



For and on behalf of  
**BAE Systems**  
Interested Party Reference No.  
**20053944**

## **CLOSING STATEMENT**

**Morgan and Morecambe Offshore Wind Farms Transmission Assets DCO Examination**

**Prepared by  
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## 1.0 INTRODUCTION

1.1 This Closing Statement is submitted on behalf of BAE Systems. It explains BAE Systems' position at the close of the Examination in relation to the following:

- Aviation impacts relating to bird strike risk to Warton Aerodrome
- Other aviation-related impacts at Warton Aerodrome
- Whether the proposed development complies with relevant planning policy

1.2 In addressing the above, this Statement considers the issues that BAE Systems has raised during the Examination, the progress made in addressing these issues in consultation with the Applicants, and any remaining residual concerns. Comments are also provided on relevant documents submitted by the Applicants at Deadline 6 in so far as they influence BAE Systems' position at the close of the Examination.

## 2.0 BIRD STRIKE RISK TO WARTON AERODROME

2.1 In its Relevant Representations and throughout the Examination, BAE Systems has raised concerns over the potential for the proposed Ecological Mitigation Areas, Biodiversity Benefit Site, landscaping and habitat proposals at substation sites, and general construction activities to increase bird strike risk to Warton Aerodrome by increasing the numbers of birds in the locality of the Aerodrome or altering bird movement and migratory patterns.

2.2 From the outset of the Examination, BAE Systems has requested that the Applicants undertake a Bird Strike Risk Assessment to determine the bird strike risk to the Aerodrome in consequence of the introduction of the Transmission Assets and to inform appropriate mitigation measures. As set out in BAE Systems' Deadline 6 submission (Examination Library Ref: REP6-206), the following assessment process is required to be completed in order to fully understand the impact on Warton Aerodrome in respect of bird strike:

- (i) The Applicants undertake a draft Wildlife Attractants Habitat Risk Assessment (dWAHRA) to identify the likelihood that the current baseline bird environment (species, numbers, movement patterns etc.) would change and identify mitigation measures to address those changes and reduce any impact such that the existing level of bird strike risk (which is considered by BAE Systems to be an acceptable level of risk) is maintained.
- (ii) The dWAHRA is reviewed from a technical perspective by the Ministry of Defence's (MOD) / Defence Infrastructure Organisation's (DIO) subject matter experts (SME)

on wildlife attractants, followed by an operational review by BAE Systems.

- (iii) The outcome of Stage 2 is fed back to the Applicants who update the dWAHRA.
- (iv) Once the dWAHRA is in agreed form, a Bird Strike Risk Assessment is undertaken (either by the Applicants or BAE Systems), informed by the agreed dWAHRA, to confirm that the mitigation measures proposed in the dWAHRA (and secured in the outline Wildlife Habitat Management Plan (oWHMP)) are robust (meaning their effect will be to reduce the level of risk to an acceptable level in line with the bird strike methodology and Strike Risk Probability Matrix for Warton Aerodrome).
- (v) Any amendments to the dWAHRA arising from the Bird Strike Risk Assessment are incorporated into the dWAHRA and the oWHMP.

2.3 BAE Systems and MOD / DIO have been liaising with the Applicants on the above process. The parties are currently at Stage 2 of the process. The MOD / DIO's SME reviewed the dWAHRA ahead of its submission by the Applicants at Deadline 6 and provided comments to the Applicants, as stated in the MOD / DIO's Deadline 6 submission (Examination Library Ref: REP6-185). The MOD / DIO has engaged in discussions with BAE Systems regarding these comments. Whilst positive progress is being made and the feedback from MOD / DIO's SME has provided some reassurance, BAE Systems continues to have significant concerns over the potential for the Newtown-with-Scales and Lytham Moss Ecological Mitigation Areas to increase bird strike risk at Warton Aerodrome.

