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D6 / SUPP / Section A Introduction

- 1 Climate Emergency Science Law (“CESL”), Dr Andrew Boswell, continues its submissions on the climate change aspects of the Proposed Development. A resume of CESL’s background was provided at Section F of the D1 Written Representation [REP1-077].
- 2 This submission replies to the Applicant’s Response to Legal Submissions [REP5-066] on behalf of CESL. *It is made by CESL itself, as a party in the examination, and not by counsel.* As such, it is not a formal pleading and does not purport to be drafted as one. CESL nonetheless addresses the legal issues directly, as the Applicant’s response is itself framed in legal terms. This reply should be read with CESL’s response to ExQ2 (18.2) at Section B of the CESL’s submitted D6 submission, the indicative sensitivity analysis at the D6 Appendices, and the notification at D6 Section F. CESL does not repeat the detail of those submissions; this reply is directed to the structure of the Applicant’s legal answer.
- 3 This reply addresses the same three deficiencies CESL identified in its response to ExQ2 at D6 Section B, using the same numbering throughout. For the reasons given in Section B below, CESL addresses them in a different order from D6:
 - Deficiency 2 (absolute assessment; D6 Section B.3.2) is taken first, at Section C;
 - Deficiency 1 (territorial mismatch; D6 Section B.3.1) at Section D; and
 - Deficiency 3 (uncertainty and current knowledge; D6 Section B.3.3) at Section E.

This deficiency numbering is identical to D6.

- 4 CESL begins by identifying a single, foundational error that runs through the whole of [REP5-066] (Section B).
- 5 It then applies that analysis to the two structural deficiencies on which CESL’s case principally rests — the failure to assess absolute lifecycle emissions (Section C) and the territorial mismatch (Section D) — before addressing the disclosure deficiency (Section E), the Applicant’s “without prejudice / academic” argument (Section F), and the Applicant’s reliance on the Climate Change Act 2008 regime (Section G).
- 6 I have used AI to assist with drafting and refining the textual content of submissions to the examination for clarity and presentation. Following the recent update to the PINS guidelines, a full statement¹ on the use of AI is provided at Section I.

¹ In accordance with PINS guidance on “Use of artificial intelligence in casework evidence”, 6 September 2024, as updated 20 February 2026

ExA Question EXQ2 18.2 (Upstream Emissions): Please clarify succinctly which requirement(s) of Regulation 5(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 you contend have not been met, and explain why, in your view, the matters raised amount to a legal deficiency in the Environmental Statement rather than a disagreement with the Applicant's exercise of professional judgement.

CESL's related reply to the Applicant's Response to Legal Submissions [REP5-066]

D6 / SUPP / Section B *The foundational error: the Applicant answers the benchmarking question, not the assessment question*

- 7 The EIA Regulations impose two distinct obligations which must not be conflated:
 - (a) The assessment duty — the duty to identify, describe and assess the absolute likely significant effects of the development on the climate: Reg 5(2), Reg 14, and Schedule 4 paragraph 5. This is the duty considered by Holgate J in *Friends of the Earth Ltd v SSLUHC* [2024] EWHC 2349 (Admin) (“the Whitehaven coal mine case”).
 - (b) The contextualisation discretion — the discretion of the decision-maker, when judging the *significance* of effects already assessed, to contextualise them against a benchmark. This is the subject of *R (Boswell) v SSENZ* [2025] EWCA Civ 669 (the Net Zero Teesside case), *R (Luton and District for the Control of Aircraft Noise) v Secretary of State for Transport* [2025] EWHC 3206 (Admin), *R(GOESA Ltd) v Eastleigh BC* [2022] EWHC 1221 (Admin) and *R (Bristol Airport Action Network Co-Ordinating Committee) v SSHCLG* [2023] EWHC 171 (Admin).
- 8 Every authority the Applicant deploys at [REP5-066, paras 25–52 and 58] goes to the second obligation. *Blewett* (adequacy of an ES is evaluative); *Finch* at [58] (significance is a value judgment); *LADACAN*, *Boswell* and *GOESA* (benchmark selection and contextualisation are evaluative): each concerns how a decision-maker may treat effects that have been assessed, or whether a benchmark must be used. None concerns whether the anterior duty to describe and assess the absolute effect arises in the first place.
- 9 The Applicant's answer therefore proceeds on an unstated and incorrect premise: that the only lawful way to assess an effect is to benchmark it, so that where no benchmark exists, no assessment is required. That premise is the hinge of the response at [REP5-066, paras 56 and 58(a)–(b)]. It is wrong in law. The duty to describe and assess absolute effects under Schedule 4 paragraph 5 is independent of, and prior to, any benchmarking exercise. An effect can be described and quantified without being benchmarked.
- 10 The clearest confirmation of this error is what the Applicant's response [REP5-066] does not contain. It does not cite Whitehaven at all, notwithstanding that Whitehaven is the authority directly governing the assessment duty on which CESL's case principally rests. The Applicant has answered a question that CESL's submissions do not raise, and has not engaged the authority on the question CESL does raise.

