



NATS

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Jayne Hollas
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

7th September 2010

Our reference: N/SFG/W(F)7718

Dear Sirs,

**Wind Farm: Dorenell, Moray, Scotland
Withdrawal of objection**

We refer to our letter submitted on 19th May 2008 and attach a copy herewith.

As you may be aware, NATS (En Route) Plc ("NERL") objected to the application and has subsequently been engaged in discussions with the applicant regarding potential mitigation for the adverse impacts that will be caused by the proposed development to NERL's primary surveillance radar at Allanshill and associated air traffic management services.

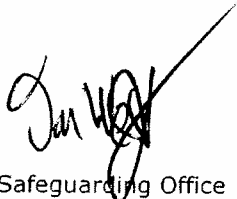
We enclose with this letter a document described as "*Statement of Common Understanding Relating to the Development of an Operator Radar Mitigation Scheme for the Proposed Dorenell Wind Farm*" which has been agreed by NERL with the applicant. This records common ground between the parties, which includes; agreement as to the need for appropriate technical mitigation to the adverse impacts of the proposed development, identification of a potential mitigation solution to these impacts, agreed conditions to be attached to any consent granted and a framework for the development and implementation of a detailed scheme of mitigation. The parties have also entered into a contract for the further progression of phase 1 as set out in the statement of common understanding.

The agreed conditions are also separately appended to this letter for ease of reference. NERL withdraws its objection to the application subject to these conditions being attached to any consent granted.

In light of the above, NERL does not consider it necessary to make any further written representations or to attend the forthcoming inquiry. Should you or the Reporter, however, have any queries in relation to the proposed conditions or the need for these, please do not hesitate to contact Bernard Ralph of NERL on 01489 444401 or bernard.ralph@nats.co.uk in the first instance.

We would be grateful if you could please acknowledge receipt of this letter and would like to thank you in advance for your assistance on this matter.

Yours faithfully,



On behalf of NERL Safeguarding Office

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Victoria Wallace
Energy Consents Unit
The Scottish Government
Meridian Court
5 Cadogan Street
Glasgow
G2 6AT

16th May 2008

Your Ref: N/A
Our Ref: N/SFG/W(F)7718

Dear Madam,

Wind Farm: Dorenell

We are writing with regards to the proposed windfarm at Dorenell, Hill of Dorenell, Moray, Scotland.

NERL have previously engaged with the Developer of this windfarm at the pre planning stage (Our Ref: N/SFG/W(F)7718). There is an impact on our systems therefore NERL currently have an objection to this development, however, given our current understanding NERL believe the issues can be overcome.

Yours sincerely

Sarah Allen
Technical Administrator
On behalf of NERL Safeguarding Office

**STATEMENT OF COMMON UNDERSTANDING RELATING TO THE DEVELOPMENT
OF AN OPERATOR RADAR MITIGATION SCHEME FOR THE PROPOSED
DORENELL WIND FARM**

Agreed between

NATS (En Route) PLC

and

Dorenell Limited

**STATEMENT OF COMMON UNDERSTANDING RELATING TO THE DEVELOPMENT
OF AN OPERATOR RADAR MITIGATION SCHEME FOR THE PROPOSED
DORENELL WIND FARM**

1. Introduction

- 1.1 Dorenell Limited (company number 05628395) of 16 West Borough, Wimborne, Dorset, BH21 1NG (who and in substitution whose successors and permitted assignees are hereinafter referred to as the "**Developer**") made an application under section 36 of the Electricity Act 1989 (ref: 08/01200/S36) (the "**Application**") for the construction and operation of an onshore wind farm comprising, amongst other things, 59 wind turbines and two wind monitoring masts located on Glenfiddich Estate within the County of Moray (the "**Proposed Development**").
- 1.2 NATS (En Route) PLC (Company number 4129273) of 5th Floor Brettenham House South, Lancaster Place, London WC2E 7EN or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act). ("**NERL**") is the provider of en route Air Navigation Services for United Kingdom Airspace. NERL is regulated by the Civil Aviation Authority ("**CAA**") and has duties under licence to provide safe and efficient air traffic control services which are capable of meeting future demand.
- 1.3 NERL made an objection to the Application.

