



CLEVE HILL SOLAR PARK

THE APPLICANT'S RESPONSES TO SUBMISSIONS RECEIVED AT DEADLINE 5

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CLEVE HILL
SOLAR PARK

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List of Abbreviations

| | |
|-----------------|--|
| AGL | Above Ground Level |
| ALC | Agricultural Land Classification |
| AOD | Above Ordnance Datum |
| AQIA | Air Quality Impact Assessment |
| CfD | Contract for Difference |
| CHSP | Cleve Hill Solar Park |
| CHSPL | Cleve Hill Solar Park Limited |
| CNMP | Construction Noise Management Plan |
| CO ₂ | Carbon Dioxide |
| CPRE | Campaign to Protect Rural England |
| CTMP | Construction Traffic Management Plan |
| DCO | Development Consent Order |
| dDCO | Draft Development Consent Order |
| EA | Environment Agency |
| ES | Environmental Statement |
| ESO | Electricity System Operator |
| ExA | Examining Authority |
| FES | Future Energy Scenarios |
| FRA | Flood Risk Assessment |
| G/NMC | Graphite / Nickel Manganese Cobalt |
| GREAT | Graveney Rural Environment Action Team |
| GW | Giga Watt |
| Ha | Hectares |
| HGV | Heavy Goods Vehicle |
| ISH | Issue Specific Hearing |
| KCC | Kent County Council |
| kV | Kilovolt |
| KWT | Kent Wildlife Trust |
| LBMP | Landscape and Biodiversity Management Plan |
| LGV | Light Goods Vehicle |
| Li-ion | Lithium-ion |
| MEASS | Medway Estuary and Swale Strategy |
| MW | Megawatt |
| NSIP | Nationally Significant Infrastructure Project |
| PEIR | Preliminary Environmental Information Report |
| PINS | Planning Inspectorate |
| PRoW | Public Rights of Way |
| PV | Photovoltaic |
| RSPB | Royal Society for the Protection of Birds |
| SBC | Swale Borough Council |
| SI | International System of Units |
| SPA | Special Protection Area |
| SPA CNMP | Special Protection Area Construction Noise Management Plan |
| SoCG | Statement of Common Ground |
| SSSI | Site of Special Scientific Interest |
| TEC | Transmission Entry Capacity |
| TMG | Traffic Management Group |
| WR | Written Representation |

1 INTRODUCTION

1. This document provides Cleve Hill Solar Park Ltd's (the Applicant's) response to the Written Representations (WRs) submitted to the Planning Inspectorate (PINS) by Deadline 5 on 30 August 2019, relating to the Development Consent Order Application (the DCO Application) for Cleve Hill Solar Park (the Development).
2. Table 1.1 lists the organisations and individuals who made submissions at Deadline 5. The Applicant has responded to the points raised by these stakeholders in Section 2 of this document.
3. References to other Application documentation are provided where necessary according to the reference system set out in the [Cleve Hill Solar Park Examination Library](#).

Table 1.1: List of Written Submissions at Deadline 5

| PINS Reference | Written Representation Received from |
|-----------------------|---|
| REP5-032 | Kent County Council |
| REP5-033 | Swale Borough Council |
| REP5-034 | Bruno Erasin |
| REP5-035 | Bruno Erasin |
| REP5-036 | Bruno Erasin |
| REP5-037 | Bruno Erasin |
| REP5-038 | Bruno Erasin |
| REP5-039 | CPRE Kent |
| REP5-040 | CPRE Kent |
| REP5-041 | Faversham Creek Trust |
| REP5-042 | GREAT |
| REP5-043 | GREAT |
| REP5-044 | GREAT |
| REP5-045 | Graveney with Goodnestone Parish Council |
| REP5-046 | Graveney with Goodnestone Parish Council |
| REP5-047 | Graveney with Goodnestone Parish Council |
| REP5-048 | Kent Wildlife Trust |
| REP5-049 | Kent Wildlife Trust |
| REP5-050 | Natural England |
| REP5-051 | Stephen Ledger |
| REP5-052 | Swale Green Party |
| REP5-053 | The Faversham Society |
| REP5-054 | The Faversham Society |
| REP5-055 | GREAT |
| REP5-056 | Faversham Creek Trust |

2 DEADLINE 5 SUBMISSIONS AND THE APPLICANT'S RESPONSES

2.1 REP5-032 Kent County Council, Written Submission of Oral Representation presented at Issue Specific Hearing 6

2.1.1 Construction Traffic Management Plan

4. The Applicant is committed to further discussions with Kent County Council (KCC) Highways with regards to the mitigation measures proposed within the Outline Construction Traffic Management Plan.
5. The Outline Construction Traffic Management Plan [REP4-014] is intended to be a 'live document' to be updated further ahead of construction of the Development.
6. Due to the nature and repetition of the deliveries required at the site, the origin of many HGV deliveries is expected to be from one of three local ports (Ramsgate, Dover or Sheerness).
7. The controlled release of vehicles from these ports was discussed within the Applicant's response to the Examining Authority's (ExA) first round of written questions [REP2-006].
8. This approach was commented on by KCC Highways in their response to the ExA's second written question ExQ2.9.1 at Deadline 4 [REP4-054] in which it is stated:
"The proposed use of a holding area at the port is considered to be a workable method of controlling the spread of vehicles arriving at the site and is believed to be entirely consistent with the type of control that is expected to be included within the CTMP".
9. Once a delivery has been made, vehicles will also be held on-site and released in a controlled manner. This is described within Section 6.7 of the OCTMP [REP4-014].

2.1.2 New Off Road Footpath

10. The Applicant provided a response to ExQ2.8.2 [REP4-020] which addresses this point.

2.1.3 New Permissive Path

11. The Applicant is willing to enter into a Permissive Path Agreement with KCC and this commitment is included within the Outline Design Principles document submitted at Deadline 5 [REP5-007].

2.1.4 PRow Diversions and Closures

12. The Applicant acknowledges the comments from KCC on this matter and will report agreement in the Statement of Common Ground expected to be submitted to the examination by 18 October 2019.

2.2 REP5-033 Swale Borough Council, Written Submission of Oral Representation presented at Issue Specific Hearing 5 (DCO)

13. SBC requests that the dDCO Requirements include Primary Requirements relating to hours of construction, hours of piling, waste burning on site, and external lighting.
14. The Applicant addressed the point raised in SBC's written submission at Deadline 3 in the Applicant's Responses to Written Representations Received at Deadline 2 [REP2-020], Section 2.4, paragraph 41.

2.3 REP5-034 / REP5-035 / REP5-036 Bruno Erasin, Written summary of Oral Representation put at Open Floor Hearing 3**2.3.1 Decommissioning and waste disposal costs for battery storage systems and redundant solar panels**

15. This topic is addressed in the Applicant's previous submissions at:

- The Applicant's Responses to the Examining Authorities First Written Questions ExQ1.4.49 [REP2-006].