- 11 CESL readily accepts — and it is important to be clear about this — that once an assessment of an effect has been carried out, the *adequacy* of that assessment is a matter of evaluative judgment reviewable only on *Wednesbury* grounds: *Blewett* at [41]. CESL does not invite the ExA or the SoS to second-guess an evaluative judgment. CESL’s case is anterior to adequacy: the difficulty is not that the absolute ex-territorial effect has been assessed inadequately, but that it has not been assessed at all. One cannot evaluate the adequacy of an assessment that was never made. This distinction governs the deficiencies below.
- 12 The Applicant itself identifies the relevant threshold. At [REP5-066, para 27] it accepts that a court will adjudicate on the content of an ES where there is “*some **patent defect** in the assessment, which has not been put right in the making of the decision*”, emphasis as in [REP5-066], (R (Plan B Earth) v SST [2020] PTSR 1446 at [137]). The absence of any methodology by which the dominant ex-territorial component of the Proposed Development’s climate impact can itself be separately assessed and evaluated for significance is such a patent defect. It is not a question of the assessment being imperfect; it is the absence of an assessment of the dominant effect, and it has not been put right.
- 13 The Applicant contends at [REP5-066, para 42] that CESL conflates the prior question — whether an effect is significant and capable of meaningful assessment — with the later question of how an assessment is carried out. The conflation is the other way about. CESL’s case does not depend on the “reasonable worst case” standard of how an assessment is performed; it rests on the prior duty to assess at all. That prior duty is engaged here precisely because the Applicant has already identified that upstream emissions are a likely significant indirect effect ([APP-058], para 20.6.59; and 63.4% of operational lifecycle emissions: [REP4-092], para 3). The only remaining reason the Applicant invokes — that the effect is not “capable of meaningful assessment” — is answered by the demonstrated feasibility of the exercise at Section D below. There is therefore no evaluative reason left for the Applicant to stand behind.

D6 / SUPP / Section C *Deficiency 2 (absolute assessment — D6 Section B.3.2): the Applicant does not engage Whitehaven*

- 14 CESL takes this deficiency first because it is the most straightforward and is, on the Applicant’s own response, unanswered. The duty to assess the GHG emissions of the project, as likely significant indirect effects, is established by *Whitehaven* at [101], where Holgate J held that such emissions “*are significant likely indirect effects of the project*” and that accordingly the 2011 Regulations required the developer’s ES and the EIA process “*to assess those emissions and their implications*”. That the duty falls on the ES itself, and not merely on the downstream examination, is express on the face of [101]². That substitution and displacement are irrelevant to *whether* that duty arises is established separately, at [103] and [106]–[108], where the court held that the alleged substitution of an alternative supply is “*a different cause and effect, or causal relationship*” from the burning of the project’s own output, and that any offsetting which substitution might justify “*does not mean that substitution ... is a relevant factor*” in determining whether the project’s own emissions are a likely significant effect. That

