

**Noise and Construction: Miscellaneous Submission following the cross-examination of Mr Hayes and Mr Pears regarding the Steadings Borrowpit proposal.**

1. In our cross-examination of Mr Pears and Mr Hayes we discussed the use of *Minerals Policy Statement 2: Controlling and Measuring the Environmental Effects of Minerals Extraction in England (MPS 2)* (extracts submitted as CREDIT 9/4) and *Minerals Policy Statement 2: Annex 2: Noise* (extracts submitted as CREDIT 7/10). Also submitted at that time was *Minerals Policy Statement 2 Annex 1: Dust* (extracts submitted as CREDIT 0/22)
2. It is CREDITs case that Noise and other potential environmental impacts such as Dust from borrow pits should be a matter for consideration at this Inquiry under the provisions set out in Minerals Policy Statement 2. It is our case that borrow pits require a level of Environmental Impact Assessment greater than that provided by the Steadings EIA or in subsequent evidence. Following the cross-examination of Mr Pears CREDIT were asked by the Inspector to consider the matter further and come back to the Inquiry or seek explanation from HJ Banks and then bring back any matters arising.
3. In the light of the Inspector's request, CREDIT has undertaken further research and identified two further documents that are relevant to this matter, these being *Minerals Policy Statement 1: Planning and Minerals (MPS1)* published November 2006 by Dept of Communities and Local Government and *Planning and Minerals: Practice Guide* also published November 2006 by Dept of Communities and Local Government.
4. We feel certain that all of the developers, especially HJ Banks and AMEC with their wider business interests will be well aware of these documents and their contents.
5. MPS 1 is absolutely clear on the matter of borrow pits and states on page 16:

***“7. Borrow pits***

*7.1 Borrow pits can be a suitable way of providing material from local sources for individual major construction projects without the need to transport it over long distances. Identifying, assessing, operating and restoring borrow pits should be undertaken to the same standards as those for long-term mineral workings and should be subject to similar levels of consideration of environmental impacts.”*

6. There can be no doubt from this statement that Steadings borrow pit should have been assessed under the Minerals Policy Statement provisions. Having reviewed AMECs proposals for borrow pits on Ray Fell, CREDIT also argues that these proposed minerals works should be reassessed under this policy guidance. We note that the AMEC Environmental Statement work did precede the publication of Minerals Policy Statement 1.

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7. Paragraph 5 page 4 of MPS 1 states: *“The policies in this statement should be taken into account by regional planning bodies (RPBs) in the preparation of Regional Spatial Strategies (RSS), by the Mayor of London in relation to the Spatial Development Strategy for London, and by MPAs and local planning authorities (LPAs) in the preparation of local development documents (LDDs) and any development plans which are being taken forward to adoption under transitional arrangements. The policies in this statement will also be important to the minerals industry and all other interested parties. They are material to decisions on individual planning applications and if reflected in a LDD and RSS, will form part of the statutory Development Plan. Where these policies are not reflected adequately in forward planning, or taken sufficiently into account in relevant development control decisions, the Secretary of State may use her powers of direction to seek changes to the documents or may intervene in the consideration of planning applications.”*
8. Secretary of State is clearly insistent that the provisions set out in these documents are taken into account by LPAs, MPAs and in Development Control decisions when considering individual planning applications and may intervene if they are not. It is CREDIT’s argument that the proposals before this Inquiry are clearly within the scope of that direction given by the SoS.
9. In cross-examination of Mr Pears we referred to the Inquiry document X/9 and in particular the letter from Mr Ian Campbell of Northumberland County Council dated 26<sup>th</sup> October 2007. Page three paragraph 3 of that letter talks about the need for further information before a definitive conclusion can be reached. It goes on to say:  
  
*“Without further information regarding the proposed number of lorry movements it is not possible to weigh up this proposal against importing the material from other local quarries, such as the established Divet Hill quarry to the south of Great Bavington, as required under Policy A8*  
  
*Having regard the proposed scale of the operations, and its temporary nature, it is likely based on the authority’s experience of other similar operations, that appropriate conditions could mitigate the impact on residential amenity and environment”*  
  
*Conclusion*  
  
*Officers have examined the amended site layout and the supplementary environmental information brought forward by the applicant in respect of the Steadings Wind Farm. The County Council has concluded that there are no grounds on which to modify their objections to the Steadings Wind Farm.*  
  
*The County Council would welcome any further correspondence on the above scheme in the future”*
10. We discussed this letter with Mr Campbell after the cross-examination to try and determine why the County Council had asked for further information then

## Campaign for Responsible Energy Development In Tynedale

apparently contradicted that requirement with the words “.....*that appropriate conditions could mitigate the impact on residential amenity and environment*”.

