Department for Communities and Local Government

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Our Ref: APP/U4230/A/11/2156151
APP/U4230/A/11/2156165
APP/U4230/A/11/2156163
APP/V4250/A/11/2160319
APP/V4250/A/11/2160321

Your Ref: APW.BM 01S0038/278

8 November 2012

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY WILLIAM SINCLAIR HORTICULTURE LTD
LAND AT CHAT MOSS PEAT WORKS, OFF CUTNOOK LANE, IRLAM M44 5WB
APPLICATION REFS: 10/58824/FULEIA, 10/58826/FULEIA, 10/58825/FULEIA, A/10/74592 MIN, A/10/74593 MIN

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector Alan Robinson BA (Hons) DipTP MRTPI, who held a public local inquiry commencing on 13 March 2012 into your client's appeals against the decision of Salford City Council to refuse planning permission for:

Appeal 1: the variation of conditions attached to planning permission Ref. 91/28449/FUL, dated 15 July 1994, for the continued use of land for the extraction of peat with variation of conditions imposed on planning permission E/11002 (*application reference 10/58824/FULEIA dated 24 March 2010*);

Appeal 2: the variation of conditions attached to planning permission Ref. 91/28450/FUL, dated 15 July 1994, for the continued use of land for peat extraction with variation of conditions imposed on planning permission E/22095 (*application reference 10/58826/FULEIA dated 24 March 2010*); and

Appeal 3: the variation of conditions attached to planning permission Ref. 97/37333/FUL, dated 14 August 1998, for variation of planning permission E/24741 (*application reference 10/58825/FULEIA dated 24 March 2010*);

and into your client's appeals against the decision of Wigan Metropolitan Borough Council to refuse planning permission for:

Department for Communities and Local Government
Christine Symes, Decision Officer
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Appeal 4: the variation of conditions attached to planning permission Ref. A/31651/89, dated 21 January 1991, for the extraction of peat and restoration of the land for amenity use (nature conservation) (*application reference A/10/74592 MIN dated 24 March 2010*); and

Appeal 5: the variation of conditions attached to planning permission Ref. A/36475/91, dated 7 September 1994, for peat working and restoration to nature conservation/amenity after use - proposed variation of conditions attached to permission E/24741 (*application reference A/10/74593 MIN dated 24 March 2010*);

2. On 17 October 2011, the appeals were recovered for the Secretary of State's own determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because they concern major proposals involving the winning and working of minerals.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The National Planning Policy Framework (the Framework) was published on 27 March 2012, after the Inquiry's last sitting day. The Framework replaced those Planning Policy Guidance Notes and Statements, Minerals Planning Guidance Notes, Circulars and letters to Chief Planning Officers set out in its Annex 3; reference to which was made in written evidence and at the Inquiry. The Secretary of State notes (IR3) that the parties' written representations on the Framework were subsequently invited and received, and that the Inspector has taken them into account in his report. The Secretary of State also notes that the parties' closing submissions were submitted in writing after the Inquiry's last sitting day (IR2).

5. Following the Inquiry's last sitting day, the Secretary of State received a representation from Paul Edwards dated 10 April 2012. The Secretary of State has taken account of this representation in his consideration of these appeals. However, he is satisfied that it does not raise matters which require him to refer back to parties prior to reaching his decision. A copy of the representation is not attached to this letter but may be obtained on written request to the address or the email address on the first page of this letter.

6. In reaching his decision, the Secretary of State has taken into account the revised Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended ('the EIA Regulations'). Like the Inspector (IR1056 -1058), the Secretary of State is satisfied that the environmental information is adequate and satisfies the requirements of the EIA Regulations.

7. The Secretary of State has also taken into account the additional information submitted by your client as a result of discussions with the Environment Agency and

Natural England in respect of buffer zones, hydrogeology and the phasing of restoration although this does not form part of the ES (IR10).

8. The application for costs (IR1) made by Salford City Council at the Inquiry is the subject of a separate decision letter, also being issued today by the Secretary of State.

Policy considerations

9. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

10. The North West Regional Spatial Strategy (2008) (RSS) forms part of the development plan relating to all 5 appeals. The saved policies of the Salford Unitary Development Plan (2006) (SUDP) also form part of the plan in respect of appeals 1, 2 and 3 and the saved policies of the Wigan Replacement Unitary Development Plan (2006) (WUDP) also form part of the plan in respect of appeals 4 and 5. The Secretary of State considers that the policies relevant to these appeals include those listed by the Inspector at IR25 – 34 and IR896 - 898.

11. The Localism Act 2011 provides for the abolition of Regional Strategies. However, until such time as the RSS is formally revoked by Order, the Secretary of State has attributed limited weight to its proposed revocation in determining these appeals. Any decision to revoke the RSS will be subject to the environmental assessment which is in train.

12. The Secretary of State has had regard to the Inspector's comments at IR900 -904 and to his conclusions in IR899 that only a little weight can be attached to the emerging development plan documents. With regard to the draft Salford Core Strategy (CS), the Secretary of State has taken account of Salford City Council's letter of 31 October 2012 to Mr Richard E Hollox, the Planning Inspector appointed to conduct the independent examination of the draft Salford CS. With regard to the draft Wigan CS, he has taken account of the letter dated 24 May 2012 from Mr Kevin Ward, the Planning Inspector appointed to conduct the independent examination of the draft Wigan CS. With regard to the draft Greater Manchester Minerals Plan, he has taken account of the fact that the examination into this draft plan is due to reconvene later this month. In common with the Inspector, the Secretary of State attributes little weight to these three draft documents which are still subject to change. Copies of the aforementioned letters may be obtained on written request to the address or email address on the first page of this letter.

13. Other material considerations which the Secretary of State has taken into account include: the Framework; Technical Guidance to the Framework; The Planning System: General Principles; Planning Policy Statement 10: Planning for Sustainable Waste Management; the White Paper "The Natural Choice: Securing the Value of Nature" published in June 2011; the "Consultation on Reducing the Horticultural Use of Peat in England" published in December 2010; Circular 11/95: The Use of Conditions in Planning Permission; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; the Written Ministerial Statement by Baroness Hanham CBE – Abolition of Regional Strategies (25 July 2012); and the local policy document "Mossland Project – The Vision".

Main issues

The need for peat and the availability of non peat alternatives

14. The Secretary of State [otherwise] agrees with the Inspector's analysis of the need for peat and the availability of non peat alternatives (IR922-946). He agrees with the Inspector that the Framework does not preclude planning permission for continued peat extraction on sites that have already been worked for peat (IR1060). However, in common with the Inspector, he considers that this does not mean that proposals on existing sites should automatically be approved, rather that careful consideration needs to be given to each case looking in particular at the consequences for climate change and biodiversity (IR1060). The Secretary of State considers these matters below.

15. Overall, the Secretary of State agrees with the Inspector's conclusion that there is no national planning policy imperative for new sources of peat supply to be brought forward (IR946). He agrees with the Inspector that the release of peat resources in Chat Moss would frustrate the move from peat to non peat media and discourage the development and take up of peat substitutes. Like the Inspector, the Secretary of State is not convinced that a compelling need argument has been advanced to support the appeal proposals (IR946).

The effect of the proposals on climate change

16. The Secretary of State sees no reason to disagree with the Inspector's analysis in IR947-959 regarding the effect of the proposals on climate change. He has taken account of the fact that it is not disputed that the continued extraction of peat from Chat Moss would release substantial amounts of CO_2 into the atmosphere (IR960). For the reasons set out in IR952-955, the Secretary of State is not persuaded that refusal of these appeals would inevitably lead to peat extraction elsewhere that would generate higher levels of emissions (IR960). Like the Inspector he considers that this argument pays insufficient account of non peat media coming forward in the period that peat extraction is proposed on Chat Moss (IR960). He also agrees with the Inspector that, whilst the appeals propose to restore the sites to lowland raised bog, there are other restoration options that are likely to result in the sequestration of carbon without the emission, in the short term, of CO_2 from peat extraction (IR960). This is a matter which the Secretary of State considers under the "Restoration of the Site" heading below.

17. The Secretary of State agrees with the Inspector's conclusion in IR961 that the loss of the carbon stored in the site through continued peat extraction and the difficulties that this would pose in meeting the challenge of climate change would be contrary to policies within the Development Plan which seek to minimise greenhouse gas emissions and to have regard to the need to minimise the impact of development on climate change. He further agrees with the Inspector that this would also be contrary to paragraph 93 of the Framework which also seeks to reduce greenhouse gas emissions (IR961).

The nature conservation status of the site

18. For the reasons set out in IR962-974, the Secretary of State agrees with the Inspector's view that the proposed area of continued peat extraction qualifies as an Annex I Habitat degraded raised bog capable of restoration, and that it is also a UK Biodiversity Action Plan habitat (IR975).

Restoration of the site – existing situation and the proposals

19. The Secretary of State has carefully considered the Inspector's analysis, in IR976-1037, of matters relating to the restoration of the site. For the reasons set out in those paragraphs, he agrees with the Inspector (IR1038) that the site is capable of early restoration under existing planning conditions and agreements to make good progress in realising its nature restoration potential, and that restoration under the existing planning permissions would ensure it continues to be a carbon store. He also agrees with the Inspector that the appeal proposals provide no compelling advantage in terms of restoration and would entail a significant delay in realising the site's biodiversity potential. In addition, for the reasons set out in IR1028 -1037, he agrees with the Inspector that the appeal proposals for the restoration of the site are not without a degree of uncertainty (IR1038).

20. Like the Inspector, the Secretary of State recognises that SUDP Policy EN11 and WUDP Policy MW1D seek restoration to lowland raised bog and that, in this respect, the appeal proposals would be in conformity with these policies. However, he also agrees with the Inspector that the appeal proposals would result in a postponement of this objective being achieved (IR1038).

Effect on the adjacent Twelve Yards Road Site of Biological Interest (SBI)

21. For the reasons set out in IR1039 - 1047, the Secretary of State agrees with the Inspector that the same protection should be accorded to the southern boundary of the SBI as to its western boundary (IR1047). Like the Inspector (IR1048), he considers that, provided the mitigation measures are put in place, the proposals would have no undue effect on the SBI. He agrees with the Inspector that, for both the western and southern boundaries of the SBI, this would afford a much greater degree of hydrological protection than the SBI now has and, as such, would represent a clear benefit of the appeal proposals (IR1048). He also agrees with the Inspector that, with the mitigation measures in place, there would be no breach of SUDP Policy EN8 or WUDP Policy EV2 which seek to safeguard SBIs (IR1048).

Effect of the proposals on residential amenity

22. For the reasons in IR1049 - 1055, the Secretary of State agrees with the Inspector's conclusion that the effect of continued peat extraction on residential amenity by dint of noise and disturbance, dust and traffic are matters that are capable of being controlled through the suggested planning conditions (IR1055).

Overall conclusions

23. The Secretary of State agrees with the Inspector's overall conclusions in IR1059 - 1068. In common with the Inspector (IR1059), he considers that Government has made it clear that the use of peat in horticulture is unsustainable. Whilst recognising that the Framework requires the economic benefits of mineral extraction to be given significant weight, like the Inspector, the Secretary of State considers that this has to be set within the context of the Government's view that the use of peat in horticulture is unsustainable and it has also to be set against the consequences of peat extraction on climate change and biodiversity (IR1061).

24. The Secretary of State has concluded (at paragraph 15 above) that there is no national planning policy imperative for new sources of peat supply to be brought forward, and that the release of peat resources in Chat Moss would frustrate the move from peat to non peat media and discourage development and take up of peat substitutes. Like the Inspector, he recognises that dismissal of the appeals would result in a number of local jobs being lost, and that the safeguarding of jobs associated with peat extraction at Chat Moss would be a benefit of the proposals (IR1062). However, he agrees with the Inspector that investment in the manufacture of non peat substitutes would, in the longer term, create employment and support the Government's aim of being a leader on sustainability and the environment (IR1062).

25. The Secretary of State agrees with the Inspector (IR1063) that the continued extraction of peat from the appeal site would result in substantial emissions of CO_2 with the attendant impact on climate change. He also shares the Inspector's views that the proposals would delay the restoration of the site to lowland raised bog by many years (IR1064), and that this delay, and the uncertainties associated with the proposed restoration scheme, would be contrary to paragraph 144 of the Framework which seeks restoration at the earliest opportunity to high environmental standards (IR1068). In common with the Inspector, he considers that restoration to realise the nature conservation value of the site is capable of being realised under the existing planning conditions and agreements, and that this would have biodiversity and carbon benefits without needing to wait (IR1064). Like the Inspector (IR1065), the Secretary of State acknowledges that the mitigation measures that can be put in place would lead to increased protection for the SBI, but he considers that this has to be set against the considerable harm to climate change and biodiversity if restoration were to be delayed.

26. The Secretary of State agrees with the Inspector (IR1067) that the appeals would conflict with the objectives of the Mosslands Vision Project. He concurs with the Inspector's comments at IR1068 and he concludes that the scheme conflicts with the framework in a number of respects. He also shares the Inspector's view that the appeal proposals are contrary to SUDP Policy EN8, WUDP Policy EV2, RSS Policies EM1, EM1(B), and DP9 (1066). Overall, the Secretary of State concludes that the appeal proposals do not comply with the development plan. He has found no material considerations of sufficient weight to determine the appeals other than in accordance with the development plan.

Formal decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeals and refuses planning permission for:

Appeal 1: the variation of conditions attached to planning permission Ref. 91/28449/FUL, dated 15 July 1994, for the continued use of land for the extraction of peat with variation of conditions imposed on planning permission E/11002 (in accordance with application reference 10/58824/FULEIA dated 24 March 2010);

Appeal 2: the variation of conditions attached to planning permission Ref. 91/28450/FUL, dated 15 July 1994, for the continued use of land for peat extraction with variation of conditions imposed on planning permission E/22095 (in accordance with application reference 10/58826/FULEIA dated 24 March 2010);

Appeal 3: the variation of conditions attached to planning permission Ref. 97/37333/FUL, dated 14 August 1998, for variation of planning permission E/24741 (in accordance with application reference 10/58825/FULEIA dated 24 March 2010);

Appeal 4: the variation of conditions attached to planning permission Ref. A/31651/89, dated 21 January 1991, for the extraction of peat and restoration of the land for amenity use (nature conservation) (in accordance with application reference A/10/74592 MIN dated 24 March 2010); and

Appeal 5: the variation of conditions attached to planning permission Ref. A/36475/91, dated 7 September 1994, for peat working and restoration to nature conservation/amenity after use - proposed variation of conditions attached to permission E/24741 (in accordance with application reference A/10/74593 MIN dated 24 March 2010);

on land at Chat Moss Peat Works, off Cutnook Lane, Irlam M44 5WB

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

29. A copy of this letter has been sent to Salford City Council, Wigan Metropolitan Borough Council and the Rule 6 party Lancashire Wildlife Trust. A notification letter has been sent to other interested parties who asked to be informed of the outcome of these appeals.

Yours faithfully

Christine Symes
Authorised by Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Alan Robinson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 June 2012

TOWN AND COUNTRY PLANNING ACT 1990

APPEALS BY WILLIAM SINCLAIR HORTICULTURE LTD

VARIATION OF CONDITIONS ON PREVIOUS PLANNING PERMISSIONS

TO EXTEND DURATION OF PEAT EXTRACTION

AND AMEND WORKING HOURS

ON LAND AT CHAT MOSS PEAT WORKS,

OFF CUTNOOK LANE, IRLAM M44 5WB

Inquiry opened on 13 March 2012

Chat Moss Peat Works, off Cutnook Lane, Irlam

File Ref(s): APP/U4230/A/11/2156151 APP/U4230/A/11/2156165 APP/U4230/A/11/2156163 APP/V4250/A/11/2160319 APP/V4250/A/11/2160321

Appeal 1

File Ref: APP/U4230/A/11/2156151
Chat Moss Peat Works, off Cutnook Lane, Irlam

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by William Sinclair Horticulture Ltd against the decision of Salford City Council.
- The application Ref 10/58824/FULEIA, dated 24 March 2010, was refused by notice dated 4 July 2011.
- The application sought the variation of conditions attached to a planning permission Ref 91/28449/FUL, dated 15 July 1994, for the continued use of land for extraction of peat with variation of conditions imposed on planning permission E/11002.
- The conditions in dispute are Nos 1 and 7. No 1 states that 'the winning and working of peat shall cease not later than 31 December 2010'. No 7 states that 'no mineral working shall be carried out other than with the prior written approval of the local planning authority except between the hours of 6.00 and 20.00 on Mondays to Fridays and with no working, apart from essential maintenance, on Saturdays, Sundays and Bank Holidays'.
- The reason given for condition No 1 is 'to ensure the satisfactory development and restoration of the site'. The reason given for condition No 7 is 'in the interests of amenity'.

Summary of Recommendation: The appeal be dismissed

Appeal 2

File Ref: APP/U4230/A/11/2156165
Chat Moss Peat Works, off Cutnook Lane, Irlam

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by William Sinclair Horticulture Ltd against the decision of Salford City Council.
- The application Ref 10/58826/FULEIA, dated 24 March 2010, was refused by notice dated 4 July 2011.
- The application sought the variation of conditions attached to a planning permission Ref 91//28450/FUL, dated 15 July 1994, for the continued use of land for peat extraction with variation of conditions imposed on planning permission E/22095.
- The conditions in dispute are Nos 1 and 8. No 1 states that 'the winning and working of peat shall cease not later than 31 December 2010'. No 8 states that 'no mineral working shall be carried out other than with the prior approval of the local planning authority except between the hours of 6.00 and 20.00 on Mondays to Fridays and with no working, apart from essential maintenance, on Saturdays, Sundays and Bank Holidays'.
- The reason given for the condition No 1 is 'to ensure the satisfactory development and restoration of the site'. The reason given for condition No 8 is 'in the interests of amenity'.

Summary of Recommendation: The appeal be dismissed

Appeal 3

File Ref: APP/U4230/A/11/2156163
Chat Moss Peat Works, off Cutnook Lane, Irlam

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by William Sinclair Horticulture Ltd against the decision of Salford City Council.
- The application Ref 10/58825/FULEIA, dated 24 March 2010, was refused by notice dated 4 July 2011.
- The application sought the variation of conditions attached to a planning permission Ref 97/37333/FUL, dated 14 August 1998 for variation of planning permission E/24741 to change the method of peat extraction from sod cutting to surface milling and similar modification of the legal agreement covering the whole of the existing Chat Moss peat working site.
- The conditions in dispute are Nos 2 and 9. No 2 states that 'the winning and working of peat shall cease not later than 31 December 2010'. No 9 states that 'no mineral working shall be carried out other than with the prior approval of the local planning authority except between the hours of 6.00 and 20.00 on Mondays to Fridays and with no working, apart from essential maintenance, on Saturdays, Sundays and Bank Holidays'.
- The reason given for condition No 2 is 'to ensure the satisfactory development and restoration of the site'. The reason given for condition No 9 is 'in the interests of amenity'.

Summary of Recommendation: The appeal be dismissed

Appeal 4

File Ref: APP/V4250/A/11/2160319
Chat Moss Peat Works, off Cutnook Lane, Irlam

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by William Sinclair Horticulture Ltd against the decision of Wigan Metropolitan Borough Council.
- The application Ref A/10/74592 MIN, dated 24 March 2010, was refused by notice dated 18 August 2011.
- The application sought the variation of a condition attached to a planning permission Ref A/31651/89, dated 21 January 1991, for the extraction of peat and restoration of the land for amenity use (nature conservation).
- The condition in dispute is No 3 which states that: 'the winning and working of peat hereby permitted shall cease not later than 31 December 2010'.
- The reason given for the condition is 'to help secure the restoration and after-care of the site'.