² The Applicant cannot remedy a deficiency in the Environmental Statement by pointing to the examination process as a whole. In *Whitehaven* [52], the court accepted that where the EIA Regulations require an assessment, it must be undertaken by the developer and provided at a sufficiently early stage to enable informed public participation and scrutiny. The omission of required information from the Environmental Statement was treated as a serious defect notwithstanding that the issue had arisen during the subsequent decision-making process. The purpose of EIA is not merely that environmental information is considered somewhere within the process, but that it is presented through the Environmental Statement in a form that allows consultees, interested parties and the decision-maker to examine and challenge it before the decision is taken.

proposition is not confined to any class of Scope 3 emission and applies directly to the upstream emissions in issue here. CESL does not suggest factual equivalence between the *Whitehaven* project and the Proposed Development; the relevance of the authority is that once GHG emissions constitute a likely significant indirect effect, substitution or displacement arguments do not answer the anterior duty to assess them. CESL relies on *Whitehaven* for the duty to assess, and not for the manner of assessment. That the assessment must be of the project's absolute emissions, presented against a no-project baseline rather than through a substitution counterfactual, is established separately by the OPRED Supplementary Guidance (June 2025), as set out at paragraph 17 below.

- 15 The Applicant's response does not address *Whitehaven* at any point. It does not distinguish it, qualify it, or explain why it does not apply. The duty it establishes is therefore unanswered on the Applicant's own case.
- 16 The significance conclusion in the ES rests on a substitution comparison with a counterfactual unabated CCGT [APP-058, paras 20.6.42–20.6.67]. As CESL explained at D6 Section B.3.2, the single-paragraph carbon-budget comparison at para 20.6.68 does not cure this, because it benchmarks a figure that includes ex-territorial emissions against a territorial-only metric. CESL does not contend that absolute lifecycle emissions are absent from the ES as numerical information. Rather, the difficulty is that those emissions are not themselves the object of an assessment capable of supporting the significance conclusion; instead they are evaluated through substitution and benchmarking exercises that do not assess the dominant ex-territorial component.
- 17 Two propositions follow, and CESL identifies the source of each. **First**, that substitution and displacement are irrelevant to whether the upstream effect must be assessed is established by *Whitehaven* itself, at [103] and [106]–[108], as set out at paragraph 14 above; that proposition is not confined to any class of Scope 3 emission and applies directly to the upstream emissions in issue. **Second**, as to the *manner* of assessment, the OPRED Supplementary Guidance (June 2025) confirms the same Directive principle in two respects. As to the baseline, it requires that downstream emissions "*OPRED expects that these downstream emissions from a new project will be presented in the ES against a no project ('do nothing') scenario (i.e. total quantity of scope 3 category 11 emissions from the project against zero scope 3 category 11 emissions for a no project scenario). Taking this approach confirms the absolute downstream emissions that may be associated with the combustion of the produced hydrocarbons over the lifetime of the project*". [OPRED guidance (2025) page 9, as quoted at REP5-072, Section E.5(B)]. As to substitution, it states that "*Substitution is not considered to be a factor affecting whether scope 3 emissions from a project's downstream activities are an effect that needs to be assessed in the ES*" [OPRED guidance (2025), page 7, as quoted at REP5-072, Section E.5(B)].
- 18 CESL acknowledges that OPRED's express terms address downstream Scope 3 (category 11) combustion emissions. CESL relies on it by analogy for the upstream Scope 3 emissions in issue, for the reasons given at the section below: the principle OPRED applies is a feature of the EIA Directive's treatment of a project's own effects, which draws no distinction between the upstream and downstream ends of a supply chain, and the logic — that an effect is assessed against the project's absence, not against a displaced alternative — is identical at each end.
- 19 The analogy is, however, confirmatory only. The duty to assess the upstream effect, and the irrelevance of substitution to that duty, rest on *Whitehaven* independently of OPRED, so the point does not depend on the ExA accepting the extension of OPRED to upstream emissions. The Applicant's reliance on substitution is therefore contrary

both to the duty to assess established by *Whitehaven* and to the requirement — established by *Whitehaven* as to substitution, and confirmed by OPRED as to absolute presentation — that the assessment be of absolute emissions against a no-project baseline. The Applicant engages neither authority. This is a structural feature of how the ES assesses significance, not a matter of evaluative judgment within it.

