of a small amount of chalk habitat, noted to be an irreplaceable habitat with high sensitivity. The Applicant is invited to explain whether it considers 2024 NPS EN-1 paragraph 5.4.53 to be relevant in this instance.

KWT Response to Question 5

Paragraph 5.4.53 of the 2024 NPS EN-1 states:

“The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of any irreplaceable habitats, including ancient woodland, and ancient and veteran trees unless there are wholly exceptional reasons and a suitable compensation strategy exists.”

KWT considers that this paragraph is directly relevant to the SoS's consideration of the proposed loss of chalk habitat. The Applicant's own assessment identifies the chalk habitat affected by Sea Link as “irreplaceable habitat with high sensitivity”. KWT considers that this should be given significant weight in determining whether paragraph 5.4.53 is engaged.

This is reinforced by Natural England's evidence base on marine irreplaceable habitats. Natural England's report *Defining Marine Irreplaceable Habitats* (NECR474) identifies a number of subtidal chalk-associated habitats as scoring highly against the criteria for irreplaceability, including *Piddocks with a sparse associated fauna in sublittoral very soft chalk or clay* (A4.231). The report identifies rarity, uniqueness, fragility and recovery potential as relevant factors in determining marine habitat irreplaceability.¹

Natural England's more recent work on marine irreplaceable habitats further confirms that the purpose of this evidence base is to identify habitats which are exceptionally vulnerable because they are very difficult, slow or unfeasible to restore, recreate or replace. While KWT recognises that the Natural England marine irreplaceable habitat methodology is not itself statutory policy

¹ [\(PDF\) Defining Marine Irreplaceable Habitats](#)

or a legal definition, it provides relevant expert evidence concerning the ecological characteristics and vulnerability of marine chalk habitats.²

There is also a specific evidence base concerning the ecological importance and vulnerability of marine chalk. Natural England's *Marine Chalk Characterisation Project* (NERR080) identifies marine chalk as a scarce habitat and states that physical damage to the structure of chalk is permanent. It further identifies seven criteria relevant to characterising marine chalk, including depth, lithological composition, hydrodynamic regime, structural complexity, extent and distribution, geographic context and community composition. Importantly, Natural England cautions that the available evidence is limited in some areas and that areas which have not been surveyed should not be assumed to have no ecological value. The report therefore supports a precautionary approach where the presence, extent or characteristics of marine chalk have not been adequately established.³

KWT also notes that Natural England raised concerns during the Examination regarding the Applicant's characterisation of outcropping clay and soft chalk. Natural England advised that the Applicant's assessment needed to appropriately consider the importance and rarity of peat, clay and chalk substrates and that every effort should be made to avoid physical impacts to these highly sensitive habitats. Natural England further advised that, where impacts could not be avoided, evidence should demonstrate how impacts had been minimised as far as possible.

Of particular relevance, Natural England has advised on other NSIP projects that benthic receptors within the Zone of Influence, particularly those within designated sites, should be characterised at a sufficient resolution to enable a robust and evidenced assessment. Natural England has further advised that, where benthic receptors cannot be characterised at a suitable resolution, the assessment should adopt a **worst-case scenario**, based on the most sensitive biotope within the broadscale habitat.⁴

The Applicant's assessment acknowledged that potential chalk habitat had been identified in small patches along the offshore route approaching the Kent landfall but sought to conclude that the impacts were not significant because much of the soft chalk was below the seabed and was not considered likely to support the faunal communities associated with higher-quality examples of the habitat.⁵

KWT considers that this conclusion has not been sufficiently demonstrated by the evidence. In particular, the fact that chalk is predominantly below the seabed does not, in itself, establish that it lacks ecological value or that it cannot support chalk-associated communities. Natural England's NERR080 report demonstrates that the ecological characteristics of marine chalk are dependent upon a range of factors, including lithological composition, structural complexity, extent and distribution, depth, hydrodynamic regime and community composition. It also cautions against assuming that areas which have not been adequately surveyed have no ecological value. The issue is therefore not simply whether every mapped patch of chalk can presently be confirmed as a particular high-quality biotope. Rather, the evidence presented

