18th November 2025

Examining Authority
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RE: Sea Link (EN020026) Nationally Significant Infrastructure Project (NSIP) Application – Written Representations (Deadline 1) – Kent Wildlife Trust (F0B50218B)

Kent Wildlife Trust's (KWT) Written Representations expand on the comments made during the Relevant Representations, which were submitted in June 2025. 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 not of the scheme in its entirety. Relevant application documents have been reviewed against relevant legislation and best ecological guidance, of which the primary sources are the National Policy Statements (NPS) for energy (EN-1), NPS for renewable energy infrastructure (EN-3), and NPS for electricity networks infrastructure (EN-5).

KWT is the leading conservation charity in Kent, working to protect and restore wildlife and wild places for over 60 years. We manage over 9,000 acres of nature reserves and work across land and sea to tackle the twin crisis of biodiversity loss and climate change. As a wildlife charity, KWT recognises and supports the need to decarbonise the energy sector. However, as the UK accelerates its shift to renewable energy, the challenge of achieving net zero without compromising nature becomes ever more critical. Nationally Significant Infrastructure Projects (NSIPs), such as Nemo Link and the newly proposed Sea Link, illustrate how poorly coordinated infrastructure can damage critical habitats – habitats that are, ironically, among our most effective natural carbon sinks, such as wetlands, salt marshes and woodlands. Protecting and restoring these ecosystems is essential not only for wildlife, but also for their irreplaceable role in carbon sequestration, flood regulation and climate resilience. To deliver meaningful climate action, renewable energy developments must not come at the expense of the very natural systems that regulate our climate. Protecting and enhancing biodiversity must sit at the heart of all decarbonisation strategies if we are to achieve a nature-positive, net zero future.

KWT are one of several landowners at Sandwich and Pegwell Bay, alongside the National Trust, Thanet District Council and Kent Country Council, with overall management of the National Nature Reserve led by KWT. As such, KWT has responsibilities for the site's protection and enhancement to ensure the long-term ecological integrity of this important coastal ecosystem. KWT hold a direct land management interest and a specialist ecological understanding of the site and is therefore uniquely placed to assess the potential impacts of the proposed Sea Link project on its sensitive habitats and species.

Sandwich and Pegwell Bay is not only one of Kent's most ecologically important coastal systems, it is also one of the original 'Rothschild Reserves'. Charles Rothschild founded the Society for the Promotion of Nature Reserves – now known as 'The Wildlife Trusts'. Between 1912 and 1915, Rothschild undertook the first national survey of its kind, identifying 284 sites "worthy of preservation" for their irreplaceable wildlife and habitat value. Crucially, this pioneering work focused on protecting entire habitats rather than individual species, a principle that underpins modern conservation. Pegwell Bay was recognised in that original list for its complex mosaic of habitats, recognised for more than a century as one of the most important places for wildlife in the UK. For the reasons set out in these Written Representations,

KWT **strongly objects** 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.) HABITATS REGULATIONS ASSESSMENT

KWT has reviewed the Habitats Regulations Assessment ("HRA") prepared by National Grid (the Applicant) for the Sea Link project (AS-007[1]), together with the accompanying Environmental Statement ("ES") documents. The assessment has been reviewed in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations"), Directive (92/43/EEC) (the "Habitats Directive"), and relevant guidance issued by the UK Government and the Planning Inspectorate ("PINS")[2]. On the basis of the information submitted, KWT concludes that the Applicant's HRA does not demonstrate that the Sea Link Project can be consented in compliance with Regulation 63 of the Habitats Regulations. The various deficiencies with the HRA are set out below.

Inadequate HRA Consultation

PINS guidance encourages early and meaningful engagement with relevant nature conservation bodies to ensure that all potential effects are properly scoped and addressed before submission. Guidance states:

"*At the pre-application stage, applicants should get advice from the appropriate nature conservation body, or bodies, (ANCB) as listed in the Habitats Regulations (and other stakeholders if needed), to ensure that all potential effects have been considered and in enough detail before the NSIP application is submitted*."[3]

Whilst the Applicant published a HRA Screening Report as part of their Preliminary Environmental Information Report ("PEIR"), KWT were not directly consulted on the HRA and were not invited to contribute to its development, despite KWT being a landowner and manager of some of the affected European sites and having invaluable ecological expertise in relation to their protected features, condition and sensitivities. As a result, key assumptions were carried forward into the screening stage despite relying on incomplete or missing baseline data. This represents a clear procedural deficiency and a failure to ensure that all relevant potential effects were identified and assessed in sufficient detail prior to submission, as expressly required by PINS guidance.

Non-compliant HRA Screening

The screening stage fails to apply the precautionary approach required under Article 6(3) of the Habitats Directive, as retained in English law through the Habitats Regulations. At the screening stage, the law requires that "*if a project is likely to have a significant effect [...] then that competent authority must make an appropriate assessment of the implications of the project for that site*"[4]. Reflecting the ruling by the Court of Justice of the European Union ("CJEU") in *Waddenzee* (C-127/02)[5], the PINS guidance makes clear that:

> "*You **must** take a precautionary approach with your decisions at each stage of the HRA process.*
>
> *For example, if you cannot **rule out**:*
>
> - *The risk of a proposal having a significant effect on the conservation objectives of a European site at stage 1: screening, you must carry out an appropriate assessment*

[1] 6.6 Habitats Regulations Assessment Report
[2] Nationally Significant Infrastructure Projects: Advice on Habitats Regulations Assessments - GOV.UK
[3] Nationally Significant Infrastructure Projects: Advice on Habitats Regulations Assessments - GOV.UK
[4] Appropriate assessment - GOV.UK
[5] Waddenzee (C-127/02) [2004] ECR I-7405.

- ***All reasonable scientific doubt of an adverse effect*** *on a site's integrity at stage 2: appropriate assessment, you must refuse the proposal unless an exemption (stage 3: derogation) is justified*."[6] (Emphasis added)

In this case, the Applicant has repeatedly applied a lower test and screened out potential effects where impacts were described as "unlikely" or "not anticipated", rather than these effects being "ruled out". It has therefore failed to carry out the screening assessment required.

It furthermore minimises the significance of likely impacts by using temporal and qualitative descriptors such as "*temporary*", "*localised*", or "*small in scale*"[7] without evidential justification. The Commission's Article 6 guidance makes clear that: "*Assessments that confine themselves to general descriptions and a superficial review of existing data […] cannot be considered 'appropriate' for the purpose of Article 6(3)*."[8]

Reaching pre-emptive conclusions before obtaining survey data

At the time of the Stage 1 screening assessment, no ecological survey data was available to substantiate the Applicant's conclusions on screening. Additionally, KWT notes that the Applicant previously stated within their Corridor and Preliminary Routeing and Siting Study (October 2022) – prior to completion of the ES or HRA that:

"Potential impacts during construction, operation and maintenance within these coastal designations [Thanet Coast and Sandwich Bay SPA/Ramsar/SAC] *would be temporary and would not result in any permanent habitat loss."*[9]

Such an assertion was made before any assessment of effects had been undertaken and therefore could not be based on objective scientific evidence. The fact that the Applicant made this unequivocal statement in advance of the statutory assessment process demonstrates a predetermination of outcome and a failure to follow due process or to approach the HRA with the required precaution and open mind. The failure to use objective information to rule out likely significant effects on Thanet Coast and Sandwich Bay SPA/Ramsar/SAC, including saltmarsh habitat, renders the screening legally inadequate.

A further legal concern arises in relation to the Applicant's reliance on "control measures" and "embedded mitigation". The CJEU in Orleans and Other (Joined Cases C-387/15 and C-388/15)[10] held that:

"*The wording of Article 6 of the Habitats Directive contains no reference to any concept of mitigating measure*".

Indeed, the CJEU has noted across multiple judgements that Article 6 of the Habitats Directive is "*intended to avoid a situation where competent national authorities allow so-called 'mitigating measures' – which are in reality compensatory measures – in order to circumvent the specific procedures laid down in Article 6(3) and authorise projects which adversely affect the integrity of the*

[6] DEFRA, "Guidance: Habitats regulations assessments: protecting a European site", section "Taking a precautionary approach to decisions". Available at: https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#follow-hra-principles

[7] 6.6 Habitats Regulations Assessment Report, paragraphs 4.3.37, 5.2.11, 6.4.23

[8] European Commission, Article 6 Guidance, p. 43.

[9] EN020026-000204-8.1 Corridor Preliminary Routeing and Substation Siting study (October 2022), p. 110. para. 7.5.9

[10] Orleans and Others (Joined Cases C-387/15 and C-388/15)

site concerned".[11] This distinction underscores that the primary obligation under Article 6(3) is to avoid adverse effects, not to offset them through compensatory or harm-reducing actions. A 'mitigating measure' is better conceived of as a 'compensatory measure', i.e. a measure that is applied after the fact (after confirmation of no significant adverse effects on the environment), rather than a circumvention to the procedural requirements of Article 6. This and following case law of the CJEU therefore remains persuasive and consistent with the domestic framework.

Taken together, these authorities establish a clear and precautionary sequence: 1. Avoidance must be the first and primary response to potential impacts; 2. Mitigation may be considered only within an Appropriate Assessment, and only where its success is scientifically proven; and 3. Compensation arises, if at all, under Regulations 64 and 68, where adverse effects remain unavoidable and imperative reasons of overriding public interest apply. Where adverse effects cannot be excluded without speculative mitigation, **consent cannot lawfully be granted** under Regulation 63.

A particular issue arises in relation to measures such as spill containment or drilling fluid control. It is unclear whether these constitute mitigation (in the Article 6 sense) or control measures (in the Regulation 63(6) sense). Given this ambiguity, and applying the precautionary principle, such measures should not have been relied upon at screening and should be assessed, on the basis of evidence, within the full appropriate assessment. Crucially, both EU and UK frameworks are aligned in requiring that any mitigation relied upon must be demonstrably effective for the lifetime of the project. The Applicant has provided no evidence demonstrating that the proposed mitigation meets this requirement.

<u>*Deficiencies in the Appropriate Assessment*</u>
Under Regulation 63(5) of the Habitats Regulations, "*the competent authority may give consent for the project only if it considers it will not adversely affect the integrity of the site*".