D6 / SUPP / Section D *Deficiency 1 (territorial mismatch — D6 Section B.3.1): the concession, and the answer to “not possible”*

- 20 The Applicant’s answer to the territorial point is at [REP5-066, para 58(b)]: “*In the absence of any relevant benchmark against which to assess emissions on a like for like basis, it may not be possible to carry out further meaningful assessment of certain emissions*”. This is the foundational error of Section B in its clearest form: the Applicant equates the absence of a benchmark with the impossibility of assessment.
- 21 Three points follow. **First**, the inability to benchmark ex-territorial emissions against UK carbon budgets (a consequence of the territorial scope of CCA 2008 s.89) does not excuse the failure to *describe and assess* those emissions under Schedule 4 paragraph 5. Those are different duties, for the reasons in Section B.
- 22 **Second**, the Applicant’s contention is one of *impossibility* — that meaningful assessment “*may not be possible*”. A contention of impossibility is defeated by a single demonstration that the exercise can be performed. At D6 CESL provided an indicative sensitivity analysis which does produce estimates for UK and ex-UK emissions across a range of sensitivity input. CESL does not invite the ExA or SoS to adopt CESL’s figures, nor does CESL’s case depend on the accuracy of any particular figure. The narrow and sufficient point is that an assessment of the ex-territorial component can be constructed using recognised sources: future gas-supply projections from the Government-owned NESO (FES 2025); a published systematic literature review of LNG well-to-tank intensities (EERA/T&E 2024); and peer-reviewed science (Howarth 2024). CESL’s indicative parameter isolation ladder (PIL) sensitivity analysis at the D6 Appendices performs exactly that construction, separately identifying the UK territorial and ex-territorial components throughout. Whatever view is taken of CESL’s specific numbers, the exercise establishes feasibility, and feasibility is the complete answer to “not possible”. CESL does not put forward the PIL as a substitute environmental statement or as the only permissible assessment methodology. It is relied upon for the narrower proposition that separate description and assessment of the ex-territorial component is feasible using readily available and established evidence. CESL’s production of that analysis is without prejudice to CESL’s position that the burden of carrying out the assessment lies on the Applicant, not on an interested party.
- 23 That feasibility does not rest on CESL’s analysis alone. The EERA methodology has been deployed at the international regulatory level — in submissions to the IMO’s intersessional GHG working group and at MEPC 83 — precisely to derive default LNG well-to-tank emission factors of the kind the Applicant says cannot meaningfully be assessed [D6 Section E]. The duty to assess those upstream Scope 3 effects is confirmed by *Whitehaven*; that the assessment must be of absolute emissions is confirmed by the OPRED guidance, which CESL has shown applies across EIA by analysis of the common EIA Directive basis of the offshore and onshore regimes [REP5-072, Section E.5(A)]. The proposition that such emissions are incapable of meaningful assessment is therefore contradicted not only by CESL but by the direction of international regulatory practice and by domestic guidance.