2.3.2 Human health effects of previous reported exposure model

16. This topic is addressed in the Applicant's previous submissions at:

- Written Representation by the Applicant - Air Quality Impact Assessment - Battery Fire [REP5-051].

17. Revisions to the Outline Battery Safety Management Plan (OBSMP) at Deadline 6 (document reference 14.4.3) include the addition of a requirement for an updated Air Quality Impact Assessment to be provided with the final submitted document ahead of construction based on the final battery technology chosen.

2.3.3 Potential environmental effects of Vanadium redox flow batteries

18. The Applicant has produced an OBSMP. Whilst the Applicant expects to utilise Lithium-ion batteries, the Applicant also wishes to retain the flexibility to use other battery chemistries as part of the energy storage facility.

19. Revisions to the OBSMP at Deadline 6 (document reference 14.4.3) include the addition of a requirement for an environmental risk assessment to be provided with the final submitted document ahead of construction based on the final battery technology / chemistry chosen.

2.3.4 Leaching potential of damaged solar panels

20. This topic is addressed in the Applicant's previous submissions at:

- Written Representation by the Applicant on Miscellaneous Environmental Issues, section 6 [REP5-024]

2.4 REP5-037 Bruno Erasin, Response to Cleve Hill Solar Park air quality Lithium-ion battery report

21. This submission comprises a review of the Applicant's Air Quality Impact Assessment [REP4-051] and a request for parameters to inform further assessment by the interested party.

22. The gas emissions analysis provided by Leclanché and used in the Air Quality Impact Assessment - Battery Fire [REP4-051] was based on a G/NMC [Lithium Graphite/NMC] cell from a previous Leclanché project. The detailed test report belongs to another client and is therefore unable to be provided.

23. The Leclanché G/NMC gas composition used in the assessment was compared to the gas composition described by the document published by Recharge, which covers a range of Li-ion battery technologies and was appended to the report [REP4-051] as Appendix F, and the gas composition is comparable.

24. Whilst the Applicant expects to utilise Lithium-ion batteries, the Applicant also wishes to retain the flexibility to use other battery chemistries as part of the energy storage facility. Revisions to the OBSMP at Deadline 6 (document reference 14.4.3) include in Section 4 the addition of a requirement for an updated Air Quality Impact Assessment

and an environmental risk assessment to be provided with the final submitted document ahead of construction based on the final battery technology / chemistry chosen.

25. The Applicant is confident that the OBSMP provides an appropriate control mechanism to ensure that the effects are the same, or of a lesser magnitude than those assessed in the ES, regardless of the battery technology used.

2.5 REP5-038 Bruno Erasin, Response to Cleve Hill Solar Park ALC report

26. This submission comprises further criticism of the Applicant's Agricultural Land Classification Report [APP-244].

27. Dr Erasin stated in a submission dated 11 June 2019 [REP2-060] that:

"Re-evaluation of the Wetness Class across the site, based on actual and local metrological data and considering that a large part of the land has naturally calcareous soils, it is my opinion that over 75% of the land at Cleve Hill Farm can be graded as Grade 2 (very good agricultural land) and Subgrade 3a (good agricultural land) in accordance with MAFF 1988 guidelines."

28. Dr Erasin's submission dated 20 September 2019 [REP5-038] states:

"About 77 field observation points merit a grade 3a based on the presence of calcareous soils which has been detailed in the CHSP ALC report, which equates to about 41% of total land surveyed (154 ha);

Additionally, combining the 41% of land with the land graded a Grade 2 (1.9ha) and Subgrade 3a (8.8 has) as detailed in the CHSP ALC report, and the three sample locations with the incorrectly allocated Wetness Class, about 170 ha of land (about 45.8%) can be graded as Grade 2 and Subgrade 3a."

29. The Applicant provided a rebuttal of the June 2019 response and missing data at Deadline 4 [REP4-041 and REP4-034]. In response Dr Erasin has reappraised his earlier assertion that "over 75%" of the land at Cleve Hill is Grade 2 or 3a to now suggest that "around 45.8% of the land at Cleve Hill is Grade 2 or 3a".

30. The Applicant is of the view that the above example demonstrates an inconsistent and speculative approach to the criticisms made of the Applicant's Agricultural Land Classification, and remains confident that the Agricultural Land Classification Report authored by Land Research Associates forms an accurate baseline assessment of the Agricultural Land Classification of the Development site. The Applicant's response set out in Table 3.2a of the Applicant's Responses to Submissions Received at Deadline 3 [REP4-041] therefore remains relevant.

31. Land Research Associates, the Applicant's ALC consultant and the author of the ALC report for the Development [APP-244] is one of the foremost UK companies undertaking soils and agricultural land quality studies since its establishment in 1991. The work on this project was led by Dr Michael Palmer (MSc, PhD, MISoilSci) assisted by Laura Thomas (BSc, MSc) and Martin Worsley (BSc). Dr Palmer is a Professional Member of the British Society of Soil Science with over 15 years' experience in the industry and a PhD in Agricultural Soil Management and Water Quality.

2.6 REP5-039 CPRE Kent, Written Submission of Oral Representation - Presented by Chris Lowe

32. The topics raised in this submission are addressed in the Applicant's previous submissions at:

- Written Representation by the Applicant on Miscellaneous Environmental Issues, section 6 [REP5-024]

- Written Representation by the Applicant on CO₂ Offset and Sequestration [REP3-025]
- Written Representation by the Applicant - Biodiversity Metrics 2.0 [REP4-052]
- Written Representation by the Applicant on Fertiliser Use [REP4-050]
- The Applicant's submissions in respect of need:
 - Statement of Need [APP-253]
 - Statement of Need Addendum March 2019 [AS-008]
 - Response to GREAT and Faversham Society Deadline 3 Submissions on Need [AS-037]
 - Written Summary of the Applicant's Oral Submissions presented at Issue Specific Hearing 1 on Need [REP3-014]
 - The Applicant's Response to GREAT Expert Report on the Statement of Need [REP3-030]
 - The Applicant's Response to GREAT Deadline 4 Submission on Need [REP5-016]; and
 - The Applicant's Response to Faversham Society Deadline 5 submission [REP5-053] contained in section 2.20 of this document.

2.7 REP5-040 CPRE Kent, Written Submission of Oral Representation - Presented by Richard Francis

2.7.1 Use of Flood Depths and Flood Levels

33. The response asserts that the Flood Risk Assessment (FRA) and modelling only relate to flood depth within the site, and not flood levels to Ordnance Datum stating that *"this is contrary to industry best practice and is unprofessional"*.
34. The Applicant's position is that the flood modelling and FRA is appropriate and was undertaken in accordance with best practice. The Statement of Common Ground between the Applicant and the Environment Agency (EA) [AS-017] confirms that the EA is satisfied that the flood modelling and FRA undertaken is suitable (see point EA-9 on page 7 of the Statement of Common Ground).
35. The FRA submitted with the DCO application [APP-227] clearly refers to modelled flood levels in metres AOD throughout the document.
36. In any case, the use of terminology to describe the potential for flood depth is relative to ground level and has no bearing on the assessment. The depth measurements are relative to AGL which was derived from a topographical survey. Flood levels in metres AOD are referenced throughout the FRA and in Section 10.6.1.9 Critical Infrastructure (substation and battery storage area) of ES Chapter 10 [APP-040].