2.4 The MOD / DIO has informed the Applicants that the current proposals for the Newton-with-Scales site could alter the movement patterns of birds in the area, increasing concentrations that cross the approach to Warton Aerodrome, potentially increasing bird strike risk. The MOD / DIO's SME has therefore stated that the mitigation proposed in the Deadline 6 version of the dWAHRA would be unacceptable and the following approach to mitigation should be proposed instead (in order of preference):

- (i) The ecological mitigation site should be located further away from the Aerodrome and its runway approaches than the habitat that it is compensating for; or
- (ii) If mitigation is undertaken at the currently proposed site, it should focus on other farmland birds, such as Corn Bunting or Grey Partridge, not wintering waders or waterfowl which pose a greater bird strike risk; or
- (iii) The mitigation measures proposed in the dWAHRA for the Newtown-with-Scales site must be more detailed and include details of the frequency of monitoring and trigger points for which active mitigation measures are put into place. Without more detail, due to the potential bird strike risk posed by this site, the MOD / DIO cannot support its provision.

- 2.5 BAE Systems also has significant concerns that supplementary feeding of geese at Lytham Moss could increase the number of birds in the area. Whilst the dWAHRA proposes active mitigation measures if bird numbers increase above an agreed trigger (which would include reducing or stopping feeding), BAE Systems' concerns are that those active measures are reactionary in nature. Furthermore, if an increase in bird numbers occurs which results in the bird strike risk worsening such that the level is classed as either "medium risk" or "high risk" (see BAE Systems' Deadline 6 Submission – Examination Library Ref: REP6-206) flying operations at Warton Aerodrome may be severely compromised or have to cease until those active measures have been put in place and bird numbers have started to reduce. There may be a lag in between active mitigation measures starting and bird numbers reducing. Any cessation of flying operations would be unacceptable to BAE Systems.
- 2.6 Given the concerns raised by the MOD / DIO, BAE Systems cannot support the proposals for the Newton-with-Scales or Lytham Moss Ecological Mitigation Areas. It is noted that the Applicants have identified potential alternative mitigation measures that would avoid the need to deliver these two Ecological Mitigation Areas in its "Comments on the Report on the Implications for European Sites (REIS)" submitted at Deadline 6 (Examination Library Ref: REP6-175). It is the Applicant's position that these alternative mitigation measures would deliver ecological objectives. Given BAE Systems has concerns over the potential bird strike risk from these two sites, it is considered that the delivery of the alternative mitigation measures, if they would avoid bird strike risk increasing whilst still delivering ecological objections, should be preferred and the Applicants' adopted course of action. Further consideration is given to this in Section 4 of this Closing Statement.
- 2.7 We note that the Applicants have submitted an updated version of the dWAHRA as part of an updated oWHMP at Deadline 6. BAE Systems and the MOD / DIO are in the process of reviewing the updated oWHMP. Accordingly, in terms of the assessment process detailed in paragraph 2.2 above, the parties remain at Stage 2.
- 2.8 In light of the above, BAE Systems' position at Deadline 7 remains the same as at Deadline 6. BAE Systems' objection to the Transmission Assets will be maintained until the above-mentioned assessment process has been completed.

### Comments on Deadline 6 Submissions Relating to Bird Strike Risk

2.9 BAE Systems confirmed in its Deadline 6 submission acceptance of the wording of Requirement 27 in the Deadline 6 version of the draft Development Consent Order (dDCO) (Examination Library Ref: REP6-013), subject to agreement of the contents of the oWHMP (including the dWAHRA), including:

- Further details of the onshore site preparation works that can take place ahead of a detailed WHMP being agreed with BAE Systems and submitted to, and approved by, Fylde Council; and
- Further details of triggers for pausing certain onshore site preparation works where they give rise to increased bird attractants being agreed with BAE Systems and MOD / DIO.

