FORMAL SUBMISSION TO THE SECRETARY OF STATE

Interested Party Reference: [redacted] **Project:** One Earth Solar Farm (EN010159)
Submission Type: Written Representation in Response to the Secretary of State's Consultation Letter dated 21 May 2026 (Requesting Responses to the Post-Examination Submissions Regarding Draft Requirements 7 and 22)

SUBMISSION ON MANIFEST ERROR OF LAW, MATERIAL INDUCTION OF SYSTEMIC COMPLACENCY, AND EVIDENCE OF TERMINAL FLOOD RISK EVASION

1. Introduction and Scope of Objection

This submission is made in direct response to the Secretary of State's (SoS) consultation letter dated 21 May 2026, which formally requests responses to the submissions tethered to the Request for Information (RfI) dated 1 May 2026. It specifically counter audits the Applicant's submission dated 15 May 2026, which attempts to justify the dangerous postponement of core surface water flood risk assessments and layout safety cases to private, post-consent discharge mechanisms under Draft Requirement 7 (Battery Safety Management) and Draft Requirement 22 (Flood Risk Mitigation Detailed Design).

Before parsing the specific engineering and hydrological failures of this application, the Secretary of State is urged to forensically examine the primary administrative record—specifically the written responses of both the Applicant and the statutory consultees to the questions put by the Examining Authority.

This record exposes a systemic collapse of procedural integrity engineered by the Planning Inspectorate (PINS) itself. Instead of enforcing robust statutory scrutiny, PINS has institutionalised an examination culture that relies on comfortable, non-adversarial consensus. Having fostered an environment where uncritical procedural compliance is the norm, the Examining Authority was visibly disrupted when its own processes were subjected to a strict legal and forensic scientific audit. This systemic reliance on collaborative familiarity over evidentiary proof has allowed the developer and regulators to adopt a persistent policy of technical avoidance whenever forced to defend their positions.

When confronted with first-principles empirical evidence, the response from both sides has been entirely evasive:

- **The Applicant** has maintained a persistent failure to engage with substantive technical critique. This avoidance culminated in their explicit defiance of a direct action point issued at Issue Specific Hearing 3 (ISH3) to disclose their underlying runoff coefficients—a deliberate non-disclosure designed to shield an un-verifiable modelling "black box" from public scrutiny and expert cross-examination.

- **The Statutory Consultees (the Environment Agency and the Lead Local Flood Authority)** have offered responses that amount to a complete abdication of their regulatory functions. Rather than providing rigorous oversight of real-world catchment mechanics, their arguments are transparently inadequate, relying on boilerplate self-certifications of their own lack of technical resources and competence to evade confrontation.

The Secretary of State cannot lawfully treat this coordinated scientific evasion as a matter of standard administrative convenience. To grant a Development Consent Order under these conditions—where the developer and regulators have combined to substitute data-driven science with deliberate inertia and superficial arguments—would constitute a manifest distortion of the public inquiry process, a denial of natural justice, and would leave the final determination fatally exposed to an immediate and successful challenge in the Planning Court.

As an independent forensic evidence base confirming that the Fundamental Safety Case (FSC) for this project has terminally failed, this Interested Party formally tables two comprehensive technical documents:

1. **The Independent Hydrological & Hydraulic Assessment Report**
2. **The Saturated Post-Development Cumulative Flood Impact Assessment Report (The Impact Report)**

In strict accordance with procedural efficiency, this submission introduces these reports as uncontradicted mathematical evidence that the structural safety case for the industrialization of the Trent and Witham catchments does not exist. Rather than recounting their dense engineering contents here, they are introduced to establish a baseline of proven physical harm that cannot legally or logistically be "engineered away" post-consent. The Secretary of State cannot use post-consent requirements to bail out an applicant whose core environmental statement is structurally defective at the point of decision and who refused to provide the evidence when instructed to do so.

