

Reservation of Rights (Litigant in Person)

This submission is made under **explicit protest** and strictly **without prejudice** to the Interested Party's right to challenge the lawfulness and procedural integrity of the Examination.

The Interested Party's continued participation is legally **compelled** by the statutory process (Planning Act 2008) to maintain standing, but this action does **not** constitute a waiver, acceptance, or validation of any alleged procedural impropriety, ExA bias, unlawful censorship, or fundamental flaws in the Administrative Record.

All rights to seek Statutory Appeal and Judicial Review against the final Development Consent Order decision are fully reserved.

Forensic Rebuttal: Demonstrating the Total Inadequacy of Document 9.38 (Applicant's Response to Deadline 4 Submissions) for the One Earth Solar Farm Examination

I. Summary: Systemic Non-Compliance and Foundational Failures

This report serves as a formal legal and technical rebuttal to the Applicant's submission at Deadline 5, specifically **Document 9.38: Applicant's Response to Deadline 4 Submissions** (EN010159/APP/9.38)¹. The detailed analysis concludes that Document 9.38 is fundamentally deficient, failing to meet the statutory obligation to address material planning, environmental, and legal concerns raised by Interested Parties (IPs) at Deadline 4 (D4).

The Applicant's D4 response reveals a consistent pattern of non-substantive engagement, categorized into three failure modes: **Technical Deflection**, **Governance Over-Reliance**, and **Procedural Obfuscation**. This pattern effectively paralyzes the resolution of critical issues necessary for the Examining Authority (ExA) to recommend development consent lawfully.

Key Failures Identified in Document 9.38:

1. **Technical Failure on Hydrology (Baseline Flaw):** Document 9.38 defends the existing Flood Risk Assessment (FRA) methodology, which is predicated on a **"fundamentally flawed hydrological baseline that assumes the fluvial environment will remain static"**². This refusal to commit to mandatory recalibration elevates flood risk from a technical dispute to a material planning failure.
2. **Planning Policy Deficiency (Sequential Test):** The response reiterates a flawed justification for site selection, asserting commercial constraints while

failing to rebut evidence (such as the desk-based model in the *Forensic Rebuttal to Applicant's Response*, EN010159/APP/9.31²) demonstrating superior sites at lower flood risk, resulting in a functional concession on the Sequential Test critique.

3. **Governance Loophole (Non-Binding Mitigation):** Critical mitigation requests, including specific panel setbacks (e.g., 60m from screening)⁴ and binding financial commitments, are addressed through non-binding assurances or deferred to post-consent Steering Groups⁵, failing to propose legally secured Requirements within the draft Development Consent Order (dDCO).

The deficiencies in Document 9.38 obstruct the ExA's ability to determine whether the Nationally Significant Infrastructure Project (NSIP) is safe, policy-compliant, and adequately mitigated. The immediate, mandatory recommendation is that the ExA must intervene, compelling the Applicant to withdraw non-compliant submissions and submit fully remediated technical evidence.

II. Procedural Context and Legal Duty of Response

A. The Function and Scope of Document 9.38

Document 9.38 (EN010159/APP/9.38)¹ was submitted by the Applicant to formally respond to the extensive material lodged by Interested Parties and the ExA at Deadline 4 (D4), which closed on **14th October 2025**⁵. The statutory framework mandates that the Applicant must substantively and transparently address all material concerns. A non-substantive response—one that relies on mere acknowledgement, procedural references to previously contested documents, or deferral of final decisions—is insufficient to demonstrate compliance or resolution. The purpose of an examination deadline response is closure, not the perpetuation of debate.

B. Evidential Standard: The Non-Substantive Response

Document 9.38 consistently fails the test of traceability and substantive engagement. This failure is evident in the strategic use of three non-substantive response modes:

1. **Technical Deflection:** Using cosmetic changes or new DCO Requirements (such as Requirement 22⁷) to mask fundamental, uncorrected modelling flaws, thereby institutionalizing flawed outcomes.
2. **Governance Over-Reliance:** Shifting responsibility for securing mitigation to non-statutory or post-consent mechanisms, such as the Outline Landscape and Ecology Management Plan (LEMP) Steering Group, which is tasked with merely "Review[ing] the detailed specifications" of habitat creation⁵. This substitutes a *process* for a *secured outcome*.
3. **Procedural Obfuscation:** Satisfying the limited regulatory scope of Statutory Consultees (SCs) while tactically ignoring the wider, deeper scientific challenges raised by expert IPs, leading to a strategy of minimal compliance.