2.10 BAE Systems preliminary comments on the Deadline 6 version of the oWHMP and the dWAHRA are provided in the table below – neither of these documents is currently in an agreed form:

oWHMP	
Section / Paragraph	Comments
Paragraphs 1.1.1.9 to 1.1.23	<p>These paragraphs summarise how the oWHMP is linked to other management and control documents secured through Requirements in the dDCO, and explains a process for updating those documents, ensuring that the contents and management / monitoring measures in each document align. BAE Systems has previously made submissions to the Examination stating the importance of these documents aligning so that mitigation measures in one document do not conflict with those in others. BAE Systems therefore supports the addition of these paragraphs into the oWHMP (and into the other management and control documents).</p> <p>BAE Systems also supports the reference at paragraph 1.1.2.3 to the management documents being “live” documents which will be updated throughout the construction and operational phases of the proposed development to reflect adaptive management approaches. This is considered essential because changes to management or mitigation measures in one document may require amendments to mitigation measures in another to ensure that they are effective.</p>
Paragraph 1.2.3.3	<p>This paragraph states that the Applicants will “likely” retain responsibility for managing any additional hazards associated with the Transmission Assets at Warton Aerodrome (i.e. any additional mitigation measures relating to bird strike risk required). Given that the necessary mitigation measures are not known at this stage, because the staged assessment process referred to above has not</p>

	<p>been completed, there remains uncertainty over who is best placed to undertake any additional mitigation measures (either the Applicants or BAE Systems). BAE Systems is comfortable with the need for there to be some flexibility in this regard. However, BAE Systems require an express commitment from the Applicants to fund the costs of any additional mitigation measures required regardless of who is responsible for their delivery – whether the Applicants or BAE Systems. Such a commitment is contained in the dWAHRA, but BAE Systems considers that it should also be included in the oWHMP.</p>
Section 1.3.2 and Table 1-2	<p>BAE Systems has previously agreed the list of bird species to be considered in the dWAHRA (contained in the Deadline 5 Version of the dWAHRA), but had requested that the dWAHRA also considers potential attractant risk for unexpected species. BAE Systems therefore supports the inclusion of additional species in Table 1-2 in the Deadline 6 version of the dWAHRA. However, it is noted that the Applicants have deleted Berwick Swan, Great Black Backed Gull, and Magpie from the list of species without explanation. BAE Systems has not agreed to the deletion of these species and considers that they should be reinstated or their deletion fully justified. It is noted that the Bird Strike Risk Assessment for Blackpool Airport contained in Appendix B to the oWHMP does consider these species.</p>
Section 1.4.1 and Figure 1-5	<p>This section summarises when active control measures will be employed to reduce wildlife attractance. No specific trigger level is given. BAE Systems considers that the trigger level should be when bird numbers exceed the current baseline level, and that this should be expressly stated in the oWHMP.</p>
Section 1.4.2 and Table 1-5	<p>An outline communication protocol has been included in the oWHMP. BAE Systems supports its inclusion, but notes that a more detailed communication protocol will be required to be included in the detailed WHMP.</p>
Section 1.5	<p>Section 1.5 again relates to trigger levels. As referred to above, BAE Systems considers that the oWHMP should state that the trigger threshold is when the existing baseline is exceeded.</p>
Paragraph 1.6.1.5	<p>This paragraph refers to feedback still being awaited from BAE Systems and the MOD / DIO. Feedback has been provided to the Applicants by the MOD / DIO on the Deadline 5 version of the dWAHRA. This set out the concerns referred to in paragraphs 2.3 to 2.5 above and resulted in updates to the Deadline 6 version of the dWAHRA. BAE Systems and the MOD / DIO will provide comment on the Deadline 6 version once feedback from the MOD / DIO's SME is available.</p>
<b>dWAHRA</b>	
<b>Section / Paragraph</b>	<b>Comments</b>
General Comment	<p>As referred to above, the mitigation measures proposed in the Deadline 6 version of the dWAHRA have not yet been reviewed by the MOD / DIO's SME or BAE Systems from an operational perspective. No comment can therefore be provided at this time on whether the mitigation measures proposed are appropriate to</p>



