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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 (██████████) response to the Secretary of State’s invitation for all Interested Parties to comment on received responses from the Applicant and other Interested Parties to her information request dated 28 August 2026.

SUMMARY

Kent Wildlife Trust (“KWT”) has reviewed the Applicant’s revised documentation submitted following the Secretary of State’s (“SoS”) request for further information. While KWT welcomes the opportunity to comment on these revisions, we remain concerned that important ecological issues raised during the Examination remain unresolved. The revised documents do not consistently provide the clarity, certainty or effective safeguards necessary to demonstrate that the potential impacts of the proposed development on protected species and internationally important sites have been adequately avoided, mitigated or otherwise addressed in accordance with the relevant environmental requirements.

For the reasons set out in this consultation response, alongside the substantial and unresolved concerns raised throughout KWT’s previous representations, we maintain our objection to the Sea Link Development Consent Order (“DCO”) and strongly consider that consent should be refused.

Comments on the Applicant’s revised document: 6.2.3.2 Part 3 Kent, Chapter 2 – Ecology and Biodiversity (Version 1 September 2026)

KWT has reviewed the tracked changes to paragraphs 2.9.137 – 2.9.146 and the associated text concerning the potential presence of European beaver in the vicinity of the proposed temporary bridge over the River Stour.

KWT remains concerned that the revised wording does not adequately address the potential presence of beaver burrows and therefore does not provide sufficient certainty that beavers and their resting or breeding places will be protected during construction.

We wish to reiterate our previous comments during the Examination Hearings that the Applicant’s assessment and mitigation must reflect the ecology and behaviour of European beavers, rather than relying on the identification of visible lodges as an indicator of their presence. European beavers do not necessarily construct conspicuous, above-ground lodges. Where riverbanks are suitable for excavation and water levels are sufficient to maintain submerged entrances, European beavers commonly use burrows excavated into the bank. These comprise underground tunnels and chambers, with entrances generally located below

the waterline. Beavers may also use a combination of burrows and lodge structures, including bank lodges where sticks and mud form a roof over underground chambers. The absence of a visible, above-ground lodge therefore does not demonstrate that beavers are absent or that the riverbank is free from burrows. This is particularly relevant to the River Stour, where suitable water levels are generally consistent. KWT understands that signs of beaver activity have been identified along the stretch of River where the temporary bridge is proposed, including bark-stripped branches, distinct gnawed-tress and a possible beaver lodge.

The extent of underground burrows is also relevant to the proposed works. Government guidance, *Beavers: signs of beavers on your land*, confirms that beaver burrows can extend up to 15 metres inland from the bank. Burrows may therefore extend considerably beyond the immediate riverbank and into areas that could be affected by the construction of the temporary bridge, its abutments, associated excavation, vehicle movements or other construction activities. Their entrances are often underwater and may not be readily identifiable during surveys.¹ Consequently, the Applicant's reliance on the position of the temporary bridge abutments, which are stated to be 8 metres back from the bank top, does not in itself demonstrate that the proposed works would avoid beaver burrows or prevent disturbance to beavers. The relevant assessment must consider the potential extent of underground burrows and chambers, as well as the effects of construction activity, including noise, vibration and excavation, on any occupied burrows.

KWT notes that the revised wording provides for the temporary bridge abutments or alignment to be adjusted to a non-disturbing distance if a beaver lodge is confirmed during pre-construction surveys. If this is not possible, the Applicant proposes obtaining an A12 mitigation licence from Natural England to facilitate the dismantling of the lodge and providing mitigation in accordance with the licence conditions. However, this provision continues to refer specifically to a *lodge*, without expressly addressing beaver burrows. The wording at paragraph 2.9.146 similarly refers to a confirmed lodge within the construction footprint, rather than encompassing all potentially affected beaver resting and breeding places.

This is a material omission. If pre-construction surveys identify no visible lodge, the proposed wording does not clearly establish what action would be required where burrows are present or suspected. It is therefore unclear how the Applicant would ensure that burrows are identified, avoided and protected, or how the proposed mitigation and licensing arrangements would apply where underground burrows could be affected by the works.