11. Mr Campbell agreed that the letter was unclear with regard to the borrow pit and the Council's intentions but he was unable to comment further because the borrow pit content of the letter was supplied to him by the Minerals Planning Team.
12. CREDIT believes that the lack of clarity in the letter has led Steadings Wind Farm Ltd and this Inquiry to the mistaken conclusion that the County Council do not require further information.
13. It is CREDIT's position that without this further information there can be no decision taken as to the appropriateness of a borrow pit at Great Bavington especially given the proximity of the Divet Hill quarry. The previous version of the Steadings proposal showed a haul road to Divet Hill quarry which is a mere 1km from part of the wind farm access track and about 4km from the Steadings site entrance by road.
14. It is also CREDIT's contention that the County Council could not have decided that the Steadings borrow pit would be acceptable without having first gathered further information and having assessed the proposal against the requirements in MPS 1 & 2. It is our argument that to do so would be to act *ultra vires*.

### **Evidence in support of CREDIT's argument.**

15. The following extracts from MPS documents should be considered alongside the Steadings borrow pit proposal and support our argument that further EIA work is required in respect of this proposal to decide; 1) that the borrow pit is in an acceptable location and 2) that the appropriate assessments and mitigation are in place.
16. We note that the AMEC Ray Fell proposal does have some additional assessment work in its Technical appendices relating to dust and water courses. We also note that ION acoustics cite MPS 2 in their noise evidence. However comparing against the MPS 1 and 2 requirements we believe further work is needed.

### **Minerals Policy Statement 1: Planning and Minerals (MPS 1)**

17. Paragraph 10 “National Policies for Minerals Planning” page 5 states:

*“To achieve the objectives and measures set out above, RPBs, MPAs and LPAs should carry out their functions in relation to the preparation of plans and in relation to development control, in accordance with the national policies for minerals planning set out below:*

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18. Paragraphs 11 to 19 then set out provisions to be followed under various headings. CREDIT has taken particular note of the provisions set out in paragraphs 14, 17 and 19 which are relevant to the wind farm borrow pit(s) being proposed at this Inquiry.

19. CREDIT argues that in relation to paragraph 14 *Protection of heritage and countryside*:

- insufficient consideration has been given to the proximity of the borrow pit to the SSSI on the fell north of Bavington;
- insufficient consideration has been given to endangered wildlife such as the white-clawed crayfish which may be effected by pollution of water courses adjacent to Steadings borrow pit;
- insufficient consideration has been given to the effects on landscape, cultural and historic heritage, particularly the impact on Great Bavington Conservation area;
- insufficient consideration has been given to the setting of listed buildings such as Ladywell and;
- no consideration has been given to the effects on the wider countryside including “*quiet recreation*” eg St Oswalds Way which passes by the Steadings borrow pit site.

20. CREDIT argues that in relation to paragraph 17 *Environmental Protection*:

- no evidence is given to suggest that any work has been undertaken “*to protect and enhance the character of surrounding rural and urban areas by careful planning and design of any proposals for minerals development*”;
- no details are given of the “*sound working practices to prevent, where feasible, or if not to minimise, environmental impacts to acceptable levels during the preparation, working and restoration stages, including the provision of improved transportation within and from sites*”;
- no evidence is given of the developers “*...environmental management practices [in] their company procedures and apply[ing] them during the operation of their sites*”;
- no evidence of “*.....operators ..... seek[ing] and maintain[ing] effective consultation and liaison with the local community before submitting planning applications and during operation, restoration and aftercare of sites*”;
- no evidence of the LPA or MPA having taken MPS 1 & 2 into account in stating “*the criteria to be used in assessing mineral proposals and in*

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*formulating planning conditions, to ensure that permitted operations do not have unacceptable adverse impacts on the environment or human health.”*