	address the bird strike risk at Warton Aerodrome arising from the introduction of the Transmission Assets.
Paragraph 1.3.3.12	<p>This paragraph confirms that the Applicants will fund the monitoring measures set out in the oWHMP and dWAHRA and the costs of implementing additional mitigation measures.</p> <p>BAE Systems considers this essential, as it should not bear the additional cost of mitigating impacts arising from the proposed development. However, it is considered that this commitment should also be confirmed in the oWHMP so that it includes costs associated with monitoring and mitigation referred to in the oWHMP for the lifetime of the project.</p>
Section 1.3.5	<p>Section 1.3.5 acknowledges that the next step in the assessment process (once BAE Systems and the MOD / DIO have agreed to the content of the dWAHRA) is to progress to a Bird Strike Risk Assessment for Warton Aerodrome. BAE Systems supports this.</p> <p>Section 1.3.5 of the dWAHRA makes reference to the Bird Strike Risk Assessment for Warton Aerodrome following the same process and matrices as used in the Blackpool Airport Bird Strike Risk Assessment and the matrix referred to in Civil Aviation Publication 772 (CAP772). However, as set out in BAE System's Deadline 6 Submission, Warton Aerodrome's current bird strike risk methodology follows a different process and applies a different strike probability matrix to that referred to in CAP772 and used for Blackpool Airport's Bird Strike Risk Assessment. As referred to in BAE Systems' Deadline 6 submission, BAE Systems monitors both leading and lagging bird strike indicators and its probability matrix also encompasses a wider range of risk levels compared to that shown in CAP772.</p> <p>The strike risk assessment matrix at Figure 1 of CAP772 is an example matrix. It does not therefore require aerodrome operators to use that matrix, and operators are able to use variations to it, as BAE Systems currently do for Warton Aerodrome. The Bird Strike Risk Assessment for Warton Aerodrome that will be necessary once the dWAHRA has been agreed with BAE Systems and the MOD / DIO should therefore follow the approach and matrices within BAE Systems' existing Bird Strike Risk Assessment for Warton Aerodrome, and Section 1.3.5 of the dWAHRA needs to be updated to reflect this.</p>

- 2.11 In light of the above comments, whilst BAE Systems considers the wording of draft Requirement 27 to be acceptable, this is only in so far it provides a mechanism for the submission, approval, and implementation of a detailed WHMP. However, the detailed WHMP is required to be in accordance with the oWHMP, the details of which (including the dWAHRA) are not yet agreed between the Applicants, BAE Systems and MOD / DIO. Pending this agreement and the robustness of the oWHMP (and the dWAHRA) being

demonstrated – through the carrying out of a Bird Strike Risk Assessment for Warton Aerodrome (which assessment must be undertaken in accordance with the bird strike methodology adopted in respect of the Aerodrome, including BAE Systems' strike risk probability matrix) and the identification of available and appropriate mitigation – draft Requirement 27 is not currently considered fit for purpose.

### **Summary of BAE Systems' Position at Deadline 7**

- 2.12 In light of the staged assessment process referred to above not yet being completed, and the concerns raised relating to the Newton-with-Scales and Lytham Moss Ecological Mitigation Areas, the impact of the Transmission Assets on Warton Aerodrome and the level of bird strike risk cannot currently be determined. As such, BAE Systems is not able to withdraw its objection to the proposed development. Confirmation of the acceptance of the wording of draft Requirement 27 does not change this position. BAE Systems' objection will not be removed until a Bird Strike Risk Assessment for Warton Aerodrome has been undertaken and it has been demonstrated that appropriate mitigation is available, the effect of which is to maintain the bird strike risk at the Aerodrome at an acceptable level (at which point draft Requirement 27 will be considered fit for purpose).