Government guidance, the Habitats Directive and related EU case law are clear and specific as to the requirements for the integrity test to be met:

- Article 6(3) of the Habitats Directive sets the requirement for an Appropriate Assessment, and the CJEU has confirmed in *Commission v Italy* (C-304/05)[12] (paragraph 69) that such an assessment must contain "*complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed*."
- In accordance with the case of *Waddenzee* (C-127/02), Government guidance on the integrity test makes clear that it must be possible *"to rule out all reasonable scientific doubt that the proposal would not have an adverse effect on the integrity of the site before you can allow the proposal to go ahead"*.[13]
- The CJEU in *Sweetman* (C-258/11) held that "*a plan or project that leads to the lasting and irreparable loss of the whole or part of a priority habitat type present on the site adversely affects the integrity of that site*."[14] In *Briels* (C-521/12), the Advocate General observed that "*the 'integrity of the site' should be viewed as a whole in the sense that it is its enduring essential character which must be considered…[with] the long-term deterioration of an existing natural*

[11] Judgment of the Court of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, para. 58; Judgment of the Court of 15 May 2014 in *Briels and Others* (C-521/12), EU:C:2014:330, para. 33.
[12] eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62005CJ0304
[13] *Waddenzee*, C-127/02, paragraph 59, reflected in DEFRA Guidance *"Habitats Regulations Assessments: protecting a European Site"* (fn 6), section *"Test the integrity of the site"*.
[14] Judgment of the Court of 11 April 2013, Sweetman and Others v An Bord Pleanála (C-258/11), ECLI:EU:C:2013:220, para. 46.

habitat [being] something which necessarily concerns enduring essential character rather than insignificant and transient fluctuations".[15]

Government guidance provides an indicative list of the circumstances that will give rise to an adverse effect on the integrity of the site if they could arise from the project's implementation:

"*The integrity of the site will be adversely affected if a proposal could, for example:*

- *destroy, damage or significantly change all or part of a designated habitat*
- *significantly disturb the population of a designated species, for example, its breeding birds or hibernating bats*
- *harm the site's ecological connectivity with the wider landscape, for example, harm a woodland that helps to support the designated species from a nearby European site*
- *harm the site's ecological function, or its ability to survive damage, and reduce its ability to support a designated species*
- *change the site's physical environment, for example, by changing the chemical makeup of its soil, increasing the risk of pollution or changing the site's hydrology*
- *restrict access to resources outside the site that are important to a designated species, for example, food sources or breeding grounds*
- *prevent or disrupt restoration work, or the potential for future restoration, if it undermines the site's conservation objectives."*

If these requirements are not met, the proposal must be refused, unless an exemption is justified.[16]

The submitted Appropriate Assessment ("AA") is inadequately reasoned and fails to apply the integrity test correctly. In particular, the reasoning for concluding an absence of significant adverse effects falls short of "no reasonable scientific doubt". The main deficiencies are set out below.

Failure to acknowledge lasting habitat loss from open-cut trenching

In the context of the Thanet Coast and Sandwich Bay SPA and SAC, open-cut trenching through areas of intertidal mudflats, which is a Priority Habitat, would by definition, result in direct and lasting habitat loss. Even where reinstatement is proposed, such activities irreversibly disrupt the sediment structure, biogeochemical properties, and ecological function of these habitats. Consequently, the use of open-cut trenching within or adjacent to these features must be regarded as constituting an adverse effect on site integrity; and thus, per Regulation 63(5) of the Habitats Regulation, as a cause for refusal of the project (unless an exemption is justified).

The precedent established by the Nemo Link project demonstrates a clear and concerning failure to accurately assess and predict environmental impacts, with direct consequences for designated European sites. Despite National Grid Venture's ES for Nemo Link concluding that effects on the Thanet Coast and Sandwich Bay SPA, Ramsar and SAC would be *"short-term"* and *"not significant,"* the works resulted in lasting and demonstrable damage to these European designated habitats. The use of open-cut trenching through the saltmarsh severed the natural bank separating the brackish lagoon from the tidal system, permanently altering the site's hydrology and leading to the loss of the lagoon, a freshwater feature critical to the foraging and natural behaviours of numerous bird and invertebrate

[15] Opinion of Advocate General Sharpston of 27 February 2014, *T.C. Briels and Others v Minister van Infrastructuur en Milieu* (C-521/12), EU:C:2014:113, para. 41.
[16] S. 64, the Habitats Regulations.

species. Eight years later, the saltmarsh vegetation has not recovered, the bank has not been reinstated as promised, and the ecological integrity of the site remains compromised.

This outcome is in direct conflict with Regulation 63 of the Habitats Regulations, which requires certainty beyond reasonable scientific doubt that no adverse effects on site integrity will occur. It also conflicts with NPS EN-1, which requires applicants to demonstrate that impacts on designated sites are avoided, mitigated, or compensated for in accordance with the Mitigation Hierarchy, and that no significant harm remains. Furthermore, it contravenes the established principle from case law that irreversible and lasting damage causes unacceptable significant adverse effects to site integrity: "*measures which involve the **permanent destruction** of a part of the habitat in relation to whose existence the site was designated*", such as the saltmarsh which has *still* not recovered from the destruction imposed by Nemo Link, are "*destined by definition to be categorised as adverse*" and, therefore, should be refused.[17] Given this precedent, where an earlier National Grid project caused lasting damage to a European site despite assurances to the contrary, KWT, the Examining Authority, Natural England, and other Interested Parties cannot have confidence in the Applicant's current assessment of impacts for Sea Link. The failure of the Nemo Link commitments underscores the urgent need for the Examining Authority to apply the precautionary principle rigorously and to require complete, precise, and definitive evidence that the same irreversible harm will not be repeated.

This pattern of inaccurate predictions, unfulfilled mitigation and lasting environmental degradation reflects not merely a project-specific shortcoming but a broader systemic failure in the assessment and governance of NSIPs. Without meaningful reform and accountability, the same flawed approach that damaged Thanet Coast and Sandwich Bay SPA/Ramsar and SAC once before risks doing so again under the banner of Sea Link.

Failure to assess effects against site conservation objectives

Under the Habitats Regulations, "*if a project is likely to have a significant effect [...] then that competent authority must make an appropriate assessment of the implications of the project for that site in view of that site's conservation objectives*".[18] Relevant EU guidance expands on this by clarifying that "*the significance of effects should be determined in relation to the specific features and environmental conditions of the protected site concerned by the plan or project, **taking particular account of the site's conservation objectives** and ecological characteristics*"[19] (emphasis added). This is supported by case law, which makes clear that "*the assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project*".[20]

Whilst the HRA lists the conservation objectives for each site, it fails to analyse the likely effects against those objectives. It therefore omits a key part of the test for determining integrity. Instead, the assessment relies on generalised statements that impacts are "*localised*" or "*temporary*", without assessing how they may impede the maintenance or restoration of qualifying features to favourable conservation status. In this way, the assessment erroneously conflates "significance" with scale, magnitude and duration when, depending on a site's ecological condition and its specific conservation

[17] Opinion of Advocate General Sharpston of 22 November 2012, *Sweetman v An Bord Pleanala* (C-258/11), EU:C:2012:743, para. 60. This part of the opinion was affirmed in the Court's judgment, see paras. 40-46.
[18] S.63(1), Conservation of Habitats and Species Regulations 2017.
[19] European Commission guidance on Article 6 of the Habitats Directive, p. 41, para. 4.5.2.
[20] Judgment of the Court of 12 April 2018. *People Over Wind and Peter Sweetman v Coillte Teoranta* (C-323/17), EU:C:2018:244, para. 34. See also the Judgment of the Court of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 45 and the case-law cited.

objectives, what may superficially seem like a "localised" or "temporary" impact can still be significant. This is a fundamental flaw running through the whole HRA.

Insufficient baseline data
Assessment of impact on integrity must be based on "*complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed*"[21] and enshrined in case law.[22] The European Commission guidance on Article 6 of the Habitats Directive also makes clear that, "*assessments that confine themselves to general descriptions and a superficial review of existing data on 'nature' within the area cannot therefore be considered as 'appropriate'*".[23]

Only one season of protected species surveys (two for birds), was carried out, with no dedicated marine mammal or benthic surveys. The reliance on desk-based data and generic assumptions leaves substantial scientific doubt unresolved. This approach is inconsistent with People Over Wind (C-323/17)[24], Commission v Belgium (C-538/09)[25] and Holohan (C-461/17)[26], which require conclusions to be based on objective, site-specific evidence.

Incorrect approach to assess effects on the integrity of the site from different pathways
The wrong approach also appears to have been taken with regard to the assessment in that potential sources of disturbance (construction noise, lighting, traffic, dust, water pollution, water drainage changes etc) have generally been considered separately in terms of whether they could have a significant adverse effect on a particular site. As a result, the HRA's conclusion is often that the impact falls below the "*significant*" threshold such that there is no impact on the integrity of the site. However, if the impact pathways were considered together for each site, it is likely that there would have been far more adverse impacts on the integrity of the site.

Unsupported and unsecured mitigation
Under Regulations 63(6) of the Habitats Regulations, proposed mitigation of adverse effects must be taking into account as part of the appropriate assessment. Furthermore, Government guidance specifies a series of requirements that mitigation measures must adhere to[27]:

"*You should assess what difference the mitigation measures would make to the effects of the proposal site. You must be sure that the mitigation will be effective. To do this, your assessment will need to show:*

- *How many measures would be implemented and monitored, and how long for*
- *How you would enforce the measures if you had to*
- *How certain you are that the measures would work to avoid or reduce effects on the site*
- *How long it will take for the measures to take effect*

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[21] European Commission guidance, 'The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC', p. 43. Available at: https://op.europa.eu/en/publication-detail/-/publication/11e4ee91-2a8a-11e9-8d04-01aa75ed71a1
[22] See, for example: Judgment of the Court of 20 September 2007, *Commission v Italian Republic* (C-304/05), EU:C:2007:532, para. 69; Judgment of the Court of 24 November 2011, *Commission v Kingdom of Spain* (C-404/09), EU:C:2011:768, para. 100.
[23] See Footnote 23: European Commission guidance, 'The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC', p. 43.
[24] Judgment of the Court of 12 April 2018, *People Over Wind* (C-323/17), EU:C:2018:244.
[25] Judgment of the Court of 26 May 2011, *Commission* v *Belgium* (C-538/09), EU:C:2011:349, para. 39.
[26] Court of Justice of the European Union, *Holohan and Others v An Bord Pleanála* (C-461/17), ECLI:EU:C:2018:883, paras. 33–34, 36.
[27] DEFRA, *"Habitats Regulation Assessments: Protecting a European Site"* (fn 6), section *"Consider mitigation measures"*).

- *The level of success you expect, or what changes you'd make if monitoring shows the measures may fail*."

The Applicant's HRA depends on mitigation measures that are not demonstrably effective or secured through enforceable mechanisms, contrary to Regulation 63(6) and the Government guidance. Both the HRA and the Construction Environmental Management Plan ("CEMP") (APP-341[28] and APP-342[29]) fail to explain most of these factors. For example, there is no evaluation of the likely success of the mitigation measures and what changes the Applicant would make if they prove ineffective, no indication as to the Applicant's level of certainty that each measure would reduce the adverse effect it is intended to alleviate, and no information on the length of time it will take for the measures to take effect. Specific concerns include:

- The absence of evidence regarding the long-term viability of golden plover mitigation;
- The failure to provide binding assurance that trenchless techniques beneath designated habitats will be achieved or enforced under the DCO, despite there being clear precedent for the Applicant reneging on commitment to pursue trenchless techniques and opting instead for open-cut trenching; and
- Reliance on generic pollution control commitments without demonstrated efficacy or monitoring.

Defective cumulative and in-combination assessment
The cumulative assessment employs imprecise language such as "*no observable effects anticipated*" and omits relevant projects that should have been considered under the Government guidance. See section 4. Assessment of Cumulative Impacts for more detail. Further, it dismisses potentially significant impacts as "*short to medium term*" without defining the duration or analysing whether construction disturbance (typically 1–3 years) could have longer-term displacement effects on qualifying species.

Incorrect approach regarding qualifying features
The Applicant's HRA fails to apply the integrity test correctly in relation to qualifying features. Even a significant adverse effect on a single qualifying feature, such as golden plover, is sufficient to conclude that a site's integrity is affected, as set out in European Commission Article 6 guidance.[30] The Applicant's repeated dismissal of effect as "*minor*" or "*temporary*" without reference to specific conservation objectives is unsound and fails to meet the evidential standard required under Regulation 63. In relation to golden plover, the Applicant fails to acknowledge its status as an on-site protected species under the Wildlife and Countryside Act (WCA) 1981. This omission could result in a failure to avoid or mitigate unlawful disturbance or harm during construction, in breach of the WCA 1981.