- no evidence provided to “.....ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations caused by mineral extraction are in conformity with national guidance and are controlled, mitigated or removed at source, so as to reduce to an acceptable level any potential adverse impacts on neighbouring land and property;
- no evidence given with regard to “..... the establishment of mineral site transport plans in consultation with the local community, dealing with matters including routing, off-site parking, considerate driving and complaints procedures;”
- no evidence is given of “consider[ation] in association with the Environment Agency, the potential for mineral developments, individually or cumulatively, to affect the flow, quality and quantity of surface and groundwater supplies and the water table, taking account of best available options in preventing leachate generation and water pollution;”
- no evidence is given to “ensure that proposals for mineral extraction and the storage and tipping of mineral wastes are designed, and appropriate monitoring procedures set up, to ensure that the operation and restoration of the site does not create land instability and help prevent pollution of soil, air, surface water and groundwater;

[.....]

21. CREDIT argues that in relation to paragraph 19 Restoration:

- no evidence is given that the developer has “take[n] account of the opportunities for enhancing the overall quality of the environment and the wider benefits that sites may offer, including nature and geological conservation and increased public accessibility, which may be achieved by sensitive design and appropriate and timely restoration;
- no evidence is given that the developer has “ consider[ed] the opportunities that sites may offer for the development of new woodland areas and for providing networks of habitats;
- no evidence is given that “ in order to avoid the possibility of mineral working resulting in dereliction, ensure land is reclaimed at the earliest opportunity and that high quality restoration and aftercare of mineral sites takes place through the provision of guidance on suitable or preferred after-uses and reclamation standards, and the use of conditions and legal agreements, as appropriate;
- no evidence is given that “ensure proposals for restoration and aftercare of sites include details of appropriate phasing of progressive restoration, final landform and landscape and monitoring procedures;

**Planning and Minerals: Practice Guide**

22. CREDIT believes that the following paragraphs are relevant to these borrow pit proposals:

*“Applications outside areas identified for future working*

43

*.....Borrow pits are mineral workings provided specifically for, and located close to, specific major projects, and not for general supply purposes. Where new information about mineral resources significantly changes the overall context of the plan, it may justify a review of that part of it. The key point is that MPAs should be satisfied there are good reasons for permitting such applications, after having considered all the relevant circumstances.*

*Environmental impacts*

45

*Relevant and effective planning conditions can mitigate environmental impacts, and are usually essential if development is to be permitted. Most environmental effects can be covered by suitable planning conditions, although some, such as discharges of pollutants to air or water, are dealt with separately by the EA through environmental protection legislation.*

46

*The principal impacts of mineral working, and the environments on which they may have an effect, are considered to be:*

- *noise*
- *dust/air quality*
- *blasting/vibration/fly rock*
- *mineral waste*
- *visual intrusion into the local setting and the wider landscape*
- *archaeological and heritage features*
- *traffic*
- *groundwater*
- *surface water*
- *land instability*

## Campaign for Responsible Energy Development In Tynedale

- *landscape character*
- *internationally or nationally designated, protected or sensitive species and plant and wildlife habitats*
- *nationally protected geological and geomorphological features.*

47

*MPS2: Controlling and Mitigating the Environmental Effects of Minerals Extraction in England (March 2005) sets out the principles to be followed in considering the environmental effects of mineral working. Technical annexes on noise and dust support that guidance. A further annex or MPS on mineral wastes is likely to be needed to take into account the requirements of the EU Mine Waste Directive, when implemented. MPAs should also have regard to PPS23: Planning and Pollution Control, Annex 1 of which covers development and its impact on air and water quality. Advice on the stability of land in quarries, surface mines and related structures is contained in MPG5: Stability in Surface Mineral Workings and Tips. For coal and colliery spoil disposal, further advice is given in Annexes A and C to MPG3: Coal Mining and Colliery Spoil Disposal.*

*Restoration, aftercare and afteruse*

48

*Unlike many other forms of development, mineral extraction is a temporary use of land, although it may be long-term. Land from which minerals have been extracted may be restored to its former condition or to a number of beneficial new uses. Sustainable minerals development aims to preserve the land's long term potential to support the widest range of afteruses in the future by achieving high standards of working and restoration. Guidance on good technical practice for the reclamation of sites to a range of after-uses is contained in MPG7: The Reclamation of Minerals Workings and in a series of research reports published by the Department and its predecessors.*

