



CLOSING SUBMISSIONS

On Behalf Of

VATTENFALL WIND POWER LTD

In Relation to The

RAY WIND FARM Public Local Inquiry

Dated:

12 December 2008

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1. Introduction

1.1 The scheme

- 1.1.1 The application by AMEC Project Investments Limited (APIL) under Section 36 of the Electricity Act 1989 was submitted to the Department of Trade and Industry (DTI) on 13th December 2005.
- 1.1.2 As is recorded in **AMEC/0/77**, AMEC Wind Energy Limited was acquired by Vattenfall Vindkraft AB on 6th October 2008. The company is now known as Vattenfall Wind Power Ltd (hereafter 'Vattenfall'). If and when the Section 36 consent is granted (in the name of APIL) it will be assigned to Vattenfall¹. However, it must be emphasised that this project continues to be run and supported locally with Vattenfall employing former AMEC Wind Energy Limited personnel and operating from its same premises in Hexham. (For convenience, therefore, we shall continue to refer to APIL as the applicant hereafter.
- 1.1.3 APIL provided a very detailed Statement of Case [**SOC/2**] on 15th October 2007. It will be convenient to refer to that document which was intended to provide a comprehensive analysis of the issues that the Inquiry has had to consider. In this closing submission we shall, where possible, avoid duplicating what we have already written. It should be taken that that Statement of Case is, without qualification (save as to the references to the Wanney Four – see below) incorporated within the present submissions.
- 1.1.4 Formally, this application was the first of the three developments before this Inquiry to be submitted² and was proposed publicly as long ago as the mid 1990s³.
- 1.1.5 Originally, permission was sought to construct, operate and, after 25 years, decommission a development of 20 wind turbines together with access tracks and associated infrastructure on the Ray Estate. Deemed planning approval is also

¹ We are instructed that DBERR has been notified accordingly.

² The Ray application was submitted on 13th December 2005, Green Rigg on 5th January 2006, Steadings on 12 January 2006.

³ See Item 1 of **AMEC/8/2/A**. The present application involved a scoping opinion sought in 2004 - see para 11 of **AMEC/7/1**. Perhaps revealingly, Mr Short told the Inquiry on 30th October that when local people knew of the first project in the area – Ray - they were not, speaking generally, opposed to it. Hence it can be assumed that such opposition as exists now is rather more the product of concern about the proliferation of developments than it is about the characteristics or location of individual schemes or the principle of there being at least one wind farm of c 20 turbines in the area.

sought under section 90(2) of the Town and Country Planning Act 1990 for the consented electricity generating station and ancillary development⁴.

1.1.6 Document **AMEC/0/60** records APIL's deletion from its scheme of the four southernmost turbines⁵. These became known as the "Wanney Four" and gave rise to the most significant objections in terms of adverse impact upon the landscape and cultural heritage interests. It was in recognition of the force of those objections that the 4 turbines were removed.

1.1.7 Mr Ormston's proof of evidence [**AMEC/7/1**] provides a useful summary of the key features and history of the scheme, including the consultation process⁶ to which the Applicant attaches considerable importance. That history was, in effect, unchallenged in his oral evidence on 23rd January. He also gave a clear exposition of the qualities of and reasons for selecting this site in his proof⁷ and explained those reasons further in his oral evidence⁸. We address the question of site selection further in dealing with Matter (d) about which the Secretary of State wishes to be informed.

1.2 Approval for one, two or three schemes?

1.2.1 It is no part of APIL's case to disparage the qualities of either the Green Rigg or the Steadings schemes. It would be a reasonable recommendation (and decision) to give consent to all three schemes notwithstanding the opinion of (for example) Rebecca Rylott that, in terms of the impact on landscape alone, to build all 3 would be difficult to justify⁹.

1.2.2 Whatever reservations there may be on a variety of issues, our submission is that it would be justifiable to give consent to all three schemes for two compelling reasons.

⁴ For a more detailed description of the scheme and the history of the application, see section 2 of the Statement of Case and chapter 2 of Volume 2 of the Environmental Statement [**CD 14**]. For the planning history, see **CD 13** and para 2.2 of the Statement of Case.

⁵ The advertisement for which is **AMEC/0/64**.

⁶ To which the landowner, Lord Devonport, attaches particular importance and which he describes at para 25 of **AMEC/0/54**.

⁷ See, for example, sections 6 to 10 of his proof and chapter 4 of Vol 2 of the ES – **CD 14**. Reference should also be made to his "points of clarification" – **AMEC/0/53**.

⁸ On 18th January 2008, in chief and in XX, particularly answering Mr Archbold's questions.

⁹ The answer she gave in XX to Mr Short on February 14th: see also para 7.6.5 of her compendium proof [**AMEC/1/14**].

- 1.2.3 First, because of the national and increasingly urgent imperative that exists to build wind farms like these which are technically viable and will make a definite and significant contribution to renewable energy capacity.
- 1.2.4 Second, at a more local/regional level, because of the need for Northumberland in particular to move immediately if it is to get anywhere near meeting its share of the regional targets for renewable energy.
- 1.2.5 Put bluntly, we submit that those considerations should outweigh landscape (or other) factors but we do not suggest (as to which see paragraph 40 of the closing submissions of Tynedale District Council ("TDC")) that they *override* all such other factors. However, we would add that there is a case to be made for concentrating developments in one area (assuming it is suitable in other respects): it tends to confine any adverse impact on one (albeit enlarged) area rather than create an assumed-to-be-adverse impact in another area altogether.
- 1.2.6 That is why we were not anxious to engage in TDC's ranking exercise, although we are pleased to have TDC's qualified support¹⁰. This is not simply the product of the confident disdain of the front-runner¹¹. Rather, we regard it as our role to promote the free-standing merits of the Ray scheme, not to engage in a comparative analysis, as we explained in **AMEC/0/62**.
- 1.2.7 If the Inquiry embarks on any comparison between projects and/or is persuaded that it is not right to give consent to all three, we simply invite the Inquiry to have regard for:
- (i) The content of that Note [**AMEC/0/62**];
 - (ii) The fact that the Ray scheme – in one form or another – has been developed and promoted by a local company since 1993¹². There has been a very lengthy process of consultation¹³ as the scheme had evolved over the years, being formally submitted only when the MOD objection was removed;

¹⁰ Provisional version – **TDC/0/22**: final ranking at para 239 of TDC's closing submissions.

¹¹ This footnote was written less than a week before the US Presidential election. Like Senator/President Obama, we take nothing for granted and carefully eschew over confidence.

¹² See para 2.1 of the Statement of Case. Although the business of AMEC Wind is now owned and operated by Vattenfall, the application should still be regarded as one made by a local company.

¹³ Following the guidance as regards community involvement - key principle 1 (vii) of PPS 22 [**CD 74**]- see also paras 25 to 27 of Lord Devonport's statement **AMEC/0/54**.

- (iii) Ms Rylott's opinion¹⁴ that if only two of the developments can be accommodated in this landscape, it is Ray and Green Rigg which make the least cumulative impact and fit best together when considering the landscape and visual effects alone.

1.3 The position of the planning authorities – and other objectors

- 1.3.1 The position of the relevant planning authorities as at the commencement of the Inquiry was set out in section 2.2 of the Statement of Case.
- 1.3.2 The present position is that Alnwick District Council never objected to the scheme. TDC continues to oppose the 16 turbine Ray scheme on landscape and visual grounds¹⁵ but raises no objection on the grounds of cultural heritage¹⁶. Northumberland County Council has formally withdrawn its objection¹⁷.
- 1.3.3 TDC has also submitted a preliminary ranking note [TDC/0/22] to which APIL has responded [AMEC/0/62]. TDC has also withdrawn any objection based on an adverse impact on tourism [TDC/0/23].

1.4 Installed Capacity

- 1.4.1 As was explained by Mr Ormston in oral evidence¹⁸, the turbines that are most likely to be used have an installed capacity of 3.15 MW¹⁹ each [see AMEC/0/49] which means that the installed capacity of the 16 turbines will be 50.4 MW.
- 1.4.2 It is not necessary (and would not be practical) to calculate the precise capacity factor (which Mr Bucknall explained in his proof²⁰ at paragraph 8.7 should be approximately 30%, as stated by Mr Ormston at paragraph 7.2 of his proof) nor to estimate with any precision the carbon savings made or homes (or other equivalent) which might be provided with electricity²¹.
- 1.4.3 As we explain in greater detail hereafter, that is because both national and regional policy expresses the targets for renewable energy in terms of installed capacity – see PPS 22, paragraphs 2 and 3, [CD 74] from which we quote:

¹⁴ In AMEC/1/14 at paras 7.6.3-7.6.5: note also that Mr Smith, in answer to AC in XX on January 24th, expressed the view that around 100 MW should be regarded as a “top-line” figure for the area in terms of landscape capacity.

¹⁵ See para 156 of TDC's closing submissions.

¹⁶ See para 182 of TDC's closing submissions: TDC note that “*the opinion of the Council in this regard is shared by English Heritage and the County Council*”.

¹⁷ Para 3 of closing submissions NCC/0/5.

¹⁸ 18th January.

¹⁹ Mr Ormston told Mr Archbold in XX on 18th January that these machines would be no noisier than those which had previously been considered.

²⁰ And further in his oral evidence, particularly in answer to Mr Crean and Mr Short.

²¹ On which issue Mr Bucknall supplied a very helpful note – AMEC/0/52.

“2.The Regional Spatial Strategy should include the target for renewable energy capacity in the region.....

3. Targets should be expressed as the minimum amount of installed capacity for renewable energy in the region, expressed in megawatts, and may also be expressed in terms of the percentage of electricity consumed or supplied. Targets should be set for achievement by 2010 and 2020. Progress towards achieving those targets should be monitored by regional planning bodies. Targets should be reviewed on a regular basis and revised upwards (if they are met) subject to the region’s renewable energy resource potential and the capacity of the environment in the region for further renewable energy developments. The fact that a target has been reached should not be used in itself as a reason for refusing planning permission for further renewable energy projects.”

- 1.4.4 The need for targets we take to be self-evident: without them, there would be no coherent structure to or direction for regional and local policy.
- 1.4.5 The logic of expressing targets in terms of installed capacity rather than electricity generated is equally plain. Installed capacity can be calculated with reasonable confidence and applied with consistency across all projects, large or small by public authorities, planners and developers.
- 1.4.6 It can sensibly²² be assumed that a developer will not promote a project which has no commercial value and thus would generate no significant contribution to renewable energy targets. Indeed, the incentives which are provided by the Renewables Obligation Certificate (ROCs) system encourage the maximisation of output (and hence revenue from wind farm projects).
- 1.4.7 Since the costs of all such projects are effectively fixed (there being no fuel costs to be factored in, unlike coal, oil or gas fired power stations, for example), those who devised those targets may be taken to have proceeded on the sensible basis that developers will choose suitable sites with good wind yield thereby maximising the revenue (and thus profit).

²²

As it was in the *Den Brook* decision [CD 130] – but note that the decision itself will have to go back to the Inspector because of errors identified in the background noise measurement data.

- 1.4.8 No doubt it is for that reason that all projects – large *and* small²³ – are encouraged on the basis that each and every one is likely to make a useful contribution to the overall targets. And, obviously, the actual carbon savings to be made will depend on what may be the actual grid mix at some indefinite time in the future.
- 1.4.9 There is neither value nor purpose in engaging in a detailed measurement of the actual energy that this – or any other individual project – is forecast to produce over the lifetime of the scheme as a consideration to weigh in the planning balance. Nor, for the same reason, is there any purpose in seeking to calculate exact carbon savings²⁴ - on which issue we commend Mr Bucknall's evidence and note at **AMEC/0/52**.
- 1.4.10 Were the planning process to require this to be done (assuming a reliable estimate could be made over the lifetime of the project²⁵) then Inquiries such as the present would become hopelessly over-complicated and unwieldy.
- 1.4.11 For all of those good reasons, PPS 22 [**CD 74**] is framed in terms of installed capacity. That approach is consistent with the Renewables Statement of Need in the 2006 Energy Review Report [**CD 117**]. It is also consistent with the advice in the consultation²⁶: *Planning Policy Statement: Planning and Climate Change, Supplement to PPS 1* [**CD 71**].
- 1.4.12 Further, it is consistent with the approach in the Energy White Paper²⁷ [**CD 102**], Government has underlined that s will no longer have to demonstrate either that there is an “*overall need for renewable energy or for their particular proposal to be sited in a particular location*”.
- 1.4.13 It follows that any attempt precisely to calculate actual capacity and/or energy generated and/or carbon savings is unnecessary and inappropriate. Hence our

²³ The value of the contribution to be made by small-scale projects is expressly recognised in PPS 22 [**CD 74**] at paras 1(vi) and 18, for example.

²⁴ We commend the approach of Mr Brooks in the *Carsington Pastures* appeal [**CD 130 tt**] at para 13.

²⁵ No doubt involving detailed wind forecast data and load factors over the lifetime of the project, precise calculations of the efficiency or otherwise of the grid connection, data as regards turbine efficiency and reliability and estimates of carbon dioxide savings based on detailed calculations of the grid mix over the next 20 to 25 years to identify but some of the factors that might have to be evaluated.

²⁶ As Dr Novitsky recognises at para 482 of his *Middlemoor* report [**CD 130 (ss)**]. He gave Dr Constable's arguments (summarised at paras 33-37 of the report) short shrift.

²⁷ See particularly paras 5.3.67 to 5.3.69. developers do not have to demonstrate the need for a particular project to be located at the particular place, as we explain in dealing with the argument about “alternatives” later. Our understanding is that, at one stage, Leading Counsel for TDC indicated that he might submit that the expression of policy in para 5.3.67 was unlawful (though this is not a submission contained in **TDC/0/0-A**). Such a submission would need to be taken with a very large pinch of salt: and it would be wrong.

disinclination to engage in TDC's attempt to open up and investigate exactly that issue²⁸.

1.5 Grid Connection

- 1.5.1 APIL has now submitted a considerable amount of explanatory material which informs the present process as to the probable route of the grid connection and the associated environmental impact. That material is more than sufficient to inform the Secretary of State for the purposes of the Section 36 consent about the indirect environmental consequences of granting consent. In short, APIL has satisfied the obligation to provide an adequate Environmental Impact Assessment (EIA).
- 1.5.2 A convenient starting point is Volume 2 of the Environmental Statement²⁹ [CD 14]. More detail is to be found in chapter 9 of Further Information 2006 (Volume 1) [CD18] and in Mr Ormston's evidence³⁰.
- 1.5.3 As regards the sufficiency of that material, we repeat the written submission **AMEC/0/56**.
- 1.5.4 In the light of the Inspector's ruling, we provided the further material consisting of the "Further Information – Electrical Connection" [**AMEC/0/64 and AMEC/0/65**]. That document analyses the likely route in more – and clearly sufficient – detail and addresses the options the Ray development has depending on whether there are one, two or three developments built³¹.
- 1.5.5 In short, the preferred route (for the Ray development) is the connection to the sub-station at Bedlington. APIL has already commenced discussions with the local Distribution Network Operator, Northern Electric Distribution Limited (NEDL). **AMEC/0/53** provided points of clarification arising out of Mr Ormston's evidence, including an email from NEDL in which it is confirmed that a connection to Bedlington would be provided³².

²⁸ As to which see, generally, para 77-89 of TDC's closing submissions.

²⁹ See, particularly, Pages 2-3 and 2-4.

³⁰ See paras 5.3.5 to 5.3.7, as expanded in oral evidence on 18th January.

³¹ A point made by the Inspector in a question to Mr Ormston on 18th January when he drew attention to the RSS draft 2007 [CD 44]: see, for example, para 3.169 on p154.

³² The Inspector will know that the current transmission access arrangements are currently under review. The Transmission Access Review (TAR) has been brought about as part of the Government's Renewable Energy Strategy the aim of which is to address issues faced by developers in securing timely, efficient and economic grid connection. It is not a useful function of the present inquiry to attempt to speculate further on what may be future transmission access arrangements which are driven by wider political and economic considerations.

1.5.6 Importantly, this route would make no significant impact on Hadrian's Wall. Other options, the way in which the lines would be laid or erected and the likely connections should two or three of the wind farms be consented and built are all explained in **AMEC/0/65**.

1.6 **Social, economic and environmental benefits and consequences**

1.6.1 On applications such as these, there are always genuine concerns expressed that any development could or will have an adverse effect on tourism, an industry which all acknowledge is important to the area.

1.6.2 The sincerity with which those concerns are expressed cannot disguise the fact that there is not a shred of respectable evidence to support them, as Adrian Smith explained in his proof of evidence³³ [**AMEC/2/1**].

1.6.3 It cannot be doubted that such a scheme, during and after construction, will produce genuine direct and indirect economic advantages, which Mr Ormston identified in his proof and of which Lord Devonport has written³⁴ [**AMEC/7/1**].

1.6.4 It is also important to bear in mind that although the original developer has now been acquired by Vattenfall, the Applicant has always been and is, for all practical purposes, to be regarded as a local company. It is a company that has devoted many years to bringing forward this application to the present stage. It has consulted widely and for years³⁵. The scheme has gone through many iterations³⁶ to accommodate various objections.

1.6.5 It also has a supportive landowner whose environmental and commercial interests are clearly set out by Lord Devonport in **AMEC/0/54**. The income from this development will have major beneficial financial consequences for the Estate and those who depend on it. Similarly, the community funds that would be generated have a benefit to the recipients which is self-evident.

1.6.6 A further advantage will arise out of the positive contribution of the Habitat Management Plan – see section 16 of APIL's Statement of Case – which will, in effect, mean a further development of the objects of the Game Conservancy Trust Otterburn Project.

³³ at section 9.1: see also section 15 of APIL's Statement of Case.

³⁴ At para 10: see also **AMEC/0/54**.

³⁵ See paras 1.5 and 11 of Mr Ormston's proof – **AMEC/ 7/1**.

³⁶ Tabulated in Mr Ormston's proof [**AMEC/7/1**] at para 8.2.

1.7 Our role at this Inquiry: the conduct of the MOD

- 1.7.1 We should comment on the (relatively) limited role that we have taken in this Inquiry.
- 1.7.2 The Inquiry is very familiar with the background to APIL's request that the whole Inquiry should be adjourned to enable the Ministry of Defence (MOD) properly to substantiate and APIL to investigate its very late objection to the Ray scheme. The Inquiry is also very well aware of APIL's expressions of concern before the Inquiry began that it would be substantially prejudiced in meeting any objection were such an adjournment not to be granted.
- 1.7.3 It may be thought that the constantly shifting sands of the MOD's objections, the lack of cogent evidence to support the MOD's objections and that organisation's failure to observe the obvious dictates of good practice have demonstrated the validity of those concerns. They are exemplified as vividly by the MOD's original complete about face with regard to its objection to the Ray development as they are by the later and equally complete about face with regard to threat radar.
- 1.7.4 As regards the former, it will be remembered that, after several years during which it had no objection to the Ray scheme as a whole, and to which it specifically recorded the absence of objection when the application was formally submitted, the MOD, with no warning and with an explanation for its change of position which can most kindly be described as wrong, first announced its objection to the Ray scheme in its Outline Statement of Case, served shortly before the Pre Inquiry Meeting in September 2007.
- 1.7.5 In APIL's opening statement³⁷ we speculated as to "whether the MOD's conduct (was) the product of arrogance, complacency or incompetence, or some unhappy combination of those undesirable characteristics". At this stage, however, we shall not dwell on the appropriate label: labels which are always less important than the product. Whatever label may be appropriate, we recognise that any objection from the MOD, a body that only exists to defend and promote our national interests, must be taken seriously. Moreover, the future national interest creates a strong imperative of co-operation for the future between those who guard its security and support our armed forces and those who must promote renewable energy. Each is

³⁷

AMEC/0/0 at paragraph 22.

important to our future. Our mutual interests are not, we judge, advanced by strident criticism. Everyone – and certainly that includes the MOD – must learn lessons for the future as we seek to achieve consensus by co-operation not conflict. That is vital in the interests of all, whether that means in relation to achieving practical solutions for acknowledged technical difficulties or in working to improve lines of communication as regards locational consideration.

1.7.6 Having said that, it will be necessary to devote some time to the history of and background to the MOD's objection. It is relevant in three ways:

- (i) It explains the role that APIL has taken in the Inquiry;
- (ii) It illuminates the issues as to the nature and extent of any technical or operational objection and the evidence on mitigation;
- (iii) On the issue of costs, which APIL seeks against the MOD on the basis that it has behaved unreasonably³⁸, and has involved APIL in very considerable and avoidable expense.

1.7.7 As regards the first of those issues and as we have already observed, the MOD's conduct has had real significance for APIL's approach to this application and in due course to the Inquiry. The late emergence of the objection and the failure properly to particularise it prompted applications to adjourn and, in the end, determined our whole strategy at this Inquiry.

1.7.8 The history of our approach to the Inquiry is recorded in the various letters³⁹ written and received and rulings given. We also refer to our Opening to the Inquiry **[AMEC/0/0]** and Note on Procedure **[AMEC/0/50]**.

1.7.9 We trust that those documents will help to explain the way in which the Inquiry should approach written evidence submitted and oral evidence called by this Applicant was actively represented only for the opening and closing submissions and the evidence in relation to aviation interests⁴⁰.

³⁸ See Circular 05/00, the same test as that which was applied when costs were ordered against APIL in the Kyle Inquiry.

³⁹ See letters of: 18th September 2007; emails 7th December 2007, 12th December 2007, 14th December 2007; letter 14th December 2007 in AMEC/8/2C. 21st November 2007.

⁴⁰ We are pleased but not surprised to see that TDC in its closing submissions takes exactly the same approach as APIL to the MOD's legal(istic) submission about the status of evidence that was not the subject of formal challenge by an advocate. We have nothing to add to what we said on the issue in **AMEC/0/50** and **AMEC/0/58**.

- 1.7.10 That, however, at least as far as this Applicant is concerned, is all history. It is the issues which really matter.
- 1.7.11 We take a similar approach to the threat radar issue. That too appeared remarkably late. We did – and were entitled to - take grave exception to the circumstances and stage of the process at which it suddenly emerged. It will not be forgotten that an adverse impact on threat radar formed no part of the original objection. Any impact on threat radar was *expressly* said to be something that could be “accommodated” as late as 21st December 2007⁴¹. Then, entirely out of the blue, a threat radar objection was suddenly introduced on 11th March 2008. But it has emerged and must be considered accordingly.
- 1.7.12 Otherwise, with one exception, the conduct of the MOD is relevant only to the issue of costs.
- 1.7.13 That exception is the potential for a civil action for damages against the MOD should the Ray project not receive consent. We comment on this briefly since the factual background to that issue did occupy some passages in evidence⁴² and there may be an overlap here with the costs issue. Indeed, an award of costs would limit the financial losses which the Applicant might otherwise need to recover in any such civil action should consent be refused.
- 1.7.14 In summary, the MOD could face an action for negligent mis-statement arising out of its previous assurance that it had no objection to the Ray scheme. It is difficult to see that it could have any conceivable defence. We shall explain briefly how such an action could proceed, reminding the Inquiry of our cross-examination of Sq Leader Deane and Mr Chafer which was specifically directed to the existence and discharge of a duty of care owed to developers by the MOD according to familiar legal principles.
- 1.7.15 It would be our submission that the MOD, in notifying or removing an objection (or absence of objection) owes a duty of care to a developer. This duty would arise under the principles set out in, for example, *Hedley Byrne v Heller* [1964] A.C 465, *Caparo Industries v Dickman* [1990] 2 605 A.C and other cases in that well known line of authority.

⁴¹ See paragraph 16 of the draft Statement of Common Ground at Annexe 4 of Mr Ormston’s proof on threat radar **AMEC/8/4**.

⁴² in XX by WN of MOD witnesses.

- 1.7.16 The MOD's legal duty can be shortly stated: It is a duty competently and carefully to consider and respond to a developer, giving a reasoned, considered and reasonable decision.
- 1.7.17 The MOD must have known ("*reasonably have foreseen*") that a developer – and this one in particular – would rely on the existence or absence of objection in deciding whether to make/pursue an application. And it did.
- 1.7.18 Because the MOD had made clear in pre-submission consultation⁴³ (through Mr Pickett) that it did not object to Ray, the formal application was submitted on 12th December 2005⁴⁴. The formal response, confirming the absence of objection, was on 19th December 2005⁴⁵. The Applicant then incurred all the costs associated with bringing the application to the Inquiry, only to discover shortly before the PIM that the MOD's position had completely changed.
- 1.7.19 The objection was not notified until shortly before the PIM in September 2007, notwithstanding the many opportunities that existed for that to have been done months earlier⁴⁶.
- 1.7.20 That the MOD was *negligent* – that is, in breach of its duty of care - in not objecting in December 2005 and in failing to object between December 2005 and September 2007 is self-evident on its own case: it attributes the volte-face to its own basic geographical error in plotting Ray's co-ordinates.
- 1.7.21 Nor can it be said that the only recoverable losses would be those incurred by APIL between December 2005 and the notification of an objection in September 2007.
- 1.7.22 That is because it was reasonable⁴⁷ for the developer to proceed as it has to Inquiry, not least because, if it obtains consent, the only losses attributable to that negligence would be those additional costs/expenses which can be shown to have been incurred *over and above* those which would have been incurred anyway had the objection been notified promptly.
- 1.7.23 We acknowledge that this might be thought to be an issue for another day. However, we mention it now to emphasise the wider legal context in which the

43 See pages 26-32 of **AMEC/8/2A**.

44 Page 34 of **AMEC/8/2/A**.

45 See the letter at item 16/page 18 of **AMEC/8/2/A**.

46 In XX by WN on 19th June Mr Chafer said he assumed someone had told APIL much earlier.

47 In legal terminology, it was mitigation of damage.

duties of the MOD must be considered and because it is also relevant to the question of costs.

1.8 Ten specific issues

1.8.1 In a letter of 8th June 2007, the Planning Inspectorate identified ten specific matters (a)-(i) upon which the Secretary of State particularly wished to be informed and a final matter (j) which would involve consideration of any other relevant matters.

1.8.2 In the structure of these submissions we shall address each of those matters though not in exactly the same order as they appear in the letter from the Planning Inspectorate.

1.8.3 We emphasise that it is fundamental first to set these applications in their national and international – as well as regional – policy context: that is, a clear and regularly re-stated energy policy which supports renewable energy developments such as these, assuming that any adverse impacts are not so serious as to outweigh other considerations. That is why PPS 22 [CD 74] has as its first “key principle”⁴⁸ the statement that:

“Renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social developments can be addressed satisfactorily”.