Summary of Recommendation: The appeal be dismissed

Appeal 5

File Ref: APP/V4250/A/11/2160321
Chat Moss Peat Works, off Cutnook Lane, Irlam

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by William Sinclair Horticulture Ltd against the decision of Wigan Metropolitan Borough Council.
- The application Ref A/10/74593 MIN, dated 24 March 2010, was refused by notice dated 18 August 2011.
- The application sought the variation of a condition attached to a planning permission Ref A/36475/91, dated 7 September 1994, for peat working and restoration to nature conservation/amenity after use – proposed variation of condition Nos 1 to 15 of permission E/24741.
- The condition in dispute is No 2 which states that: 'the winning and working of peat shall cease not later than 31 December 2010'.
- The reason given for the condition is: 'to help secure the restoration and after care of the site'.

Summary of Recommendation: The appeal be dismissed

Procedural Matters

1. At the inquiry an application for costs was made by Salford City Council against the appellant. This application is the subject of a separate report.

2. The inquiry sat on 13, 14, 15, 16, 19, 20, 21, 22, 23 and 26 March. As it was not possible to hear the closing submissions of the parties at the inquiry, it was agreed that these would be made in writing at a later date. Accordingly, the closing submissions of Salford City Council (hereafter called Salford), Wigan Metropolitan Borough Council (hereafter called Wigan) and Lancashire Wildlife Trust (hereafter called the Trust) were submitted on 2 April and those of the appellant were submitted on 5 April.

3. The evidence at the inquiry and the closing submissions were written against the background of the consultation draft of the National Planning Policy Framework (hereafter called the draft Framework). The final version of the National Planning Policy Framework (hereafter called the Framework) was issued on 27 March, after the last of the inquiry sitting days. To provide an opportunity for the parties to comment on the implications of the Framework as far as these appeals are concerned, the parties were given a further period for submitting written comments. The parties submitted their comments on the Framework on 19 April and additional submissions on the Framework were subsequently made by the Trust and the appellant. Within this report, the parties' Framework submissions are reported separately from the parties' other submissions. The inquiry was closed in writing on 1 May.

4. An accompanied inspection of the site and its surroundings was made on 11 April. The site inspection took in the homes of two of the interested persons who had appeared at the inquiry, Mr Edwards and Mrs Moss. The site inspection also included the restored areas of two nearby peat workings, Astley Moss and Cadishead Moss. The latter is managed by the Trust. (Inspector's note: see ID27 for the plans of the places visited during the site inspection).

5. The five planning applications sought to extend the duration of peat extraction operations until 31 December 2025 with restoration operations being completed by 31 December 2027. The applications also sought to amend the working hours covered by the three existing planning permissions within Salford to 0700 to 1900 hours.

6. The five planning applications were refused by the two planning authorities for reasons which cover much the same ground but with some slight differences in wording. One of the reasons of refusal relates to the loss of a carbon sink which would lead to significant CO_2 emissions from the oxidisation of peat which is removed as part of the proposals. Two of the reasons refer to the significant impact of the proposals on the ecology, hydrogeology and hydrology of the adjacent Twelve Yards Road Site of Biological Importance (hereafter called SBI) and the insufficiency of information that has been submitted to enable these impacts to be assessed. The other reason for refusal relates to the failure that the site can be successfully restored to a lowland bog habitat. This reason goes on to say that the continued extraction of peat would lead to irretrievable damage to the peat substrate which currently meets the criteria of an Annex I habitat.

7. The appeals were recovered for determination by the Secretary of State by direction dated 17 October 2011. The reason given for the recovery of jurisdiction is that the appeals are for major proposals involving the winning and working of minerals.

8. The inquiry followed procedures that were established at the pre-inquiry meeting. The pre-inquiry meeting also identified a number of questions which the parties were requested to deal with in the presentation of their cases at the inquiry. These questions were framed so as to allow the reasons for refusal to be explored in greater detail at the inquiry. (Inspector's note: the minutes of the pre-inquiry meetings are contained in document OD5. See paragraph 37 for the questions that were posed to the parties).

9. There was no disagreement between the parties that the development being proposed constituted development under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (hereafter known as the EIA Regulations) for which an Environmental Statement needed to be prepared. Accordingly, when the applications were submitted in March 2010 they were accompanied by an Environmental Statement (hereafter called the ES). Salford then issued a Regulation 19 letter requiring further information to be submitted. This was duly done in a revised ES submitted in November 2010. In response to a request for clarification made at the pre-inquiry meeting, the appellant subsequently confirmed that the earlier ES had been wholly subsumed into the ES of November 2010. (Inspector's note: see paragraph 40 of the pre-inquiry meeting minutes, document OD5).

10. Additional information was submitted by the appellant in September and December 2011 as a result of discussions between the appellant and the Environment Agency and Natural England in respect of buffer zones, hydrogeology and the phasing of restoration. This information was not required by the local planning authorities by way of Regulation 19 of the EIA Regulations but was submitted by the appellant as a response to discussions that were to see whether the Environment Agency's and Natural England's objections could be

resolved by additional mitigation measures. As such, this additional information does not form part of the ES. Nevertheless, the additional information forms part of the proposals being put forward by the appellant and was debated at the inquiry. It is thus in the public domain and I have dealt with the appeals on this basis. (Inspector's note: see CD11.48 and CD11.49 for the additional information submitted in September 2011 and OD3 for the additional information submitted in December 2011).

11. The smooth running of the inquiry owed much to my programme officer, Mr Matthew Maule of Urban Vision. I would like to place on record my thanks to Mr Maule for his quiet efficiency and also his approachability in dealing with all parties. (Inspector's note: Urban Vision is a consultancy which undertakes much of Salford's planning work).

The Site and Surroundings

12. The appeal site lies within Chat Moss, a broad expanse of flat open countryside typical of a lowland peat landscape. Chat Moss lies between the built up areas of Greater Manchester to the east and Warrington to the west. To the north, this tract of countryside is bounded by the main Liverpool to Manchester railway line and to the south by the M62 Liverpool to Manchester motorway.

13. Whilst there has been extensive working of peat on Chat Moss both in the past and more recently, much of the peat has been drained and is now in agricultural use. The absence of hedgerows around fields and peat workings give the area an open, exposed character, although there are also blocks of woodland in the vicinity of the railway line and also smaller areas of woodland along the edge of some of the tracks which criss-cross Chat Moss. Although the area has an open character, longer views into and out of Chat Moss are limited by both the flat topography and the presence of blocks of woodland around the edge of Chat Moss.

14. Chat Moss is characterised by a grid like pattern of narrow tracks and deep drainage ditches. These are typical of many areas where peat has been worked. Many of the tracks are public rights of way. There is a scattered pattern of settlement on Chat Moss. This consists mainly of isolated farms and also small groups of dwellings along the main tracks through the area.

15. The appeal site extends to about 95 hectares (ha). Peat has been extracted from the site since the 1960s. Approximately 63 ha has been the subject of recent peat extraction. The area of the site that has been recently worked has a flat bare brown/black peat surface. This area is criss-crossed by shallower drainage ditches and surrounded by deeper perimeter drains. These drain the peat, allowing the peat to dry out so it can then be harvested. The main operation/storage area is located adjacent to the southern entrance of the site, off Twelve Yards Road. There is also another peat storage area located to the west of the operation adjacent to Railway View Farm. (Inspector's note: see the photographs in appendix 3 of Mr Leay's evidence, WSHL1.7. These provide a series of views of the appeal site and its immediate surroundings).

16. Within the eastern part of the appeal site and along the eastern boundary of the area where peat extraction has recently taken place is the Twelve Yards Road SBI, which is approximately 15 ha in area. About 13 ha of this area is managed by the Trust. The former peat workings, which were worked by traditional

methods involving the cutting and drying of the peat in long narrow strips, are being restored to a lowland raised bog. In the southernmost part of the area being managed, there are long strips of water where Sphagnum has been successfully re-established, but the northern part is much drier and other habitats are more in evidence. A long narrow strip along the western boundary of the SBI and about 2 ha in area is currently bare peat and has been used as a vehicle circulation area for the peat extraction operation on the adjacent land to the west. (Inspector's note: it is agreed by the parties that figures given for areas here and elsewhere for the appeal site are approximate. There has been no surveying of the site to arrive at more precise figures).

17. The SBI has been managed by the Trust for Salford under a lease from the landowner until the expiry of the current planning permissions in December 2010. There is currently a licence in place dating from March 2011 and made between Peel Environmental Ltd, the land owners, and Salford which allows the City Council and the Trust access and entry to the Site to restore the restoration area to wetland bog habitat. This licence was in place until the end of December 2011 and Peel has confirmed in writing its willingness to extend this licence for a further twelve month period.

18. The northern limit of the extraction area is formed by the Liverpool to Manchester railway line which separates this peat extraction site from peat and sand/gravel operations on Astley Moss to the north. For the most part, the southern limit of the extraction area is defined by one of the tracks across Chat Moss, Twelve Yards Road, although there are two areas of the appeal site which extend south of Twelve Yards Road. One of these areas lies immediately to the south of the SBI from which it is separated by Twelve Yards Road. This area is the subject of appeal 3. The other is an area about 12 ha in area and is now in a state of "informal" restoration where a series of wet areas are separated by low peat bunds. This area was last worked for peat in 2008. This area forms part of the area which is the subject of appeal 2.

19. The western boundary of the extraction area mainly adjoins farmland, although there is a small group of residential properties, including Elmholme, Rose Farm and Boag Farm, which extend into the western part of the extraction area. (Inspector's note: for the boundaries of the SBI and the extraction area which is the subject of these appeals can be seen on the plan in appendix 2 to Mr Leay's evidence).

20. The extraction area is covered by a number of planning permissions. There are three planning permissions within the administrative boundary of Salford and a further two within Wigan. However, there are no markers on the ground to distinguish individual permissions. Nor, with the exception of appeal 3 which lies wholly south of Twelve Yards Road, is there any physical feature to distinguish between the area worked under one planning permission and the area worked under another. The extraction site has been operated as a single site. (Inspector's note: the planning permission boundaries can also be seen on the plan in appendix 2 to Mr Leay's evidence. Appeal 1 is shown on Mr Leay's plan as site A, appeal 2 as site B, appeal 3 as site C, appeal 4 as site E and appeal 5 as site F).

21. Within the administrative area of Salford, a further planning permission for peat extraction was granted in 1963. The area of this planning permission adjoins the

south-western corner of the appeal site but is not the subject of the current appeals. Salford maintains that there is now no longer a planning permission in place covering this area as the planning permission was not saved through the process of reviewing old planning permissions as set out in Minerals Planning Guidance (hereafter called MPG) 14. This is disputed by the appellant. (Inspector's note: the area covered by the 1963 planning permission is shown as site D on the plan in appendix 2 to Mr Leay's evidence).

Planning Policy

22. The purpose of this section of the report is to identify relevant local, regional and national policy. It does not seek to give weight to emerging policy or to relate local and regional policy to national policy. This exercise is undertaken in the conclusions of the report.

23. Formally adopted local and regional policy comprises the adopted Salford Unitary Development Plan (hereafter referred to as the SUDP), the adopted Wigan Replacement Unitary Development Plan (hereafter referred to as the WUDP), and the North West Regional Spatial Strategy (hereafter referred to as the RSS). (Inspector's note: relevant policies of the SUDP are to be found at CD6.2 to 6.12; those of the WUDP at CD6.15 to 6.32; and those of the RSS at CD4.1 to 4.6).

24. The SUDP was adopted in June 2006. A number of its policies were saved in June 2009. They will eventually be replaced when the Greater Manchester Joint Minerals Development Plan Document (hereafter known as DPD), the SCS and other elements of the Local Development Framework (hereafter abbreviated to LDF) are adopted.

25. Policy ST13 is contained with the safeguarding of natural environmental assets. It says that proposals which would have an unacceptable impact upon the City's natural environmental assets will be refused. Policy ST14 seeks to minimise the impact of development on the global environment, whilst under Policy ST17 the exploitation of mineral resources will be safeguarded and their exploitation only permitted where there is no appropriate alternative secondary source of supply. The environmental impact of the mineral workings will be minimised.

26. Policy EN8 is concerned with locally important nature conservation sites. It indicates that proposals that would adversely affect a SBI, a local nature reserve or a priority habitat as defined by the Greater Manchester Biodiversity Action Plan will only be permitted in certain circumstances. These include the benefits of the development clearly outweighing the impact on nature conservation, the effect on the nature conservation value of the site has been reduced as far as is practicable and appropriate mitigation is provided to ensure that the overall nature conservation interest of the area is not diminished. (Inspector's note: the Greater Manchester Biodiversity Action Plan is at CD5.8. Lowland raised bog is identified in the document as being a priority habitat).

27. Policy EN11 indicates that the focus for the protection and restoration of lowland raised bog in the City is the Mossland heartland on Chat Moss. Proposals that would affect land which has the potential to be restored to lowland raised bog will be permitted within the heartland where the development would not prevent restoration to lowland raised bog in the future.

28. Policy EN17 says that development that is likely to contribute towards or cause a significant increase in noise, odours or pollution of the air, water or soil will not be permitted. Policy EN18 states that development that would have an unacceptable impact upon surface or ground water will not be permitted. Policy M2 is concerned with mineral development. It indicates that planning permission will not be granted for proposals involving minerals extraction where it would have an unacceptable impact on, amongst other things, residential amenity; have an unacceptable harm to the water environment (including surface and groundwater levels or flows); have an unacceptable impact on sites of ecological value or on protected species or their habitats; or does not include a satisfactory scheme of restoration and aftercare.

29. The WUDP was adopted in April 2006. The following policies were saved in February 2009. Policy EV1 seeks to improve the character and appearance of the Borough by protecting and, where appropriate, enhancing semi-natural habitats and by promoting biodiversity. Policy EV1B says that development that would result in unacceptable levels of noise or prejudice the use of land reserved for other purposes will not be permitted.

30. Policy EV2 seeks to protect and enhance the natural environment and biodiversity by, amongst other things, SBIs or other sites of nature conservation value unless conditions can be imposed which prevent damaging impacts. The policy also requires the enhancement of areas of nature conservation interest and protecting features of wildlife interest, protected species and key biodiversity habitats. Policy EV2B indicates that development will not be permitted which would adversely affect SBIs unless conditions can be imposed that will prevent damage or where there are other material considerations which are sufficient to override these concerns. Policy EV2C states that development will not be permitted which would adversely affect certain landscape features, such as Mosslands, which are of major importance for fauna and flora. Policy EV2D seeks to protect legally protected species, whilst Policy EV2E says that biodiversity will be promoted within the Borough.

31. WUDP Policy MW1 is concerned with mineral extraction. It indicates that the Borough will make an appropriate contribution to the regional production of minerals and will seek to minimise the adverse impact of the working of these minerals. Policy MW1D says that permission will not be forthcoming for peat extraction on the remaining fragments of Remnant Mossland shown on the Proposals Map. It goes on to require peat workings to be restored to wetland with a preference to lowland bog or a complementary habitat. Policy MW1E sets out, amongst other things, requirements for the restoration and aftercare of sites. The policy points to the need for satisfactory schemes to be provided. Policy MW1F states that where mineral workings are permitted, hours of operation will be limited and satisfactory restoration sought.

32. In terms of general policies within the WUDP, Policy G1A says that the impact of development will be subject to careful consideration and only permitted where there would be no significant adverse impact on amenity by reason of noise, traffic, visual intrusion or other nuisance. Policy G1B says that where it is necessary to restrict the use of land or require certain operations to be carried out, consideration will be given to the use of a planning obligation.

33. In respect of the RSS, which was adopted in September 2008, Policy DP1 sets out the spatial principles underpinning the RSS. These include promoting sustainable economic development, promoting environmental quality and reducing emissions and adapting to climate change. Policy DP7 seeks to promote environmental quality by, amongst other things, maintaining and enhancing the quantity and quality of biodiversity and habitat. Policy DP9 says that as a regional priority, proposals should contribute to reducing the region's CO_2 emissions and take account of future changes to national targets for CO_2 and other greenhouse gas emissions.

34. RSS Policy EM1 requires that the region's environmental assets should be identified, protected, enhanced and managed. It goes on to say that proposals should deliver an integrated approach to conserving and enhancing the landscape, natural environment, historic environment and woodlands of the region. Policy EM1(B) explains that proposals should secure a step change increase in the region's biodiversity by contributing towards the delivery of national, regional and local biodiversity objectives. Policy EM7 is concerned with mineral extraction. It says that plans and strategies should make provision for a steady and adequate supply of a range of minerals that meets the region's apportionment of land won aggregates. It goes on to explain that plans and strategies should ensure sensitive environmental restoration and aftercare.

35. Emerging local policy is provided by the draft Salford Core Strategy (hereafter called the SCS), the draft Wigan Core Strategy (hereafter referred to as the WCS) and the draft Greater Manchester Joint Minerals DPD. (Inspector's note: relevant policies of the SCS are at CD6.1; those of the WCS at CD6.33 to 6.39; and the Greater Manchester Joint Minerals DPD at CD5.2).

36. When adopted, the SCS will provide strategic level policy within the LDF for the City. Although subject to public consultation during its preparation, the draft version went out to a formal round of public consultation in February 2012.

37. SCS Policy SF3F sets out a vision for Chat Moss up to 2028. It recognises that Chat Moss is an important biodiversity resource and offers major opportunities for lowland bog restoration. The SCS is seeking to achieve the delivery of a Biodiversity Heartland, which includes restoration to lowland raised bog. It points out that the eventual cessation of peat extraction is necessary in order to complete the Heartland and as a consequence no further planning permissions will be granted for peat extraction.

38. Policy BG1 aims to increase the size, diversity and inter-connection of habitats within the City. It notes that a Biodiversity Heartland in Chat Moss will provide the largest area of habitat improvement and restoration in Salford. Policy BG2 says that development that results in a net loss in the City's biodiversity value will not be permitted.

39. SCS Policy MN1 is concerned with minerals. It seeks to provide a sustainable supply of minerals whilst protecting and enhancing the environment. In relation to peat, Policy MN1 does not permit any further extraction of peat, including physical extensions of sites or extensions in time for sites that have previously been granted planning permission, except where extraction would secure restoration to lowland raised bog.

40. The WCS was submitted to the Secretary of State for independent examination in September 2011. The hearing sessions of the examination in public began at the end of January 2012.

41. Policy CP9 seeks improvement of natural environments and open space within and between towns and other settlements through the ongoing restoration of despoiled landscapes and natural and semi-natural features, including the Mosslands. Policy CP12 seeks protection of wildlife corridors, especially those involving regional or local priority habitats. Policy CP14 seeks to reduce emissions of CO_2 arising from new development and help reduce the impacts of climate change. Policy CP16 seeks the effective restoration and aftercare of sites where minerals are extracted. The policy also seeks to prevent further peat extraction on the remaining areas of the Remnant Mossland. It also requires consideration to be given to its role in mitigating climate change and its role as a wildlife habitat before considering proposals for additional peat extraction. Policy CP18 says that help will be given to maintain, enhance and protect the environment. (Inspector's note: see updated version of Policy CP16 at ID19).

42. The Greater Manchester Joint Minerals DPD was submitted to the Secretary of State for independent examination in November 2011. The hearing sessions of the examination in public were held in February 2012. Policy 6 says that planning permission for peat extraction will only be granted where three criteria are met. First, the site has previously been worked for peat; the removal of the peat is required to enable restoration to take place and then only peat that is physically required to implement the restoration; and the site is to be restored to a lowland raised bog.

43. National planning policy for England is provided by the final version of the Framework, which was issued at the end of March 2012. With one main exception, the Framework replaces previous issued national policy in the form of Planning Policy Statements (hereafter referred to as PPS), Planning Policy Guidance (hereafter abbreviated to PPG), Minerals Policy Statements (hereafter called MPS) and MPGs. The main exception is PPS10 which is concerned with waste management and which remains extant until the Government completes a review of its policies on waste management.