## **3.0 OTHER AVIATION-RELATED IMPACTS**

- 3.1 BAE Systems has raised a concern during the Examination that the design of the substation sites, and in particular the location and height of lightning rods, could infringe on the Obstacle Limitation Surfaces (OLS) at Warton Aerodrome.
- 3.2 As confirmed at Deadline 6, BAE Systems has now agreed with the Applicants that the drafting of Requirements 4 and 5 provides adequate safeguards that would secure prior consultation and agreement of BAE Systems to the location and height of lightning rods at the substation sites before their installation. This will enable BAE Systems to undertake the necessary safeguarding assessments (at the Applicants' cost) to ensure that the substation design does not infringe on OLS.
- 3.3 Additionally, BAE Systems has requested that, if necessary, the installation of aircraft hazard safety lighting is secured on lightning rods and tall cranes, as well as the use of tall cranes being agreed with BAE Systems prior to their use. These measures are now secured through a combination of text inserted into the outline Code of Construction Practice (oCOCP) submitted at Deadline 6 (see paragraphs 1.7.7.1 and 1.7.7.2 of Examination Library Ref:

REP6-067), the Commitments Register submitted at Deadline 6 (see commitment CoT140 of Examination Library Ref: REP6-024), and Requirement 4.

- 3.4 BAE Systems therefore has no outstanding objections in relation to other (non-bird strike related) aviation impacts subject to the abovementioned Requirements being included in the DCO. This position is recorded in the Statement of Common Ground (SoCG) between the Applicants, MOD, and BAE Systems.

#### **4.0 POLICY ASSESSMENT**

- 4.1 The SoCG between BAE Systems, the MOD, and BAE Systems submitted at Deadline 7 provides a summary of the policy position of each of the parties. BAE Systems' overarching policy position is provided below, making reference to relevant policies in NPS EN-1.
- 4.2 The starting point for considering policy compliance for energy projects consented through the Planning Act 2008 is Part 4 of NPS EN-1. Paragraph 4.1.3 states that the Secretary of State will start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 4.3 Paragraph 4.1.7 states that where NPSs require an applicant to mitigate a particular impact as far as possible, but the Secretary of State considers there would still be residual adverse effects after the implementation of such mitigation measures, the Secretary of State should weigh those residual effects against the benefits of the proposed development. For projects which qualify as Critical National Priority (CNP) Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. This presumption, however, does not apply to residual impacts which present an unacceptable risk to defence or human health.
- 4.4 In light of these policy requirements, consideration is given below to:
- (i) Whether residual aviation impacts will remain after mitigation is proposed
  - (ii) Whether the mitigation proposed is the most appropriate, given regard to the "mitigation hierarchy" in NPS EN-1
  - (iii) What the implications of the above are in relation to the Projects status as CNP Infrastructure

(iv) The overall planning balance.

### **Aviation Assessments and Residual Aviation Impacts**

- 4.5 Paragraph 5.5.5 of EN-1 states that it is essential that new energy infrastructure is developed collaboratively alongside aerodromes, aircraft, air systems, and air space so that safety, operations, and capabilities are not adversely affected by new energy infrastructure. Paragraph 5.5.49 is clear that the Secretary of State should be satisfied that the effects on aviation and defence assets have been assessed by the applicant. Paragraph 5.5.50 adds that the Secretary of State should be satisfied that the proposal has been designed to minimise adverse impacts on the operation and safety of aerodromes. This includes assessments into bird strike risk (as required by EN-1 paragraph 5.5.41).

### **Environmental Impact Assessment**

- 4.6 As set out in BAE Systems' submissions to the Examination at various stages, potential aviation impacts on Warton Aerodrome were scoped out of the Environmental Impact Assessment (EIA). The reasoning given by the Applicants for scoping out impacts on Warton Aerodrome was because the Order limits are located 2.5 km away from the centre line of the runway at Warton Aerodrome. No explanation has been given why a 2.5 km distance was used. Aviation impacts on licenced aerodromes such as Warton Aerodrome should be considered on the basis of a 6km radius from the runway. This was first raised by BAE Systems in its Section 42 consultation response in November 2023. Wildlife hazard impacts should be considered within a 13 km radius from Warton Aerodrome, as required by CAP772.
- 4.7 The failure of the Environmental Statement to consider aviation impacts to Warton Aerodrome is considered to be a significant flaw in the EIA and has led to the current situation where insufficient assessment of aviation impacts, and in particular bird strike risk, to Warton Aerodrome has been undertaken, and remains at issue at the close of the Examination.

