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Dear Sir

ELECTRICITY ACT 1989 (“the Act”)
TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A WIND
TURBINE GENERATING STATION ON LAND AT RAY ESTATE, NEAR
KIRKWHELPINGTON, NORTHUMBERLAND

I THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the application dated 12 December 2005 (“the application”) on behalf of AMEC Project Investments Limited (“the company”) for both the consent of the Secretary of State under section 36 of the Act (“section 36 consent”) to construct and operate a 60MW wind turbine generating station on land at Ray Estate near Kirkwhelpington, Northumberland (“the Development”), and a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be granted.

II PUBLIC INQUIRY

2.1 Following objections from the relevant planning authorities, Tynedale District Council and Northumberland County Council, to the Application, the Secretary of State was obliged to cause a public inquiry into the Application to be held under Schedule 8 to the Electricity Act 1989. The public inquiry also considered an application made by Steadings Windfarm Limited, under section 36 of the Electricity Act 1989, to construct and operate a wind turbine generating station on land near Kirkwhelpington, Northumberland (“Steadings”) and an appeal by Wind Prospect Developments Limited against the failure of Tynedale Council to determine within the statutory time period an application for the erection and operation of 18 wind turbines on land at Green Rigg Fell, Birtley Parish, Tynedale (“Green Rigg”).

2.2 The Secretary of State appointed Mr David M H Rose BA (Hons) MRTPI (“the Inspector”), to preside over the public inquiry. The public inquiry was governed by

the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 2007 (“the Inquiries Procedure Rules”).

2.3 The public inquiry was held at The Britannia Hotel, Newcastle Airport, between 15 January 2008 and 18 December 2008. The Inspector submitted his Report of the public inquiry to the Secretary of State on 30 November 2009.

2.4 The Inspector’s formal recommendation was as follows:

- 16.1 “I recommend that consent be refused under Section 36 of the Electricity Act 1989 to construct, operate and decommission a wind farm generating station of up to 56 megawatts capacity comprising 16 wind turbine generators up to 125 metres high; site access roads; an electrical substation and compound; a wind farm monitoring mast; four temporary borrow pits; and a temporary compound and temporary component storage area on land at Ray Estate, near Kirkwhelpington, Northumberland; and that a direction under section 90(2) of the Town and Country Planning Act 1990 be not given.
- 16.2 In summary, the only reason for recommending refusal is the uncertainty surrounding the implementation of appropriate measures to mitigate the adverse impacts of the proposal on the operations of NERL and NIAL. Such uncertainty would undermine the rationale for imposing a Grampian condition in that the condition might not be fulfilled; and consent for the project could preclude other wind farm projects from coming forward in the locality.
- 16.3 In the event that the Secretary of State disagrees with my conclusions and recommendation, a list of recommended conditions to be imposed on any consent and deemed approval is set out in Appendix B(ii) for consideration.”

III SECRETARY OF STATE'S CONSIDERATION OF THE APPLICATION

3.1 The Secretary of State has carefully considered the Inspector’s Report, the views of the relevant planning authorities, the objections received, other representations made to him by various bodies, the environmental information (see paragraph [6.2 below]) and all other matters he considers relevant.

He notes that, amongst other matters, the Inspector considered:

- Whether the proposed developments are in accordance with the relevant development plans
- Whether the proposed developments are consistent with energy policy
- The justification of the sites
- The visual and landscape impact of the proposed developments including on the Northumberland National Park and North Pennines AONB
- Noise impacts
- Aviation interests
- Impact on the historic environment
- Tourism and economic impacts
- Construction traffic
- Ecology and hydrology
- Borrow pits
- Grid connections
- Human Rights

3.2 The Secretary of State has carefully studied the Inspector's report, and in particular the Inspector's conclusions and recommendations, which, with the exception of his conclusion and recommendation in respect of the imposition of a "Grampian" condition concerning mitigation of impacts on the operations of National Air Traffic Services ("NATS") (En-Route) Limited ("NERL") and Newcastle International Airport Limited ("NIAL") the Secretary of State is minded to accept. The Secretary of State's reasons for disagreeing with the Inspector on this one point is set out in paragraphs 4.1-4.4 and 4.15-4.17 below.