² [Developing an Approach for Mapping Marine Irreplaceable Habitats in English Waters - NECR642](#)

³ [Natural England Marine Chalk Characterisation Project - NERR080](#)

⁴ [EN010125-000658-Natural England.pdf](#)

⁵ [EN020026-001865-9.34.1 \(B\) Applicant's Detailed Responses to the Relevant Representations identified by the ExA \(Clean\).pdf](#)

during the Examination indicates that the extent, distribution and ecological characteristics of the chalk habitat had not been sufficiently established to support the Applicant's conclusion that the proposed impacts are not significant.

This is particularly important given that the Applicant itself identified potential chalk habitat, while Natural England identified uncertainty regarding the distribution and extent of subtidal chalk and advised that further characterisation would assist in informing the assessment. Natural England's advice also emphasised the need to follow the mitigation hierarchy by avoiding physical impacts to highly sensitive chalk habitats wherever possible, including through micro-siting. In these circumstances, KWT considers that the Applicant's conclusion appears to rely, at least in part, on an assumption regarding the ecological value of predominantly sub-seabed chalk rather than a sufficiently evidenced demonstration that the habitat cannot constitute an irreplaceable habitat. This is inconsistent with the precautionary approach indicated by Natural England's evidence and advice, particularly where the habitat in question has been identified as potentially irreplaceable and where its extent and ecological characteristics remain uncertain.

The SoS should therefore take particular caution before accepting the Applicant's conclusion that impacts to subtidal chalk are not significant. The evidence available to the Examination indicates uncertainty as to the extent and ecological characteristics of the habitat, while Natural England's advice identifies the sensitivity and potential irreplaceability of chalk habitats and recommends an avoidance-led approach. KWT therefore considers that paragraph 5.4.53 is highly relevant to the SoS's consideration of the proposed loss and deterioration of chalk habitat. The Applicant has not, in KWT's view, demonstrated on the basis of sufficiently robust habitat characterisation that the chalk habitat subject to permanent loss or deterioration falls outside the scope of irreplaceable habitat contemplated by paragraph 5.4.53.

If the SoS concludes that the affected chalk habitat constitutes irreplaceable habitat, paragraph 5.4.53 is clear that development consent should not be granted where development would result in its loss or deterioration **unless there are wholly exceptional reasons and a suitable compensation strategy exists**. KWT considers that this stringent test must therefore be expressly addressed in the SoS's decision.

Question 6 – Hovercraft at Pegwell Bay

NE [REP7-274] raised concerns regarding effects on marine mammals, noise and visual disturbance due to the late addition of commitment in GG45 in the Register of Environmental Actions and Commitments ("REAC") which stated that the hovercraft at Pegwell Bay would be on standby and only used for emergencies. The Secretary of State invites the Applicant to update GG45 in the REAC [REP7 359], outline Construction Environmental Management Plan ("oCEMP") [REP7 129] and oOCEMP [REP7-127] to strengthen this commitment as follows:

"Hovercraft at Pegwell Bay will be on standby and used for emergencies only. It will not be used at any other time during any stage of the project's construction, operation, maintenance or decommissioning. The applicant will report all instances of emergency hovercraft use to Natural England and Thanet District Council TDC within 24 hours".

The Applicant is also requested to define 'emergency use'. 7. NE is invited to advise whether this control is sufficient to avoid adverse effects on marine mammals and designated sites from the use of hovercraft.

KWT Response to Question 6

KWT supports the SoS's proposed strengthening of commitment GG45. KWT considers that the commitment should provide a clear and enforceable restriction on the use of the hovercraft at Pegwell Bay throughout construction, operation, maintenance and decommissioning. Given the concerns previously raised regarding marine mammals, noise and visual disturbance, we consider it important that routine or foreseeable project activities cannot be undertaken using the hovercraft under the broad interpretation of an "emergency".