Failure to identify Priority Habitats and Species
Under Regulation 64 of the Habitats Regulations, the competent authority can approve a project which it considers will adversely affect the integrity of a European site if it is satisfied that, there being no alternative solution, the project must be carried out for imperative reasons of overriding public interest. Where the site hosts Priority Species (listed in Annex II of the Habitats Directive) or Priority Habitats (listed in Annex I of the Habitats Directive), the range of permissible Imperative Reasons of Overriding Public Interest (IROPI) is restricted to grounds of human health, public safety, or benefits of primarily environmental importance. In this case, the Sea Link project does not meet the restricted IROPI criteria. The project is not required for human health or public safety, nor does it deliver benefits of "primary environmental importance" in the meaning of Regulation 64. Furthermore, reasonable alternatives,

[28] EN020026-000187-7.5.3.1 CEMP Appendix A Outline Code of Construction Practice.pdf
[29] EN020026-000207-7.5.3.2 CEMP Appendix B Register of Environmental Actions and Commitments (REAC).pdf
[30] European Commission guidance, 'The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC', p. 43. Available at: https://op.europa.eu/en/publication-detail/-/publication/11e4ee91-2a8a-11e9-8d04-01aa75ed71a1

including alternative landfall locations and less environmentally damaging grid connection solutions, have not been exhausted or properly assessed. As such, the stringent legal tests for IROPI cannot be satisfied, and the project cannot rely on this derogation route.

Overall, KWT, is firmly of the opinion that the HRA is not compliant with requirements under the Habitats Regulation. Specifically:

- The precautionary principle is not applied correctly at either screening or assessment stage;
- Mitigation measures are inadequately defined, evidenced and secured;
- Conservation objectives, qualifying features and priority features are not addressed;
- Cumulative and in-combination effects are materially under-assessed; and
- The integrity test is not applied correctly, with adverse effects being miscalculated and subsequently ignored.

Consequently, the submitted HRA does not provide the "*complete, precise and definitive findings*" required to remove all reasonable scientific doubt (*Commission v Italy, C-304/05*)[31]. Unless these deficiencies are rectified, the Examining Authority cannot lawfully conclude that the Sea Link Project will not adversely affect the integrity of any European site.

2.) FAILURE TO PROPERLY CONSIDER AND CONSULT ON ALTERNATIVE OPTIONS

KWT maintains that the Applicant has failed to demonstrate compliance with its statutory obligations to consider reasonable alternatives to the proposed landfall at Pegwell Bay and the converter station siting at Minster Marshes. The assessment of alternative options presented within the ES and associated documentation falls short of the legal, policy, and evidential standards required under the EIA Regulations and the Habitats Regulations, as well as relevant NPS.

Failure to Consider Reasonable Alternatives:
Regulation 14(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) expressly require that an ES include:

"*a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment.*"

Regulation 14(3)(b) of the EIA Regulations sets the evidentiary threshold for an ES as the information reasonably required to reach a reasoned conclusion on the significant effects of a development on the environment.

The Applicant has not complied with the requirement as, whilst there are descriptions of the options and some analysis, the options documents fail to clearly analyse the relevant environmental impacts of the different options, and fail to explain why, from an environmental standpoint, the option selected has less environmental impact that the others. This failure also means that the Applicant's ES does not meet the evidentiary threshold under Regulation 14(3)(b), as it does not provide the information reasonably required to reach a reasoned conclusion as to the effects of the development on the environment. Instead, the DCO documents present a largely retrospective justification for a pre-determined decision to pursue the Pegwell Bay (K1) landfall and Minster Marshes converter station sites.

Although six landfall options (K1 – K5 and K1a) and two converter station locations were initially identified, there is no evidence that environmental constraints were systematically or transparently

[31] eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62005CJ0304

assessed prior to selecting K1. The process adopted appears to have prioritised engineering convenience and cost over environmental sensitivity, contrary to the principles established under the EIA Regulations, NPS, and the National Planning Policy Framework (NPPF 2024).

Additionally, the Applicant's justification for not consulting on alternative landfall locations in Kent is fundamentally flawed. The ES states that only the "*feasible*" option, Pegwell Bay (K1), was progressed to consultation. However, this approach is inconsistent with the requirements of the EIA Regulations 2017, Regulation 14(2)(d), which mandates that "*reasonable alternatives*" relevant to the development and its characteristics must be described and assessed. The constraints cited by the Applicant to dismiss other landfall options, principally cost, engineering complexity, and the presence of allocated sites for housing, do not constitute absolute barriers and, crucially, apply equally or more acutely to Pegwell Bay itself, with the aggravated constraint that it lies within multiple internationally and nationally designated conservation sites.

The exclusion of other Kent landfall options from public consultation therefore represents a procedural deficiency and a failure to provide stakeholders and decision-makers with a transparent, evidence-based comparison of alternatives. This approach notably breaches the requirement of paragraph 4.3.29 of NPS EN-1, which requires that potential alternatives be identified **before** applying to the Secretary of State, so as to "*allow **appropriate consultation** and the **development of a suitable evidence base** in relation to any alternatives which are particularly relevant*." By pre-determining Pegwell Bay as the only "feasible" option, the Applicant has not demonstrated the balanced, iterative site-selection process required by European legislation and national policy statements.

The Applicant's approach to site selection is also inconsistent with case law. In his review of existing case law on alternative sites in *R (Stonehenge) v Secretary of State for Transport*, Holgate J confirmed:

"*Where there are clear planning objectives to development upon a particular site then "it may well be relevant and indeed necessary" to consider whether there is a more appropriate site elsewhere. "This is particularly so where the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it." Examples of this second situation may include infrastructure projects of national importance*".[32]

The Sea Link project clearly fits the description advanced by Holgate J, as an NSIP which is bound to have significant adverse effects on biodiversity and ecology. Holgate J continues that whilst "*it may not be necessary to consider alternatives if the environmental impact is relatively slight and the objections not especially strong*", this is clearly not the case with the Sea Link project. Distinguishing itself from Holgate J's hypothetical proposal with slight environmental impact, the Sea Link project will have significant adverse effects on the environment, and objections to this project are strong (most notably, the objection that the Applicant has failed to comply with numerous legal and policy requirements). In its own Covering Letter to the Examining Authority dated 1st September 2025, the Applicant states that "*over 6,000 Relevant Representations have been received, which to the best of the Applicant's knowledge is a greater number than have been received on any DCO application to date*."[33] This directly demonstrates that objections are not only "especially strong" but unprecedented, further underscoring the necessity of a rigorous alternatives assessment under both the NPS and the Habitats Regulations. Further case law confirms that the Applicant's lack of consideration of reasonable alternatives is non-compliant with legal requirements. In *R (Mead Realisations Ltd) v SSCLG*, the court held that

[32] *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin), para. 269; citing Simon Brown J (as he then was) in *Trusthouse Forte Hotels Ltd v Secretary of State for the Evironmet* [1986] 53 P&CR, paras. 292, 299-300

[33] EN020026-000768-9.10 s89 1st September Covering letter.pdf

alternatives must be examined with sufficient rigour and transparency to allow the decision-maker to understand why one has been selected over another.[34] Similarly, in *Holohan v An Bord Pleanala (Case C-461/17),* the CJEU confirms that Article 5(3)(d) the EIA Directive "*must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage*".[35] The Applicant has failed to supply such information, thereby contravening the alternatives assessment required following case law.

Non-compliance with NPS EN-1 and EN-5 – Site Selection and Design:
NPS EN-5 sets out clear expectations for applicants in relation to siting, routing and design. Paragraphs 2.2.6 to 2.2.10 state that applicants are not exempt from their duty to consider and balance environmental and community factors in route selection, nor from applying good design and avoidance measures. In other words, constraints such as engineering feasibility or cost do not absolve applicants of the responsibility to minimise environmental harm through appropriate siting.

Paragraph 2.1.10 of EN-5 explicitly requires that routing and avoidance of environmental impacts "*both onshore and offshore*" must be considered at an early stage in the development process. This has not occurred. The decision to pursue landfall at Pegwell Bay, a site within the Thanet Coast and Sandwich Bay SPA, Ramsar, SSSI and NNR, represents the most environmentally damaging of all options considered, directly conflicting with this policy requirement.

Section 2.2 of EN-5 Factors Influencing Site Selection and Design states that the siting of projects should be determined by:

"*the desirability of preserving natural beauty, of conversing flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest and do what* [they] *reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings, or objects*."

The Applicant has paid insufficient attention to this requirement in its selection of proposed sites in Kent. The selection and refinement of the route and landfall options do not evidence a systematic application of these statutory duties, nor do they show that impacts on designated sites, Priority Habitats and Species, or sensitive ecological receptors were avoided where reasonably possible. Instead, the design relies heavily on unproven mitigation rather than early-stage avoidance, directly contrary to the obligations set out in Section 2.2 of NPS EN-5.

The Horlock Rules and the Duty under the Electricity Act 1989
Paragraphs 2.9.18 - 2.9.19 of NPS EN-5 require applicants to follow the Horlock Rules, established by National Grid in fulfilment of their Schedule 9 duty under the Electricity Act 1989. These rules state that applicants must:

- *"consider environmental issues from the earliest stage to balance the technical benefits and capital cost requirements for new developments against the consequential environmental effects in order to keep adverse effects to a reasonable practical minimum;*
- ***seek to avoid altogether internationally and nationally designated areas** of the highest amenity, cultural or scientific value by the overall planning of the system connections;*

[34] R (Mead Realisations Ltd) v Secretary of State for Communities and Local Government [2015] EWHC 2317 (Admin)
[35] Judgment of the Court of 7 November 2018, *Holohan and Others v An Bord Pleanála* (C-461/17), EU:C:2018:883, para. 69

- *protect as far as reasonably practicable areas of local amenity value, important existing habitats and landscape features including ancient woodland, historic hedgerows, surface and ground water sources and nature conservation areas;*
- *consider the land use effects of the proposal when planning the siting of substations or extensions*".

The Applicant's proposal demonstrably fails to comply with these principles. The chosen converter and substation sites are located within a floodplain (Flood Zones 2 and 3), immediately adjacent to Sandwich Bay to Hacklinge Marshes SSSI, permanently destroying Functionally Linked Land ("FLL") to the Thanet Coast and Sandwich Bay SPA/Ramsar, and within a landscape supporting high densities of wintering and migratory birds. Rather than avoiding these constraints, the Applicant seeks to rely on engineered flood defences and "embedded mitigation", a clear departure from the Horlock Rules' first principle – to avoid altogether internationally and nationally designates areas. The Applicant has not provided a properly detailed and reasoned explanation as to why the avoidance of such designated sites is not possible.

Paragraph 2.11.14 of EN-5 further stipulates that where a statutory consultee identifies risks from electromagnetic fields (EMF) or other technical effects, "*the potential impact and siting and design alternatives will need to have been fully considered as part of the application*." KWT wishes to point out that the Maritime and Coastguard Agency (MCA), a statutory consultee, expressly raised concerns regarding "*impacts from Electromagnetic Deviation in nearshore areas*" within their consultation letter (October 2025).[36] This constitutes a clear identification of risk under paragraph 2.11.14, relating to the potential interference of EMF with maritime navigation and compass accuracy. Despite this, the Applicant has provided no evidence that siting and design alternatives were assessed to avoid such effects. The omission further demonstrates a failure to address the full suite of siting and technical design considerations required by policy.