44. The Framework is accompanied by a separate volume of technical guidance. This provides additional guidance to planning authorities to ensure the effective implementation of the Framework. The introduction to this document explains that it retains key elements of, amongst other things, MPSs and MPGs.

45. Paragraph 6 of the Framework explains that the purpose of the planning system is to contribute towards the achievement of sustainable development, whilst paragraph 7 identifies three dimensions to sustainable development which give rise to different roles for the planning system: economic, social and environmental roles. The former is concerned with the planning system's role in building a strong, responsive and competitive economy, the second is to do with the planning system's role in supporting strong, vibrant and healthy communities, whilst the latter is concerned with the role of the planning system in protecting and enhancing the natural, built and historic environment.

46. Paragraph 14 explains that at its heart lies a presumption in favour of sustainable development.

47. Paragraph 17 sets out a number of core planning principles. These include supporting the transition to a low carbon future in a changing climate and contribute to conserving and enhancing the natural environment.

48. Paragraph 93 points to the key role that planning has to play, amongst other things, in securing reductions in greenhouse gas emissions and minimising vulnerability and providing resilience to the impacts of climate change. In respect of biodiversity, paragraph 118 says that when determining planning applications, planning authorities should aim to conserve and enhance biodiversity by applying a number of principles. These include where significant harm arising from a development cannot be avoided or adequately mitigated then planning permission should be refused; development should be permitted where the primary objective is to conserve or enhance biodiversity; and opportunities to incorporate biodiversity in and around developments should be encouraged.

49. In terms of minerals, paragraph 142 makes the point that minerals are essential to support sustainable economic growth and the quality of life. Paragraph 143 sets out guidance on minerals for planning authorities in preparing local plans. Amongst other things, it says that whilst planning authorities should identify minerals of national and local importance and include policies for their extraction, new sites or extensions to existing sites for peat extraction should not be identified. It also says that, as far as practicable, account should be taken of the contribution that substitute materials would make to the supply of materials before considering the extraction of primary minerals. It also points to have put in place policies to ensure that land on which extraction has taken place is reclaimed at the earliest opportunity and that high quality restoration and aftercare takes place.

50. Paragraph 144 says that in determining planning applications for minerals, planning authorities should have regard to a number of considerations. These include giving great weight to the benefits of the mineral extraction, including to the economy; not granting planning permission for peat extraction from new or extended sites; and providing for restoration and aftercare at the earliest opportunity to high environmental standards. The paragraph explains that bonds or financial guarantees to underpin planning conditions should only be sought in exceptional circumstances.

51. The glossary to the Framework does not include peat in the definition of minerals of national or local importance.

52. At paragraphs 49 to 51 of the volume of technical guidance accompanying the Framework, Government policy towards financial guarantees for the restoration and aftercare of mineral sites is set out. It explains that the responsibility for restoration and aftercare lies with the mineral operator and that in their planning applications; operators should demonstrate what the likely budgets for dealing with restoration and aftercare will be.

53. These paragraphs go on to explain that in exceptional cases it will be reasonable for the planning authority to seek a financial guarantee to cover the costs of restoration and aftercare. The exceptional circumstances may include very long term projects where progressive reclamation is not practicable, where a novel approach or technique is to be used and where there is reliable evidence of either financial or technical failure.

54. The technical guidance at paragraph 54 sets out some definitions of certain categories of minerals referred to in the Framework. The Framework refers to the importance of maintaining landbanks for aggregates, non-energy minerals and industrial minerals. Peat is not included within the definitions provided by the technical guidance for aggregates, energy minerals and industrial minerals.

55. No reference is made in the preceding paragraphs to Green Belt policy either at local or national level. This is deliberate. Whilst the appeal site lies within the Green Belt, none of the reasons for refusal allege that the proposals are contrary to Green Belt policy. In the cases put to the inquiry, the two planning authorities did not seek to argue that the proposals conflict with the openness of the Green Belt or the reasons for including land within the Green Belt. There is no evidence before me to suggest that a different view should be taken.

The Proposals

56. It is accepted by the appellant and the two planning authorities that the end date for peat extraction set out in the planning permissions which the five planning applications submitted in March 2010 propose to vary is 31 December 2010.

57. Following the submission of the revised ES of November 2010, the five applications now seek to extend the period of peat extraction to the end of December 2025. It is being proposed that the limit of peat extraction would be set by retaining a minimum depth of 2m of peat above the geology underlying the peat deposits. The five applications would extend the end date for restoration to December 2027.

58. The five applications also amend the description of the permitted restoration of the site from an 'amenity' use to a lowland raised bog, with an element of progressive restoration prior to the final date of restoration, the end of December 2027.

59. The five applications also seek to reduce the working day as currently permitted of 0600 to 2000 hours to 0700 to 1900 hours. They also introduce a scheme of phased working and restoration and introduce a 15 year aftercare period. (Inspector's note: see details of phased restoration scheme at CD11.49).

60. It is agreed by the appellant and the two planning authorities that in the event that the appeals are allowed then there would lead to consequential amendments to conditions on the existing planning permissions. For example, if appeal 1 is allowed then in addition to amendments being required to conditions 1 (expiry of peat extraction) and 7 (hours of operation) of planning permission 91/28449, amendments would also be needed to conditions 2 (no peat extraction within 5 metres of site boundaries), 11 (restoration to amenity) and 12 (5 year aftercare period). (Inspector's note: see paragraph 2.5 of the Statement of Common Ground, document OD4, which sets out the consequential amendments that would be needed to conditions on existing planning permissions. Hereafter, the Statement of Common Ground is referred to as the SoCG).

61. It is also accepted that there would also be changes to other conditions not referred to in the preceding paragraph and in paragraph 2.5 of the SOCG. Further, it is accepted that if the appeals were to be allowed there would be a need for a significant number of additional new conditions.

The Case for William Sinclair Horticulture Ltd

Policy Considerations

62. An understanding of Government policy in relation to the use of peat is crucial in order to understand the context for the determination of these appeals.

63. It is national planning policy to maintain and encourage a competitive UK horticultural industry (see MPG13 at CD1.17). That policy has not changed since the adoption of MPG13 in 1995 and continues. Dr Hockaday for Salford agreed this in cross examination and Mr Dickman for Wigan also agreed this in cross examination). The horticultural industry represents a significant and important sector of the economy which provides material used for purposes including the production of food and the growing of plants which are clearly necessary to support the national interest in producing food and growing plants.

64. In the White Paper "the Natural Choice" (see paragraph 2.64 on page 29 of CD3.15) the Government explains that peat is "effectively a non-renewable resource". It identifies (see paragraph 2.65 on page 29) that the long-term policy aim is for peat **use** to be reduced to zero for three reasons:

    - To protect important lowland peat habitats;
    - To protect significant carbon stores; and
    - To promote a shift towards the greater use of waste derived and by product materials in growing media.

65. The White Paper explains "we want to reduce peat **use** to zero by 2030" (see paragraph 2.66 on page 29). It then sets out a number of "milestones" for **voluntary** reduction in peat use in various sectors of the market: a phase out by 2015 for use of peat in the public sector, 2020 for amateur gardeners and 2030 for professional growers.

66. The White Paper therefore identifies that there is to be a period of transition towards a peat free growing media market. Indeed, it states "making the transition to peat-free alternatives would put the (horticultural) industry on a sustainable footing, contributing to our goal of increasing food and other production sustainably and protecting our natural capital" (see paragraph 2.64 on page 29).

67. The recognition of the need for a period of transition for the horticulture industry within the White Paper is thus overt. It is necessary because, as is set out below, Government recognises that the market needs time to adapt and to invest in the supply of peat-free alternative products (see paragraph 9 on page 7 of the DEFRA report on the impact assessment of phasing out the use of peat in England, CD3.19). (This was confirmed by Dr Hockaday in cross examination). Thus, the phase out is dependent upon the ability of the market to source peat alternatives on a sufficient scale to be able to meet demand. It is therefore incorrect as suggested by Salford that the policy of phasing out of the use of peat is not dependent upon the market. It is entirely dependent upon the market and indeed is voluntary.

68. It is no part of Government policy to harm the horticultural industry. It is not Government policy that the demand for growing media should not be met during

the transitional period. (This was confirmed by Dr Hockaday in cross examination). If this was the policy and demand was not to be met then harm to horticultural industry would occur.

69. It must follow that during the transitional period, where there is an insufficient amount of peat-free alternatives available to meet the demands of the market, the Government accepts that peat will have to be used to meet the shortfall.

70. To this extent, Government policy in relation to the use of peat is no different from its policy relating to the use of any non-renewable resource such as coal, oil or gas. A sustainable approach to the consumption of any non-renewable resource is an approach which looks first to the use of sustainable alternatives and then uses only so much of the non-renewable resource as is necessary not to harm the economy. That is why in a period of transition in relation to energy production, renewable sources of energy are looked to first before using coal, oil or gas to provide for society's energy needs. The approach to the use of peat during the transitional period is no different.

71. As Mr Leay emphasised in cross examination the concept of sustainability is a three-legged stool which has regard to an economic role, a social role and an environmental role. A sustainable solution is a solution which pursues all three roles in an integrated way and which delivers multiple goals (see paragraphs 10 and 11 of the draft Framework, ID12).

72. Thus, in the context of peat, the sustainable approach during the period of transition is to look first to non-peat alternative materials to meet demand and where the supply of such materials is insufficient, to look to peat to meet any shortfall. This maximises the environmental benefits whilst minimising any adverse impacts upon the economy which in turn would have adverse social consequences in terms of loss of employment. Peat extraction to meet any residual need for growing media after having taken account of all available peat free alternatives cannot then be regarded as "unsustainable"; quite the reverse, it represents the sustainable choice during the transitional period.

73. In this context the mantra asserted by the local planning authorities in this case has the ring of Orwell's 1984 to it: refusal of appeals good, peat extraction bad. The approach which simply asserts that peat extraction is unsustainable is too simplistic. It is not Government policy that peat extraction is unsustainable. It is Government policy that extraction is unsustainable **in the longer term** given that alternatives to peat use exist and that society needs to be given time to move towards a peat free growing media market.

74. As Mr Leay explained in cross examination, the adoption of the mantra that peat extraction is unsustainable fails to take account of all three elements of sustainability. It fails to have regard to the need for a period of transition. It fails to have regard to the consequences economically and socially if demand is not met. It fails to have regard to the policy of maintaining and encouraging a competitive UK horticultural industry. It is not Government policy. As such, the approach advocated by the local planning authorities in their submissions is to be firmly rejected.

Policy of Reduction in Use

75. In this context, it is important to understand why the focus of the White Paper is upon reduction in peat **use**. Any economic market is the product of both supply and demand. A policy which seeks to control the use of any particular product can therefore seek to control the supply of that product to the market or it can seek to influence the use of that product by the consumer.

76. The realities of the market in peat are, however, that the Government has no effective means to restrict supply by the market. This is because peat is freely available to the market from other EU jurisdictions and the Government has no power to restrict the importation of peat into England as a result of the EU rules relating to the free market. Indeed, DEFRA stated in the consultation document that preceded the White Paper "it is likely that it will always be possible to import peat from overseas" (see paragraph 51 of page 15 of CD3.19). DEFRA also recognised this point in its consultation on reducing the horticultural use of peat (CD3.14 p 11 para 1.22) "the UK has very limited legal grounds for unilaterally banning the import of peat from other EU countries and restricting the free movement of goods within the European Community" (see paragraph 1.22 on page 11 of CD3.14).

77. That is not to say that the ultimate aim of phasing out the use of peat across the EU as a whole is unattainable. Indeed, the Government is committed to working at an international level to secure just this objective. However, it is highly unlikely that such a goal will be achieved EU wide in the period to 2030. None of the witnesses called by the planning authorities was able to identify any other EU country which currently has a policy of phasing out peat use. None could identify any draft policy or legislation which would prevent peat extraction, import/export or which would result in a tariff being imposed upon the use of peat. In such a context, the only reasonable conclusion to adopt now is that it will be possible to import peat from other EU countries in the period to 2030.

78. Further, it is plainly economically viable to import peat from those EU jurisdictions. The evidence for this is overwhelming given that two-thirds of peat currently used in the UK is imported (see Dr Hockaday' appendix 7 and also table 6 of the DEFRA monitoring report on of peat use, CD 3.13).

79. Thus, in a context where there is insufficient non-peat alternative materials available to meet demand and where the market will meet the shortfall through the use of peat, a policy which sought to prevent the supply of UK peat would simply export the demand for peat to other EU countries. The Government cannot ban the import of supply (see above). The consequence of a ban on domestic supply in this context then would be that peat would still be used in the UK to meet the shortfall and the policy objective would not be attained. Indeed, the consequences of failing to provide a sufficient supply of peat during the transitional period would be entirely adverse to the economy, in social terms and in environmental terms and are addressed further below.

80. The White Paper itself does not identify any specific action aimed at restricting the supply of peat; rather it has established a task force of which Mr Burns is a member, to examine the barriers to reducing peat use, establishes a programme for reviewing the achievement of targets before the end of 2015 and will review potential alternative policy measures if necessary.

81. As a result, Government has wisely rejected a policy of restricting the supply of peat during the transitional period because it recognises that it cannot control supply to the UK market. It is for this reason that the White Paper policy is carefully aimed at a voluntary reduction in the **use** of peat, that is, aimed at reducing consumption rather than supply. Paragraph 13 of the consultation paper that preceded the White Paper states in terms that: "Success in achieving the voluntary targets will ultimately depend on changes in consumer behaviour – demand led as a result of increased consumer awareness of the environmental impacts of peat." (See CD3.14)

82. Rather than simply restricting the supply of peat, the Government's policy is to focus upon encouraging the investment necessary to increase significantly the supply of non-peat alternatives and through a programme of increasing consumer awareness shift consumers towards the use of such alternatives.

83. It is argued by the local planning authorities, that to grant planning permission for further peat extraction would be to undermine this policy but that too is overly simplistic.

84. If regard is had to the likely available supply of peat free alternatives and concludes that there is likely to be insufficient supply to meet demand (see below) then the provision of additional peat supply to meet the shortfall will not affect the extent of use of those alternatives. You cannot affect what is not there to be used. As a matter of logic, if all the available non-peat alternatives have been used by consumers, the grant of planning permission for peat extraction cannot reduce the amount of supply of such alternatives. In this scenario there is no available supply of non-peat alternatives that can be affected and no further non-peat alternatives that could come forward for use by consumers. In such a scenario it is axiomatic that the supply of peat to meet residual needs which non-peat alternatives cannot meet will not undermine the policy of looking to such alternatives first.

National Planning Policy

85. Peat is a mineral for the purposes of national planning policy. This was confirmed by Dr Hockaday and Mr Dickman in cross examination. As such, the suite of existing national planning guidance relating to minerals planning is applicable to the appeal scheme. It is therefore important to understand the approach to minerals development adopted in existing national planning policy in the context of concerns relating to climate change and sustainability.

86. The central and overarching objective of MPS1 is to ensure an adequate and steady supply of minerals (including peat) in accordance with the principles of sustainable development (see paragraph 1 of MPS1, CD1.12). It is national planning policy that society should look to renewable resources first in order to meet demand that would otherwise require the consumption of minerals. Minerals should only be consumed to meet demand that renewable resources cannot meet (see paragraph 21 and 22 of PPS1, CD1.1 and paragraph 1 of MPS1, CD1.12). This was agreed by Dr Hockaday and Mr Dickman in cross examination and by Mr Leay in examination in chief.

87. In the context of demand for peat as a growing medium, this means that regard must be had to the extent to which non-peat alternative media are available now and are likely to be available in the future. This was accepted by Dr Hockaday

and Mr Dickman in cross examination. To the extent that non-peat alternatives cannot meet demand, existing national planning policy provides for that demand to be met through the supply of peat.

88. Further, and crucially in this case, where demand is to be met through the supply of minerals it is national planning policy that demand should be met from domestically sourced minerals as opposed to imported minerals (see second bullet point of paragraph 9 of MPS1, CD1.12). Indeed, MPS1 states in terms that planning authorities should aim to source mineral supplies indigenously, to avoid exporting potential environmental damage" and should "take account of the benefit, including the reduction of carbon emissions, which local supplies of minerals would make in reducing the impact of transporting them over long distances by road" (see second and seventh bullet points of paragraph 15 of CD1.12).

89. In their evidence to the inquiry the local planning authorities failed to have regard to this element of national planning policy. Indeed, even during cross examination Dr Hockaday explained that he had been unable to find where a policy of looking to indigenous supply first could be found. Until taken to the clear terms of the policies referred to above, Dr Hockaday was plainly unaware of this element of national planning policy. Thus, his evidence was formulated without regard to a fundamental aspect of national minerals planning policy. Thus, Ms Beard's views as to the appropriate planning balance which depended in large part upon Dr Hockaday's evidence were entirely flawed as a result.

90. In the present case, it is then current planning policy that, if non-peat alternative media cannot meet demand, demand is to be met firstly through the supply of domestically sourced peat as a priority over peat sourced from overseas.

91. MPG13 adopts just this approach even though it dates back to 1995. It analyses the likely demand for peat having regard to the view then adopted as to likely availability of non-peat alternatives and identifies the residual requirement for peat over the 10 years to 2005. Notwithstanding the later production of MSP1 and PPS1, the essential approach of national policy has remained unchanged since 1995.

92. There is then no national planning policy to the effect that because of climate change considerations peat extraction in the UK should cease, nor that no new planning permissions for peat extraction should be granted at all and certainly no policy to the effect that no time extensions should be granted to permit extraction of sites that have already been worked.

93. It is also necessary to understand that "indigenous" or "domestic" supply of minerals means minerals from England. MPS1 applies only in England (see paragraph 2 of CD1.12). The devolved administrations have their own powers to make planning policy. Thus, England cannot rely upon the devolved administrations to plan for and supply minerals to make up for any shortfall in supply in England. National planning policy is thus that if there is a shortfall in supply of minerals in England the policy is that that supply should be met first from mineral sources in England.

94. Only during the inquiry, once the penny dropped, did the local planning authorities attempt to argue that "indigenous" and "domestic" meant within

Great Britain. This argument formed no part of the evidence presented in proofs of evidence or rebuttals. It is a submission which is in any event obviously flawed. It rests upon the reference in paragraph 4 of MPG13 to Great Britain. However, MPG13 was formulated in 1995 prior to the devolution of planning powers as Mr. Leay pointed out in re-examination. Things have moved on. It is now the case that the Secretary of State does not have powers which enable him to regulate the supply of minerals from Scotland to meet demand in England. That is a matter entirely outside of the Secretary of State's planning policy purview.

95. MPS1 post-dates the devolution of planning powers. It states in terms that it relates only to England. The objective of MPS1 to ensure an adequate and steady supply of minerals (including peat) must therefore relate to the supply of peat from England. The policy cannot be reasonably read as relying upon supply from Scotland as the Secretary of State has no policy control over supply from Scotland. It follows that the use of the term "indigenous" and "domestic" in MPS1 can only be read as relating to minerals sourced in England.

96. The policy objective of sourcing necessary minerals from England to meet demand arising in England is a matter of common sense and is two fold. Firstly, it is to ensure that English demand does not export environmental cost to other jurisdictions (see second bullet of paragraph 15 of MPS1, CD 1.12) and secondly, it results in a reduction in CO_2 emissions associated with the transportation of minerals compared to the CO_2 emissions that would result from the movement of minerals from other jurisdictions over long distances (see seventh bullet point of paragraph 15 of CD 1.12).

97. In that context it is plain that national planning policy is that the English peat should be used ahead of Scottish peat, Irish peat or peat from northern Europe.