2. Energy Policy [matters (b) and (c)]

2.1 **Establishing the context: National and International targets** International and National energy policy sets the whole context for the planning decision on which the Inspector must report and which the Secretary of State has to decide. How that policy sets the context is a point we have already addressed in our legal submissions⁴⁹ [AMEC/0/75].

2.1.2 By way of introduction, and to avoid repetition, we adopt everything which we said in sections 6 and 7 of APIL’s Statement of Case. Government policy has developed against the background of a wide consensus within the international

⁴⁸ Para 1(i).

⁴⁹ And has been discussed and addressed in many previous reports into such project – such as *Little Cheyne Court* [CD 130(h)], *Clyde* [CD 130(uu)], *Middlemoor* [CD 130(ss)].

scientific community as to the cause of climate change and the need urgently to address the threat it poses to society at every level.

- 2.1.3 We also remind the Inquiry of the key message of the *Energy White Paper: Meeting the Energy Challenge* (Cm 7124 [CD 102] published on 23rd May 2007, the importance of which is regularly re-stated by Government, as in the Prime Minister's call for global action on climate change in his speech of 19th November 2007 [AMEC/8/2/F] and in the Climate Change Bill which was introduced in Parliament on 14th November 2007 and completed its passage through the House of Lords on 31st March 2008 and received Royal Assent at the end of November 2008.
- 2.1.4 In summary we face two long-term energy challenges⁵⁰.
- 2.1.5 The first is to tackle climate change by reducing carbon dioxide emissions both within the UK and abroad. The second is to help ensure secure, clean and affordable energy as we become increasingly dependent on imported fuel⁵¹.
- 2.1.6 The Government's strategy, as spelled out in the *Energy White Paper*, is to address those challenges by delivering four energy policy goals:
- (i) to put ourselves on a path to cutting carbon dioxide emissions by some 60% by about 2050, with "real progress by 2020";
 - (ii) to maintain the reliability of energy supplies;
 - (iii) to promote competitive markets in the UK and beyond; and
 - (iv) to ensure that every home is adequately and affordably heated.
- 2.1.7 The Climate Change Bill was a further expression of that policy. It now enshrines in statute the UK's target of reducing carbon dioxide emissions by at least 50% by 2050 and at least 26% by 2020 against a 1990 baseline.
- 2.1.8 We do not disparage the opinions of those who take a different view of the nature, causes or significance of climate change or who doubt the threat it poses or those who hold sincerely and strongly very different views as to how any such threat might best be addressed.
- 2.1.9 Such views would contribute to an interesting debate but have absolutely nothing to do with nor do they inform the present decision making process. The simple fact

⁵⁰ The wording which follows is to be found, for example, on the DBERR website introducing the White Paper.

⁵¹ The massive increase in the costs of which have made the need to address this particular challenge all the more pressing.

of the matter is that our Government is both obliged and determined to address climate change by the promotion of renewable energy projects.

- 2.1.10 It is a clear feature of its policy⁵² that onshore wind developments – a proven and effective technology – should be brought forward to contribute to the generation of such energy. Moreover, as we have already explained, the Government has made clear that schemes such as the present and others both bigger and smaller are *all* needed to address those challenges.
- 2.1.11 Those who wish to study the emergence and current expressions of UK energy policy in any detail will find all relevant references in paragraph 6 of the Statement of Case.
- 2.1.12 We also remind the Inquiry of the written and oral evidence from Simon Bucknall [**AMEC/5/1**, **AMEC/5/3** and 23rd January 2008]. That explains the policy history referred to above and addresses a number of the issues – such as intermittency, the need for back-up, actual output, carbon savings⁵³ and cost, all of which are, strictly, issues of only peripheral interest given the expression of targets in terms of capacity and detailed analysis of which is outwith the terms of reference of this Inquiry.
- 2.1.13 By way of illustration, Mr Bucknall explains in his rebuttal [**AMEC/5/3**] that CREDIT and NHSN's concerns about measuring the carbon balance were unfounded: that the project would have a beneficial impact is, as the Renewables Statement of Need in the 2007 White Paper [**CD 102**] makes clear⁵⁴, to be assumed.
- 2.1.14 In a nutshell, it is Government policy - which cannot be challenged in the present process - to proceed on the basis that such a project will have a positive benefit in terms of reducing harmful emissions; further, that onshore wind farms such as Ray are *needed* as one part of the diverse sources of electricity supply upon Government policy depends. And, of course, it must be remembered that onshore

⁵² As is plain from PPS 22 [**CD 74**] at p155 et seq.

⁵³ This raises the familiar question of whether one should calculate CO2 savings based on displacement of marginal coal-fired plant as a factor of 0.86 (see para 8.10 of Mr Bucknall's proof) or some different factor such as 0.43 (see the table at **TDC/0/4**). However, this is not an issue that this Inquiry needs to resolve, any more than it was necessary to resolve it in the *Fullbrook* decision [**CD 130(dd)**] given the expression of targets in terms of capacity this is the short answer to the point made in **TDC/0/4**. As Mr Bucknall explained in oral evidence on 23rd January, if one were to do the exercise to see exactly what was displaced – albeit that would vary at any one time – one would probably choose an average grid mix which would make a figure of 0.43 too conservative: see also his rebuttal of CREDIT's arguments at **AMEC/5/3** paras 2.8-2.11.

⁵⁴ At page 157: see also para 2.13 of Mr Bucknall's rebuttal – **AMEC/5/3**.

wind is a *proven* source⁵⁵, as innumerable decisions on other wind farm projects recognise.

2.2 Regional Targets

- 2.2.1 The history of regional strategy in relation to renewable energy in the North East is set out in section 10 of our Statement of Case. It is important to trace the history of the regional targets which can be found fully set out in that section.
- 2.2.2 The Inquiry has a table [TDC/1/6] which records what renewable energy schemes there presently are in existence – or which are in various stages of development within the planning system or otherwise. What has been or is likely to be built contrasts markedly with the sub-regional target of 212 MW for Northumberland⁵⁶.
- 2.2.3 On 15th July 2008 the final published North East RSS was adopted [CD 45]. As a result, the renewable energy material forming part of the Development Plan includes the RSS (and the Local Plan and LDF). The targets that were in Policy 40 [CD 41] are now in Policy 39.
- 2.2.4 As Adrian Smith put it so graphically at paragraph 11.2.2 of his proof [AMEC/2/1] something has indeed gone “terribly wrong” with Northumberland’s efforts to make a significant – still less the required – contribution to the 2010 target. Unless projects such as these receive consent, it is likely that Northumberland will contribute less than one quarter of that sub-regional target for 2010 of 212MW set in Policy 40 of the draft Regional Spatial Strategy [CD 41], no material part of which has been modified in any later part of the process such as the Secretary of State’s Proposed Changes in May 2007 [CD 44] or the final published RSS [CD 45].

⁵⁵ For Mr Bucknall’s discussion and rebuttal of CREDIT’s arguments see section 2 of **AME/5/3**.

⁵⁶ Very late in the day, Mr Short sought to put in slides (by way of presentation on 30th October) supported, it is said, by a spread sheet he sent out the previous week suggesting that there would be a shortfall of (only) 59 MW against the 2010 target. He had not advanced such a proposition (even in general rather than precise numerical terms) at an earlier (and more appropriate) stage of the Inquiry. That figure is not accepted and it must be remembered that Mr Short accepted in XX by WN that – as at para 1.1 of his rebuttal **JWS/R/AMEC 2** he had positively asserted (agreeing with Adrian Smith) that it was “*likely that the renewable energy target allocated to Northumberland will not be attained by 2010*”. We remind the Inquiry of Mr Lewis’s supplementary proof **TDC/1/6** as containing a reliable record of the relevant information and we believe that Wind Prospect have submitted a further note which Mr Smith has seen and approved.

2.3 Conclusion on energy policy considerations

- 2.3.1 All of the three projects which are being considered at this Inquiry would make a useful contribution to the achievement of that regional target⁵⁷ which, in itself, is an important means whereby we seek to achieve national targets.

3. Accordance with the Development Plan – [matter (a)]

3.1 The constituents of the Development Plan: A material consideration

- 3.1.1 The Development Plan and all relevant and emerging guidance, apart from the final published North East RSS [CD 45] which must now be added to the list, are identified in section 9.3 of AMEC's Statement of Case.
- 3.1.2 Adrian Smith is obviously correct to say⁵⁸ that the provisions of the Development Plan constitute a significant material consideration in the present decision making process. It can also fairly be assumed that the emerging Regional Spatial Strategy (RSS) will form part of that plan and it would, in any case, be a material consideration in its own right.
- 3.1.3 Within that RSS (as Dr Novitsky concluded in his Report⁵⁹ on the *Middlemoor* application [CD 130 (SS)] the key policies are Policies 39, 40, 41 now set out in CD 45 (previously 40, 41 and 42), to which we have already referred and shall look at in more detail below.
- 3.1.4 Those policies, which are formulated and expressed in terms derived directly from national guidance, set out a spatial strategy and clear locational guidance for renewable energy development. They are the final expression of a lengthy and thorough process which has been carefully developed over a long period.
- 3.1.5 We shall summarise that history shortly: first, it has to be set in the national context.

3.2 The Development Plan and the national planning context

- 3.2.1 PPS 1 [CD 70] requires development plans to promote renewable energy resources: It is key principle (ii). Paragraph 20 identifies such energy as a means

⁵⁷ Mr Smith calculated (at a time before the Wanney 4 were deleted from the scheme) that Ray alone would increase Northumberland's contribution from a paltry 24% of the RSS target to about 52% - see para 10.3.2 of **AMEC/2/1**. For a breakdown of the status of renewable energy projects in the NE region as at 30th September 2007, see **AMEC 2/4**. Since then, *Middlemoor* (up to 75 MW capacity) has received consent.

⁵⁸ At para 1.2.2 of his proof – **AMEC/2/1**.

⁵⁹ See para 486 et seq.

of mitigating the effects of climate change. Paragraph 22 requires development plan policies to “*seek to promote and encourage rather than restrict the use of renewable resources (for example, by the development of renewable energy)*”.

- 3.2.2 Likewise the draft supplement in December 2006 [CD 71], the final version of which was published in December 2007, at paragraph 9⁶⁰ requires (as a “*Key Planning Objective*”) that all planning authorities and regional planning bodies should “*make a full contribution to delivering the Government’s Climate Change Programme and energy policies*”. Paragraph 12 gives clear guidance on the preparation of the Regional Spatial Strategy so as to advance those objectives and, in particular to “*set regional targets for renewable energy in line with PPS 22, and ensure their ambition fully reflects opportunities in the region are consistent with the Government’s national target for 10% of electricity to come from renewable sources by 2010 and further aspiration to derive 20% of electricity from renewable sources by 2020*”, revising such targets upwards in the light of delivery.
- 3.2.3 PPS 22⁶¹ [CD 74] sets out the familiar 8 key principles at pages 7-8. Paragraphs 2 and 3 require the Regional Spatial Strategy to “*include the target for renewable energy capacity in the region*” and to “*set targets for achievement by 2010 and 2020*”revising upwards where possible. Paragraph 5 provides that, “*where appropriate targets in regional spatial strategies may be disaggregated into sub-regional targets*” and paragraphs 6 and 7 that criteria-based policies should “*then be used to identify broad areas at the regional/sub-regional level where development of particular forms of renewable energy may be considered appropriate*”.
- 3.2.4 The Development Plan follows that approach in the setting of appropriate targets and in providing locational guidance.
- 3.2.5 We add – a point made in section 14 of APIL’s Statement of Case – that the positive economic impacts of the project serve to advance the cause of the fourth key principle of PPS 22 and at least 2 of the 4 goals of Energy White Paper 2003.

⁶⁰ Formerly para 6.

⁶¹ See also the Companion Guide [CD 75].

3.3 Locational Guidance: the broad areas of least constraint

- 3.3.1 As Adrian Smith explains⁶², both the Northumberland County and National Park Joint Structure Plan First Alteration [**CD 66, AMEC/0/25**] and emerging RSS [**CD 44, 45b**] set out criteria-based policies and identify the broad areas for onshore wind projects such as these. In so doing, the North-East⁶³ has complied with that guidance⁶⁴.
- 3.3.2 This has been a developing process over several years. Regional Planning Guidance for the North East 2002 (RPG 1)[**CD 34**] was followed by the North East Regional Renewable Energy Strategy (NERRES) of which there have been 3 versions – 2003 [**CD 108**], March 2005 [**CD 109a**] and September 2005 [**CD 109**]. As Mr Smith comments⁶⁵, the NJSP [**CD 35, 36**] and the Consultation/Submitted Spatial Strategy (RSS) are the product of those policies⁶⁶.
- 3.3.3 A useful analysis of the planning policy history can be found at **AMEC/2/3**.

3.4 Other relevant Regional Planning Guidance: RSS and Policies 39, 40, 41.

- 3.4.1 RPG 1 [**CD 34**], published by GONE and the First Secretary of State in November 2002, became the RSS for the region in October 2004⁶⁷. It therefore formed part of the current development plan – see particularly Policies EN 1, EN 2, EN 3 and EN 4-6⁶⁸.
- 3.4.2 The emerging RSS was published by the North East Assembly in 2004 and the later submission draft in 2005 [**CD 39**] contained the now familiar Policies 40, 41 and 42 which supported the Ray proposal on the scale and at the place in issue. In the final adopted North East RSS [**CD 45**] these have become Policies 39, 40, 41.
- 3.4.3 What is now Policy 39 requires strategies plans and programmes to “*facilitate the generation of at least 10% of the region’s consumption of electricity from renewable sources by 2010....and....aspire to further increase in renewable energy generation to achieve 20% of regional consumption by 2020*”. To meet that

⁶² Paras 2.3.7-2.3.9 and section 3 of his witness statement **AMEC/2/1**.

⁶³ Uniquely, as Mr Smith comments.

⁶⁴ Other relevant policies are listed at paras 2.4 and 2.5 of **AMEC/2/1**.

⁶⁵ Para 3.2 of **AMEC/2/1**.

⁶⁶ The detail and history of which he sets out in detail at para 3.2 to 3.5 of **AMEC/2/1**.

⁶⁷ The effect of SI: 2004 No 2206.

⁶⁸ The relevant provisions of which are summarised in section 4 of **AMEC/2/1**.

target, it will be necessary to install a minimum of 454 MW of renewable electricity generating capacity which Policy 40 splits into 4 sub—regions of which Northumberland is one, with a sub-regional target of 212 MW by 2010.

- 3.4.4 Policy 40 states that: *“Strategies, plans and programmes should support and encourage renewable energy proposals and identify renewable resource areas”* and goes on to identify the criteria for assessing proposals.
- 3.4.5 Policy 41, states that: *“Strategies, plans and programmes should provide a positive policy framework to facilitate onshore wind energy development within the following broad areas of least constraint for wind energy developments”*. These include Knowesgate, within which the Ray development lies.
- 3.4.6 It must be remembered that the draft RSS underwent an Examination in Public when all those with a legitimate interest in the process – such as the MOD – will have had a democratic opportunity to express their individual concerns about or objections to the scheme⁶⁹.
- 3.4.7 The Panel Report is [CD 45a]: the Secretary of State’s Proposed Changes (May 2007) are [CD 45b]. Nothing in those Proposed Changes watered down the previously drafted policies: indeed, those changes make an explicit connection between achieving the RSS renewable energy targets and individual planning proposals and the amendment to paragraph 3.172 retained the definition of the scale of development as appropriate to the broad ‘Ws’ areas⁷⁰.
- 3.4.8 The relevant sections of the adopted RSS [CD 45] now read as follows:
- (i) Para 3.192 provides that: *“Within RSS, Medium scale wind energy development is broadly defined as up to 2-25 turbines, with small scale up to 5 turbines, although this may change dependent on advances in technology”*;
 - (ii) Para 3.193 notes that: *“It is possible that broad areas of least constraint could sustainably accommodate more than one wind energy development subject to the requirements of Policy 40”*.

⁶⁹ The list of those invited to or who did make representations is in **SWFL/0/7**.

⁷⁰ From Mr Short’s presentation on 30 October it would seem he continues to insist that there is some material error in the location of the ‘Ws’. This was the argument he apparently deployed at the Ex in Public of the RSS and in his XX of Mr Smith on 24th January 2008. We invite the Inquiry to find Mr Smith’s response/explanation was more than sufficient to dispose of the point.

3.5 Northumberland County and National Park Joint Structure Plan

3.5.1 The NSJP Policies [CD 36, AMEC/0/25], adopted by Northumberland County Council in 2005, are to a very similar effect. Policies M3 and M4 deal with energy conservation as regards the design and layout of a development and the criteria to be taken into account in considering such proposals.

3.5.2 Policy M5 gives strategic/locational guidance. Knowesgate is again identified as having the potential for medium scale⁷¹ development and has a Key Diagram with a 'W' between the A 68 and A 696 in much the same general locations as the diagrams in the RRES.

3.5.3 This policy is therefore supportive of the Ray proposal.

3.6 Tynedale District Local Plan and Local Development Framework

3.6.1 TDC's LDF Core Strategy Formal Submission document was published in October 2006, examined in public in April 2007 and was the subject of an Inspector's report in October 2007⁷². The Adopted Core Strategy was published in October 2007 contains Policies EN 1 and EN 2⁷³.

3.6.2 Again, the supporting text⁷⁴ identifies Knowesgate as one of 3 areas in Tynedale where "current national, regional and sub-regional planning policy provides a positive context for wind energy development".

3.6.3 It follows that the Ray proposal meets the requirements of Policies EN 1, EN 2 and the supporting text.

3.7 Alnwick District Local Plan and LDF

3.7.1 The Alnwick District Local Plan [CD 38] was adopted in 1997 and the Alnwick LDF Core Strategy [CD 48] was published in 2006 and considered at an examination in public in 2007, the same year in which it was formally adopted.

3.7.2 Policy S 21⁷⁵ is concerned with renewable energy and, significantly, refers to 3 strategic broad areas of least constraint which again includes the Knowesgate area.

3.7.3 The Ray project meets the requirements of Policy S 21.

⁷¹ Para 4.6.28 suggests that a medium scale wind farm would be less than 50 MW but that proposition was not included in the draft NSJP nor was it considered at the EiP nor does it appear in the RSS or RRES. It should not attract much, if any, weight – see Mr Smith at para 5.1.2 of AMEC/2/1.

⁷² A process discussed by Mr Smith in AMEC/2/1 at section 6.

⁷³ Relevant parts of which are set out at para 6.3 of AMEC/2/1.

⁷⁴ Which also cross-refers to the Arup study – see below.

⁷⁵ More details of which are set out in para 7.2 of AMEC/2/1.

3.8 Conclusion on Development Plan issues

3.8.1 The Ray development, of 16 turbines generating just over 50 MW of renewable energy in the Knowesgate area, is a product of and is fully supported by the key elements of the Development Plan.

4. Justification for the Site - matter (d)

4.1 The process of selection

4.1.1 We addressed this in some detail in the SOC and in section 1 above. Apart from what appears in the ES, the clearest explanation of the process of site selection comes from Mr Ormston both in his proof and in his oral evidence⁷⁶. Put shortly, it is a good site for a development of the size proposed which has – importantly – a good wind resource⁷⁷ and reasonable grid connection⁷⁸.

4.2 No need in law to judge alternatives

4.2.1 Nothing in PPS 1⁷⁹ or PPS 22 supports any argument that the Applicant has to show that there are no alternative sites that are better or as good as the site which is the subject of this application.

4.2.2 What matters is, first, whether the *particular site in question* is suitable, not whether others may not be equally or more suitable and, second, whether the Applicant in question has complied with the obligations of the EIA Regulations⁸⁰.

4.2.3 Those Regulations oblige the developer to give “*an outline of the main alternatives considered and an indication of the main reasons for*” the choice of site – but that requirement arises only when the developer has indeed considered alternatives before promoting a particular site. That is not the situation here.

4.2.4 Any other approach would run entirely counter to the clear message of paragraph 3 of PPS 22 [CD 74] that targets should always be reviewed upwards and the fact that a target may have been reached would be no basis for refusing permission to a further project.

⁷⁶ **AMEC/7/1** – See section 6 and his evidence at the Inquiry on 18th January. As Mr Ormston said in answer to XX by AC and to questions by the Inspector, it is a good site and he/APIL/AMEC Wind Energy Limited have looked for sites throughout Northumberland (and elsewhere).

⁷⁷ See para 7.2 of Mr Ormston’s proof [AMEC/7/1] and his evidence in XX by Mr Short on January 18th when he explained the estimate of a 30% capacity factor and the wind speed figures.

⁷⁸ See **AMEC/O/65** and “Grid Connection” in section 1 above.

⁷⁹ And the supplement thereto [CD 70] - at para 22 particularly.

⁸⁰ Reg 4(1) and para 4 of Sch 4 Pt 2 of the *Electricity Works (EIA)(E & W) Regulations 2000*.

- 4.2.5 As we have already noted in section 1 above, that same message can be seen at paragraph 5.3.67⁸¹ of the Energy White Paper 2007 [**CD 102**].
- 4.2.6 Any argument to a different effect is, bluntly, hopeless and should fail here as it failed in the *Middlemoor*⁸² Inquiry when Dr Novitsky concluded (at paragraph 485): “..the strong policy impetus for renewable energy development indicates that, as suggested in the EWP, if a site appears suitable it should not be necessary to compare it to others”.
- 4.2.7 None of the recognised exceptions to this approach (that is, so as to require consideration of alternatives) arises in the present case⁸³.
- 4.2.8 In the light of the evidence APIL has submitted, more than sufficient justification has been shown for the size, design and location of this development.

4.3 Location and size in accordance with Regional Guidance

- 4.3.1 The Ray wind farm would be located within the Outcrop Hills and Escarpment (OHE) landscape character type⁸⁴ which, in the Final Report prepared by Benson et al for the Government office for the North East (GO-NE) in July 2003 [**CD 141**], was considered to be more sensitive to wind farm development than the neighbouring Upland Fringe Farming (UFF) character type. However, the later study undertaken by ARUP and completed in 2006 [**CD 104**], was an analysis with a greater level of detail.
- 4.3.2 In summary⁸⁵, those studies⁸⁶, support the choice of the Ray site as follows:
- (i) By the gradual and careful development of the locational guidance that has emerged from the early GIS and landscape work undertaken in preparation of the RRES in 2003, 2005⁸⁷ which showed a ‘W’ symbol in the Knowesgate area and which, with the advantage of later studies

⁸¹ We have already rebuffed any suggestion that the content of that paragraph could possibly be said to be unlawful.

⁸² **CD 130 (ss)** and see also *Humberhead Levels* [**CD 130 (rr)**] and, *Tween Bridge/Keadby* [**CD 130 (rr)**] and *Carsington Pastures* [**CD 130tt**] where Mr Crean QC for the LPA put forward the identical argument to that now advanced for TDC!

⁸³ See the discussion of cases like *Edwards v SOSE* [1994] 1 PLR 62 in **SWFL/0/40**, **WPD 0/20** and **AMEC/0/75**. See also the flat rejection of an apparently identical argument in the *Carsington Pastures* decision/report – **CD 130(tt)**. **TDC 0/28** contains the decision of Sullivan J in the *Bovale* case. There is nothing in that case which contradicts anything set out in the developers’ submissions referred to above or in the wind farm decisions where the point has been argued before (and to absolutely no avail).

⁸⁴ Details of which appear in Appendix 1/6 to Ms Rylott’s proof **AMEC/1/14**

⁸⁵ Provided by Adrian Smith at section 3.4 of his proof – **AMEC/2/1**. See also the analysis of the Planning History [**AMEC/2/3**]

⁸⁶ Listed by Mr Smith in **AMEC/2/1** at para 3.2.3

⁸⁷ See, particularly, RRES March 2005 [**CD 109a**] which, as Mr Smith explained in his rebuttal proof **AMEC/2/6** (at para 1.2), took careful account of all relevant constraints

and considerable analysis, debate and examination, has been carried through to the latest drafts of the RSS;

- (ii) By the ARUP study, both as to scale and location. The effect of that study is usefully summarised by Mr Smith at paragraph 3.4 of **AMEC/2/1**;
- (iii) By Ironside Farrah's independent review of the ARUP study [CD 25] save in respect of the Wanney 4;
- (iv) By the evidence of Rebecca Rylott that, within the Landscape Character Type OHE, there are areas (such as that in which Ray would be built) which are no more and may in fact be less sensitive than areas within UFF⁸⁸.

4.3.3 As acknowledged in paragraph 7.3 of TDC's Development Control Committee Report [CD 20]:

"The landscape zone within which the majority⁸⁹ of the Ray turbines lie is favourable to medium size wind farm development due to its large scale and simple character".

4.3.4 Likewise, policy 42 (now 41) of the draft Regional Spatial Strategy [CD 41] and the examination of and proposed and adopted changes thereto [CD 42-45] all recognised Knowesgate as an area of least constraint for a wind farm of the size and at the location of Ray⁹⁰.

4.3.5 The scale of the development accords with the definition offered in the Secretary of State's Proposed Changes to the RSS in May 2007, (new) paragraph 3.172 of which restated that definition⁹¹ as *"Within RSS, medium-scale development is broadly defined as up to 20-25 turbines"*⁹². It appears also in paragraph 3.192 of the adopted RSS [CD 45].

4.3.6 The development is also firmly within the broad Knowesgate 'W' area long identified in the Development Plan⁹³ material (and the adopted RSS in particular)

⁸⁸ Discussed in greater detail in the section dealing with landscape and visual impact below.

⁸⁹ That is, not including the Wanney 4.

⁹⁰ As Adrian Smith explains at para 3.4.8, 3.4.9 of his proof, the anomaly that was pointed out in the location of the 'W' symbol on the submitted key diagram was addressed and resolved in the Examination in Public and in the Secretary of State's Proposed Changes. He addressed this again in his rebuttal of Mr Sort's evidence [AMEC/2/7] and in oral evidence in answer to Mr Short on January 24th.

⁹¹ Which can be found at para 3.1.2 of the draft RSS [CD 42].

⁹² See Para 2.2 of Mr Smith's rebuttal **AMEC/2/6**: see also Mr Smith's discussion of the issue of scale (rebutting Mr Short's evidence) at para 2.2 of **AMEC/2/7**.

⁹³ We refer to our submissions on Matter (a) where the locational guidance and the emergence of a Regional Spatial Strategy are analysed in more detail.

as a suitable location - or at least one of least constraint – for such development – as summarised by Mr Smith at paragraph 4.4 of his rebuttal of Mr Short’s evidence [AMEC/2/7].