Overall, the Applicant's approach to alternatives and site selection is inconsistent with the statutory duties of the EIA Regulations 2017, the mitigation hierarchy in NPPF, and the principles of NPS EN-1 and EN-5. The Applicant has failed to demonstrate that avoidance was prioritised or that alternative options were properly considered, particularly where these alternatives were assessed as having fewer environmental constraints.

3.) THE MITIGATION HIERARCHY

The Mitigation Hierarchy is a well-established principle in environmental assessment and is embedded in multiple regulatory frameworks:

- Under the EIA Regulations, developers must provide in the ES "*a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment*" (Regulation 14(2)(c)). Schedule 4(7) requires that such description addresses the mitigation measures for any identified significant adverse effects and any proposed monitoring arrangement for such mitigation. This description should explain the extent to which significant adverse effects on the environment are "*avoided, prevented, reduced or offset*", covering off the construction and operation phases of the proposed project.
- The EIA Regulations also require developers to include in the ES "*a description of the reasonable alternatives studies […] and an indication of the main reasons for the option chosen, taking into account the environmental effects*" (Regulation 14(2)(c)).

[36] EN020026-000940-Sealink rule 6 letter response from MCA 17 10 25_Redacted.pdf

Such requirements are rooted in the principle of impact avoidance, which is also reflected in NPS EN-1, where paragraph 5.4.42 states that *"development should, in line with the mitigation hierarchy, aim to avoid significant harm to biodiversity and geological conservation interests, including through consideration of reasonable alternatives."*

Paragraphs 5.3.4 and 5.4.35 of NPS EN-1 require applications to demonstrate how significant negative effects would be avoided and mitigated following the Mitigation Hierarchy, which demands the integration of appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development. In addition, the HRA process demands a strict application of avoidance at the screening and appropriate assessment stages. Regulation 63(5) of the Habitats Regulations states that competent authorities "*may agree to the plan or project* ***only after*** *having ascertained that it will not adversely affect the integrity of the site"* (emphasis added). Demonstrating that impacts can be avoided, not merely reduced or offset, is the first and most important step of the Mitigation Hierarchy.

Document 6.1 (B) Environmental Statement Non-Technical Summary (AS-016)[37] describes that mitigation measures have been categorised as follows:

- 'Embedded Measures'
- 'Control and Management Measures'
- 'Additional Mitigation'

The categorised mitigation measures described in document AS-016 broadly align with the principles of the Mitigation Hierarchy. For example, 'Embedded Measures', such as routing infrastructure sensitively or siting works to reduce environmental effects, are built into the design from the outset and are presented as corresponding to the first step of the Mitigation Hierarchy – 'Avoidance'. However, the description provided by the Applicant focuses on these measures being intended "*to reduce*" effects, which implies minimisation rather than true avoidance. This suggests that the first and most important step of the Mitigation Hierarchy – to avoid impacts entirely – has been under-emphasised or potentially skipped.

'Control and Management Measures', which include good practice operational controls such as construction management plans, correspond broadly with the second step of the hierarchy – 'Minimisation'. These measures do not prevent impacts from occurring but instead serve to manage or reduce their severity during implementation.

'Additional Mitigation' refers to site- or topic-specific actions applied where embedded or control measures are insufficient. Since the pre-application stage, KWT has consistently maintained that the proposed location of the Sea Link project is unsuitable, a concern underscored by the volume and extent of 'Additional Mitigation' measures proposed by the Applicant. These include compensation or offsetting for ecological effects such as the loss of riparian habitat, loss of habitat used by golden plover (a qualifying feature to the SPA) and breeding skylark, increased bird collisions, disturbance to breeding and wintering birds, loss of macroinvertebrate and macrophyte communities, and impacts on noise-sensitive receptors.

Whilst these categories collectively represent a tiered approach consistent with the Mitigation Hierarchy, KWT considers that the DCO documents reveal that, in practice, the approach is disproportionately weighted toward minimisation and compensation, rather than avoidance. This reinforces a key concern raised by KWT during the pre-application consultation, that the Applicant has not given adequate consideration to avoidance measures and has instead relied predominantly on

[37] EN020026-000534-6.1 (B) Environmental Statement Non Technical Summary (Clean).pdf

mitigation strategies that fall lower in the Mitigation Hierarchy. For example, within Document 7.5.3.1 Register of Environmental Actions and Commitments (APP-342)[38] Table 1.3 Register of Environmental Actions and Commitments – Kent Onshore Scheme notes that there will be "*loss of habitat within Sandwich Bay to Hacklinge Marshes SSSI, Thanet Coast & Sandwich Bay SPA/Ramsar and Sandwich Bay SAC*." While the installation method proposed for the Kent Landfall includes a trenchless technique, intended to "*minimise the loss of habitat*" and "*avoid any loss of saltmarsh*," this still results in a loss of habitat within these internationally and national designated conservation sites. If it can be demonstrated that there is no viable way to avoid the saltmarsh, KWT will support the use of trenchless techniques, as a mitigation measure to reduce impacts rather than open-cut trenching. However, we consider that insufficient effort has been made to avoid the saltmarsh in the first instance. We further note that there is no definitive guarantee that open-cut trenching across the saltmarsh can be excluded – this is an important lesson from the Nemo project. Likewise, open-cut trenching of other designated habitats, such as Priority Habitat mudflats, demonstrates that the first and most important step of the Mitigation Hierarchy, avoidance, has not been adequately applied.

There is also no information on the mechanisms by which mitigation will be implemented, monitored or enforced, nor on what corrective measures would be taken in the event of failure. These deficiencies are apparent in relation to the proposed golden plover mitigation, which lacks any detail as to effectiveness, monitoring, or enforcement. This omission constitutes a material flaw in the HRA and ES.

4.) ASSESSMENT OF CUMULATIVE IMPACTS

Inter-Project Cumulative Impacts Assessment

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

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

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

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

- Existing projects: Already built and operational developments (e.g., Nemo Link);
- Approved projects: Those with development consent that are not yet built (e.g., KCC/TH/0041/2024 approved ground mounted solar photovoltaic (PV) array with associated infrastructure); and
- Reasonably foreseeable projects: Those that are publicly proposed or in planning, even if not yet consented but where there is enough certainty, that they may proceed (e.g., Statkraft Little South Solar Farm Ash Levels and RBL Solar 2 land adjacent to Richborough Energy Park).

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

- It requires assessing cumulative impacts with other plans or projects, regardless of who is responsible for them.
- Projects do not need to be under the same developer or authority.

[38] EN020026-000207-7.5.3.2 CEMP Appendix B Register of Environmental Actions and Commitments (REAC).pdf

- Past projects, like Nemo Link, and ongoing or proposed developments in the same area must be considered if their effects could overlap spatially or temporally.

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

Case law further supports this approach. The CJEU in *Waddenzee* (C-127/02) confirmed that the appropriate assessment must consider a plan or project's significant effects on a site "*either individually or in combination with other plans or projects*", echoing the legislative duty established under Article 6 of the Habitats Directive, and retained under Regulation 63(1)(a) of the Habitats Regulations.[39] In *Commission v Kingdom of Spain* (C-404/09), the CJEU confirmed the same position under the EIA Directive (which is part of retained EU law through the EIA Regulations): assessments of environmental impact "*must also include an analysis of the cumulative effects on the environment which that project may produce if considered jointly with other projects*".[40]

The entire legal and policy rationale is clear: coordinated assessment ensures that infrastructure is planned and consented with full understanding of its total environmental impact, not considered in isolation. Cumulative impacts therefore need to be fully transparently addressed.

In this case, the Applicant's cumulative assessment fails to meet these statutory duties. There is no robust analysis of how other consented or proposed developments within the same ecological landscape will interact with Sea Link's impacts, particularly in relation to qualifying features of the Thanet Coast and Sandwich Bay SPA. The Applicant's ES and HRA fail to take into account several relevant projects in proximity to the proposed golden plover mitigation site, including, but not limited to:

- Goshall Valley Solar Farm – 84 ha, c. 400m south-west of the mitigation site;
- RBL2 Solar Farm – 62 ha, immediately north of the proposed mitigation site; and
- Planning application 25/00459 – a mixed-use development of 356 dwellings and associated infrastructure c. 280m south-east of the site.

Together, these developments represent the permanent loss of approximately 160ha of FLL to the Thanet Coast and Sandwich Bay SPA. Despite this, the Applicant provides no evidence of cumulative assessment of the combined effects on habitat suitability, disturbance levels, or the long-term viability of the proposed mitigation land. Treating these developments in isolation, rather than cumulatively, fails to demonstrate compliance with Regulation 63(5) of the Habitats Regulations and Regulation 14(2) of the EIA Regulations.

Further concern arises from the National Grid ESO's "*Beyond 2030 Strategy*" (March 2024)[41], which includes routing proposals for a new offshore cable between Scotland and Kent (SW_E2a_2). This proposal identified Pegwell Bay as the preferred connection point. Despite its inclusion in National Grid's published strategy, the Applicant has refused to consider it within the cumulative assessment, claiming it is too early in development. This is inconsistent with requirements under the Habitats

[39] Judgment of the Court of 7 September 2004, Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (C-127/02), EU:C:2004:482, para. 45.

[40] Judgment of the Court of 24 November 2011, *Commission v Kingdom of* Spain (C-404/09), EU:C:2011:768, para. 80.

[41] neso energy 'Beyond 2030' A national blueprint for a decarbonised electricity system in Great Britain

Regulations and the EIA Regulations, as confirmed in case law. For example, the CJEU in *Commission v Kingdom of Sprain* (C-404/09) held that the "*[cumulative] assessment be a **preliminary** to the authorisation of the project*" (emphasis added),[42] and the *High Court in Pearce v SSBEIS v Norfolk Vanguard Limited* [2021] EWHC 326 (Admin) quashed the North Vanguard Offshore Wind Farm Order after finding on judicial review that assessment of cumulative effects had unlawfully been postponed in the development process.[43]The habitats and species at Pegwell Bay have already been affected by the Nemo Link project; Sea Link would represent a second major impact, and SW_E2a_2 a potential third. Repeated large-scale disturbance to the same designated site is unacceptable and is a real threat to the medium/long-term future of the site. It also represents a clear failure to apply the precautionary principle and the cumulative assessment approach enshrined in both domestic and European law.

Intra-Project Cumulative Impacts Assessment

The wrong approach appears to have also been taken with regard to the impact assessment in that potential sources of disturbance (construction noise, lighting, traffic, dust, water pollution, water drainage changes, etc.) have generally been considered separately in terms of whether they could have a significant adverse effect on a particular site. The resulting conclusion is often that the impact falls below the "significant" threshold such that there is no impact on the integrity of the site. However, this veers towards ignorance of functional interdependence within the Sea Link project, and artificial division of the required cumulative assessment. Case law criticises the "*mischief of "salami-slicing", or "project-splitting*" *being resorted to in an attempt to evade the requisite assessment*" of impact on integrity under Regulation 63 of the Habitats Regulations.[44] Whilst not quite 'salami-slicing', the Applicant tends towards an approach of intra-project division within its cumulative assessment, seemingly with the aim of artificially limiting the assessed level of impact by splitting it across separate impact pathways. If these impact pathways were instead considered cumulatively for each individual site, it is likely that far greater adverse impacts on the integrity of the site would have been found. As such, it is KWT's belief that the Applicant adopts a flawed approach to its assessment of cumulative effects, which results in an under-representation of the extent of impact on site integrity.