2. Common Ground

- 2.1 The parties agree that without appropriate mitigation, the Proposed Development will cause an unacceptable impact on the primary radar of NERL located at Allanshill and associated air traffic control operations.
- 2.2 The purpose of this document is to summarise the common ground between the parties and the stage reached as to the design of an Operator Radar Mitigation Scheme (as defined in the Conditions (defined below) and to set out the key principles which will govern the development and agreement of the Operator Radar Mitigation Scheme pursuant to the Conditions (defined below).
- 2.3 Following initial assessment work, the parties have agreed that the following is necessary to mitigate the impacts of the Proposed Development ("**Potential Solution**"):
- The design and creation of a plot suppression zone in respect of the Allanshill primary radar (by adapting the radar data processing systems at the Scottish Area Control Centre at Prestwick and making necessary software changes) to be of a sufficient size to remove the false primary plots likely to be generated by the Proposed Development ("**Plot Suppression Zone**").
 - As genuine primary plots received from aircraft will also be removed by the creation of the Plot Suppression Zone, the in-fill of the Plot Suppression Zone with a replacement primary radar feed from NERL's Perwinnes primary radar.
 - All necessary consents and assurances (if any)
- 2.4 The parties agree that due to the "Radar Site Services" upgrade programme of NERL, the Potential Solution would not be available at the earliest until the upgraded Perwinnes primary radar has been introduced back into operation and NERL's operational handover date has occurred (currently estimated to be in June 2011 at the earliest). NATS will use reasonable endeavours to complete such upgrade and operational handover by 1 June 2012.

- 2.5 Based upon an initial assessment, the parties agree in principle that the Potential Solution has reasonable prospects of providing adequate mitigation to the impacts of the Proposed Development. Further detailed assessment work will need to be carried out and NERL expressly reserves its position in relation to the detailed requirements of an Operator Radar Mitigation Scheme to mitigate the impacts of the Proposed Development.
- 2.6 The parties have agreed that, in the circumstances of this particular Application, NERL will withdraw its objection to the Application subject to the agreed Conditions set out below being attached to any consent granted pursuant to the Application. The parties have also entered into a commercial contract for the initial progression of an Operator Radar Mitigation Scheme in accordance with Phase 1 of this Statement of Common Understanding.
- 2.7 It should be noted that nothing in this document will serve to discharge the agreed Conditions and further detailed contractual obligations will need to be entered into between the parties for Phases 2 – 4 as appropriate. This document is not the Operator Radar Mitigation Scheme as defined in the agreed Conditions below.

3. Agreed Conditions

- 3.1 Unless otherwise agreed in writing by the parties, the agreed conditions ("**Conditions**") read as follows:
- 3.1.1 No turbine shall be erected until an Operator Radar Mitigation Scheme has been submitted to and approved in writing by the Scottish Ministers following consultation with the Operator.
- 3.1.2 No turbine shall be erected until all obligations contained within the Operator Radar Mitigation Scheme (other than ongoing obligations) have been fully implemented and the development shall thereafter be operated fully in accordance with all ongoing obligations contained within the Operator Radar Mitigation Scheme.
- 3.1.3 Definitions: For the purpose of conditions 3.1.1 and 3.1.2 above;
- "Operator"** means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 5th Floor, Brettenham House South, Lancaster Place, London, WC2E 7EN or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).
- "Operator Radar Mitigation Scheme"** means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the impact of the Development on the primary radar of the Operator located at Allanshill and associated air traffic management operations of the Operator which reflects the requirements of the submitted Statement of Common Understanding.
- "Statement of Common Understanding"** means a document agreed with the Operator dated [] and submitted to Scottish Minister which sets out the high level requirements of the Operator Radar Mitigation Scheme and the principles which will govern the development and agreement of such a scheme (as the same may be amended from time to time by agreement with the Operator).