2. The Institutional Competence Void and Unbroken Paper Trail of Notice

2.1 The Circularity of Incompetence (Self-Certified Regulatory Abdication)

The Secretary of State is put on formal notice that the administrative record contains a documented "closed loop" of regulatory abdication, meaning no competent public body has scrutinized the hydraulic engineering of this 1,409-hectare megaproject. As detailed in this Interested Party's primary letters to the Department dated **5 May 2026** and **7 May 2026**, relying on statutory "assurances" to govern a post-consent framework under Requirement 22 is fundamentally *Wednesbury* unreasonable:

- **The Environment Agency's (EA) Deferral:** At Issue Specific Hearing 3 (ISH3), the EA explicitly declined to confirm the safety of surface water runoff impacts, stating on the record: *"We defer to the local authority to comment on this… as we feel they are the experts in this over us."*

- **The Lead Local Flood Authority's (LLFA) Admission:** Contradicting the EA's assumption of local expertise, Nottinghamshire County Council (NCC) formally conceded in writing that it possesses *"neither the expertise nor resource"* required to verify or provide technical comments on the drainage strategy for an infrastructure rollout of this magnitude.
- **The Lincolnshire County Council (LCC) Abdication:** Simultaneously, LCC confirmed at ISH3 that its technical assistant had provided no comments for this section. Instead, they unscientifically relied on the 'Passive Drip' fallacy (ExQ3 12.0.10) -the absurd claim that runoff 'simply drops' to the ground—which ignores the accelerated velocity, kinetic forces, and array alignment (parallel vs. perpendicular contours as evaluated by the Mile High Flood District in 2023) of industrial solar arrays.

To delegate the safety of 62 rural communities to a private, post-consent forum overseen by bodies that have already self-certified as incompetent or completely absent constitutes a clear jurisdictional error of fact and a manifest breach of the *Tameside* Duty of Inquiry to take reasonable steps to obtain sufficient information before granting consent, as applied in **Pratt v Exeter City Council EWHC**."

2.2 The Unbroken Paper Trail of Actual Factual Notice

The technical defects inherent in the Applicant's modeling are not novel issues raised late in the day. The Applicant and the Examining Authority (ExA) have operated under actual, factual, and written notice of these omissions for nearly two years:

- **2 & 9 August 2024:** This Interested Party explicitly put the Applicant on written notice that their static surface water mapping baseline was entirely unfit for purpose and omitted array-specific runoff dynamics.
- **5 May 2025:** This correspondence and technical critique were formally placed into the examination record via this Interested Party's Relevant Representation, ensuring the ExA had direct knowledge of these fatal baseline errors from the absolute outset of the formal process.
- **Continuous Ventilation:** This Interested Party subsequently raised these identical, specific engineering and hydrological failures at all Examination Deadlines and at all hearings throughout the examination window. The Secretary of State was subsequently placed on direct, actual notice of these systemic failures via formal submissions delivered in October 2025 and January 2026.

3. Supervening Change of Material Fact: The Collapse of the "Envelope" Defense

The entirety of the Applicant's 15 May response has been rendered structurally obsolete by a critical, supervening regulatory event. On **28 May 2026**—thirteen days after the Applicant submitted their response—the Environment Agency formally launched its updated Flood Map for Planning (**NaFRA2**).

In doing so, the EA explicitly retired the previous surface water datasets as *"unsuitable for development planning"* and mandated the use of upper-end (95th percentile) climate change allowances for the 2070s epoch.

The Applicant's core defense—that an "Outline Drainage Strategy" settled during the Examination establishes a safe "design envelope" for post-consent detailed refinement—has collapsed. A baseline cannot be "refined" when the overarching structural parameters of the catchment have been legally and scientifically overwritten. The entire hydraulic context of the Trent and Witham Valleys intersecting this site must now be recalculated from first principles against the mandatory 95th percentile thresholds. Layering the Applicant's missing array-specific variables onto this newly volatile background baseline makes it mathematically impossible for the detailed design to fit within the original parameters.