KWT considers that the mitigation provisions must expressly encompass beaver burrows, underground tunnels and chambers, and any associated resting or breeding places, rather than relying on the identification of visible lodges. The wording should also recognise that the absence of a visible lodge cannot be treated as evidence of the absence of beaver activity. KWT therefore requests that the revised wording is amended to:

- Explicitly refer to beaver burrows, including underground tunnels and chambers, as well as lodges and any associated resting or breeding places, throughout the relevant ecological assessment and mitigation commitments.
- Require pre-construction surveys to assess the presence and extent of beaver activity, including burrows, with appropriate consideration given to the difficulty of identifying entrances that are underwater or otherwise concealed.

¹ [Beavers: signs of beavers on your land - GOV.UK](#)

- Require the location and potential extent of identified or suspected burrows to be considered when determining the alignment of the temporary bridge, the position of its abutments and the location and methods of associated construction activities.
- Prioritise avoidance through appropriate stand-off distances and design adjustments, informed by a suitably experienced and qualified beaver ecologist, rather than assuming that the stated 8-metre separation from the bank top will prevent disturbance.
- Clarify the measures that would be required where burrows are identified or suspected, including the circumstances in which further investigation, changes to the construction method or alignment, and a relevant licence from Natural England would be necessary.

Any licensing provision must apply to the relevant beaver burrows and associated resting or breeding places, rather than being restricted to the dismantling of a visible lodge. The proposed wording should also make clear that works affecting these features must not proceed unless the necessary avoidance measures and any applicable licensing requirements have been satisfied.

These amendments are necessary to ensure that the mitigation reflects the ecology of European beavers and provides a clear, enforceable mechanism for avoiding harm. This is consistent with KWT's wider position during the Examination that environmental safeguards must provide certainty of delivery and should not rely on the assumption that future surveys or remedial measures will adequately address risks that could have been avoided through the design and mitigation secured before consent and construction activities.

Comments on the Applicant's revised document: 7.5.7.2: Outline Landscape and Ecological Management Plan – Kent (Appendix A)

KWT has previously raised concerns regarding the suitability of the proposed golden plover compensation site. In particular, its location adjacent to the busy Sandwich Bypass (A256) and that it's enclosed between existing and proposed development raises significant concerns about disturbance, the availability of suitable undisturbed habitat and the ability of the site to provide a viable and effective compensation area for the lifetime of the development. From reviewing Figure 4 in Appendix A, we are confused as to why its titled '*Golden Plover and Skylark Habitat Enhancement Area*'. KWT understood that this area was being proposed as compensation for the loss of habitat used by wintering golden plover and lapwing, rather than as enhancement for skylark. The inclusion of skylark within the figure title therefore raises questions about the intended purpose of the site and whether the Applicant's compensation proposals have changed.

Whilst golden plover and skylark may use some overlapping agricultural habitat types, their ecological requirements differ in important respects. Golden plover are predominantly relevant here as wintering waders, requiring extensive, open and relatively undisturbed fields for feeding and roosting. Lapwing also use open agricultural landscapes, with suitable habitat requirements varying between the breeding and wintering seasons. By contrast, skylark are ground-nesting farmland birds that require suitable nesting and foraging conditions during the breeding season, including appropriate vegetation structure and access to nesting sites. Habitat management that benefits skylark during the breeding season does not automatically demonstrate that the same area will provide suitable conditions for wintering golden plover and lapwing, particularly where disturbance, surrounding development and the availability of open sightlines may constrain its suitability.

KWT recognises that some habitat management measures may provide benefits to more than one species. However, any such shared benefit must be demonstrated through the proposed habitat design, management prescriptions and evidence of suitability for each target species. Crucially, this area is intended to provide mandatory compensation for the loss of golden plover habitat, golden plover being a designated feature of the Thanet Coast and Sandwich Bay SPA. This is therefore not simply a matter of general habitat enhancement, but of ensuring that the compensation required to address impacts on a designated SPA feature is appropriate, effective and secured. The title of Figure 4 suggests that the area is intended to serve a broader or different purpose than KWT previously understood. This creates a significant concern regarding the consistency of the Applicant's documentation and, more importantly, whether the specific compensation requirements for golden plover, alongside those for lapwing, remain adequately addressed and will deliver the necessary ecological outcomes.

KWT therefore requests that the Applicant clarifies the intended purpose of the area shown in Figure 4 and explains whether it is intended to provide compensation for wintering golden plover and lapwing, habitat enhancement for breeding skylark, or a combination of these objectives. The Applicant should identify the relevant impacts each measure is intended to address and demonstrate how the proposed location, habitat characteristics and management regime will deliver effective compensation for each species. The description and labelling of Figure 4 must also be made consistent with the relevant ecological assessment, compensation proposals and other application documents.