2.7.2 Historic Flooding

37. The CPRE Kent response also states that *"no attempt was made to compare the impact of the modeled [sic] flooding with that of historical recorded flooding"*
38. As set out in section 3.1 of the FRA [APP-227], the North Kent Coastal Model¹ was re-run to model flooding conditions during a breach of flood defences north of the Development, using updated parameters. The 2013 flood model used historical events for calibration and this is outlined in Section 6.3.2 Calibration - Wave Overtopping of the North Kent Coastal Modelling Volume 2 - Isle of Grain, Medway, Swale up to and including Whitstable report.

¹ JBA Consulting (2013). North Kent Coastal Modelling Volume 2 - Isle of Grain, Medway, Swale up to and including Whitstable.

39. Although large events occurred in 1953 and 1978, neither nearshore nor offshore wave observations are available for these events. Although it would be preferable to validate against these storms, validation of the wave model for events within the period of data available still provides a good measure of confidence that the wave model is representing reality well, within the normal confines of modelling uncertainty.

2.7.3 Flood Risk following Managed Realignment

40. The CPRE Kent response also states that "that *Managed realignment as proposed by the Environment Agency's Medway Estuary and Swale Strategy (MEASS), has the potential to reduce flood risk at Faversham*" and attempts to evidence this using calculations which rely on an unscientific and oversimplified methodology for calculating storage volumes.
41. Appendix I - Medway and Swale Strategy Study (MEASS) Modelling Report (Mott MacDonald March 2018) of the EA's MEASS document (September 2019²) clearly shows that under a managed realignment scenario at the Site (benefit area BA6.2) there would be a greater extent of flooding in Faversham. This is shown on Figure 140: Flood extents of the baseline (light blue) and the Leading Option (pink) results for the 1:200-year present scenario in Swale and Medway estuaries. The highlighted red boxes denote areas where the flood extent is increased compared to the baseline. The flood modelling used to inform the MEASS was undertaken by Mott MacDonald using industry standard software and a recognised methodology.
42. This is in clear contrast to the statement made in the CPRE Kent submission that managed realignment would bring a *"benefit to Faversham of the order of 0.5-1.0 metres depth reduction in flooding"*.

2.8 REP5-041 / REP5-056 Faversham Creek Trust, Written Summaries of Oral Summaries Issue Specific Hearing 6 - Environmental Matters

43. The response asserts that the Development places an unreasonable burden on organisations listed, however the burden of provision of information and monitoring rests with the Applicant. In particular, the Applicant will be responsible for delivering the provisions within the Outline Landscape and Biodiversity Management Plan, this will not fall to RSPB and KWT. The habitat management and monitoring requirements set out in the application control documents will be delivered through contractual agreement with an organisation capable of delivering the management required (which could include local nature conservation organisations).
44. The other points raised in this submission are addressed in the Applicant's previous submissions at:
- The Applicant's Responses to the Examining Authorities First Written Question ExQ1.4.49 [REP2-006];
 - OBSMP, Revision C (Deadline 6 submission document reference 14.4.3);
 - The Applicant's submissions in respect of need:
 - Statement of Need [APP-253]
 - Statement of Need Addendum March 2019 [AS-008]
 - Response to GREAT and Faversham Society Deadline 3 Submissions on Need [AS-037]
 - Written Summary of the Applicant's Oral Submissions presented at Issue Specific Hearing 1 on Need [REP3-014]
 - The Applicant's Response to GREAT Expert Report on the Statement of Need [REP3-030]

² <https://www.gov.uk/government/publications/medway-estuary-and-swale-flood-and-coastal-risk-management-strategy/medway-estuary-and-swale-flood-and-coastal-risk-management-strategy> [accessed 02/10/2019]

- The Applicant's Response to GREAT Deadline 4 Submission on Need [REP5-016]; and
- The Applicant's Response to Faversham Society Deadline 5 submission [REP5-053] contained in section 2.20 of this document.

2.8.1 CfD Allocation Round

45. A transcript of the audio submitted by the Faversham Creek Trust [REP5-056] is as follows:

"The Government has announced that 12 new renewable energy projects have secured contracts to provide enough power for 7,000,000 homes, pushing the price of offshore wind down to a record low. Ministers said that these wind farms represent a breakthrough as they will typically generate electricity without a subsidy on bills."

46. The predominant technology to participate successfully in the latest CfD round was Offshore Wind, with 5.5 GW awarded to the technology, of a total 5.8 GW in the allocation round. The clearing price for the allocation round was around £40/MWh for both 2023/24 and 2024/25 delivery, representing a significant reduction on the 2017 CfD Allocation round clearing price of £74.75 (2021/22 delivery) and £57.50 (2022/23 delivery).

47. The Applicant makes the following points about the allocation round:

- This Government backed subsidy scheme has achieved lower prices for consumers. Contributory factors for offshore wind include: construction risk management of this technology is well advanced in the UK due to significant experience in North Sea installations; the technology has evolved versus previous installed technologies, increasing MW capacity and MWh output expectations per unit of infrastructure spend; and the locations of the wind generators in the Offshore classification are planned to be built, predominantly in shallow waters of Dogger Bank and other accessible areas.
- Some of these cost savings may transfer through to subsequent developments, but clearly any further builds in either deeper water or further away from existing infrastructure, will be likely to cost more. This may cause clearing prices for offshore wind to be higher in future CfD allocation rounds than was experienced in September 2019's Round three.
- The award of a CfD to a proposed project is not a guarantee that the project will go ahead, or if it does, at a particular generation capacity, as has been seen in previous CfD allocation rounds.
- The Applicant recognises the importance of making use of the natural and abundant wind resources in and around the country for the generation of low carbon electricity. However the Applicant has already submitted (see APP-253, the Applicant's Statement of Need, Chapter 5.3) that a diverse generation technology mix is crucial to ensure that sufficient energy is available when some natural resources do not generate. This point is described in relation to a "wind drought" experienced during the summer of 2018, when wind capacity factors were very low; renewable energy output reduced year-on-year; but that record solar output helped fill some of the gap. See reference [6] to the Applicant's response to the Statement of Need submitted on behalf of GREAT in DL3 ([REP3-036]). A diverse energy mix remains important to ensure security of supply, and supply and demand can be managed.