4.The Interlocking Jurisprudence of Rochdale and Barker: Why Deferral is Unlawful

In their 15 May response, the Applicant relies on a flawed interpretation of the Rochdale Envelope principle (R v Rochdale MBC ex parte Milne [2000]), implying that outline strategies allow them to fix structural engineering details post-consent via Requirements 7 and 22. This procedural mechanism is entirely dismantled by the interlocking public law jurisprudence of the House of Lords in R (Barker) v Bromley LBC [2006]. Barker established that a decision-maker cannot treat an initial outline consent as a shield against new or unresolved environmental risks. Main significant environmental effects cannot be kicked down the road into post-consent requirements.

By combining Rochdale and Barker, the Secretary of State is trapped in an inescapable legal Catch-22 manufactured entirely by the Applicant's failure to supply granular data during the public phase of the Examination:

First, if the Secretary of State grants the DCO now based on the 15 May response, he is granting an envelope that Rochdale law dictates is defective because it fails to capture the true, updated environmental baseline. Because the original envelope was tested against an obsolete surface water baseline that the Environment Agency has since retired as unsuitable for development planning, the parameter envelope has officially burst at the point of decision.

Second, if the Secretary of State tries to let the Applicant re-run the hydraulic numbers post-consent via Requirement 22, Barker law dictates that this re-run constitutes a subsequent EIA stage. Because modelling the accelerated runoff speed (Q_p)and compressed time to concentration (Tc) against the mandatory 28 May 2026 EA NaFRA2 baseline will inevitably force material changes to the infrastructure layout—such as the widespread deletion or relocation of solar strings and BESS assets—the Secretary of State will have unlawfully granted a DCO today for a design configuration that cannot legally be built, rendering the final decision ultra vires, void ab initio, and a procedural nullity.

Furthermore, deferring these calculations removes the core life-safety case from public scrutiny. Interested Parties possess a statutory right under the Infrastructure Planning (EIA) Regulations 2017 to cross-question and submit expert counterevidence on how

accelerated runoff and drainage outfall surcharges interact. Moving this process behind closed doors constitutes an unlawful ouster of statutory public consultation.

5. The Abject Inadequacies of the Statutory Bodies.

The critical exposure of these catchments has been actively facilitated by the statutory bodies' systematic blindness to real-world hydraulic mechanisms throughout this process:

5.1 Blindness to Compound Flooding Mechanisms

The EA and LLFAs have treated pluvial and fluvial risks as isolated, single-source hazards. In the low-lying Trent and Witham corridors, severe storms cause a devastating fluvial surcharge that physically blocks and "locks" gravity drainage outfalls, dykes, and flap valves. Because the receiving river is surcharged, surface water runoff cannot escape; it backs up and accumulates vertically on the dry side of flood embankments. This physical mechanism—empirically proven during the storm of 2012, Storm Dennis (2020), Storm Babet (2023), and Storm Henk (2024)—was entirely ignored by the regulators' reliance on static screening maps.

5.2 Sanctioning of the "Distinct Cell" Fallacy and the "5mm Fiction"

Following un-scrutinized private meetings with the Applicant, the EA irrationally abandoned its scientifically sound "no storage loss" requirement in favour of a **5mm modelling tolerance**. This "5mm fiction" is an administrative shorthand designed to mask a massive cumulative, uncompensated loss of **200,000 cubic meters of floodplain storage** across the Trent Valley behind theoretical "modeling noise":

- **Floodplain Constriction:** The introduction of raised access tracks, inverter plinths, and kilometers of security mesh fencing across **4,361 hectares of active floodplain** dramatically increases macroscopic hydraulic drag.
- **Debris Dam Creation:** Fencing acts as a physical debris screen during a flood, catching floating vegetation to form impermeable "debris dams" that structurally penalize catchment conveyance.
- **Policy Breach:** By permitting the developer to "salami-slice" the floodplain into distinct spatial cells to dilute perceived impacts, the regulators have hidden an immense cumulative volume displacement, directly violating the absolute **"No Net Loss" of floodplain storage** mandated by National Policy Statement EN-1 Paragraph 5.8.12.