The definition of "emergency use" should therefore be sufficiently precise to ensure that the exception is limited to a genuine and unforeseen event where use of the hovercraft is necessary to address an immediate risk to health, safety or the environment. Routine construction, maintenance, operational or logistical requirements should not constitute emergency use.

KWT also considers that the Applicant should be required to notify Kent Wildlife Trust of any emergency use of the hovercraft, in addition to NE and Thanet District Council. As the organisation managing the relevant nature conservation interests at Pegwell Bay, KWT considers that timely notification would be appropriate to enable us to understand when hovercraft activity has occurred and consider any implications for the designated site and its wildlife. KWT therefore supports the strengthened wording proposed by the SoS, subject to the addition of Kent Wildlife Trust to the notification requirement and the inclusion of a suitably restrictive definition of "emergency use".

Question 7 – Sufficiency of hovercraft control

NE is invited to advise whether this control is sufficient to avoid adverse effects on marine mammals and designated sites from the use of hovercraft.

KWT Response to Question 7

KWT considers that the strengthened commitment proposed by the SoS represents an improvement and provides more appropriate level of control of hoverport use at Pegwell Bay. However, KWT considers that the adequacy of the control ultimately depends on the final wording being sufficiently clear and enforceable, particularly the definition of "emergency use".

However, the use of the hoverport, even in emergency circumstances, would still present a significant risk to protected flora and fauna identified at the hoverport, including lizard orchids, reptiles and two Schedule 5 invertebrate species. KWT therefore considers that appropriate ecological surveys should be undertaken in advance to establish the presence and distribution of protected species and inform a specific emergency plan for the hoverport. This would ensure that appropriate avoidance and mitigation measures are identified and can be implemented immediately should emergency access be required, rather than relying on ecological surveys being undertaken once an emergency has occurred and access is required at short notice. This is particularly important to ensure that emergency use can be undertaken lawfully and without committing an offence under the Wildlife and Countryside Act 1981 or other relevant wildlife legislation.

KWT therefore recommends that the final control requires the Applicant to undertake appropriate ecological surveys in advance and use the findings to develop and agree an

emergency ecological management plan for the hoverport. The plan should set out the measures required to avoid harm to protected species and habitats during any emergency use and should be capable of being implemented immediately when required.

Question 19 – Collision monitoring and mitigation

The Applicant is invited to update Appendix B of the oLEMP [REP7-141] to secure two years of collision monitoring from commencement of operation of the new overhead line arrangement and to update REAC commitment B55 to secure that:

“In the event that collision monitoring surveys in the oLEMP identify that collisions with existing lines are worse than predicted due to the new overhead line arrangement, the applicant will consult with the statutory nature conservation body regarding the need for additional diverters on existing lines. Where consultation with the statutory nature conservation body indicates that additional mitigation is required, diverters shall be fitted on the existing lines, or other appropriate measures agreed with the statutory nature conservation body.”

KWT Response to Question 19

KWT welcomes the proposed requirement for collision monitoring and the mechanism for securing additional mitigation where monitoring demonstrates that collision rates are greater than predicted.

However, KWT continues to strongly recommend that appropriate bird deterrents/diverters are installed from the commencement of operation, rather than waiting for collision monitoring to demonstrate that bird collisions are occurring. KWT considers that the mitigation hierarchy should be applied in a preventative rather than reactive manner. If the Applicant waits until monitoring demonstrates that collisions are occurring at higher rates than expected before installing additional mitigation, the environmental damage will already have occurred. Bird mortality and injury should not be relied upon as the mechanism for determining whether mitigation is required. It would therefore be more appropriate and precautionary to install suitable deterrents from the outset, particularly where there is historic evidence and a known risk of bird collision associated with the overhead line arrangement within the wirescape.