Until these matters are clarified, KWT does not consider that the inclusion of Figure 4 provides sufficient confidence that the proposed compensation for golden plover and lapwing is appropriately defined, suitable in location or secured to deliver the required ecological outcomes.

Comments on the Applicant's revised document: 7.8 – Red-Throated Diver Protocol

KWT has reviewed the Applicant's *Red-Throated Diver Protocol* (Document 7.8, Version E, September 2026), submitted in response to the ExA's request for further information at Issue Specific Hearing 3. KWT remains concerned that the document does not resolve the fundamental uncertainty surrounding emergency cable repairs during the wintering period of red-throated diver within the Outer Thames Estuary SPA. In particular, it does not demonstrate how adverse effects on the integrity of the SPA would be avoided or adequately addressed where emergency repairs cannot be deferred until outside the sensitive winter period.

Emergency repairs and the lack of secured mitigation

Paragraph 1.5.13 of the revised Protocol states:

"Routine operational and maintenance activities will be planned so that they fall outside of the period 1 November – 31 March."

KWT welcomes this commitment to avoiding the wintering period for routine activities. However, the following paragraphs explicitly distinguish emergency repairs from routine maintenance, without providing equivalent safeguards for emergency works.

Paragraph 1.5.14 states:

"It should be noted that unplanned and time-critical 'emergency' repair work is not a routine operational and maintenance activity and does not form part of the Proposed Project."

The paragraph further explains that the scope of damage and associated repairs “*cannot be effectively anticipated in advance*” and describes an emergency as “*very improbable*”. However, the Applicant’s own wording acknowledges that emergency repairs are possible. The fact that their precise location, timing and extent cannot be predicted does not remove the need to assess their potential consequences for the SPA or establish an appropriate framework for responding to them.

The Offshore Scheme passes through the Outer Thames Estuary SPA in two locations, as acknowledged at paragraph 1.4.1. The same paragraph identifies the SPA as protecting foraging areas for non-breeding red-throated diver and confirms that the main period of occurrence in coastal offshore waters is October to March. Paragraph 1.4.1 also cites a population estimate of $22,280 \pm 4,293$ individuals. The potential for emergency repairs to occur during this period is therefore a material consideration for a project that intersects an internationally important area for this species.

The Protocol does not adequately demonstrate how disturbance would be avoided or mitigated if emergency works were required during this sensitive period. It does not set out a sufficiently defined framework for assessing alternative repair methods, minimising vessel movements, limiting the duration of works or identifying other practicable measures to reduce disturbance. Nor does it establish clear requirements for securing any necessary mitigation before works commence, insofar as the circumstances of a genuine emergency permit.

KWT recognises that emergency repairs may be necessary to protect infrastructure and maintain the electricity supply. However, the Applicant has not demonstrated that the potential environmental consequences of these scenarios have been adequately assessed or that all reasonable opportunities to avoid and reduce harm have been explored. This issue was specifically raised by the Examining Authority (“ExA”) during the Issue Specific Hearing 3, where the ExA stated that they were “*not convinced that the Applicant has demonstrated that all residual impacts are those that cannot be avoided, reduced, or mitigated.*”

Likewise, Natural England identified that emergency cable repair works undertaken during the winter period would result in an adverse effect on the integrity of the SPA due to disturbance. In the absence of avoidance, mitigation or compensation, this raises the realistic potential of unacceptable risk to an irreplaceable habitat, namely a European designated site protected under the Conservation of Habitats and Species Regulations 2017. The ExA’s request for the Red-Throated Diver Protocol was therefore meant to address and consider in the context of this express concern. The Applicant has not demonstrated that the potential environmental consequences of emergency repair scenarios have been adequately assessed or that all reasonable opportunities to avoid and reduce harm have been explored. The unpredictable nature of emergency repairs makes it particularly important to establish a robust framework of advance planning and enforceable safeguards, rather than leaving the ecological consequences to be assessed retrospectively after potentially damaging works have taken place. In KWT’s view, the Protocol does not yet adequately address the concern identified by the ExA, Natural England, or demonstrate that the Mitigation Hierarchy has been properly applied to these scenarios.

Reliance on post-event reporting and potential compensation

KWT is particularly concerned by the approach set out in paragraphs 1.5.15 and 1.5.16, which relies on reporting and consideration of compensation after emergency works have taken place.