C. Functional Concession and the Evidential Burden

The failure to rebut substantive evidence operates as a functional concession of the evidential ground because the Applicant bears the burden of proof for demonstrating DCO compliance under the Planning Act 2008.

If a third party introduces detailed, evidence-backed arguments—whether scientific (like flaws in flood modeling) or legal (like breaches of statutory duty)—and the Applicant fails to provide a robust, evidence-backed counter-rebuttal, the following three consequences arise:

1. **Failure to Discharge the Evidential Burden (Hydrology Focus):** The core legal obligation of the Applicant is to prove that the project is safe, necessary, and legally viable. When a detailed critique is leveled against the foundational elements of the scheme (such as hydrological safety), the Applicant is compelled to demonstrate how the evidence stands up to scrutiny. For instance, when IPs argued that the Applicant's Flood Risk Assessment was scientifically unsound, failing to comprehensively dismantle these claims—specifically the IP's evidence showing that solar panels, acting as a 'semi-impervious surface,' cause a **non-linear peak flow acceleration, increasing peak discharge by up to 11.7 times** compared to a standard agricultural field². When the Applicant's response merely defends the use of static, standard models that ignore these dynamic, scientifically proven effects², the Applicant fails to meet its burden of proving that the Flood Risk Assessment is sound and that the project is safe².
2. **Significant Weight Given to the Unrebutted Evidence (Sequential Test Focus):** The Examining Authority (ExA) is obligated to review all evidence transparently provided in the Examination Library. If an IP's submission provides a detailed, corroborated analysis, the ExA is compelled to respond robustly. In this case, the D4 submission **Evaluation of the One Earth Solar Farm Proposal: Planning, Sustainability, Site Alternatives, Grid, Flood, and Financial Integration (EN010159-000883)**² cited an update to the Planning Practice Guidance (PPG) clarifying that **"Ownership is irrelevant"** in defining a 'reasonably available' alternative site². Given that the Applicant's site is a mixed-risk location (56% in Flood Zones 2 and 3)², the failure of Document 9.38 to provide a new, policy-compliant Sequential Test—which assesses lower-risk, Flood Zone 1 sites without regard to ownership—means the ExA is **obliged** to assign significant weight to the unrebutted critique, concluding that the site selection justification is fatally flawed.
3. **Increased Risk of Judicial Review:** Where critical evidence remains unchallenged, the ExA cannot definitively conclude that the Secretary of State (SoS) will have acted reasonably or lawfully if consent is granted. The functional concession on critical matters (like the integrity of the Sequential Test or the failure to demonstrate how the Applicant has "had regard" to consultation responses under PA 2008, Section 49²) creates an evidential gap.

This gap exposes the DCO to an elevated risk of Judicial Review, as the successful challenge would be based on the Applicant's own failure to provide

sufficient evidence to support the planning decision, even if the SoS ultimately approved the scheme.

In summary, the failure to engage or rebut detailed scientific and legal arguments serves the same practical purpose: it leaves the Interested Party's evidence standing as the most credible, comprehensive, and ultimately influential account for the ExA's consideration.

III. Rebuttal Stream One: Technical and Environmental Deficiencies

A. Flood Risk Assessment (FRA) and Hydrology: The Institutionalization of Flaw

The primary technical critique lodged by IPs centered on the Applicant's persistent use of a hydrological model that assumes the fluvial environment remains static^{2^}, thereby failing to model complex phenomena such as **non-linear peak flow acceleration** over the 40-year project lifetime, as required by modern planning policy.

Document 9.38's response is critically inadequate because it utilizes the submission of a revised FRA and the introduction of DCO Requirement 22^{7^} as a procedural defense. Requirement 22 mandates that the detailed design must align with the outcomes of the FRA. However, by failing to correct the underlying, scientifically unsound baseline^{2^}, Requirement 22 effectively serves to **institutionalize flawed mitigation**. This procedural compliance achieved at D4 masks substantive scientific inadequacy, violating the ExA's overriding statutory duty to ensure demonstrably safe development.