- 4.3.7 As Northumberland County Council’s report on the proposal [CD 26] records, the Ray proposal “*would assist in addressing policy intentions set out in Policy M4 of the Structure Plan*”.

5. Visual Impact – Matter (f)

5.1 The Issue

- 5.1.1 The Secretary of State particularly wishes to be informed about the “*visual impact of the proposed developments, in particular the impact upon the Northumberland National Park and the Northumberland Coastal Area of Outstanding Natural Beauty*”.
- 5.1.2 It goes without saying that *any* development such as Ray will have a significant impact on the local landscape. This is typically and universally acknowledged – for example at paragraph 20 of PPS 22 [CD 74].
- 5.1.3 The real issue is whether the visual impact of the development is so objectionable that it outweighs the benefit in terms of the contribution that the project would make to the target for renewable energy capacity in the region. Here the answer is clear. This is a medium to large-scale landscape of medium sensitivity⁹⁴. Ray would fit comfortably and suitably within it, especially after the deletion of the Wanney 4⁹⁵.
- 5.1.4 In all of this discussion it is important to remember two important considerations. First, the visual impact is, for all practical purposes, reversible at the end of the 20 to 25 year period with which any planning permission would be concerned. Second, though we may assume the visual impact to be adverse, it is not necessarily the case that one should equate visual impact with harm⁹⁶: That is

⁹⁴ As explained, for example, in answers to XX on February 14th. She went on to explain that the OHE landscape type (within which Ray lies) varies considerably in the sensitivity of particular areas within that character type: nor is it a “rare” type of landscape in the area and she commented in answer to Mr Short that it is of “medium” value in terms of landscape quality. Mr Short’s presentation on 30th October in which he characterised the Ray area in its entirety and some of the Green Rigg/Steadings areas included no reference to or discussion of that opinion.

⁹⁵ As Ms Rylott observed in evidence on 14th February, the 16 turbine scheme is “more acceptable” in landscape terms. She went on to explain how the Ray development is appropriate for the scale of the landscape: see also para 2.3.21 et seq of her proof.

⁹⁶ As recognised by Mr Brooks at para 48 of the *Carsington Pastures* report [CD 130 tt]

because the judgment of visual impact is inevitably subjective and opinions differ widely.

5.2 The Landscape and Visible Impact Assessment (LVIA) as part of the EIA

- 5.2.1 The original LVIA for Ray was prepared by Stephenson Halliday, Chartered Landscape Architects and formed part of the Environmental Statement [CD 14-17]. The assessment itself is in Volume 2, Chapter 7, and is supported by figures and visualisations in Volumes 3 and 4 and in Technical Appendix 7A in Volume 5. Further information was provided in November 2006 [CD 18-19] and Cumulative Landscape and Visual Impact Assessment (CLVIA) is provided in Volume 1 supported by the Figures in Volume 2.
- 5.2.2 As that assessment acknowledged, and as is accepted by Rebecca Rylott in her combined proof [AMEC/1/14], the Ray development will undoubtedly have significant landscape effects on part of the Outcrop Hills and Escarpment LCT creating a localised wind farm landscape⁹⁷. Of course, this is entirely normal for a wind farm of this size.
- 5.2.3 There will also be significant indirect effects affecting the views from limited areas (diminishing beyond 4 km⁹⁸) of the Upland Fringe Farming, Rolling Lowland Farmland and Upland River Valley LCTs. But these effects would not be significant in overall terms.
- 5.2.4 The original LVIA also accepted that significant effects would occur on views at up to five settlements and on a limited number of residential properties within the local area and on those using parts of the A68 and A696 as well as minor roads and local footpaths.
- 5.2.5 Ms Rylott's assessment re-examined this and her conclusion⁹⁹ was that the effect on views would be limited and that the views from settlements which would have the main significance would be from the southern edge of Risdale, although the view of the turbines will diminish as one descends the hill.

⁹⁷ As Ms Rylott confirms – paragraph 1.2.4 of her proof. Note that the Tynedale LCA divides up the OHE type into similar categories to those appearing in the ES. Ray is within the Sweethope and Blackdown Area (8d) – para 3.2.31 of the proof.

⁹⁸ Ms Rylott's evidence in chief, February 13th.

⁹⁹ See particularly paras 5.2.5 and 6.8 of her proof which describes that more detailed assessment which she conducted.

- 5.2.6 She explains that there will be no views of real significance which will be affected at Knowesgate: the only areas really affected will be the garage and the public house and even where there are small areas of East and West Woodburn which will be affected, such effects will be limited by screened. Similarly, the vast majority of the Kirwhelpington will be unaffected.
- 5.2.7 Ironside Farrar carried out a review of the LVIA/CLVIA in February 2007 [CD 25] and found that the original analysis was sound.

5.3 Formal Landscape Studies

- 5.3.1 As Ms Rylott records¹⁰⁰ there have been a number of landscape appraisals/analyses that have supported developments in the Knowesgate area in which the Ray development would take place. Those include:
- (i) The Landscape Appraisal for Onshore Wind Development 2003 [CD 141]; and
 - (ii) The North East of England Renewable Energy Strategy (NERRES) 2003-2005 [CD 109]¹⁰¹.
- 5.3.2 A more detailed landscape capacity study, commissioned by the North East Regional Assembly and undertaken by chartered landscape architects – Ove Arup in June 2006 [CD 104]. That study considered different wind farm scenarios and identified as the “most preferred” a Scenario D which contained wind farm development (excluding the Wanney 4) within the Outcrop Hills and Escarpment LCT¹⁰².

5.4 Objections on the basis of visual impact

- 5.4.1 As we made clear in opening and have repeated since, we are not dismissive of the opinions of those who dislike the appearance of turbines and who genuinely believe that their presence would diminish the visual amenity of the area, impact upon its character and diminish the spiritual dimension which for some is so important.

¹⁰⁰ Paragraph 1.2.9 et seq of her proof.

¹⁰¹ Although the Upland Urban Fringe landscape character type was specifically referred to, there are other LCTs within this general area which on closer inspection have a similar or increased landscape capacity for wind farm development - Ms Rylott's proof at para 3.2.10 et seq.

¹⁰² See appendix 1/6 to AMEC/1/14.

- 5.4.2 Those who hold such views do so genuinely, but they speak for themselves and not for society as a whole. As is well known¹⁰³, there are people who like the presence of turbines¹⁰⁴ and there are many who are indifferent. All such attitudes are largely subjective. Nevertheless, everyone must acknowledge that the significant changes which the presence of turbines would bring to the landscape will be temporary – albeit will last 20-25 years – and not permanent. That may seem a long time to an individual but in the context of an energy policy which intended urgently to address the long term wellbeing of the planet, such changes are, frankly, relatively insignificant.
- 5.4.3 Nevertheless, it is important to consider what is said by the statutory consultees and those other objectors who have expressed concern about visual impact.
- 5.4.4 Northumberland County Council did not object in principle but did object to the Wanney 4. TDC¹⁰⁵ was concerned that:
- (i) *“The proposed development by virtue of its scale and location would have a detrimental visual effect upon skylines and important views and would detract from the appearance of the area. As such the development would have a significant adverse effect upon the appearance of the Area of High Landscape Value, contrary to Tynedale District Local Plan Policy NNE 16 and Policy M 4 of the Northumberland County and National Park Joint Structure Plan and Regional Planning Guidance as set out in RPG 1 and the emerging Regional Spatial Strategy for the North East; and*
 - (ii) *The proposed development by virtue of its scale and location would have an adverse impact upon the appearance of the landscape and would be highly visible from places frequented by the general public. The Council does not consider that the adverse visual impact of the scheme would be outweighed by the national, regional or local benefits which would accrue from the development. As such the proposal would be contrary to Policy CS 16 of the Tynedale District Local Plan.”*

¹⁰³ As to which see para 2.3.21 of her proof.

¹⁰⁴ As striking structures in the landscape, illustrated at **AMEC appendix 1/5**.

¹⁰⁵ The terms of Tyndale’s objections on this issue are set out in Ms Rylott’s proof at para 1.2.13: see also **CD 22** – TDC’s Form B submission, Appendix A Reasons for Objection para 2.

5.4.5 However, TDC's objections were contrary to the recommendation of its Planning Officer [Appendix 3 of Philip Lewis' proof **TDC/1/1**] which was to the effect that there should be no objection to the grant of Planning Permission save with regard to the Wanney 4.

5.4.6 Alnwick District Council, with jurisdiction over the 4 northernmost turbines and one borrow pit, made no objection to the proposal.

5.5 **The landscape evidence at the Inquiry.**

5.5.1 It will not be helpful to recite Ms Rylott's written or oral evidence in any great detail. Very shortly, her analysis of LVIA and CLVIA Methodology led her to conclude¹⁰⁶ that the methodology for LVIA and CLVIA in the Environmental Statement and in the Further Information were "appropriate and accord(ed) with the guidance provided by the Landscape Institute's "*Guidelines for Landscape and Visual Impact Assessment*", Second Edition [**CD 140**].

5.5.2 Ms Rylott also relied on various landscape studies namely:

- (i) The GO-NE Landscape Appraisal of Onshore Wind Development July 2003 [**CD 141**];
- (ii) The Development of a Regional GIS for the North East Renewable Energy Strategy 2003 [**AMEC/0/7**];
- (iii) The North East Regional Assembly exercise undertaken by Arup in June 2006 [**CD 104**];
- (iv) A Landscape Assessment of Tynedale District and Northumberland National Park – June 2007 – Appendix 1/6 [**AMEC 1/6**].

5.5.3 As Adrian Smith has also advised, the relevant Local Plan Policies within Tynedale LDFA Adopted Core Strategy [**CD 37**] are Core Strategy Policies EN 1 and EN 2¹⁰⁷. In summary, Ms Rylott's opinion was and is that the Ray proposal had been sensitively developed. Her reservations¹⁰⁸ about the localised area around the Great Wanney Crag at the western end of the Site are now allayed by the deletion of those turbines from the scheme.

¹⁰⁶ At para 2.3 of her proof.

¹⁰⁷ Quoted by Ms Rylott at paragraph 3.2.35 of her proof.

¹⁰⁸ Expressed at paragraph 3.2.36 of her proof.

5.6 Impact on the Northumberland National Park

- 5.6.1 National Parks and AONB's are afforded the highest status of protection with regard to landscape and scenic beauty – see PPS 22 [CD 74].
- 5.6.2 Ms Rylott's opinion¹⁰⁹ is that there would be “*no significant adverse effect on the amenity of residents, or the character and integrity of landscapes including the Northumberland National Park and its “setting”*”. She adds that the concept of settings should not be confused with the creation of a buffer zone around a National Park¹¹⁰.
- 5.6.3 It is important to bear in mind that no part of the proposed Ray wind farm is within the National Park and the nearest turbine would be no closer than 3k at its nearest point (Winter's Gibbet)¹¹¹.
- 5.6.4 The continuing objection of the Northumberland National Park Authority¹¹² does, in effect, seek to promote the concept of a buffer zone for the National Park¹¹³ whilst disguising the issue as one of ‘setting’.
- 5.6.5 We are content that the Inquiry should make its own judgment as to the force of the competing contentions about the impact of the Ray – and/or any one or both of the other two developments – on the National Park. That judgment will be informed by an assessment of the relative qualities of Mr Kirkpatrick and Ms Rylott. It is, of course, perfectly legitimate in closing submissions for NNPA to commend the evidence of its witness in relation to Ray (say) notwithstanding that, during cross examination of behalf of another developer (Green Rigg) Mr Kirkpatrick's evidence was shown to be¹¹⁴ ill-thought out and unimpressive. But it is not a realistic expectation¹¹⁵ that Mr Kirkpatrick's opinion might prevail against the carefully considered, thoroughly researched and entirely balanced and authoritative assessment of Ms Rylott¹¹⁶.

¹⁰⁹ Recorded at paragraph 3.2.37 of her proof.

¹¹⁰ Which would be contrary to guidance in PPS 22 [CD 74] at para 14 - see also paragraph 3.3.2.39 of Ms Rylott's proof.

¹¹¹ It is not a particularly special view or part of the Park – see Ms Rylott's proof at paras 4.6.4-8 – see Viewpoint 6. Other relevant viewpoints are listed/discussed at paras 4.6.6-12

¹¹² See the closing submission [NNPA/O/4].

¹¹³ Contrary to well established principle and practice – see para 14 of PPS 22 [CD 74].

¹¹⁴ To be as generous as one can be.

¹¹⁵ Para 26 of NNPA/O/4: her evidence was apparently “not convincing”!

¹¹⁶ Para 20 of NNPA/O/4 acknowledges that the National Park Authority has not made a formal assessment of and has no formal position as regards the 16 turbine scheme.

5.6.6 Having made that judgment as to the relative merits of the differing professional opinions and considered matters in the round, we submit that any adverse impact on the National Park can either be regarded as insignificant, or alternatively that such impact does not weigh significantly in the balance against the other more powerful considerations in favour of this scheme/these schemes.

5.7 The North Pennines AONB

5.7.1 This is 22 km to the south, on the edge of the study area, and is assessed in pages 7-17 of the ES [CD 15]. The Ray wind farm will have no¹¹⁷ impact of any significance upon it.

5.8 Other designated areas

5.8.1 Although not specifically raised in the letter of 24th May 2007, Ms Rylott has considered the potential impact of the development on other designated areas such as Parks or Gardens of Historic Interest and (perhaps more significantly) on the setting of the Hadrian's Wall World Heritage Site. Her opinion (see paragraph 4.8 of her proof) is that there will be no significant effects as a consequence of the Ray development either from a cumulative or from an individual perspective.

5.8.2 The question of the local landscape designation (AHLV) - the effect upon which was raised in some objections - is no longer a significant consideration given that such a designation has now been replaced by the broader landscape character approach¹¹⁸.

5.9 Design

5.9.1 Any analysis of visual impact should take account of the design of the particular wind farm. In our submission, the design¹¹⁹ is beyond sensible criticism and is appropriate for this particular landscape.

5.10 Visual Impact and Impact on Amenity

5.10.1 Self-evidently, the presence of this – or any – wind farm will diminish the visual amenity of any visitors or residents who dislike the sight of turbines. This we have recognised already and, as we repeat, we respect (but do not share) the opinions of opponents. That is so whether their interest is, for example, in the spiritual

117 This is Ms Rylott's opinion – see para 4.7.

118 See paragraph 4.8 of Ms Rylott's proof.

119 Described in detail in Section 3.3 of Ms Rylott's proof.

dimension of this landscape¹²⁰ and area, in its tranquillity in so far as that derives from a view unaffected by tall, man-made structures or is because of a love of the “Far Horizons”.

5.10.2 Whilst we respect them, these are subjective and essentially personal opinions. If this project is to be justified, it must be on the basis of its contribution to much longer term, wider and more urgent imperatives. Personal objections should be seen as secondary to the wider public interest. Furthermore, it is imperative to bear in mind that all significant impacts of such developments are almost entirely reversible at the end of its planning life.

5.10.3 Having said that, we know the Inquiry will have studied with care the evidence as to what can be or will be seen from the various viewpoints – see the analysis in Ms Rylott’s proof at paragraph 5.1.4 et seq¹²¹ and her discussion of the ZTVs [AMEC/1/11] at paragraph 5.1.3.

5.10.4 Ms Rylott has also considered impacts on individual properties and settlements¹²², on road transport routes¹²³, footpaths and bridleways and, more generally, on those who may live or walk in the area¹²⁴.

5.11 Cumulative Considerations

5.11.1 Ms Rylott’s compendious proof [AMEC/1/14] incorporates her detailed consideration of the cumulative impact if more than one of these developments were to be built and addresses the visual consequences of the various permutations that might arise.

5.11.2 Again, we doubt that repetition of what she has written will illuminate the issues to a very great extent. Hence we adopt her summary.

5.11.3 Ms Rylott observes¹²⁵ that Ray and Green Rigg:

¹²⁰ The characteristics of which Ms Rylott discusses at paras 4.4.10-11 of her proof.

¹²¹ Her Viewpoint analysis is at **AMEC/1/4**. She explained more about the selection and description of the viewpoints in XX on February 15th.

¹²² Para 5.2 et seq.

¹²³ Although it is not easy to see how a notional reduction in the transient pleasure of the motorist driving his (more or less) polluting vehicle along something like the A1 could weigh very heavily in the planning balance: but see para 5.3 et seq.

¹²⁴ Discussed at para 5.4 of her proof. It is important to remember that there is no compelling evidence that tourists are in fact deterred by the presence of turbines although the anxiety that that might happen is not irrational. Happily, however, it is contradicted – or at least is not borne out – by experience. See also para 1.5.6 of **AMEC/1/16** and **AMEC/1/8**. Wind farms can be a positive benefit as a visitor attraction and experience is that they are quickly accepted by the communities after construction. See also Biggar Economics’ 2006 Survey [CD 257] which constitutes a recent assessment of the issue .

¹²⁵ Paras 7.6.1-2 of her proof.

“fit reasonably well together, and display a reasonable consistency of image and rationale, with both developments located within the ‘hills’ or higher ground and the same landscape character type. This combination is further improved by the adoption of the Ray 16 option, which arguably has the least effects on views from The Great Wanney Crag and the other assessment viewpoints when compared to the other developments”.

5.11.4 In our submission, she is clearly correct in that opinion and also correct to add (most importantly) that the various combinations would not significantly affect views from or the enjoyment of the Northumberland National Park, Historic Parks and Gardens or the North Pennines AONB. But, obviously, we recognise that there will be cumulative impacts on the more immediate area around Knowesgate, the edge of Kirkwhelpington, part of the A 696, A 68, the Reiver’s Way and St Oswald’s Way.

5.12 **Conflicting Evidence**

5.12.1 It may be unnecessary to argue about the respective qualities of the landscape witnesses. Should it matter, we have not the least hesitation in commending Ms Rylott’s evidence as thorough, professional, balanced and authoritative. Should there be any material conflict between her opinion and that of any other landscape witness, hers should prevail.

5.12.2 Particularly, it should be noted that there is a large measure of agreement between her evidence and that of Mr White (for Northumberland CC). We also observe that Mr Wimble (for TDC) offered his criticisms of Ms Rylott’s thoroughly explained¹²⁶ and entirely straightforward methodology without actually offering an alternative methodology of his own¹²⁷. And Mr Kirkpatrick’s long-winded and almost entirely irrelevant contribution can safely be disregarded completely for reasons explained by Ms Rylott in section 1.4 of **AMEC/1/16**.

¹²⁶

See **AMEC/1/9**.

¹²⁷

And answered in her rebuttal statement – see para 1.3.5 et seq of **AMEC 1/16**.

6. Aviation Generally - Matter (g)

6.1 The approach to be taken: an overview

- 6.1.1 The importance of addressing the potential impacts of any of these developments upon civil and military aviation interests is self evident and well recognised - see paragraph 25 of PPS 22 [CD 74] and paragraph 1.7 of the Companion Guide [CD 75]
- 6.1.2 Our starting point for our submissions in relation to all aviation issues is that APIL has fully and responsibly engaged in detailed and careful consultation of all those parties with an interest in aviation matters from the very outset. Indeed, we confidently assert that APIL's engagement in that process has been a textbook illustration of good practice¹²⁸ in accordance with the Interim Guidelines [CD 291¹²⁹].
- 6.1.3 The Inquiry will be well aware that this Applicant's approach to – and the whole thrust of its evidence on - the aviation issue has been (at least as regards NERL and NIAL) to recognise that the presence of the Ray turbines would probably have some significant operational impact upon the interests of those bodies at least to the extent as to justify (or require) technical mitigation. Hence the essence of our case – at least as regards NERL's and NIAL's opposition to its application - has been to concentrate on mitigation.
- 6.1.4 In a nutshell, we can identify with clarity particular technical solutions to which there is no real scientific, economic, environmental or other technical or practical obstacle. Taking those technical solutions alone or in combination, one can say on a sound evidential basis that there is a sufficient degree of confidence and support within the industry and the scientific community that that there is a *reasonable prospect* that they will succeed.
- 6.1.5 The Inspector's report should therefore include a finding that it is likely that a satisfactory solution in terms of mitigation will be found within the lifetime of the consent given for the Ray project. Hence our submission is that the objections of NERL and NIAL can and should be dealt with by suspensive conditions. Further, we submit that it is neither necessary nor useful for the Inspector to have to

¹²⁸ Perhaps a little grudgingly, Mr Chafer (in X by WN on 19th June) said that he "didn't disagree with" that proposition. For the details of that lengthy consultation process (as regards the MOD), see **AMEC/8/2a**).

¹²⁹ Particularly, see paras 3.1.4 and 5.1.

resolve complex and detailed points of disagreement as to the *extent* of the technical and operational impacts.

- 6.1.6 Although it is, of course, elementary that conditions must not be so vague and uncertain as to be incapable of being met or enforced. However, that requirement constitutes no objection to the principle or terms of conditions such as those proposed which create flexibility in the face of developing science. There is a carefully constructed control mechanism provided for within the terms of the condition. That is very different from the kind of condition sometimes regarded as objectionable on the grounds of uncertainty as is apparent from the Secretary of State's decisions on the other wind farm/aviation cases included in the core documents [**CD 130**¹³⁰].
- 6.1.7 In the end, it may be that exactly the same approach can be taken to the objection of the Ministry of Defence (MOD). That is, we acknowledge, the way in which a similar issue was dealt with in the terms of the consent given for the Middlemoor wind farm in which the schedule of conditions provided that no development should take place without the approval of the Secretary of State¹³¹.
- 6.1.8 With regard to the MOD's objection, it is important to recognise at the outset that if there were any serious prospect that all or any of these developments would or might well have a serious impact on the operational efficiency and the value of the training provide at Spadeadam, then that would be a matter of grave and genuine concern. But even then that concern could and should be allayed by the imposition of a condition leaving the final determination of that issue to the Minister who would, in due course, have to be satisfied that a condition was met before any project could be built.
- 6.1.9 However, the manner in which the MOD's objection has emerged in the present case and the way in which it has been developed during the course of the Inquiry, together with the almost complete lack of any evidential support produced by the MOD as to whether there would *actually* be any operational or technical impact of any significance on anything that takes place at RAF Spadeadam, means that the

¹³⁰ Examples of which would be the conditions at *Tween Bridge/Keadby* [**CD 130 (rr)**] as regards civil aviation interests and at *Middlemoor* [**CD 130 (ss)**] as regards MOD.

¹³¹ **CD 130(ss)**, Annex A – Schedule of conditions.

Inquiry should scrutinise the objections with more than usual care and a healthy degree of scepticism.

- 6.1.10 The MOD case, in summary, must be that the admitted impact of the turbines on the ATC and threat radars is likely to have real significance for the operations at Spadeadam in general, and on pilot training in particular.
- 6.1.11 It is frankly remarkable that the proposition that such an impact would have any real significance for such operations is entirely unsupported by any evidence rather than by little more than bald and unsubstantiated assertion. There has, for example, been not a single technical and operational analysis showing how many flights into or out of Spadeadam might be affected and how, if at all, the quality of that training would be in the least diminished.
- 6.1.12 Significantly, the MOD's closing submission asserts as a fact that which it has entirely failed to establish. We quote the MOD'S introduction, at paragraph 5: *"Each such adverse effect will impair the efficacy, variety and realism of the training currently provided by Spadeadam. And each such adverse effect will limit the efficacy, variety and realism of the training that might be sought to be provided by Spadeadam"*. It adds an invitation (at paragraph 8) to *"record and acknowledge that any resultant loss... will be irreplaceable."*
- 6.1.13 In fact, the MOD has adduced no evidence whatsoever as to any adverse consequences for Spadeadam. As did the QinetiQ material, it has rightly identified the potential for a *theoretical* "radar effect" (see paragraph 20 of the MOD's closing submission) on its ATC and/or threat systems. But it has certainly not identified any *real* "adverse operational effects" on the military training operations that will or may realistically be expected to arise in *practice*. So it is not a case of the developers needing to satisfy the Inquiry that their interests "overwhelm" those of the developers. The MOD – the only body that would be in a position to do so – has failed to identify a potential impact of any real importance should such developments proceed.
- 6.1.14 Accordingly, we submit that the objections(s) of the MOD can be rejected. We expand on that submission later in this submission.
- 6.1.15 We shall deal with the sanction of awarding costs against the MOD in a separate written submission but the unreasonable conduct upon which that submission will

be founded is also examined below for reasons we have already explained in Section 1 above.

6.2 The structure of this submission

6.2.1 In this submission, we shall:

- (i) consider whether, as a matter of law, technical mitigation must have a reasonable prospect of being achieved within the lifetime of the consent to the project;
- (ii) address the question of what condition or conditions might most appropriately incorporate the provision for such mitigation;
- (iii) address the technical mitigation that APIL proposes in respect of the interests of NERL and NIAL;
- (iv) do likewise in relation to the interests of the MOD.

6.3 Is there a “reasonable prospects” test?

6.3.1 The central question for the Inspector’s report and ultimately for the relevant Secretary of State is whether or not the condition/s offered can and should be imposed on the Section 36 Consent. We have already addressed this issue in summary in our submission **AMEC/0/75**.

6.3.2 As a matter of law, we submit that the legal position as regards the imposition of *Grampian* conditions is clear. Put very shortly, it is clear law following *British Railways Board v Secretary of State for the Environment and Others*¹³² that there is *no* requirement to show that such a condition must have a reasonable prospect of being discharged within the lifetime of the consent. Similarly, the well known case of *Merritt v Secretary of State for the Environment*¹³³ is to the same effect.

6.3.3 It would be an improper fetter of the Inspector’s discretion to reject in principle the imposition of a *Grampian* condition upon the basis that – as a matter of law - the Inspector’s discretion must be exercised in accordance with the mandatory terms of the policy of the Secretary of State as set out in paragraph 40 of the Annex to Circular 11/95 [CD 96]. As the Deputy High Court Judge found in *Merritt*, the mandatory form of that policy was unwarranted. It follows that even a modified

¹³² Judgment 28th October 1993: full transcript of House of Lords’ decision available on Lawtel.

¹³³ Decision of Robin Purchas QC in the QBD Crown Office List on 5th August 1999 - again unreported but available on Lawtel.

form of such policy constitutes no law other than one amongst a number of other material considerations.

6.3.4 But, as we shall see, this may be a debate of academic interest only (having no practical importance) since it is perfectly clear on the evidence that there is at the very least a reasonable prospect that one or more of the various forms of mitigation will succeed to the point that the condition proposed can be discharged within the lifetime of the consent.