98. The result is that whilst there is a drive in policy terms to voluntarily reduce the use of peat within England in the years to 2020/2030, there is no policy that English peat should not be used or supplied in the interim. It is then national planning policy that if, during the period of transition towards a time when it is anticipated that there will be no use of peat, there is a residual need for a supply of peat to meet the sector of demand that cannot be met from non-peat alternatives that residual need should be met from peat sources within England first. If there is such a residual need it is national planning policy that there should be an adequate and steady supply of peat from England during the period of transition.

The draft Framework

99. The draft Framework cannot be read as changing this approach to the maintenance of an adequate and steady supply of English peat to meet residual needs during the transition period.

100. The Impact Assessment for the draft Framework (see page 43 of CD3.3) states in terms that the proposed policies in the draft "do not seek to change the overarching objective of minerals planning".

101. Under the headings "Minerals" and "Objectives" the draft Framework states at paragraph 100 that "Minerals are essential to support sustainable economic growth. It is therefore important that there is a sufficient supply of material to

provide the infrastructure, buildings, energy and goods that the country needs. The Government's objective for the planning system is to secure an adequate and steady supply of indigenous minerals needed to support sustainable growth, whilst encouraging the recycling of suitable materials to minimise the requirement for new primary extraction…"

102. Thus, the central objective remains in the draft as it is in MPS1 namely to ensure that there is a steady and adequate supply of indigenous peat within the period of transition to 2030 having regard to the role that non-peat alternatives can play minimising the requirement for further extraction. Dr Hockaday, Mr Dickman and Mr Leay all agree that paragraph 100 and this central objective applies to peat.

103. It follows that the policy within the draft Framework can only be read as not allowing for the grant of planning permission for peat extraction during the period of transition to a peat free market if there will be a steady and adequate supply of peat from England to meet any residual need in the interim that cannot otherwise be met through the use of non-peat alternatives.

104. It is only if it can be concluded that Government has determined that there will be a steady and adequate supply of peat from England to meet the demand that cannot otherwise be met through the use of non-peat alternatives that it could be reasonably concluded that the draft Framework does not provide for any increase in the peat production landbank. The Government has not so determined.

105. Dr Hockaday referred to the statement in the DEFRA consultation on reducing the horticultural use of peat (CD 3.14) where it is stated that all mineral planning authorities will not grant new applications for peat extraction. (See paragraph 4.5 of CD3.14). This same paragraph also states that "any future requirements should be easily accommodated from existing extraction sites and it is expected that new sites will not need to be opened up to meet expected market demands".

106. Dr Hockaday also referred to the impact assessment for the draft Framework (CD3.3) which explains at page 43 that in line with DEFRA policy, "this proposal updates planning policy to reflect this change. Given the intention to eliminate peat use, there should be no further need to identify new peat extraction sites."

107. The Impact Assessment goes on to state "it is estimated that existing sites have sufficient capacity to service current levels of use for six years" (see page 44 of CD3.3 under bullet point headed "Business").

108. However, Dr Hockaday sought an explanation from DEFRA of the evidential basis for the conclusion that future requirements would be accommodated from existing supply. The response received from DEFRA is set out in his Appendix 7. It is plain from the response that the DEFRA statements and the statement in the draft Framework Impact Assessment were not based upon an actual assessment of actual peat reserves. As such, it is at the very least unclear that they take into account the changes to the supply of English peat that have occurred recently such as the imminent loss of 200,000 m^3 of supply from Bolton Fell described by Mr. Burns or the loss of supply from Chat Moss if the present appeals are refused.

109. Further, the DEFRA response makes clear that the statements that DEFRA made regarding the adequacy of supply are based upon an assumption that

supply will be adequate if the UK continues to import peat on the same basis as at present, that is, that two thirds of peat in the supply is sourced from imports.

110. The statements regarding the adequacy of supply are therefore based upon an approach that relies upon supply being met from imports. It also does not examine the position for England in isolation from the UK as a whole. The statements cannot therefore be taken as a statement that there is adequate indigenous, that is, English, supply to meet needs; quite the reverse, the email in Dr Hockaday's appendix 7 reveals that Government is entirely aware that indigenous sources of peat cannot meet needs in the years to come and there will necessarily be a continued reliance upon imported peat.

111. Strangely, it appears that the approach that DEFRA has adopted to the adequacy of supply and the statements that it has made regarding the adequacy of supply have failed to have regard to the objectives of national planning policy of meeting residual needs first from an indigenous supply.

112. The result is that when the draft Framework was formulated Government must be taken to be aware that indigenous sources of peat will be inadequate to meet UK needs in the period of transition to a peat free growing media market in 2030.

113. In this context it is remarkable that both Salford and Wigan continue to assert that the Government has concluded that there is sufficient supply of peat to meet demand in the future based upon the DEFRA statement referred to above. The evidence presented by Dr Hockaday himself proves that Government has not concluded and indeed could not have rationally concluded that there is an adequate supply of indigenous peat to meet demand to 2025. Further, as is explained below Mr Burns has demonstrated even adopting highly robust assumptions regarding low growth in the market and frankly unrealistic levels of supply of non-peat alternative media there will be a significant shortfall between the residual need for peat and the supply of peat from within England.

114. On this basis, in order to realise the central objective for minerals contained within the draft Framework, it has to be construed as permitting an increase in supply of peat from England to meet any residual needs arising during the transitional period to 2030. Any other approach would not allow the objectives of paragraph 100 to be achieved.

115. Significant reliance has been placed by the local planning authorities on paragraph 4.5 of the consultation draft on reducing the horticultural use of peat (CD3.14). This states that " looking ahead, it is expected that all minerals planning authorities will take into account the proposed phase out of peat use in the horticultural sector and will therefore not grant new applications for extraction. Under the proposals set out in this consultation document, the horticulture sector is projected to use a further 17.4 million cubic metres of peat (equivalent to 6 years worth of peat at current levels of use) before its use is phased out (in 2020 for the amateur sector and 2030 at the latest for the professional sector). Any future peat requirements should therefore be easily accommodated from existing extraction sites, and it is expected that new sites will not need to be opened up to meet expected market demands. However, if considered necessary, it would also be possible to legislatively prohibit the extraction of peat from any new lowland peat sites, where permission to extract has not already been granted."

116. Firstly, this statement is in a DEFRA consultation draft. It is not a statement of planning policy as confirmed by Dr Hockaday in cross examination. Secondly, in the context of the Government's knowledge that there is insufficient indigenous supply to meet residual need paragraph 4.5 needs to be read very carefully. The last sentence of paragraph 4.5 is crucial - it refers to new sites as being those from which permission to extract has not already been granted. In other words, a new site is a site from which there has been no previous extraction, that is, a site where the ground has not already been broken for peat extraction in the past. In this context a new site is not a site where extraction has occurred but where that extraction is now time expired. It follows that the reference to not granting new applications for extraction has to be read so as not to encompass applications for extensions of time on sites which have already been the subject of extraction but which are now time expired.

117. In a context where Government is aware that indigenous supply is insufficient to meet residual needs, any other approach to the interpretation of paragraph 4.5 would mean that the central objective of ensuring adequate and steady supply from indigenous sources could not be attained. However, it is Government policy that this objective should be attained. Thus the approach of Salford and Wigan to interpreting this paragraph must be flawed.

118. Having understood that the intention of the draft Framework is not to result in the ban of planning permission for peat extraction in all circumstances from all sites, the next question is from which sites does the draft NPPF indicate that increase in supply should be drawn from?

119. In paragraph 101 the draft Framework explains that local planning authorities should not identify additional sites or extensions to existing sites for peat extraction in their development plans. In other words there is no requirement for a landbank for peat. That is however a very different matter than a policy of no new planning permissions for peat. It simply means as Mr Leay explained to the Inspector that peat is not seen as a mineral important enough to warrant a landbank. It is not an indication that peat is not required or that no further planning permissions for extraction should be granted.

120. In paragraph 103 the draft explains that when determining planning applications, local planning authorities should "not grant planning permission from new or extended sites". Both paragraphs 101 and 103 must be read within the context of that central objective. It cannot be the case that if there is an inadequate supply of indigenous peat to meet the residual need arising, after taking into account the role that non-peat alternatives can play, that paragraphs 101 and 103 should be construed such that the residual need should not be met; rather it must mean that further planning permission should be granted so long as this is not on new virgin territory, that is, on previously uncut peat bog.

121. The only way to construe paragraph 103 so as to accord with the objectives of paragraph 100 is that if there is an inadequate supply of indigenous peat to meet the residual need arising, after taking into account the role that non-peat alternatives can play, further planning permission can be granted on sites that have been the subject of previous extraction but where the planning permission is time expired. Indeed, this approach is consistent with the national planning policy approach that currently exists as has been set out above.

122. To construe the draft Framework in any other way would have the result that it must be interpreted to mean that there should be a sufficient indigenous supply of all minerals apart from peat. There is however no such policy in the draft Framework and no such proviso to the central objective as set out in paragraph 100. In referring to "new or extended sites" that draft Framework is not referring to applications for permission for extension of time for working on sites that have become time expired.

123. If there was intended to be a blanket ban on the grant of further planning permission for peat the draft Framework would simply state that "no planning permission for peat extraction should be granted." It does not state this, and it does not state this for a reason. That reason is that Government recognises that there is insufficient indigenous supply of peat to meet residual demand to 2030.

124. It is submitted that the draft Framework cannot reasonably be interpreted as meaning that the appeal scheme is necessarily contrary to the draft NPPF. Indeed, if it is established that there will be insufficient indigenous supply to meet residual need to 2030, the grant of planning permission in the present appeals will accord with policy and the draft Framework.

125. So far as regional policy is concerned, Policy EM7 of the RSS advocates the same approach as adopted national planning policy. This is unsurprising, given that RSS is required to be in accordance with national planning policy. Dr. Hockaday accepted that the approach in EM7 does not change the general approach set out in national planning policy.

126. So far as adopted local policy within Salford is concerned, Policy ST17 of the SUDP provides that the exploitation of mineral resources will only be permitted where there are no appropriate alternative secondary sources. This too accords with the general national planning policy approach explained above. It should also be noted that the reasons for refusal do not refer to conflict with ST17.

127. In relation to Wigan, the relevant adopted local policy is MW1 of the WUDP. This provides that the Council will seek to maintain an appropriate contribution to the regional production of minerals. Again the local approach chimes with the national planning policy approach. It should also be noted that the reasons for refusal do not refer to conflict with MW1.

128. There is then no change to the national planning policy approach as a result of regional policy or adopted local planning policy.

129. In conclusion, in the context of these appeals which seek permission to extract peat to 2025 national planning policy and the draft Framework require an assessment of the likely demand for growing media and the likely supply of non-peat alternatives to 2025. If there is likely to be a shortfall in the extent to which non-peat alternatives can meet demand, national policy supports the grant of permission from English sites to meet any residual need to 2030.

Emerging Local Minerals Policy

130. In general terms, emerging minerals policy has misconstrued existing national planning policy in relation to peat extraction and indeed that within the draft Framework. Emerging policy has interpreted national planning policy as meaning that no planning permission for peat extraction must be granted. For the reasons

set out above, this is incorrect and emerging policy should be given little weight as a result of this error.

131. In Salford as Ms Beard candidly accept in cross examination, the emerging policies are entirely inconsistent. SCS Policy SF3F which relates to "Chat Moss" (albeit that this area is undefined given that a Core Strategy has no proposals map) refers to avoiding "unnecessary peat extraction". This implies that necessary extraction may be permissible. However, Policy MN1 provides in effect that no planning permission for any kind including temporal extensions on existing sites should be granted. This internal inconsistency together with the inconsistency with the national approach and the early stage that the Core Strategy is at means that the Salford emerging minerals policies should be given no weight in the present case.

132. In Wigan the proposed changes to Policy CP16 of the draft Core Strategy also evince a flawed approach. Accordingly, this policy too should be given little weight.

133. So far as the Greater Manchester Joint Minerals Plan Development Plan Document is concerned, this has been the subject of written representations. It is simply flawed to suggest, as Salford does, that because the Inspector did not comment upon the matter he is likely to be satisfied with the policy. The Inspector asked for representations in writing. If he had raised matters with the planning authority without the appellant being present it is highly likely that there would have been a breach of natural justice; that is the reason the matter was not raised. To the extent that it can be construed as prohibiting the grant of planning permission for a temporal extension for peat extraction, it too should be given limited if any weight.

Supply and Demand

134. As a result of the analysis set out above, planning policy requires an approach where it is necessary to first, examine the likely demand for growing media; second, examine the likely availability of non-peat alternatives to meet that demand; third, examine the extent to which there is a residual demand for growing media that cannot be met from non-peat alternatives, in order to identify the need for peat; and fourth, to examine the extent to which that residual demand can be met from indigenous supply.

135. If it is the case that the residual demand cannot be met by indigenous supply, then there will be a national need for further indigenous peat to be supplied.

Likely Demand for Growing Media

136. Mr Burns carried out a careful appraisal of the likely demand for growing media into the future in his evidence. He based his figures upon figures produced by Government notwithstanding that it is the appellant's view that the Government figures understate the past use of peat and overstate the use of peat alternatives (see paragraph 5.5 of page 9 of Mr Burns's proof of evidence). This is a far from trivial matter. He explained that the inclusion of material as peat free in the Government figures which actually contains peat could account for as much as between 60-100,000 m^3. Subsequently, the products concerned have been re-labelled as containing up to 39% peat. Thus, the figure that Mr. Burns used as his starting point for the calculation of the likely available peat

alternatives overstates the position by as much to 60-100,000 m^3 which is way above the amount of peat that would be derived from Chat Moss (at 40,000 m^3).

137. He identified that over the 10 year period from 1999 to 2009 the total volume of growing media supplied to the market grew at a compound rate of around 2.5% per annum (see paragraph 5.8 on page 9 of Mr Burns's proof of evidence).

138. Mr Burns explained that the key driver for growth in the past and into the future is a growing and ageing population; gardening is significantly more popular with people over the age of 45. The total UK population is forecast by Government to grow at 1% per annum to 71 million by 2031 (compared to 61 million in 2008). The population over 65 is projected to increase by 60% (see paragraph 5.8 on page 9 of Mr Burns's proof of evidence).

139. In that context the forecast presented to the inquiry by Mr. Burns which was based upon a 1.5% annual growth in demand can be seen as highly conservative because first, it is significantly lower than the growth experienced in the market over the last 10 years; second, it does not reflect the recent significant increase in market demand experienced by the appellant company; third, it does not reflect a likely increase in demand associated with recession where the inexpensive hobby of horticulture is preferred to other more expensive pursuits; and fourth, in the future the population will comprise many more people over 45 who are far more likely to engage in horticultural pursuits. Thus, there will be a larger number of persons engaged in horticulture in the future than occurred over the 10 year period to 2009 when growth was at the higher rate of 2.5% per year.

140. Dr. Hockaday accepted the use of the 1.5% figure as appropriate and did not challenge its use. Mr Dickman appeared at first to challenge the adoption of a 1.5% growth figure however, he did not seek to sustain his objection with any vigour under cross examination. Mr. Burns's appraisal of the likely demand for growing media is therefore highly robust and should be adopted.

Likely availability of non-peat alternatives

141. Mr. Burns also conducted a careful examination of the likely availability of peat-free alternatives based upon research commissioned by DEFRA (see CD3.11). His figures for the future supply of non-peat alternatives adopt the increase in available non-peat alternatives identified in the DEFRA research. However, this level of increase in the availability of non-peat alternatives is predicated upon a number of assumptions which it is plain are highly unlikely to be realised in the period to 2025.

142. **Green Compost.** Green compost can only be included in peat alternatives at relatively low inclusion rates because the electrolyte concentration is high. High electrolyte levels impair seed germination in many plant species. Consequently, high inclusion rates of green compost results in a product which is not fit for purpose. Mr Burns explained that producers rarely use green compost at above a 25% inclusion rate, but the typical rate is 10% (see the top of page 12 of Mr Burns's proof of evidence).

143. The DEFRA figures however are predicated upon a 42% inclusion rate (see the paragraph on page 12 below table 4 of CD 3.11). The result is that the DEFRA figures are not realistic in this regard because they overstate by a considerable margin the role that green compost can actually play in providing material

towards non-peat alternatives. A reduction in this 42% inclusion rate even down to 25% results in the need to increase the role that other materials play over and above that assumed by DEFRA. For reasons, set out below this is highly unlikely to materialise because even the rates for other materials assumed by DEFRA are unlikely to be realised never mind a yet further addition to make up for the shortfall in the role that green compost can play.

144. Further, the inclusion rate assumed by DEFRA assumes a doubling in green compost every five years which can only occur with significant investment in advanced processing in composting facilities. This level of investment is unlikely without the introduction of fiscal incentives as the DEFRA research acknowledges. No such incentives currently exist and there are no published proposals for the introduction of such incentives of which Mr. Burns was aware.

145. Dr. Hockaday sought to argue that a greater level of green compost could be used than Mr Burns had assumed. But it was apparent that he did not understand the market. Dr Hockaday pointed in cross examination to products that were 90% derived from green compost and suggest that more of such products could be used to meet demand in the future. It is true that there are products used as soil improvers which are derived from green compost to such a degree. The problem for Dr Hockaday however is that the soil improver market was at 2009 98% peat free (see table 4 on page 9 of CD 3.13). There is then no material scope for additional use of green compost in the soil improver market as Mr Burns explained. The only potential for further reductions in peat use in the future comes within the growing media sector of the market and in that sector the use of green compost is limited by the considerations referred to above.

146. Dr Hockaday also appeared not to have understood that given that green compost can only make up a proportion of a peat free growing medium product, it can only be used if there are sufficient other materials to combine with it. As Mr Burns explained in his evidence, you can have all of the green compost in the world but, if there are no other available peat free materials to mix with it, green compost cannot be used to make a growing medium product.

147. The only reasonable conclusion to draw is that Mr Burns's assumptions as to the use of green compost are highly robust. The reality is that green compost will not in fact be used in producing peat free alternative product in anything like the scale that Mr Burns has assumed.

148. **Wood Fibre.** The levels of wood fibre assumed by the DEFRA research to be available are also dependent upon significant further investment. The research assumes that there are five wood fibre plants in operation by 2015, nine by 2020 and eleven by 2025. Each plant is forecast to cost £1.4m, so the total investment assumed is some £15.4m. Further, the research assumes that woodchip feedstock would be available in sufficient volume and at a price to make the use of wood fibre in growing media economic.

149. It is plain that in fact there will be significant competition for woodchip from bio-energy production. There are at least seven such bio-energy plants operating now. Mr. Burns gave evidence of the significant number of such plants that have been granted planning permission and which are in the planning pipeline. He was unchallenged in cross examination on this. Indeed, Mr Burns explained that since the DEFRA research was published there has been a large increase in the cost of whitewood chip.

150. Indeed, the DEFRA research explains (see page 10 of CD 3.11) that the UK is forecast to produce around 11 to 12 millions tonnes of wood fibre but there could be a demand for 40 million tonnes from the bio-mass energy sector alone, leaving a shortfall of 28 million tonnes which that sector would have to import. Whilst there is scope for growing media manufacturers to invest in forestry, it takes considerable time for trees to grow and for wood fibre to be realised; too much time to influence supply of peat free alternative in any meaningful way prior to 2025 as Dr Hockaday acknowledged.

151. In this context the growing media industry is unlikely to make significant capital investment in wood fibre plants when, given the competition from bio-energy plants, the cost of woodchip will be likely to rise to levels that render its use uneconomic in growing media; particularly given that peat will be freely available from sources outside of the UK as has already been explained. Indeed, Mr. Burns explained that the appellant company has considered and rejected the option of investment in wood fibre technology for these very reasons (see paragraph 5.26 and following of page 12 of Mr Burns's proof of evidence).

152. Dr Hockaday accepted in cross examination that there was no real scope for the importation of woodchip to provide additional supply over and above that assumed by Mr. Burns.