48. The Applicant confirms its opinion that enormous capacities of offshore wind will support decarbonisation of the country but, and no matter how enormous they are, those capacities alone will not deliver the security of supply the UK demands. The

proposed development at Cleve Hill will play an important part in contributing to both decarbonisation and, alongside developed wind capacities, security of supply.

2.9 REP5-042 GREAT, Written Summary of Oral Representation presented at Issue Specific Hearing 6

2.9.1 London Array Development Comparison

49. The comparison of the Proposed Development's construction traffic against the London Array Substation construction traffic was discussed during Issue Specific Hearing 6.
50. At the hearing it was explained by the Applicant that the peak traffic assessed as part of the London Array Substation construction was 60 HGV movements (30 vehicles).
51. The peak traffic assessed as part of the Cleve Hill Solar Park was 80 HGV movements (40 vehicles).
52. This information along with further information on the expected number of construction vehicles to be generated by the Proposed Development is discussed in Section 2.7 of the Outline CTMP [REP4-014].
53. It is considered that the vehicle numbers assessed within the Environmental Statement for the construction of the Cleve Hill Solar Park Development are robust and represent a worst-case scenario.

2.9.2 Development Phasing

54. Information relating to timing of construction of Phase 2 of Cleve Hill Solar Park was set out in the Applicant's response to Tom King's Written Representations submitted for Deadline 3 [REP5-016] which states:

"This states that a decision on whether Phase Two will come forward within the initial 24 month construction window will be made ahead of any construction starting on-site.

The phasing of the Proposed Development will be secured via Requirement 3 of the DCO (Document Reference 3.1) which requires approval from the relevant planning authority on phasing prior to any development being commenced".

55. It is proposed that there is a start up and close down period of one hour at the start and end of the working day. These do not form part of the core working hours. It is intended that this time would be used to allow movement to place of work, maintenance and general preparation works. This would not include operation of plant or machinery likely to cause a disturbance. These periods are discussed further in Section 5.3 of the Outline CTMP.

2.9.3 Road Condition Surveys

56. The commitment and proposed methodology for undertaking road condition surveys and resulting remedial works are set out within Section 6.13 of the Outline CTMP.
57. The Applicant has committed to repairing any highway damage attributable to the construction of the Proposed Development to a standard at least equal to that observed prior to the route being used by the Development construction traffic.

2.9.4 Heavy Goods Vehicle Restrictions

58. The road sign indicating HGVs should not use Whitstable Road, as shown in the submission by GREAT in their Summary of Oral Representation at Issue Specific Hearing 6, is not permanent signage.

59. Following further discussions with KCC Highways it is understood that the temporary signage was put in place due to planned highway works at Brenley Corner and to ensure HGVs did not divert along Whitstable Road.

2.9.5 Heavy Goods Vehicle and Light Goods Vehicle Definitions

60. Vehicle classifications are discussed with Section 2.3 of the Outline CTMP.

2.10 REP5-043 / REP5-044 GREAT, Written summary of Oral Representation put at Open Floor Hearing 3

2.10.1 Introduction

61. The Applicant, Cleve Hill Solar Park Limited, is a joint venture between two otherwise unconnected companies, namely Hive Energy Limited and Wirsol Energy Limited. GREAT submitted a statement [REP5-044] at DL5 purporting to challenge the credibility of both of those companies. The purpose of this statement by the Applicant is to rebut the points raised by GREAT. The Applicant has already set out its corporate structure and case for funding the Cleve Hill Solar Park in its Statement of Reasons [APP-019] and Funding Statement [APP-020] the contents of which are not repeated here.

2.10.2 Litigation

62. GREAT has referred to ongoing litigation proceedings between Wirsol Energy Limited (& Others) and Toucan Energy Holdings Limited (& Others) concerning the sale and purchase (respectively) of solar projects. In fact, those proceedings were initiated by Wirsol lodging a claim against Toucan on 2 August 2018 in the Technology and Construction Court. The documents GREAT refer to comprise what in effect amounts to a counterclaim made by Toucan against Wirsol issued in the Commercial Court. The two sets of proceedings have subsequently been consolidated.
63. The facts and grounds of claims as reported by GREAT are broadly correct. So too is the statement at paragraph 5 that Wirsol is (vigorously) defending the claims. However, GREAT have not sought to present both sides of the litigation. Instead they have focused on the grounds of Toucan's claims only and conveyed these as a reason to doubt the credibility of the Applicant.
64. The fact of the matter is that those grounds of Toucan's claims are merely one party's allegations against another. Until the claims are heard and determined by the High Court there is nothing to suggest that the grounds are valid or proven.
65. GREAT also refers to a Consent Order made for security of costs in the course of the litigation. By its very nature, the "Consent Order" was entered voluntarily by the parties. It is a reciprocal arrangement with security being provided by the parties on both sides of the dispute. That arrangement was approved by the High Court as is entirely normal in claims of this nature. Therefore, it is incorrect and disingenuous for GREAT to assert that "the High Court has been satisfied that the Wirsol / Wircon defendants do not have sufficient substance for the litigation to proceed, without providing a bond to satisfy any later costs award". No such conclusion can be drawn at all.
66. Accordingly no weight can be placed on the claim by the ExA or Secretary of State as to the credibility of the Applicant or Wirsol, or otherwise. To do so would constitute having regard to a non-material consideration.

2.10.3 OFGEM Audit

67. GREAT's reference to Ofgem's audit of the Widehurst Solar Park is also inaccurate and misleading, including the suggestion that Wirsol does not contest Toucan's allegations.

It does, but has not had to do so by way of pleaded case since Toucan's allegations are set out in its reply and defence.

68. The facts here are that the project was energised on 31 March 2017, de-energised the following day to carry out repairs to switchgear in the substation, to which the project is connected. Those repairs having been undertaken, the project was re-energised on 18 July 2017. Ofgem sought clarification of the date of energisation, UKPN confirmed it was 31 March 2017 in a letter dated 4 August 2017, and Ofgem confirmed accreditation under the Renewables Obligation on 23 February 2018.
69. Under the terms of the sale and purchase agreement between Wirsol and Toucan, Toucan was entitled to payment for lost energy from the date of acquisition to the date of re-energisation. That has been paid by Wirsol to Toucan.
70. Accordingly no weight can be placed on the Ofgem Audit, or the inclusion of that in the claim, by the ExA or Secretary of State as to the credibility of the Applicant or Wirsol, or otherwise. To do so would constitute having regard to a non-material consideration.

2.10.4 Disclosure

71. GREAT has criticised the Applicant for not disclosing the above matters in the examination of the Application. However, the Applicant was and remains of the view that these matters are irrelevant to the determination of the Application and that no weight should be placed on them.