6.4 **Form or terms of any condition**

6.4.1 Whilst we yield to no-one in our admiration for the diligence and close attention which the Inspector has paid to the detailed and at times complex and highly technical evidence in relation to aviation issues, it is, as we have already observed, probably impossible and certainly unnecessary to reach any conclusion other than that technical mitigation is properly a matter for conditions and that the Secretaries of State will be better placed when the time comes to decide both as to the appropriateness and terms of any suspensive condition that ought to be attached to any consent and, at a later stage, if and when any condition might be regarded as satisfied.

6.4.2 We offer the additional comment that a process such as this planning inquiry is some way from being a very satisfactory forum for the detailed technical analysis of such issues. That alone is a good reason for not being specific as to the terms of any particular form of mitigation as it may currently be envisaged – a point we made earlier when dealing with the argument that a condition must not be too vague or uncertain if it is to be valid.

6.4.3 Partly that is because of the nature of the inquiry process. Perhaps more significantly, it is because the scientific areas with which the evidential analysis was concerned are ones that are developing fast.

6.4.4 For example, put at its highest, we take it that no-one will contend that the Inspector need say any more than that he thinks that there are “reasonable prospects” that, say, the Raytheon solution may be workable within something like a five to seven year timescale. And that he can and should say because the evidence in support of that approach is overwhelming.

- 6.4.5 However, even if (contrary to that position) one could or did not reach such a conclusion at the end of 2008 or the beginning of 2009, there is every reason to expect that a clearer answer could be given when the Secretary of State reaches a final decision in due course.
- 6.4.6 Moreover, the information available to the Secretary of State at that time, and/or available to those legitimately interested at a later stage in deciding whether the condition could or could not be discharged is likely to be very different from what is available now. It would, we submit, be perverse to refuse consent now without any high degree of confidence as to what the future might hold. And, in the end, no single witness has said in his or her oral evidence that any of these solutions has *no* chance of being successful within the lifetimes of any consent given for these projects.
- 6.4.7 Not only does that fortify our submission about the legitimacy of imposing a condition or conditions, it also illuminates the point we make about the *terms* of any such condition. It would, we submit, be a grave error to seek to impose a condition which was too specific and/or tied to a particular form of technical mitigation and which constrained the flexibility which is absolutely essential to having a condition that works.
- 6.4.8 It will be recalled that during the course of the aviation evidence, Mr Strachan¹³⁴ asked a number of questions about the attitude of the Scottish Government to the conditions to be imposed on the consent sought for Clyde Wind Farm. The point that was apparently being made was that Scottish Ministers might not be prepared to uphold the rather general or broad terms of the condition as agreed by NERL at the Public Inquiry and as endorsed in Mr Gordon's Report.
- 6.4.9 We raised no objection to those questions at the time, partly because we generally prefer not to interrupt unless we find we have no alternative and partly because, having acted for the applicants on the Clyde project, we had a rather greater insight than is normally the case when such an issue arises and had no wish to be giving evidence ourselves. In any case, we thought it better to wait to see if we were able to provide the Inquiry directly with the actual terms of any such condition in the event that Scottish Ministers did indeed give consent.

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Counsel for NATS En –Route Limited – hereafter NERL. See also para 194 of NERL's closing submissions.

- 6.4.10 That has now happened and we have provided this Inquiry with the relevant letter of consent, the terms of that consent and Mr Gordon’s Report [**CD 130 (uu)**].
- 6.4.11 We particularly draw the Inquiry’s attention to the conditions imposed as regards aviation and communication with regard to primary and secondary radar (see paragraphs 6.60-6.61 of the terms endorsed by Mr Imrie)¹³⁵.
- 6.4.12 Of course, that does not mean that we would endorse the imposition of such a generalised condition without a sound background in evidence explaining how such a condition is meaningful or purposeful: in that context, it is useful to consider the “Clarification” [**CD 328**] issued by the Scottish Government on 4th August 2008.
- 6.4.13 Whilst it would be wrong to say – as a matter of law – that there needs to be actual “agreement” between the developer and the operator as regards the prospects of the particular mitigation measures before such a condition can be imposed, we accept (at least for the purposes of the present case) that it is reasonable that there should be some clarity of evidence to support a judgment that “*such a solution can be delivered within a reasonable timeframe*”¹³⁶, whether that judgement consists of a determination by the Inspector in the present process or by the relevant Minister as to the scientific and technical realities of and prospects for any proposed solution.
- 6.4.14 We also submitted and have referred to¹³⁷ a number of other conditions that have been proposed or accepted for other developments. These are applicable both to the interests of NERL and NIAL because the same principles must apply to each. The *London Array* case [**AMEC/8/2/G**], for example, dealt¹³⁸ with a possible air traffic control impact on Kent International Airport and and, *Tween Bridge* and *Keadby*¹³⁹. The Inquiry also has copies of the conditions imposed in respect of *Little Cheyne Court* and *Knabs Ridge* developments¹⁴⁰ and *Middlemoor*¹⁴¹. The

135 Head of Energy Consents Unit.

136 The language of the Note of clarification

137 See AMEC 8/2/G. and the oral evidence of Mr Ormston on 12th March (am).

138 See Condition 3(d).

139 Also added as Inquiry documents – **CD 130 (qq)**, **(rr)** respectively. In each case the concern was an adverse impact on Doncaster/Sheffield Airport: see condition 3 .5.

140 Again, see [**CD 130(b)**].

141 **CD 130 (ss)**.

Clyde consent includes a condition applicable to the interests of NERL [CD 130(uu)].

6.4.15 We do not intend to rehearse the discussions between the parties at the conditions session. The Inquiry may consider that the parties are not very far apart.

6.4.16 The Kyle decision [CD 130 (vv)] was – obviously – a disappointment to Vattenfall but the circumstances of the present application and the quality and extent of the evidence presented at this Inquiry are very different both in relation to the degree of impact on the interests of NERL and upon NIAL and as to the potential solutions by way of mitigation. Hence, by way of substantiating that distinction, one can say with confidence in the present case that:

- (i) The degree of impact of Ray on the interests of NERL and/or NIAL would be substantially less than that of Kyle on Prestwick;
- (ii) The mitigation proposals are clearly and thoroughly described in and supported by the evidence which this Inquiry has heard¹⁴² - they are not too vague;
- (iii) There can be no question here that consenting Ray would “throw a shadow”¹⁴³ over this area: either this project and/or the other projects can be consented in the Knowesgate area notwithstanding the aviation issue or they cannot: it is not the case that one can realistically say here that to consent these projects (subject to conditions) would obstruct the progress of other smaller projects or that other regeneration initiatives would be “blighted”. That would be entirely speculative and wholly speculative were it to be advanced as an argument;
- (iv) We recognise that there would remain an element of uncertainty in the area, no doubt of concern to those who have always opposed the project. But those objectors can hardly be unhappier with a situation in which the objectionable developments might not happen that they disliked than they would be if they knew there was no doubt about it;

¹⁴² Compare Kyle: at para 11.12 of the Report it was noted that the “*mitigation proposals were presented very late in the inquiry*”: even so (para 11.13) the Reporter would have regarded it as “*competent to impose negative conditions*”.

¹⁴³ Para 11.14 of the Kyle report.

- (v) The Kyle report was written in November 2007. Since then, there is clear evidence that significant progress has been made on the part of all sides to the debate in addressing the conflict between aviation and wind farm interests. The record of such progress is to be found in the oral evidence led on behalf of APIL and canvassed in cross-examination and in the Memorandum of Understanding and the Aviation Plan [see **MOD/0/22** and **MOD/0/22A**].

6.4.17 It is also wrong (or at least terribly naïve) to submit, as NERL do in closing (see paragraph 9 of their submissions) that it would cause no prejudice to these developers were their applications to be refused as – effectively – premature, leaving them to re-apply in the future. The prejudice resulting from delay would include:

- (i) The wasted costs of this Inquiry;
- (ii) The loss (for some years) of even a conditional consent which has an obvious commercial value;
- (iii) Disappointment, frustration and disincentives for commercial investors;
- (iv) Postponement of the time when the project will produce renewable energy;
- (v) Difficulties in obtaining a grid connection as the development will, effectively, lose its place in the grid queue; and
- (vi) Practical difficulties as regards placing an order for components where it is known that demand exceeds supply at the moment. The longer the delay, the more uncertain or remote the eventual outcome, the further back the developer will fall in the order queue.

6.4.18 We also submit that paragraph 186 of NERL's closing submissions misrepresent the effect of the EIA Regulations in this context. We take it that there is no point made against the Raytheon proposal. But nor is there any objection under the EIA Regulations to the Third Radar option. As we submitted before in **AMEC/0/56**, there can be no EIA objection simply because different parts of one project may have different consenting regimes. In general, we submit that the indirect and direct effects of a section 36 consent/deemed planning permission are sufficiently described in the material before the Inquiry. However, a small site, well removed

in terms of geography, from the development itself at which, in due course, it might be necessary to build a third radar station cannot be regarded as integral part of the project for which consent is sought in the same way as an overhead line providing a grid connection. Even if it is, the information is sufficient to meet the obligation imposed by the EIA Regs, particularly when one bears in mind that an application for planning permission for such a site would have to be made in due course.

6.4.19 Generally, we commend to this Inquiry the constructive and positive approach of Dr Novitsky at the *Middlemoor* Inquiry with regard to the use of suspensive conditions¹⁴⁴. The submissions of both NERL and NIAL as regards what level of scientific certainty and information is needed before a suspensive condition is imposed sets the bar far too high. What is needed – at its highest – is no more and no less than that there should be a reasonable prospect that that the technical and operational objections of NERL/NIAL/MOD will be resolved in the not too distant future.

6.5 THE INTERESTS OF NERL - How to address any impact

6.5.1 The starting point for considering the nature and extent of the impact on the interests of NERL is to recognise that we are concerned not with a safety issue but with an impact on operational capacity. As (for example) Mr Strong made entirely clear in cross-examination¹⁴⁵, NERL will always manage its operations so as to “ensure that safety is not compromised”: a very good example of that will be when the Great Dun Fell radar is withdrawn from service.

6.5.2 That there is no question that a safety issue will arise is also apparent in the *Knabs Ridge* decision at paragraph 31 [**CD 130/B**].

6.5.3 That is confirmed by NERL’ own Statement of Case [**SOC/11(NERL)**] which reminded us (at paragraph 11) that safety is its “overriding priority”. It has to balance that priority with its “key role”¹⁴⁶ which is to “maximise the capacity of the airspace”. Of course, any proposal for mitigation would have to be subjected to a safety case¹⁴⁷ analysis signed off by the CAA.

¹⁴⁴ Which NERL’s closing submissions at paras 200-202 tend to damn with faint praise.

¹⁴⁵ Including cross-examination by WN on the afternoon of 3rd June 2008.

¹⁴⁶ Per paragraph 14 of that Statement of Case.

¹⁴⁷ Explained by Mr Ormston on 12th March – in chief.

- 6.5.4 Given that this Applicant accepts that its project will have some effect on aviation interests, the emphasis of this developer has been to concentrate on mitigation. Having said that, however, it remains the case that the less the impact in practice or the more it could be managed operationally by NERL, the easier it is to accept how it may be mitigated and/or the less mitigation may be needed.
- 6.5.5 It is recognised that the focus of the positive case by both Banks and to a lesser extent Wind Prospect has been a submission which can be summarised shortly: technical mitigation is not required if NERL can manage operationally by careful management of air traffic controllers¹⁴⁸ whether with or without the additional benefits with the increased use of Secondary Surveillance Radar (SSR), schemes such as the introduction of a Transponder Mandatory Zone (TMZ) and/or Multi-Radar Tracking (MRT)¹⁴⁹.
- 6.5.6 We will allow other parties, (presumably, Banks in particular) to develop their submissions about how far, if at all, NERL (or indeed NIAL) could vector around the radar returns which will immediately show on their screens from the Ray turbines and others. We know very well that air traffic controllers are not *mandated* to do so because MATS Part 1 [CD 295]¹⁵⁰ gives the controller more flexibility than existed in the previous edition of those instructions. An air traffic controller must now take action only if he considers the object to be in “unsafe proximity” and in the circumstances identified in para 15.2 of Section 1, Chapter 5. It may be though that this is consistent with the video display that was analysed in the evidence of Mr Maclean¹⁵¹.
- 6.5.7 With NERL, as with the other bodies interested in the aviation issue, there may be a temptation to take on trust their evidence that simply because they say there is an impact which is operationally unacceptable, then they must be right about that.

¹⁴⁸ Details of which were canvassed, for example, by Mr Taylor in his proof and in chief and addressed in XX by JS during the morning of 3rd June and by VF in his XX of Mr Strong on the morning of 4th June. That a pragmatic approach can and is taken in practice is demonstrated by the fact that NERL acknowledges that it will be able to manage whilst Great Dun Fell is out of action for at least 12 months – see XX by WN of Mr Strong during the late morning of 3rd June. Otherwise, we refer to Mr Warren-King’s written evidence [AMEC/9/4] and to the answers he gave in XX by JS on 19th March (pm) and in ReX on 20th March (am). But we make no more detailed submissions in light of the fact that (a) we know that other developers will and (b) the Applicant recognises – as it has always recognised – that there will be an impact on NERL’s interests if Ray is built which reasonably requires technical mitigation.

¹⁴⁹ See VF’s XX of Mr Strong on the morning of 4th June.

¹⁵⁰ As confirmed in cross-examination by WN of Mr Maclean on 6th June 2008.

¹⁵¹ Cross-examination by AN on the morning of 6th June 2008.

6.5.8 The difficulty with that seductively simple approach is that NERL's approach, like that of the MOD and of NIAL, has not maintained a consistent line that "all adverse impacts are objectionable".

6.5.9 Instead, NERL, like NIAL and the MOD, had previously been prepared to be rather more pragmatic - at least until it faced three projects within more or less the same area.

6.5.10 In reality, the essence of NERL's approach can really be described as being along the lines that "some impacts are operationally acceptable but too many mean we shall have to object to the lot".

6.5.11 That latter interpretation is borne out by the consultation history.

6.6 **NERL and the consultation history: what conclusions should be drawn?**

6.6.1 We remind the Inquiry of our cross-examination of Mr Strong and Mr Asquith in particular in which we looked at the consultation history in some detail.

6.6.2 The starting point must be to assume that NERL gave careful consideration to everything that it wrote in the letter of 23rd November 2006¹⁵². The only way in which that letter can sensibly be interpreted, as Mr Strong conceded¹⁵³ was that as at the date of that letter NERL' position was that:

- (i) it was happy with any 18 turbines in the area;
- (ii) NERL did not discriminate between any of the three projects save that it then expressed a preference for turbines "within an area 3nm either side of a straight line" running down the centre of lower airway 602; and
- (iii) NERL' real concern was with the proliferation of wind farms in the area.

6.6.3 One should also assume that NERL contributed sensibly and responsibly to the regional planning process in the course of which one of the key factors relevant to the creation of strategic guidelines for wind farm development for the region was the potential impact of such developments on aviation interests.

¹⁵² See the Annexes to Mr Ormston's proof, **AMEC/8/2, Item 7**. A fuller set of the relevant correspondence is at **WPD/0/15**.

¹⁵³ In cross-examination by WN on 3rd June 2008.

- 6.6.4 In that context, it is important to concentrate particularly on the GONE study in 2005 [CD 306]¹⁵⁴. The constraints map in the GONE study recognised the white area as being of “less operational significance” compared with other areas. It is all very well to produce an e-mail [NIAL/16]¹⁵⁵ suggesting that this map may now be out of date. However, it is important to bear in mind that the GONE report [CD 306] was being sent out to interested parties in or after March 2006¹⁵⁶.
- 6.6.5 Note also that NERL was equally entitled to have registered any objection it had to the later development of the Regional Spatial Strategy – particularly to Policy 42 (now 41) which underwent an Examination in Public in early 2006 [SWFL/0/7].
- 6.6.6 As Mr Asquith acknowledged¹⁵⁷, NERL apparently made no representations to the effect that the Constraints map and Policy 42 (now 41) should not have been developed as they were.
- 6.6.7 It follows that NERL must be taken to have set out a clearly considered position in that letter of 23rd November 2006¹⁵⁸.
- 6.6.8 At that stage, as Mr Strong recognised, Ray would seem to have been the more favoured of the developments being the most central of those beneath Airway L602. Nowhere - at that stage at least - was it being suggested that NERL preferred a more concentrated group in some other part of the airway or indeed that its preference was for 18 turbines spread out over a wide area within that airway¹⁵⁹ or that it was unable to tolerate *any* development of such a size in the Knowesgate area.
- 6.6.9 In cross-examination¹⁶⁰ Mr Asquith accepted that before NERL objected to a project there would necessarily have been a technical *and* operational assessment.
- 6.6.10 It was, of course, Mr Strong who was responsible for the technical input and it was Mr Maclean who was concerned with the operational assessment. Mr Maclean

154 There had, of course, been the earlier report in 2003 [CD 108, 109 and 142].
155 28th January 2008.

156 The release date of CD 306 is shown as 20th March 2006.

157 In XX by AN during the mid-afternoon of 4th June.

158 AMEC/8/2, Item 7.

159 Mr Maclean's preference as set out in paragraph 4.2.9 of his proof of evidence.

160 By WN on the afternoon of 4th June 2008.

accepted¹⁶¹ that his own operational assessment must have taken between April and November 2006.

- 6.6.11 In a nutshell, in the absence of any good technical or operational reason that might have emerged between November 2006 and the present time for objecting to any developments in this area, it is only fair to conclude that NERL has simply decided that it is easier to object to all than to discriminate in favour of any development.
- 6.6.12 In saying that, we recognise that Mr Maclean explained that whereas originally (paragraph 4.2.9 of his proof of evidence) NERL had favoured an arrangement that had 18 turbines were spread across all three developments, his position changed¹⁶² on the basis that a compact group of turbines might be preferable because it would be capable of being blanked.
- 6.6.13 The difficulty with the blanking solution, however¹⁶³, is that there is little or no evidence as to the extent to which other developments including Ray, or parts thereof, might be equally suitable for blanking¹⁶⁴.
- 6.6.14 Whatever blanking possibilities or opportunities there may be or have been, the fact remains that until December 2006, NERL's position was that any one of these three developments would have been technically and operationally acceptable even without blanking.
- 6.6.15 In that case, it is relevant to ask what has changed in terms of increased scientific knowledge or operational or technical understanding. The answer to that, quite simply, is nothing.
- 6.6.16 The suggestion by Mr Maclean in his proof of evidence¹⁶⁵ that NERL's change of position can be explained by an increase in practical experience gained between April 2006 and August 2006 is entirely unconvincing. In truth, nothing new was learned or understood during that period and, in any case, the letter of 23rd

161 In cross-examination by WN on 6th June 2008.

162 See paragraph **4.2.10** of that proof.

163 As to which see **NERL/0/16**.

164 Although we do not challenge NERL position as expressed in **NERL/0/20** submitted after the end of the oral evidence on the issue, we note paras 163 and 164 of NERL closing submissions. We differ somewhat on the interpretation of Mr McLean's evidence. Our note is that Mr McLean did not give evidence about any actual blanking assessment of the Ray 16 or other variations upon the scheme.

165 See paragraph **4.2.8**.

November 2006 setting out NERL's considered position after technical and operational input came later than the period referred to.

6.7 Mitigation acknowledged to be needed for NERL

- 6.7.1 But where does this analysis - or the technical and operational analysis conducted by either of the other developers - leave us? The answer to that question is that, from APIL's point of view, we return to where we began which is to accept that the presence of its turbines would be such as to require – or, at least, benefit from - technical mitigation. And so it is upon technical mitigation that we concentrate.
- 6.7.2 The solution particularly commended by APIL with regard to the protection of NERL's interests is the Raytheon upgrade at Great Dun Fell. On any view, it is this form of mitigation that even NERL recognises offers the best prospects of success¹⁶⁶.
- 6.7.3 Mr Ormston makes this clear in the note at **AMEC/8/2/D**. It was confirmed by Mr Ormston in chief¹⁶⁷, by Mr Warren-King (in cross-examination by Mr Strachan)¹⁶⁸ and by Mr Turner, similarly, in paragraphs 30 and 35 his proof of evidence [**AMEC/10/1**] and in paragraph 31 of his rebuttal [**AMEC/10/3**] and in evidence chief¹⁶⁹.
- 6.7.4 The second possibility that we commend as also having a reasonable prospect of success – albeit it is at a very early stage in terms of detailed technical analysis - is what we have referred to as the “third radar” but is probably better referred to as the “new radar” solution¹⁷⁰. It is clear that NERL has nothing in the way of technical or operational objection to that possibility¹⁷¹,
- 6.7.5 Both Mr Turner and Mr Warren-King in cross-examination by Mr Strachan¹⁷² confirmed that this new radar was their second preference as regards the interests of NERL. Mr Turner also confirmed that he was not advocating taking a feed from Lowther Hill as constituting a sufficient technical solution.

¹⁶⁶ Even in his own evidence in Re X, Mr Strong described it as having the “greater opportunity of success”.

¹⁶⁷ On March 12th 2008.

¹⁶⁸ On 19th March

¹⁶⁹ 12th March (pm)

¹⁷⁰ It was called third radar because it would be if it were an additional radar to be built within the Spadeadam site: but it need not be built within that site and can be created anywhere within the area indicated in the QinetiQ report [**AMEC 0/61 at 7-13 p 44**]

¹⁷¹ See XX by WN on the morning of 3rd June. In Re X just before lunch that day the only obstacle to which Mr Strong drew attention was a supposed difficulty getting planning permission. But as we know, the available area is a large one.

¹⁷² On 18th March

6.7.6 It may be convenient to restate what we have already said as to APIL's position in relation to Lowther Hill: if other developers satisfy the Inquiry that taking a feed from Lowther Hill would constitute a satisfactory solution either alone or in conjunction with other solutions proposed, then that solution would apply to the Ray development just as it would to any other development.

6.7.7 For the purposes of our positive case, we concentrate on what evaluation there can be made at the *present* time¹⁷³ and the two forms of technical mitigation that are positively commended to the Inquiry by our witnesses, namely, Raytheon¹⁷⁴ and the new radar.

6.8 Raytheon – NERL and generally

6.8.1 The evidence in relation to Raytheon is, quite frankly, all one way.

6.8.2 The starting point for this analysis is the positive and optimistic support within the aviation community that Mr Ormston¹⁷⁵ and Mr Turner¹⁷⁶ have explained. At the very least, that gives one a good degree of confidence (or satisfies the legal mind that there is a reasonable prospect) that Raytheon will provide a satisfactory solution to all technical problems within the lifetime of these consents.

6.8.3 The Inquiry heard and read evidence about the time scales set out in **CD 316**. We draw attention to NERL's own report referring to this very project, of which Mr Strong was the co-author (annexed to Mr Ormston's witness statement **AMEC/8/2** as Item 8¹⁷⁷).

6.8.4 In his evidence¹⁷⁸ Mr Strong, whilst observing that this was still "a work in progress" confirmed (as Mr Ormston had already said) that funding was now agreed for Phase 2 and that the Raytheon solution was the most "positive solution proposed". His only reservations were about funding but he confirmed that the NERL' "options" document¹⁷⁹ was an "enthusiastic expression of confidence about

¹⁷³ By which we mean, subject to the qualifications as to the nature and timing of the present process to which we adverted earlier.

¹⁷⁴ Commended as a "preferred solution" by Mr Ormston on 12th March

¹⁷⁵ Mr Ormston said directly on 12th March that it has "reasonable prospects". His view should carry very considerable weight, given that he personally attends meetings of the Aviation Steering Group. See also **AMEC/8/2D** which Mr Ormston "pulled together" in December 2007 (his words in chief) to "explain to NIAL where we were". Obviously, things have moved on since then – see **MOD/0/22**, and **22A**

¹⁷⁶ In chief on 12th March (am) he said in terms that he "believed this (Raytheon) has a reasonable prospect of success".

¹⁷⁷ The 11 page technical report on "options for mitigating the impact of wind turbines on NERL's primary radar infrastructure.

¹⁷⁸ Cross -examination by WN on 3rd June 2008.

¹⁷⁹ And particularly paragraph 60.

the prospects of success” and that NERL was “enthusiastic about Raytheon” and, particularly, that the time scales set out in the Raytheon document [CD 316] were realistic.

- 6.8.5 Further, he confirmed that there had been a (then) recent meeting¹⁸⁰ between the British Wind Energy Association (BWEA), Raytheon and BERR as to the possibility of accelerating the project to reduce the time scale, assuming the right amount of money could be found. And of course, money can always be found should it be necessary, whether it comes from the Government¹⁸¹, from developers, from NATO or from the United States or elsewhere¹⁸².
- 6.8.6 If confirmation for that self-evident truth were needed, reference need only be made to page 10 of the Prime Minister’s speech now included in the documentation for the Inquiry as **AMEC/8/2/F**.
- 6.8.7 Mr Asquith’s evidence¹⁸³ was to much the same effect. He too was “enthusiastic” about the project and regarded it as having “the most likely prospect of success” and as being “cost effective although the timescales are difficult”. Nevertheless, he added that the timescales in **CD 316** looked reasonable and that NERL was working towards improving them.
- 6.8.8 Then, in answer to the direct question¹⁸⁴ as to whether NERL felt that Raytheon had a reasonable chance of being successful, he said it had the “best chance at the moment”.
- 6.8.9 Quite properly, this proposal for mitigation was investigated by Mr Strachan (for NERL) in cross-examination¹⁸⁵. It was expressly acknowledged during that process (by Mr Strachan) that NERL was “enthusiastic” about the Raytheon project. It was put – and is accepted – that there are no “guarantees”. But that does not begin to support any submission that the project (and/or the new radar) do not have “reasonable prospects”¹⁸⁶.

180 The Aviation Memorandum of Understanding is **MOD/0/22**; the Aviation Plan is **MOD/0/22A**
 181 See the speech of the Prime Minister in November 2007, **AMEC/8/2F**
 182 Again, see XX by WN of Mr Strong on 3rd June
 183 XX by WN, 4th June pm.
 184 From WN, 4th June pm.
 185 18th March (pm)
 186 Nor did Mr Strachan suggest to Mr Ormston (in XX on 18th March) that his optimism was misplaced.

6.8.10 In so far as there is any useful evidence as to the CAA's attitude, it is to be found in the constructive observations directly from the CAA itself in **AMEC/0/67**.

6.9 **Third/New radar – NERL and generally**

6.9.1 Given what we have already said about there being no need for this Inquiry to identify any one *particular* form of technical solution in order to justify imposing the kind of condition that we commend, it may be unnecessary to go further and comment in any detail on the possibility of the “new radar” installation as a (further) alternative.