KWT is also concerned that a two-year monitoring period is insufficient to provide a robust evidence base for assessing collision risk. Bird movements, including migratory movements, can vary between years depending on a range of factors, including weather conditions. A two-year monitoring period may therefore fail to capture the full range of conditions under which birds may interact with the overhead line infrastructure. KWT recommends that collision monitoring is secured for a **minimum of five years** from commencement of operation. This would provide a substantially more robust dataset across different weather conditions, migration patterns and annual variations, allowing a more reliable assessment of actual collision risk. KWT therefore recommends that:

- Appropriate bird deterrents/diverters are installed from the commencement of operation as precautionary mitigation;
- Collision monitoring is undertaken for a minimum of **five years**, rather than two years; and

- The proposed mechanism for additional mitigation on existing lines is retained, so that further measures can be secured where monitoring demonstrates that residual collision risk remains greater than predicted.

This would provide a more precautionary and preventative approach and would avoid the situation whereby mitigation is only introduced after evidence of bird mortality has already been established.

Question 55 – Requirement 1: Control of operational noise

The Secretary of State invites the Applicant and relevant IPs to comment on the proposed insertion of the final wording in Requirement 18 (Control of operational noise) of the DCO, should the DCO be made:

18 . (1) No part of Work Nos. 1B, 3B, 9B and 11 shall come into operation until an operational noise assessment has been submitted to and approved in writing by the relevant planning authority. The assessment shall:

- (a) be based on the final specification and layout of plant and equipment;
- (b) demonstrate compliance with the rating levels set out in sub paragraph (3); and
- (c) identify any mitigation measures required to achieve compliance.

(2) The development shall be operated in accordance with the approved assessment and any mitigation measures therein, which shall be implemented prior to operation and maintained for the lifetime of the development.

KWT Response to Question 55

KWT supports the proposed wording of Requirement 18 in principle. We welcome the requirement for the operational noise assessment to be based on the final specification and layout of plant and equipment, rather than relying solely on assumptions made at the application stage. KWT also supports the requirement that any mitigation measures identified as necessary to achieve compliance must be implemented prior to operation and maintained for the lifetime of the Proposed Development. This provides greater certainty that operational noise impacts will be assessed against the final form of the development and that any necessary mitigation will be secured before the relevant infrastructure becomes operational.

However, KWT considers that the Requirement could be strengthened to include provision for post-commissioning noise monitoring, to verify that the operational noise levels predicted in the approved assessment are being achieved in practice. Where monitoring demonstrates that the rating levels are exceeded, or that the approved mitigation is not effective, the Applicant should be required to undertake additional mitigation or remedial measures. We consider that this is particularly important because the proposed wording requires mitigation identified through the assessment to be maintained for the lifetime of the development but does not expressly provide a mechanism for responding where that mitigation subsequently proves to be ineffective.

KWT therefore recommends that Requirement 18 is strengthened to ensure that:

- The operational noise assessment is based on the final specification, layout and operating conditions of the relevant plant and equipment;

- All mitigation identified as necessary to achieve compliance is implemented before operation commences;
- Appropriate post-commissioning noise monitoring is undertaken to verify compliance with the approved assessment and rating levels;
- Monitoring results are made available to the relevant planning authority and, where relevant, other statutory consultees;
- Where monitoring demonstrates that the approved rating levels are exceeded or that mitigation is not achieving the predicted outcome, additional mitigation and/or remedial measures are required; and
- All mitigation and any subsequent remedial measures are maintained for the lifetime of the development.

KWT considers that these amendments would provide greater certainty that Requirement 18 will secure the intended environmental outcome in practice, rather than simply establishing compliance based on predictions made before operation. This approach is consistent with KWT's wider concern throughout the Examination that environmental safeguards should be secured, enforceable and capable of responding where monitoring demonstrates that predicted outcomes are not being achieved. The experience of Nemo Link demonstrates the importance of ensuring that monitoring is accompanied by a clear mechanism for requiring remedial action where environmental outcomes fall short of those anticipated at the time of consent.

Kind regards,

[Redacted]

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