4. High Level Requirements

- 4.1 The following paragraphs (4.2 – 4.7) set out at a high level what needs to be achieved in order for NERL to agree an Operator Radar Mitigation Scheme pursuant to the Conditions.
- 4.2 The Developer shall ensure:
- 4.2.1 that any action taken or carried out by the Developer or its representatives under or in relation to the Operator Radar Mitigation Scheme does not affect the safe and efficient provision of NERL's air traffic services or NERL's licence obligations;
 - 4.2.2 that at all times it performs its obligations under the Operator Radar Mitigation Scheme in such a way as to co-operate and co-ordinate with NERL's operations;
 - 4.2.3 that any work undertaken under or in relation to the Operator Radar Mitigation Scheme shall be programmed by the Developer to minimise any delay or disruption to NERL;
 - 4.2.4 that the Operator Radar Mitigation Scheme shall not impede or adversely affect the safe or efficient provision of NERL's air traffic services;
 - 4.2.5 that the Operator Radar Mitigation Scheme shall be designed so as to minimise complication to the airspace affected by the Proposed Development; and
 - 4.2.6 that the Developer promptly reimburses all of NERL's reasonable costs relating to this document and the Operator Radar Mitigation Scheme in accordance with the commercial contracts to be entered into between the Developer and NERL as referred to in Clause 4.7 below (including assessment and validation work, any regulatory requirements, implementation and operation of the Operator Radar Mitigation Scheme, agreement of the Operator Radar Mitigation Scheme, together with NERL's reasonable legal fees).
- 4.3 The Developer is responsible for developing the Operator Radar Mitigation Scheme and a Solution (as defined below) in accordance with this document.
- 4.4 At the Developer's expense, NERL shall provide reasonable cooperation to the Developer in relation to the development of an Operator Radar Mitigation Scheme and a Solution.
- 4.5 Unless otherwise agreed in writing by the parties, the following phases (each a "**Phase**") are to be completed:
- 4.5.1 Phase 1 - Identification and detailed design of a potential mitigation solution;
 - 4.5.2 Phase 2 - Validation of potential solution;
 - 4.5.3 Phase 3 - Implementation and Integration of potential solution; and
 - 4.5.4 Phase 4 - Certainty on operation of that potential solution.
- 4.6 The Developer shall not seek to discharge either of the Conditions prior to all four phases being complete.
- 4.7 It is anticipated that three separate contracts will need to be entered into as follows:
- 4.7.1 Phase 1 contract;
 - 4.7.2 Phase 2 and 3 contract; and
 - 4.7.3 Phase 4 contract.

5. Development of an Operator Radar Mitigation Scheme

5.1 Phase 1 - Identification and Design of Potential Solution

- 5.1.1 The objective of Phase 1 is for the Developer (with the reasonable co-operation of NERL in accordance with the Phase 1 contract) to identify and design the Potential Solution so that it will fully mitigate the impact of the Proposed Development on the Allanshill primary radar and associated air traffic operations to the satisfaction of NERL (in its reasonable opinion) and which is capable of meeting all of NERL's regulatory and licence requirements ("**Requirements**").
- 5.1.2 The Developer shall promptly draft and agree with NERL a plan for project governance (the "**Project Plan**") throughout the development of an Operator Radar Mitigation Scheme which shall include governance documents which, as appropriate, may include but are not limited to the following:
- Project Definition and Plan
 - Risk management plan
 - Action log
 - Communication plan
 - Roles and responsibilities
- 5.1.3 The Developer shall promptly produce a proposal to satisfy the Requirements which, as appropriate, may include but not be limited to.
- Feasibility and Option document
 - Detailed Design
 - Compliance Matrix
- 5.1.4 In the event that consent is granted pursuant to the Application and the Developer intends to implement such consent, the Developer shall enter into negotiations with NERL to produce a Contract for Phases 2 and 3 and a contract for Phase 4 including requirements that allow the Developer to procure services to deliver the contract (if considered appropriate by NERL). Both parties undertake to negotiate in good faith to agree and conclude any such further contracts.
- 5.1.5 If at any stage either (1) NERL (in its reasonable opinion having regard to the terms of this Statement of Common Understanding), is of the view that the Potential Solution will not provide satisfactory mitigation in respect of the Proposed Development or (2) the Developer no longer considers the Potential Solution to be viable, then if the Developer wishes NERL to consider an alternative potential solution and unless otherwise agreed, the process will need to begin again at Phase 1 in relation to the alternative potential solution at the Developer's expense.
- 5.1.6 Further detailed work will need to be carried out in the event that consent is granted pursuant to the Application and the Developer intends to implement such consent to develop an Operator Radar Mitigation Scheme which reflects the requirements set out in this document.
- 5.1.7 The condition to exit Phase 1 is:
- (a) The Developer shall provide a proposal for the Potential Solution to meet the Requirements;
 - (b) Following satisfactory analysis and production of a compliance matrix and a resulting statement of compliance of the proposal, NERL's issue (in its absolute discretion) of an unqualified acceptance certificate for the Phase in the form set out at Schedule B; and
 - (c) Contract to be entered into covering Phases 2, 3 (and 4 if required by NERL).

- 5.1.8 All NERL's reasonable costs associated with this phase shall be borne by the Developer to be paid in accordance with the terms of the Phase 1 contract entered into on the same date as this document.