Additionally, the ES offers superficial consideration of transboundary and migratory impacts, despite acknowledging the area's role within the East Atlantic Flyway. The lack of cumulative assessment for migratory and overwintering species is inconsistent with the expectation of NPS EN-1 and EN-5, which require applicants to identify and evaluate cumulative and cross-boundary ecological effects, including for internationally important species.

Finally, the Planning Inspectorate's HRA Advice Note (2025) reiterates that a Habitats Regulations Assessment must "*provide a clear conclusion on whether an adverse effect on the integrity (AEoSI) of a European site can be ruled out, alone or in combination with other plans and projects*." The Applicant's submission fails to do so. The cumulative risks to the Thanet Coast and Sandwich Bay SPA/Ramsar and associated FLL remain unquantified, the mitigation untested, and the conclusion unsupported by evidence.

5.) IMPACTS TO BIODIVERSITY

Habitat Loss to Thanet Coast and Sandwich Bay Designated Sites

KWT remains deeply concerned about the real and significant residual risks posed by the Sea Link project to the Thanet Coast and Sandwich Bay SPA/Ramsar, Sandwich Bay SAC, and Sandwich Bay to

[42] Judgment of the Court of 24 November 2011, *Commission v Kingdom of* Spain (C-404/09), EU:C:2011:768, para. 83.

[43] *Raymond Stephen Pearce v Secretary of State for Business Energy and Industrial Strategy v Norfolk Vanguard Limited* [2021] EWHC 326 (Admin).

[44] *R (on the application of Together Against Sizewell C Limited) v Secretary of State for Energy Security and Net Zero Sizewell C Limited* [2023] EWCA Civ 1517, para. 71.

Hacklinge Marshes SSSI. Of particular concern is the use of horizontal directional drilling (HDD) through this protected area.

Whilst the Applicant asserts that the use of HDD will avoid surface impacts to the Thanet Coast and Sandwich Bay designated sites, this assurance is critically undermined by the admission that open-cut trenching may be required should HDD fail. Likewise, the final 45 metres under the intertidal mudflats, a Priority Habitat within the SSSI/SPA/Ramsar/SAC boundary, will require open cut trenching, with the Applicant's Benthic Ecology Chapter (AS-020)[45] of the ES stating "*impacts during HDD exit and cable pull at the exit point will affect the intertidal zone* [mudflats] *and cable trenching will affect both intertidal and subtidal habitats*." These intertidal mudflats support internationally important bird and invertebrate communities, forming the ecological foundation of Sandwich and Pegwell Bay SPA/Ramsar and SAC. As referenced within the Applicant's AS-020 document, the mudflats are noted within the Thanet Coast and Sandwich Bay SPA citation as a supporting habitat for the qualifying ornithological features. Therefore, it is concerning that the Applicant is not taking the same precautions at the Kent landfall site as they are at the Suffolk landfall site, with the Benthic Ecology Chapter, paragraph 2.6.3 stating:

"*At the Suffolk landfall, the entry/exit point, where the cable will be pulled for subsequent submarine installation, will be entirely in the subtidal environment, thus avoiding the intertidal area. There will be no direct impacts to intertidal benthic ecology receptors at this location* [Suffolk] *and therefore it has not been considered further in the impact assessment. In Kent, the trenchless solution will completely avoid saltmarsh habitat, exiting approximately 105 – 140m down shore of this habitat, exiting within intertidal mudflats*."

This inconsistent approach raises serious concerns regarding the Applicant's adherence to the Mitigation Hierarchy and the legal duty under Regulation 63 of the Habitats Regulations to avoid adverse effects on the integrity of a European site. The only circumstance in which a project may proceed despite residual adverse effects on site integrity is where imperative reasons of overriding public interest (IROPI) apply. However, IROPI cannot lawfully be invoked here. First, the Thanet Coast and Sandwich Bay complex includes Priority Habitats, meaning that IROPI is restricted to grounds of human health, public safety, or primary environmental benefits, categories that do not encompass the delivery of energy transmission infrastructure. Second, the Applicant has failed to demonstrate that no less environmentally damaging alternatives exist, which is a mandatory prerequisite before IROPI can be considered.

The decision to avoid intertidal habitats entirely by the use of HDD at the Suffolk landfall, but not at Kent, appears conflicting to the principles of equivalence and precaution embedded in the Habitats Regulations, the NPS EN-1 and EN-3, and established case law such as *People Over Wind* (C-323/17).[46] In light of these obligations, it is unclear why the same avoidance-led design applied at Suffolk has not been implemented in Kent, particularly given the recognised sensitivity and statutory protection of the intertidal mudflat habitats within the Thanet Coast and Sandwich Bay complex.

Furthermore, KWT, along with other eNGOs, is not convinced by the Applicant's claims that trenchless techniques can be used in the first instance. During the Nemo Link project, similar trenchless methods were proposed but ultimately abandoned, resulting in severe and long-lasting damage to the saltmarsh, damage that remains unrecovered to this day. This long-term damage caused by Nemo Link provides essential context for evaluating Sea Link's biodiversity impacts. Despite assurances that effects on the Thanet Coast and Sandwich Bay SPA/Ramsar/SAC would be "*short-term*" and "*not significant*," open-cut trenching resulted in permanent alteration of the saltmarsh and the loss of the brackish lagoon,

[45] EN020026-000538-6.2.4.2 (B) Part 4 Marine Chapter 2 Benthic Ecology (Clean).pdf
[46] See, for example, *People Over Wind* (C-323/17), paras. 30 and 34.

impacts that remain evident eight years later. This precedent demonstrates that earlier assessments substantially underestimated ecological harm and that key mitigation commitments were not fulfilled.

Additionally, despite the Applicant asserting during meetings with KWT that the affected mudflats from Nemo Link have since recovered, no evidence has been provided to substantiate this claim, despite repeated requests. The lack of supporting data undermines confidence in the Applicant's assertions regarding the resilience of these habitats. Furthermore, the Applicant's failure to secure an alternative route should trenchless methods prove unviable represents a critical weakness in environmental risk management. Any likelihood, however small, of open-cut trenching through the saltmarsh is incompatible with the precautionary principle under Regulation 63 of the Habitats Regulations, which prohibits development consent unless it can be ascertained that there will be no adverse effect on site integrity.

This approach also conflicts with NPS EN-1, which requires that applicants clearly set out effects on internationally and nationally designated sites (paragraph 5.4.17) and demonstrate how opportunities to conserve and enhance biodiversity have been taken (paragraph 5.4.19). Relying on trenchless drilling without a secured fallback that avoids designated habitats fails to meet this standard. In light of the UK's legally binding target to halt biodiversity loss by 2030 under the Environmental Targets (Biodiversity) (England) Regulations 2023, projects such as Sea Link must not only avoid ecological harm but deliver measurable net gains. Should the landfall remain at Pegwell Bay, KWT therefore urges the Examining Authority to require a binding commitment to alternative routing and/or an alternative landfall option should HDD fail, learning from the ecological failure of the Nemo Link scheme.

Given this history, KWT has serious concerns regarding the reliability of the Applicant's current ecological impact predictions for Sea Link. The failures observed during Nemo Link illustrate that without robust precaution, complete and precise evidence, and enforceable mitigation, irreversible biodiversity losses can and do occur.

This reinforces the need for the Examining Authority to scrutinise the Applicant's assessment and proposed safeguards rigorously to ensure that the mistakes of Nemo Link are not repeated.

Habitat Loss at Minster Marshes:
Although the Applicant categorises most habitat losses as "temporary", the ES concedes that recovery may take several years, in addition to the construction time, depending on restoration success. For instance, construction works at Minster Marshes will result in:

- Loss of 140m of hedgerow, vital for ecological connectivity;
- Removal of 300m of ditch habitat, key for aquatic and riparian species;
- Clearance of dense scrub and broadleaved woodland belts; and
- Loss of approximately 15ha of Priority Habitat floodplain grazing marsh (Section 41, Natural Environment and Rural Communities Act 2006, or 'NERC Act 2006').

Floodplain grazing marsh is a nationally scarce habitat supporting diverse invertebrate, amphibian, and bird assemblages. Its misclassification within the ES as a mix of neutral and improved grassland significantly underrepresents its ecological value within the Stour Valley biodiversity network. The ES stating that recovery of these habitats will take several years in addition of the construction time, conditional on restoration success, raises serious questions about the Applicant's claim that these impacts are "temporary." Previous development decisions have found that cases where the recovery of habitats is uncertain and recovery timescales extend beyond 10 years may not be acceptable.[47] KWT believes that the Sea Link project is one such case, where the recovery of the damaged habitats is by no

[47] See, for example, the Secretary of State's decision regarding the Gilwerne to Hafodyrynys gas pipeline (2002).

means guaranteed by the Applicant, and could foreseeably fall into the 10+ years' time period which has previously been found to be unacceptable.

The loss of hedgerow and woodland edge further exacerbates habitat fragmentation across an already constrained ecological corridor, contrary to the Government's 30 by 30 commitment to protect 30% of land and sea for nature by 2030. The cumulative footprint of the converter station, 40m-wide HVDC working corridor, 27 temporary culverts and 16 outfalls will further sever riparian and terrestrial linkages critical for mammals, amphibians, reptiles and the critically endangered European eel.

Habitat Loss at Ash Level and South Richborough Pasture Local Wildlife Site:
KWT also wishes to highlight the permanent and cumulative habitat losses within Ash Level and South Richborough Pasture Local Wildlife Site ("LWS"). The Applicant estimates a temporary loss of around 30ha (approximately 4% of the LWS), affecting valuable Priority Habitat floodplain grazing marsh and ditch systems that are difficult to restore to ecological equivalence. When considered alongside the proposed 84ha Goshall Valley Solar Farm, which would permanently remove 8.3% of the same LWS, the cumulative loss would reach over 11% (114ha) of this ecologically important site. Such reduction and fragmentation cannot be justified through "temporary" disturbance or limited habitat enhancements and represents a clear breach of the Mitigation Hierarchy and duties under the Environment Act 2021 to conserve and enhance biodiversity. For example:

- Failure to follow the Mitigation Hierarchy: The scale of habitat loss and fragmentation cannot be justified under the Mitigation Hierarchy. The Applicant has not demonstrated that reasonable avoidance options were considered or exhausted, nor have they provided evidence that the affected habitats, particularly the species-rich ditch systems and grazing marsh, can be restored to ecological equivalence within the timescales assumed. Reliance on "*temporary disturbance*" or minor habitat enhancements does not meet the standard required under NPS EN-1, EN-5 or good ecological practice, all of which place avoidance at the forefront of decision-making for sensitive and irreplaceable habitats.
- Duties under the Environment Act 2021: The scale of loss sits uncomfortably with the duties arising under the Environment Act 2021. Section 1 places legally binding obligations on the Secretary of State to meet national environmental targets, including those relating to biodiversity abundance and habitat extent. These duties apply across all functions of the Secretary of State, including when determining DCOs. Permitting large-scale, cumulative erosion of a designated LWS, without clear avoidance, secured mitigation, or meaningful ecological justification, would undermine the statutory duty to "*conserve and enhance biodiversity*" under Section 98 and runs contrary to the intent of the Act's environmental target framework.

Other Habitat / Species Loss:
The loss of habitat will also directly affect breeding and wintering bird populations. The Applicant has incorrectly scoped out hedgerow impacts as "temporary," despite confirming that construction of the Minster converter station and substation will result in permanent hedgerow loss. These structures provide essential nesting, foraging and commuting habitat for a range of bird species including turtle dove and yellowhammer.

