

## London Resort, Adequacy of Consultation

### Joint statement representing the views of Kent Wildlife Trust, Buglife and RSPB

15<sup>th</sup> January 2021

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Date: 15<sup>th</sup> January 2020

To: [pmconsultingltd@outlook.com](mailto:pmconsultingltd@outlook.com) (by email only)

Dear Paul McKim,

This letter represents the joint views of Kent Wildlife Trust, Buglife and RSPB on the adequacy of consultation on the London Resort project. Please consider this letter as part of your representation to the Secretary of State on the adequacy of consultation.

This letter summarises the consultation and engagement of the London Resort Company Holdings with non-statutory environmental consultees, in relation to their DCO application submitted to the Planning Inspector on the 4<sup>th</sup> January 2021. This joint letter aims to express our concerns regarding the adequacy of the consultation undertaken for the London Resort application. These concerns are expressed in the context of the 'Planning Act 2008: Guidance on the pre-application process' guidance document dated March 2015, hereafter referred to as 'the pre-application guidance'. This guidance sets out the requirements and procedures for the pre-application process and consultation where an application is to be made for consent for a major infrastructure project.

### **Engagement with environmental NGOs**

The pre-application guidance states<sup>1</sup> that "*applicants will often require detailed technical advice from consultees and it is likely that their input will be of the greatest value if they are consulted when project proposals are fluid, followed up by confirmation of the approach as proposals become firmer. In principle, therefore, applicants should undertake initial consultation as soon as there is sufficient detail to allow consultees to understand the nature of the project properly.*"

*To manage the tension between consulting early, but also having project proposals that are firm enough to enable consultees to comment, applicants are encouraged to consider an iterative, phased consultation consisting of two (or more) stages, especially for large projects with long development periods. For example, applicants might wish to consider undertaking non-statutory early consultation at a stage where options are still being considered. This will be helpful in informing proposals and assisting the applicant in establishing a preferred option on which to undertake statutory consultation.*"

It would be expected that an application with the scale of impacts of the London Resort proposal would adhere to the above pre-application guidance. Whilst it is acknowledged that the London Resort project was consulted on via a four stage consultation process in 2014 and 2015, the [London Resort Guide to Consultation](#) acknowledges that "*the area has evolved considerably since 2015*" and that they are now presenting an "*evolved masterplan*". Material changes to the area include the designation of the Swanscombe Marine Conservation Zone (MCZ). Further, despite the identification of a nationally important invertebrate assemblage in the 2014-2015 consultation, representations made previously by consultees do not appear to have had any influence on the design of the scheme. On this basis, and in line with paragraphs 74 and 75 of the pre-application guidance it should be necessary for the applicant to undertake an iterative consultation for the 2020 scheme, including an element of fluidity to the scheme design in response to technical input from consultees. Unfortunately, this was not the case in 2020.

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<sup>1</sup> Underlining is our own.



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We wish to highlight the shortcomings of the London Resort Company Holdings (LRCH) consultation with non-statutory environmental consultees. Consultation with environmental NGOs has been inconsistent.

For example, Kent Wildlife Trust welcomed the two meetings organised by the applicant's ecological consultants prior to the statutory public consultation, however it is disappointing that follow up meetings were not organised following the statutory consultation, to which detailed comments were and concerns were made. These meetings included a discussion to establish if there was a role for Kent Wildlife Trust (KWT) in helping to facilitate and/or deliver ecological mitigation and compensation for the negative impacts of the development. Due to the multitude and magnitude of concerns regarding the ecological impact of this project, including the underestimation of impacts, KWT declined to be involved in the delivery of a mitigation/compensation package for a scheme to which we are strongly opposed. Instead, KWT expressed interest in providing advice on the mitigation/compensation package developed by the applicant, with the aim of securing the best outcome if this application is approved despite the serious ecological impacts. A similar approach to consultation has been experienced by other environmental NGOs.

Buglife have particular expertise on both invertebrates and brownfields habitats (open mosaic habitats on previously developed land (OMHPDL)). It is therefore concerning that despite the known presence of a nationally important invertebrate assemblage and substantial OMHPDL, that Buglife, were not proactively consulted by the applicant. Instead, engagement was initiated after Buglife made contact with the applicant in July 2020. Following this exchange, a single video call was held in July, following which Buglife sent initial comments on the key issues to the applicant's ecological consultant. The proposal will result in the loss of terrestrial areas of greatest importance for invertebrates, yet no effort has been made by the applicant or their consultants to discuss off-site compensation proposals or habitats features with Buglife.