Paragraph 1.5.15 states that, following emergency operation and maintenance activities within the SPA and its 2 km buffer during the period 1 November to 31 March:

“a report would be provided to Natural England detailing the nature of the event and the specific location, duration and extent of works undertaken, including associated vessel transits and submitted to the MMO no more than four weeks post conclusion of the emergency works.”

The paragraph explains that the purpose is to record activities and help quantify potential impacts for future cumulative and in-combination assessments.

KWT considers that this reporting requirement may provide a useful record of activities and inform future assessments, but it does not prevent or mitigate disturbance arising from the emergency works themselves. Reporting after the event cannot substitute for demonstrating that the potential effects of the proposed project have been adequately assessed or that appropriate safeguards are secured.

KWT welcomes the removal of the previous wording in paragraph 1.5.16, which stated:

“Following emergency works within the Outer Thames Estuary SPA (and 2 km buffer), any requirement for compensation post repair for impacts to the SPA will be discussed with the MMO if they conclude adverse effects on the Outer Thames Estuary SPA following submission of the above report in Section 1.5.15.”

We welcome this removal because Natural England has already stated that emergency cable repair works undertaken during the winter period would result in an adverse effect on the integrity of the SPA due to disturbance. The Applicant should therefore not rely on the MMO subsequently reaching this conclusion after the works have taken place. The previous wording was also inadequate because it deferred consideration of compensation until after the emergency works had occurred, without establishing how the need for compensation would be assessed in advance, how appropriate compensation would be identified, or how its delivery would be secured.

Given that Natural England has already identified that adverse effects on the integrity of the SPA would occur, the Applicant must explicitly address the need for compensatory measures rather than treating compensation as a matter for retrospective consideration. Under the Habitats Regulations, where a project is authorised under the derogation provisions despite an adverse effect on site integrity, the necessary compensatory measures must be secured to protect the overall coherence of the national site network. The revised Protocol must therefore clearly explain how the need for compensation would be addressed, how suitable measures would be identified and secured, and how their timely implementation and effectiveness would be ensured. Compensation should not be treated as an optional or speculative future consideration where adverse effects have already been identified.

While KWT welcomes the removal of this wording, the revised Protocol still does not explain how the Applicant would address the risk of adverse effects where effective avoidance or mitigation is not possible during an emergency. The Applicant must demonstrate how this risk would be addressed, rather than leaving the potential consequences for the SPA to be considered retrospectively. Without this clarity, the revised Protocol does not provide sufficient certainty that the legal requirements for protecting the integrity of the SPA would be met, and the SoS should not consider this matter adequately resolved.

Implications for the Habitats Regulations

The Outer Thames Estuary SPA is a European designated site protected under the Conservation of Habitats and Species Regulations 2017, as amended. Regulation 63(1) requires the competent authority to undertake an appropriate assessment where a plan or project is likely to have a significant effect on a European site, alone or in combination with other plans or projects. Consent may only be granted where the competent authority has ascertained that the proposal will not adversely affect the integrity of the site, subject to the applicable derogation provisions.

KWT considers that the emergency repair scenarios identified in paragraphs 1.5.14 – 1.5.16 represent a material evidential gap in the Applicant's assessment. The Applicant acknowledges that emergency works could take place within the SPA and its buffer during the wintering period, yet the revised Protocol does not demonstrate how the resulting risk of disturbance and adverse effects on the integrity of the SPA would be avoided or adequately addressed.

The SoS must therefore be satisfied that the implications of these scenarios have been properly considered in the Habitats Regulations assessment and that the legal requirements for the protection of the SPA can be met. The Applicant's assertion at paragraph 1.5.14 that emergency repairs are "*very improbable*" does not demonstrate that the potential effects can be discounted. Similarly, the post-event arrangements in paragraphs 1.5.15 and 1.5.16 do not provide assurance that the necessary environmental safeguards will be effective.

The legal principles established in relevant case law reinforce KWT's concerns regarding the adequacy of the revised Protocol. In *Waddenzee* (Case C-127/02), the Court of Justice of the European Union established that a project may only be authorised where the competent authority is satisfied that it will not adversely affect the integrity of the protected site, with no reasonable scientific doubt remaining². In *Holohan and Others v An Bord Pleanála* (Case C-461/17), the Court confirmed that an appropriate assessment must not contain lacunae and must provide complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt concerning the effects of the project on the protected site³. These principles are directly relevant where, as here, the Applicant acknowledges the possibility of emergency activities during a sensitive period but has not adequately demonstrated how their environmental consequences would be assessed and managed.