153. The only reasonable conclusion to draw is that the levels of wood fibre as assumed in the DEFRA research are highly optimistic and that in reality such levels are unlikely to be realised in the period to 2025. The only reasonable conclusion to draw is that Mr Burns's assumptions as to the use of wood fibre are highly robust. The reality is that wood fibre will not in fact be used in producing peat free alternative product in anything like the scale that Mr Burns has assumed.

154. **Coir.** The DEFRA research also assumed an enormous increase in the availability of coir. A tenfold increase is assumed by 2015, a further doubling of this tenfold increase by 2020 and an increase by a further third to 2025 (see page 12 of CD3.11). These are vast increases in a market which the report recognises currently comprises small factories with little mechanisation in underdeveloped countries overseas and in locations that are often remote from ports from which the material could be shipped to the UK. For these increases to be material over the period to 2025 there would have to be significant investment overseas to provide the factories and infrastructure required to support the vast scale of the increase in production assumed in the DEFRA report.

155. Mr. Burns gave evidence to the effect that he has seen little evidence of any investment in coir production since the DEFRA report was published. Dr Hockaday was unable to point to any example of such investment since the DEFRA report was published. He accepted in cross examination that it was not likely that coir would be available over and above that assumed by Mr Burns in the period to 2030. There is then no scope for additional amounts of coir to be imported over that assumed by Mr. Burns. Mr. Burns was not challenged on his conclusions relating to coir in cross examination. The only reasonable conclusion is that again the level of increase in coir assumed is extremely optimistic and that the levels of coir assumed by Mr Burns to be available in the future will not be realised in reality.

156. **Bark.** Mr Burns explained that the DEFRA research recognises that the volume of bark used as a peat substitute is unlikely to grow because almost all available material is already used (see paragraph 5.28 on page 12 of Mr Burns's proof of evidence). However, as Mr Burns explained the DEFRA research assumes that the volume of bark that has been available in the past will continue to be available in the future. Sudden oak death however is affecting the supply of bark because bark from infected trees has to be incinerated and cannot be used as a peat substitute. The disease represents a serious threat to the continued supply and availability of bark into the future. Mr. Burns was not challenged on any of this in cross examination. The only reasonable conclusion is that the level of available bark is likely to fall in the future and that the levels of bark assumed in the DEFRA research are unlikely to be realised in reality. The reality is that bark will not in fact be used in producing peat free alternative product in anything like the scale that Mr Burns has assumed.

157. **Superfyba.** Mr. Burns explained in his evidence that the appellant company has developed a product known as Superfyba which manufactures a material from oversize components of green waste which would otherwise be landfilled. The technological process is proprietary. The maintenance of quality is difficult given the presence of contaminant in the raw material provided. The appellant's plant at Basingstoke represented a significant amount of investment (circa £2m to date). Whilst the appellant has plans to bring two other factories producing Superfyba on stream, Mr Burns explained that it did not have plans to make any further investment.

158. The difficulty with the suggestion that Superfyba would result in an increase in availability over and above that which Mr Burns identified is that the material is more expensive than peat to produce. He explained that unless there is a significant change in the Government's strategy the product would largely be used to replace problematical or expensive peat alternatives rather than replacing peat. There is no evidence that the Government has any specific plans for market intervention that would affect the relative price of peat compared to the production of Superfyba. In re-examination, Mr Burns explained that it would be used to replace the wood fibre that would be lost to the biomass energy sector rather than resulting in any material increase in the available levels of peat free materials he had identified. There is no evidence to contradict his view as none of Salford's or Wigan's witnesses gave evidence on this matter and in any event none had the relevant expertise to be able to express a view. The only reasonable conclusion is that the production of Superfyba is unlikely to make any material difference to the available amount of peat free materials.

159. The assertion by the planning authorities that Superfyba will come forward to meet the entire needs of the market was not based upon a fair record of the evidence presented by Mr Burns and should be firmly rejected. Mr Burns was emphatic that Superfyba would not make any material difference to the available amount of peat free materials he had assumed.

160. **Other new future materials.** In cross examination of Mr. Aumônier it appeared to be suggested that other materials from the waste stream might be diverted into the manufacture of peat free growing media. Substantial reliance was placed upon waste policy and the extent to which it might achieve such a diversion of materials. Crucially the point was not put to Mr Burns, the only witness for the appellant with detailed knowledge of the peat free materials

market. The reason for this was plain, the planning authorities did not wish to put a point to the only witness with detailed knowledge of the market for fear that the answer that would be obtained would harm their case. Indeed, a review of Dr Hockaday's evidence reveals that even he did not identify the material within the waste stream which could be so used and which is currently not used. None of the witnesses called by the local planning authorities identified any such material. The DEFRA research itself states under the heading "new future materials" (see page 11 of CD3.11) that "the stakeholders interviewed were not aware of any new raw materials that may become available as large-scale peat alternative materials in the next 15 years. The major growing media manufacturers rely on the availability of materials of consistent quality and are not able to manufacture consistently formulated products if the raw ingredients used are constantly changing. This means that by-products of other industries can only be used if they are available in large enough volumes on a continual basis. Many potential materials, for example bracken compost, are not available in sufficient volumes to justify the product development costs needed to utilise them. They may be used by very small-scale manufacturers or growers mixing their own substrates but are unlikely to have a large impact nationally."

161. It is a mark of the desperation of the local planning authorities' position that they have sought to suggest that the waste stream could magically produce a material that could be used. However, in the absence of any identification of what that material could be and in the light of the conclusions of the DEFRA research it is readily apparent that there is no magic bullet to come to their aid at anything like the quantity that would be required, having regard to the extent to which Mr Burns has assumed that other materials would be available when they will not be.

162. For all these reasons any appraisal of the availability of future supply of non-peat alternatives based upon the levels identified in the DEFRA research is likely to overestimate that supply to a very significant degree. Mr. Burns's assessment is therefore again highly conservative because it adopts the levels identified by the DEFRA research. The reality is that far less non-peat alternatives will be available to meet demand for growing media than Mr Burns has assumed will be. Thus, the need for peat will in reality be far greater than Mr. Burns identifies for the purpose of his analysis.

Residual Requirement for Peat

163. Even on the basis of the robust assumptions that he adopted, Mr. Burns identified that non-peat alternatives will not be able to meet the demand for growing media between now and 2025 to the tune of a shortfall of 2,715,000 m^3 in 2015, 1,980,000 m^3 in 2020 and 890,000 m^3 in 2025. Thus, even on highly robust assumptions, even with a policy of a voluntary reduction in peat use and assuming that all available non-peat alternatives are used, there will remain a significant need for peat throughout the period to 2025.

164. Of course, the picture changes even more radically if less pessimistic assumptions are adopted relating to the growth of the growing media market as a whole. Mr. Burns explained that if the average growth experienced between 1999 and 2009 of 2.5% were assumed, the shortfall would be 3,360,000 m^3 in 2015, 3,113,000 m^3 in 2010 and 2,605,000 m^3 in 2025.

165. It follows that national policy then requires that the planning system seeks to meet this vast residual need for peat first by indigenous supply before turning to foreign sources of supply.

The likely ability of indigenous sources of peat to meet the residual requirement

166. DEFRA research (see table 6 of CD3.13) identifies that the total amount of UK sourced peat in 2009 supplied to all markets was 942,000 m^3. Indeed, in that year some 68% of peat was sourced from outside the UK. In other words the planning system has for many years failed to supply indigenous peat to meet needs in accordance with national planning policy (see row O in table 1 of appendix 1 of Burns's evidence).

167. The production from Chat Moss itself and also Bolton Fell is included in this figure. Bolton Fell will cease production at the end of 2013. Once this is taken into account the available supply within the UK will fall significantly to approximately 700,000 m^3 (see paragraph 5.35 on pages 13 and 14 of Mr Burns's proof of evidence). The result is that right through the period to 2025 there will be an insufficient supply of indigenous peat to meet demand and demand will have to continue to be met in large part by foreign imported peat.

168. In terms of the position on an England only basis, Mr Burns referred at the inquiry to the figures in the report of the impact assessment on the phasing out of horticultural use of peat (see paragraphs 15 and 16 on page 8 of CD3.19). There is a wide differential between English demand for peat and supply from English sources. English demand represents 80% of UK sales. It follows on the basis of Mr Burns's evidence that the extent of English shortfall would be some 712,000 m^3 in 2025 (80% of 890,000 for 2025).

169. CD 3.19 records that the Office of National Statistics reports that in 2009 only 476,000 m^3 of peat sold was sourced in England. On that basis Mr Burns explained that with the loss of 200,000 m^3 per annum from Bolton Fell from 2013 and 40,000 m^3 per annum from Chat Moss, the available English supply would be some 236,000 m^3. That leaves a shortfall in England of some 476,000 m^3 in 2025 (712,000 minus 236,000 = 476,000). Thus, because of the differential between demand and supply within England, when the position is examined on an England only basis, the shortfall is more significant than when examined on a UK wide basis.

170. It has also been established at the inquiry that there is no means to increase the supply of peat from English sites. Mr Burns, the only witness with real familiarity with the market who gave evidence explained that he was not aware of any other English site which had been worked which had a time expired planning permission. The only potential sources of English supply were then those sites currently in production.

171. Mr. Burns explained that English sourced peat is the cheapest peat available to the market. In a context where two thirds of peat is imported, if suppliers could source more peat from England they obviously would as this would avoid the uplift in costs associated with importation. However they are not doing so. That is because they are unable to obtain more peat from the working English sites than they already are. There is then no material scope for the existing English sites to supply more peat to the market placed.

172. The local planning authorities have suggested that the new drying technology being developed by the appellant will enable increases in supply to materialise from existing peat sites in the future. Mr. Burns strongly disagreed. He explained that the appellant's technology was proprietary and that he would not be selling it to competitors. In any event, that technology could only be used by the appellant on sites in Scotland which, for reasons set out above are not "indigenous" sites in policy terms. Thus the suggestion that new technology will provide the means of increasing English supply is simply fanciful and should be rejected.

173. It can be readily seen that on any basis there is a shortfall in English peat to meet English demand to 2025 even if all available peat free alternatives to the UK are used to meet demand in England alone. This means that throughout the period to 2025 there is a substantial residual need for indigenous peat to be supplied to meet market demand. National minerals planning policy requires that this residual need is met first from English peat.

174. It follows that national planning policy supports the grant of further planning permission for peat extraction but not from virgin sites, only from sites which have been previously worked and which are time expired.

175. The inquiry has heard that there is only one such site in England, namely the appeal site. Mr Burns was aware of no other and none of the local planning authorities' witnesses were able to identify any other English site where there had been previous extraction but which was time expired. Thus, given the shortfall that will arise in the future to 2025 the only site that could meet the residual need in England is the appeal site. This is a very significant matter and should be given significant weight.

176. Even on a UK wide basis, assuming that the sites in Scotland that are currently mothballed are brought back into production, Mr Burns explained that the output from these Scottish sites will be insufficient to meet the shortfall during the transition period. Assertions to the contrary by Salford and Wigan should be rejected as they have failed to have regard to the extent of the shortfall and the limited contribution that sites from Scotland could make even if new technologies were employed in the extraction process.

The Approach of Other Parties to these Issues

177. In refusing to grant planning permission both local planning authorities took issue with the conclusion that there is a need for additional supply of peat through the period to 2025. Prior to his rebuttal evidence, Dr. Hockaday produced no analysis of demand and supply. Instead, he relied upon a single sentence within a DEFRA consultation paper (see paragraph 4.5 of CD3.14) to the effect that future requirements for peat can be accommodated from existing extraction sites (see paragraph 144 of page 47 of Dr Hockaday's proof). However, as explained above that statement was predicated upon an assumption that the current proportion of domestic and imported peat is maintained (see Dr Hockaday's appendix 7), that is, it is a statement to the effect that demand can be met so long as we continue to import peat to meet 68% of demand.

178. That statement is not a statement to the effect that the residual need for growing media can be met from indigenous sources at all. It is therefore not a statement to the effect that there is a sufficient supply of indigenous peat to

meet demand as required by national minerals planning policy. Dr. Hockaday's reliance upon this material to establish no need for peat in the period to 2030 was therefore entirely fallacious. The continuing reliance upon it by the local planning authorities is equally so.

179. Indeed, in his rebuttal, Dr Hockaday carried out his own appraisal based upon Mr. Burns's analysis of the supply and demand for growing media. Dr Hockaday's exercise demonstrates that on his own approach there is a shortfall in the ability of the market to meet demand from peat free alternatives through to 2025. Dr Hockaday's appraisal proves the appellant's case on this issue. It establishes that there will be a residual need for peat to 2025. It is thus all the more remarkable to see the local planning authorities continuing to assert that there is already a sufficient supply of peat when their own witness proved the contrary in his rebuttal evidence.

180. Dr Hockaday then sought refuge in two further arguments. First, he asserted that the amount of available non peat alternative materials could be increased over that assumed by Mr. Burns to be available; and second, that if the past rate of growth in available peat free materials was extrapolated into the future, there would be no requirement for peat.

181. As to the first point, Dr Hockaday accepted in cross examination that there was no scope to import any material over and above that assumed by Mr Burns. Further, this point was supported by pointing to various soil improver products that contained high levels of green compost. This latter point simply demonstrated Dr Hockaday's ignorance of the market. The soil improver market is already 99% peat free as Mr Burns explained. The growing media market is not. The amount of green compost that can be used in a soil improver cannot be used in growing media for reasons explained above. Thus, the scope for further reductions in peat usage does not lie in the market relating to the products that Dr Hockaday identified. As to the second point, Dr Hockaday also accepted that it was unlikely that the rate of growth in peat free alternatives would be continued into the future. Indeed, as Mr Burns explained given that the greatest amount of this growth was in the soil improver market which is now almost entirely peat free, that rate of growth will not continue.

182. The result is that the local planning authorities have presented no credible evidence which could be relied upon to reject Mr Burns's analysis. Mr Burns's conclusions have to be accepted as being correct.

183. Mr. Dickman did not seek to engage in any meaningful way with the issues relating to supply and demand within the growing media market in the years to come. His approach was simply to assert that it was not a matter for a local planning authority to consider. Given the thrust of national planning policy, this is plainly misconceived. A local planning authority has to consider all material considerations and it is highly material whether there will be a shortfall in growing media to meet demand given the thrust of national planning policy. In any event, however misconceived his position, Mr Dickman did not present any evidence that challenged the conclusions reached by Mr Burns. The Trust in its evidence did not question Mr Burns's assessment. Again, like Wigan, it chose to avoid these issues.

184. The simple facts are these. Even if it is assumed that growth in demand is significantly lower than has occurred in the past and even if it is assumed that all

available material to make peat free growing media is used and consumed by the market, there will be a shortfall in growing media which available supply on both a UK wide basis and on an English basis cannot meet. Rather, even if the appeal proposals are allowed there will continue to be a shortfall in the supply of indigenous peat. The appeals therefore carry the full support of existing national planning policy and policy in the draft Framework as they will assist in meeting the policy objective of ensuring adequate supply to meet residual need to 2025. This is a matter which must be given significant weight.

185. Further, the appeals secure these policy benefits without compromising the use of all available non peat alternative materials. The grant of planning permission pursuant to these appeals will therefore not undermine the shift toward a peat free market in any way; it does not remove downward pressure on the market to switch to peat free alternatives because there are no peat free alternatives available to use. Rather, the grant of planning permission assists in ensuring that demand is met in the transitional period and would assist in ensuring that no harm is caused to the horticultural industry and economy in line with national planning policy.

186. It is the appellant's submission that in this context, the grant of planning permission is entirely in line with the policy of transition to a peat free market and entirely in line with national planning policy

Consequences if the appeals are refused

187. As the appeal site is the only additional available site in England that has been the subject of previous extraction to meet the residual need for additional English supply of peat to 2025, refusal of these appeals would not be in accordance with existing national planning policy and indeed the draft NPPF.

188. As Mr. Burns explained in his evidence, if planning permission for the appeal scheme is refused then it is important to consider how the market is likely to respond. In the context of an identified need where it has already been assumed that all available non-peat alternatives have been consumed by the market and indigenous supply is insufficient to meet the residual need there are two potential market responses. First, the market might not meet the need; and second, the market might meet the need through the importation of peat into the UK. Neither of these market responses is consistent with national minerals planning policy. It is national planning policy that residual need should be met and that it should be met through indigenous supply first.

189. As Mr. Burns explained, in the competitive growing media market those engaged within that market will not pass up an opportunity to meet the need; rather it will do all it can to meet demand. Indeed, that it should meet the need is consistent with paragraph 4 of MPG13 and the Government's policy of supporting the horticultural industry within the UK.

190. The result of refusal would therefore be that England would have to look to other jurisdictions for the supply of peat to 2025. This would give rise to a domino effect within the market as Mr Burns explained in cross examination. Mr Burns explained that the market would firstly turn to Scotland. As there is insufficient peat supply in the UK as a whole, importation would inevitably turn to Ireland. Mr. Burns explained that this is turn will force the market to source supply from even further afield from locations in northern Europe such as

Estonia. Mr. Burns is obviously correct in this given that two thirds of peat used in the UK is currently imported including a substantial proportion from Ireland and the Baltic states. It is plainly economic to import peat to meet a shortfall in supply.

191. In this context, submissions from the local planning authorities suggest that importation will not occur in response to a refusal of these appeals. These submissions have no basis in fact or evidence.

CO_2 Consequences

192. This domino effect would have significant consequences in terms of CO_2 emissions, the position has to be examined on a global scale not a local one: if refusing planning permission would be likely to give rise to an increase in CO_2 emissions when examined on a global scale compared to the position if planning permission were granted, then it cannot be concluded that a development would have an adverse impact upon CO_2 emissions (as accepted by Mr Horsfall and Dr Hockaday in cross examination). In such circumstances, the objective of securing reductions in CO_2 emissions can only be secured by granting planning permission. This is precisely the position in this case.

193. A refusal of these appeals would result in first, the same amount of CO_2 being released from peat itself as would be released if the appeal schemes were permitted; and second, a greater amount of CO_2 being emitted associated with transportation because, as a matter of common sense, the peat will have to be transported a greater distance to reach the market than if it were extracted from Chat Moss which is centrally located in England.

194. These points were established in the evidence of Mr Aumônier. He presented in his evidence an appraisal which provides an indication of the scale of differential in terms of transportation CO_2 of supplying peat from various locations. Whilst this was the subject of some low level sniping from the local planning authorities, none presented an alternative assessment which demonstrated that the importation of peat from jurisdictions outside England would have lesser CO_2 transportation implications than using Chat Moss as a source of peat. This is unsurprising since as a matter of common sense sourcing from further afield inevitably results in greater CO_2 emissions.

195. Mr. Aumônier was explicit in his assumptions. He assumed that peat would be transported by road on the most direct route. That is obviously a reasonable assumption given the desire to minimise costs associated with transportation from other jurisdictions. It was suggested by Mr. Dickman that arrangements could be made for bulk shipping direct from ports in Europe to ports more proximate to the appellant's operation. However, market operates on a just in time delivery principles as Mr Aumônier explained. There is in reality no realistic scope for bulk shipping of peat to more proximate ports than the channel ports.

196. Mr. Aumônier was challenged as to the emission factors he utilised but he explained that these were derived from Government advice. It was suggested that these factors did not take into account issues relating to elevation. However, the factors used and the exercise undertaken was entirely in line with the approach that DEFRA used in its consultation paper relating to the carbon emissions associated with the use of peat and peat alternatives.