6.9.2 We recognise that this possible solution emerged at a relatively late stage of the process (for reasons that are only too painfully familiar) when QinetiQ carried out the report [**AMEC/0/61**] into the new MOD objection.

6.9.3 The new radar was considered in the first instance as a solution to the MOD issue. It was only in the course of that analysis that it became apparent that it was a solution which had a wider potential with regard to other aviation interests.

6.9.4 It is important to emphasise that no-one from NERL or NIAL (or indeed the MOD) has said a single word to contradict the technical feasibility or operational potential of the third/new radar solution.

6.9.5 Mr Rogers acknowledged¹⁸⁷ that it had not yet been investigated but “looked feasible”. Cross examination of Mr Asquith¹⁸⁸ made it clear that NERL would certainly not close its mind to the new radar as a possible solution: what is more, that same cross-examination investigated another development¹⁸⁹ where the developer relocated a whole primary and secondary radar system in order to accommodate NERL's concerns.

6.9.6 Mr Turner, on the other hand, who was the person who first identified this as a potential solution said that he had “a high degree of confidence in this solution¹⁹⁰”.

6.10 **NERL - conclusions**

6.10.1 In summary, then, the solution of a condition is, we submit, thoroughly attractive.

6.10.2 If it is necessary, as a matter of law or policy, to do so, we submit with confidence that there is indeed every reasonable prospect that such a condition could be met

¹⁸⁷ XX by WN on 3rd June. He added it “wouldn't be easy” and that it might take a substantial length of time to finalise

¹⁸⁸ By WN on 4th June 2008.

¹⁸⁹ An offshore development in Aberdeen which involved the relocation of the primary and secondary radar at Perwinnes – see XX by WN of Mr Asquith during the afternoon of 4th June.

¹⁹⁰ In chief, 12th March (pm).

within the lifetime of the consent for the Ray project. The process of discussion which would end in that condition being imposed by the Secretary of State¹⁹¹ and then met/discharged.

6.10.3 With due respect to all those involved in the present Inquiry, that is likely to be a rather more effective and constructive means of resolving technical and operational difficulties than an Inquiry process such as the present which almost inevitably sees a polarisation of sectional interests.

6.10.4 Finally, we emphasise that there is absolutely no question of public safety ever being compromised if such a condition is imposed. As Mr Ormston explained in evidence¹⁹² and as we know from **CAP 764**, it is always necessary for a Safety Case to be completed before any particular solution is put into practice.

6.11 **THE INTERESTS OF NIAL - Much the same approach as for NERL**

6.11.1 Our position as regard the interests of NIAL is very similar to that which it adopts in relation to NERL: that is, we accept that there will be an impact of sufficient operational significance. Therefore it is reasonable there should be technical mitigation even though there may not be agreement as to the full extent and significance of such effect. Further, we submit that the mitigation advocated by Ray has a reasonable prospect of success and nothing has been said on behalf of NIAL or otherwise to contradict that assertion.

6.11.2 Nevertheless, it remains useful to address the nature and extent of the effect on NIAL's operations in the context of the full consultation history because the true extent of NIAL's objection, like that of NERL, may in fact be rather less absolute and entrenched than would seem to be suggested by the presentation of its case at this Inquiry.

6.12 **NIAL's approach to the regional planning and consultation process**

6.12.1 NIAL has, of course, been entirely familiar with the Ray proposal since as long ago as 2004 when the scoping process was under way¹⁹³.

6.12.2 The previous position of NIAL, like NERL, was rather more pragmatic than may have been apparent in the present Inquiry process. Confirmation of that can be found in the absence of any objection by either organisation to the designation of

¹⁹¹ Exactly the process which preceded the consent for the Clyde wind farm.

¹⁹² March 12th 2008.

¹⁹³ See **CD 14 para 3.4.2** and **16.1** and cross-examination of Mr Rodgers by WN on 10th June 2006.

Knowesgate as a “broad area of least constraint for wind energy developments” within Policy 42 (now 41) of the examination in public of the Regional Spatial Strategy Submission Draft **[SWFL/ 0/7]**.

- 6.12.3 During that same period (from 2004 to the present time) NIAL has been in a position to contribute - constructively, it can be assumed¹⁹⁴ - to the development of the Regional Spatial Strategy.
- 6.12.4 As we have observed already, the GONE report was released as late as March 2006¹⁹⁵, by which time NIAL, like NERL, was well aware of the “growing number of wind farm applications” and “proliferation of wind turbines in certain areas surrounding the airfield” – see Pippa Nelson’s memo of 5th January 2006¹⁹⁶.
- 6.12.5 Those contributions can be seen in the GONE report **[CD 306]**. We particularly draw attention to page 2 (which gives the date), and page 18, paragraphs 6.1, 7.1 and 11.I. The white map showing which areas have the greater constraints from an aeronautical point of view is at page 51.
- 6.12.6 As Mr Rodgers accepted in cross-examination¹⁹⁷, the only fair reading of paragraph 7.1 is that NIAL was indeed supportive of this process at that stage and, moreover, that the 30 km circle (at page 51) was based on the advice in CAP 764 **[CD 299]**¹⁹⁸. It may be, as he acknowledged¹⁹⁹, that he was not aware of the policy decisions that others in his organisation had taken.
- 6.12.7 On the basis of that carefully conducted analysis, all three developments would be towards the outer end of the 30 km circle, with Ray being the most north-easterly of all three projects. Of course, that does not mean that the area was of *no* operational significance to the airport or other aviation interests: but it was certainly the area of *least* significance and, as the evidence established, nothing has changed about NIAL’s operation to lead Mr Rodgers or NIAL to take a different view²⁰⁰.

194 In XX by WN on 10th June (am) Mr Rodgers explained that he had not personally been involved in the consultation process but said he thought that “the planning department would have been”. That this was so is demonstrated by the various contributions from Pippa Nelson – see below and ReX of Mr Rodgers on 10th June (pm).

195 The release date on **CD 306**. See also XX of Mr Rodgers by WN and VF on 10th June (am/pm respectively)

196 Appendix E to Mr Warren King’s proof **[AMEC/9/2]**: see also Appendix D

197 By WN on 10th June 2008.

198 Chapter 2, page 2, para 3.A.

199 In XX by WN and VF on 10th June.

200 See XX by WN and VF on 10th June.

6.12.8 A study of that history alone might have sustained the submission that NIAL's present position (that is, at the Inquiry) is more a product of preferring not to discriminate between projects and about cumulative effects than of a genuine and soundly based concern about the difficulties of managing if *any one* of these developments were constructed.

6.12.9 However, such a submission is supported (indeed, is rendered unanswerable) by the Memorandum from Pippa Nelson on 9th January 2006 now before the Inquiry as **AMEC/0/69**.

6.12.10 There Ms Nelson says in terms that:

“Concerns have been raised in recent months in regard to the number of applications which have been submitted to the airport for wind turbines within small areas surrounding the airfield. While two of the developments may be seen as acceptable and the appropriate mitigation taken, higher numbers will inevitably threaten safety at NIA.”

6.12.11 Mr Rodgers accepted in cross-examination²⁰¹, when invited to consider the chronology of these events, that that letter could only be understood as NIAL at the time being prepared to tolerate one or two of these developments presently before this Inquiry²⁰².

6.12.12 There is, of course, no new technical or operational understanding or other information which explains the present, quite obviously different, approach. That, we submit, is because it is clearly based on a change of policy rather than evidence²⁰³.

6.13 **Some operational impact for NIAL: mitigation needed**

6.13.1 Other developers will no doubt make their submissions about how NIAL presently manages the impact of turbines that already appear on its screens and to what extent to which that may help us to assess the practical consequences – if any - for NIAL if some or all of the turbines from the present schemes do likewise²⁰⁴.

²⁰¹ WN on 10th June 2008.

²⁰² See also Ms Nelson's letter to the DTI of 5th January 2006 included as **Appendix E to AMEC/9/2** and her letter of 12th April 2006 (**Appendix D**) to APIL's Aviation Adviser.

²⁰³ And, in reality, there has been absolutely no technical or operational development since the Examination in Public took place which would render obsolete any contribution by NIAL (or lack of it) to that process – see XX by AN of Mr Rodgers on 10th June. Nor has NIAL, which has been consulted, formally (or otherwise) proposed any amendments to the constraints maps to which we have referred.

²⁰⁴ Obviously, should it be necessary to resolve any conflict of evidence, we commend what Mr Warren-King said in his supplementary (comprehensive) proof [**AMEC/9/4**] and his oral evidence including his answers in XX to Mr Hill on

6.13.2 Similarly, submissions will no doubt be made as to how any such impact might be managed (from an operational point of view) in the future and/or as to the value of potential developments such as the introduction of mandatory SSR or creation of a TMZ²⁰⁵.

6.13.3 Our only comment at this stage is that NIAL has fallen a very long way short of identifying (and measuring) an impact of any real and particular significance upon the capacity of the airport either for the present or in the future²⁰⁶. Nor has NIAL looked at whether the reduction in the number of turbines at Ray from 20 to 16 would be a significant advantage²⁰⁷.

6.13.4 Nevertheless, we concentrate on the mitigation proposed.

6.14 Mitigation proposed for NIAL

6.14.1 Everything that we have said about technical mitigation for NERL is equally applicable to what is commended to the Inquiry for NIAL. Again, there is no question of compromising safety, as Mr Rodgers acknowledged²⁰⁸.

6.14.2 For NIAL, the first preference would be the Raytheon upgrade at Great Dun Fell, acknowledged by Mr Ormston as necessary²⁰⁹ and as commended by Mr Ormston, Mr Warren-King and Mr Turner in their written and oral evidence²¹⁰.

6.14.3 The next option would be the new or third radar commended by Mr Turner as the second alternative at paragraph 29 of his rebuttal statement [AMEC/10/3] and in oral evidence²¹¹.

6.14.4 Nothing that was said by any witness contradicts our positive case, supported by evidence already identified that, if one is applying a “reasonable prospects” test, Raytheon certainly qualifies for such a description²¹², as does the new radar also.

19th March (pm). But in this submission we shall not conduct any detailed analysis given APIL’s long-standing recognition that it is accepted that the Ray development would have *some* impact which needs to be mitigated.

205 About which Mr Rodgers was XXd by AN – 10th June (am)

206 As conceded in XX by AN and WN of Mr Rodgers on 10th June.

207 Again, conceded by Mr Rodgers in XX by WN on 10th June (am). That is notwithstanding that, according to Mr Turner (in chief – 12th March) removing the Wanney 4 will make a significant improvement as regards any impact on NIAL.

208 In XX by AN on 10th June (am).

209 Oral evidence on 12th March 2008.

210 Mr Ormston, oral evidence on 12th March 2008: Mr Warren-King in his proof of evidence [AMEC/9/2] at paragraphs 9.2-9.6 and in his oral evidence on 18th March 2008 and Mr Turner in his rebuttal statement [AMEC/10/3] at para 29 and in his oral evidence on 12th and 18th March 2008.

211 The BAES/Sensis technology is currently intended only for Watchman (MOD radar), albeit it may have a civil application at some future stage.

212 The evidence of Mr Ormston about this was quite properly investigated by Mr Hill in XX (March 12th pm), as was the evidence of Mr Turner to the same effect in XX on March 18th (pm). It was not suggested to either that their optimistic opinions were unsupported by evidence or otherwise unjustified. Mr Turner, for example, acknowledged that consideration of “practicalities” and “time” were involved.

- 6.14.5 Particularly, nothing that Mr Rodgers (or any other evidence led on behalf of the airport) contradicts anything that we have said. It will be remembered that Mr Rodgers was asked directly in cross-examination (by WN on 10th June 2006) whether he had any particular knowledge or experience of the progress of the Raytheon system. He said that he had no direct experience, at least beyond what he had heard in the course of this Inquiry, and contradicted nothing that had been said by our (or other) witnesses on the subject.
- 6.14.6 We do comment very briefly on paragraph 9.2.10 of Mr Rodgers' witness statement where he expressed some concern that, were a "new data source" to be located in a different (but suitable) location, it might be objectionable upon the basis that NIAL would not have "control over such a critical piece of equipment".
- 6.14.7 This, with the greatest respect, was either the expression of an unnecessary anxiety or was clear overstatement. NIAL already takes a primary and secondary radar feed from Lowther Hill and a secondary feed from Great Dun Fell. If the Raytheon solution were the one to go forward, then that would also come to NIAL from the Great Dun Fell radar and would provide processed plot extracted primary data which NIAL could show on a separate radar screen or an existing screen utilising a toggle switch. This would have the effect of filtering out all unwanted returns from rotating turbine blades whilst not degrading the primary returns from real aircraft.
- 6.14.8 But, in fairness to Mr Rodgers, his oral evidence was more accommodating than might have been expected from what had been written: he accepted in cross-examination²¹³ that issues about ownership could and should be addressed in contractual terms and hence, on the evidence, NIAL ended no more or less optimistic or pessimistic about Raytheon's prospects than NERL or the CAA²¹⁴.
- 6.14.9 In short summary, then, all those technical solutions have a sufficient level of support in the scientific and business community and amongst potential customers that they can be considered to offer a reasonable prospect that there can be satisfactory mitigation of the operational and technical difficulties identified.

²¹³

By WN on 10th June 2008.

²¹⁴

As to which see the CAA's closing submissions at the Kyle Inquiry [AMEC/8/2E].

- 6.14.10 It follows that we do not accept that NIAL has fairly represented the test to be applied by this Inquiry when - at paragraph 1(xi) of its Closing Submissions - it notes the absence of a “quick-fix” solution to NIAL’s concerns.
- 6.14.11 Nor is the reference to the “drawing board” - in paragraph 1(xi) – legally or factually illuminating. Of course the technical solution is still in development. What matters is the evidence on (for example) Raytheon and the time scales tested in evidence to which we have referred already. Nor is it fair or helpful to characterise the solutions proposed as “rag bag of different ideas”. The record of the evidence demonstrates that such a characterisation is wholly inappropriate.
- 6.14.12 Nor does NIAL’s somewhat flippant dismissal of the Raytheon project in the closing submissions at paragraphs 49 and 51 do justice to the actual evidence about the project – particularly in the light of recent developments regarding funding and the evidence of Mr Strong, Mr Ormston and Mr Turner. The actual evidence – as opposed to NIAL’s incomplete paraphrase of it – is set out in section 6.8 above.
- 6.14.13 In conclusion on this point, we are sorry if the range and variety of the mitigation proposed has proved “bewildering” for the author of NIAL’s closing submissions (see paragraphs 32, 67). We can only hope that the analysis of and evidence about the two solutions proposed by this Applicant at least is clear enough to all other observers.
- 6.14.14 We therefore commend those solutions to the Inquiry as having a reasonable prospect of success and submit that the imposition of a suspensive condition is justified.

6.15 Terms of any condition

- 6.15.1 It is understandable that someone like Mr Rodgers might prefer it were no suspensive condition to be imposed.²¹⁵ No doubt it would make his life easier. But that is not the test.
- 6.15.2 On analysis, NIAL is taking a narrow view in which *only* the commercial and operational interests of the Airport matter or at least in which they are elevated to an importance which is exaggerated. Certainly, those interests are relevant but they must be set in the context that this Inquiry, and those responsible for

²¹⁵

His oral Ev in Ch on 10th June.

implementing energy policy, have a much wider agenda where other considerations carry greater weight.

6.15.3 We refer back to what we said above and to the constructive discussion in the course of the Conditions session with regard to the type of condition to be imposed, drawing on the experience of decisions such as *Clyde, London Array, Tween Bridge* and *Keadby*.

6.16 THE MINISTRY OF DEFENCE - MOD's approach to the Inquiry process

6.16.1 We have already explained that we see little virtue or advantage in dwelling too much on the past. Nevertheless, the history of the objection from the MOD and the way that it has been presented is a matter for legitimate concern and comment for reasons already given.

6.16.2 What follows is a more detailed analysis of our submissions on the MOD's conduct at the Inquiry and the evidence and argument it has presented. In summary, our submission is that the MOD's conduct and approach to this Inquiry has:

- (i) Fallen below the standards of competence to be expected of a body discharging an important public duty (addressed below under the heading 'not competent');
- (ii) Been less than clear and candid in introducing and explaining its changes of position (hereafter 'inadequate and misleading explanations'); and
- (iii) Not been constructive in enabling the developers and the Inquiry properly to investigate its objections (hereafter 'unco-operative').

6.16.3 We shall then invite the Inspector in his Report to deprecate the MOD's conduct in clear and unequivocal terms in the hope that no other developers or any member of the public with a genuine concern about the interests which the MOD is required to protect should ever have to face these kinds of problems again. We also invite the Inspector to recommend that the MOD pays a very substantial amount of costs.

6.16.4 First, however, we comment briefly on APIL's approach to this issue.

6.17 This Applicant's approach – a textbook example of good practice

- 6.17.1 The Applicant has always acted responsibly as regards the possible impact of its development on the interests of the MOD.
- 6.17.2 We assume that it is sufficient for us to remind the Inquiry of the consultation history, stretching back as far as 1996, which is recorded or summarised in **AMEC/8/2A**.
- 6.17.3 When – out of a clear blue sky – the MOD raised an objection to the APIL scheme just before the PIM, APIL acted responsibly and conscientiously in trying to understand the nature and extent of that objection. The correspondence and other documentation (including APIL's Statement of Case **SOC/2** and opening statement **AMEC/0/0**, and later submission **AMEC/0/58**) sufficiently summarise the history thereafter.
- 6.17.4 Not until the meeting at RAF Henlow on 30th January 2008²¹⁶ did APIL (and its advisers) regard itself as having sufficient information to enable its expert witnesses to produce a sufficient response to the MOD objection as it then appeared.

6.18 Can the MOD'S objections simply be disregarded?

- 6.18.1 Regardless of our criticisms of the way it has behaved, we acknowledge that what really matters is whether any residual concerns²¹⁷ raised by the MOD as regards the impact on Spadeadam generally or threat radar in particular are so insignificant or unsubstantiated that it is not necessary even to impose any condition.
- 6.18.2 In making that submission we do not intend to rehearse the technical evidence about the nature and extent of any impact on the ATC screens at Spadeadam or on the threat radar systems. We comment briefly on two matters raised in the MOD's closing submissions.
- 6.18.3 First, we do not accept that the evidence established (as is asserted in paragraph 4 of those submissions) that each turbine is likely to produce a radar return signal

²¹⁶ The unchallenged evidence of Mr Ormston on 12th March (am): see also **AMEC/8/2C** and, particularly, the exchange of letters on 14th/15th February 2008.

²¹⁷ Here, too, it should be noted that there can be no question that any *safety* issue arises in the sense of there being any risk of air accident: safety only arises as regards the consequences for aircrew should their training be compromised by some diminution in the opportunity for training at Spadeadam. But apart from the complete absence of evidence as to any such impact, the only conclusion this Inquiry could reach would have to be that the MOD would not be so irresponsible as to deploy aircrew in a hostile environment *unless* they had first been fully trained somehow.

greater than the largest civilian aircraft. The weight of the evidence, we submit, was that radar cross section varied and that a turbine might produce a return, the nature of which might vary according to conditions, and other turbines might not.

- 6.18.4 Second, we are not quite clear what is being suggested in paragraph 6 of those closing submissions. There is certainly no evidence to support any suggestion that the collective effect of the three schemes would be significantly worse than the effect of any particular scheme.
- 6.18.5 Next, we fundamentally disagree with the way in which the MOD (at paragraph 21 of its closing submissions) suggests the Inquiry should approach the assessment of adverse impact. There is no place here – or in any other civil process – for the "no doubt whatsoever test". It may be thought that the introduction of such a test arises only because the MOD has itself failed to establish that any or all of these developments would have any significant impact on its operations. It is not appropriate that the MOD should seek to evade the consequences of its own lack of evidence by requiring the developers to prove an absolute negative.
- 6.18.6 If the decision maker were not able to go that far, the alternative would be to impose some kind of condition (at least in relation to matters of air traffic control at RAF Spadeadam), notwithstanding the paucity of evidence as regards any adverse impact on the efficacy of that facility.
- 6.18.7 In summary, however, our submission is that the Inspector would be fully entitled to find that the MOD's evidence is so fundamentally unreliable and all its expressions of concern about the impact on operations so clearly unsubstantiated that *no* condition is needed even in respect of ordinary air traffic control issues such as those which occupied the week of evidence that was heard at Hexham.
- 6.18.8 We make an identical submission - with even more force - in relation to threat radar. Not only did that issue emerge remarkably late²¹⁸ but the process of analysis²¹⁹ has demonstrated that the MOD can – at least on the basis of evidence it is prepared to place before the Inquiry - establish no real probability that these wind farms would have an adverse impact on its operations. There is

²¹⁸ Remarkably, we mean, assuming that it was an objection of any substance.

²¹⁹ Particularly by VF in his cross-examination of Sqn Ldr Coleman.

therefore no substantiated operational or technical impact that needs to be mitigated.

6.18.9 Even were mitigation found to be needed for threat radar systems or for ATC radar, the QinetiQ reports [AMEC/0/61 and AMEC/10/5] provide the necessary material to see the basis upon which a suspensive condition might be imposed.

6.18.10 We turn therefore to justifying the descriptive labels with which we began this section.

6.19 Not competent

6.19.1 The MOD has always known that it should make any objection with care and approach the presentation of such an objection at Inquiry with real diligence²²⁰. It was, accordingly, obviously incompetent for the MOD to have indicated *no* objection to a project like Ray²²¹ between 15th February 2002 [page 8 of the chronological history set out in AMEC/8/2/A], to have re-stated the absence of any objection on 19th December 2005 [AMEC/8/2/A page 37] and then to have made a wholly unexpected volte-face by raising an objection with no warning in the Outline Statement of Case a matter of days before the Pre Inquiry Meeting.

6.19.2 If - and it is not something that we are prepared to take on trust for obvious reasons - the origin of this error was in fact a geographical mistake in converting the co-ordinates accurately given by APIL as northings/eastings²²² into latitude and longitude²²³ then that too was self-evidently incompetent particularly bearing in mind that the MOD had accurate co-ordinates from APIL.

6.19.3 Such incompetence was compounded by the fact that the MOD also had a whole series of perfectly clear messages about the Ray site being “close to Spadeadam”²²⁴, maps²²⁵, a letter from the DTI reminding them that the Ray Estate was “near Kirkwhelpington”²²⁶ and so forth.

²²⁰ Even 10 years ago, the MOD felt itself vulnerable to potential criticism of its management of the *Blinkbonny Heights* Inquiry (see letter 15th January 1997 at the end of MOD/3/11). Very much more recently, Dr Novitsky was plainly unimpressed by the very late submission of evidence (particularly about a “dead zone”) at *Middlemoor* – see paras 449 – 450 of CD 130 (ss)

²²¹ Or to Green Rigg either, apparently, until the PIM: this part of the history (MOD/Green Rigg) was thoroughly investigated by VF in XX of Mr Chafer on 19th June (pm).

²²² See AMEC/8/2/A pp 15-21.

²²³ Which appears to have been done in the heavily redacted letter of 30th July 2001 at AMEC/8/2/A p 25.

²²⁴ See AMEC/8/2/A pp 24, 26, 27.

²²⁵ See, generally, AMEC/8/2/A and pp 30, 36 in particular.

²²⁶ See AMEC/8/2/A pp 33, 34, 37.

- 6.19.4 To have assumed – on no sound evidential basis whatsoever – that the Ray site was “near Penrith”, in an entirely different county and within the jurisdiction of an entirely different planning authority would be frankly alarming as a matter of good practice. It would be entirely contrary to all good practice as well as being fairly and squarely contrary to the recommended practice within the MOD’s own documentation²²⁷.
- 6.19.5 Of course, people make mistakes: however, when reasonable and responsible people discover those mistakes, they acknowledge and rectify them.
- 6.19.6 Rectifying the mistake in this case in a proper and sensible manner would have involved notifying all interested parties (the developers, TDC and so forth) that a mistake had been made as soon as it was discovered. It would then have required the MOD to give a candid explanation of how that mistake had come to be made. But that is not what happened.
- 6.19.7 According to Mr Chafer²²⁸ the error must have become apparent no later than April 2007²²⁹. Yet APIL was told nothing at the time of the MOD’s change of position. Nor, so far as anyone is aware, was any other body with an interest in the planning process.
- 6.19.8 The competent way to have gone about matters would have been for whoever was responsible to have initiated a proper process of objection at that stage and, particularly, to have notified the developer(s) accordingly.
- 6.19.9 Likewise, it was both incompetent and unattractive, for Mr Chafer, whilst apparently aware of the change of position, not to have said so openly to Mr Ormston on the various occasions upon which they met during 2007. They were on good terms. They were often in touch with or saw each other²³⁰. Mr Chafer says he knew the MOD had changed its mind about Ray. There was the most obvious opportunity for Mr Chafer to explain the change of position was when Mr Ormston asked a direct question at the July 2007 BWEA Aviation Steering Group

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See annex A to Mr Spencer’s proof of evidence: **MOD/3/2**, particularly para 3.1.

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See his supplementary proof of evidence **MOD/1/4** paragraph 50 as rewritten.

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It should, of course, have been equally obvious in, say, June 2006 when (according to para 9 of Mr Chafer’s proof **MOD/1/1**) TNEI pointed out that all 3 developments were close to each other.

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Mr Ormston explained the regularity with which they met in ReX on 12th March.

meeting attended by Mr Chafer²³¹. Yet nothing was said that even hinted that there had been, or might be, the volte-face which lay ahead.

- 6.19.10 Next one must consider the way in which the sands of the MOD's objections have shifted since any objection was notified in the outline Statement of Case.
- 6.19.11 We have seen objections introduced with regard to low flying that were subsequently withdrawn. There was also an objection with regard to air defence radar which also evaporated.
- 6.19.12 Then there is the matter of threat radar to which we have already referred. This objection emerged from nowhere on 11th March 2008 but it is an issue of which the MOD should have been very well aware previously and which it must have considered carefully previously. Its conduct in this respect is clearly incompetent.
- 6.19.13 We can say with complete confidence that the MOD understood the *potential* impact of such a development on Spadeadam and its threat radar systems because we know from the *Blinkbonny Heights* material [**MOD/3/11**] that as long ago as 1996 it had put forward, as an important part of its objection to that development, concerns regarding the impact of wind turbines in this area on threat emitter systems²³².
- 6.19.14 Perhaps more interestingly and significantly, the MOD had actually identified a concern about threat emitter/radar in relation *to this very project*²³³.
- 6.19.15 What is more, the issue of a possible impact on threat radar was expressly raised *by this developer* after the wider objection was first intimated in September 2007. As is recorded by Mr Ormston in **AMEC/8/4**, threat radars were expressly mentioned at the meeting on 8th October 2007²³⁴, and were directly referred to in an email of 14th December²³⁵.