2.10.5 Australian business

72. GREAT asserts that Wirsol is "involved in developments in Australia that appear to have extended their business risks. It appears that they are concerned about these risks, they may have over-expanded their business and are over-exposed to possible financial downside", but this is unsubstantiated speculation, which is not true and no weight should be placed on it. It should also be noted that the assets in Australia are owned by WIRCON GmbH, not Wirsol Energy Limited. Whilst WIRCON GmbH is the ultimate parent company of Wirsol Energy Limited, it is the later entity that operates in the UK and forms part of the Applicant.

2.10.6 Experience of developing renewable energy projects

73. The experience of Wirsol Energy Limited and Hive Energy Limited in terms of developing and constructing renewable energy projects is as set out in the Applicant's evidence, which it is not necessary to repeat here. GREAT offers no evidence for the assertions made in its statement, which unsuccessfully seek to discredit the Applicant.

2.10.7 Adherence to controls in the DCO

74. The draft DCO includes Requirements, i.e. conditions on the consent, which control how it is implemented and the project is constructed, operated and decommissioned. Those Requirements have been subject to scrutiny in the ExA's written questions and two hearings. They can be further tested before the end of the examination.
75. The Planning Act 2008 includes at Part 8 strict enforcement powers. These are administered by the local planning authority (in this case, Swale Borough Council) and make non-compliance with the terms of a DCO a criminal offence. This too has been considered in two hearings.
76. Therefore, if as GREAT assert, the Applicant or any subsequent undertaker failed to comply with the terms of the DCO, remedies would be available to the LPA to ensure compliance.

2.10.8 Conclusion

77. In conclusion it will be clear from the above that the assertions and allegations in GREAT's statement [REP5-044] are unfounded, disingenuous and misleading. For the reasons set out above the ExA and Secretary of State should place no weight on them whatsoever. They are not material considerations in the determination of the Application.

2.11 REP5-045 Graveney with Goodnestone Parish Council, Written summary of Oral Representation presented at Open Floor Hearing 3 - supporting evidence on Traffic and Transport

78. The following comments have been prepared by the Applicant in response to a number of observations made by the Parish Council regarding the Outline CTMP and submitted as supporting evidence to their written summary of oral evidence presented at Open Floor Hearing 3.

2.11.1 Decommissioning and Phasing

79. A Decommissioning Traffic Management Plan will be produced and agreed with the relevant highways authorities prior to this stage of work commencing. The Outline CTMP [REP4-014] considers construction of the Development only. This is set out within Section 1.1 of the Outline CTMP.
80. A decision on whether Phase Two will come forward within the initial 24 month construction window will be made ahead of any construction starting on-site.
81. The phasing of the Proposed Development will be secured via Requirement 3 of the DCO (Document Reference 3.1) which requires approval from the relevant planning authority on phasing prior to any development being commenced.
82. Paragraph 2.7.4 of the Outline CTMP refers to the peak in HGV movements to the site, not the combined traffic peak (LGV and HGVs). The combined (LGV and HGV) traffic peak is predicted to occur in week 100 of the construction programme. This comprises of 222 two-way vehicle movements (111 vehicles). This breaks down as 162 two-way LGV movements (81 vehicles) and 60 two-way HGV movements (30 vehicles).

2.11.2 Carriageway Width Constraints

83. Carriageway width constraints along the construction traffic route have been discussed within revision C of the Outline CTMP (Section 4.2) and further in the Applicant's submission at Deadline 5 in response to representations from Mr Tom King [REP5-016].
84. It is not considered possible to provide passing places within the public highway where it is identified that the width of the carriageway along the construction traffic route is not wide enough to allow a HGV and another vehicle to pass. If passing places were provided in these locations third part land would be required.
85. Furthermore, there is available carriageway width for a vehicle to wait to allow another to pass ahead of those areas identified where the road narrows.
86. Construction traffic will not be reliant on the use of private land to access the Proposed Development.
87. Head Hill Road and Seasalter Road are currently used by HGVs and other large vehicles and as such vegetation is not expected to impact on the clearance for passing vehicles.
88. The owner or occupier of a property has a legal responsibility (Highway Act 1980 s154) to ensure that the 'public highway' adjacent to a property is not obstructed by vegetation from their property.

89. Following discussions with KCC Highways, it is understood that landowners typically cut the roadside vegetation twice a year between the end of March and end of September.

2.11.3 Construction Traffic Mitigation

90. Construction traffic mitigation measures are set out within Section 6 of the Outline CTMP. These include measures such as construction traffic speed restrictions and signage to ensure the safety of other road users.
91. It is expected that the majority of staff would arrive on-site before 07.00 and would not leave until after 19.00.
92. The controlled arrival and departure of HGVs from the site has been discussed in the following submissions:
- The Applicant's response to the Examining Authority's first written questions (Document Reference 10.1, Section 2.10).
 - KCC Highways response to the Examining Authority's second round of written questions.
 - Oral submissions by the Applicant at Deadline 5 following Issue Specific Hearing 6 on Environmental Matters (Document Reference: 13.1.3).
93. The role of the Traffic Management Group (TMG) and the proposed frequency of meetings is set out within Section 7.2 of the Outline CTMP [REP4-014].

2.12 REP5-046 Graveney with Goodnestone Parish Council, Written summary of Oral Representation presented at Open Floor Hearing 3 - supporting evidence on the EQIA and Noise

2.12.1 Equality Impact Assessment

94. The Applicant submitted an Equality Impact Assessment to PINS in July 2019 [AS-025]. Section 1.2 of that document sets out the purpose of the EQIA:
- "Section 149 of the Equality Act 2010 (the Act) requires public authorities to have due regard to a number of equality considerations when exercising their functions. This Equality Impact Assessment (EQIA) considers the potential for the Development to discriminate based on certain protected characteristics under the Act in order to assist the SoS [Secretary of State] in its consideration of the public sector equality duty under section 149."*
95. The Applicant remains of the view that the EQIA submitted provides an appropriate basis for the SoS to fulfil their obligations under the Act.

2.12.2 Assessment of Impacts on People

96. The ES submitted with the DCO Application considers people (population) as receptors throughout in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 regulation 5(2)(a).

2.12.3 Construction and Traffic Noise

97. ES Chapter 12 - Noise and Vibration [APP-042] provides an assessment of construction noise (including traffic noise) at sections 12.5.1, 12.5.2, and 12.5.3. The methodology for the construction noise and vibration assessment is set out in section 12.2.2, with the construction traffic noise methodology at section 12.2.4.
98. The noise assessment typically considers the closest receptors, as receptors at the same or greater distance will experience the same, or a lesser magnitude of effect, therefore if the impact is acceptable at the closest receptors, it will be acceptable at those the same distance, or further, away.

2.12.4 Use of Metric Dimensions

99. The ES utilises the International System of Units (SI units) as a default. It was not considered appropriate to duplicate all of the dimensions set out in Chapter 5 - Development Description [APP-035] of the ES in imperial measurements, as this was considered likely to lead to greater confusion for the majority of readers rather than greater clarity.
100. The Applicant has provided some imperial measurements where appropriate, in particular in consultation materials where the site location in respect of the distance from Faversham and Whitstable is quoted in miles as well as kilometres.