5.2 Phase 2 - Validation of Potential Solution

- 5.2.1 In the event that the Developer confirms its desire to proceed to Phase 2, NERL and the Developer shall commence implementation of the Project Plan in accordance with that plan to achieve:

- Validation Plan
- Phase 2 Test and Trial Compliance Statement
- Validated Potential Solution

- 5.2.2 The condition to exit Phase 2 is:

- (a) Phase 2 Test and Trial Compliance Statement
- (b) The Developer providing evidence to the satisfaction of NERL that the Potential Solution meets or exceeds the Requirements (by reference as appropriate to those contained in Schedule A); and
- (c) Upon completion of (a) and (b) above, NERL's issue of an unqualified acceptance certificate (in its absolute discretion) for the Phase in the form set out at Schedule B.

- 5.2.3 All NERL's reasonable costs associated with this phase shall be born by the Developer to be paid in accordance with the terms of the relevant commercial contract to be entered into.

5.3 Phase 3 – Implementation and Integration of a Potential Solution

- 5.3.1 The objective of Phase 3 is for the Developer, with NERL's assistance, to deliver and implement the Potential Solution in order to achieve successful operational acceptance in accordance with the Requirements (including as applicable those set out at Schedule A).

- 5.3.2 In the event that the Developer confirms its desire to proceed to Phase 3, NATS and the Developer shall commence implementation of the Project Plan in accordance with that plan to achieve the following:

- All necessary regulatory approvals, consents and assurances.
- Integration of the Potential Solution
- Operational Acceptance Testing
- Phase 3 Test and Trials Compliance Statement

- 5.3.3 The condition to exit Phase 3 is:

- (a) All necessary regulatory consents, approvals and assurances
- (b) Phase 3 Test and Trials Compliance Statement
- (c) The Potential Solution being integrated and proving a satisfactory working solution (which shall be confirmed through a signed "NERL Operational Handover Certificate" and "NERL Assurance Documentation", both to be provided by NERL in its absolute discretion); and
- (d) An unqualified acceptance certificate, following completion (a), (b) and (c), issued by NERL for the Phase in the form set out at Schedule B.

5.3.4 All NERL's reasonable costs associated with this phase shall be borne by the Developer to be paid in accordance with the terms of the relevant commercial contract to be entered into.

5.4 Phase 4 - Certainty on the Operation of the Potential Solution

5.4.1 The objectives of Phase 4 are:

- (a) for NERL and the Developer to agree a legally binding agreement covering the short and long term operational requirements for the Potential Solution (if any). Such agreement shall effectively bind any future owners and operators of the Proposed Development and any assignees of any consent granted pursuant to the Application;
- (b) an agreed asset lifecycle management plan for maintenance, procurement and support, through life governance, metrics management, cost recovery, service levels, performance and contract reviews; and
- (c) for NERL and the Developer to agree a report on the activities under Phases 1-4 for the purposes of the Conditions which documents the implementation and ongoing obligations in relation to the Potential Solution.

5.4.2 If NERL confirms that there are ongoing operational requirements for the Potential Solution, the Developer and NERL shall agree a draft operational agreement covering the short and long term operational requirements for the Potential Solution (if any) once it has been validated, implemented and integrated into NERL's systems ("**Through Life Capability Management Contract**") which may include (without limitation) the key principles detailed in Schedule C. Both parties undertake to negotiate in good faith to agree and conclude the Through Life Capability Management Contract without undue delay.

5.4.3 The Developer shall provide a draft report on the activities in Phases 1-4 to the satisfaction of NERL detailing the Potential Solution and the implementation and operational requirements of the Potential Solution (as guided by the requirements of this document and as agreed between the parties) (the "**Operator Radar Mitigation Scheme**").

5.4.4 The condition to exit Phase 4 is:

- (a) a signed Through Life Capability Management Contract between the Developer and NERL (if applicable);
- (b) acceptance certificates issued by NERL for Phases 1 to 3 inclusive;
- (c) upon completion of 5.4.4(a) (if applicable) and (b), an unqualified acceptance certificate issued by NERL for the Phase in the form set out at Schedule B; and
- (d) an agreed Operator Radar Mitigation Scheme.

5.4.5 All NERL's reasonable costs associated with this phase shall be borne by the Developer in accordance with the terms of the relevant commercial contract.

5.4.6 Unless otherwise agreed by the parties, the Potential Solution shall only be deemed to be a satisfactory mitigation solution to the impacts of the Proposed Development on the primary radar of NERL located at Allanshill and associated air traffic control operations ("**Solution**"), which will enable NERL to agree to an Operator Mitigation Scheme for the purpose of the Conditions, when each of Phases 1, 2 and 3 have been completed together with the requirements at 5.4.4 (a) (if applicable), (b) and (c) in relation to Phase 4.