The above provide examples of the failings of the applicant to properly engage with environmental NGOs on their proposals. Further, Paragraph 81 of the pre-application guidance states that; *"It is good practice that those who have contributed to the consultation are informed of the results of the consultation exercise; how the information received by applicants has been used to shape and influence the project; and how any outstanding issues will be addressed before an application is submitted to the Inspectorate."* It seems apparent that the 2020 statutory consultation did not provide opportunity to influence any aspect of the on-site works or the project layout, as this was seemingly set in stone prior to consultation. This is not in accordance with the pre-application guidance which advises that technical input from consultees is most effective when plans are fluid. This is particularly relevant when applying the mitigation hierarchy to ensure that plans firstly avoid environmental impacts, then mitigate impacts and compensate only as a last resort.

### **Accuracy of consultation information**

Paragraph 20 of the pre-application guidance states that: *"Experience suggests that, to be of most value, consultation should be:*

- *based on accurate information that gives consultees a clear view of what is proposed including any options;*
- *shared at an early enough stage so that the proposal can still be influenced, while being sufficiently developed to provide some detail on what is being proposed; and*
- *engaging and accessible in style, encouraging consultees to react and offer their views."*

Unfortunately, the pre-application consultation process has not been adequately carried on the basis that the applicant did not provide accurate information on the ecological baseline and impacts, the project was not consulted on at a stage which allowed the design of the proposal to be influenced and the absence of iterative dialogue to address these shortcomings in information and to reduce the schemes impacts.

On this basis we ask that the Secretary of State request that the applicant carries out further consultation on the environmental impacts of the scheme and feasibility of mitigating and compensating for this impacts prior to acceptance. We explain our rationale further below.

Concerns regarding the accuracy and availability of ecological information were expressed to the applicant through limited conversations with the applicant's consultant and extensively in response to the statutory consultation. These extensive concerns include (but are not limited to) the following:

#### Inaccurate information:

- The assessment of sites in PEIR Chapter 4 and associated assessments in Appendix 4.1 have not been updated since 2012 and are therefore not based on up to date, accurate information. The assessment of the Swanscombe site during the site selection process and alternatives test was inaccurate with regards to the criteria of "land use" and "environmental constraints". An updated and accurate site assessment should be conducted, including the environmental constraints of the Swanscombe MCZ designated in 2019, the presence of the distinguished jumping spider (one of only two sites in the UK known to support this species), and the nationally important nature of this site for biodiversity.
- On numerous occasions throughout the consultation documents the applicant has under represented the significance and scale of impacts to designated sites. For example, impacts to functionally linked land were assessed as being regionally important, whereas functionally linked land is afforded the same protection as internationally designated sites. Similar inaccuracies have been raised for the assessment of the Swanscombe Marine Conservation Zone (MCZ) and for Local Wildlife Sites (LWSs). These inaccuracies affect the scale of mitigation and compensation required and may impact the feasibility of project delivery in this location.
- Further, the Swanscombe Peninsula has been identified as being of national importance for biodiversity and Natural England is considering the site for SSSI designation. Whilst it is acknowledged that Natural England had not begun to consult on SSSI designation at the time of the statutory consultation, the biodiversity value has not changed during that time. The applicant has not fully accounted for the nationally important invertebrate, bird and vascular plant interest within their consultation documents, particularly with respect to applying the mitigation hierarchy and national planning policy.
- Information on the habitat baseline is not fit for purpose, with the applicant failing to accurately assess the habitats on site. They appear to have significantly underestimated the value of the site, including failing to understand the definition of OMHPDL habitats, leading to an underestimate of the ecological value. Further, the applicant has changed the classification of particular habitats to suit their narratives, describing Botany Marsh West as coastal floodplain grazing marsh in the PEIR but then downgrading this habitat to low distinctiveness modified grassland in their Biodiversity Net Gain (BNG) calculation. Since these issues were raised during the statutory consultation it has been suggested by a third party that the applicant has increased their estimation of the amount of OMHPDL on site. Despite this, none of the non-statutory consultees who raised this as an issue have been made aware of these revisions or have been given opportunity to comment on the accuracy of these revisions. It is likely that these changes continue to underestimate the amount of OMHPDL on site.
- Inaccurate information on the biodiversity baseline of the site invalidates the BNG assessment and the applicant's claims that they will achieve BNG.

- Detailed comments were made regarding the baseline BNG metric calculations, highlighting concerns that the value of onsite habitat enhancement has been significantly over-estimated owing to underestimates of baseline condition.

It is likely that the multitude of inaccuracies contributed to the applicants claims that *73% of people support the London Resorts approach to the environment and biodiversity, with 51% strongly supporting it*". This public claim is itself misleading, and the impacts of the environment and the effectiveness of mitigation and compensation should be based on robust data as opposed to members of the public who have not been provide sufficient and accurate evidence.

### **Further information required by consultees**

Both during the statutory consultation and in the limited informal discussions with the applicant's consultants we advised that additional information was required for consultees to fully understand and comment on the biodiversity impacts. We have not been provided with any of this additional information, and therefore wish to highlight that the consultation documents remain inadequate.