The ES also acknowledges significant impacts on Cetti's warbler (Schedule 1, Wildlife and Countryside Act 1981) and red- and amber-listed farmland birds such as skylark, yellow wagtail, and reed bunting. While labelled "*temporary*", the recovery of lost hedgerows and woodland is estimated to take 5–10 years, effectively representing a medium-term loss of breeding territories. Species such as skylark and yellow wagtail are territory-faithful; repeated (and/or prolonged) disturbance and habitat fragmentation can lead to sustained population decline. The ES itself concludes that residual effects on inland nesting

birds will be "*moderate adverse*" and "*significant*" in the short to medium term, an assessment KWT agrees with.

Although the Applicant proposes 10ha of habitat enhancement for farmland birds, there is insufficient evidence that this will provide functional ecological equivalence to the complex mosaic of arable, grassland and wetland habitats being lost. Moreover, woodland and scrub creation cannot compensate for the loss of open-field nesting habitat, as these environments are ecologically non-interchangeable. Such substitution would likely result in a net loss of breeding opportunities for farmland species, contrary to NPS EN-1 Section 5.4, the EIA Regulations 2017 and the Environment Act 2021.

Finally, the Applicant's portrayal of "moderate beneficial" long-term effects is unsubstantiated. Without enforceable restoration and management plans, including quantified success criteria and monitoring commitments, there is no assurance that lost habitats will recover to their former ecological value.

KWT therefore urges the Examining Authority to:

- Scrutinise the feasibility and enforceability of trenchless methods;
- Require legally binding fallback options that avoid designated habitats;
- Require the Applicant to strengthen habitat restoration and monitoring commitments with measurable targets; and
- Require the Applicant to fully account for cumulative and long-term habitat loss within LWS and ecologically sensitive areas.

Without these measures, the proposal risks causing the permanent degradation of designated habitats, contravening the Habitats Regulations 2017, NPS EN-1 and EN-5, and the Environment Act 2021, and undermining national efforts to halt biodiversity decline.

Pollution

KWT remains seriously concerned about the pollution risks associated with the 27 temporary and 11 permanent culverts proposed within the Kent Onshore Scheme. The Applicant acknowledges that "*high rainfall events could cause a large number of pollutants from runoff to enter the watercourse system which may affect macroinvertebrate communities downstream*." However, it concludes that pollutants will be diluted or filtered through attenuation ponds, resulting in a "*negligible*" and "*not significant*" impact.

KWT strongly disagrees. This conclusion is scientifically unsound and fails to consider the well-documented first flush effect, where initial stormwater runoff carries disproportionately high concentrations of contaminants, including hydrocarbons, heavy metals, nutrients, and suspended solids, that can cause acute toxicity to aquatic invertebrates and fish before dilution occurs. The assumption that rainfall equates to safe dilution contradicts Environment Agency guidance and established hydrological science.

These risks are amplified by the hydrological setting of the converter and substation sites within Minster Marshes; low-lying floodplain wetlands that act as natural water retention and filtration systems. In such environments, pollutants are not rapidly flushed away but can persist, accumulate, or disperse widely, posing ongoing threats to wetland ecology and the water quality objectives of the Water Framework Directive (2000/60/EC) and its UK transposition (Water Environment (Water Framework Directive) (England and Wales) Regulations 2017). Furthermore, given the ecological link between these wetland habitats and the Thanet Coast and Sandwich Bay SPA/Ramsar, contamination of functionally linked hydrology would risk contravening the Habitats Regulations as well.

The Applicant's claim of "negligible" effects fails to satisfy the precautionary requirements of Regulation 63 of the Habitats Regulations as reaffirmed in *Waddenzee* (C-127/02), *Sweetman* (C-

258/11), and *People Over Wind* (C-323/17), including that conclusions of no adverse effect must be based on "*complete, precise and definitive findings*" as per *Commission v Italian Republic* (C-304/05), *Commission v Kingdom of Spain* (C-404/09), and following case law.

Unsupported qualitative statements do not meet this test. Similarly, NPS EN-1 (Section 5.16) requires applicants to demonstrate that projects will not cause deterioration in water body status or impede achieving good ecological potential. Reliance on assumed dilution, rather than demonstrated treatment or containment, fails to comply with these obligations and undermines the Mitigation Hierarchy. By presuming that impacts will be neutralised through natural process rather than designing the scheme to avoid pollution risks at source, the Applicant bypasses the upper tiers of the Mitigation Hierarchy – avoidance and minimisation – and instead relies prematurely on lower-order, unproven mitigation, which is contrary to policy and best practice.

Moreover, following *R (Morge) v Hampshire CC* [2011] UKSC 2, competent authorities must be satisfied through material evidence, not assertion, that a proposal will not adversely affect site integrity.[48] No such evidence is presented here: there is no pollutant quantification, hydraulic modelling, or empirical monitoring data to substantiate the Applicant's conclusions.

Discharging runoff into the sensitive hydrological system of Minster Marshes without demonstrable pollution control therefore represents a significant risk of ecological degradation and non-compliance with the Habitats Regulations, Water Framework Directive, and NPS EN-1. The HRA and ES must be revisited to include:

- Quantitative pollutant loading and dispersion modelling;
- Hydrological risk assessment for floodplain interactions; and
- Robust, enforceable mitigation and monitoring to ensure no adverse effect on watercourses or dependent habitats.

Without this evidence, the assumption of "*negligible*" impact cannot be sustained, and the project cannot be lawfully consented under the precautionary requirements of the Habitats Regulations.

Noise & Vibrations

Within the ES Chapter 9 Noise and Vibration (AS-111[49]), the Applicant concludes that "*no significant effects are anticipated*" from construction or operational noise and vibration. However, this conclusion is not supported by sufficient evidence, nor does it meet the evidential or procedural standards required under the EIA Regulations 2017 and relevant case law. Baseline data collection has been limited in both temporal and spatial coverage, with monitoring undertaken over a short period in 2023 at a narrow selection of receptors. No year-round or seasonally varied data are provided to reflect changing background conditions or the sensitivity of wildlife and human receptors across different times of year. This is a critical deficiency given the proximity of the works to designated habitats and communities.

The ES relies on modelling rather than measured verification, assuming worst-case attenuation and mitigation that are neither demonstrated nor enforceable. The ES also fails to evaluate the cumulative noise and vibration impacts arising from overlapping construction phases, plant operation, and heavy goods vehicle (HGV) movements, particularly along the A256 corridor. Site-specific modelling must be undertaken in accordance with BS 4142 (industrial noise) and BS 5228 (construction noise and vibration) standards, explicitly assessing how predicted noise (including traffic) and vibration levels will affect the proposed golden plover mitigation site. The Noise and Vibration chapter (AS-111) confirms

[48] *R (Morge) v Hampshire CC* [2011] UKSC 2, para. 84.

[49] EN020026-000779-6.2.3.9 (B) Part 3 Kent Chapter 9 Noise and Vibration (Clean).pdf

that the A256, which runs immediately adjacent to the proposed mitigation site, experiences moderate to high ambient noise levels and that "*the main source of noise include road traffic from the A256* [...] *there are also potential industrial sources of noise, particularly in the vicinity of the A256.*" Despite this, the assessment fails to evaluate how these baseline conditions, or additional construction and operational noise and vibration, will influence the behaviour and habitat use of golden plover and other sensitive bird species such as lapwing, particularly in relation to the proposed mitigation site. Continuous exposure to such disturbance is likely to render the mitigation site unsuitable for foraging and roosting, directly undermining its function as proposed mitigation for the loss of FLL to the Thanet Coast and Sandwich Bay SPA.

The ES treats noise primarily as a human amenity issue, overlooking its ecological implications. This approach is inconsistent with NPS EN-1, paragraph 5.12.4 which requires that noise effects of the proposed development on ecological receptors should be assessed. Studies have consistently shown that chronic noise can cause avoidance behaviour, disrupt flock cohesion and increase energy expenditure in wading birds and waterfowl.[50] Such effects are especially pronounced in open habitats where visual and acoustic cues are critical to predator detection and communication.

Additionally, the ES provides no quantification of construction noise levels in proximity to the proposed mitigation site or other FLL used by the SPA species, nor does it assess vibration effects from pylon installation or trenching works near wetland areas. This omission is conflicting with BS 5228-2:2009+A1:2014 guidance (guidance on controlling vibration from construction) and best practice for assessing ecological receptors in areas subject to sustained or impulsive noise. The Applicant also relies heavily on assumptions of temporary disturbance, suggesting that any displacement will be reversible once construction ceases. However, ecological literature[51] highlights that repeated or prolonged disturbance, even temporary, can lead to long-term site abandonment and reduced habitat functionality.

Under the Noise Policy Statement for England (NPSE, 2010)[52] and NPS EN-1 (Section 5.12), applicants must demonstrate that noise impacts have been reduced and minimised as far as reasonably practicable and that residual effects are acceptable. The Applicant's reliance on generic embedded mitigation and the assumption that noise thresholds will not be exceeded fails to demonstrate compliance with these policy tests. In line with *Waddenzee* (C-127/02) and *People Over Wind* (C-323/17), where uncertainty remains, a conclusion of no adverse effect cannot lawfully be reached without further investigation. Similarly, *R (Morge) v Hampshire Country Council* [2011] UKSC 2 confirmed that competent authorities must be satisfied on the basis of material evidence, not assumption, that disturbance will not adversely affect site integrity.

Given these precedents, the Applicant's Noise and Vibration assessment cannot reasonably be relied upon. It lacks the transparent methodology and complete, precise data necessary to remove all reasonable scientific doubt. KWT therefore requests that:

- The Examining Authority require a revised, seasonally representative baseline noise assessment, including data on both human and ecological receptors;
- Site-specific modelling be undertaken in accordance with BS 4142 (industrial noise) and BS 5228 (construction noise and vibration) standards, explicitly assessing how predicted noise (including traffic) and vibration levels will affect the proposed golden plover mitigation site;

[50] Reijnen & Foppen, 2006; McClure et al., 2013

[51] NatureScot Research Report 1283 - Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species | NatureScot

[52] Noise Policy Statement for England

- Cumulative and in-combination effects be reassessed, particularly in the context of other ongoing or proposed infrastructure works in East Kent;
- Binding noise limits and monitoring protocols be secured through a requirement in the DCO, with enforceable mitigation triggers and remedial actions where thresholds are exceeded.

6.) PROTECTED SPECIES

KWT is concerned that the Applicant has based their assessment of protected species impacts on only one season of ecological survey data. For a project of this scale and complexity, particularly one affecting a range of legally protected and sensitive habitats, a single survey season of data is insufficient to provide a robust understanding of species presence, distribution and population dynamics. Whilst the EIA Regulations 2017 and NPS do not specify a required number of survey years, both emphasise that environmental assessments must be based on appropriate baseline data and *"include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment."*[53] In addition, Natural England's standing advice for protected species (e.g. bats, great crested newts, reptiles) regularly states that more than one survey season may be necessary to adequately understand how a species is using a site, especially where populations are mobile, cryptic, or subject to annual variation. This is reinforced in guidance such as CIEEM's Guidelines for Ecological Impact Assessment (EcIA)[54], which stresses that ecological surveys must be sufficient in scope, timing, and duration to capture natural variation. In KWT's view, reliance on a single season of surveys fails to meet this standard and risks underestimating the scale and nature of impacts on protected species.