IV DEVELOPMENTS SINCE THE PUBLIC INQUIRIES CLOSED

4.1 The Department of Energy and Climate Change (DECC) and its predecessor Departments have been working for several years with NERL and the sole supplier of NERL's radar, Raytheon Canada, to find a technical solution to the unacceptable impacts of wind turbines on aviation radar. Following a Department of Trade and Industry funded feasibility study in 2007, NERL put forward a proposal for a 2-year, research and development project to develop and test a software upgrade to the Raytheon radar to mitigate wind turbine interference.

4.2 DECC, The Crown Estate (TCE) and developers contracted with NATS to deliver an R&D programme for the Raytheon radar. Each party has committed to funding a specific proportion of the work. This is a 19 month programme of work, which is being undertaken by NATS staff and Raytheon Canada Ltd.

4.3 The basic principle which was originally set up in a MoU written in 2008,

which has since been superseded by a contract which was signed in October 2009 is that the funding for this system is split between 3 stakeholders.

4.4 The project commenced in September 2009 and should be complete in May/June 2011. The Secretary of State is not aware of any reason to suggest that the trial will not be concluded satisfactorily.

Aviation Interests

4.5 The Secretary of State has carefully considered the impact of the Development on aviation interests in light of all the information presented. In particular he has considered the Inspector's conclusions on the impacts on the operations of NERL and NIAL and the impacts on air traffic control radars and threat systems at RAF Spadeadam.

NERL

4.6 The Secretary of State notes the Inspector's conclusion that the "presence of unwanted returns from the proposed wind farms would add to the complexities of air traffic control provided by NERL" and that he considers the "totality of the evidence points to the need to secure appropriate mitigation" (15.248).

4.7 The Applicants accept the need for mitigation and, in respect of that mitigation, suggested the upgrading of the Great Dun Fell radar with Raytheon technology (15.256) or the provision of new radar (15.257). The Inspector found that Raytheon project was a "work in progress" whilst the possibility of new radar was "little more than an initial notion", both of which points he took into account when considering whether it would be appropriate to impose a suspensive Grampian type condition (see paragraph 4.12 below).

NIAL

4.8 In respect of impacts on NIAL, the Applicants acknowledge that mitigation is required in respect of clutter "in the form set out ... for NERL" (15.272). The Inspector concludes that his conclusions in relation to NERL apply with equal force to NIAL. It is therefore necessary to consider whether mitigation can be secured and whether it would be proper to impose a Grampian type condition.

RAF Spadeadam

4.9 The Secretary of State notes that Inspector found, in respect of impacts on primary radar at RAF Spadeadam, that "the available evidence points to limited impacts which would not impinge to a material degree on the operations of RAF Spadeadam; and significantly, in the event of such impacts, the unit would manage them to ensure that safety was not compromised". On impacts on threat radar, he found that there "is no compelling evidence to suggest that the operation of RAF Spadeadam would be undermined to a material degree".

4.10 The Secretary of State agrees with the Inspector's conclusions and therefore considers that there are no grounds to refuse consent to the Development on the basis of impacts on MoD operations at RAF Spadeadam.

Aviation conditions

4.11 The Applicants accept the need for mitigation in respect of impacts on both NERL and NIAL. The Inspector concludes that "no form of operational mitigation is sufficient to overcome the adverse impacts on primary radar serving NERL and NIAL" (15.393). He concluded that mitigation based on Raytheon or the provision of a new radar remains a future possibility but, for consent to be granted to the Development on that basis, the imposition of a Grampian-type condition would be required to protect the interests of NERL and NIAL.

4.12 In deciding whether it would be justifiable to impose such a condition, the Secretary of State agrees with the Inspector that such a condition would not be unlawful and that it would be possible to frame a condition in such a way as to meet the test of precision.

