



Date: 12<sup>th</sup> May 2021

To: [LondonResort@planninginspectorate.gov.uk](mailto:LondonResort@planninginspectorate.gov.uk)

Dear Planning Inspectorate

### **London Resort DCO application - extension request and subsequent approval**

We write in relation to the above matter as a coalition of environmental NGOs and in support of the Save Swanscombe Peninsula Campaign's (SSP) letter to you dated 5 May 2021. Individually, our organisations are registered as interested parties for this application.

We refer to the Applicant's letter of 15<sup>th</sup> April 2021 requesting an extension of four months to the Pre-examination stage to "*further engage in order to deliver an effective and robust on-site and off-site mitigation strategy in acknowledgment of the SSSI Notification*" and to make "*revisions to the submissions prepared in support of the application*". And your reply granting that request dated 5 May 2021.

The designation of the Swanscombe Peninsula SSSI changes the national planning policy context within which the application is assessed. Paragraph 175(b) of the National Planning Policy Framework (NPPF) states that "*development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted.*" The National Policy Statement (NPS) for National Networks essentially repeats the NPPF policy on SSSIs in stating that "*Where a proposed development on land within or outside a SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted. [...] an exception should be made only where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs. The Secretary of State should ensure that the applicant's proposals to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest, are acceptable.*"

We (the undersigned) are disappointed with the granting of an extension, as we believe that due to the significant changes to the national policy context under which this application must be considered, that the Applicant should have sought to withdraw their existing application and restart the pre-application process. It is our view that a four-month extension will not provide sufficient time for the Applicant to undertake a thorough reappraisal of the Environmental Statement and associated documents, nor will it allow for sufficient consultation with key stakeholders and the public. We acknowledge that you have taken the decision to grant the extension, however we feel that there is benefit in raising concerns regarding the likely effectiveness of the extension in addressing biodiversity issues, and to make recommendations as to the elements of the DCO which we feel must be revisited in light of the SSSI designation.

We welcome and support the Examining Authorities (ExAs) reminder to the Applicant of the need to comply with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 during the extension period. Paragraph 14(2)(d) of these regulations' states that "*An environmental statement is a statement which includes at least - 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*". Further, Regulation 14(2) requires a description of the reasonable alternatives studied by the developer, including comparison of the environmental effects. We have previously

highlighted serious concerns relating to the accuracy of this assessment which have not been addressed. The inaccuracies of the assessment of alternatives sites was also raised by Natural England in their relevant representations. We ask that you require the Applicant to prepare and publish an accurate assessment of alternatives, to supersede that undertaken in 2012, and to respond accordingly to its findings. Significant alteration of the order limits to avoid adverse impacts to the SSSI should not be ruled out, as a material change to the application, and we would be pleased to engage with both PINS and the Applicant on this matter.

Chapter Three of the PEIR states that in the absence of a National Policy Statement (NPS) for business or commercial NSIPs, regard is given to the NPS for National Networks and the National Planning Policy Framework (NPPF). The NPPF and the NPS for National Networks include a clear principle for avoiding adverse impacts to individual SSSIs and the SSSI network. Paragraph 175a of the NPPF sets out the mitigation hierarchy to be applied to development, requirement significant harm to biodiversity to first be avoided, then mitigated or as a last resort compensated. Paragraph 5.25 of the NPS for National Networks states that *“As a general principle [...] development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The applicant may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought.”*

Throughout the pre-application process, we have raised concerns regarding the Applicant's use of the mitigation hierarchy, having bypassed the initial stages of avoidance and alternatives. The extension period should include a clear focus on the proper application of the mitigation hierarchy and the consideration of reasonable alternatives with compensation only being explored as a last resort. This is particularly important due to the fact that both the undersigned organisations, and Natural England, consider that off-site compensation is unlikely to adequately address the direct loss and other harm that will result to the SSSI from the development proposal. We are therefore looking to engage with the Applicant during this extension period on the proper application of the mitigation hierarchy and how they propose to avoid impacts to the Swanscombe Peninsula SSSI, and consider that such measures should be a key focus of the extension period.

On the basis of the above, and the need for the Applicant to provide a full reappraisal of the biodiversity baseline and scale of impacts, it seems inevitable that proposed changes in line with national policy to protect SSSI should alter the application to such a degree that these will be material. If impacts to the SSSI have been considered in full and the mitigation hierarchy properly applied, then it is reasonable to expect that proposed changes will result in a materially different project. In line with paragraph 113 of 'Planning Act 2008: Guidance for the examination of applications for development consent', we are concerned that the ExA will not be able to act reasonably and fairly when considering a material change without sufficient consultation. Due to the scale of changes required to properly apply the mitigation hierarchy and assess alternatives we are concerned that the extension will not provide sufficient time for detailed consultation, and that this would be better assessed as part of the pre-application process.

We are seeking to engage with the Applicant on the issues discussed in this letter and are awaiting the rescheduling of a meeting by the Applicant's consultants. We will be urging the Applicant to address not just NE's relevant representations but also those from CPRE Kent - The Countryside Charity, RSPB, Buglife and Kent Wildlife Trust.

Please do not hesitate to contact us should you have any questions or require further information.

Yours faithfully

Nicky Britton Williams (Kent Wildlife Trust)  
Mark Nowers (RSPB)  
Jamie Robins (Buglife)  
Vicky Ellis (CPRE Kent – The Countryside Charity)