James Ledsham

From: [redacted]@gmail.com>
Sent: 07 May 2026 11:38
To: One Earth Solar
Subject: Follow-up to Response to Request for Information (RfI) dated 1st May 2026 – Project Reference EN010159

To: John Wheadon,

Head of Energy Infrastructure Planning Delivery & Innovation **Department:** Energy Security & Net Zero (DESNZ)

Date: 7 May 2026

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Dear Mr. Wheadon,

I am writing to provide a critical update to my formal response to your letter of 1 May. This addendum details the functional collapse of the regulatory oversight system, which has resulted in a **"circularity of abdication"** that renders any reliance on statutory assurances fundamentally irrational.

1. The Circularity of Incompetence: A Wednesbury Unreasonable System

The Administrative Record now contains a documented "closed loop" where no competent public body has actually scrutinized the engineering of this project. This circularity is the functional definition of **Wednesbury unreasonableness** (*Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223*):

- **The Environment Agency's Deferral:** At Issue Specific Hearing 3 (ISH3), Sean Holden for the Environment Agency (EA) explicitly declined to confirm the safety of surface water runoff impacts, stating: *"We defer to the local authority to comment on this... as we feel they are the experts in this over us"*. **[EV 8-005-time stamps 00:45:45:16 to 00:46:12:18]**
- **The LLFA's Admission of Incompetence:** Contradicting the EA's assumption of expertise, Nottinghamshire County Council (NCC) admitted in writing that it possesses *"neither the expertise nor resource"* to provide technical comments on the drainage strategy or flood risk assessment.
- **The Lincolnshire (LCC) Abdication:** Similarly, at ISH3, Stephanie Hall for Lincolnshire County Council confirmed that their technical assistant *"hasn't given me any comments for this section"*. LCC subsequently relied on the **"Passive Drip" fallacy**—a claim in ExQ3 (12.0.10) that runoff "simply drops" to the ground—which ignores the documented peak discharge amplification identified by expert counter-evidence.
- **The ExA Oversight:** The Examining Authority (ExA) presided over a documented collapse of the inquisitorial process during ISH3. When the EA explicitly deferred surface water scrutiny to Councils that had previously admitted a total 'competence void,' the ExA failed in its statutory duty to identify this as a terminal circularity. This allowed the Applicant to maintain the fiction of regulatory oversight, effectively hiding a **'Black Box' modelling approach** that ignores the Baiamonte up to **11.7x peak discharge factor**.

- **The SoS's Repetition of Error:** By issuing the Request for Information (RfI) on 1st May 2026, the Secretary of State is not merely repeating the ExA's mistake—he is completing the arch of circularity. The RfI seeks to delegate safety 'assurance' to the very bodies (EA and LLFAs) that have already admitted they cannot provide it.

The Secretary of State's attempt to 'cure' these defects by **amending Requirement 22** is a fundamental legal misdirection. No amount of procedural refinement to a 'staged assessment' can provide life-safety when the underlying scrutiny is non-existent. Requirement 22 is predicated on a post-consent discharge process involving regulators who have already formally declared their lack of 'expertise or resource' to verify the engineering. To suggest that safety is maintained through a Requirement overseen by self-certified incompetent bodies is a violation of the **Tameside Duty of Inquiry**.

2. Breach of EIA Regulations and 2026 NPS Updates: Negligence of Modern Science

The failure of both the EA and the LLFAs to engage with technical challenges constitutes a clear breach of **Regulation 14(3)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**, which mandates that assessments be based on "modern science." This negligence is compounded by the **January 2026 updates to National Policy Statements EN-1 (Section 4.1) and EN-3**, which explicitly distinguish between minor "technical refinements" and the **Fundamental Safety Case (FSC)**.

Under this updated statutory framework, the following issues represent a failure to establish a completed FSC prior to consent:

- **The "Wave Effect" (Peak Discharge):** The failure to model the **11.7 times Baiamonte peak discharge amplification factor** ignores the hydraulic synchronization of runoff across thousands of hectares of glass panels. The January 2026 NPS updates now mandate **"Front-Loaded Certainty,"** requiring that such fundamental safety variables be established during the Examination, not deferred to post-consent assessments.
- **Tidal Flooding and Storage Loss:** The uncompensated loss of **200,000 cubic meters of floodplain storage**—masked by the "5mm modelling fiction"—constitutes a terminal evidentiary deficit. The **March 2026 Strategic Mandate for the Building Safety Regulator (BSR)** and the **2026 NPS updates** strictly require granular, data-backed site-specific proof of safety and cumulative impact at the application stage.

By attempting to utilize Requirement 22 to resolve these mathematical and engineering certainties post-consent, the Applicant and the Secretary of State (SoS) are attempting a "staged assessment" that the law now forbids for matters of primary life-safety. The 2026 updates mandate that any "Parallel Tracking" is strictly contingent upon a **completed Fundamental Safety Case**; deferring these core safety assessments to a private, post-consent forum is an unlawful delegation of the SoS's statutory duty to be satisfied of safety at the point of decision.

3. The Failure of the Tameside Duty of Inquiry

Under the **Tameside Duty of Inquiry** (*[1977] AC 1014*), the SoS is legally compelled to inform himself of all relevant information before making a decision. To grant a Development Consent Order (DCO) based on **"staged ignorance"** via Requirements 7 and 22 is an unlawful attempt to "Requirement" past mathematical and engineering certainties that the regulators have proven they cannot scrutinize.

As established in ***Shadwell*** (*[2013] EWHC 10 (Admin)*), the SoS is legally bound to depart from the advice of statutory consultees when that advice is demonstrably defective. The record confirms that the current advice is based on a scientific vacuum and an institutional incompetence void.

Conclusion

The Secretary of State simply cannot delegate his statutory duty to regulators who have already admitted they lack the resources to perform it. Any order issued in the face of these documented defects would be **void ab initio** and subject to immediate application for quashing.

The only rational, lawful, and safe course of action is to **refuse the Order**.

Yours sincerely,

Stephen Fox Interested Party Reference: [redacted]