4.13 However, the Inspector finds that to grant consent to a proposal which cannot be implemented within a reasonable timeframe might have the effect of blocking other proposals which would of themselves be acceptable were it not for the potential cumulative impacts which arise when they are assessed alongside the consented proposal(s). He therefore rightly considered the prospects for the proposed mitigation measures to be implemented. While noting that "the balance of the evidence...was that, assuming no material setbacks, [Raytheon] could be delivered within a period of some five years or so" (15.403), he finds that "it is not possible to say with any reasonable degree of confidence that Raytheon is likely to be implemented within a foreseeable and reasonable timeframe" (15.404). In respect of the provision of new radar (as an alternative to Raytheon), he finds that the uncertainties surrounding the location of a suitable site and the lack of a clear time-frame to obtain the necessary approvals, and to install and test the radar militate against reliance on the provision of new radar as a suitable basis for a Grampian condition.

4.14 Although the Inspector attaches "great weight to the benefits" of the Development, he nevertheless finds the "circumstances of the purported radar mitigation measures to be too uncertain to justify the imposition of suspensive conditions" (15.409).

4.15 The Secretary of State notes the Inspector's conclusion and accepts that it was not unreasonable for the Inspector to reach his conclusion about the likelihood of a satisfactory solution being found during the life of the consent and the deemed planning permission, given the information in front of him at the end of the inquiry. However as noted in paragraphs 4.1- 4.4 since the close of the

Inquiry in December 2008, there have been developments in respect of the Raytheon system which the Secretary of State considers that he needs to take into account when assessing the balance of likelihood of Raytheon being able to provide satisfactory mitigation to the radar impacts within a reasonable timeframe.

4.16 In considering the balance of probability of successful mitigation, the Secretary of State makes the observation that the funding of this trial has already overcome one of the series of “high hurdles” that the Inspector took into consideration when deciding on the relative likelihood of Raytheon being brought forward as a solution (15.404). Given that the Inspector recognised that the wind farms under consideration were “well developed with few impediments to implementation”, that “any other proposals, which might be waiting to come forward, are likely to take some time to come to fruition” (15.409), and that material progress has been made in respect of Raytheon, the Secretary of State considers that the planning balance has changed to the extent that he regards it as reasonably foreseeable that a solution to the radar issues may come forward within the relevant timescale (five years) and that therefore it would be appropriate for Grampian type conditions in respect of both NERL and NIAL to be attached to any consent which is issued in respect of the Development. Moreover, in the Secretary of State’s opinion, any other schemes waiting to come forward in the same area are unlikely to have any inherently greater certainty of success than the Development, not least because their potential impacts on the operations of NERL and NIAL may require similar mitigation.

4.17 The Secretary of State therefore considers that any consent to be granted to the Development should be subject to conditions that no development shall take place until a scheme to mitigate the adverse impacts of the Development on NERL’s and NIAL’s primary surveillance radars had been agreed. Any such mitigation should ensure that any remaining impacts on NERL’s and NIAL’s operations were acceptable, and would have to be designed on the basis of an assessment of the impacts of the Development on NERL’s and NIAL’s primary radars, considered both in isolation and in combination with any impacts from Green Rigg (and elsewhere). In the Secretary of State’s opinion, no potential solution to mitigate the impacts of the Development on NERL’s and NIAL’s operations would be acceptable unless the cumulative level of impacts on the primary radars were to remain at an acceptable level after the implementation of the proposed mitigation.

V CUMULATIVE VISUAL AND LANDSCAPE IMPACTS

5.1 On the question of cumulative impacts, while the Secretary of State is refusing to grant consent in respect of Steadings, he understands that the Secretary of State for Communities and Local Government intends to allow the appeal in respect of Green Rigg. The Secretary of State therefore needs to consider the question of the cumulative impacts of the Development with Green Rigg but not with Steadings. He notes the Inspector’s conclusion “As for Ray,

either individually or cumulatively with Green Rigg, I again find no material conflict with the development plan as a whole.” (15.609) and agrees with this conclusion.