Whilst we will not provide an extensive list of the information which is lacking, a number of examples are provided below:

- At the time of the statutory consultation ecological surveys (including for invertebrates and for bats) were still underway and consequently the results of these surveys were not available. The applicant has still not made this information available nor consulted on its findings.
- The consultation documents clearly lacked an impact assessment on the distinguished jumping spider (*Attulus distinguendus*), which is found on just two sites in the UK, one of which is proposed to be destroyed by the London Resort application.
- Both the EIA Regulations and the Habitats Regulations require an assessment of cumulative impacts of the project. We understand that the list of projects to be assessed in combination is yet to be refined, however it is concerning that the Lower Thames Crossing and Ebbsfleet Central are not included in Appendix 20.1. A full assessment of the cumulative impacts of these projects on the environment should be key to the Planning Inspectors decision to progress these applications.
- We highlighted that noise and light modelling of the impacts of the scheme for specific ecological receptors (as opposed to residential receptors) is essential for determining impacts to designated sites.
- There is lack of detailed assessment of the hydrological impacts of the scheme, which are essential for understanding the impacts to designated sites (including Botany Marsh Local Wildlife Site) and protected species (including water vole and breeding and wintering birds).
- On the basis of the inaccuracies of the ecological baseline and the lack of information regarding mitigation and compensation it was not possible for consultees to make detailed comments on this matter. Please see below for further detail on this issue.

### *Mitigation / compensation*

There is very little information about offsite compensation other than the statement in paragraph 12.151 of the PEIR that *"the Applicant is committed to the funding and delivery of an offsite compensation scheme involving habitat creation and enhancement sufficient to deliver the necessary credits to achieve a net gain"*. While in principle we support this commitment, we are not convinced that this will be achieved or achievable in practice. Appendix 12.3 identifies that the development will lead to an estimated onsite biodiversity net loss of 335.2 units or 15.01%. It is likely that this is a significant underestimation of total biodiversity loss once relevant guidance for habitat type, distinctiveness and condition are applied and appropriate amendments to the calculation made. Consequently, the overall net loss, and therefore the amount of habitat required in compensation, is likely to be at least double (and possibly much more) that stated in Appendix 12.3.

Whilst it is understood that the applicant will be employing the Rochdale Envelope approach to this application, this does not excuse lack of regard for a detailed ecological mitigation and compensation strategy at this stage. Paragraph 112 of the pre-application guidance states<sup>2</sup> that *“The use of the Rochdale Envelope approach does not remove the onus on applicants to submit as detailed as possible project proposals in their application, and it should certainly not be an excuse for an unnecessary degree of flexibility. The Inspectorate and the Secretary of State will need to be satisfied that, given the nature of the project, they have full knowledge of the likely significant effects on the environment. In particular, care should be taken to ensure that the likely environmental effects, within the defined parameters, are assessed and, where possible, mitigated against. It is accepted that it may not always be possible to assess every impact and so it may be appropriate to consider a ‘worst case’ scenario which can serve as an overarching reference point for mitigating actions. In addition where it is considered that too much flexibility has been used, and therefore there is uncertainty as to the likely significant effects, then more detail can be required or consent can be refused”*

We strongly argue that on the basis of inaccurate assessments and lack of information, that the applicant does not yet have full knowledge of the likely significant effects on the habitats and species. Further, the applicant has made no effort to consult on a mitigation and compensation strategy for the project. To date, brief discussions around compensation have focused solely on the applicant acquiring land, likely some distance away in Swale, to compensate for the loss of wetland habitats. There has been no discussion of compensating for the loss of Open Mosaic Habitat on Previously Developed Land (OMHPDL). We, and statutory bodies such as Natural England, have expressed serious concerns regarding the feasibility of compensating for OMHPDL. Further, species specific mitigation strategies (e.g. for critically endangered invertebrates, breeding and wintering birds, vascular plants etc) should be drafted and consulted on for technical input. In order to comply with the pre-application guidance, the applicant should undertake a detailed assessment and consultation on the feasibility of mitigation and compensation.

Finally, paragraph 77 of the pre-application guidance states that *“To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects...”*. On the basis that the Swanscombe Peninsula is recognised as being of national importance for biodiversity it is not considered that one round of consultation on the updated 2020 scheme is proportionate or appropriate. Further, since the statutory consultation Natural England has begun to consider this site for SSSI designation, further highlighting its nationally important status. The applicant should undertake detailed assessment with this in mind, calling on technical input from statutory and non-statutory consultees.

On the basis of the above we ask the Planning Inspector to reject the LRCH’s DCO application and request that adequate and proportionate consultation is undertaken on biodiversity issues, in which we will gladly engage.

Yours sincerely,

**Nicky Britton-Williams, representing the collective views of Kent Wildlife, Buglife and RSPB.**

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<sup>2</sup> Underlining is our own