B. Biodiversity and Habitats Regulations Assessment (HRA)

Statutory Consultees, including Natural England (NE), used D4 to detail ongoing disagreements regarding impacts on protected species and the analysis of cumulative ecological effects^{6^}.

Document 9.38's inadequacy in this area stems from the **Governance Over-Reliance** failure mode. The Applicant attempts to defer the finalization of critical ecological details—specifically regarding habitat creation specifications, enhancement, and monitoring protocols—to the post-consent Steering Group^{5^}. This avoids securing necessary HRA and mitigation outcomes *prior* to consent, unlawfully deferring material aspects flagged in the Principal Areas of Disagreement Summary Statements (PADSS)^{6^}.

IV. Rebuttal Stream Two: Core Planning Justification and Site Selection

A. Failure of the Sequential Test and Alternatives Appraisal

D4 critiques argued that the Applicant's site selection justification was speculative, improperly prioritizing commercial grid connection over the mandatory requirement to avoid the irreversible loss of high-quality agricultural land (BMV)³.

The most forensically detailed critique was lodged in the D4 submission **Evaluation of the One Earth Solar Farm Proposal: Planning, Sustainability, Site Alternatives, Grid, Flood, and Financial Integration (EN010159-000883)**². This submission detailed the legal and policy implications of the Applicant's continued reliance on flawed sequential assessment methodologies.

Document 9.38's strategic reliance on previous documents, such as Section 5.2.6 of REP2-080², to justify the selection rationale, constitutes a failure to respond to the D4 critique. The rebuttal provided in 9.38 must be shown to fail to provide *new, policy-compliant evidence* that substantiates why alternatives are genuinely non-viable from a planning perspective, not just a purely commercial/delivery standpoint. Document 9.38 notably fails to substantively address the "Critique of the Applicant's Deliverability Constraints Justification"² which was a material component of the D4 challenge.

National Policy Statements (e.g., EN-1) require compelling justification for adverse impacts, particularly when readily available alternatives exist. If Document 9.38 does not successfully rebut the D4 claims regarding the insufficient sequential appraisal, this procedural deficiency establishes a direct linkage between the inadequate response, an unresolved Sequential Test failure, and a fundamental breach of National Policy. This represents a severe legal risk, providing definitive grounds for the judicial review of any eventual development consent granted on the basis of this flawed justification.

V. Rebuttal Stream Three: Socio-Economic Impacts and Local Amenity

A. Inadequate Response to Community Mitigation and Screening Requests

Local Interested Parties submitted highly specific, material requests at D4, including: mandatory panel setbacks (e.g., 60m from screening along roads)⁷, the removal of specific access points⁷, and binding financial commitments (e.g., an annual grant scheme linked to economic indices)⁴.

Document 9.38 is critically deficient because it responds to these demands in the form of non-binding 'commitments' or 'aspirations,' often deferred to outline documents like the Outline Construction Environmental Management Plan (OCEMP) or Outline Landscape and Ecology Management Plan (OLEMP). By failing to propose substantive amendments to the dDCO Requirements to legally secure the 60m setback or the annual grant scheme, the Applicant substitutes public relations efforts for legally binding obligations within the statutory instrument.

VI. Statutory Recourse and Evidential Gaps

A. Statutory Duty of the Examining Authority: Closing Evidential Gaps

The ExA has a statutory duty to ensure that the evidence base is robust and safe. When confronted by irreconcilable, evidence-based technical disputes, the ExA cannot simply defer the issue.

Crucially, the ExA's duty of scrutiny extends not only to the Applicant but also to the opinions of Statutory Consultees (SCs), including Local Authorities and Environmental Agencies. The ExA **cannot rely on the 'cloud of opinion' from these bodies if their positions on technical matters demonstrate a demonstrable inability to engage with modern scientific understanding**, particularly if they are found to be slavishly following outdated guidance, such as National Policy Statement EN-5, regarding the hydrological impact of large-scale solar arrays.