- 24 **Third**, the Applicant's position is internally contradictory. It cannot simultaneously maintain (i) at para 58(b), that ex-territorial emissions may not be capable of meaningful assessment, and (ii) at paras 52 and 57, that the SoS may rely on the CCA 2008 regime in respect of those same emissions. If the Applicant relies on those emissions as being within a regime that will "necessarily ensure" compliance with legal targets, they cannot simultaneously be treated as incapable of meaningful assessment; and if (as Section G shows) the regime does not in fact reach them, neither limb of the Applicant's position holds.
- 25 This is not a disagreement with an evaluative judgment. As CESL explained at D6 Section B.4.1, the "evaluative judgment" umbrella presupposes a judgment to evaluate. Where there is no separate description, assessment methodology or significance conclusion for the dominant ex-territorial emission category — as the Applicant's own concession at para 58(b) confirms — there is a gap in the environmental information, not an exercise of judgment within a protected range. The SoS cannot reach a reasoned conclusion under Reg 30(2)(b)(i)(aa) on a category of effect that has not been assessed.
- 26 The Applicant asserts at [REP5-066, para 58(a)] that CESL "*is simply repeating the same arguments in another form*" as were rejected in *Boswell* and *LADACAN*. CESL is not. In *Boswell* and *LADACAN* the question was whether a decision-maker, having assessed emissions, was obliged to *contextualise* them against a benchmark, or could decline to do so where no like-for-like benchmark existed. The emissions in those cases had been assessed; the dispute was about the further step of contextualisation. CESL's case here is about the prior step: the dominant emission component has not been separately assessed as a distinct effect. That is a different question, arising at a different stage of the EIA process, and neither *Boswell* nor *LADACAN* decides it. To characterise the present case as a repeat of those cases is to make the very conflation identified in Section B — treating an absence of assessment as though it were a contested choice of benchmark.

D6 / SUPP / Section E *Deficiency 3 (uncertainty and current knowledge — D6 Section B.3.3): a duty of disclosure, not a choice of methodology*

- 27 CESL confines this deficiency to its proper scope. The question raised by this deficiency is not whether the selection of the DESNZ WTT factor was correct, nor whether the EIA Regulations prescribe which dataset to use. It is a distinct question — whether the ES discharged the mandatory duty to describe the material uncertainties attaching to the factor it did use. The Applicant's answer at [REP5-066, paras 58(c)–(d)] — that dataset selection is "*a classic example of legitimate professional judgment*" — engages only the former question and does not reach the disclosure duty that this deficiency concerns.
- 28 CESL's contention is grounded in a distinct, mandatory content requirement: Schedule 4 paragraph 6 requires the ES to describe "*the main uncertainties involved*", and Reg 14(3)(b) requires it to take account of "*current knowledge and methods of assessment*". These are duties of disclosure, independent of which factor was chosen. The Applicant asserts at para 58(c) that disclosure "*is exactly what the Applicant has done*" and is "*inherent in the Government setting conversion factor datasets*". That is incorrect: the ES does not disclose, and the Applicant has at no stage engaged with, the structural features of the factor established by the Government's own EIR response [EIR2026/02883; REP5-072, Section B] — that the LNG intensity derives from the Exergia (2015) study; that all LNG is assigned the Qatar pathway when US LNG (absent from Exergia) was 76% of UK LNG imports in 2025; that supply shares are frozen at 2021 DUKES data; and that DESNZ has not updated them for several years. Whatever view is taken of the suitability of the factor itself, the ES does not disclose or assess these material limitations and uncertainties, notwithstanding the requirements of Schedule 4 paragraph 6 and Regulation 14(3)(b).
- 29 These features are not "inherent" in the mere publication of a dataset; they were established only through CESL's EIR request, and they are precisely the "main uncertainties" Schedule 4 paragraph 6 requires to be described. The Applicant's reliance on *Finch* at [77] (at [REP5-066, para 58(c)], that addressing variability "*enter[s] into exactly the area of conjecture and speculation*") misapplies that authority. The "conjecture and speculation" exclusion in *Finch* governs whether a *putative* effect, whose likelihood is unproven, need be assessed at all. It does not licence the non-disclosure of evidenced uncertainty about an effect that has already been assessed and is conceded to be significant. The Applicant inverts the principle: it deploys a doctrine about what need not be assessed in order to excuse not disclosing known uncertainty about what has been assessed. The shift towards greater LNG reliance is not conjecture. The present position — in which US LNG was the dominant single source of UK LNG imports, at 76% in 2025 — is established by Government statistics (DESNZ Energy Trends [REP5-072, section B.1]). The forward trajectory of increasing structural reliance on LNG imports, as UK Continental Shelf and Norwegian pipeline supply decline, is projected by NESO FES 2025 and independently corroborated by the Oxford Institute for Energy Studies (NG202, 2025) and by National Gas (*Securing Britain's Energy*, February 2026) [REP3-085]. CESL maintains its position, set out at [REP5-072], that the DESNZ factor does not bound even the lower end of the foreseeable uncertainty range; that point is not necessary to this disclosure-based deficiency, which is engaged whatever view is taken of the factor's suitability. The disclosure duty arises because the material, evidenced uncertainty attaching to the factor — including the reasonably foreseeable upstream intensity of an increasingly LNG-dominated marginal supply — was not disclosed.