Signed for and on behalf of
Dorenell Limited

Signed:

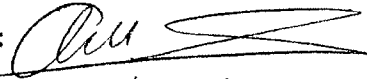
Print Name:
Position:
Date:

Signed for and on behalf of
NATS (En Route) PLC

Signed:

Print Name: Tom Wright
Position: Em AR
Date: 7 Sep 10

Signed for and on behalf of
Dorenell Limited

Signed: 

Print Name: *Esbjörn Wilmar*
Position: *Director*
Date: *8/9/2010*

Signed for and on behalf of
NATS (En Route) PLC

Signed:

Print Name:
Position:
Date:

Schedule A

NERL Outline Requirements for the Potential Solution.

Architectural and Design constraints

Installation

Human factors

Human Machine Interface

Project specific requirements

Test Requirements

Technical engineering requirements

Asset management requirements

Security Requirements:

- Data Security
- Access Security
- Site Security
- Other Security

Safety Objectives and Safety Requirements

- Functional
- Performance
- Regulatory
- Human Factors Safety
- End to End Safety

Project and Process requirements

User requirements

Stakeholder Requirements

Facility Requirements

- Contingency
- Decommissioning

Supply Chain Requirements

Business Requirements

Training requirements

Transition requirements

Health and Safety Requirements

Requirements affecting existing contracts

Thorough and Legally Robust Consultation

All necessary regulatory consents, assurances and requirements

Environmental

Schedule B

Form of Acceptance Certificate

[insert Phase]

This certificate is issued by NATS (En Route) plc ("**NERL**") pursuant to the Statement of Common Understanding relating to the development of a Radar Mitigation Scheme for Dorenell Wind Farm.

[In the event of qualified Acceptance:

the following defects in such Phase exist as at [•] and are required to be remedied in accordance with the terms of the remedial plan annexed and to the satisfaction of NATS (En Route) plc:

[list of defects]

This certificate is not a waiver of any rights of NERL in respect of defects in the phase]

Phase [] has been completed to the satisfaction of NERL and is therefore accepted.

Signed
for and on behalf of
NATS (En Route) plc

Print Name

Position

Date

Schedule C

Key Principles for the Through Life Capability Management Contract

The key principles to be included within any Through Life Capability Management Contract (without limitation) are:

- (a) The Developer will re-imburse NERL for all reasonable costs related to implementing or sustaining (but not safeguarding envisaged by paragraph (q) below) the Potential Solution.
- (b) There shall be no unacceptable impact to the safety or efficiency of NERL's infrastructure or operations and no impact to NERL's regulatory obligations and services (all to be judged by NERL in its absolute discretion).
- (c) No impact on NERL's long term investment programme
- (d) Service Level Agreements satisfactory to NERL
- (e) Change management

In the event that either NERL or the Developer wishes to make a change to the Potential Solution or the Proposed Development which may have a detrimental effect on the effectiveness of the Potential Solution the parties shall in good faith seek to agree to the change proposed by the other party including any amendment to the Potential Solution, with a view to maintaining the balance of risk between the parties in existence at the date of the Through Life Capability Management Contract.

- (f) Safeguarding, including all mitigating arrangements for planned and unplanned outages, of the Potential Solution which may, for example, provide (subject to the provisions of the Phase 4 contract) that in the event of radar outage the Developer will cease blade movement and propose an action plan to mitigate and restore services and agree this with NERL in which case NERL would be obliged to promptly permit blade movement to recommence once the situation is resolved.
- (g) The Developer shall ensure that NERL can use the data used for the implemented Potential Solution without hindrance, cost or penalty over the lifetime of the Potential Solution and NERL shall retain all IP rights relating to any Potential Solution or any implemented solution.
- (h) The Developer shall ensure that NERL has the option of continuing to use the Potential Solution on commercial terms even if the Potential Solution is no longer required.
- (i) The obligations shall effectively bind the future owners and operators of the wind farm and any assignees of the section 36 consent.

Wider requirements:

- (j) All necessary contracts (including with third parties) agreed on terms acceptable to NERL
- (k) Communications Services (data links)
- (l) Indexation
- (m) Security for performance
- (n) Upgrading
- (o) Termination
- (p) Decommissioning
- (q) Safeguarding by NERL of any radars utilised as part of the Potential Solution / Solution against the impacts of other developments, including the impacts arising from other wind farm proposals

- (r) All NERL's reasonable legal costs associated with the completion of the operational contract to be borne by the Developer

LDG/LDG/84764/200872/UKM/31561657.1