5.3 The Macro-Catchment Strategic Data Vacuum

The host authorities possess no joint, cross-boundary macro-catchment model capable of simulating the aggregate hydrological transformation of an 8,844-hectare contiguous cluster of solar infrastructure. By allowing developers to maintain artificially narrow "Zones of Influence," the statutory bodies have failed to account for Cumulative Lag. While individual attenuation ponds might delay a localized peak on paper, they are entirely blind to the massive expansion of the total volume of water discharged into a hydraulically locked river network over a prolonged wet winter period.

Consequently, the application lacks the verified baseline data required to satisfy the strict statutory commands of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Under Schedule 4, Paragraph 5 of the 2017 Regulations, the Applicant is legally mandated to provide a rigorous, data-driven assessment of the cumulation of effects with other existing and approved projects, alongside the scheme's vulnerability to major disasters such as extreme compound flooding. By evaluating this unprecedented regional rollout within isolated, artificial boundaries and failing to model the cumulative volumetric surge into a locked catchment system, the Environmental Statement remains fundamentally incomplete and statutorily defective.

5.4 Distinct Separation of EIA Statutory Illegality and Wednesbury Discretionary Weight

For the absolute avoidance of doubt, this Interested Party clarifies that the statutory illegality of this application arises directly and exclusively from a fundamental breach of the Infrastructure Planning (EIA) Regulations 2017, independent of the 2026 National Policy Statement updates which operate under transitional arrangements. Regulation 14 of the EIA Regulations 2017 strictly mandates that an Environmental Statement must consider current knowledge and methods of assessment, establishing an absolute statutory obligation on both the Applicant and statutory authorities to ground their conclusions in modern science. The Applicant's Environmental Statement is terminally defective under this specific clause because it completely omits the modern scientific consensus and physical variables governing utility-scale solar array surface water hydrology: specifically, the collapse of the time to concentration (Tc) and the up to 11.7 times exponential spike in peak discharge $Q_p$and a collapse of time to concentration $T_c$driven by panel-induced Hortonian flow $q = i - K_8$(where q is the runoff rate, i is rainfall intensity, and $K_s$is the saturated hydraulic conductivity of compacted drip-line soils)

al spike in peak discharge (Q_p) driven by panel-induced Hortonian flow. This systemic failure to apply modern scientific methods is directly compounded by the Applicant's outright defiance of the Examining Authority's (ExA) formal Action Point issued following Issue Specific Hearing 3 (ISH3), which explicitly ordered the disclosure of the underlying runoff coefficients. By flatly refusing to disclose these foundational equations, the Applicant deliberately ensured their modeling remained an un-verifiable "Black Box" entirely shielded from public transparency, expert counterevidence, and objective scientific verification. The Secretary of State is legally barred from fulfilling his statutory duties when an applicant suppresses the core data required to satisfy the current knowledge standard of the EIA Regulations across a conjoined macro-catchment.

Consequently, a separate and equally fatal public law barrier arises under the principle of Wednesbury unreasonableness regarding administrative weight. The Secretary of State has been placed on continuous, actual notice of these identical, cross-boundary cumulative risks throughout the entire Examination window, most critically via this Interested Party's technical paper served directly on his department in October 2025 by the Tillbridge Case Officer, which forensically analysed the conjoined hydrodynamic