D6 / SUPP / Section F The “without prejudice / academic” argument does not cure a deficiency in the ES

- 30 The Applicant submits that CESL’s criticisms “do not go anywhere as a matter of fact” because it has provided sensitivity testing “without prejudice” [REP5-066, paras 56, 58(f), 58(j), 59]. CESL’s engagement with that material in this section, and at D6 Section E, is likewise without prejudice to CESL’s primary case that the material is legally incapable of curing the deficiencies in the ES. Subject to that, the Applicant’s submission does not meet CESL’s case, for three reasons.
- 31 **First**, the deficiencies are deficiencies in the assessment and therefore would infect any reasoned conclusion made by the decision maker on the basis of the ES. The significance conclusion in the ES itself remains unchanged and has not been withdrawn. Supplementary material provided “without prejudice” to the adequacy of the ES does not alter the conclusion the ES reaches, and it is that conclusion the SoS must rely on under Reg 30(2)(b)(i)(aa).
- 32 **Second**, the Applicant cannot have it both ways. Either the sensitivity scenarios form part of the environmental information to be assessed — in which case they undermine the ES significance conclusion, because they show savings falling sharply under realistic stress — or they are disavowed as “unrealistic” and “speculative” [REP5-066, para 58(f)], in which case they cure nothing. They cannot simultaneously render CESL’s case “academic” and be disowned as not representing likely effects.
- 33 **Third**, and in any event, CESL has demonstrated at D6 Section E that the sensitivity test does not remedy the deficiencies even on its own terms: it does not address the territorial mismatch (D.2), it does not present absolute lifecycle emissions (D.4), and it holds LNG intensity constant while varying only LNG share (D.5–D.8).

D6 / SUPP / Section G The Applicant’s reliance on the CCA 2008 regime (the Gateshead argument)

- 34 The Applicant’s principal positive answer is that the ExA and SoS may rely on the CCA 2008 regime to control the Proposed Development’s emissions, and “*assume that this control regime will operate effectively*” [REP5-066, para 57], such that the regime “*will necessarily ensure that the relevant legal targets will be met*” (paras 52, 57, 58(i)). This invokes the principle in *Gateshead MBC v SSE* [1995] Env. L.R. 37.
- 35 CESL does not dispute that the principle exists, or that *Bristol* establishes the CCA 2008 as a qualifying control regime. CESL’s submission is directed at the **limits** of the principle as applied to the emissions in issue. It fails here on two independent grounds.

G.1 First limb: the regime does not reach the dominant emission component

- 36 The principle permits reliance on a control regime only in respect of the effects that the regime actually controls. The Applicant’s own authority makes this plain: it cites *An Taisce* [2014] EWCA Civ 1111 at [46] for the proposition that the decision-maker may “*have regard to, and rely upon, the existence of a stringently operated regulatory regime for future control*” [REP5-066, para 47]. The necessary premise is a regime that controls *the relevant effect*.
- 37 The dominant emission component — ex-territorial upstream Scope 3 emissions — falls entirely outside the CCA 2008 regime. UK carbon budgets are territorial under

CCA 2008 s.89; the UK ETS covers territorial Scope 1 combustion. Neither reaches overseas supply-chain methane [REP5-072, Sections E.1(A), E.4]. There is therefore no “*separate regulatory control*” on which the SoS can rely in respect of those emissions, and the submission that the regime “*will necessarily*” control them is, as a matter of the regime’s territorial scope, incorrect. The word “necessarily”, used three times in the response, is doing work the territorial scope of the CCA 2008 cannot support. This is the same internal contradiction identified at Section D: the Applicant cannot rely on the regime to control emissions it elsewhere concedes (para 58(b)) fall outside the benchmark because they are ex-territorial.