197. Criticism was also made of the exercise on the basis that it was company specific. But that too misses the point. The scale of the differences between the transportation CO_2 emissions associated with different sources is so great that no matter where within England the factory is located, the CO_2 emissions associated with use of imported peat including Scotland will be greater. Indeed, in relation to the use of Scottish peat it has to be remembered that the transportation CO_2 emissions do not end with delivery to the factory for bagging. The product then has to go to the market. The greatest centre of population in England is in the south. Thus, whether the factory is in the north or south, the peat will still have to travel further and will thus generate greater transportation CO_2 than if it were sourced from Chat Moss.

198. In the circumstances, it simply cannot be rationally concluded that the Appeal Scheme would have an adverse effect upon global CO_2 emissions compared to the position if planning permission were refused. Absent action on a European wide scale, the only means by which to secure a global CO_2 reduction which is the objective of Government policy is to grant planning permission for the Appeal Scheme.

199. However, there is no evidence before this inquiry that European wide action is likely over a timescale to 2025. There is currently no proposed EU wide legislation to prevent exports of or to permit the introduction of import tariffs upon peat. There is no timetable of when such legislation might be forthcoming. Indeed, the fact that peat importation cannot be prevented has recently been expressly accepted in Government statements.

200. Thus, the clear consequences of refusing the appeals would be an increase in the release of greenhouse gas emissions compared to the position if the appeals are allowed. The purpose and objective of Government policy relating to global warming is for this country to play its part to cut greenhouse gas emissions so that they are reduced on a global scale. A refusal of these appeals would achieve a net increase in emissions compared to the grant and would thus be contrary to climate change policy. By contrast by allowing these appeals, greenhouse gas emissions would be reduced compared to the position if the appeals were refused.

201. That is not a counsel of despair as contended by the local planning authorities; it is recognition of reality. Allowing these appeals would clearly assist in the attainment of climate change policy objectives. The appeal scheme therefore entirely accords with policy on climate change and would deliver net benefits in terms of CO_2 reductions compared to refusal. This is a matter which is a benefit of the appeal scheme and which should be given significant weight.

202. It is a matter of real significance that as a result of the failure to obtain planning permission for further extraction at Chat Moss, the appellant company has had to source peat from elsewhere and that this peat has been sourced from a bog in Ireland that only a few years previously was a virgin bog. The domino effect arising from a restriction in available English supply has thus already resulted in importation from overseas and an increase in CO_2 emissions. A refusal of these appeals would continue to have the same consequences.

Economic and Social Consequences

203. Mr Burns identified in his evidence that if the appeals were refused the consequence of the domino effect would be the purchase of peat from abroad. Thus, money that would otherwise have been spent within the UK economy would be lost to the UK economy. By contrast, if the appeals are allowed the price paid for peat from Chat Moss would remain entirely within the UK economy (see paragraphs 5.43 (b) and 5.44 (b) of page 15 of Mr Burn's proof of evidence). He was not challenged on this evidence.

204. Further, as a result of the delays caused by refusal of the applications for planning permission the appellant has had to lay off 8 staff. The loss of employment is not a matter to which the local planning authorities have given any real weight. Instead, they contended that employment lost at Chat Moss would be compensated by a corresponding increase in jobs in the peat free sector. This contention rests upon the conclusion that a refusal of the appeals would result in a corresponding increase in the supply of peat free media (see paragraph 101 of page 26 of Ms Beard's proof of evidence). However, there is no evidence that this would be the case. Indeed, the evidence has established that even if all the likely available non peat alternative materials were utilised there would be a shortfall in growing media. In those circumstances, following a refusal of the appeals the market could not adjust to increase the supply of non peat alternatives and thus compensate for jobs lost. The local authorities' position is therefore entirely misconceived.

205. The reality is that a refusal of these appeals would result in the loss of jobs that has already occurred being made permanent. By contrast, allowing these appeals would secure additional employment which is both an economic and a social benefit which should be given significant weight in the planning balance.

Environmental Consequences of Refusal

206. The potential impact of the appeals scheme upon the 12 Yards Road SBI is addressed below. In this section however the implications of a refusal for the restoration of the appeal site are addressed. It is necessary to identify what would be likely to happen in the event that the appeals were refused.

207. In terms of the mechanisms for securing restoration of the appeal sites there is no material difference between the sites in Salford and the sites in Wigan. The conditions require that: first, there is restoration to amenity use; second, that the works undertaken are limited to "minor regrading" and drainage works; and third, that there is an aftercare period of 5 years.

208. The 1991 Section 106 Agreements of which apply to the proposed working areas of the sites provide for:

- Works "to secure the future of the site for purposes of nature conservation" (see clause 5 of CD 9.4)
- "The works in question will have regard to the need to provide within the site areas where:
  - (i) Tree planting will be carried out.
  - (ii) Natural regeneration will be allowed to occur.

(iii) The emphasis will be on the provision of relatively wet areas where "wetland" vegetation and fauna can become established" (see clause of CD 9.4).

- A scheme for the management of the natural history interest of the site to be agreed and implemented (see clause 7 of CD 9.4).

209. Notwithstanding these same requirements what is remarkable is that Salford and Wigan have adopted directly opposing views of what may be required. The Officer's Report addressing the Salford applications advised members in clear terms: "members are strongly advised that the existing permissions and the restoration requirements do not provide mechanisms for the restoration of the sites to active bogland… little weight should be given to reliance on the conditions of the existing permissions to deliver restoration of the site to active bogland. So restoration per se to lowland raised bog habitat would be considered to be advantageous and if this proposal could deliver such restoration it would amount to a clear benefit" (see page 88 of CD 11.36).

210. Thus, Salford officers in advising members were of the view that if the appeal scheme secured restoration to bog this would create benefits over and above the position of the appeals being refused. This position was then flatly contradicted by the evidence presented by Mrs Hughes on behalf of Salford, where she identified that the least beneficial option was to allow the appeal scheme restoration and that the existing permission or site abandonment would secure greater benefit in ecosystem terms. This matter is returned to below.

211. By contrast to Salford, Wigan has maintained a position that the mechanisms referred to above can secure restoration to an active bog.

212. The mere fact that there is such significant disagreement between the local planning authorities as to whether the existing permission could be used to secure restoration to active bog reveals of itself that there is significant uncertainty over what may be secured in the event that the appeals were dismissed. Indeed, the fact that Mrs Hughes presented evidence in flat contrast to the advice given by Salford's officers to members regarding the benefits of the appeal scheme also reveals uncertainty.

213. In essence, there are three issues: first, what form of restoration can be required; second, whether the operational development required to enable restoration to bog would be in breach of the conditions; and third, whether the aftercare period is sufficient to secure restoration to active bog.

What form of restoration can be required?

214. All the parties agree that restoration to amenity use can encompass a restoration to lowland bog but that it also encompasses a range of other uses. Thus use of the phrase "amenity use" by itself does not enable a local planning authority to require restoration to lowland bog.

215. So far as the 1991 Section 106 Agreement is concerned, this requires works to secure nature conservation. This too could encompass restoration to bog but it also encompasses a range of other uses. Thus, this requirement in the Agreement does not enable a local planning authority to require restoration to lowland bog.

216. So far as Clause 6 of the 1991 Section 106 Agreement is concerned this points to the works being determined by having regard to the need to provide within the site areas a number of features. This raises the question of whether there is a need to provide those features. In that context it cannot be argued that the Agreement establishes that there is a need to provide "relatively wet areas" across the site as a whole; rather the clause calls for a determination as to the extent to which tree planting is needed and where natural regeneration should be allowed to occur.

217. Indeed, it is arguable that even if there was a requirement for wet areas across the site as a whole that clause only provides for the provision of such relatively wet areas where vegetation **can** become established via natural regeneration. It does not provide for the artificial inoculation of the wet areas with sphagnum. Further and in any event, the phrase "relatively wet areas" is extremely wide and encompasses a range of wetland habitats as Mr Leay explained in re-examination.

218. Indeed, even Wigan's attempt to construe the position by reference to material arising at the date of the grant of planning permission only arrives at a high point of indicating restoration to a wetland nature reserve which by any stretch is not restoration to lowland bog.

219. On that basis, it can be seen that there is no enforceable requirement for the restoration of the site under the conditions or Section 106 Agreement to lowland bog. A range of potential schemes could come forward without including restoration to lowland active bog which would meet these mechanisms.

Whether the operational development required to enable restoration to bog would be in breach of the conditions

220. Nevertheless, Mr. Burns accepted in his evidence that the appellant would not seek to frustrate restoration to active bog in the event that the appeals were refused but his answer was subject to an important caveat namely, so long as this could be achieved in accordance with the conditions.

221. In fact, it cannot be achieved because restoration to bog requires operational development to an extent not permitted under the existing planning permissions. The conditions all state that the works to be undertaken in relation to restoration are to be limited to those constituting "minor regrading"

222. In order to secure restoration to bog, best practice requires the creation of bunded cells of limited size in order to reduce the effect of wave action upon sphagnum growth as Dr Turner explained. For example, the appeals include restoration proposals for cells of 40m x 40m. Dr Turner explained that these bunds would be 0.5m high and 2.5m in width. There would need to be 33 km of bunding across the site as a whole.

223. By any stretch of the imagination the creation of 33 Km of bunds 0.5m high and 2.5m in width cannot be described as minor regrading. This is a substantial operational development not contemplated when the original planning permissions were granted and likely to require Environmental Impact Assessment.

224. In that context the submission of both Councils that the amount of bunding is not sufficiently material to amount to operational development is breath-taking

and obviously self serving. The Secretary of State should obviously reject such an assertion if only to protect other valuable areas of the countryside from being the subject of such works based upon his decision in the present case.

225. It is no answer to suggest that this extent of bunding must have been contemplated when the Section 106 Agreements were entered into and planning permission granted. It plainly was not. The modern form of restoration to bog has evolved since the early 1990s as Dr Turner explained. There is no evidence whatsoever that bunding of this extent was contemplated in the grant of the earlier planning permissions. Further, given that the permissions and the Section 106 Agreements allow for other forms of wet area to be provided which would not require bunding it is impossible to see how an argument that operational development of this extent was permitted within the use of the phase "minor regrading".

226. It is submitted that bunding of the scale required to restore to lowland bog if carried out would result in a breach of condition. As a result, restoration to bog is highly unlikely to occur in the event that the appeals are dismissed.

Whether the aftercare period is sufficient to secure restoration to active bog

227. The position of the local planning authorities in relation to aftercare is contradictory. On the one hand it was put to Dr Turner in relation to the appeal scheme restoration proposals that even a 15 year aftercare period would be insufficient and yet on the other it appears to be being suggested that 5 years aftercare in relation to restoration under the existing planning permissions is sufficient. The planning authorities cannot reasonably hold such mutually exclusive positions at the same time.

228. Mrs Hughes in her evidence clearly considered the aftercare that could be realised under the existing permissions to be 5 years and assessed the position on that basis (see paragraph 215 of page 32 of Mrs Hughes's proof of evidence). She stated in terms that such a period of after care "is shorter than would be required to ensure complete establishment of active raised bog" (see paragraph 219 of page 63 of Mrs Hughes's proof of evidence). The suggestion put in cross examination to Dr Turner that clause 7 of the Section 106 Agreement could be used to secure a longer period of aftercare was thus clearly not a matter that Mrs Hughes considered to be correct. In this at least she was right. Clause 7 could not be used to require a period of aftercare longer than required by the conditions and it contains no words to suggest that it could.

229. Dr Turner also explained in his evidence that 5 years would be inadequate to secure restoration to peat forming capability. He explained that even if one had a cell created it would take two years to re-establish hydrological stability, a further two years for the growth of nursing species and then in the final year inoculation with sphagnum could occur. He explained that without continued care after that initial year there was little likelihood of securing restoration to peat forming capability.

230. The fact that 5 years is too short was also strongly supported by Natural England's lead adviser on Mosslands who said that a 5 year after care period was "totally inadequate" (see appendix 2 of the documents attached to Mr Birnie's proof of evidence). Mrs Hughes's effort to explain this away as the adoption of a negotiating position should be rejected as there is no evidence that Natural

England did not mean what was said; that is, 5 years is a totally inadequate period of aftercare. Thus, the evidence all points in one way. Even if a restoration scheme to lowland bog could be required and even if the operational development was not in breach of the conditions, restoration to bog would not be achieved because the after care period is inadequate.

231. In conclusion, it is obvious that the existing mechanisms cannot be used to secure a restoration to bog in the event that the appeals were to be dismissed. It would not be reasonable to expect the appellant or anyone else to do the necessary works when these would be in breach of condition and do not have the necessary planning permission. The aftercare period is such that a return to peat forming capability would not be achieved. Even if this is not accepted at the very least there is considerable doubt that restoration to peat forming capability could be required and achieved.

Restoration with the appeal proposals

232. By contrast, it is submitted that allowing the appeals does away with these uncertainties and would secure a return to peat forming capability. The appeals provide the only opportunity to secure a restoration scheme that would accord with best practice and which provides for 15 years of aftercare.

233. The approach of the local planning authorities as expressed through Mrs Hughes's evidence was to question whether with additional extraction the goal of restoration to a peat forming bog would be achieved. It must be noted that Mrs Hughes did not give evidence to the effect that with the further extraction this objective would not be achieved; rather she presented her evidence by way of identifying a number of risk factors. At no stage did she quantify the degree of risk associated with these factors. The highest that she put it in paragraph 330 at page 96 in her proof of evidence was: "there are significant uncertainties and risks associated with restoration proposals on shallower depths of peat and in particular the appeal scheme, which **may** act singly or in a cumulative synergistic manner to compromise the achievement of restoration to active raised bog" (emphasis added).

234. Mrs Hughes did not therefore say that further extraction means that restoration to active raised bog will be compromised. Nor did she seek to quantify the degree of risk in her evidence. At no point did Mrs Hughes even say that if further peat was removed the risk that restoration to active bog would be significant. This matter is returned to below.

235. Further, in examining the issues in relation to the appeal scheme restoration proposals the relative expertise of the witnesses must be taken into account. On the one hand Mrs Hughes had never been in charge of or undertaken bog restoration herself. All her knowledge was obtained through academic study. On the other hand, Dr Turner is highly experienced in the field. He has personal experience of bog restoration in a number of schemes at Gardrum, Astley Moss and Bolton Fell. Indeed, his involvement in the experiments at Gardrum relating to peat restoration techniques placed him at that time at the vanguard of scientific exploration of the issues relating to bog restoration. His knowledge and experience is not simply obtained from reading but actually from doing.

236. Indeed, the attempts to undermine Dr Turner's credibility by reference to the report relating to Gardrum were extreme. It appeared to be suggested in cross

examination by reference to parts of that report which relate to the scrapes that had been created that Gardrum has not been the success that Dr Turner claimed it had been. However, the scrapes were an experimental design of their time as Dr Turner explained. They were not designed by him but by David Bellamy Associates. Further, the scrapes are far larger than anything proposed in the appeal scheme measuring over 60m in length compared to cells of at most 40m x 40m now being proposed in the appeal scheme. Also and highly significantly the scrapes have very significant depths of water up to 1m deep (see paragraph 2.12 of appendix 5 of the documents attached to Dr Turner's evidence) compared to the appeal scheme where the water depth would be at most 200mm. Even with these differences Dr Turner was very firm in his conclusion that the scrapes would return to peat forming capability.

237. The real comparison at Gardrum is provided by the pits which Dr Turner was responsible for. Even then Dr Turner explained that these were a scientific trial and that he had gained knowledge from his experience. These pits demonstrate that even with a very shallow depth of only 0.41m of remaining peat, sphagnum growth and bog regeneration can be achieved. Again, Dr Turner was emphatic that these trials demonstrate success and would result in a return to peat forming capability.

238. On the basis of his experience and the detailed knowledge he exhibited at the inquiry it is submitted that Dr Turner's evidence should accordingly be given greater weight than that of the well read Mrs Hughes.

239. The central theme of Mrs Hughes's evidence was that in terms of restoration "the more peat the better". However, she did not produce a single scientific study that supported this conjecture. In her evidence the only documents she relied upon were a study from 1930 (see ID8) and a paper by the Thorne and Hatfield Conservation Trust (see ID9). The 1930 paper examined what happened when peat is cut and allowed to re-vegetate naturally. It did not examine the depth of peat that is required for a modern scheme of peat restoration to be successful in returning land to peat forming capability. It patently does not provide any scientific support for the view that more peat is better when applying modern best practice. The Thorne and Hatfield paper contains the bare statement that it is generally accepted that more peat is better but it provides no reference to support this view; rather it goes on to identify that in the past English Nature accepted that levels of peat between 0.5m and 1.0m were an acceptable base upon which to restore.

240. In short the references provide by Mrs Hughes did not support her proposition. As it turned out during her cross examination this was a theme in Mrs Hughes evidence, of which more below. Thus, Mrs Hughes, despite her wide reading, was unable to find any scientific study which supported her view. Indeed, she ultimately accepted that there is no identified minimum level of peat required for restoration to be successful.

241. By contrast to Mrs Hughes, Dr Turner strongly disagreed with the view that more peat is better. He emphasised that what was of more importance were first, the provision of the appropriate hydrological conditions and secondly the provision of the appropriate type of peat. He had no doubt that the appeal scheme would provide the right hydrological conditions, indeed, he explained that

water levels would be easier to control with a shallower depth of peat (see paragraph 3.43 on page 12 of Dr Turner's proof of evidence).

242. As to the type and depth of peat Dr Turner explained that the stratigraphic survey already undertaken reveals that there is sufficient peat remaining on the appeal site generally to enable extraction to occur using the milling method to 2025 and for there still to be at least 2m depth of peat of which at least 0.5m would be ombrotrophic (or bog) peat.

243. Mrs Hughes's criticisms of the stratigraphic survey are unfounded. There is uncertainty associated with any survey. What matters is the degree of uncertainty. Dr Turner explained in his evidence that the survey was accurate to within a few centimetres. Mrs Hughes gave no evidence to contradict this view. Further, the point relating to the number of survey points goes nowhere. First, because as Dr Turner explained that the mineral sub-substrate does not typically vary to any great degree under lowland bog and secondly, because a planning condition would be imposed to obtain a full picture at appropriate points prior to extraction being carried out. The point put in cross examination to Dr Turner concerning points 8 and 10 on the survey and the differences between them was entirely unfair because those points are at opposite ends of the site; one at the boundary with the 12 Yards Road SBI, the other in the site of appeal 4 within Wigan. There is no reasonable basis to conclude that uncertainty associated with the stratigraphic survey could support a conclusion that the appeal scheme would not secure a return to peat forming capability.

244. It appeared to be suggested in cross examination of Dr Turner that the identification of bog peat as distinct from fen peat was an uncertain process. However he explained in examination in chief how this was done by reference to the colour and composition of peat obtained through augur survey. He explained that this process was accurate to within a few centimetres; a view which again was not contradicted in evidence by Mrs Hughes or any other witness. Again, the uncertainty such as it is could not and does not support a conclusion that the appeal scheme would not secure a return to peat forming capability.

245. It also appeared to be suggested in cross examination of Dr Turner that 0.5m of bog peat may be insufficient to ensure that mineral contamination from the fen peat below would not occur. Dr Turner emphasised in re-examination that in his view whether the amount of bog peat remaining was 0.5m, 1m or 2m would not materially affect the likelihood of successful restoration. It would be the same. This point does not support a conclusion that the appeal scheme would not secure a return to peat forming capability. Indeed Dr Turner gave evidence that although 0.5m of ombrotrophic should be beneficial in bog restoration it was neither essential nor usual, most restoration schemes of peat extraction sites that he knew of have been conducted with little or no "bog" peat.

246. Further, Dr Turner explained that he was unaware of a bog restoration scheme which had a similar extent of peat remaining in situ as is proposed in this appeal. He referred to the Bolton Fell, Astley Moss and Gardrum sites where restoration proposals have been successful and are progressing towards peat forming capability on levels of peat as low as 0.5m.