interactions of the Tillbridge, Great North Road, and One Earth schemes. Because the government's subsequent January 2026 updates to National Policy Statements EN-1 and EN-3, the March 2026 PPG, and the 28 May 2026 EA NaFRA2 deployment have now formally enshrined these exact cumulative parameters and data-driven mandates into national planning frameworks, the state has authoritatively validated the scientific accuracy of my warnings. While transitional arrangements mean the 2026 policy text cannot be retroactively applied as a statutory design checklist, its deployment stands as unassailable proof of what constitutes a highly material environmental consideration. For the Secretary of State—possessing direct, personal notice of an empirical life-safety threat since October 2025, and knowing that the Applicant actively hid their baseline equations from the public record—to afford the Applicant's obsolete 15 May assertions anything less than low weight, or to dismiss my uncontradicted served paper, would constitute a textbook abuse of administrative discretion. Relying on a self-shielded "Black Box" model crosses the line into manifest Wednesbury irrationality, rendering any subsequent decision to grant this Order procedurally flawed, ultra vires, and void ab initio.

5.5 The Absolute Precedence of the EIA Regulations Over Outdated Policy Assumptions

The Applicant's attempt to hide behind the transitional arrangements of the pre-2026 National Policy Statement for Renewable Energy Infrastructure (EN-3)—specifically leveraging Paragraph 2.10.76, which unscientifically asserts that because solar PV panels will drain to the existing ground, the impact will not, in general, be significant—constitutes a fundamental error of law. It is a foundational principle of public law that generalized planning policy statements cannot override, erase, or immunize an applicant from explicit statutory obligations mandated by secondary legislation. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 carry supreme legal force and take absolute precedence over outdated policy guidance.

Under Regulation 14 of the EIA Regulations 2017, an Environmental Statement must identify, describe, and assess the significant direct and indirect effects of a development on the environment based on current knowledge and methods of assessment, which establishes an unassailable mandate to utilize modern science. The Applicant cannot use Paragraph 2.10.76 of the old EN-3 as a shield to escape this statutory requirement. Because contemporary hydraulic science has long since shattered the myth of hydrological neutrality—proving that millions of continuous glass panel canopies forcefully concentrate rainwater at the dripline, compress the time to concentration (Tc), and amplify peak discharge (Q_p) by up to 11.7 times—omitting these physical variables from the core modelling creates a terminal legal defect under the 2017 Regulations.

The Secretary of State cannot lawfully substitute the mandatory, data-driven scientific scrutiny required by the EIA Regulations 2017 with an outdated policy fiction that treats an 8,844-hectare industrial catchment as hydrologically inert. Where a direct conflict exists between an obsolete policy assumption of no influence and a statutory regulatory duty to model verified ground-level impacts, the EIA Regulations take immediate

precedence. To accept the Applicant's 15 May submission based on a dead policy baseline, while consciously ignoring the total omission of peak discharge and runoff acceleration variables, would represent a manifest error of law, a failure of the Tameside duty of sufficient inquiry, and a textbook breach of Wednesbury rationality.

5.6 The Statutory Authorities' Complete Technical Inability and Evasion of Expert Counter-Evidence

This Interested Party establishes that the systemic failure of the Environment Agency and the host Lead Local Flood Authorities is definitively proven by their total, documented inability to provide a scientific response to the empirical data submitted throughout this examination. When confronted with first-principles hydraulic evidence demonstrating the collapse of the time to concentration (Tc) and the multi-fold amplification of peak discharge (Q_p) via the Baiamonte Effect, neither the EA nor the LLFAs produced a single line of mathematical counter-evidence or site-specific routing data to disprove these findings.

Instead of fulfilling their statutory roles as objective expert regulators, these bodies retreated into a position of total regulatory capture and defensive evasion. They attempted to deflect their technical incompetence by deploying two fundamentally false arguments on the record. First, they fell back on the unscientific "Passive Drip" fallacy, absurdly asserting that solar panels exert no mechanical or kinetic influence on rainfall distribution. Second, they privately huddled with the Applicant to sanction the "5mm modelling tolerance"—an administrative fiction designed to hide a massive, cumulative 200,000 cubic meter displacement of active floodplain storage behind artificial "modelling noise."