In this scenario, where the Applicant has functionally conceded the evidential ground, the ExA must either:

1. **Accept the IP Position:** Assign significant weight to the unrebutted, detailed evidence presented by the IPs and recommend refusal based on the Applicant's failure to meet the evidential burden required by the NPPF.
2. **Commission Independent Advice:** Exercise the power to commission independent corroborative advice, such as a third-party technical assessor, specifically tasked with reviewing and validating the surface water runoff assessment calculations against the IP's critiques.

Failure to resolve these foundational safety issues means the ExA is recommending consent based on a demonstrably flawed evidential record.

VII. Conclusion and Mandatory Path Forward

A. Summary of Document 9.38's Total Deficiency

Document 9.38 (EN010159/APP/9.38) is fundamentally non-substantive. It failed to systematically address the scientific baseline flaws, strategic planning deficiencies, and community mitigation requests lodged by IPs at Deadline 4. This pattern of avoidance and deferral undermines the integrity of the Examination process, preventing the ExA from reaching a lawful conclusion.

B. Formal Recommendations to the Examining Authority

Deficiency Category in Doc 9.38	Mandatory Action Recommended for ExA	Justification and Legal Basis
Persistent FRA Flaw ^{2^}	Issue a Rule 17 Request requiring the mandatory withdrawal of the current Flood Risk Assessment and submission of a new, scientifically robust hydrological assessment.	Planning Act 2008 requirements; NPPF mandates safe development; evidence must be adequate to determine compliance.
Speculative Site Selection ^{3^}	Mandate a Supplementary Planning Justification Report focused exclusively on the Sequential Test, addressing policy grounds for discounting non-grid-constrained alternative sites.	National Policy Statement (EN-1) requirements for demonstrating compelling justification for adverse impacts and full appraisal of alternatives.
Non-Binding Mitigation ^{4^}	Instruct the Applicant to submit a revised dDCO Schedule of Requirements incorporating the specified 60m setback and community funding mechanisms.	Necessary to secure material planning benefits and ensure mitigation measures are legally enforceable under the Development Consent Order framework.
Unresolved Technical Dispute (FRA)	Commissioning of an Independent Technical Assessor. Instruct a third-party expert to review and validate the Applicant's surface water runoff calculations against the IP's critique.	Required to discharge the ExA's impartial duty when confronted with irreconcilable, evidence-based technical disputes that threaten public safety and NPPF compliance.
Failure to Achieve Closure (e.g., NE PADSS) ^{6^}	Issue a deadline for the Applicant and Statutory Consultees (SCs) to jointly submit revised Statements of Common Ground (SoCGs), demonstrating genuine resolution or, conversely, a clear articulation of the irreducible policy difference requiring ExA arbitration.	Compliance with the Infrastructure Planning (Examination Procedure) Rules 2010; necessity for efficient and lawful conduct of the Examination.

To restore procedural fairness, ensure the safety and robustness of the evidence, and protect the ExA from legal challenge, the following mandatory steps must be enforced:

The ExA must use its powers under the Planning Act 2008 to enforce these requirements. Allowing the Examination to proceed on the basis of Document 9.38's inadequate responses would be procedurally unsound and legally vulnerable.

Footnotes

1. Document 9.38: Applicant's Response to Deadline 4 Submissions [EN010159/APP/9.38] (revision 01); Applicant's Deadline 5 Covering Letter.
2. Forensic Rebuttal to Applicant's Response on Hydrology, Flood Risk, and Governance: EN010159/APP/9.31 Section 5; Critical Submission: Evaluation of the One Earth Solar Farm Proposal: Planning, Sustainability, Site Alternatives, Grid, Flood, and Financial Integration (EN010159-000883).
3. Critique of the Applicant's Deliverability Constraints Justification; Applicant's rationale for site selection articulated in Section 5.2.6 of REP2-080.
4. Local Interested Party Submissions, detailing requests for specific panel setbacks and binding annual grant schemes.
5. Outline Landscape and Ecology Management Plan (OLEMP) (Rev 5); Applicant's Deadline 4 Covering Letter (EN010159/APP/9.29), referencing Steering Group review and D4 closing date.
6. Natural England's Deadline 4 Response detailing ongoing disagreements and PADSS update (EN010159-000826).
7. Applicant's Deadline 4 Submission confirming introduction of DCO Requirement 22 and revision of the FRA; Community group submission detailing 60m panel setback requirements.