²³¹ See paragraph 2.4 of Mr Ormston's rebuttal statement **AMEC/8/3**, note also that that question took place after (indeed was prompted by Mr Ormston's knowledge of) the meeting that had taken place at Newcastle Airport on 11th July 2007, attended by various interested parties (TDC, NERL, NIAL, CAA and MOD) the agenda for which is at **AMEC/0/66**. That this exchange took place in the terms that Mr Ormston described was not challenged in XX by Miss Dehon on 12th March.

²³² See, particularly, paras 6-8 and 11 of the 'Statement by the Ministry of Defence' within **MOD/3/11**.

²³³ See Item 3 of **AMEC/8/2/A**, pages 5 to 14. See also the fact that the importance of RAF Spadeadam EWTR is specifically referred to in the Interim Guidelines [**CD 291**] at para 3.4.6.1 – which is why, as per the advice in these guidelines, developers are advised (if located within the Range) to enter into a "dialogue with the MOD, through Defence Estates" – para 3.4.6.1, 3.4.6.2.

²³⁴ **AMEC/8/4**, para 2.3.

²³⁵ **AMEC/8/4**, para 2.8.

- 6.19.16 Following that email, threat radar was directly addressed in the Draft Statement of Common Ground sent by Mr Chafer on 21st December 2007²³⁶. The MOD said it had no objection on that basis.
- 6.19.17 The following month, APIL was told, first, that it was getting no more information on threat radars and then that “*simulated threat radars have not been considered*”. Nor were threat radars referred to at RAF Henlow on 30th January 2008 or in the next version of the Statement of Common Ground²³⁷.
- 6.19.18 It was therefore another complete and incompetent volte-face²³⁸ when the MOD raised the threat radar issue wholly without any warning, informal or otherwise, on 11th March 2008²³⁹.
- 6.19.19 It is also entirely clear that there had not been any (or at least any adequate) investigation of the substance of the threat radar objection before it was first raised on 11th March 2008²⁴⁰.
- 6.19.20 Unhappily, one can see many other instances in which the MOD has fallen well below those standards of competence that the public in general and the developers in particular are entitled to expect.
- 6.19.21 It has also fallen well below the standards it has set for itself as regards the process of assessment. Unsurprisingly, that involves identifying in the first place exactly where a particular development that is proposed will be located²⁴¹.
- 6.19.22 As we have seen, not only did the MOD put Ray in the wrong place (apparently near Penrith) according to what Mr Ormston was told²⁴² at a meeting on 8th October 2007 - see paragraph 15 of his proof of evidence [AMEC/8/1] – but there was no written report produced, despite that being a requirement of the process²⁴³.

²³⁶ **Annex 4** to Mr Ormston’s proof of evidence on threat radar **AMEC/8/4** - see para 16.

²³⁷ See paras 2.9 to 2.14 of **AMEC/8/4**

²³⁸ Curiously described by Mr Chafer at para 2 of **MOD/3/8** as an “evolution” in the MOD’s case just as Counsel for the MOD described the MOD’s change from absolutely no objection to Ray and Green Rigg to one of objection as having “evolved” at para 32 of his Opening Statement **MOD/0/1**.

²³⁹ See cross-examination of Mr Trott (the wrong witness anyway) by PC on 11th March 2008.

²⁴⁰ We refer to the investigation of the history of the emergence of the threat radar objection and the MOD’s Statement of Case Addendum” [**MOD/0/10**] by WN and VF in XX of Mr Chafer on 7th November. We give further examples of those who should have been consulted (and when) in our references to the evidence of Sq Ldr Coleman and Sgt Edmonds shortly hereafter.

²⁴¹ See the evidence of Mr Spencer in **MOD/3/2, Annex A** and cross-examination by WN at Hexham on 20th June.

²⁴² That some geographical error was made and that it was offered (at that stage, for the first time) as an explanation for the error is clear enough: but whether that was the *real* reason for the change of position is another matter entirely.

²⁴³ And further is an important part of the “Proposed Assessment Method” given as good practice in Appendix 7 of CAP 764 [**CD 299**].

- 6.19.23 The required process is explained in para 3.2 of Annex A [**MOD/3/2**] to Mr Spencer's proof²⁴⁴: there should be a "report...written (based on the findings) and sent to operational staff and DD". But there was never ever such a report or, if there was, no-one has succeeded in finding it. Nor was any MOD witness able to identify (still less produce) any such document²⁴⁵.
- 6.19.24 Other serious errors²⁴⁶ include:
- (i) Failing to realise that its own paperwork had noted the development as being close to Spadeadam [e.g **AMEC/8/2A** p.26]²⁴⁷;
 - (ii) Misplacing Broom Hill – [**Annex A** and **Screenshot 1** to **MOD/3/2**];
 - (iii) Placing the Teesside Wind Farm off Sunderland rather than Redcar – [**Annex D1**];
 - (iv) Putting Green Rigg in the wrong place - paragraph 87 of Mr Spencer's rebuttal statement [**MOD/3/4**];
 - (v) Thinking the Ray development might also be near Haydon Bridge (paragraph 12 of Mr Spencer's rebuttal statement) or alternatively, in Hexham itself²⁴⁸;
 - (vi) Plotting Steadings at sea²⁴⁹;
 - (vii) Failing to engage effectively in the RSS process to explain (should it be the MOD's true position) that, contrary to what we see in **SWFL/0/7**, the MOD in fact has fundamental objections to (certainly) medium²⁵⁰ and (possibly) to small scale wind development in the Knowesgate area (Policy 42, now 41);

²⁴⁴ See also his XX by WN on 20th June.

²⁴⁵ See, for example, the XX by WN of Mr Chafer on 19th June (am).

²⁴⁶ Several of which were dealt with in XX of Mr Spencer by WN on 20th June and in XX of Sq Ldr Deane on 17th June (pm). This is not intended as an exhaustive list but as selected highlights.

²⁴⁷ Although, as Sq Ldr Deane agreed in XX by WN on 17th June pm, "any half competent body" would have realised Ray was close to Spadeadam. Since we are extremely critical of the MOD generally, it is appropriate at this juncture to recognise that Sq Ldr Deane (given what one might regard as an impossible brief) gave his evidence with candour and restraint, answering questions frankly and without evasion, argumentativeness or obfuscation. He is to be commended for his realistic approach.

²⁴⁸ See the rebuttal statement of Mr Ormston at para 4.2, Appendix 2.

²⁴⁹ Paragraph 3 of Mr Chafer's proof **MOD1/1**.

²⁵⁰ Defined in **CD 42** at p 142 as 20 to 25 turbines. The Inquiry will remember that, in XX of Mr Chafer by WN during the late morning of 19th June (as Mr Chafer tried to explain away the words of **SWFL/0/7** on the basis that they meant only that all such areas needed to be assessed by reference to specific schemes, albeit that the Examination in Public was taking place at a time when the details of all 3 of these schemes were well known) he was invited to investigate and provide the Inquiry (before the Threat Radar session) with a map showing *anywhere* within the Knowesgate area in which such a development might be acceptable, for reasons of line of sight or otherwise. Entirely predictably, no such map has been produced and the Inquiry is left, yet again, with the very clear impression that Mr Chafer simply tried to argue his way out of any difficult situation, however hopeless. That is not the behaviour of an open and constructive witness trying to help the process by giving his evidence in a balanced, objective and dispassionate manner.

- (viii) Failing to obtain the contribution of Sq Ldr Coleman²⁵¹ to assist with the effect (if any) of the developments on the threat radar capability of the site at a time either when the ATC (and other) objections were first made or (at the very latest) when (in the Statement of Common Ground circulated in December 2007 [**AMEC 8/4** Annex 4] Mr Chafer was asserting positively that such an impact could be “accommodated”;
- (ix) Over-estimating of the height of the turbines apparent in Sq Ldr Coleman’s contributions to **MOD/0/26**²⁵²;
- (x) Providing constantly changing co-ordinates of the threat radar sites²⁵³ to which one must add the most recent – and yet further - variation to be found in **MOD/0/27**;
- (xi) Putting the developers to the expense of investigating threat radar sites and systems which, as Sq Ldr Coleman conceded on more than one occasion, did not in fact constitute a real concern²⁵⁴;
- (xii) Providing its evidence on threat radar in a piecemeal fashion without providing full and sufficient particularity when proofs were first served or at the latest when providing rebuttals²⁵⁵;
- (xiii) Failing to answer the developers’ various legitimate requests²⁵⁶ for information both as to the original objection and then as to which threat systems/sites might be affected by the wind farms and, apparently, even to involve Sgt Coleman in the provision of such information²⁵⁷;

²⁵¹ See XX of Sq Ldr Coleman by WN on 18th July (pm). To be fair to the witness, he accepted that the description “incompetent” was entirely fair and appropriate. However, Mr Chafer, faced with XX by WN on 7th November about the basis for para 16 of the S of CG (annex 4 of **AMEC/8/4**) may not have aided the MOD’s (hopeless) cause in protesting that it has been competent : Mr Chafer suggested that before writing that paragraph he thought someone down the line might have spoken to Spadeadam. Either they did and Spadeadam’s then view was that threat systems would not be adversely affected (which, if true, is a position that has changed for no sound reason and, if untrue, was plainly inept) or they did not ask Spadeadam which would similarly be inept.

²⁵² See also XX by VF of Sq Ldr Coleman on 22nd July (pm).

²⁵³ Conveniently tabulated within **AMEC/10/5B** to which one must add further variation to be found in **MOD/0/27**.

²⁵⁴ See XX by VF on 22 and 23rd June: an example is the SA-8 system which, the witness agreed, was only a concern if sited at Bells Crag – cf question 1 on **WPD/0/17**.

²⁵⁵ And failing to provide adequate documentation in accordance with Mr Coppell’s assurance of co-operation – see XX of Mr Chafer by AN on 7th November.

²⁵⁶ See generally APIL’s litany of complaints set out in the correspondence/history clip **AMEC/8/2/C** and particularly the letters of 18th September and 7th and 14th December 2007 (pages 2, 14, 18 and 20 of that clip) and, on threat radar, letters such as Bond Pearce’s to MOD of 8th April 2008 and Hammonds and Shepherd and Wedderburn’s letters of 15th April 2008 and Hammonds’ letter of 1st May: see MOD’s replies of 16th April, 20th April, 3rd May, 16th May and **MOD/0/14**.

²⁵⁷ XX of Sgt Edmond by VF during the afternoon of 29th October.

- (xiv) In providing one witness (Sq Ldr Coleman) whose answers in cross-examination to VF were, apparently, regarded as so unreliable or inaccurate that it was necessary for the MOD's Counsel to try to make a fresh start in further Re-Examination²⁵⁸;
- (xv) Failing to seek the views of and input from Sgt Edmonds until a few days before he prepared his proof of evidence [MOD/5/1] dated 18th March 2008, notwithstanding that the MOD had a long standing objection to Steadings and had notified objections to Ray and Green Rigg as long ago as September 2007²⁵⁹;
- (xvi) Failing to provide a proper proof from Sgt Edmonds dealing in writing and at the proper time with the real substance of his evidence about issues such as placing equipment (such as the missiles themselves) remotely from the radar heads, details of the experience of Kirkheaton and a site by site analysis²⁶⁰.

6.19.25 All of those complaints of incompetence are relevant both as to the substance of the objection/mitigation and to our application for costs.

6.20 Inadequate and Misleading Explanations

6.20.1 In explaining its changes of position in particular, the MOD has provided explanations which are, at best inadequate, and at worst misleading.

6.20.2 We are entitled to expect that a public body, entrusted with important matters affecting the public interest, recognises the importance of candour and completeness in such matters.

6.20.3 Had the MOD been candid then, when it discovered its error (let us say when it prepared its Outline Statement of Case having realised someone had made an elementary geographical error) it would have acknowledged frankly and immediately that it had made a serious error. It would have expressed regret, perhaps. It could properly and sensibly have added that the public interest required that the important issue now discovered was one that needed to be addressed carefully and properly.

²⁵⁸ On 28th October 2008: we particularly highlight the witness's answers to the Inspector shortly before 1pm.

²⁵⁹ See XX by WN on 29th October.

²⁶⁰ All of which – assuming that what he had to say was relevant and important – should have been reduced to writing and provided to the Inquiry long before he gave evidence orally on the afternoon of 28th October.

- 6.20.4 We could all then have got on with the job of addressing the real issues in relation to the objection - that is, establishing whether there were indeed sound grounds for a technical objection, however late it may have arisen, and, if so, how any real impact might have been mitigated.
- 6.20.5 But that did not happen. Nor has it happened even at this final stage of the process: in closing submissions, the MOD has felt able to draft more or less 200 pages of text with not a single reference to the consultation history either as regard the main or the threat radar objection, still less with any recognition of the inadequacies of its own processes let alone any apology. Mr Chafer rates only four brief mentions in the MOD's lengthy despatch. Neither there or anywhere else do the closing submissions deal with his evidence in relation to the consultation history and the emergence and formulation of the MOD's objection. We are therefore encouraged to submit that the MOD recognises that this Applicant's oral evidence and previous submissions about that history and what can be deduced from it are not to be challenged - notwithstanding that the MOD knows perfectly well but this Applicant at least suggests that the consultation history is relevant not just to the issue of unreasonable conduct but as to the underlying absence of merit in relation to the claimed adverse impact on ATC operations at Spadeadam and the threat radar sites.
- 6.20.6 To summarise that history, the Inquiry will accept as unchallenged the proposition that the MOD failed to explain to APIL that it had an objection when (according to its case) it belatedly decided it had one (see paragraph 6.19.7- 6.19.9 above). When the MOD finally made public its objection before the pre-inquiry meeting it its outline statement of case, it provided an inaccurate and misleading explanation. More remarkably still, despite the obvious opportunity afforded (for example) by APIL's letter of 18th September 2007 [**AMEC/8/2/C**] we were subjected to obvious sophistry. The public explanation was that the change in position was to be understood as a commendable system of re-appraisal in the light of developing knowledge informed by the May 2005 report.
- 6.20.7 The crucial point about the MOD's public explanation for its change of position is that there was *no* reference to this elementary but crucial geographical mistake in the Outline Statement of Case, in the Statement of Case or in Counsel's Opening

at the beginning of the Inquiry. Instead, as we have investigated in some detail in evidence, the clear impression that those documents sought to convey was that the change of position was the product of ongoing and responsible reassessment²⁶¹. To put it as generously as we can, that was wholly misleading.

- 6.20.8 Regardless of what may have been said as more or less a throwaway remark by Sq Ldr Jones on 8th October 2007²⁶², there was *not even a hint* in that written material produced by the MOD that the real explanation²⁶³ for the change of attitude was to be found in some geographical error in any public statement or record of the background to that objection.
- 6.20.9 Yet that geographical error is the only reason of which Mr Spencer was ever aware²⁶⁴ and he – having attended the actual trial that were later analysed in the May 2005 report – knew perfectly well that the lessons learnt from then had been learnt long before the MOD's change of position as regards Ray.
- 6.20.10 It follows that this was not, as Counsel for the MOD would have us believe, the MOD just being "reticent" in its written material about the reality or economical with the truth: it was frankly misleading.
- 6.20.11 We can so submit with confidence because the language of the Outline Statement of Case, of the Statement of Case itself and of the MOD's opening statement was simply cribbed from paragraph 3 of the Executive Summary of the May 2005 Report itself **[CD 301]**. It entirely failed to give the real reason for the change (whatever it may really be) and attempted to lay a smoke screen to obscure such real reason.
- 6.20.12 The MOD offers no adequate excuse for this nor did Mr Chafer face up²⁶⁵ realistically to the fact that he had put his name to a document which was clearly misleading²⁶⁶. Nor is any excuse offered by Sq Leader Deane²⁶⁷ by whom

²⁶¹ When Mr Spencer was asked about this in XX by WN on 20th June (he having first been instructed in December 2007, several weeks before the Inquiry was opened) he said that he had always understood that a geographical error was to blame. Had he thought about it and noticed what the MOD was writing and saying, he could easily have told his colleagues at the MOD or us that the references in the OSC, SOC and Opening to on-going/fresh assessment in the light of the new knowledge gained from the May 2005 report was rubbish: he had even attended the trials!

²⁶² Recorded by Mr Ormston at paragraph 15 of his proof of evidence **AMEC/8/1** but not mentioned by Mr Chafer in his proof of evidence at **MOD/1/1**.

²⁶³ See paras 45 and 49 of Mr Chafer's rebuttal **MOD/1/2** explaining the "root" cause and the MOD's "fundamental" mistake.

²⁶⁴ See XX by WN on 20th June (am).

²⁶⁵ Such as in XX by WN on 19th June or otherwise during or before the Inquiry. Sq Ldr Deane, in stark contrast, took a more realistic and responsible approach.

²⁶⁶ The Inquiry may remember that, on 19th June (pm) Mr Coppell sought to assert that it was not "misleading" to give an explanation for a change of position which was demonstrably untrue if the reader /listener (APIL) knew the real

(according to the document itself) the full Statement of Case was “prepared” and which is similarly misleading – as was the MOD’s Opening Statement [MOD/0/1]²⁶⁸.

- 6.20.13 This failure to give a straightforward and accurate explanation for the MOD’s change of position has another vivid illustration when one considers the relationship between Mr Chafer and Mr Ormston²⁶⁹. As we observed earlier when reciting the history, Mr Ormston asked Mr Chafer a direct question²⁷⁰ at the Aviation Steering Group meeting on 18th July 2007²⁷¹. Mr Chafer did not then immediately volunteer what he knew of the change in the MOD’s position as regards Ray, even assuming in his favour that he honestly thought²⁷² Mr Ormston already knew of the objection.
- 6.20.14 It is particularly regrettable that no lessons were learned from the sorry saga of the main objection. Unhappily, the MOD has approached the threat radar issue with much the same failure to admit error and unwillingness to help all those interested in this issue to address it constructively.
- 6.20.15 This second volte-face, this time from a position of no objection on the threat radar issue as at the Statement of Common Ground on 21st December 2007 to a

reason (though not mentioned in the document!). This is another example of attempting to argue away the unanswerable. Mr Coppell’s straw in the wind, which he clutched with such vigour, was Mr Ormston’s acknowledgement that, on 8th October, Sq Ldr Jones had sought to explain the MOD’s change of position by pointing to Penrith and saying that that is where they thought Ray was (see para 15 of Mr Ormston’s proof). But that explanation does nothing to rebut the appropriateness of the label – “misleading” – which the OAC/SOC/Opening so richly deserve - because (a) the first of those documents (the OSC) was generated *before* the 8th October (b) APIL has never accepted that the geographical error was the real reason (c) there was no mention of geographical error in the later two documents (SOC/Opening) or other correspondence before the Inquiry began and (d) APIL was not the only audience. The first MOD document disclosed in the Inquiry process which acknowledged that there was a geographical error was Mr Chafer’s proof.

267 As we have already commented, Sq Ldr Deane, to his considerable credit, answered the questions put to him during the Inquiry frankly and as best he could. By way of example, when he was confronted with this reality in XX by WN on 17th June (pm), he frankly acknowledged that the document for which he had titular responsibility was “fundamentally misleading”. He was correct. It may be thought regrettable that the MOD did similarly face that same reality in its closing submission.

268 It is a remarkable thing that this document was served *after* there had been at least one meeting between TSol, its Counsel and Mr Chafer – see XX of Mr Chafer by WN on 19th June (am) – yet, apparently, no-one realised how misleading was that document and/or saw fit to correct it.

269 It may be thought a little unusual that PC sought to achieve some sort of redemption for Mr Chafer in what passed (at least for a while) as XX of Mr Ormston on 7th November. Perhaps he hoped Mr Ormston’s generous nature might offer some words of comfort for Mr Chafer. To be blunt, Mr Ormston’s opinion of Mr Chafer’s behaviour is not legally illuminating. On a personal level, they get on well and they have needed to do so in the past and will need to do so in the future. But a dispassionate view – supported by all the evidence – is that Mr Chafer has not repaid the trust that Mr Ormston has shown in him.

270 We have already noted that the fact that he asked this question and was unchallenged by Miss Dehon on 12th March (am).

271 See para 2.3 of his rebuttal proof [AMEC/8/3], a question prompted by his knowledge of the meeting at NIA [AMEC/0/66] earlier that month. See also para 2 of the letter of 18th September 2007 in AMEC/8/2/C. Mr Chafer in XX on 19th June (am) “didn’t recall” the terms of his answer at that meeting. The Inquiry may think Mr Ormston has every reason to have remembered it vividly, and recorded it in the documents to which we have referred.

272 As he said in XX to WN on 19th June that he had “assumed someone in his department” had previously told APIL of that change. Why he made that assumption (if he did) will no doubt remain another mystery.

position of complete objection, was introduced surreptitiously²⁷³ by the MOD on 11th March 2008. The developers' objections and the Inspector's ruling led to the MOD's more formal statement of this objection in a Statement of Case Addendum **[MOD/0/10]** on 14th March 2008.

- 6.20.16 One might have expected this to have been introduced with a clear apology and frank recognition of error. Had that been done, one could simply have moved on to look at issues of substance. But it did not happen. When Mr Chafer dealt with the change in his second supplementary proof (at paragraph 2) he felt able to characterise the change in the MOD's stance as an "evolution"²⁷⁴. In no sense of the word is a complete change from no objection to objection "evolution". It is "revolution".
- 6.20.17 Perhaps it was simply insouciance that enabled Mr Chafer to use such a word²⁷⁵ faced with explaining mounting evidence of incompetence within his department. In our submission, however, it is more readily explained as the product of a complete failure frankly and responsibly to face reality and an obstructive disinclination to deal openly with either the developers or the Inquiry.
- 6.20.18 That is further conduct relevant to the evaluation of the substance of the objection and to the question of costs in due course.

6.21 Uncooperative

- 6.21.1 It may be instructive to consider what, in the circumstances of an Inquiry such as this, one would expect of a public body with responsibility for such important issues affecting the national interest.
- 6.21.2 The answer is that one would expect the MOD to maintain a thoroughly co-operative and non-confrontational role in an inquisitorial process.
- 6.21.3 Nobody who has spent any time observing any significant part of this Inquiry can have detected anything other than an obstructive attitude and confrontational approach on the part of the MOD to the legitimate interests of these developers.
- 6.21.4 Each of these projects is brought forward in response to the Government's policy on climate change. That is their underlying justification. But has the MOD been co-

²⁷³ That is, with no notice, informal or formal.

²⁷⁴ By an (un)remarkable co-incidence, PC also spoke of "evolution" at para 32 of his Opening Statement **[MOD/0/1]**

²⁷⁵ In concert with Counsel for the MOD at paragraph 32 of his Opening **MOD/0/1**.

operative in helping to meet those policy obligations, accommodating difficulties where they are found to exist? The short answer is that it has not.

- 6.21.5 On the contrary: the MOD has tried to make life as difficult as possible for these developers. The dispassionate spectator of these proceedings would have realised that even had he not seen Mr Coppel's unfortunate e-mail explaining his preference for the order in which he called his witnesses²⁷⁶.
- 6.21.6 The obstructive approach was apparent from September 2007 onwards²⁷⁷ as the MOD has consistently failed to answer entirely legitimate questions²⁷⁸ all of which were designed to try and enable the developers to understand and thus to address the concerns which the Ministry had expressed. That was true with regard to the original objection and has been equally true with regard to the threat radar issue.
- 6.21.7 Yet when confronted with a complaint about its own conduct, the MOD's standard response has been to suggest that it is others who are guilty of the very thing of which they stand accused.
- 6.21.8 We remind the Inquiry of the obstructive and uncooperative attitude which was vividly apparent at the Special Procedural Meeting on 20th December 2007 and in the correspondence before and after it.
- 6.21.9 Within the correspondence, it may suffice to identify two particular examples: the first is the sequence of letters in **AMEC/8/2/C** (particularly the letters 14th and 15th February 2008). The short answer to any criticism of APIL is that it only had the material that was needed to complete the first QinetiQ Report on 30th January 2008, as Mr Ormston explained in evidence.
- 6.21.10 The second example concerns a key piece of information with regard to the threat radar issue and for which the developers were asking – namely, where exactly where the treat radars located²⁷⁹.

²⁷⁶ Another little example of such a confrontational – and unfair – approach can be seen in Mr Coppel's XX of Mr Warren-King on 19th March (am). Mr Coppel attempted to discredit the witness by reference to some of the figures/measurements he had included in his evidence when – as was demonstrated with clarity at the very end of Re-X on 20th March - it was actually information supplied by the MOD itself on which Mr Warren-King had relied in giving that evidence.

²⁷⁷ The history is conveniently recorded in the letters and notes in **AMEC/8/2/C**.

²⁷⁸ The Inquiry may remember Mr Chafer was challenged about the way that MOD failed to Respond to questions posed (in XX by VF on 19th June, pm). With a straight face, Mr Chafer answered that they were being “as helpful as possible”. This is a useful – and vivid – illustration of how far (putting it charitably) Mr Chafer's evidence was detached from reality.

²⁷⁹ It may seem obvious that what must first be established – given that the location of the turbines has remained constant during the relevant period (apart from deletion of the Wanney 4) – is the exact position of the treat radar

- 6.21.11 Again, the MOD really should have known where its sites were. It could have had no possible excuse for not realising that that information was key to any line of site analysis by QinetiQ. Until that information was provided, the report could not be completed. When it was provided - eventually, but in fact not in its final form, in **MOD/0/24** on 24th June 2008 - QinetiQ were able to produce their response [**AMEC/10/5**] which was submitted to the Inquiry on 3rd July 2008.
- 6.21.12 The MOD has had no apparent hesitation in using the QinetiQ material as and when it feels that it is helpful – such as in the re-examination of Sq Ldr Coleman. But although it has failed to carry out any equivalent or other detailed assessment of its own, it launched an ill-considered and entirely unjustified attack on APIL for an alleged delay in the production of the material.
- 6.21.13 We can see that strategy in the correspondence referred to already. A remarkable example is when, after writing an intemperate letter in his own name, Mr Coppel apparently regarded it as appropriate to draft a contentious/argumentative little paragraph in the rebuttal proof of evidence of its main threat radar witness, Sq Ldr Coleman²⁸⁰.
- 6.21.14 Such conduct is simply not acceptable in any process such as the present.
- 6.21.15 This criticism is also relevant to the substance of the objection and to costs.