2.12.5 Additional Sensitivity of Groups with Protected Characteristics

101. Paragraphs 20 and 21 of the EQIA set out the Applicant's approach to this issue:

"The EQIA considers impacts on relevant receptor groups, rather than specific individual cases.

There are a range of disabilities which could result in an individual experiencing effects in a different, and more or less acute way than the general population. Where an individual with specific concerns in this regard is identified, or identifies themselves or their dependants to the project team through consultation, the Applicant would engage with the affected parties directly to discuss and understand the specific concerns raised, and to suggest potential additional mitigation measures where practicable. The Applicant has made communication lines available in part for this purpose and is committed to ongoing dialogue with the local community throughout all phases of development. The Applicant considers information on specific circumstances to be personal and of a sensitive nature, and so has deliberately not reported on any such circumstances in this document."

2.13 REP5-047 Graveney with Goodnestone Parish Council, Written summary of Oral Representation put at Open Floor Hearing 3

102. Section 2.12, the Applicant's response to REP5-046 addresses the points raised in REP5-047, with additional topics raised responded to in the following sections.

2.13.1 Security

103. Paragraph 140 of Chapter 5 - Development Design of the ES [APP-035] sets out how privacy of residents will be ensured.
104. Security is covered within section 5.4.7 of Chapter 5, and also section 17.3.6 of Chapter 17 - Miscellaneous Issues of the ES [APP-047].

2.13.2 Terrorism

105. The Development includes security measures, such as CCTV, as set out in section 5.4.7.1 of Chapter 5 - Development Design of the ES [APP-035].

2.14 REP5-048 Kent Wildlife Trust, Written Submission of Oral Representation presented at Issue Specific Hearing 6

2.14.1 AR HMA capacity for brent geese

106. The Applicant acknowledges KWT's position and refers to the Applicant's response to the Examining Authority's ExQ2.1.11 [REP4-020] and response 4 in Table 2.15 of the Applicant's response to DL3 WRs [REP4-041] and response 4 in Table 2.16 of the Applicant's response to DL2 WRs [REP3-020].

2.14.2 Ivermectin-free manure

107. The application of manure is not relied upon to achieve carrying capacities in the AR HMA for golden plover and lapwing that would be equivalent to the capacities recorded in arable land as reported by Gillings (2003, 2007); however, the application of manure is likely to increase the attraction of golden plover and lapwing to the ARHMA, this likelihood being based on the findings of the Gillings study and Tucker (1992). These studies do not differentiate between manure from ivermectin-treated and ivermectin-free cattle. The Applicant agrees that whether or not the manure used in the AR HMA is ivermectin-free be a variable recorded to assist with monitoring, alongside invertebrate biomass.

2.14.3 Timing of AR HMA establishment

108. The latest iteration of the outline LBMP at Deadline 6 (document reference 6.4.5.2, Revision D) sets out the proposed scheduling of implementation of the AR HMA and the Applicant welcomes further comment from KWT and the HMSG.

2.14.4 Grazing of Grazing Marsh Grassland and AR HMA

109. The latest iteration of the outline LBMP at Deadline 6 sets out the proposed grazing management of the Grazing Marsh Grassland and AR HMA and the Applicant welcomes further comment from KWT and the HMSG.

2.14.5 Triggers with the LBMP

110. The latest iteration of the outline LBMP at Deadline 6 sets out indicative triggers for discussion within the HMSG and the Applicant welcomes further comment from KWT and the HMSG.

2.14.6 Remedial measures for marsh harrier

111. The Applicant proposes surveillance monitoring to understand future use of the site by foraging marsh harriers. In the event that lower than expected use is triggered in the monitoring, then it is appropriate to enhance the monitoring to provide better understanding of that response. The Applicant is aware of the challenges of monitoring low-flying birds in the presence of the solar arrays and will design the surveillance monitoring accordingly. The Applicant acknowledges the difference in positions between the Applicant and KWT regarding remedial action and maintains that further remedial measures for marsh harrier are not required to avoid an adverse effect on the integrity of The Swale SPA.

2.15 REP5-049 Kent Wildlife Trust, Comments on responses to the Examining Authority's Further Written Questions and Comments on responses submitted for Deadline 4

2.15.1 Marsh harrier displacement

112. Other examples of marsh harriers breeding near urban environments are at Radipole Lake in Dorset³ and Potteric Carr in Doncaster⁴.

113. KWT provide information from a paper by Alves *et al.* (2014) regarding the habitat use by marsh harrier stating that this "appears to be the best available evidence" regarding the impact of industrial development on marsh harriers. However, the Applicant disagrees with the interpretation by KWT of the conclusions of this study. The paper states "*our field observations showed clear disturbance and avoidance behaviour of*

³ http://www.bbc.co.uk/dorset/content/articles/2009/06/12/marsh_harriers_feature.shtml

⁴ <https://www.ywt.org.uk/sites/default/files/2018-07/June%202018.pdf>

birds when, for instance, farmers and machines were operating in the area', but later qualifies that *"The degree of disturbance caused by other human constructions, such as houses or warehouses, showed little or no relevance in the results but we believe they must also be considered. In fact, the consequences of this type of disturbance are often difficult to detect and quantify, especially because they are not immediate. Yet, birds may be affected indirectly by them, for instance in terms of reproductive success (Fernández and Azkona, 1993)."* This research is therefore not as clear cut as KWT describe when alleging similar comparisons between this study and the potential for displacement effects of the solar arrays; it is perhaps the element of human activity associated with the "human constructions" that has the negative association, rather than the constructions themselves. The solar park will operate with less intense human and vehicular activity than baseline farming operations.

114. The Applicant has acknowledged KWT's assertion regarding the uncertainty of birds' responses to the presence of the Development but considers that the degree of uncertainty is acceptably low.
115. With respect to carrying capacity, the Applicant agrees that the future capacity and availability of prey for marsh harriers cannot be fully quantified; however additional information was provided at Deadline 4 [REP4-022] in support of the expectation that the carrying capacity of the site for small mammals will be higher. The Applicant's position is that the new grassland extents both between the arrays and in the open landscape habitats of the AR HMA and areas of lowland grassland meadow will provide an increase in accessible foraging resources for foraging marsh harrier. In the baseline condition, when crop growth is high in the summer months (when marsh harriers are breeding), they present a physical barrier to the birds' prey, so birds are restricted in foraging extent to the narrow field margins. With the Development, the extent of favourable grassland resources (between arrays and in other HMAs) will be substantially larger than the baseline and it is available at all times of year and not limited, as is the case with arable crops that dominate the baseline landscape at the site.