Additionally, in *Briels and Others v Minister van Infrastructuur en Milieu* (Case C-521/12), the Court distinguished between measures that avoid or reduce adverse effects and compensatory measures intended to address damage after it has occurred⁴. This reinforces KWT's concern that post-event reporting and the subsequent consideration of compensation cannot substitute for an adequate assessment of potential effects or demonstrate, in themselves, that the integrity of the SPA would be protected.

KWT therefore considers that the unresolved risks associated with emergency cable repairs cannot simply be deferred to decisions made after consent or after an incident has occurred. The SoS must be satisfied that the relevant requirements of the Habitats Regulations have been met, including that the necessary assessment and effective safeguards provide sufficient certainty regarding the protection of the Outer Thames Estuary SPA.

² [EUR-Lex - 62002CJ0127 - EN - EUR-Lex](#)

³ [EUR-Lex - 62017CA0461 - EN - EUR-Lex](#)

⁴ [EUR-Lex - 62012CN0521 - EN - EUR-Lex](#)

Cumulative and In-Combination Effects on Red-Throated Diver and the Outer Thames Estuary SPA

KWT is also concerned that the revised Protocol does not adequately address the potential for emergency repair works to contribute to cumulative and in-combination effects on red-throated diver within the Outer Thames Estuary SPA. Whilst the Applicant's HRA considers some projects and in-combination effects, the assessment of planned construction activities does not demonstrate that the potential effects of unplanned emergency repairs during the wintering period have been adequately assessed in combination with other relevant projects and activities.

The Applicant should demonstrate that the potential effects of emergency repairs have been adequately considered alongside disturbance arising from other relevant projects and activities, including where the timing, location or duration of works could compound impacts on red-throated diver within the SPA. This should include explaining how cumulative and in-combination effects would be assessed, what thresholds or criteria would trigger further mitigation or compensation, and how any necessary measures would be secured. Without this information, KWT is not satisfied that the revised Protocol adequately addresses the concerns raised by Natural England and the ExA or demonstrates that the risk of adverse effects on the integrity of the SPA has been appropriately addressed under the Habitats Regulations.

Implications for Critical National Priority policy and the Mitigation Hierarchy

The unresolved issue is also directly relevant to the application of the Critical National Priority ("CNP") presumption under the National Policy Statement for Energy ("NPS EN-1"). As we explained in our response to ExQ3 (Deadline 6), the CNP presumption is not unconditional. Paragraph 4.2.15 of NPS EN-1 makes clear that the presumption in favour of consent is dependent on the proper application of the Mitigation Hierarchy and on residual impacts being those that genuinely cannot be avoided, reduced or mitigated.

Throughout the pre-application process and Examination, KWT has raised concerns that the Applicant has not adequately prioritised avoidance, including through site selection and routing, and has instead relied excessively on mitigation and compensation. These concerns are relevant to the present issue because the revised Protocol does not demonstrate that the residual impacts associated with emergency repairs during the winter period have been adequately avoided, reduced or mitigated.

We wish to emphasise the ExA's clear indication within Issue Specific Hearing 3 that, in the absence of adequate information on emergency repair scenarios and their potential impacts, the ExA's position would be to recommend refusal to the SoS. KWT continues to support this position. The Applicant has acknowledged that emergency works may occur during the sensitive winter period but has not demonstrated how the potential effects on the SPA's integrity would be avoided or adequately addressed. CNP status does not remove the need to satisfy the Habitats Regulations. If adverse effects on the SPA's integrity cannot be ruled out, the Applicant must address the applicable derogation requirements; the strategic importance of the project does not, by itself, resolve that issue.

The SoS must consider whether the Applicant has genuinely exhausted reasonable opportunities to avoid or reduce harm and whether the remaining impacts can properly be characterised as unavoidable residual effects. Where the potential for adverse effects on an internationally important SPA remains unresolved, and the proposed approach relies on

retrospective reporting and subsequent consideration of compensation, KWT considers that reliance on the CNP presumption is not justified on the evidence currently provided.

Under section 104 of the Planning Act 2008, the SoS must have regard to the relevant National Policy Statements and determine the application in accordance with the applicable statutory decision-making framework.⁵ The strategic importance of the infrastructure does not remove the need to demonstrate compliance with the applicable environmental requirements or establish that the Mitigation Hierarchy has been properly applied. Any reliance on the relevant exceptions or derogations must be addressed in accordance with the applicable legal and policy tests. KWT considers that the unresolved risk to the Outer Thames Estuary SPA from emergency cable repairs is a significant concern that must be taken into account in determining whether the CNP presumption applies and whether the application can be consented.