### **Site Selection of Ecological Mitigation Areas and Biodiversity Benefit Sites**

- 4.8 Throughout the Examination, BAE Systems has raised concern that aviation impacts were not adequately considered in the site selection process for the Ecological Mitigation Areas and the Biodiversity Benefit Site. BAE Systems' detailed position on this is set out in its "Comments on Applicant's Submissions Made at Deadline 2", submitted at Deadline 3 (Examination Library Ref: REP3-074). As set out in that submission, no information has been provided to the Examination by the Applicants on how aviation considerations were taken into account in the site selection process for the Ecological Mitigation Areas and the

Biodiversity Benefit Site. Whilst the Applicant's Site Selection of the Environmental Mitigation and Biodiversity Benefit Areas document, submitted at Deadline 2 (Examination Library Ref: REP2-046), does refer to *"surrounding land uses and proximity to aviation infrastructure"* being a consideration in the site selection process, there is limited information in the document or other submissions to the Examination on how aviation impacts were considered or the level of weighting given to them.

- 4.9 In relation to the Ecological Mitigation Areas, all the site selection criteria relate to ecological considerations, in particular locating mitigation sites as close as possible to areas where ecological harm is taking place, and do not include aviation impacts. This is considered important in light of the comments received from the MOD / DIO's SME, referred to in paragraphs 2.3 to 2.5 above, stating that the Newton-with-Scales site is proposed in a location that could increase bird strike risk. The MOD / DIO's preference for alternative mitigation is relocating the site further away from Warton Aerodrome than the Newton-with-Scales site. The Applicants have not considered whether this was an option because aviation impacts were not factored into the site selection process.
- 4.10 In relation to the Biodiversity Benefit Site, BAE Systems' position remains that there is no statutory requirement to provide biodiversity net gain (BNG) for developments consented through the Planning Act 2008. As such, there is no need to provide the proposed biodiversity benefit site at Leigh Marsh Fields. No credible explanation has been provided of why the site needs to be located where it is proposed. Given that BNG is not a statutory requirement (meaning there is no requirement to use the statutory Biodiversity Metric, and noting that the biodiversity benefit site is providing benefit not mitigation), the biodiversity benefits of the biodiversity benefit site would not be reduced if it was located outside of the 13 km wildlife hazard safeguarding zone around Warton Aerodrome. This should have been a factor in the Applicant's site selection process.
- 4.11 BAE Systems considers that by failing to consider whether there are alternative locations for the Ecological Mitigation Areas and the Biodiversity Benefit Site that would avoid aviation impacts, the Applicant's approach to site selection is fundamentally flawed.

#### Assessment of Bird Strike Risk

- 4.12 As set out in Section 2 of this Closing Statement, it is not possible to determine the residual bird strike risk to Warton Aerodrome until the staged assessment process has been

completed – in particular, a Bird Strike Risk Assessment has been undertaken and the results of that assessment have informed the identification of appropriate mitigation measures that have been agreed between the Applicants, BAE Systems and the MOD / DIO. This is the process that has been followed in order to determine the residual bird strike risk to Blackpool Airport. The Applicants acknowledge that a Bird Strike Risk Assessment for Warton Aerodrome is required (see paragraph 1.3.5.1 of the dWAHRA).