6.22 The real reason for the MOD objection

- 6.22.1 We have already observed²⁸¹ that we cannot accept the MOD's word that the "root cause"²⁸² of the MOD's change of position was indeed the discovery of a geographical error, error though undoubtedly there was²⁸³ and despite the fact that geographical error was offered as a reason to Mr Ormston on 8th October²⁸⁴. We say that for a number of reasons.

sites so that one knows whether they are or are not in Line of Sight: Sgt Edmonds (in his rebuttal statement at paragraph 5) says as much: "*what matters is whether a turbine is within line-of-sight of a threat system*".

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See paragraph 2.

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Note also the exchange between WN and PC on this issue at Hexham during the afternoon of Thursday 19th June and what was put by WN in XX of Sq Ldr Deane on 17th June pm and of Mr Chafer on 19th June (am): see also Mr Ormston's evidence about that what was said on 8th October at para 15 of **AMEC/8/1**.

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See Mr Chafer's rebuttal proof [**MOD/1/2**] at paragraphs 45, 49 and paragraphs 17-18 of his main witness statement [**MOD/1/1**].

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See **AMEC/8/2/A** page 25.

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See paragraph 15 of his proof of evidence **AMEC/8/1**. Interestingly, Mr Chafer makes no reference to this exchange in his proof **MOD/1/11** nor does it feature as a reason in the correspondence. In XX by Miss Dehon on 12th March 9 (am), Mr Ormston explained that, whilst the fact that there had been a geographical error was indeed pointed out on 12th March, he still understood that the real explanation for the MOD's change of heart was re-assessment following the May 2005 trial.

- 6.22.2 In the first place, had a geographical error been the real reason for the change of position, one would have expected it to have been spelled out as such in the Outline Statement of Case, the Statement of Case and in the Opening.
- 6.22.3 But it was not. Instead, the reader and listener were given an entirely misleading explanation which suggested that the original assessment had identified the Green Rigg and Ray developments as having a “*marginal technical effect on radar which it was believed, at that time, could be operationally accepted*”²⁸⁵. That was rubbish.
- 6.22.4 The first written records of any suggestion that there had been a geographical error were in Mr Ormston’s own proof [AMEC/8/1] at paragraph 15 and in Mr Chafer’s proof of evidence [MOD/1/1] at paragraph 18.
- 6.22.5 Mr Chafer was also misleading and wrong²⁸⁶ when he suggested that turbines “*in that location in radar line of sight would not create unmanageable operational difficulties*”. That is because, had Ray been placed at the mistaken latitude/longitude co-ordinates, it would not have been in line of sight *at all* of Spadeadam radars [see AMEC/8/2/B] and there would not have been *any* operational impact to manage. The reality is that there had not been any actual assessment of Ray in that position. What was said was, frankly, untrue.
- 6.22.6 Moreover, as Sq Leader Deane acknowledged²⁸⁷, and as we have commented already, there is “not a shred of paper” (other than the proof of evidences themselves) which provides any form of assessment of an operational impact.
- 6.22.7 As we therefore repeat; if the assessments had been made on the basis of the geographical error placing Ray near Penrith, then Ray would not have had *any* line of sight to Spadeadam²⁸⁸. So the explanation given even in its latest form remains unconvincing and one looks to see whether there is an alternative.
- 6.22.8 It may not be for us to have to explain this but we can offer four possibilities, one (or a combination) of which is probably the answer once the geographical error excuse is rejected:

²⁸⁵ This is the language of the Outline Statement of Case repeated verbatim in paragraph 3 of the Statement of Case and at paragraph 8 of the Opening Statement.

²⁸⁶ At para 18 of his proof: **MOD/1/11**: the informed reader/listener may think that choice of words unduly generous.

²⁸⁷ XX by WN on the morning of 18th June

²⁸⁸ As proved by the unchallenged document **AMEC/8/2/B**.

- (i) First, there may simply have been a change of policy, perhaps at a senior level;
- (ii) Alternatively, there may have been a change of personality at Spadeadam, as has in fact happened, resulting in a change of policy. One person may be tolerant of an impact, another not²⁸⁹. It may be thought that paragraph 14 of the MOD's closing submission is the product of just such an unrelentingly absolute approach;
- (iii) The third possibility is that the MOD is effectively following a similar line to the other aviation interests. That is, it might be prepared to tolerate one or two of these developments (say Ray and Green Rigg) but not three and it is certainly not inclined to discriminate between the developments: hence it is easier to object to all with equal force;
- (iv) The fourth possibility is that, as the MOD looked ahead to opposing Banks/Steadings at public inquiry, it realised that it was illogical – that is, there was a fundamental inconsistency – in objecting to one project (Steadings) but not to two other projects in the immediate vicinity (Ray, Green Rigg). Of course, that penny will have dropped in either April 2007, when Steadings drew the inconsistency to the MOD's attention²⁹⁰ or on 28th June 2006, when TNEI had, it would seem, already done likewise²⁹¹. That may explain why it decided to object to them all.

6.23 But is there still an MOD objection that must be taken seriously?

6.23.1 Where does this all leave us?

6.23.2 The short answer is that the MOD's own evidence has to be treated with considerable caution. It amounts to very little in the way of evidential support for an objection. On the other hand, APIL's original analysis as set out in the QinetiQ report [AMEC/0/61] does represent a soundly based, scientific, analysis of the issue of line of sight and proposals for such mitigation as may be needed.

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Again, reference should be made to XX of Sq Ldr Deane by WN late on 17th June: It was put to him that he had chosen to take a stronger line than his predecessor, Sq Ldr Jones and that that was demonstrated by his having said at a meeting in January 2008 that he would tolerate *no* degradation of radar performance: he said he "couldn't recall exactly what was said".

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See para 50 of Mr Chafer's rebuttal proof [MOD/1/2].

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See para 9 of Mr Chafer's first proof [MOD/1/1].

- 6.23.3 As regards the theoretical impact, we commend what was said by Mr Warren-King in his written²⁹² and oral evidence²⁹³. In practice, for the reasons he gives²⁹⁴, if Spadeadam were providing a RAS, they could readily separate traffic *vertically* assuming that there was no opportunity to provide 5nm lateral separation within the Otterburn Gap. Obviously, such a procedure would require both aircraft to be identified but identification would be needed anyway even if only lateral separation to be achieved. Hence the practical impact is likely to be insignificant.
- 6.23.4 To take this as shortly as we reasonably can, we make the same submission as those that will be made by the other two developers as to whether turbines in line of sight would be likely to have any practical implications for Spadeadam's ATC operations.
- 6.23.5 We add that if the Inquiry is asked to take the MOD's assertions to that effect on trust, it should not do so. Unhappily, nothing that the MOD has said in this Inquiry can be relied upon.
- 6.23.6 Moreover, the MOD has done absolutely nothing to satisfy this Inquiry that it could not, from a practical point of view, manage the impact of any one – indeed, even all three - of these developments should they be built.
- 6.23.7 On the contrary; although the Inquiry has been going for nearly a year, there is almost *no* particularity - by which we mean anything other than bald assertion - to *quantify* the extent of any supposed impact upon the capacity of Spadeadam, its operational efficiency, which entry and exit routes might be affected and so forth. Indeed, there is *nothing* beyond the proof of evidences that can be characterised as any form of operational assessment²⁹⁵. As we have already observed, the MOD's closing submissions repeat the approach of asserting as a fact that there would be an impact of some significance without an iota of evidential foundation.

292 It is most convenient to refer to his supplementary/rebuttal proof [AMEC/9/4] which incorporates his earlier proof.

293 See, particularly, XX by Mr Coppell on 19th March (am).

294 For example: the MOD 's own figures demonstrate that 98.4% of aircraft using the range will be in receipt of a RIS – see XX by Mr Coppell on 19th March (am) and the majority of traffic will enter from the east. Mr Warren-King explained that if Spadeadam were providing a RAS they could separate traffic vertically and that there were always options from an operational point of view. No separation standards (horizontal or vertical) are applied to an aircraft in receipt of a RIS – see MATS Pt 1 (CAP 493) Section 1, Ch 5, page 3, para 1.5 [CD 295]

295 That may be thought especially regrettable when the MOD could very easily have assisted the Inquiry by leading evidence as to (for example) the practical impact and significance of a development such as Kirkheaton. Sq Ldr Coleman, even after reflection since July was only able to say in further evidence to the Inspector following further Re-X on 28th October that he “*was not qualified to measure any impact*” though he thought there would be one and conceded that no site would be rendered “un-useable” were the wind farms to be built (cf the hyperbole of para 5(2) of MOD/0/10). It would just be “affected” to an un-quantified extent.

6.23.8 Thus we associate ourselves with what we understand to be the more detailed submissions of other developers in submitting that the Inquiry should not accept that there would be any adverse impact on those operations which requires technical mitigation.

6.24 If mitigation is required

6.24.1 But if technical mitigation is required, then APIL (based on the QinetiQ report) has provided an answer which is, in effect, unchallenged.

6.24.2 Mr Turner's preference²⁹⁶ would, in the first place, be for the third (that is, the new) radar site somewhere in the area indicated as appropriate at page 44, Figure 7-13 of **AMEC/0/61**. There will be good logistical reasons for that to be built within the 9,000 acres of the Spadeadam range itself, but it need not necessarily be so. Indeed, Sgt Edmonds²⁹⁷ told us that the MOD was actively interested in sites outside the Spadeadam boundaries.

6.24.3 The second preference would be for the MOD to take a feed from the existing civilian system at Great Dun Fell with Raytheon²⁹⁸, upgraded or otherwise.

6.24.4 A third alternative²⁹⁹ would be to use the existing radars at Berry Hill and Dead Water Fell but with an upgrade to those systems through SENSIS or BAES³⁰⁰ although, as Mr Turner acknowledged³⁰¹, the prospects of success for those technologies are not as good as they are for Raytheon or the new radar.

6.24.5 As regards the 'reasonable prospect' that these technical solutions will succeed, we adopt the point we made earlier about the potential of the new radar and the Raytheon upgrade at Great Dun Fell. Nothing that any MOD witness has said contradicts our positive case that each of those options has a reasonable prospect

²⁹⁶ As explained in his oral evidence on 12th March 2008. He was supported in this evidence by that of Mr Warren-King – e.g in XX by Mr Coppell on 19th March (am).

²⁹⁷ In evidence in chief and in XX by WN – 28th/29th October.

²⁹⁸ See also paragraph 7.4 of **AMEC/0/61**. The Lowther Hill option was canvassed there but is not advocated by Mr Turner. Nevertheless, we repeat what we said during the Inquiry about other developers' support for that as an alternative.

²⁹⁹ Discussed, for example, in chief by Mr Ormston on 12th March and by Mr Turner at para 17 of his rebuttal statement [**AMEC/10/3**]

³⁰⁰ As to which see the Clatter trials referred to by Mr Turner at **Reference [3]** to his rebuttal proof: see also Mr Chafer's letter of 6th February 2007 which reads as follows: in dealing with the BAES and SENSIS systems ""*both systems appear to have the potential for further development and the MOD remains ready to work with both BAES INSYTE and SELEX, or any other industry partner to seek a satisfactory mitigation for the effect of wind turbines on radar performance*".

³⁰¹ In chief, 12th March, he had a "lower degree of confidence" in this option.

of success. The only relevant MOD document [MOD/3/3]³⁰² contains nothing which contradicts the mitigation options now canvassed³⁰³.

- 6.24.6 We note what the MOD says in closing at paragraph 174. Our note of WN XX of Mr Spencer³⁰⁴ is that he said that the five year timescale would be "pretty tight" but he accepted that seven years would be "better" and agreed that that would be a "reasonable timescale".
- 6.24.7 Sq Leader Deane³⁰⁵ said he had no personal opinion to offer or expertise which enabled him to offer an opinion. He had nothing to say against Raytheon nor against the Third Radar³⁰⁶ and accepted that the MOD thought all the technologies³⁰⁷ "worthy of further consideration" and that his use of the word "fanciful" at paragraph 99 of his rebuttal was "a poor choice of words".
- 6.24.8 For the MOD to suggest (in footnote 217 of its closing submissions) that the prospects of developing and implementing the Raytheon proposal within three to five years are "minimal" is not consistent with any of that evidence, nor is it consistent with the evidence of Mr Chafer³⁰⁸ who simply said that he had no knowledge that enabled him to say whether any of the mitigation proposed by APIL would or would not succeed. Nor is it consistent with the evidence of Mr Spencer³⁰⁹ who (having said nothing either way in his written or oral evidence about Raytheon) acknowledged that he had nothing to add to or subtract from Mr Turner's evidence about the prospects for that project.
- 6.24.9 The MOD cannot offer the excuse that the option of the new radar was only canvassed in the QinetiQ report [AMEC/0/61 and AMEC/10/4] so that it has not had sufficient time to evaluate it.

³⁰² The minutes of the radar sub-group meeting on 28th March 2007.

³⁰³ All that Mr Coppel put in XX was that it is "possible that these (solutions) may get nowhere" (18th March (am): to which Mr Turner accurately responded "correct". But a *possibility* of failure is not the test to be applied. Mr Coppel's XX concluded with him inviting Mr Turner to agree that, before any mitigation could be regarded as "proven" there are "issues that need to be overcome first". And do there are – but there is no contradiction of the direct evidence that there are reasonable prospects that this will be achieved.

³⁰⁴ Based on paragraph 64 of his rebuttal proof, MOD/3/4 where he had said that it was "highly unlikely" that it would be possible to site, build, and bring a new radar into operation within five years.

³⁰⁵ XX by WN on 18th June (am).

³⁰⁶ He acknowledged that, whilst he had thought one would take place, there had in fact been no technical assessment by the MOD.

³⁰⁷ Including BAES and Sensis.

³⁰⁸ On 19th June in XX by WN.

³⁰⁹ On 20th June in XX by WN.

- 6.24.10 That report was submitted on 19th February 2008. The MOD witnesses gave evidence on this issue in June/July and October 2008. It is therefore regrettable that – as it transpires – they did nothing to investigate this serious suggestion in the interim.
- 6.24.11 Nor did Mr Chafer say anything against APIL's positive case on mitigation. Indeed, he acknowledged that there was strong Governmental pressure to achieve a technical solution³¹⁰. He did not rule out – on technical or other grounds – any of the solutions which APIL have proposed. And his evidence in XX by WN concluded with his recognition that he “would be happy” if a condition could be worded in such a way as to afford adequate protection to MOD interests
- 6.24.12 The same applies to Mr Spencer. His rebuttal proofs [**MOD/3/4** and **MOD/3/7**] may have seemed to pour cold water on the various forms of mitigation proposed by APIL but his oral evidence³¹¹ on the issue was significantly more sanguine.
- 6.24.13 For example, in relation to the Third Radar, he commented that it would be “pretty tight” to find a site, build and test it and install and commission it within 5 years³¹² but went on to agree that a period of 5 to 7 years did indeed offer a “reasonable prospect” of success. He had nothing to add to or subtract from what had already been said about BAES/SENSIS. Significantly (having entirely failed to deal with Raytheon in his 2 rebuttal proofs) he simply said that he had “nothing to add” to the evidence of Mr Turner on that proposed solution³¹³.
- 6.24.14 In that case, a condition of the type proposed in **AMEC/8/3** and/or discussed in the course of the Conditions session and/or as attached to the *Middlemoor* consent would be appropriate. The Inquiry will recall that what we might describe as a “hybrid” condition (that is, somewhere between that which was proposed by NIAL and that which came from NERL) was considered during the conditions session. The MOD declined to engage in those discussions because its case was and is that no form of condition would satisfy its needs. That, as we understand it, is a similar (and, we would argue, an unhelpful) approach to that which it took at *Middlemoor*.

³¹⁰ See XX by WN on 19th June and, for example, the PM's speech in November 2007 [**AMEC/8/2F**].

³¹¹ In XX by WN on 20th June (am).

³¹² His rebuttal proof (para 64) had been phrased rather more negatively: there it was said to be “*highly unlikely*”.

³¹³ Interestingly, he had not even seen the Aviation Plan **MOD/0/22A** updating the progress and proposals.

6.24.15 Subject to what follows, it could be drafted so as to apply to both ATC and threat radar systems at Spadeadam. It would not be objectionably uncertain in any of those forms, because a considerable degree of flexibility will be needed to accommodate a rapidly developing scientific landscape. Further, it is no objection to such an approach that the Secretary of State would not be properly informed so as to take the decision “outwith his expertise” and/or these have been “core issues argued before the Inquiry”³¹⁴.

6.24.16 The fact of the matter is that this indeed an area in which the science is developing rapidly and it can safely be assumed that – as in the case of the *Middlemoor* condition, a decision to which, as we understand it, there has been no challenge – the Secretary of State will be willing and able to obtain all such information and/or advice as would enable him to take an informed decision.

6.25 **MOD THREAT RADAR OBJECTION - No adverse impact established; alternatively, manageable by condition**

6.25.1 Put very shortly, our position (we suspect, in common with the other developers) is that, now the evidence has been heard, the MOD has entirely failed to demonstrate that any one or all of these developments would have an adverse effect of any practical significance on any one of its threat radar systems and/or on the efficacy and value of the Spadeadam range in general and the training of pilots in particular.

6.25.2 Hence, this issue constitutes no basis for an objection to all or any part of the schemes which are the subject of this inquiry. Any consent need not be subject to any condition.

6.25.3 Even if, contrary to that submission, one were persuaded that there might or probably would be *some* impact that merits the imposition of a condition, we have established without contradiction [as illustrated in **AMEC/10/5/A**] that there is considerable scope for suitably located sites both inside and outside the Spadeadam range to which any one threat radar system affected could be moved. There they would be in a position that was not in line of sight of any of the Ray turbines.

³¹⁴ MOD’s closing submissions, para 562-568. We suggest it would be better to concentrate on our concept of a developing scientific landscape than upon the MOD’s soft fruit metaphor – see para 565.

- 6.25.4 Nothing which emerged in the evidence of Sq Ldr Coleman or that of Sgt Edmonds contradicts the message of page 29 of **AMEC/10/5** (the QinetiQ report) that “*the simplest way of mitigating the impact of the wind farms would be to locate the mobile radars out of LOS of the wind turbines*” and that there are “*many other potential sites within the Spadeadam range which could be used to achieve this*”.
- 6.25.5 In fact, as emerged from the oral evidence of Sgt Coleman³¹⁵, the MOD is already actively looking at off-site locations³¹⁶ and so the scope for re-siting the systems is greatly increased. It is surprising and unfortunate that the Inquiry was not told of that until the end of October 2008. It is therefore pure hyperbole for the MOD in its closing submissions (at paragraph 516 et seq) to suggest that such a simple solution would generate unmanageable and/or hugely expensive consequences. The MOD has (to use a word much favoured by its Counsel) actually done “zero” investigation of Mr Turner’s practical suggestion since it first appeared in the QinetiQ report [**AMEC/10/5**], notwithstanding these threat radar systems are, by definition, *mobile*.
- 6.25.6 The other key point (which we have already made several because it bears repetition) is that there is simply no evidence that the utility of the range (from the point of view of pilots/aircrew which is what matters) would be significantly diminished if any or all of these projects are constructed.
- 6.25.7 On the contrary, the MOD has undertaken no quantitative or qualitative assessment of any possible impact – still less one that establishes that there would be any significant diminution in the value of the training.
- 6.25.8 Nor has anyone from the MOD answered Mr Turner’s suggestion³¹⁷ that a simple instruction could be given to pilots to avoid the affected cells of the wind farm would avoid any practical difficulties³¹⁸. That would seem an entirely effective remedy and one that would not diminish the value of the training provided by the range Sgt Edmonds³¹⁹ accepted that such an instruction could be given.
- 6.25.9 In a nutshell, then, this objection is one of two things. Either it is just opportunistic – that is, it amounts to nothing more than an ill-considered introduction of an

³¹⁵ In answer to PC in chief on 28th and in XX By WN on 29th October.

³¹⁶ Rather different from the impression given by Sq Ldr Coleman in XX by WN on 18th July.

³¹⁷ See para 6 on page 29 of **AMEC/10/5**.

³¹⁸ As proposed by Mr Turner in **AMEC/10/5** and as canvassed by WN in XX with Sgt Edmond on 29th October.

³¹⁹ In XX by WN on 29th October.

unsubstantiated additional objection to bolster the original ATC objection – or, alternatively, it is all theory and no practice.

6.25.10 The only reasonable conclusion that the Inquiry could reach is that the MOD has fallen a long way short of establishing that there might – either in theory or practice - be an adverse impact of such significance even to merit the imposition of a condition. It is the developers who have taken the trouble to provide the Inquiry with the benefit of detailed scientific analyses, have answered the theoretical objection in an effective way.

6.25.11 Alternatively, a suitable condition could easily be imposed were one deemed necessary.

6.25.12 We substantiate that submission in the more detailed analysis of the issue that follows.

6.26 How the threat radar objection emerged

6.26.1 A useful starting point for deciding whether not the MOD has established the likelihood of any impact is to consider the genesis of this objection.

6.26.2 As we have seen, this is not a case in which even the MOD can claim that, as of 11th March 2008, it suddenly thought of a point hitherto overlooked or discovered it had said one thing but meant another.

6.26.3 Had it simply realised – however late in the day – that this was just another muddle, then, in the first place, one would have expected the issue to be raised informally (or formally) before it was suddenly canvassed with Mr Trott on 11th March 2008. It was not. Indeed, no explanation for what was done has yet been forthcoming³²⁰.

6.26.4 It is also worth repeating that the threat radar issue had been to the forefront of the objection to the Blinkbonny Heights project over 10 years earlier³²¹ and to the original objection to the Ray project itself back in 1996³²².

³²⁰ Despite Mr Chafer being given that opportunity in XX by WN on 7th November: nor did the MOD's counsel take the hint and offer an explanation/apology. Nor is any explanation, excuse or apology offered in the MOD's closing submissions. It is simply ignored as though it did not matter or it was beneath the dignity of such an organisation to have to explain. Or perhaps the omission of any reference to this part of the history is the product of true insouciance. But we repeat that the history is relevant to the assessment of the substance of the objection and not just to whether the MOD had behaved unreasonably.

³²¹ See **MOD/0/18**.

³²² See item 3 of **AMEC/8/2/A** and Mr Ormston in chief on 7th November. It was because of what APIL had learned from the Blinkbonny Inquiry and because there had originally been a "threat emitter" objection to the present Ray development (see **AMEC/8/2/A**) that Mr Ormston had approached the nature of the MOD objection (when it emerged) with caution and a specific concern about threat radar which he was relieved to see did not arise in the first Statement of Common Ground. This, if we may say so, is rather more illuminating an explanation of the significance

- 6.26.5 The history recorded by Mr Ormston in his threat radar proof³²³ [AMEC/8/4] is important. The question of threat radars was expressly canvassed by Sqn Ldr Jones (in the context of low flying) at a meeting in Sutton Coldfield on 8th October 2008³²⁴. But nothing further was said about threat radars during the later exchanges in October and November 2007 recorded at paragraphs 2.4 to 2.7 of that proof of evidence.
- 6.26.6 Then, on 14th December 2007, APIL specifically raised the question of the potential impact on threat radars. The MOD's response was the Draft Statement of Common Ground on 21st December 2007³²⁵. The only legitimate interpretation of paragraph 16 of that draft is that the MOD had carefully considered the possible impact on the "Electronic Warfare Threat Emitter equipment" but had judged that (unless things change) it could *accommodate* the impact" (emphasis added).
- 6.26.7 The Inquiry was told that this section was omitted from the later draft prepared by Mr Turner³²⁶ because there was no point referring to the threat radar issue in the draft produced for discussion at Sutton Coldfield on 19th February 2008 when MOD had already made clear that threat radar was not an issue.
- 6.26.8 We also draw attention to the correspondence that subsequently followed - see paragraph 2.11 and 2.12 of the history recorded by Mr Ormston in **AMEC/8/4**.
- 6.26.9 Through all of this the MOD invites us to regard it as a responsible organisation doing an important job. Such an organisation, especially one that had, through its own incompetence, failed to object to Ray until the PIM in September 2007, must be taken carefully to have considered the nature and extent of such an objection when it was (eventually) made. We (through Sq Ldr Coleman³²⁷) were told that the MOD's was a "considered" objection. That is also the message of the Minister of State writing on 22nd October 2007 [AMEC/8/2/C p5]. Yet nothing at that stage was said about any impact on threat systems.

of the history than that suggested by the MOD at para 409 et seq of its closing submissions. However, the MOD is quite right to say that no question of res judicata applies: footnote 158 of those submissions is an interesting digression into a legal concept which has absolutely nothing to do with a fact based issue such as the present, especially one in which scientific solutions and practical effects will change from site to site, from one system to another and from year to year.

323 And see **AMEC/8/2/C** examined in further XX of Mr Chafer on 7th November.

324 See paras 2.1-2.2 which Sq Ldr Coleman admitted (XX by WN on July 18th) admitted he had not read, still less checked the accuracy of the contents with Sq Ldr Jones. See also para 39 of the main proof of evidence of Mr Turner [AMEC/10/2].

325 Annex 4 to this proof of evidence.

326 Annex 5 of **AMEC/8/4** - as Mr Ormston explained on 7th November. This evidence was not challenged.

327 In XX by WN on 18th July.

6.26.10 It follows that the inescapable conclusion to be drawn is that the threat radar objection was simply thrown in, at a very late stage, as a makeweight to a more general MOD objection. But it was and is an objection which, on analysis, has proved wholly insubstantial and remains entirely unsubstantiated.

6.27 Our evidence

6.27.1 Given that the MOD³²⁸ declined to permit constructive discussion between the developers' experts and those who actually operated the systems in question during the visit to Spadeadam, and has been rather less than constructive and helpful in answering written queries³²⁹, this Applicant, like the other developers, has been limited to conducting a theoretical rather than practical analysis³³⁰.

6.27.2 Our positive case can be put shortly: any impact of the turbines upon any aspect of the threat radar systems could easily be managed in practice, by instructions to aircrew and/or (most obviously) by moving those mobile systems what is probably a very short³³¹ distance³³².

6.28 Is any potential impact established: the oral evidence of Sq Ldr Coleman

6.28.1 If one may be allowed to pay a fellow colleague and professional witness a genuine and sincere compliment, we would say that Mr Lennox's evidential analysis and Mr Fraser's cross-examination of Sqn Ldr Coleman on the basis of that analysis were (to use a word favoured by Mr Coppel) perfect paradigms of how to respond to and entirely deconstruct an apparently plausible case.

6.28.2 At the end of his evidence in cross-examination, Sqn Ldr Coleman was reduced to saying, in effect, that he believes that there would be an adverse impact on some of the systems but that he can't say why because that information remains classified.