247. Dr Turner received support for the view that a 2m depth of peat and 0.5m of bog peat would secure successful restoration from Dr Stoneman, the only other witness to the inquiry with experience of actually carrying out bog restoration.

He made plain in his evidence that if a peat depth greater than or equal to 2m was retained the site would still be restorable at the end of extraction (see paragraph 13.3.4 of page 30 of Dr Stoneman's proof of evidence).

248. The only reasonable conclusion to draw in all of this is that the depth of peat that will be secured to provide the foundation for the appeal restoration scheme is more than sufficient to secure successful restoration.

249. Any other conclusion would have the potential to have wide ranging implications for the restoration of bogs elsewhere in the country. If a site has been subject to extraction to a level below 2m and is subject to restoration requirements to something other than bog (for example Little Woolden Moss which has a requirement to be restored to agriculture) an application for planning permission to be permitted to restore to bog would be required. If 2m is insufficient depth, then the LPA would have to conclude that restoration to bog would not be successful and would have to refuse planning permission for that restoration scheme. In these circumstances, it is submitted that there would have to be compelling evidence that restoration on 2m of peat would not secure peat forming capability. There is no such evidence.

250. The only reasonable conclusion on the basis of the evidence presented to the inquiry is to accept what is said by Dr Stoneman and Dr Turner, the only two witnesses who have experience of peat bog restoration that without any doubt the appeal schemes will retain a sufficient depth and type of peat to ensure successful restoration to a bog with peat forming capability.

251. So far as cell size in concerned, Mrs Hughes vacillated in her evidence. In her proof she described the adoption of cells of up to 40m x 40m as being based upon best practice. However in her rebuttal she latched on to comments on the report into the Gardrum restoration (see appendix 5 of the documents attached to Dr Turner's evidence) to suggest that cells of 20m x 20m would be more appropriate. This is an example of Mrs Hughes relying upon read knowledge rather than experience. The comments in the Gardrum report that refer to 20 m are comments in relation to the width of the scrapes. The point being made is that the scrapes were too wide. As such those comments have to be read in context of the length of the scrapes at 60m and more. The author of the report is not making comments on appropriate cell size but the appropriate width when a scrape is of such a length to minimise wave action. She misunderstood what she was reading as being transferable to a criticism of a cell size of 40m x 40m when it does not. Her evidence on this point is therefore misconceived. In any event she did not say that with a maximum cell size of 40 x 40m restoration to peat forming capability would not be achieved. Dr Turner's clear evidence is that a 40m x 40m cell size would minimise wave action appropriately should be accepted.

252. Mrs Hughes also raised concerns regarding potential mineral contamination from perimeter drains. That is addressed through the imposition of conditions which required the invert levels of perimeter drains to be retained at existing levels. This has to be done in any event as Dr Turner explained because if the perimeter drains were deepened they would no longer flow into the drains taking water away from the site. This position is further secured through the proposals to place weirs within the perimeter drains. There is then a means of ensuring that there would be no purpose in deepening drains and there is thus no basis for

concluding that the deepening of perimeter drains would occur such as to mean that successful restoration to peat forming capability would not be achieved.

253. Similarly, in relation to foot drains a condition is proposed that will ensure that these do not penetrate into the mineral sub-stratum. That condition is precise and enforceable. There is thus no basis for concluding that the provision and maintenance of foot drains would result in penetration of the mineral sub-stratum such as to mean that successful restoration to peat forming capability would not be achieved.

254. Dr Turner gave clear evidence that the 15 year period of aftercare would be sufficient to ensure that restoration to peat forming capability would be achieved. Mrs Hughes views based upon her reading should be rejected in favour of Dr Turner's experience based upon his doing.

255. It is suggested that matters identified in Mrs Hughes's appendix 12 have not been addressed. This in incorrect. All the matters on that list have been addressed in the evidence before the inquiry.

256. To conclude on this matter, there is no evidence that if the site were worked to 2025 that successful restoration to peat forming capability would not occur; quite the reverse. The evidence establishes that the only means to secure a return to peat forming capability is to allow the appeals. On this basis, as the officers at Salford advised members the appeal schemes would produce a significant nature conservation benefit over the position of the appeals were refused. This is a matter which should be given significant weight.

Annex 1 of the Habitats Directive

257. The conclusion above leads on to the necessary consideration of the status of the proposed working areas within the context of the Habitats Directive. The working areas of themselves as they presently stand have no nature conservation value. They have no conservation value designation. They are not internationally designated, not nationally designated, have no regional designation nor are they subject to any local designation. Mrs Hughes was clear in her evidence that the working areas do not meet the criteria for designation at any level. There is at least no dispute with that conclusion. Indeed, Mrs Hughes accepted in cross-examination that they are not a European Site within the meaning of the Habitats Regulations.

258. The Trust suggested in evidence that Article 10 of the Directive resulted in a heightened status for protection for the proposed working areas, but it is submitted that that approach is flawed. Article 10 was only partially quoted in Dr Stoneman's proof of evidence. The words omitted are highly relevant to the interpretation of Article 10. Article 10 states that "Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of **features** of the landscape which are of major importance for wild fauna and flora. **Such features are those which**, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), **are essential for the migration, dispersal and genetic exchange of wild species"** (emphasis added).

259. Dr Stoneman readily accepted in cross examination that the sites do not current have any significance for the migration, dispersal and genetic exchange of wild species. As such, Article 10 cannot apply to the appeal site. Indeed, for the reasons set out above for the existing sites to play a role in establishing links between sites by functioning as a lowland bog habit, it is submitted that this can only be secured by allowing the appeals. This is an additional benefit of the appeal scheme to which weight should be attached.

260. So far as the status of the site as an Annex 1 habitat is concerned, it is submitted that in the absence of allowing these appeals it cannot be considered to be such a habitat. As has become apparent at this inquiry for a degraded bog to be an Annex 1 habitat it has to be a site "where, with appropriate rehabilitation management, there is a reasonable expectation of establishing vegetation with peat-forming capability within 30 years" (see middle of the page extract from the Interpretation manual, CD3.24). Mrs Hughes contends that this phrase has to be construed in the abstract by asking whether, if a restoration scheme came forward at an unspecified point in time in the future, there would be a reasonable expectation of establishing peat forming capability within 30 years. This approach is manifestly incorrect. The question of reasonable expectation has to be answered in the here and now by reference to the site specific circumstances that exist now. That this is the case is made explicit by the approach that the Joint Nature Conservation Committee (hereafter called the JNCC) adopted when examining potential sites for designation as Special Areas of Conservation (hereafter called SACs).

261. In order to be designated as an SAC a site has to first be an Annex 1 site. The JNCC explains in CD 3.24 that the question of reasonable expectation has to be assessed on a case by case basis. It states that "the prospects of a site for restoration have been carefully assessed as an important aspect of quality to be considered alongside the need to select an adequate proportion of the overall UK lowland raised bog resource… Prospects for site restoration have been assessed on a case by case basis…Sites have not been selected if they are not judged capable of the required degree of restoration within 30 years…".

262. It is plain from this, that the assessment relating to the prospects for restoration have been undertaken in the here and now and not against whether in 30 years or some other date in the future a restoration scheme might theoretically come forward which would have a reasonable expectation of securing peat forming capability within 30 years of that restoration scheme being put into effect.

263. As set out above, in the here and now absent the appeal schemes, there can be no reasonable expectation that the appeal site will be restored to lowland bog; indeed the Salford officer's report accepts that this is the case. The conditions on the existing planning permissions preclude the operational development that would be necessary and the after care period is as Natural England has stated "totally inadequate".

264. There is no other party who would make the necessary application for planning permission to restore to bog, carry out the necessary Environmental Impact Assessment, has the funding to buy the land, carry out the restoration to bog and then to carry out the aftercare. The planning authorities have not made any such resolutions and have not identified any such funding. The Trust has no

funding. Indeed, Dr Stoneman on behalf of the Trust was unable to identify any particular funding source and did not know how much money would be required. In that context there is no evidence that can found a reasonable expectation that any third party would secure a return to peat forming capability absent a grant of permission pursuant to the present appeals.

265. Much has been made of correspondence from SLR Consulting (see CD11.34) on this point in the cross examination of Mr Webb, but he explained that the correspondence does not concede this point. The statement that the site can be an Annex 1 habitat has to be read in the context of the letter as a whole which does not make explicit whether the statement was made on the basis of the existing planning permission restoration mechanisms. Much was also made of the SoCG but the point regarding reasonable expectation was explicitly included in the section within that statement relating to matters in dispute. In any event, neither of these points assists the Secretary of State in determining whether the site is or is not an Annex 1 site.

266. Natural England has asserted throughout the process of the determination of the applications that the working areas are an Annex 1 habitat. However, what is remarkably absent is any explanation why. No reasoning has been provided anywhere which explains why they take the view that the working areas fall within the manual of interpretation definition. There is no appraisal in any of the documentation that explains either their approach to the question of "reasonable expectation" nor is there any appraisal of the likelihood of achieving restoration to a peat forming capability within 30 years under the existing planning permission mechanisms.

267. In cross examination, Mrs Hughes said that a document which had not been produced demonstrated that Natural England had carried out an appraisal and concluded that the proposed working areas did fall within the definition. That document was then produced after the end of cross examination. Unfortunately, Mrs Hughes asserted that the document stated something that it did not. The document produced contains no such appraisal. Indeed, it does not refer to Annex 1 or to the manual of interpretation anywhere within the document. Rather, what it does is to appraise sites for selection for a programme of work in the late 1990s from which the appeal sites were omitted because they had extant planning permissions for peat extraction.

268. Indeed, it should also be remembered that attached to the Natural England letter of 30 June 2010 to Salford was the response dated 15 June 2010 of Dr Paul Thomas to the ecology section of the ES for Chat Moss. (This was included as a background paper to the Committee Report, see page 552 of CD11.36). This response makes it clear that the Natural England stance in relation to Annex 1 was based upon an assumption that the existing planning conditions could require restoration to lowland bog. This is a stance, of course, that Salford does not accept. On page 3 of Dr Thomas's letter of 15 June 2010, he stated "... note that I would strongly advise the local authority not to accept any after use other than bog restoration under the existing planning consent in order to contribute to UK BAP targets for lowland raised bog and EC targets for degraded raised bog."

269. The result is that nowhere in the evidence did Natural England assess the site on a proper basis in relation to its potential Annex 1 status. As a consequence

the views expressed by Natural England are unexplained, can only be taken to be flawed and should be given limited if any weight.

270. In the circumstances, the reasonable conclusion is that only by allowing these appeals could the Annex 1 potential of the appeal sites be realised. It is only if permission is granted that the sites become an Annex 1 habitat within the definition. This is a matter that should be given significant weight in the planning balance.

271. Even if it is concluded contrary to the above that the existing mechanisms give rise to a reasonable expectation to peat forming capability within 30 years, the point goes nowhere. That is because the appeal scheme will secure the same objective for reasons set out above. Thus, even if the site is to be considered an Annex 1 habitat now, the objectives would still be secured by the appeal scheme. It must be remembered that there is no timetable imperative in the Directive or in policy which requires restoration now.

The reasons for refusal

272. Having set out the general context, addressing the reasons for refusal becomes more straightforward.

The carbon reason for refusal

273. The local planning authorities failed to approach the issue of CO_2 emissions relating to the appeal scheme on a correct basis.

274. Firstly, they misunderstood the nature of the appeal site. In the reason for refusal it is described as a carbon sink. It is not a carbon sink by any stretch of the imagination. It is a carbon store. A carbon sink performs two functions it sequesters CO_2 and it stores it. A store simple stores CO_2 but does not sequester. Despite Mr Horsfall's brave attempt to persuade the inquiry to the contrary it is plain that the Appeal site cannot be a carbon sink because it performs no sequestering function. To that extent the local planning authorities refused permission on the basis of a misunderstanding of the role of the site in CO_2 terms. The novel suggestion by Salford that the reference to a "sink" in the reasons for refusal was a reference to the function of the SBI formed no part of Mr Horsfall's evidence. He specifically sought to defend the view that the proposed working areas were a sink. The submissions in this regard are not reflective of the Council's evidence.

275. Secondly and more fundamentally, the local planning authorities have adopted an entirely parochial approach to the appraisal of the CO_2 consequences of the scheme. They have not asked themselves whether the grant of planning permission would increase or decrease global CO_2 emissions compared with the position of permission was refused; rather they have asked whether locally CO_2 emission would reduce if permission was refused and they have not taken account of the carbon leakage consequences.

276. As set out above, it is clear beyond doubt that a refusal of these appeals would result in greater CO_2 emission and a greater impact upon climate change than if planning permission is granted. As a consequence, it is only if the appeals were refused that conflict with the policies identified in the reasons for refusal relating to carbon emissions would arise. A grant of planning permission would be entirely in accordance with PPS1 and the key objectives of the PPS1 supplement

on Climate Change. Policies DP1 and DP9 of the RSS and Policy CP16 of the Wigan draft CS.

Impact upon the hydrology and ecology of the 12 Yards Road SBI

277. Mrs Hughes confirmed that it was only if it was concluded that the appeal scheme would have a material adverse impact upon the hydrology within the SBI that it could be concluded that the ecology of the SBI might be adversely affected. Even then it was established in cross examination of Mr Dickman that the WUDP policies do not apply to protect the SBI which lies within Salford. On this basis and on the basis that Mr Thewsey confirmed that working the areas in Wigan would not affect hydrology in the SBI in any way, the Wigan reasons for refusal relating to conflict with their UDP, in relation to applications within Wigan cannot be sustained.

278. So far as Salford is concerned, it was established in cross examination of Ms Beard that conflict with the SUDP policies could only arise if it was concluded that there would be an adverse impact upon the nature conservation value of the SBI as a result of the appeal scheme.

279. The appeal scheme now incorporates in relation to the site of appeal 1 in Salford a buffer zone and terracing to the west of the western boundary of the SBI. Mr Thewsey confirmed in cross examination that subject to appropriate planning conditions, which are being proposed, he had no concerns relating to draw down from the perimeter ditch proposed to the west of the SBI. Indeed, this element of the appeal scheme is an improvement upon the existing situation. This enhancement is a matter which should be given significant weight in the planning balance.

280. Mr Thewsey's remaining concerns relate entirely to drawdown from the southern perimeter ditch (hereafter called the southern ditch). This was raised for the first time in relation to the appeal scheme in November 2011. This point cannot have been in the mind of members when they refused planning permission. It was not referred to in the officer's report to committee. There is no record of any formal consideration by Salford in accordance with its standing orders as to whether these concerns could justify refusal of planning permission.

281. The appeal scheme will not involve any change to the southern ditch. As such, the appeal scheme will have no impact upon drawdown within the SBI compared to the existing situation. Indeed, the SBI was designated with the southern perimeter in situ. Thus, the appeal scheme will not change the position or circumstances from those which existed and which nevertheless justified designation of the SBI. Mr Thewsey made no attempt in his evidence to demonstrate that the grant of planning permission would have any effect compared to the existing situation.

282. Further and in any event, it is submitted that it has been established that the southern ditch does not control the extent of drawdown within the SBI. Mr. Thewsey contended in his evidence that the drawdown could be seen by taking a line between boreholes BH11/04C and BH11/04B (see the drawing in Mr Thewsey's appendix 12.15). The difference between his position and that of Dr Edwards was so small that if Mr Thewsey had used a thicker pen to draw his line there would have been a real danger of not being able to identify any real difference between the two positions.

283. However, Mr. Thewsey turned out not be particularly good at dot to dot because he omitted to account for the water levels at Post 7 – levels within a shallower ditch at the southern boundary of the SBI. His line indicates drawdown at post 7 below the lowest levels recorded at Post 7.

284. Dr Edwards explained in examination in chief that this could only occur if the water in the ditch at Post 7 were "perched". However, the ditch is a peat ditch. Peat is by its nature permeable. If it were perched it would dry out during warmer periods. Dr Edwards explained that the data shows that it only dries out for very limited periods of time. Further, he explained if it did dry out, the base of the ditch would crack and fissure and water would then permeate easily down to the Mr Thewsey's drawdown level. But again, the records show that there is water at post 7 almost throughout the year.

285. The plain fact is that Mr. Thewsey was unable to explain why there was water within the ditch at Post 7 in any reasonable way; that is because he is fundamentally incorrect in identifying the extent of drawdown ignoring the presence of the ditch at post 7. Indeed, it was remarkable that no point was put in cross examination to Dr Edwards to challenge his evidence that the water in the ditch at Post 7 was not perched. The assertion that the southern ditch must be the dominant controller of drawdown because the water level in the ditch sits above the water table identified by Thewsey is obviously wrong headed. Even in their closing submissions neither local planning authority has even attempted to explain how the water within the ditch at Post 7 could be perched above the water table year round. The only reason for this is because there is no reasonable explanation. Dr Edward's evidence was not challenged on this issue and must be accepted.

286. Dr Edward's evidence to the effect that the ditch at post 7 controls the draw down within the SBI is obviously correct. His approach is the only one that accounts for the data actually recorded on site. It is also the approach which accords with the view expressed by the Environment Agency on the 15 December 2011 (see page 96 of Mr Birnie's third volume of documents) which explains that the most notable disturbance to the groundwater gradient at the south end of the site seems…"to be on account of the small ditch on the northern side of the former railway that forms the boundary of the SBI". This was an acceptance of the position that the shallow ditch at post 7 controls the draw down within the SBI. The Environment Agency only changed its position in January 2012 and without explanation.

287. Once it is accepted that the drawdown line should be drawn joining BH11/04C to Post 7 and then to BH11/04B, the implications of the southern ditch become apparent; it has no material impact within the SBI. Even if the southern ditch was removed, the shallower ditch at Post 7 would continue to be present and would drawdown water just as it does now. Dr Stoneman confirmed in cross examination that the Trust has no plans to fill in the shallow ditch at Post 7 in any event.

288. It is also incorrect to assert that because the drawdown level from the ditch to the west of SBI had a particular level of drawdown the ditch to the south must have a same level of drawdown. There is an entirely different hydrological regime to the south where features are present which are not present to the west, namely the shallow ditch at post 7, the old railway embankment and the

trees upon it. All these features affect the hydrological conditions materially as Dr Edwards explained in re-examination.

289. Mr Thewsey's point regarding differential impact along the southern boundary also goes nowhere. As Dr Edwards explained the ground to the north of the southern ditch drops to the east. Thus, if anything the drawdown from the southern ditch will reduce and is in any event governed by the shallow ditch at post 7. Mr Thewsey could not gainsay this evidence as he had never actually visited the site.

290. Mr Thewsey's persistence in pursing objection on behalf of the Environment Agency was wholly unreasonable, all the more so given that he had not even visited the site prior to giving evidence at the inquiry. Dr Edwards regarded it as essential to visit the site and had done so. He is obviously right in this.

291. The reality is that, for reasons of their own, throughout the process of the determination of the applications, the Environment Agency, Natural England and Salford have been seeking to obtain enhancement for the SBI because of perceived difficulties within it. These are not however the result of peat extraction but rather down to poor management of the SBI. Trees have been allowed to grow, the inverts on drains are set too high, bunds are ineffective and holes have been allowed to develop in them. It is not the function of the planning system to require the developer of an adjacent site to make up for deficiencies in the management of local nature conservation sites. Policy does not require development to enhance such sites.

292. The central difficulty for the local planning authorities is that they have failed to identify the difference that a grant of planning permission would make in hydrological and thus ecological terms compared to the existing situation. That is because there is no difference and thus no impact. It is submitted that the only reasonable conclusion to draw is that the appeal scheme will not have an adverse impact upon the water levels within the SBI. Mrs Hughes confirmed that this means that there can be no adverse impact upon the nature conservation value of the SBI. Even if it did have an impact upon water levels within the SBI, such effect is so small and could only affect the margin of the site in the vicinity of the ditch at post 7. Mrs Hughes did not identify this strip of having any nature conservation value nor as making any material contribution to the SBI objective of securing a lowland bogland habitat. Mr Webb was of the view it did not make any material contribution to this objective.