In public law, when a statutory consultee is presented with highly specific, expert-led scientific evidence that directly challenges the safety case of a development, they cannot legally discharge their duty by simply ignoring the data or retreating into generic, non-responsive policy platitudes. The total absence of any technical or scientific rebuttal from the EA and LLFAs stands as unassailable proof that they lacked the capacity and the data to answer my submissions. For the Secretary of State to treat the silence and unscientific capitulation of these self-certified, un-resourced bodies as a rational justification to grant this Order—while failing entirely to grapple with the uncontradicted scientific realities placed on notice since October 2025—constitutes a manifest breach of the *Tameside* duty of sufficient inquiry, rendering any subsequent determination ultra vires and void ab initio on grounds of *Wednesbury* irrationality.

6. Public Law Jeopardy for the Decision-Maker and Formal Remedies

Because this Interested Party has placed these explicit technical omissions on official record since August 2024, the Secretary of State has been under actual notice of these modeling failures throughout the process. Proceeding to grant the DCO based on the Applicant’s obsolete 15 May response places the final determination in severe public law jeopardy:

- **Breach of the Tameside Duty of Sufficient Inquiry:** The SoS cannot fulfill the statutory duty to acquire robust information when the chosen baseline completely omits the physical impact of the arrays on runoff speed and relies on maps the government's own statutory advisor has formally retired as unfit for planning.
- **A Verifiable Error of Material Fact:** Relying on a Flood Risk Assessment that treats solar panel runoff as hydraulically neutral, alongside retired surface water mapping, constitutes an explicit error of material fact which was established as directly applicable to planning inquiries in Connolly v Secretary of State for Communities and Local Government EWCA Civ 1059
- **Triggering of Wednesbury Irrationality:** Knowingly brushing aside nearly two years of precise, data-backed warnings—warnings subsequently validated by the EA's deployment of NaFRA2 and the 2026 updates to En1 and En3—to rely on a developer's boilerplate evasion crosses the line into textbook legal irrationality.
- **Mandatory Departure under Shadwell:** Under the precedent of R (Shadwell Estates Ltd) v Breckland District Council EWHC 12 (Admin), the Secretary of State is legally compelled to depart from the advice of statutory consultees (the EA and LLFAs) precisely because that advice is documented as defective, un-resourced, and unscientific.

The Secretary of State cannot lawfully assist the Applicant in the postponement of this safety case. Consistent with the *Tameside* Duty of Inquiry and the *Shadwell* mandate, the Secretary of State is urged to **Refuse Consent:** Deny the Development Consent Order on the grounds that the Applicant has failed to provide a robust Environmental Statement that accounts for the project's real-world impact on peak discharge (Q_p) and runoff velocity, failing the mandatory scientific and cumulative assessment standards of Regulation 14 of the Infrastructure Planning (EIA) Regulations 2017.

6.1 Reservation of Rights and Non-Waiver (Litigant in Person)

This submission is made under explicit protest and strictly without prejudice to this Interested Party's established position regarding the ongoing breach of natural justice and procedural integrity that has compromised this process. For the avoidance of doubt, the Secretary of State has operated under formal notice of jurisdictional nullity since the direct service of this Interested Party's technical paper and legal notice on 31 October 2025.

The continued active participation of this Interested Party in this post-examination consultation is legally compelled by the statutory framework of the Planning Act 2008 solely to maintain standing. This action does not constitute, and must not be interpreted as, an implied waiver, acceptance, or validation of any alleged procedural impropriety, unlawful censorship, or fundamental flaws in the Administrative Record. Engaging in this consultation does not cure the systemic omissions identified herein, nor does it immunize the defective baseline from secondary legislation. All rights to seek Statutory Appeal and Judicial Review in the Planning Court against the final Development Consent Order decision are fully and strictly reserved.

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