*Aviation Assessments and Residual Aviation Impacts Summary*

- 4.13 BAE Systems considers that significant gaps remain in respect of the Applicant's assessment of aviation impacts to Warton Aerodrome at Deadline 7.
- 4.14 The Applicants have failed to demonstrate through the site selection process whether alternative ecological mitigation measures exist that would avoid aviation impacts (rather than requiring them to be mitigated) and without the staged assessment process referred to in paragraph 2.2 of this Closing Statement being completed, the Applicants cannot definitively conclude that appropriate mitigation is available to address the bird strike risk at Warton Aerodrome such that it can be maintained at an acceptable level.
- 4.15 Paragraph 4.2.10 of EN-1 requires applicants to show how their application meets the requirements of policy in EN-1 and other NPSs. This includes identifying mitigation measures and residual risks following the implementation of those mitigation measures. Due to the gaps in the Applicant's assessment of aviation impacts, BAE Systems considers that the Applicants have not demonstrated that they have complied with paragraph 4.2.10 of EN-1.

**Mitigation Hierarchy**

- 4.16 Paragraph 4.1.5 of EN-1 requires the Secretary of State to consider whether the mitigation hierarchy has been followed when weighing the adverse impacts of a proposed development against its benefits. Paragraph 4.2.11 requires applicants to apply the mitigation hierarchy and demonstrate how it has been applied.

- 4.17 The Applicants have submitted at Deadline 6 “Comments on the Report on the Implications or European Sites (RIES)” (Examination Library Ref: REP6-175). Within this document the Applicants identify “alternative measures” to avoid impacts on European Sites to the delivery of the Lytham Moss and Newton-with-Scales Ecological Mitigation Areas. These alternative measures include:
- Further screening at the source of construction works in the vicinity of sensitive areas (such as Lytham Moss) during sensitive period to reduce visual and noise disturbance; and
  - Scheduling of works to reduce or avoid working in certain areas during periods of particular sensitivity for SPA species.
- 4.18 These “alternative measures” would avoid both ecological impacts and aviation impacts and are therefore “avoidance measures” for the purposes of the mitigation hierarchy. As such, they should take first priority in the mitigation hierarchy over proposing mitigation for ecological and aviation impacts. On page 16 of the Comments on the Report on the Implications or European Sites (RIES) document, the Applicants state that these “alternative measures” would be less preferable from an ecological perspective than the delivery of the Newton-with-Scales and Lytham Moss Ecological Mitigation Areas. However, given that the “alternative measures” would avoid ecological harm in the first instance, it is difficult to see how that statement is correct.
- 4.19 Therefore, if the Applicants were to follow the mitigation hierarchy, as required by EN-1, they would need to demonstrate why the alternative (avoidance) measures are not possible to be delivered or there are other considerations that would mean that mitigation measures are more beneficial. This has not been demonstrated by the Applicants.
- 4.20 BAE Systems considers that, in accordance with the mitigation hierarchy, if there are “alternative measures” available that would avoid ecological and aviation harm (noting that the Newton-with-Scales and Lytham Moss Ecological Mitigation Areas are the sites that the MOD / DIO’s SME has raised concerns over), these should take precedence over ecological mitigation (being the delivery of the above ecological mitigation areas) that would itself then require any aviation impacts arising to be mitigated.

#### **Critical National Priority and Planning Balance**

- 4.21 Paragraphs 4.2.10 to 4.2.13 of EN-1 require applicants to demonstrate that the mitigation hierarchy has been met and that residual impacts can be compensated. As set out above,



BAE Systems considers that this has not been achieved at Deadline 7.