2.15.2 Habitat Management Steering Group

116. The Applicant will consult the HMSG on a draft governance for the HMSG and the Applicant welcomes further comment from KWT and the HMSG.

2.15.3 Landscape and Biodiversity Management Plan

117. The Applicant is grateful comments received from KWT to date and welcomes further comment from KWT and the HMSG on the latest iteration of the LBMP submitted at Deadline 6 (document reference 6.4.5.2, Revision D).

2.16 REP5-050 Natural England, Written Submission of Oral Representation presented at Issue Specific Hearing 6

2.16.1 Letters of No impediment

118. The Applicant has no comments to add.

2.16.2 Construction Noise Management Plan (CNMP) and Breeding Bird Protection Plan (BBPP)

119. The Applicant welcomes NE's acceptance of these documents.

2.16.3 Fertiliser-free buffer along ditches within the Arable Reversion Habitat Management Area (ARHMA)

120. The Applicant welcomes NE's agreement that the difference in capacity for brent geese is not significant.

2.16.4 Fertiliser application rates [REP4-050]

121. The Applicant welcomes NE's comments that lower nutrient inputs across the site will benefit Ramsar ditch features.

2.16.5 Ivermectin-free manure

122. The application of manure is not relied upon to achieve carrying capacities in the AR HMA for golden plover and lapwing that would be equivalent to the capacities recorded in arable land as reported by Gillings (2003, 2007); however, the application of manure is likely to increase the attraction of golden plover and lapwing to the ARHMA, this likelihood being based on the findings of the Gillings study and Tucker (1992). These studies do not differentiate between manure from ivermectin-treated and ivermectin-free cattle. The Applicant agrees that whether or not the manure used in the AR HMA is ivermectin-free be a variable recorded to assist with monitoring, alongside invertebrate biomass.

2.16.6 Seed mix

123. The Applicant welcomes NE's agreement with the proposed seed mix for the AR HMA.

124. Lapwings and Golden Plovers – bird days: The Applicant welcomes NE's comment that this resolves an uncertainty regarding combination of bird-days for lapwing and golden plover.

2.16.7 Timing of sowing of habitat management areas

125. The proposed schedule of sowing of the AR HMA under different construction start date scenarios in the Deadline 6 iteration of the LBMP (document reference 6.4.5.2, Revision D) demonstrates that the AR HMA would be sowed before birds arrive in the first winter after construction has started.

2.16.8 Grazing compartments

126. The Applicant welcomes NE's agreement regarding the proposed use of stock-proof fencing to manage grazing.

2.16.9 Grazing management

127. The Applicant welcomes NE's agreement regarding the proposed grazing management.

2.16.10 Mowing vs. grazing

128. The Applicant welcomes NE's agreement regarding the proposed flexibility in management of the grassland sward.

2.16.11 Monitoring, triggers and remedial actions

129. The Applicant will consult the HMSG on a draft governance for the HMSG and the Applicant welcomes further comment from KWT and the HMSG.

130. The Applicant welcomes NE's agreement regarding the focus of appropriate triggers and remedial actions for the AR HMA.

2.16.12 Triggers and remedial actions for marsh harriers

131. The Applicant refers to REP2-027 to the Examination regarding recent case law and appropriate assessment under the Habitats Regulations and the submissions on northern edge array spacings [REP4-023], the ditch cross sections [REP4-030] and further information on small mammal carrying capacity [REP4-022]. The Applicant acknowledges the difference in positions between the Applicant and NE regarding the level of uncertainty and remedial actions and maintains that further remedial measures for marsh harrier are not required to conclude beyond reasonable scientific doubt that there will not be an adverse effect on the integrity of The Swale SPA.

2.16.13 Water level control

132. The Applicant welcomes NE's acceptance of the information regarding water control structures. The Deadline 6 iteration of the outline LBMP includes information on the management of the FGM HMA in the SSSI and the Applicant welcomes further comment from NE and the HMSG.

2.16.14 Current position on adverse effects on integrity

133. The Applicant welcomes NE's agreement regarding no adverse effect on integrity in relation to construction disturbance impacts and operational impacts on brent geese. The Deadline 6 iteration of the outline LBMP includes further detail of the management of the FGM HMA in the SSSI such that NE should be able to conclude no adverse effect on integrity with regards to lapwing and golden plover.
134. The Applicant will consult the HMSG on a draft governance for the HMSG and the Applicant welcomes further comment from KWT and the HMSG.
135. With regard to marsh harrier, the Applicant refers to the comments made in section 2.16.12.

2.16.15 Impact on The Swale Estuary Marine Conservation Zone (MCZ)

136. The Applicant welcomes NE's comments.

2.16.16 Provision of offsite mitigation

137. The Applicant welcomes NE's comment regarding no requirement for off-site mitigation in relation to golden plover and lapwing. The Applicant refers to the position described in section 2.16.12 with regard to marsh harrier.

2.17 REP5-051 Stephen Ledger, Written summary of Oral Representation presented at Open Floor Hearing 3

2.17.1 Given the unknown environmental effect of new east-west solar panels I question if enough biodiversity mitigation can be achieved.

138. The existing arable rotation includes substantial periods of time where the land is bare ground. There is expected to be vegetation beneath the panels, reducing with distance from the array table edges as set out in the Microclimate and Vegetation Desk Study [APP-204].

2.17.2 Given the restrictions on the site how practical will sheep grazing be?

139. Grazing within the Development site is not the primary land-use, and is therefore subject to different commercial pressures from those that exist for sheep farming in general. The Outline LBMP [REP4-007] allows for mechanical cutting of vegetation as well as grazing to ensure that vegetation can be appropriately managed.

140. The Applicant has added additional text to the Outline LBMP for Deadline 6 relating to the grazer and grazing at Appendix A (Deadline 6 submission document reference 6.4.5.2, Revision D).

2.17.3 Flood Risk / Strategic View

141. The Applicant's position is that the flood modelling and flood risk assessment is appropriate and in accordance with best practice. The Statement of Common Ground between the Applicant and the Environment Agency (EA) [AS-017] confirms that the EA is satisfied that the flood modelling and flood risk assessment undertaken is suitable (see point EA-9 on page 7 of the Statement of Common Ground).

2.18 REP5-052 Swale Green Party, Written summary of Oral Representation put at Open Floor Hearing 3

142. The points raised in this submission are addressed in the Applicant's previous submissions at:
- Written Representation by the Applicant on NSIP Policy and Procedure
 - ES Chapter 4 - Site Selection, Development Design and Consideration of Alternatives [APP-034]
 - Written Representation by the Applicant on Miscellaneous Environmental Issues, section 6 [REP5-024]
 - Written Representation by the Applicant on CO₂ Offset and Sequestration [REP3-025]
 - Written Representation by the Applicant - Biodiversity Metrics 2.0 [REP4-052]
 - Written Representation by the Applicant on Fertiliser Use [REP4-050]
 - The Applicant's submissions in respect of need:
 - Statement of Need [APP-253]
 - Statement of Need Addendum March 2019 [AS-008]
 - Response to GREAT and Faversham Society Deadline 3 Submissions on Need [AS-037]
 - Written Summary of the Applicant's Oral Submissions presented at Issue Specific Hearing 1 on Need [REP3-014]
 - The Applicant's Response to GREAT Expert Report on the Statement of Need [REP3-030]
 - The Applicant's Response to GREAT Deadline 4 Submission on Need [REP5-016]; and
 - The Applicant's Response to Faversham Society Deadline 5 submission [REP5-053] contained in section 2.20 of this document.