Breeding and Wintering Birds

Breeding bird surveys undertaken in 2023 and 2024 demonstrate the exceptional ornithological value of the proposed development area. A total of 95 species were recorded in 2023, increasing to 109 in 2024, including up to 73 red or amber-listed species of conservation concern. Evidence of breeding was confirmed, probable or possible for 84 species, including several listed under Schedule 1 of the WCA 1981, notably barn owl, little ringed plover, and garganey, as well as confirmed breeding of Cetti's warbler within the Order Limits. Annex I species such as marsh harrier, sandwich tern, and peregrine falcon were also recorded foraging through the Order Limits, underscoring its value for protected and migratory species. The number of Section 41 (NERC Act) Priority Species increased from 12 in 2023 to 18 in 2024. Intertidal and riparian areas, particularly along the River Stour, supported regionally important assemblages, including spotted redshank, representing approximately 1% of the national population in 2023. Inland areas, particularly those adjacent to the River Stour and within Parcel 244 (location of the proposed converter and substation), are of District to County importance, supporting key populations of marsh harrier, skylark and waders following seasonal inundation.

Given this evidence, the Applicant's assertion that displaced breeding birds can simply relocate to "*abundant*" habitat elsewhere is ecologically unsound and legally indefensible. Many of the affected areas lie within or adjacent to the Sandwich Bay to Hacklinge Marshes SSSI, designated partly for supporting nationally rare breeding bird species. Displacement during the breeding seasons risks nest failure, territory loss and disruption to site fidelity, contrary to the WCA 1981 which imposes a statutory duty to avoid harm to the notified features of a SSSI. Such disturbance also conflicts with paragraph 193 of the NPPF (2024) and paragraphs 5.4.42 - 5.4.43 of NPS EN-1, both of which require significant harm to biodiversity to be avoided, and if unavoidable, mitigated or compensated through ecologically equivalent measures. The Environment Act 2021 further establishes a legal duty to conserve and

[53] EIA Regulations 2017, reg. 14(3)(b).
[54] EcIA-Guidelines-v1.3-Sept-2024.pdf

enhance biodiversity, reinforcing that disturbance within or adjacent to designated sites without effective mitigation is unacceptable.

Wintering bird surveys confirm the area's national importance for non-breeding waterbirds. The foreshore, intertidal zone, and River Stour estuary consistently support large aggregations of species including dunlin, grey plover, oystercatcher, and sanderling, with peak counts for some species exceeding the 1% national population threshold. Inland nocturnal surveys revealed widespread foraging by curlew, teal, redshank, and golden plover, demonstrating the area's critical role as FLL to the Thanet Coast and Sandwich Bay SPA/Ramsar. Case law including *RSPB v The Secretary of State for Communities and Local Government, Secretary of State for Transport v London Ashford Airport Limited, Shepway District Council* [2014] EWHC 1523 (Admin) makes clear that off-site supporting habitats essential to SPA functionality must be treated as integral to the site's conservation objectives.[55] To ignore the adverse effects of the Sea Link proposal on breeding and wintering birds is to fail to comply with the integrity test requirements under the Habitats Regulations and the relevant aforementioned case law.

Golden Plover

Land parcel 244, the proposed site for the converter and substation, forms part of the functional ecological network supporting golden plover, a qualifying feature of the Thanet Coast and Sandwich Bay SPA. The Applicant's ES recorded a peak of 370 individuals using the flooded fields in December 2022, with continued though lower use in 2023–24. However, earlier surveys reported in the PEIR recorded up to 700 individuals, figures notably omitted from the DCO submission without explanation. This omission raises serious concern that the extent and significance of inland foraging habitats have been understated.

Additionally, no baseline ecological surveys of the proposed golden plover mitigation site have been provided. The Applicant has therefore failed to establish whether this land is currently used by golden plover or other SPA species. If it is already functioning as FLL, its reclassification as "mitigation" does not constitute new or compensatory habitat but merely the retention of existing land. This approach is inconsistent with *Briels* (C-521/12), in which the CJEU held that measures intended to compensate for, rather than avoid or reduce, impacts cannot be treated as mitigation under Article 6(3) of the Habitats Directive.[56] The Applicant's approach therefore conflates avoidance, mitigation and compensation, undermining the integrity of the HRA and providing insufficient protection for this SPA species.

Golden plover depend on expansive, open, and low-disturbance landscapes such as wet grassland, stubble fields and grazed pasture that provide visibility for predator detection and cohesive flock behaviour. They are highly sensitive to noise, lighting and visual disturbance and require large, uninterrupted areas for foraging and roosting. The proposed mitigation site lies immediately adjacent to the busy A256, subjecting it to continual traffic noise, lighting, and visual disturbance. The Applicant's Noise and Vibration report (AS-111) concludes that "*the main sources of noise include road traffic from the A256* […] *there are also potential industrial sources of noise, particularly in the vicinity of the A256*." Defra noise mapping referenced within the report also states that "*ambient noise levels are moderate to high in the vicinity of the A256*". The report implicitly acknowledges that the proposed mitigation site is subject to continual and significant disturbance from traffic and industrial activity, conditions fundamentally incompatible with the ecological requirements of golden plover. In effect, the Applicant's evidence demonstrates that the proposed mitigation site is inherently unsuitable for supporting this SPA qualifying feature. Furthermore, future developments, including the RBL2 Solar

[55] *RSPB v The Secretary of State for Communities and Local Government, Secretary of State for Transport v London Ashford Airport Limited, Shepway District Council* [2014] EWHC 1523 (Admin), para. 92.
[56] Judgment of the Court of 15 May 2014 in *Briels and Others* (C-521/12), EU:C:2014:330, para. 29.

Farm (a 62ha solar installation proposed directly north of the mitigation site), Goshall Valley Solar Farm (a 84 ha solar installation proposed approximately 400m south-west) and planning application 25/00459 (a mixed-use scheme for 356 dwellings and associated infrastructure located approximately 280m to the south-east), will effectively enclose the site on all sides. The cumulative effects of these developments will fragment the landscape, increase disturbance levels, and eliminate the open, low-disturbance conditions essential for golden plover foraging and roosting, rendering the site ecologically unsuitable for the species. As a result, the site cannot credibly be considered effective mitigation or compensation for the loss of FLL supporting the Thanet Coast and Sandwich Bay SPA.

Without robust baseline evidence or clear, enforceable mitigation measures (as required by the Planning Inspectorate's HRA Advice Note 2025)[57], there is no scientific certainty that the proposal would maintain functional habitat connectivity or support the SPA's qualifying populations. The likely outcome is displacement, elevated energy expenditure, and a loss of ecological linkage between inland foraging grounds and coastal roosting areas, effects that would compromise the integrity of the Thanet Coast and Sandwich Bay SPA and fail to meet the precautionary requirements of the Habitats Regulations.

Marine Mammals

The proposed development poses significant unassessed risks to marine mammals, particularly in and around Sandwich and Pegwell Bay, home to Kent's largest seal population and within proximity to the Southern North Sea SAC, designated for harbour porpoise. Marine mammals are afforded strict protection under multiple laws, including the Marine and Coastal Access Act 2009, the Habitats Regulations 2017, WCA 1981, and the Conservation of Seals Act 1970. All cetaceans are European Protected Species (EPS) under the Habitats Regulations, while grey and harbour seals are Annex II species, requiring the conservation of habitats essential to their survival and reproduction. In addition, Section 41 of the NERC Act 2006 and the Environment Act 2021 impose duties to conserve and enhance biodiversity, with marine mammals listed as species of principal importance.

Despite these clear legal obligations, the Applicant's ES is based almost entirely on desk-based information, with only three seal count surveys undertaken, all outside the optimal survey period. This approach fails to provide an accurate or scientifically robust baseline of seal abundance or distribution. The lack of surveys during key life stages, including breeding, pupping, and moulting periods, means the Applicant cannot reliably assess potential disturbance, displacement, or habitat loss impacts.

This falls short of the evidential standard required under the Habitats Regulations and EIA Regulations 2017, which demand complete, precise, and definitive evidence to rule out adverse effects on the integrity of European sites. It also contravenes NPS EN-3 paragraphs 2.8.104 and 2.8.131, which require early consultation with relevant statutory and non-governmental bodies, and comprehensive assessment of:

- likely feeding areas and impacts on prey species and prey habitat;
- known birthing areas/haul out sites for breeding and pupping;
- migration routes;
- protected sites;
- baseline noise levels;
- predicted construction and soft start noise levels in relation to mortality, permanent threshold shift (PTS), temporary threshold shift (TTS) and disturbance;
- operational noise;

[57] Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders - GOV.UK

- duration and spatial extent of the impacting activities including cumulative/in-combination effects with other plans or projects;
- collision risk;
- entanglement risk; and
- barrier risk.

KWT has consistently urged the Applicant to undertake dedicated marine mammal surveys and assess impacts on seal haul-out areas, prey availability, and acoustic disturbance. These requests have not been adequately addressed. Consequently, the Applicant's assessment does not meet the requirements of NPS EN-1, EN-3, or the precautionary principle under the Habitats Regulations, which prohibits consent unless it can be demonstrated beyond reasonable scientific doubt that the integrity of protected sites will not be adversely affected, alone or in combination with other plans or projects.

KWT strongly recommends that comprehensive marine mammal baseline surveys be undertaken, including acoustic monitoring, a full annual survey cycle covering the moult period, and mapping of haul-out and breeding sites, alongside the development of a Marine Mammal Mitigation Protocol (MMMP) in consultation with Natural England and relevant NGOs. Without these measures, the ES cannot be considered robust or compliant with national policy and legislative requirements.

Riparian Mammals

KWT strongly disputes the Applicant's conclusion that the Kent Onshore Scheme will only result in a "*minor adverse short-term impact*" to riparian mammals, with a purported "*moderate beneficial*" effect in the long term. This assessment significantly underplays the scale and ecological significance of the likely impacts, particularly for protected species such as water voles, otters, and beavers and does not demonstrate compliance with the precautionary approach required under UK law and policy.

Water voles are a Species of Principal Importance under Section 41 of the NERC Act 2006 and are fully protected under Schedule 5 of the WCA 1981. It is an offence to intentionally disturb, injure, kill, or destroy the resting place of a water vole. The proposed construction would result in the temporary loss of approximately 300m of ditch habitat, including 230m within areas where water vole activity has been recorded. These ditches provide essential habitat and movement corridors, and even short-term fragmentation can lead to local extinctions due to the species' territoriality, habitat specificity, and vulnerability to displacement. The Applicant's reliance on displacement under licence, combined with open trenching and limited micro-siting, is not sufficient to meet the Mitigation Hierarchy embedded in UK planning policy and biodiversity legislation. Avoidance of impact must be the first consideration, particularly when dealing with species afforded this level of legal protection. Whilst the potential use of HDD was reportedly explored and dismissed as impractical, this decision prioritises construction convenience over statutory biodiversity duties. NPS EN-1, the Environment Act 2021, NPPF and Defra biodiversity duty guidance are clear: significant harm to biodiversity must be avoided, mitigated, or, as a last resort, compensated and only when there is no reasonable alternative.