6.28.3 His position was not at all advanced in his additional Re-Examination on 28th October 2008.

³²⁸ In the form of Mr Coppel in person on the occasion of the Spadeadam visit on 24th April 2008 (see Mr Turner's evidence in chief and in XX by PC on 16th July).

³²⁹ See, for example, **MOD/0/16, SWFL/0/33** and, in giving the location of the systems, **MOD/0/20, 23, 24, 24A, 27**. In relation to the latter category, see the observations of Mr Turner in chief on 16th July.

³³⁰ As Mr Turner explained in chief on 16th July (am), the QinetiQ analysis "assumed a worst case". In XX by Mr Coppel on 16th July he explained that there would need to be an "unusual set of circumstances for these impacts to happen"

³³¹ See **AMEC/10/5, 10/5A** and Mr Turner in chief on 16th July (am): even a few hundred metres might be more than sufficient. Further information about QinetiQ's line of sight and terrain modelling is in **AMEC/0/72** and **73**.

³³² As **AMEC/10/5** states at pages 27, 29 and Sgt Coleman conceded in XX by WN on 29th October.

- 6.28.4 The answers he gave to the Inspector's questions were revealing. Despite the time he had had to compose his thoughts, he could still quantify no adverse impact on training or operational efficiency of the range or the threat systems within it³³³. He fell back on what he suggested were the limitations of the evidence that we would be allowed to hear in a public inquiry like this.
- 6.28.5 That feeblest of residual defensive positions can be rejected with absolute confidence. Had that been the MOD's *considered* position then one of two things would have happened.
- 6.28.6 In the first place, Sqn Ldr Coleman and Sgt Edmond would and should have said so in their proofs of evidence and/or in a rebuttal statement. They did not explain that the figures publicly available were *unreliable* and that the real figures could not be provided publicly for fear of damaging the national interest.³³⁴
- 6.28.7 Secondly, if there were a genuine (rather than spurious) concern about the release of classified material³³⁵, then the appropriate steps could have been taken to ensure that the same could have been investigated in a closed session of the Inquiry³³⁶.
- 6.28.8 Neither of those things happened.
- 6.28.9 The Inquiry has to conduct its business on the basis of evidence that is properly presented and thoroughly tested. That is what has happened. We have no hesitation in saying that after Mr Fraser's comprehensive demolition of the MOD case on threat radar means that there is, quite simply, nothing left to support any case about adverse impact.
- 6.28.10 Since it can fairly be assumed that Mr Fraser's closing submissions on behalf of Wind Prospect will summarise and analyse that evidence, and APIL can have

³³³ We have already commented that his description of some un-quantified adverse impact is in stark contrast to the rather exaggerated language of para 5 of **MOD/0/10**.

³³⁴ When WN made this point in XX of Sgt Coleman on 29th October PC intervened to draw attention to para 16 of Sq Ldr Coleman's rebuttal proof [**MOD/4/2**]. But all that that paragraph says is that the MOD is not giving *exact* figures or parameters because they are classified. That is true but the objection misses the point. Far from saying that the publicly available figures which QinetiQ had used were unreliable, Sq Ldr Coleman encouraged the use of those figures by saying it was "*preferable*" to base calculations on those figures. Had he wanted to say "*it may be further but I can't say publicly how much further*" then this would have been the place for him to have said so.

³³⁵ Notwithstanding the levels of security clearance enjoyed by more than one of the developers' witnesses. Mr Turner, for example, explained in chide (12th March) that he was cleared for UK Secret.

³³⁶ See *DCLG Circular 02/2006* paras 6 to 25. When this was pointed to Sgt Edmond by WN in XX on 29th October, that option had apparently not been explained to him notwithstanding the interest he had in being discrete in his evidence as evidenced by very many of his answers in chief and XX. Perhaps the MOD had not thought of it themselves (in which case there would be another addition to the catalogue of errors we set out above).

nothing to add to or subtract from such submissions, it is unnecessary for us to burden the Inquiry with our own parallel analysis³³⁷.

6.28.11 There is certainly no comfort that the MOD can find³³⁸ in the QinetiQ material at **AMEC/10/5**.

6.28.12 That exercise, as anybody reading the report will recognise, constituted a line of sight analysis on the basis of a theoretical analysis of distances *and* radar ranges³³⁹. But Mr Turner does *not* purport to have conducted a detailed analysis of actual ranges and or the practical operation of these systems. That was the point of the Lennox analysis and was the basis of the comprehensive demolition of Sq Ldr Coleman's evidence in cross-examination by Mr Fraser, unrepaired in re-examination.

6.28.13 Certainly nothing that Mr Turner (or any other witness called by the developers) said or wrote about *theoretical* impact should prevail against the evidence of Sq Ldr Coleman (the MOD's own witness) in cross-examination about the reality that in *practice*, on the basis of the publicly available material with which the Inquiry must work, that there will be no significant effect were these developments to be built.

6.28.14 It follows that on the basis of the evidence of Sq Ldr Coleman at the end of Mr Fraser's cross-examination the Inquiry must find that there is absolutely no evidence of adverse impact on the threat radar systems.

6.28.15 Further, on the basis of that (and all other MOD evidence which we consider next), the Inquiry should also find that there is no evidence that there would be a significant (still less any quantified) effect on the utility of the Spadeadam Range and/or the value of aircrew training provided upon it were these developments to be constructed.

6.29 **No significant effect on the value of training**

6.29.1 The MOD cannot even claim to have carried out an analysis of the individual – or cumulative - impact of these developments³⁴⁰.

³³⁷ It will be borne in mind that the site of the "AMEC proposal is generally further away from the threat sites than are the sites of the Green Rigg proposal or of Steadings.." – see para 342 of the MOD's closing submissions

³³⁸ Or **SWFL/12**.

³³⁹ See **AMEC/10/5** at page 20. Table 4-2 (as is clear from the last paragraph of page 19) combines the effects of radar range of acquisition and tracking radar (as set out in Table 4-1 on page 18: as Sgt Coleman accepted in XX by WN on 29th October this, rather than *missile* range) as the relevant component.

³⁴⁰ Conceded by Sq Ldr Coleman in XX by VF on 22nd July.

- 6.29.2 Instead, it has sought to exaggerate the potential impact – as by suggesting that, were the developments to go ahead, one of “the main available approach options will have to be discarded”³⁴¹. That contention was, on analysis, obviously unsustainable.
- 6.29.3 Put at its highest, the most that the MOD can claim to have established³⁴² would be that there is a theoretical (and uncontroversial) possibility that lock might be lost³⁴³ within the small cells immediately above the turbines of each development³⁴⁴.
- 6.29.4 But it is quite impossible to see how that can be regarded as “a bad thing” given that the whole object of the training involves the acquisition of lock and testing the pilot’s attempt to lose it whether flying behind trees, the contours of the land or otherwise. Having said that, the existence of the theoretical possibility explains why QinetiQ proposed mitigation³⁴⁵.
- 6.29.5 Further, even were loss of lock to be an issue of potential importance³⁴⁶, it must be regarded as nothing more than a theoretical concern given that there is not the slightest evidence that this would matter, even were it necessary or desirable for the planes to fly through the cells.
- 6.29.6 Alternatively, there is nothing to say that any adverse impact could not be managed perfectly well by the threat radar operatives with the benefit of the camera mounted on the radar and/or with input from the Range Controller³⁴⁷ or

³⁴¹ Para 9 of Sq Ldr Coleman’s rebuttal proof, **MOD/4/2**. See XX by WN on this issue on 18th July (pm).

³⁴² As Mr Turner explained in evidence in chief on 16th July (am) and in cross-examination .

³⁴³ The lesson of **MOD/0/11**, as accepted by Sq Ldr Coleman in XX by WN on 18th July (pm) and by VF on 22nd July (pm) is that it is loss of lock (the tracking rather than acquisition radar) which matters. That was also Mr Turner’s understanding of the MOD operatives’ real concern, arising out of such conversation with MOD personnel as he managed to have – see XX by Mr Coppell on 16th July . Mr Turner explained that the chance that the turbines might prevent the *acquisition* of lock was “very unlikely” (16th July, am) if the aircraft is outside the cells and that, if lock were lost, it could be re-acquired quickly (in about 10 seconds) and without difficulty (16th July pm).

³⁴⁴ See **AMEC/10/5 - Figures 4.2-4.8** and XX by WN of Sq Ldr Coleman on 18th July (pm) considering the lessons of the Culdrose trials – **MOD/0/11**. Note that the document expressly records that Skyguard was chosen as *representative* of the actual systems (including the SA-6, SA-8) which were then in use at Spadeadam.

³⁴⁵ As Mr Turner explained to Mr Coppell on 16th July (pm)

³⁴⁶ It was certainly the lesson learned from the Culdrose trials - **MOD/0/11**. It should be noted also that whatever Sqn Ldr Coleman may now say, paragraph 5 on the first page of **MOD/0/11** makes it clear that the Skyguard was chosen as representative of the systems at Spadeadam which included the SA6 and SA8. We suggest that that is how the Culdrose trial should be regarded – rather than as an exercise that was “exclusively concerned” with loss of lock as para 422 of the MOD ‘s closing submissions suggest. Loss of lock was, moreover, what Mr Turner was told (unofficially, on his visit) was the real concern of the Spadeadam operators.

³⁴⁷ Or technologies such as IFF/SSR , and perhaps additional screens– all as explained by Mr Turner in chief on 16th July (am) and in XX by Mr Coppell (pm). See also pp 27-29 of **AMEC/10/5**.

whether it would happen with sufficient frequency to be even slightly significant³⁴⁸ as regards the workload of the threat radar operatives/controllers³⁴⁹ or because it diminishes the value of the training for the pilots.

6.29.7 Of course, none of this arises anyway if it is accepted that Mr Fraser has entirely dismantled any case (based on publicly available material that the Inquiry can consider) that there would be any impact in practice given the actual sites at which the particular systems have been or are likely to be used.

6.30 Were mitigation to be needed

6.30.1 Even if, contrary to the foregoing, and in the absence of any quantitative or qualitative evidence as to the practical consequences of there being any impact of these turbines on any part of the threat radar systems, there were judged to be a sufficient possibility of an adverse impact to require mitigation, then each of the developers is able to say the same thing.

6.30.2 First, any residual concerns that might exist could probably be very easily addressed by the MOD in practice - perhaps as it had in mind when contributing to the 21st December 2007 Draft Statement of Common Ground - either by greater interaction between the Range Controller and threat radar operators³⁵⁰ and/or by increased use of IFF and/or by use of SSR.

6.30.3 Alternatively (and simplest of all) any such effect could be eliminated by moving what are, by definition, moveable threat radar systems, probably a very short distance³⁵¹ to the point at which they would not be in direct line of sight. In fact, they would be best placed³⁵² just at the border of blue and red, a very wide area³⁵³.

6.30.4 The idea that there would not be anywhere suitable within or outside the Spadeadam site for such relocation is entirely unrealistic - at least coming from a witness such as Sq Ldr Coleman who had apparently carried out absolutely nil

³⁴⁸ It is remarkable that the MOD was either unable or unwilling to draw on its experience of the impact – if any – of Kirkheaton on the systems at, say, Albemarle Barracks: the Inquiry may remember how Sq Ldr Coleman attempted to deal with XX on this issue by WN late on 18th July.

³⁴⁹ Of which there has been no assessment – Sq Ldr Coleman in XX by WN on 22nd July (am)

³⁵⁰ Dealt with in XX by WN of Sq Ldr Coleman on 22nd June (am) and by Mr Turner in chief on 16th July (am)

³⁵¹ Again, as Mr Turner explained in evidence in chief on 16th July (am).

³⁵² Mr Turner explained this by reference to **AMEC/10/5/A/5-1** on page 28 of **AMEC/10/5**.

³⁵³ Mr Coppell made no headway whatsoever in XX on 16th July (pm) in suggesting that there might be serious obstacles were it necessary to seek such a site. On the contrary: we know the MOD is actively interested in sites beyond the boundaries of Spadeadam

investigation of that practical opportunity notwithstanding the point having been drawn to his attention in the QinetiQ report.

6.30.5 In any case, one would have hoped that someone at the MOD might have thought this proposal was worthy of investigation anyway as soon as the threat radar issue was raised back on 11th March 2008. But apparently Sq Ldr Coleman has carried out no such investigation, nor has anyone else at the MOD, despite having (now) had several months to study the QinetiQ report.

6.31 What, if any, condition is needed for threat radar?

6.31.1 In those circumstances, we submit that there is simply no need for a condition with regard to the threat radar issue.

6.31.2 However, were it otherwise, it would be easy enough to adapt the kind of condition that might be suitable for other MOD interests.

6.31.3 Those that we commend to the Inquiry include the condition discussed and proposed by APIL during the conditions session but we remind the Inquiry of the condition attached to the Middlemoor consent [AMEC/8/2/G] and that which is described in paragraph 11.2 of Mr Ormston's rebuttal proof of evidence [AMEC/8/3].

7. Noise – matter (f) (and shadow flicker and electromagnetic interference)

7.1.1 Volume 2 of the ES³⁵⁴ [CD 14] contained a thorough analysis of the potential for noise to be generated by the Ray development. The issue is also addressed in the Planning Statement [CD 13].

7.1.2 The assessment process has been conducted entirely in accordance with the guidance in *ETSU-R-97* [CD 271]³⁵⁵ and has been supplemented by the Acoustics Report of August 2007 [AMEC/4/3, 4/4, 4/5] and the evidence and analysis of Peter Simpson.

7.1.3 **AMEC/4/5**, at paragraph 3.2, contains the tabulated results of a modelling exercise undertaken to determine the noise implications of excluding the Wanney 4 from the development.

³⁵⁴ See particularly Chapters 18 and 17

³⁵⁵ According to which criteria (rather than WHO guidelines) these developments should be judged, as is clear from PPS 22 and numerous other wind farm decisions where the point has been debated.

7.1.4 Although one fully appreciates the concerns expressed by someone such as Mr Clipsham that the noise generated by the turbines may damage the peaceful environment that he treasures³⁵⁶, the fact remains that the assessment of potential noise from construction, operation and de-commissioning of the wind farm has been undertaken (as Mr Simpson puts it in paragraph 1.1.16 of his proof **AMEC/4/1**)

"fully in accordance with all relevant procedures, as specified in the relevant English planning policies, and the British/International Standards and guidance documents".

7.1.5 The effect of Mr Simpson's evidence is summarised in paragraphs 1.1.17 and 1.1.18 of that proof:

"the assessment shows that stringent noise criteria applicable to all daytime and night-time periods can be achieved at all residential dwelling in the vicinity of the proposed wind farm" so that there is "no reason why noise should be considered as a reason for refusal of the proposed development".

7.1.6 Paragraph 3.3 of **AMEC/4/5**, summarising the effects of the modified scheme, records – we submit without any effective contradiction – that the ETSU criteria³⁵⁷ will be met in all circumstances with only a theoretical and remote chance of exceeding those limits by a very small margin at 6 properties at one wind speed if all Vesta V 90 machines³⁵⁸ were operating in unconstrained Operation Mode 0.

7.1.7 Mr Simpson³⁵⁹ has also addressed cumulative effects. Again, the Inquiry can be confident on the basis of his evidence that the ETSU criteria will be satisfied.

7.1.8 We invite the Inquiry to accept that evidence and, further, to accept that Mr Simpson in his rebuttal evidence [**AMEC/4/6 and AMEC/4/7**] and in his oral evidence to the Inquiry³⁶⁰ has dealt comprehensively and conscientiously with a variety of concerns expressed by CREDIT, Thockrington PCC, Mr Clipsham and Mr Short³⁶¹.

³⁵⁶ And no doubt is in marked contrast to the world in which he lived when at Mercury Records – as he wryly observed when speaking to the Inquiry on 29th October.

³⁵⁷ Note that in answering questions from Mr Short on 12th June, Mr Simpson confirmed that the noise levels at Cornhills and Larkhall in particular had been assessed against the ETSU criteria.

³⁵⁸ Albeit it will not necessarily be these machines which are ultimately used – see **AMEC/0/49, and AMEC/0/53**.

³⁵⁹ at Para 4 of **AMEC/4/5**.

³⁶⁰ On 12th June 2008.

³⁶¹ Mr Simpson responded to Mr Archbold's concerns shortly after the close of his cross-examination.

- 7.1.9 All such concerns will be met by the imposition of conditions to ensure that noise is monitored and controlled to meet accepted criteria. The fact that different turbines³⁶² may be used rather than those originally envisaged is neither here nor there: whatever turbines are used, they will still have to comply with the constraints imposed: it is those conditions which are the effective means of control³⁶³.
- 7.1.10 Neither shadow flicker nor electromagnetic interference is likely to cause any problems³⁶⁴; but a condition is agreed.

8. Impact on Historic Environment – Matter (g)

8.1 The Issue

- 8.1.1 Considerable information on the – very limited – direct and indirect effect of the Ray development can be found in paragraphs 62 to 69 of the Chapter 11 of Volume 2 of the ES [CD 14], in Chapter 9 of the Planning Statement [CD 13] and in the Further Information (November 2006) which also provided³⁶⁵ a cumulative assessment in conjunction with the operational wind farm at Kirkheaton and the developments at Steadings and Green Rigg.
- 8.1.2 It will also be remembered that the internal advice³⁶⁶ to both Northumberland County Council and TDC³⁶⁷ took issue only with the Wanney 4 and, otherwise, was concerned with cumulative impact rather than the adverse impact of Ray alone.
- 8.1.3 Clearly, Ray is particularly well placed on this issue given its limited impact, either alone or in conjunction with other developments³⁶⁸. In particular, Mr Best, giving evidence on behalf of both TDC and NCC made it clear³⁶⁹ that, following the

³⁶² We refer again to Mr Ormston's evidence and the Note on "machine options" – AMEC/0/49.

³⁶³ As Mr Simpson explained in answer to Mr Short on 12th June

³⁶⁴ See Chapters 17 and 19 of Vol 2 of the ES [CD 14]

³⁶⁵ **CD 18** - at pages 13 to 18.

³⁶⁶ See paras 19.2.4 and 19.2.7 of APIL's Statement of Case.

³⁶⁷ TDC's SOC [**SOC 4a**] had suggested (before the Wanney 4 were deleted) that it would (in conjunction with NCC) "*present evidence to demonstrate that the Ray Wind Farm proposal would have an adverse impact both when taken in isolation and cumulatively with...Green Rigg...*"

³⁶⁸ Note the exchange between AC and Mr Colcutt in XX on 20th May: he asserted that "one could have 16 Ray, 13 Green Rig and 7 Steadings turbines without a harmful effect on cultural heritage".

³⁶⁹ In evidence on 21st May: in answer to VF in XX on 22nd May he explained it was not just because of Ray's location and the deletion of the Wanney 4 but also because of Ray's more widely spaced layout that he came to his opinion

deletion of the Wanney 4 from the Ray scheme, the concerns of those bodies on the cultural heritage issue had been satisfied³⁷⁰.

8.1.4 English Heritage had previously adopted the same basis of objection as TDC in relation to the hillfort and the Wanney 4. However, in their statement [EH/2/2] they make it clear that they would remove their objection were the Wanney 4 to be deleted. That has now occurred.

8.2 National and local policy

8.2.1 The relevant national policy is to be found in PPG 16 [CD 80] and PPG 15 [CD 79].

8.2.2 The relevant Development Plan policies are Regional Planning Guidance 1 [CD 34], The Northumberland County and National Park Joint Structure Plan [CD 35] and Tynedale District Local Plan 2000 [CD 37].

8.3 Stephen Carter's opinion in summary

8.3.1 As Mr Carter acknowledged in his proof³⁷¹, the key monuments in the vicinity are Hadrian's Wall and the hillfort at Great Wanney Crag.

8.3.2 He confirmed³⁷² as accurate the finding of the ES³⁷³ that the development would only have extremely limited direct effects on two minor sites. He did not agree³⁷⁴ with the assessment in the ES of indirect effects. His view (in relation to the 20 turbine development) was that it was only the Great Wanney Crag univallate hillfort which might be seriously affected.

8.4 Great Wanney Crag

8.4.1 Mr Carter's opinion was and is that the impact on that would be reduced to one of "negligible significance" once the Wanney 4 were removed³⁷⁵.

8.4.2 As regards cumulative impact³⁷⁶, this would only be moderate (impact magnitude rather than significance). With the removal of the Wanney 4, that impact/significance would reduce to minor/negligible given a combination of Ray and Steadings.

³⁷⁰ AC, in XX of Mr Colcutt on 20th May, put it to him that "*in relation to Ray, the Inspector has before him sufficient information to grant consent for Ray with no impact on cultural heritage*". Mr Colcutt agreed.

³⁷¹ AMEC 6/1 at paragraph 2.3.

³⁷² At para 3.3 of his proof.

³⁷³ CD 14 at section 11.5.1.

³⁷⁴ At para 3.6 of his proof.

³⁷⁵ At para 5.22.

³⁷⁶ See para 5.23 to 5.29 of his proof.

8.5 Hadrian's Wall

- 8.5.1 The nearest Ray turbine would be at least 13.5k to the north³⁷⁷, well outside its landscape setting as defined in local policy³⁷⁸ or otherwise impact adversely upon Hadrian's Wall or its setting as defined in other policy³⁷⁹.
- 8.5.2 The position of English Heritage³⁸⁰ is that the Ray turbines on their own would not constitute an unacceptable impact on this most important World Heritage Site.
- 8.5.3 From a cumulative point of view, given that the turbines are some 10k to 19k away from selected viewpoints³⁸¹, the setting of Hadrian's Wall will not be adversely affected by the addition of Ray.

9. Conditions – Matter (i)

- 9.1.1 Conditions have been agreed with TDC and these were further discussed and finalised at the conditions session with input from the Inspector. There are still some ongoing discussions with TDC to finalise the wording of a few conditions. The finalised agreed conditions will be submitted to the Inspector in due course.

10. Other Relevant Issues - Matter (j)

10.1 Tourism

- 10.1.1 It is understandable that people are concerned that there might be an adverse impact on tourism. But it is a concern without real foundation and it is re-assuring that TDC has recognised that its objection on this basis – at least as regards Ray – cannot be sustained. That is a realistic approach, consistent with all the evidence which we summarised in our Statement of Case at section 15.
- 10.1.2 All the available evidence is to the effect that it cannot be and has not been demonstrated that such development(s) would actually have any significant³⁸² harmful effect.

³⁷⁷ See para 7.7 of Mr Carter's proof.

³⁷⁸ Local Plan Policy N17 [CD 37] and saved policies at CD 35c.

³⁷⁹ RPG 1 (ENV 14, 15) [CD 34]; Structure Plan [CD 35-36] Policy HC1, Local Plan [CD 37] Policies BE 25, 26.

³⁸⁰ Recorded in Mr Carter's proof at paras 6.2-3.

³⁸¹ See para 6.9.

³⁸² As Mr Brooks recognised, for example at para 76 of his report on the *Carsington Pastures* appeal [CD 130(tt)]: See CD 326.

10.2 Hydrology and Hydrogeology

10.2.1 It is understandable that someone such as Mr Clipsham³⁸³ should be concerned that there might be an adverse impact on his water supplies.

10.2.2 However, the Inquiry can safely proceed on the basis that those concerns will be satisfied by the detailed hydrological assessment, the effects of which are summarised in Volume 2 of the ES³⁸⁴ [CD 14]. Further, the condition discussed and agreed at the Conditions Session will ensure the protection of all local water supplies.

10.3 Ornithology, the Habitat Management Plan and Ecology generally

10.3.1 As the Inquiry knows from Lord Devonport's statement [AMEC/0/54], the developer and the landowner have both long recognised the importance of protecting and enhancing the flora and fauna of the area. The development has proceeded with that consideration as one of great importance. The Inquiry can safely conclude that the wind farm would actually benefit the habitat indirectly (for the commercial reasons explained in Lord Devonport's statement) and directly because of the measures set out in the Habitat Management Plan and ES³⁸⁵.

10.3.2 The Inquiry also heard from Stuart Lowther who has been involved with this Project since 2006. His proof [AMEC/3/1] contained a detailed and compelling analysis of the likely ecological and ornithological implications of the development. As he suggests, the Inquiry should take seriously the positive advantages of active management of the land which forms part of the HMP. In a nutshell, the position is that the main area of the HMP will be within the northern part of the site whilst the remainder of the site will be managed in accordance with good practice of moorland management³⁸⁶.

10.3.3 When he gave oral evidence on 12th June 2008, Mr Lowther was able to assure Mr Archbold that no turbines would be built on blanket bog and, where there were any road crossings, they would only be at a shallow level so that, with appropriate

³⁸³ As he explained to the Inquiry on 29th October.

³⁸⁴ See Table 10-8 at pages 10-21 and chapter 10, paras 127-132: see also chapter 4.8 of the Planning Statement [CD 13].

³⁸⁵ We hope it suffices to refer to the brief summary and documents identified in our Statement of Case at sections 16 and 17, particularly to chapter 11 of volume 1 of the Further Information in November 2006 [CD 18] and the addendum at AMEC/0/59.

³⁸⁶ Including heather burning and operational considerations.

construction techniques, any problems would be avoided. He also explained³⁸⁷ why the paper submitted by Mr Dean to the Scottish Parliament was something of which one should – at least – be “*highly sceptical*”.

- 10.3.4 To put the matter shortly, we submit that on the basis of all the evidence the Inquiry can be confident that the Ray wind farm would cause no significant harm to any ecological interests and that it is probable that the net effect (if any) will be positive.

³⁸⁷

By reference to **AMEC/0/70**.

11. Summary

- 11.1.1 We draw all these threads together very briefly as follows:
- (i) This project is brought forward in response to the urgent regional, national, and international need to address climate change by the promotion of renewable energy developments;
 - (ii) Ray, as it is and where it is, accords with the development plan and, particularly, with the locational guidance within it;
 - (iii) The Ray site is technically viable both as regards the energy that would be generated and connection to the grid;
 - (iv) The Ray site will have positive benefits particularly from the point of view of economic and ecological considerations;
 - (v) Ray is ranked first amongst the projects by the Local Planning Authority for reasons that TDC has clearly explained in its submissions;
 - (vi) The Ray development has no significant impact on cultural heritage: there is now no objection on that basis from NCC, TDC and English Heritage;
 - (vii) The impact on aviation interests should be manageable by conditions, particularly in the light of the technical mitigation which has been proposed;
 - (viii) All other potentially adverse impacts (noise, hydrology and so forth) can similarly be managed by conditions.

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8th December 2008