- 4.22 Paragraph 4.2.14 of EN-1 states that only when the requirements of paragraphs 4.2.10 to 4.2.13 have been met can the CNP presumptions in EN-1 apply. As the Applicants have not met the requirements of paragraphs 4.2.10 to 4.2.13, it is BAE Systems' position that the proposed development cannot be considered CNP and the CNP presumptions do not apply. As such, there is no presumption that the need for the Transmission Assets outweighs any harms arising from the proposed development. Even if the CNP presumption was to apply, in accordance with paragraph 4.1.7 of EN-1, where residual defence impacts remain, the presumption would not outweigh those impacts. Consideration therefore needs to be given to the weight to be applied to the potential aviation impacts of the proposed development.
- 4.23 BAE Systems considers that, given the content of Section 5.5 of EN-1, relating to civil and military aviation and defence interests, as well as the requirements of paragraph 4.1.7, negative weight needs to be given to any residual aviation harm, particularly where the harm is in respect of defence interests such as Warton Aerodrome. In particular, paragraph 5.5.59 of EN-1 requires the Secretary of State, in considering whether to grant a Development Consent Order, to consider whether, after reasonable mitigation, a development would prevent a licensed aerodrome from maintaining its licence and the operational loss of the aerodrome would have impacts on national defence or result in substantial local / national economic loss.
- 4.24 Due to the gaps in the Applicant's assessment of aviation impacts, and in particular, in the absence of the staged assessment approach to determining the level of bird strike risk and identifying appropriate mitigation measures to minimise or avoid bird strike risk, it is not possible to reach a conclusion in respect of the residual aviation harm to Warton Aerodrome. Given the uncertainty surrounding this issue, BAE Systems considers that negative weight must be attributed to the potential for aviation harm to arise and that this should weigh against the grant of development consent for the Transmission Assets in the planning balance.

## **5.0 CONCLUSION**

- 5.1 BAE Systems' position at the close of the Examination can be summarised as follows:

- It is satisfied that Requirements 4 and 5 in the dDCO provide sufficient protection that safeguarding assessments can be undertaken and the detailed design of the substation sites can be amended (as required) so that there would be no



infringement on OLS at Warton Aerodrome.

- Furthermore, Requirements 4 and 5, as well as the oCOCP, would provide sufficient protection to secure the installation of aircraft hazard warning lights on lightning rods at the substation sites, if required.
- The oCOCP would secure the prior notification and agreement of BAE Systems to the use of tall cranes or construction equipment.
- BAE Systems remains concerned that the Transmission Assets could result in an increase in the level of bird strike risk at Warton Aerodrome. The assessments required to demonstrate the availability of appropriate mitigation to reduce bird strike risk to the current baseline level (which level is considered acceptable) haven't yet been undertaken. In particular, following advice from the MOD / DIO's SME, BAE Systems remains concerned that the provision of the Newton-with-Scales and Lytham Moss Ecological Mitigation Areas could increase bird strike risk to Warton Aerodrome.

5.2 In light of the final bullet point above, BAE Systems is not able at this stage to remove its objection to the proposed development and will not be in a position to do so until a Bird Strike Risk Assessment for Warton Aerodrome has been undertaken and mitigation measures that are satisfactory to BAE Systems have been identified and secured through a detailed WHMP and WAHRA. In order for the detailed WHMP and WAHRA to be agreed, the parties must first of all agree the contents of the outline WHMP and the dWAHRA. There are a number of points of detail in respect of both of these documents which remain under discussion.

5.3 In the absence of the necessary assessments to demonstrate that suitable mitigation is available, BAE Systems is not in a position to determine the level of residual bird strike risk to Warton Aerodrome arising from the introduction of the Transmission Assets. It is considered that negative weight must be given to the potential for aviation harm and that this should weigh against the grant of development consent in this case.

5.4 Requirement 27 of the dDCO provides a framework / a route whereby the necessary assessments can be undertaken and the availability of mitigation can be explored and ultimately secured – to this extent, the wording of Requirement 27 is considered acceptable. However, BAE Systems continues to have concerns over the content of the oWHMP and the dWAHRA, as set out in this Closing Statement – both of these documents remain to be agreed. Therefore, BAE Systems is not in a position at this stage to confirm that Requirement 27 is fit for purpose and that it will operate to secure the necessary mitigation, thereby avoiding harm to Warton Aerodrome.

- 5.5 BAE Systems must maintain its objection to the Transmission Assets at the close of the Examination but is prepared to continue engaging with the Applicants and MOD / DIO with a view to progressing the staged assessment process to its conclusion and arriving at a robust determination in respect of the bird strike risk at Warton Aerodrome and the availability of appropriate mitigation to maintain this risk at an acceptable level.

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