Requirements for a Revised Red-Throated Diver Protocol

Given the number of unresolved risks to the integrity of the Outer Thames Estuary SPA and the Applicant's failure to demonstrate that the potential effects of emergency activities during the sensitive wintering period of red-throated diver can be adequately addressed. KWT strongly considers that the DCO should be refused. However, should the SoS be minded granting consent, or permit the Applicant to make further amendments to the Red-Throated Diver Protocol, KWT considers that the following matters must be addressed as a minimum.

The Applicant must provide a more comprehensive and robust framework for assessing and managing the environmental consequences of emergency activities, rather than relying on post-event reporting and the subsequent consideration of compensation. While the precise nature, location and timing of an emergency cannot be predicted, the potential types of incidents, their associated risks and the procedures for managing their environmental consequences can reasonably be anticipated in advance. The Applicant should therefore identify and assess a representative range of reasonably foreseeable worst-case emergency scenarios, including, but not limited to:

- **Emergency cable repairs during the wintering period:** Where repairs are required between 1st November and 31st March and cannot reasonably be deferred until outside the sensitive period.
- **Prolonged or complex repairs:** Where damage is more extensive than initially anticipated, works take longer than expected, additional vessels or equipment are required, or repeated vessel movements increase the extent and duration of disturbance.
- **Oil or fuel spills and other pollution incidents during winter:** Including the potential effects on the SPA, its supporting habitats and the prey resources on which red-throated diver depends, alongside any additional disturbance caused by emergency response activities.
- **Vessel breakdowns, accidents or other incidents requiring an emergency response:** Where towing, recovery operations or additional vessel movements may be necessary within or near the SPA.
- **Concurrent or overlapping activities:** Where emergency works coincide with other projects, maintenance activities or incidents affecting the SPA, potentially compounding disturbance or reducing the availability of suitable foraging habitat.

⁵ [Planning Act 2008](#)

For each relevant scenario, the Applicant should establish a clear procedure explaining how the risks to red-throated diver and the integrity of the Outer Thames Estuary SPA would be assessed and managed. This should include:

- **Advance assessment and notification arrangements**, including how the potential presence and distribution of red-throated diver, the location and duration of the incident, and the likely extent of disturbance would be considered, alongside timely engagement with Natural England and other relevant authorities.
- **A clear hierarchy of response measures**, demonstrating how the Applicant would first consider whether works could be deferred, undertaken using alternative methods or delivered in a different location to avoid disturbance, before identifying appropriate measures to minimise unavoidable effects.
- **Specific and practicable mitigation measures**, including controls on vessel numbers, routes, movements, anchoring, noise, working areas and the duration of activities, with clear responsibilities for their implementation and arrangements for monitoring and adaptive management where practicable.
- **Contingency and escalation procedures**, setting out how environmental risks would be reassessed if repairs became more extensive or prolonged than anticipated, additional vessels were required, or initial mitigation proved insufficient.
- **Cumulative and in-combination assessment procedures**, explaining how emergency activities would be considered alongside other relevant plans, projects and activities affecting red-throated diver within the SPA, including overlapping or repeated disturbance during the wintering period.
- **Arrangements for circumstances where adverse effects cannot be avoided or adequately mitigated**, explaining how the relevant legal requirements would be addressed and how any necessary measures, including compensation where legally appropriate, would be identified and secured. Compensation must not be treated as an automatic substitute for avoidance and mitigation, or as an issue that can simply be deferred until after the works have taken place.
- **Post-event reporting and review**, to record the nature and consequences of the incident, the measures implemented and any residual effects, and to inform future emergency planning and cumulative assessments. Such reporting must supplement, rather than replace, appropriate assessment and effective safeguards.

KWT recognises that genuine emergencies may require an immediate response to protect human safety, prevent a more serious environmental incident or avoid significant damage to critical infrastructure. However, the possibility of an urgent response does not justify failing to assess foreseeable emergency scenarios or establish appropriate procedures in advance. The Protocol should identify the safeguards that can reasonably be prepared and applied in such circumstances, while allowing for the specific response to reflect the nature and urgency of the incident.