2.19 REP5-053 The Faversham Society, Written summary of Oral Representation presented at Open Floor Hearing 3

2.19.1 Updated FES Analysis

143. The Applicant notes the document submitted by the Faversham Society, updating the analysis provided in their Deadline 3 Submission - Written summary of oral submissions presented at Issue Specific Hearing 1 and 4 - request for additional hearings [REP3-070]. The Applicant responded to this submission in Table 2.13 of The Applicant's Responses to Submissions Received at Deadline 3 [REP4-041]. Further, the Applicant's responses to GREAT Statement of Need ([AS-037] and [REP3-030 to 046]) include narratives on the FES data and how National Grid intended for it to be interpreted. This can be found at paragraphs 7.1 to 7.13 of [REP3-030]. This response remains valid.

144. In summary, the Applicant does not agree with the interpretation made of FES scenarios within the Faversham Society's Deadline 5 submission, and makes the following points in response:
- The FES scenarios demonstrate possible ways that the energy system may develop, based on a forecast of demand and government policy. They do not indicate forecasts of confirmed and consented generation capacities, nor do they seek to imply or impose restrictions on the capacities of generation of particular technologies which may be required, or may be delivered.
 - The FES scenarios therefore do not imply a requirement for particular generation technologies, and nor can their datasets sensibly be disaggregated to indicate need for a single generation technology within a future system scenario
 - Further, and as discussed in the previous section relating to the recent CfD auction, the inclusion of future projects within the planning system does not also indicate a commitment by or obligation on the Applicant actually to deliver that project at all, or if it does, at a particular generation capacity.
 - Therefore, the Applicant considers that the analysis presented by the Faversham Society inaccurately concludes that "it is impossible to demonstrate any need for" the Applicant's proposed development.

2.20 REP5-054 The Faversham Society, Written summary of Oral Representation presented at Open Floor Hearing 3 - supporting evidence

2.20.1 The DCO

145. The Applicant has provided an updated Mitigation Route Map at Deadline 6 (document reference 7.2, Revision E).
146. This Deadline 6 submission includes a revised version of the draft DCO, which includes amendments made since DL5 (document reference 3.1, Revision F) in response to ongoing dialogue with Swale Borough Council and other stakeholders.
147. The Applicant has also added a new Part 3 of Schedule 1, which sets out a formal process for Swale Borough Council to request further information from the undertaker when deciding an application to discharge a requirement, and also sets out the process for the undertaker of the DCO to follow in order to appeal any refusal of an application to discharge a requirement, or where such application is not decided by Swale Borough Council within eight weeks. Time scales are set for such information requests and appeals, with responsibility for deciding appeals by the Secretary of State. The inclusion of this new part of Schedule 1 is a response to a request made by Swale Borough Council earlier in the Examination for a clearer appeal mechanism and for that to be included in the dDCO. Swale Borough Council has been consulted on, and agreed, this new drafting, and has confirmed (in an email dated 30 September 2019) its support for the inclusion of the drafting in the dDCO. Further commentary on this new drafting is given in the Schedule of Changes to the dDCO (Deadline 6 submission document reference 14.4.1).

2.20.2 Precautionary Principle

148. The Development has been pursued in accordance with the precautionary principle. Where there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment, the Applicant has addressed concerns raised on a scientific basis proactively, through the assessments and mitigation contained in the ES, and in response to information provided by interested parties throughout the Examination. Examples of the application of this approach include:
- Written Representation by the Applicant on CO₂ Offset and Sequestration [REP3-025]

- Written Representation by the Applicant - Air Quality Impact Assessment - Battery Fire [REP4-051]

149. The Applicant also refers to its Deadline 2 submission on recent case law relating to appropriate assessment under Habitat Regulations Assessment [REP2-027].

150. The findings of the Environmental Impact Assessment are reported in the ES [APP-030 to APP-250].

2.20.3 Enforceable Requirements

151. See response to SBC submission [REP5-033] in section 2.2.

2.20.4 Decommissioning

152. The other topics raised in this submission are addressed in the Applicant's previous submissions at:

- The Applicant's Responses to the Examining Authorities First Written Question ExQ1.4.49 [REP2-006]

2.21 REP5-055 GREAT, Written Summary of Oral Representation presented at Issue Specific Hearing 6 - Comments on Heritage

2.21.1 Assessment of "Harm"

153. The Applicant's heritage assessor did identify harm to the heritage significance of the principal heritage assets at Graveney (namely, the Church, Graveney Court and Sparrow Court), but assessed this harm to be "less than substantial" (which is also the stated position of Historic England and GREAT's heritage assessor [REP4-063 to 066]). In making this assessment, regard was paid to the relevant policy and guidance published by Historic England and the methodology used was considered appropriate by Historic England (as stated in the SOCG between the Applicant and Historic England, [REP4-038]). The Applicant's assessor highlighted that, whilst there is a difference of opinion between Historic England and the Applicant as to the "degree" of "Harm" (this being due to a professional disagreement on the importance of the visual component of "setting" as a contributor to overall heritage significance for the assets in question), both parties are in agreement that the "category" of any arising "Harm" is "less than substantial". The relevant test is Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.

2.21.2 Consideration of Heritage Assets beyond 1 km

154. As set out during ISH 6 and in Section 9 of the Applicant's written summary of the hearing [REP5-011], consideration was given by the Applicant to designated assets at distance from the Development, but it was considered that significant effects were unlikely beyond 1 km from the boundary and the majority of assets beyond 1 km were therefore scoped out, and only those within 1 km taken forward for detailed assessment as presented in the ES.

155. Nevertheless, more distant assets were considered where the Applicant's assessor considered there was some potential for harm to significance to occur, or at the request of Consultees with respect to specific assets (such as the Church on the Isle of Harty), and this was reported in the ES Chapter [APP-041]. Where more distant assets were assessed, none were found to receive any adverse effect on their heritage significance, further justifying the decision not to take the majority beyond 1 km forward to detailed assessment in the ES.

156. With respect to the assets named in GREAT's submission for DL5 and during ISH6, the Applicant has given further consideration (in accordance with the methodology as set

out in the ES) to the heritage significance of these assets and the contribution made by their “settings” to that significance, and does not consider any harm to that significance likely to occur.