49

*Proposals for the restoration and aftercare of a site should form an important part of the information submitted with a minerals planning application. Details of the materials to be used for site restoration, which could include overburden from mines and quarries, soils and soil-forming materials, should be specified. Where there is serious doubt about whether satisfactory reclamation can be achieved at a particular site, there must also be doubt whether permission for mineral working should be given. Similarly, where existing mineral sites are due for first or subsequent periodic reviews of conditions under the 1991 and 1995 Acts, MPAs should test the proposed new conditions against current best practice, and amend those conditions that are considered inadequate as a result. The use of mineral waste in site restoration should also conform to any relevant waste management controls operated by the EA, and in due course, the competent authority arrangements in the implementation of the 2006 EU Mine Waste Directive.*

50

*Mineral workings often provide the opportunity in their restoration and after-use to create new wildlife habitats, landforms and sites of geological interest. In particular they should make a contribution, wherever possible, towards achieving specific targets set out in the UK Biodiversity Action Plan and local Geodiversity Action Plans. In addition, they can contribute in certain locations to initiatives such as the creation of the National Forest or Community Forests. Opportunities may exist to contribute to such initiatives even in cases where nature conservation or woodland may not be the primary end use of a site. PPS9: Biodiversity and Geological Conservation (August 2005) provides further advice.”*

**Minerals Policy Statement 2: Controlling and Measuring the Environmental Effects of Minerals Extraction in England (MPS 2)**

23. The policy references within MPS2 relevant to the borrow pits under consideration at this Inquiry are too many to reproduce in this submission. We have therefore reproduced the following as proof to the relevance of the material

*“Introduction*

*[.....]*

2.

*.....Since minerals can only be worked where they are found, and as this may be in environmentally-sensitive or designated landscape areas and/or in close proximity to communities, the need to keep these impacts to an acceptable minimum in the planning and operating of extraction sites is a high priority. Where adverse environmental effects cannot be adequately controlled or mitigated through the design of proposals or the attachment of conditions, planning permission should be refused.*

*[.....]*

**PURPOSE OF THIS GUIDANCE**

5.

*This Statement sets out how MPAs should minimise any significant adverse environmental effects that may arise from minerals extraction by:*

- *framing policies in development plans;*
- *considering planning applications; and*
- *considering reviews of planning consents under the provisions of the Environment Act 1995.*

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*In securing this aim, MPAs should liaise appropriately with Environmental Health Authorities (EHAs), relevant government agencies (i.e. the Environment Agency, English Nature, the Countryside Agency and the Health & Safety Executive), voluntary conservation and environmental groups (i.e. the Wildlife Trusts, The Royal Society for the Protection of Birds (RSPB) etc.), local communities, developers and minerals operators to secure improvements in the environmental performance of minerals extraction. **Industries involving similar processes (i.e. aggregates recycling, construction and waste disposal etc.) should take into account relevant elements of this Statement in planning their own development proposals, in the expectation that they will be applied by planning authorities.** [Emphasis added]*

### SCOPE AND STRUCTURE

6.

*This Minerals Policy Statement (MPS) comprises an overarching document, supported by technical annexes setting out policies and good practice on specific environmental effects.*

*This Statement provides policy on:*

- *the planning considerations for the formulation of development plans, and decisions on individual planning applications and formulating planning conditions; and*
- *environmental management systems (EMSs) and community relations.*

[.....]

### ENVIRONMENTAL IMPACT ASSESSMENT

8.

*An Environmental Impact Assessment (EIA) should ensure that the likely significant environmental effects of a proposed development are fully understood and taken into account before development is allowed to go ahead. Under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000, an EIA is mandatory for new mineral extraction sites and/or extensions to or reviews of permissions for existing sites of more than 25 hectares. **Below this threshold, new sites and modifications to existing sites require an EIA if, without any mitigatory measures, they would be likely to have significant environmental effects.** Criteria for assessing the need for EIA in Schedule 3 of the 1999 Town and Country Planning Regulations are based on the characteristics of the development, its location and the characterisation of the potential impact. **Mineral working applications and reviews of old mineral permissions in or affecting the following designations** (National Parks, the Broads, Areas of Outstanding Natural Beauty, World Heritage Sites, Scheduled Monuments,*

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*Sites of Special Scientific Interest and land to which Nature Conservation Orders apply and international conservation sites (e.g. those designated under the EU Habitats Directive or the Ramsar Convention on Wetlands)) should be subject to the most rigorous examination, normally including an Environmental Statement (ES), regardless of the size of the site. Guidance is given in DETR Circular 02/99 Environmental Impact Assessment. [Emphasis added]*

[.....]