G.2 Second limb: the assumption of “necessary” compliance is contradicted by the statutory plans

- 38 Even for the UK-territorial component, the Applicant’s case that the regime “*will necessarily ensure that the relevant legal targets will be met*” (para 57) depends on an unstated factual assumption: that the national framework contains sufficient removal headroom to accommodate the Proposed Development’s residual emissions while still meeting the carbon budgets. The repeated use of the word “necessarily” is important. It is not merely a submission that the regime provides a framework for managing emissions; it is a submission that the regime guarantees accommodation of the Proposed Development’s residual emissions. The burden therefore lies on the Applicant to identify the basis for that asserted necessity.
- 39 The Gateshead principle entitles a decision-maker to assume the *proper operation* of a regime. It does not entitle the decision-maker to assume a factual state of affairs that the relevant statutory plans positively contradict. CESL’s notification at D6 Section F identified that the Applicant’s reliance, at [APP-058, para 20.6.54], on post-2050 “balancing” via agriculture and land-use removals is not supported by either the CCC’s Seventh Carbon Budget or the Government’s Carbon Budget and Growth Delivery Plan. Those documents do not identify land-use removals as a mechanism for accommodating residual emissions from electricity generation. Rather, they show land-based removals being used to address residual emissions within the land-use and agriculture sectors, and engineered removals being deployed in relation to other residual emissions. The Applicant has identified no pathway within those statutory plans by which the Proposed Development’s residual emissions would be accommodated.
- 40 CESL emphasises that this point does not depend on para 20.6.54 remaining in the ES. The Applicant faces a fork. **Either** para 20.6.54 is maintained, in which case the stated mechanism for accommodating the residual emissions is contradicted by the SoS’s own statutory plans; **or** it is withdrawn, in which case the ES contains no stated mechanism at all for how the Proposed Development’s post-2050 residual emissions are to be accommodated within the national framework, and the gap in the assessment is laid bare rather than cured. On neither branch does the Applicant have an answer: deletion of the paragraph removes the Applicant’s only stated basis for the assumption of “necessary” compliance, and so strengthens rather than weakens CESL’s point.
- 41 The Court of Appeal in *Boswell* at [81] permits a decision-maker to conclude that emissions “*will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target*”. But that permits an assumption that emissions will be managed; it does not permit an assumption that directly contradicts the content of the very plans said to do the managing. Where the CCC’s pathway and the Government’s delivery plan do not identify a pathway by which the Proposed Development’s residual emissions would be accommodated, an assumption that the

regime will “necessarily” ensure compliance requires further analysis. The Gateshead principle permits reliance on the existence and operation of a regulatory regime. It does not eliminate the need for an evidential basis where the Applicant asserts a specific mechanism for accommodating residual emissions that is not identified in the statutory plans relied upon.

- 42 The Applicant’s reliance on *Global Feedback* [2023] EWCA Civ 1549 [REP5-066, paras 43, 58(e)] does not assist. That authority concerns the distinct s.13 CCA 2008 duty to formulate national policies and proposals. CESL does not invite the SoS to perform the s.13 exercise. CESL’s point is evidential: the Applicant has invited reliance on a factual premise (available removal headroom) that the SoS’s own statutory plans contradict. That goes to the rationality of the reliance, not to the s.13 duty.