VI. SECRETARY OF STATE’S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

6.1 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination of the section 36 application.

6.2 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (the 2000 Regulations”) prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those regulations.

6.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement (ES), he has considered the comments made by the local planning authority, those designated as statutory consultees under regulation 2 of the 2000 Regulations and other consultees and objectors.

6.4 Taking account of the extent to which any adverse environmental effects will be modified and mitigated by measures that the company has agreed to or will be required to take either under the conditions attached to the section 36 consent or the Planning Conditions, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or the deemed planning permission.

VII SECRETARY OF STATE'S CONSIDERATION OF THE CONSERVATION (NATURAL HABITATS, &c) REGULATIONS 1994

7.1 Regulation 48 of The Conservation (Natural Habitats &c.) Regulations as amended ("the 1994 Regulations") requires the Secretary of State to consider whether the development would be likely to have significant effects on a European Site, as defined in the 1994 Regulations.

7.2 In the event of such an effect he must undertake an appropriate assessment of the implications for the European site in view of its conservation objectives. The section 36 consent may only be granted if it has been ascertained that the development will not adversely affect the integrity of such a site unless there are no feasible alternatives and imperative reasons of overriding public interest apply.

7.3 The Secretary of State notes there are European interest features in the vicinity of the site: namely Hen Harriers, blanket bogs and potentially, bats. He has been informed by Natural England that, provided planning conditions are imposed, the integrity of the populations and habitats of European interest features will be maintained. Accordingly, in view of this advice, the Secretary of State has considered whether an appropriate assessment pursuant to the 1994 Regulations is required and concluded that it is not. The Secretary of State finds no reason for refusing section 36 consent on the grounds of adverse effects on the integrity of a European Site.

VIII SECRETARY OF STATE'S PROPOSED DECISION ON THE APPLICATION

8.1 The Secretary of State, having carefully considered the Inspector's Report, the views of the relevant planning authorities, the objections received, other representations made to him by various bodies, the environmental information and all other matters he considers relevant, and taken into account relevant developments since the close of the public inquiry in respect of the new Raytheon radar, is minded to grant section 36 consent and issue a section 90 direction for the Development.

8.2 The Secretary of State accepts the Inspector's findings on the section 36 application in all respects other than the question of whether it is appropriate to impose a Grampian condition to ensure mitigation of the adverse impacts on the operations of NIAL and NERL where he is minded to accept that the new information referred to in paragraphs 4.1– 4.4 changes the planning balance to the extent that it would be appropriate to impose such a condition. In the Secretary of State's judgment, this information indicates that there is now a reasonable prospect that the new Raytheon radar will, within the next five years, be available and capable of mitigating to a satisfactory extent adverse impacts on the operations of NIAL and NERL.

8.3 The Secretary of State believes that the planning conditions set out in

Appendix B(ii) of the Inspector's report form a sufficient basis on which the development might proceed. He is therefore minded to give a section 90 direction that planning permission for the Development be deemed to be granted subject to planning conditions in substantially the form to be found at Annex E.

8.4 However, in accordance with regulation 21(6) of The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, the Secretary of State is first required to notify in writing the persons entitled to appear at the inquiry who appeared at it of his disagreement with the Inspector's recommendations and the reasons for it; and afford them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. This is because, in disagreeing with the Inspector, he proposes to take into account new evidence or matters of fact in relation to the new Raytheon radar which were not available to the Inspector.

IX. DISTRIBUTION

Copies of this letter together with a copy of the Inspector's Report have been sent to the main parties and individuals listed in the Inspector's Report.

X. COSTS

The company made an application for an award of costs against MoD during the course of the inquiry. The Secretary of State is still considering matters arising from the Inspector's separate report on the question of such an award and will issue a decision on it in due course.

Yours faithfully

Giles Scott
Head of Development Consents and Planning Reform