Even if further amendments to the Protocol are permitted, KWT considers that these must address the outstanding concerns substantively and demonstrate that all reasonable opportunities to avoid and reduce harm have been explored. Without a sufficiently defined and secured framework for responding to foreseeable emergency scenarios, the Applicant has not demonstrated that the risks to the Outer Thames Estuary SPA have been adequately addressed.

Comments on Natural England's Formal Statutory Response to the Secretary of State's Request for Information

KWT has reviewed Natural England's response to the SoS's Request for Information, dated 18th September 2026. KWT notes that Natural England's response identifies several outstanding ecological concerns despite the revisions made by the Applicant following the close of the Examination. These concerns directly reinforce several issues raised by KWT throughout the Examination and in our previous response to the SoS Request for Information. They demonstrate that important questions remain regarding the adequacy of the environmental evidence, the assessment of potential impacts, and the effectiveness and enforceability of proposed mitigation.

Outstanding concerns regarding benthic ecology and the Pegwell Bay landfall

Natural England explicitly confirms that outstanding concerns remain from a benthic ecology perspective, and that separate concerns remain in relation to the proposed landfall at Pegwell Bay. They identify potential impact pathways associated with the landfall and intertidal ecology across multiple documents, demonstrating that the issues are not confined to a single assessment or mitigation commitment.

Natural England also highlights that important details remain unresolved, including the widths and locations of access routes between the Kent hoverport and the horizontal directional drilling ("HDD") working area, as well as the potential footprint of advance works, such as archaeological trial trenching. They further note that the impact assessments are based on HDD being feasible and advises that, if HDD proves infeasible, it may be necessary to revisit those assessments. Natural England's comments reinforce KWT's concerns that the environmental consequences of construction at Pegwell Bay have not yet been fully established and that key details are being deferred until after consent.

This is particularly concerning given the sensitivity and designation of the Sandwich Bay and Hacklinge Marshes SSSI and the potential for impacts to intertidal habitats. KWT has been requesting further clarity and the assessment of credible worst-case scenarios, including open-cut trenching across the saltmarsh at Pegwell Bay should HDD prove infeasible, since our first pre-DCO consultation response in 2023. It is therefore extremely concerning that these fundamental uncertainties remain unresolved at this late stage. KWT also questions the apparent inconsistency in the approach taken to these risks. The ExA sought further information and an emergency protocol for potential impacts on red-throated diver within the Outer Thames Estuary SPA, yet there appears to have been no equivalent requirement to establish a clear contingency plan and assess the worst-case environmental consequences should HDD fail at the Thanet Coast and Sandwich Bay SPA and Ramsar, Sandwich Bay SAC and Sandwich Bay and Hacklinge Marshes SSSI. Given the potential for open-cut trenching to result in direct impacts to sensitive national and international tidal habitats, it is unclear why this scenario has not been subject to the same level of scrutiny. The omission of such essential assessments cannot be treated as a minor detail to be deferred until after consent; they are fundamental to understanding the full extent of the proposed works and their potential environmental impacts. Without this information, it is difficult to have confidence that all relevant impact pathways have been identified and adequately assessed, or that appropriate mitigation can be designed and secured. KWT considers that the SoS should not accept these matters being deferred to the post-consent stage without clear evidence that the environmental implications have been fully assessed and that any necessary mitigation can be delivered effectively.

KWT's previous submissions have also highlighted the experience of the Nemo Link project at Pegwell Bay. Evidence obtained from the Marine Management Organisation ("MMO") through Freedom of Information requests showed that, over a five-year monitoring period, Natural England, the Environment Agency and Cefas consistently raised concerns that the saltmarsh had not recovered as anticipated and that the mitigation measures had not successfully delivered the intended environmental outcomes. The subsequent consideration of changes to the relevant marine licence condition further illustrates the limitations of relying on post-construction monitoring and regulatory conditions to resolve environmental problems after damage has occurred.

Natural England's current advice is therefore particularly significant. While it supports a condition requiring a Benthic Mitigation Plan, it requests that the plan be submitted at least six months before seabed preparation works and be informed by agreed pre-construction baseline monitoring. It also makes clear that monitoring should assess the effectiveness of mitigation and that monitoring itself does not constitute mitigation. KWT agrees that monitoring is necessary, but stresses that it cannot substitute for adequate assessment, avoidance of impacts where possible, or effective mitigation secured before damage occurs. The Nemo Link evidence demonstrates why the SoS should not assume that post-consent monitoring and the future agreement of management plans will necessarily secure successful ecological outcomes. KWT therefore considers that the outstanding benthic and landfall issues must be resolved to the extent necessary to establish the likely environmental effects and secure effective mitigation before consent is granted. The SoS should not rely on future surveys, management plans or monitoring as a substitute for an adequately evidenced assessment of the impacts of Sea Link.