D6 / SUPP / Section H Conclusion

- 43 The Applicant’s response does not answer CESL’s case because it answers a different question. It establishes, at length, that significance and benchmark selection are evaluative judgments. CESL does not dispute that. CESL’s case is about the prior duty to identify, describe and assess the project’s likely significant effects — a duty the Applicant’s authorities do not touch. That duty, and the irrelevance of substitution to it, is directly governed by *Whitehaven*, which the Applicant does not address; that the assessment must be of the project’s absolute emissions against a no-project baseline is confirmed by the OPRED guidance, as set out at Section C.
- 44 On that footing: the failure to assess absolute lifecycle emissions (Deficiency 2) is unanswered; the territorial mismatch (Deficiency 1) is confirmed by the Applicant’s own factual concession, and the Applicant’s plea of impossibility is defeated by the demonstrated feasibility of the exercise and by international and domestic practice; the disclosure failure (Deficiency 3) is a failure of a mandatory content requirement that the professional-judgment defence does not reach; the “without prejudice” material cures none of them; and the CCA 2008 reliance argument fails because the regime does not reach the dominant emissions and the assumption of necessary compliance is contradicted by the SoS’s own plans. While each deficiency stands independently, Deficiency 1 is the most significant: it concerns the dominant emission component, it is confirmed by the Applicant’s own concession at para 58(b), and it is the least susceptible to cure by anything short of an actual assessment of the ex-territorial emissions.
- 45 CESL accordingly maintains its invitation to the ExA to conclude that the ES, as supplemented by [REP5-063] and [REP5-066], does not meet the requirements of Reg 5(2) read with Schedule 4 paragraphs 5 and 6 and Reg 30(2)(b)(i)(aa), and that the matters raised are legal deficiencies in the ES, not disagreements with the Applicant’s exercise of professional judgment.

D6 / SUPP / Section I *Statement on the use of Artificial Intelligence*

- 46 This statement is made in accordance with PINS guidance on “*Use of artificial intelligence in casework evidence*”, 6 September 2024 and its update of 20 February 2026.
- 47 I have used standard commercially available artificial intelligence tools (OpenAI ChatGPT v5.2, Anthropic Claude Sonnet 4.6 and Anthropic Claude Opus 4.8) to assist with researching issues, and drafting and refining textual content for clarity, structure, and readability.
- 48 AI was used solely in response to prompts provided by me and drew on publicly available information and the content of documents and material supplied by me; it was not used to generate original evidence or data.
- 49 The text in this submission may therefore have been influenced by the use of AI for research support and proof-reading during the drafting process.
- 50 I submit that any use of AI in preparing this submission has been responsible and lawful, and has been directed to clarifying and structuring the issues presented.
- 51 I am responsible for the factual accuracy of this submission. All information has been reviewed and checked by me and, to the best of my knowledge and understanding, is true and accurate.
- 52 Numerical work, including any tables of figures or graphs in this document, is usually my own work, but may be assisted by AI in which case it is always thoroughly checked to my own standards.
- 53 No images, video, or visual material have been created, altered, or enhanced using artificial intelligence in this submission.
- 54 This submission does not contain any personal data, and no personal information has been disclosed or processed using AI. Any use of AI complies with data protection, confidentiality, and copyright requirements.

D6 / SUPP / Section J *Authorities cited*

1. *R (Blewett) v Derbyshire County Council* [2003] EWHC 2775 (Admin); [2004] Env LR 29
2. *R (Boswell) v Secretary of State for Energy Security and Net Zero* [2025] EWCA Civ 669
3. *R (Bristol Airport Action Network Co-ordinating Committee) v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 171 (Admin)
4. *R (Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20
5. *Gateshead Metropolitan Borough Council v Secretary of State for the Environment* [1995] Env LR 37
6. *R (Global Feedback Ltd) v Secretary of State for Environment, Food and Rural Affairs* [2023] EWCA Civ 1549
7. *R (GOESA Ltd) v Eastleigh Borough Council* [2022] EWHC 1221 (Admin)
8. *R (Luton and District Association for the Control of Aircraft Noise) v Secretary of State for Transport* [2025] EWHC 3206 (Admin) ("LADACAN")
9. *R (An Taisce (The National Trust for Ireland)) v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 1111
10. *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2349 (Admin) (the *Whitehaven* coal mine case)