12.

*Policies and proposals should take into account the level of existing activity and impacts, the duration and nature of proposals for new or further working, and the extent of impacts which a particular site, locality, community, environment or wider area of mineral working can reasonably be expected to tolerate over a particular or proposed period. With respect to an individual site, the effect of all relevant impacts (i.e. of noise, dust, traffic, on landscape etc.) should be considered objectively. Impacts that are acceptable individually should not be regarded as unacceptable in combination without a proper assessment. MPAs should also have regard where relevant to cumulative impacts of simultaneous and/or successive working of a number of sites in a wider area of commercially-viable deposits. These may affect communities and localities over an extended period, depending on the nature, age and size of the site(s) (see paragraphs 24–29). [Emphasis added]*

24. MPS2 goes on to set out requirements for “*Pre-Application Discussions*”, “*Consideration of Applications*”, and “*Planning Conditions*”. The document also gives guidance regarding the “*Proximity of Minerals Workings to Communities*” . This is particularly relevant when it is considered that properties and settlements within range of Divet Hill quarry already suffer some disbenefit from noise and dust. Appendix A sets out requirements on “*Community Consultation and Involvement*” and Appendix B “*Environmental Management Systems*”

### Minerals Policy Statement 2 Annex 1: Dust

25. Again the relevant references within this Annex are too numerous to reproduce here. The Annex sets out policy and objectives for Air Quality. It also sets out the Local Authority’s duty of care in this regard and sets limits for airborne particles (PM<sub>10</sub>)
26. The Annex discusses *Health Effects* and sets out a *site assessment flow chart* for residential properties with 1000m of a proposed development. CREDIT considers it appropriate that the LA considers the potential health effects of dust from the Divet Hill quarry in conjunction with that from the Steadings borrow pit.

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27. The Annex gives guidance on *Pre Application Discussions*, on *Considering Applications* and details of *Planning Conditions* which include action plans and monitoring requirements. Appendix C of the Annex sets out the essential elements of a Dust Assessment.

### Minerals Policy Statement 2 Annex 2: Noise

28. Annex 2 was discussed with Mr Hayes and Mr Simpson during cross-examination. Mr Simpson and ION Acoustics cite this Annex in their evidence as relevant in considering Construction Noise (see AMEC/4/3 page 21, first paragraph).
29. This Annex quotes the WHO Guidelines for Community Noise and interprets that guidance into suggested Planning Conditions. These were discussed with Mr Hayes during cross-examination where we pointed out the difference between his 55dB LAeq 16 hour proposal for a noise limit and the 55dB LAeq 1 hour planning condition specified in Annex 2.
30. The Annex sets out very clearly its *Purpose and Scope*, and its requirements in *Pre-Application Discussions*, *Environmental Impact Assessment* and in *Considering Applications*. It is clear in the latter that MPAs should consider “.....cumulative effects of noise emissions” It is our belief that neither the developers, the MPA or the EHO have considered such cumulative impacts which includes the minerals working at Divet Hill Quarry.
31. The Annex goes on to provide very clear guidance on planning conditions.

### Conclusion

32. It is CREDITs conclusion that within the Minerals Policy Statement documentation there is a clearly identified requirement to bring the borrowpits under this policy guidance. The Steadings application was revised in September 2007 after the publication of MPS1. In reducing the number of their borrow pits from 4 to 1, removing the haul road to Divet Hill Quarry and concentrating all their aggregates requirements into that one borrow-pit near the settlement of Great Bavington, Steadings have reinforced the need to use the provisions set out in these policy statements.
33. Indications are from the Ray environmental statement that AMEC intend to take similar volumes of rock from borrow pit(s) on the Ray site. We propose that there is therefore also a need for a detailed review of the AMEC borrow-pit proposal against these policy requirements.

CREDIT  
5th July 2008