In addition to the water vole concerns, KWT has direct knowledge of breeding populations of both otters and beavers within the River Stour and surrounding ditch network. These are European Protected Species under the Habitats Regulations, with beavers also recently granted full protection in England under the WCA 1981 (as amended). Whilst the Applicant reports no signs of these species along the watercourses to be crossed, they are highly mobile species, with otters frequently traveling between 20 – 30km in search for food and the territory of a beaver being on average 3.6km of linear habitat. Both species require unimpeded access along connected waterways to forage, disperse, and maintain family groups. The proposed 27 temporary culverts, 16 outfalls, and associated loss of 300m of ditch habitat pose a direct barrier to the free movement of otters and beavers through this landscape.

Culverts and fragmented ditch networks can significantly impede the movement of riparian mammals, isolate populations and reduce genetic exchange. The narrowing of working corridors at pinch points does not resolve this issue, particularly where banks are steep, and vegetation is lost, both of which are critical features for species cover and movement.

Whilst the Applicant points to the creation of new wetland features such as ponds, scrapes, and attenuation basins, these cannot compensate for the functional loss of linear riparian corridors critical to water vole, otter, and beaver ecology. The assumption that replacement habitat will be of equal ecological value, and adopted quickly by displaced fauna, is unsubstantiated and over-optimistic. Habitat creation must supplement, not justify, the destruction of key existing habitats.

In summary, the Kent Onshore Scheme represents a significant and inadequately mitigated threat to riparian mammals, including species of national and European conservation concern. KWT recommends that the Examining Authority:

- Recognises the presence of breeding otter and beaver populations and requires that their habitat connectivity and movement are not compromised;
- Rejects the assertion that ditch habitat loss and fragmentation can be classed as "minor" or "temporary" in ecological terms;
- Mandates the avoidance of ditch crossings wherever protected species may be affected, and requires the Applicant to revisit the feasibility of HDD or other non-intrusive methods;
- Secures robust post-construction monitoring and restoration to ensure population viability is maintained;
- Requires the Applicant to ensure legal compliance with all relevant UK and European legislation protecting water voles, otters, and beavers.

Failure to address these issues adequately would result in non-compliance with statutory duties and would undermine regional biodiversity conservation efforts in one of Kent's most ecologically sensitive wetland landscapes.

7.) BIODIVERSITY NET GAIN

It is recognised that Biodiversity Net Gain (BNG) is not yet mandatory for NSIPs, however the Applicant has committed to achieving a 10% net gain in biodiversity to align their targets set out in National Grid's RIIO-T2 Business Plan (2021 – 2026). Further, NPS EN-1 and EN-5 set out the policies for environmental net gain and BNG for NSIPs. Whilst no NSIP-specific BNG guidance exists as yet, the Environment Act 2021 provides for a statutory BNG requirement for NSIPs, which is to be introduced from May 2026.[58] The expected 10% net gain in biodiversity requirement will not apply to NSIPs retrospectively; however, it is to be noted that it may well be in force by the time any DCO is made in this matter. Existing BNG frameworks, namely that under the Town and Country Planning Act 1990 ("TCPA"), may also assist with a proactive assessment of the Applicant's BNG claims. KWT has considered them on this basis.

Currently, the Applicant's BNG hierarchy diverges from that set out in TCPA legislation. For the most part, the National Grid NSIP projects are linear, routed across third party land and the infrastructure allows retention of the original habitat (often agricultural) within the Order Limits. Projects consented under the TCPA tend to be 'point-based' sites where the development often results in substantial permanent loss of habitat within the development boundary. However, Sea Link is a hybrid of both models: while the cable and overhead line route itself is linear, the Minster converter and substation

[58] https://consult.defra.gov.uk/biodiversity-net-gain/biodiversity-net-gain-for-nationally-significant-i/supporting_documents/OFFSEN%20FINAL%20Consultation%20on%20BNG%20for%20NSIPs%20%20May%202025.pdf

constitute a large, fixed development footprint that would result in the permanent loss of approximately 13ha of FLL to the Thanet Coast and Sandwich Bay SPA, including loss of hedgerows, ditch networks and other valuable habitat. This level of irreversible habitat loss aligns far more closely with a TCPA-type 'point-based' impact and therefore should require a BNG approach that reflects those higher, permanent losses rather than one designed for predominantly linear schemes.

Absence of Delivery Mechanism

Whilst the BNG Feasibility Report ("BNGFR") (AS-055[59]) outlines the potential to deliver gains both on- and off-site, there is no standalone Biodiversity Management Strategy or secured mechanism to demonstrate how or where such gains will be achieved, managed, and monitored. Instead, the Applicant relies on dispersed references across other documents (e.g., the CEMP, LEMP and ES chapters), resulting in a piecemeal and unenforceable framework. This approach falls short of NPS EN-1's requirement for clear, embedded biodiversity enhancements and proactive design integration. Paragraph 5.4.34 of NPS EN-1 explicitly requires that:

"*Consideration should be given to improvements to, and impacts on, habitats and species in, around and beyond developments, for wider ecosystem services and natural capital benefits, beyond those under protection and identified as being of principal importance. This may include considerations and opportunities identified through Local Nature Recovery Strategies, and national goals and targets set through the Environment Act 2021 and the Environmental Improvement Plan 2023*."

However, the ES provides only vague references to LNRS and carbon sequestration potential, with no evidence that these considerations have shaped the scheme's design or mitigation hierarchy. Opportunities for nature-based solutions (NbS) and climate resilient habitat creation appear to have been secondary to engineering and cost imperatives.

Exclusion of Intertidal and Coastal Habitats

The BNG assessment explicitly excludes intertidal and coastal habitats, including the mudflats and saltmarsh at Pegwell Bay, on the basis that trenchless techniques will avoid all direct impacts. However, whilst trenchless techniques are proposed for the saltmarsh, the Applicant's ES confirms that open-cut trenching methods will be employed across the intertidal mudflats at the Kent landfall. This represents a direct loss of high distinctiveness habitat within the Thanet Coast and Sandwich Bay SPA/Ramsar/SAC and Sandwich Bay to Hacklinge Marshes SSSI. By excluding these intertidal areas from the BNG parameter line, the Applicant has omitted habitats that will experience permanent or long-term disturbance and loss. This not only undermines the accuracy of the BNG baseline but also precludes a full accounting of biodiversity losses associated with construction.

Additionally, there is no mechanism proposed to re-run or update the BNG assessment should further damage occur, for example, in the event of fluid release, sediment plume, or contamination during trenching or HDD operations. This renders the current BNG assessment incomplete, speculative, and inconsistent with statutory BNG guidance and best ecological practice.

Exclusion of Temporarily Impacted Habitats

The Applicant's use of a "BNG Parameter Line", a reduced boundary excluding large parts of the DCO Order Limits, results in the omission of significant areas that will experience temporary but ecologically meaningful habitat loss. Construction compounds, laydown areas, haul roads and access routes are excluded from the assessment, despite clear potential for direct habitat loss, soil compaction, hydrological disruption, and long-term recovery delays. The BNG assessment excludes habitats subject to temporary loss of less than two-years, which is consistent with the metric's technical guidance. However, KWT has concerns regarding the level of certainty that these habitats can, in practice, be reinstated to their baseline type and condition within this timeframe, particularly given the scale of

[59] EN020026-000697-6.12 (B) Biodiversity Net Gain Feasibility Report (Clean).pdf

disturbance, length of construction activities (currently anticipated four-years), hydrological sensitivities, and the overall nature of the construction works. The assumption of full recovery within two-years must be supported by robust evidence. This requires a detailed Habitat Management and Monitoring Plan (HMMP) that clearly sets out phasing, reinstatement methods, soil and hydrology protection measures, success criteria, and monitoring commitments. Without such guarantees, the exclusion of these temporarily impacted habitats risks underestimating biodiversity losses and overestimating the project's BNG performance.

Overall, and notwithstanding the concerns outlined above, KWT will continue to engage constructively with the Applicant regarding the BNGFR. We would like to point out that the absence of the Excel version of the BNG metric makes it impossible for Interested Parties to independently assess the Applicant's calculations, assumptions, or feasibility of achieving net gain. We therefore request that the Examining Authority requires the Applicant to submit all documentation listed in Planning Practice Guidance for BNG, to allow for a transparent assessment.

As it currently stands, KWT considers that the BNGFR and supporting documentation:

- Fail to demonstrate how the Applicant's stated 10% net gain commitment will be delivered in practice, including a lack of a secured plan for off-site gains;
- Exclude substantial areas of habitat within the Order Limits;
- Omit temporarily affected land from the BNG boundary, with no certainty these habitats will be reinstated within two-years, resulting in an underestimation of losses;
- Show no meaningful alignment with Local Nature Recovery Strategies, national environmental targets, or the Environmental Improvement Plan 2023; and
- Do not demonstrate the application of the Biodiversity Gain Hierarchy in accordance with best practice.

KWT therefore urges the Examining Authority to require the Applicant to:

- Provide evidence demonstrating that all temporarily impacted habitats excluded from the BNG metric will be fully reinstated within two years. Any habitats for which this cannot be guaranteed must be included within the metric;
- Devise a detailed Habitat Management and Monitoring Plan (HMMP) that clearly sets out phasing, reinstatement methods, soil and hydrology protection measures, success criteria, and monitoring commitments;
- Provide a standalone, secured Biodiversity Management Strategy with measurable targets, monitoring and minimum 30-year management commitments; and
- Establish a clear mechanism for re-calculating BNG metric should project design, routing, or impacts assumptions change.

8.) CONCLUSION

KWT fully recognises the need for strategic energy infrastructure; however, we strongly object to the Sea Link project as set out in the current application due to its unacceptable environmental risks and failure to demonstrate compliance with environmental law. As set out throughout these representations, the evidence base submitted by the Applicant contains significant gaps, unsupported assumptions, and unsecured mitigation, leaving substantial scientific doubt regarding major impacts on internationally designated sites, FLL, protected species, and Priority Habitats.

KWT therefore urge the Examining Authority to find that the Applicant has not discharged its obligations under the EIA Regulations, the Habitats Regulations, or the relevant NPS (EN-1, EN-3 and EN-5), and to require:

1. A reassessment of alternatives, demonstrating that all reasonable options have been objectively compared in line with the Mitigation Hierarchy and the requirements of NPS EN-1, paragraph 4.4.2;
2. A review of the feasibility and environmental implications of trenchless techniques at the Kent landfall, with transparent contingency planning in the event of HDD failure;
3. A full inter-project cumulative impact reassessment that explicitly includes all relevant, approved, and reasonably foreseeable developments within the Kent coastal landscape;
4. An intra-project cumulative assessment that properly considers all the relevant impact pathways in relation to the affected protected sites.
5. A comprehensive, multi-season programme of protected species surveys across both onshore and intertidal environments, undertaken in accordance with Natural England guidance and sufficient to establish a robust ecological baseline;
6. A full baseline ecological and hydrological assessment of the proposed golden plover mitigation site to determine its current function, suitability, and capacity to deliver effective mitigation;
7. Evidence-based, enforceable mitigation strategies supported by monitoring, adaptive management, and clear triggers for remedial action in the event of failure; and
8. A revised BNG assessment that includes all land within the DCO Order Limits, including intertidal and temporarily impacted habitats, supported by a completed BNG metric and habitat mapping;

Until these deficiencies are resolved, through complete, precise and conclusive evidence, and through robust, enforceable safeguards, the Examining Authority cannot be assured that the integrity of these sites will be protected as required by the Habitats Regulations. We therefore respectfully request that the Examination scrutinises these matters with the utmost rigour and seeks the further information and commitments necessary before any consent can be considered.

We hope that our evidence and expertise will be of assistance to the Examining Authority. If you require any further information regarding this written submission, please do not hesitate to contact me.

Kind regards,

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