Pegwell Bay hovercraft: the need for clear, enforceable controls

Natural England welcomes the proposed restriction limiting hovercraft use at Pegwell Bay to emergency situations. However, their response also emphasises the need for further clarity and controls, including a precise definition of emergency use, an agreed Code of Conduct, consideration of the worst-case scenario, and clarity regarding the location and route of access. Their advice identifies the potential for disturbance to marine mammals and other ecological receptors from noise and visual disturbance.

KWT has previously raised concerns regarding the potential effects of hovercraft use at Pegwell Bay, including disturbance to wildlife and the risks associated with access through sensitive habitats. KWT has also highlighted the need for appropriate safeguards for terrestrial species and habitats in the hoverport area, including lizard orchids, reptiles and Schedule 5 invertebrates.

Natural England's response reinforces the need for the proposed restriction to be supported by specific, enforceable requirements rather than a general commitment to use the hovercraft only in emergencies. The definition of an emergency, the permitted route and extent of access, the circumstances in which use may occur, and the measures required to avoid or minimise disturbance should be clearly established. A Code of Conduct should be agreed with the relevant authorities before first use, with appropriate provisions for ecological safeguards and reporting. KWT requests to be included in this agreement.

KWT considers that these arrangements should be secured in the relevant consent documentation and environmental management plans. The Applicant should not be permitted

to defer fundamental decisions about access routes or the management of disturbance until after consent where these decisions could materially affect the nature and significance of environmental impacts.

KWT acknowledges that Natural England welcomes or accepts certain proposed measures, subject to amendments and further safeguards. However, these specific areas of agreement must not be interpreted as resolving the separate outstanding issues that Natural England has expressly identified. On the contrary, Natural England's formal statutory response confirms that significant uncertainties remain regarding the adequacy of the Applicant's environmental assessments, the potential impacts of the proposed development, and the effectiveness of the proposed mitigation.

KWT considers that the information currently available does not provide a sufficiently robust basis for the SoS to conclude that the proposed development's environmental impacts have been adequately assessed or that the necessary protections can be secured and delivered effectively. Fundamental matters remain unresolved, including the potential impacts of construction at Pegwell Bay, the consequences should HDD prove infeasible, and the residual risks to protected species and sensitive habitats. These are not merely matters of implementation that can automatically be deferred until after consent; they may affect the assessment of the development's environmental effects, the adequacy of mitigation and the ability to satisfy applicable legal requirements. The SoS should give appropriate weight to Natural England's advice and should not interpret the Applicant's additional commitments as evidence that these issues have been satisfactorily resolved. Until the outstanding concerns have been adequately addressed and there is sufficient evidence that the relevant environmental and legal requirements can be met, KWT considers that the application has not demonstrated an adequate basis for the grant of development consent.

Conclusion

KWT maintains our objection to the Sea Link DCO and strongly considers that the application should be refused. The additional information and amendment documents submitted by the Applicant has not resolved the substantive ecological concerns raised by Natural England, KWT and other Interested Parties, nor has the Applicant appropriately addressed the concerns and questions raised by the ExA during the Examination hearings.

The opportunity to submit further information after the ExA has completed their Examination and submitted their Recommendation Report must not be treated as a substitute for demonstrating that Sea Link complies with the relevant environmental requirements. The SoS must independently consider whether the additional information resolves the outstanding concerns and provides a sufficient basis for determining the application in accordance with the applicable legal and policy framework.

In particular, KWT considers that the Applicant has failed to demonstrate that the potential effects of emergency activities on the Outer Thames Estuary SPA have been adequately assessed, that all reasonable opportunities to avoid and reduce harm have been explored, or that the requirements of the Habitats Regulations can be satisfied. The strategic importance of the proposed development does not remove these obligations, and the CNP presumption should not be relied upon to justify consent where these matters remain unresolved.

KWT submits these final representations to ensure that the outstanding ecological concerns are clearly brought to the SoS's attention before a decision is made. We maintain that the evidence

currently provided does not demonstrate that the proposed Sea Link project can be consented in accordance with the applicable environmental requirements, and that refusal remains the appropriate outcome.

Kind regards,

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