293. It follows that the appeal scheme does not give rise to any adverse impact upon the nature conservation value of the site. There is thus no conflict with PPS9 or any other regional or local planning policy.

294. Thus it can be concluded that the proposed development would accord with PPS9 and policies MSP2, DP1, DP7, EM1 and EM1(B) of the RSS. In Salford, the development would not breach policies EN8 EN11 and ST13 of the SUDP. In Wigan, the development would not breach policies EV2, EV2B, EV2C, EV2D of the WUDP or policy CP12 of the emerging CS.

295. If however, the Secretary of State were to reach a different view and conclude that the appeal scheme would change hydrological conditions with the SBI to the extent that an adverse impact upon its nature conservation value would arise,

then as has been established above there is no alternative site from which the need for additional peat could be met.

296. Further, the appellant has offered a package of enhancements that can be secured by condition. It is submitted that with this mitigation package in place, no adverse impact upon the nature conservation value of the SBI would arise and there would thus be no conflict with PPS9 or the policies relating to nature conservation in the SUDP.

Conflict with Policy regarding Restoration

297. For reasons set out above, it cannot be concluded that the appeal scheme will give rise to harm to nature conservation interests because it will not result in successful restoration to a lowland bog habitat; quite the reverse. It will secure such restoration when it would not otherwise be secured.

298. As such there can be no conflict with PPS9 as the nature conservation value of the site as a whole, that is, its restoration potential, is conserved by the proposed development.

299. Thus it can be concluded that the proposed development would accord with PPS9 and policies MPS2, DP1, DP7, DP9, EM1 and EM1(B) of the RSS. In Salford, the development would not breach policies EN8, EN11 or ST13 of the SUDP. In Wigan, the development would not breach policies EV2, EV2B, EV2C, EV2D, MW1E of the WUDP or policies CP12 or 16 of the emerging CS.

Conflict with the Wigan UDP mosslands policy

300. The only aspect where there is conflict with planning policy is in respect of Policy MW1D of the WUDP (CD6.26). This policy provides that "permission will not be granted for peat extraction on the remaining fragments of remnant mossland shown on the proposals map". The site of appeal 4 lies within the remnant mossland designation shown on the proposals map. Thus there is a conflict with this policy.

301. However, Mr Leay explained in examination in chief by reference to the explanatory text that the objective of the policy was to protect the "remaining areas of semi-natural, uncultivated moss of high wildlife value" from peat extraction. His view was that as the site of appeal 4 stands it is bare peat. As such it is not a remaining area of semi-natural, uncultivated moss. Thus the objectives of the policy could not now be achieved in any event. As a result, he explained that whilst there was a technical conflict it could not be given any material weight in the planning balance.

302. Mr Dickman agreed that the site of appeal 4 was not now semi-natural, uncultivated moss. However in cross examination he argued that the policy objectives could still be met through restoration. This approach patently misunderstands the objective of the policy which was to preserve the remaining semi-natural uncultivated moss, that is, to protect those remaining areas from peat extraction. The policy is not a policy aimed at securing restoration of areas within the designation on the proposals map once their semi-natural, uncultivated moss state has been lost.

303. Even if this argument is not accepted, for the reasons set out above, the objective of restoration can only be achieved through the grant of planning

permission pursuant to these appeals. Thus, whatever view is reached there can only be a technical breach of policy and one to which little if any weight should attach.

Bond

304. Salford seeks a bond to secure after care. Wigan does not. This contrast in approach should be given significant weight in determining whether a bond should be required because it reveals that one Council at least is content that in accordance with policy conditions relating to after care will be sufficient to secure the after care that is considered appropriate. Salford did not refuse the applications on the basis of the failure to provide a bond. It can therefore be taken that members did not consider that a bond to address after care was necessary or appropriate. It is therefore entirely unclear whether the request for a bond raised in the evidence is a matter which Salford has formally considered pursuant to its standing orders. Presumably given the disregard for the pursuit of the argument relating to the southern ditch, officers do not consider such procedural matters to be of importance.

305. To date, Salford has never asked the appellant for financial information, has not identified the amount of the bond it seeks and has not identified the mechanism to be used for the bond. All it has said is to be found in two single sentences in Ms Beard's evidence.

306. The guidance regarding the need for bonds is clear. They are unnecessary if conditions can be imposed which can be enforced. Such conditions can be imposed here and they can be enforced. There are no exceptional circumstances. The aftercare requirements are not novel or untried, they are not particularly onerous financially. The argument that the land could be sold to someone impecunious should be treated with extreme caution.

307. If the appellant walks away at the aftercare stage, which it has no intention of doing, the conditions could be enforced against the land owner, Peel Holdings, a company with more than sufficient resources to meet the aftercare requirements. The suggestion that Peel would divest itself of the land at that stage is easily scotched. At that point the land would be a restored peat bog which produces no income. There is no reasonable likelihood of anyone other than a body such as the Trust being interested in its acquisition; all the more so given the conditions relating to aftercare that will exist.

308. In short, there is no basis for establishing the exceptional circumstances required. The bond issue was raised without authority as an after thought in an attempt to bolster Salford's case. A bond is unnecessary. Should the Secretary of State consider otherwise then the appellant would suggest that a minded to grant letter may be an appropriate way forward.

309. Salford continues to assert that the 1963 permission has lapsed (see area D on the plan of planning permission boundaries contained in the bundle of plans at Plan B). However, that is not accepted by the appellant and in any event the matter does not arise for determination in the present appeals.

Conclusions

310. The evidence has established that even if all available non peat alternative materials are utilised, there is insufficient supply of peat within the UK to meet

UK demand and within England to meet English demand. Absent the grant of the permissions sought in these appeals there will thus be shortfall in the supply of growing media to 2025 from indigenous sources. The result will be that demand will be met through imported peat.

311. The appeal sites are the only English sites that have been identified in this inquiry that can meet the supply without breaking new ground. There is no site as Mr Leay explained in his evidence which is better in planning terms on the basis of its nature conservation impact, no site which is not an Annex 1 habitat, no site which is better in terms of the reduction of CO_2 emissions, no site is more centrally located and which would have less transportation CO_2 emissions, no site which is better in terms of impact upon residential amenity either from noise or dust, upon human health, upon archaeology, upon listed buildings or other heritage assets, upon woodland, upon water quality or on the basis of impact upon the character of the countryside.

312. In short, only the appeal scheme is the best and only site that can meet the residual need for peat through to 2025.

313. The appeal scheme carries with it a number of benefits which must be given significant weight:

- It will help to meet the shortfall in indigenous supply of peat to 2025 in accordance with national minerals planning policy and will reduce reliance upon imports;
- It will not undermine the shift to a peat free market in any way;
- It will result in less CO_2 emissions than if permission were refused. It is the best choice in terms of reducing impacts upon climate change;
- It will help meet the need for peat from a location which has already been the subject of extraction in the past and is not a virgin peat bog;
- It will help meet the need for peat from a site which is not designated as being of nature conservation value at either a national, regional or local level;
- It will retain the economic benefit of peat extraction within the UK. A refusal of permission will result in a loss to the UK economy as peat is sourced from overseas and the overseas territory secures an economic benefit;
- It will continue to provide employment which would otherwise be lost;
- It will result in enhance of the hydrological regime for the SBI through the provision of the western buffer; and
- It will secure the restoration of the Appeal Site to bog and the Habitats Directive Annex 1 potential of the site as a whole, which cannot otherwise be secured under the current planning condition/s106 obligation requirements.

314. The appeal schemes accord with national planning policy, regional planning policy and local plan policy save in relation to Policy MW1D where there is only technical breach of little if any significance.

315. On that basis it can only be concluded that the planning balance lies significantly in favour of the grant of planning permission. The Secretary of State is therefore asked to allow these appeals and grant planning permission for the proposed development.

Submissions of William Sinclair Ltd as to the Framework

Minerals Policy

316. Paragraph 142 of the Framework explains that minerals are essential to support sustainable economic growth and our quality of life. This applies to peat and to other fossil fuel minerals. However, there is recognition that minerals are a finite resource and thus best use of them must be made to secure their long term conservation. "Best use" is plainly made by means of the hierarchy of supply looking to substitute secondary and recycled materials first before allowing primary extraction. The appellant's view is that this is the means by which Government regards extraction of minerals to meet needs as being sustainable. The hierarchical approach then is unchanged from previous national planning policy.

317. Paragraph 142 seeks to ensure a sufficient supply of material to provide the goods that the country needs. This remains unchanged from previous policy.

318. It continues to be a policy objective to take into account the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials before considering primary materials whilst aiming to source minerals supplies indigenously (see the second bullet point of paragraph 143). If that is the aim for development plan preparation then it plainly is the objective of policy more generally.

319. Thus, it is submitted that the thrust of national minerals planning policy remains as stated elsewhere in the appellant's case.

320. The draft Framework did not require planning authorities to identify new sites or extension to existing sites for peat extraction. This is unchanged in the final version of the Framework (see the first bullet point of paragraph 143). No further detail on the meaning of the phrase is provided within the document. In similar vein to the draft Framework, the final version of the Framework provides that when determining planning applications planning authorities should not grant planning permission for peat extraction from new or extended sites (see the fifth bullet point of paragraph 144). No further guidance is provided as to the meaning of the phrase "new or extended sites".

321. The case put forward previously by the appellant is thus equally applicable in the context of the final version of the Framework. In the context of the Government's state of knowledge (namely its awareness that there is insufficient indigenous supply of peat to meet the residual need in the transition period), the Framework cannot be construed as meaning no further planning permissions for peat extraction shall be granted. For the reasons previously explained, the Framework cannot be read as precluding the grant of permission for time extensions relating to sites that have been previously extracted. To do so would result in the failure to achieve the policy objective set out earlier in respect of the growing media market, that is, the peat that the country needs to 2030 would not be provided from indigenous sources.

322. The policy position relating to restoration and after care is not changed materially. Restoration and after care should be provided for at the earliest opportunity and carried out to high environmental standards (sixth bullet point of paragraph 144). It is the appellant's view that these objectives are attained by the proposed development which provides for restoration on a phased basis as soon as peat is worked to a minimum depth of 2 metres and for its restoration thereafter. The restoration scheme would clearly be to high environmental standards and there has been no suggestion that the environmental standards of the scheme proposed could be improved upon by the other parties.

323. A bond remains a matter which can only be sought in exceptional circumstances (see sixth bullet point of paragraph 144). For reasons set out in the appellant's case, no exceptional circumstances exist as Wigan has not sought a bond.

324. One policy change which is significant to the determination of the appeals is the requirement to "give **great weight** to the benefits of the mineral extraction including to the economy" (first bullet point of paragraph 144 – emphasis added). This has the result that the benefits of the proposed extraction previously identified must be given great weight in the planning balance. This marks a shift of approach from the draft Framework and one that provides greater weight in the planning balance in favour of the grant of planning permission.

Nature Conservation Policy

325. The essential national planning policy approach to nature conservation is unchanged by the final version of the Framework. Paragraph 118 adopts the same approach as PPS9. The approach to the question of "significant harm" remains unaltered.

Sustainable Development

326. The dimensions of sustainable development identified in paragraph 7 of the Framework need to be considered as Mr Leay emphasised in his evidence at the inquiry. Paragraph 7 refers to the three roles performed by sustainable development: the economic social and environmental roles. Paragraph 8 of the Framework explains that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

327. As set out earlier, the appellant considers that the grant of planning permission in these appeals would result in the attainment of all three gains. Economic gains in the form of retention of the economic benefit of peat extraction within the UK economy whereas refusal would lead to a loss to the UK economy as peat is sourced from overseas. Indeed, paragraph 19 of the Framework emphasises that significant weight should be given to the need to support economic growth through the planning system. Social gains would be in the form of retained employment.

328. It is considered that environmental gains would be achieved in a number of ways:

- It is development which reduces CO_2 emissions compared to the position if it were to be refused and it is development which does not prejudice the attainment of voluntary targets to transition to a peat free market by

2030. Paragraph 93 of the Framework identifies planning as playing a key role in securing reductions in greenhouse gas emissions and requires local planning authorities to plan for new development in locations and ways which reduce greenhouse gas emissions (see the first bullet point of paragraph 95. As explained earlier, it is only by granting planning permission for the appeal proposals can CO_2 emissions be reduced compared to the situation if the proposals were refused;

- Development which is the better option in terms of transportation related CO_2 emissions compared to the position if permission were refused. Indeed, the Framework at paragraph 30 provides encouragement to solutions which support reductions in transportation related greenhouse gas emissions. The best solution in terms of minimising transportation CO_2 is to allow the appeals for reasons set out in the previous submissions;
- Meeting the residual need for peat to 2025 from a site which has been the subject of extraction in the past and is not a virgin peat bog, is not designated as being of nature conservation value and is not an Annex 1 site;
- Enhancement of the hydrological regime for the SBI through the provision of the western buffer; and
- Securing the phased restoration of the appeal site to bog which cannot otherwise be secured under current planning conditions or existing Section 106 obligation requirements.

329. With economic, social and environmental gains the only reasonable conclusion is that the proposed development is sustainable within the terms of the Framework.

330. By contrast refusal of the appeals would result in economic loss to the UK, social losses in terms of employment and environmental harm in terms of increased CO_2 emissions. It is submitted that refusal of the appeals is unsustainable in Framework terms.

The Core Planning Principles

331. The core planning principles set out in the Framework include the exhortation that every effort should be made objectively to identify and then meet development needs (third bullet point in paragraph 17).

332. Previously, the appellant has identified a residual need for peat to 2030 taking into account robust assumptions. Having identified that residual need and the absence of any alternative site from which the need could be met, only the grant of planning permission in these appeals would accord with the objective of making every effort to meet that need.

333. The core planning principles also provide that planning should support the transition to a low carbon future in a changing climate, encourage the reuse of existing resources and the use of renewable resources (first bullet point of paragraph 1). The residual need identified earlier arises only after all available peat alternatives are assumed to have been used. The provision of additional indigenous peat supply by allowing these appeals would thus support the use of

all available non peat alternatives and meet the shortfall to 2025. Chat Moss would have a fundamental role in supporting the transition to a peat free market by 2025. Indeed, it has been established that if these appeals were dismissed there would be adverse CO_2 consequences compared to what would happen if the appeals were allowed. Only the grant of planning permission supports the core planning principle for transition towards a low carbon future by a means which is sustainable in Framework terms.

334. The core planning principles also provide that planning should contribute to conserving and enhancing the natural environment. The appeal schemes achieve this through securing the restoration of the sites which would not otherwise be achieved. The principle goes on to explain that planning should direct development toward sites of lesser environmental value. That is the case with the appeals which propose development on land which is not designated at any level.

The Development Plan

335. Annex 1 of the Framework explains that local plan policies should not be considered out of date simply because they were adopted prior to the publication of the Framework. It provides that for twelve months from the day of publication those taking decisions may continue to give full weight to relevant policies adopted in development plan documents adopted since 2004 even if there is a limited degree of conflict with the Framework (paragraph 214 of Annex 1). The elements of the development plan in this case were adopted post 2004.

336. It is submitted that there is no material conflict between the relevant policies in the unitary development plans in the present case and the Framework. Thus, those policies should continue to be given full weight, with the exception of Wigan UDP Policy MW1D for reasons that have already been explained.

Emerging Policy

337. Paragraph 216 of Annex 1 of the Framework sets out the matters that are relevant to the determination of how much weight should be accorded to emerging policy. Those matters have been addressed previously and the conclusions reached remain unchanged.

The Presumption in favour of sustainable development

338. The Framework indicates that objectively assessed needs should be met except where the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against Framework policies taken as a whole (second bullet of paragraph 14).

339. For reason set out previously, there is a clear and compelling objective need for further supply up to 2025 from English sources. The appeal schemes are the only available means of meeting those needs. It would do so without giving rise to any significant impacts and would bring significant benefits which should be given great weight. The balance must therefore be struck in favour of the grant of planning permission.

340. Further, paragraph 14 of the Framework explains that there is a national planning policy presumption in favour of sustainable development, which, in terms of decision taking, means approving development proposals that accord

with the development plan without delay. As has already been stated, the appeal schemes accord with the adopted development plans save in one minor technical respect which should be given no weight.

341. It is submitted that the appeal schemes thus have the benefit of the presumption in favour of sustainable development and should be approved without delay.

Further Submissions of William Sinclair Ltd as to the Framework

342. These submissions are made in response to those made on behalf of Salford Council, Wigan Council and LWT as a result of the issuing of the final version of the Framework. These submissions are to be read in conjunction with those submissions already made on behalf of the appellant. They respond only to matters not already addressed in earlier submissions.

Response to Salford's Framework submissions

343. In terms of Salford's table in appendix 1, the appellant has already made its position regarding the weight to be given to local and emerging policies clear in its submissions.

344. The appellant has already explained that the proposed development constitutes sustainable development and that the grant of planning permission for the appeal proposals represents a more sustainable option than refusal. Salford's simplistic approach to the question of sustainability is to be rejected.

345. The appellant accepts that the Framework highlights the importance of climate change as a planning consideration. However, Salford's submissions are based upon a parochial approach to CO_2 emissions which fails to have regard to the consequences of refusing planning permission, namely that peat will be imported and that greater CO_2 emissions will result. The best option in terms of reducing the adverse impacts upon climate change is to allow the appeals for reasons already put forward by the appellant.

346. Although the proposed working areas have potential to realise their potential to become an Annex 1 habitat pursuant to the Habitats Directive, such potential and the consequent nature conservation value can only be realised if there is a realistic prospect of restoration to peat forming capability within 30 years from now. As the appellant has already demonstrated, the mechanisms to achieve this objective are not currently in place. At present, the areas of the site that have been worked for peat are not of any significant nature conservation value. For reasons that have already been set out, the only certain means of securing a return to peat forming capability at the appeal sites and their role within a wider bog complex is to grant planning permission. Refusal of planning permission is not the best way to secure the protection and enhancement of the soil at the site. Nor will refusal achieve a return to peat forming capability and the fulfilment of the sites potential to return to an active carbon sink. Thus, the proposed development is the only means to secure the objectives set out in Framework paragraphs 109, 113, 114 and 117. The Framework does not therefore support the reasons for refusal in this regard.

347. It is accepted that the general approach in Framework paragraph 118 reflects that previously set out in PPS9. Peat is not irreplaceable; the land will only be returned to peat forming capability with the grant of planning permission.

348. Salford asserts that its evidence demonstrates that peat is not one of those goods that the country needs. This assertion is contrary to the clear evidence provided by Dr Hockaday in his rebuttal proof which shows a shortfall in the supply of peat to 2025. It also ignores the evidence of Mr. Burns and the statement by DEFRA in appendix 7 of Dr Hockaday's evidence that there is only sufficient peat if two thirds of peat used is imported. Salford's assertion is thus unfounded, contradicted by its own evidence and should be rejected.

349. The appellant disagrees with Salford's contention that the absence of a reference to peat in the list included within the definition in the Framework glossary of "minerals of national and local importance" means that the Government has concluded that peat is not needed. The definition within the glossary states that minerals of local and national importance are "those minerals which are necessary to meet society's needs including….". It then lists a number of minerals but does not include peat. The use of the word "including" obviously means that the list that follows is not intended to be all inclusive; rather the list is a list of examples. Thus, the absence of a reference to peat does not mean it falls outside of the definition. The question that has to be asked in order to determine whether peat is a mineral of local or national importance is whether peat is "necessary to meet society's needs". The appellant's view is that it plainly is. Further, the evidence given at inquiry has established beyond peradventure that the supply of further indigenous peat is necessary to meet needs up to 2025. Salford's submissions on this point should be rejected.

350. It is accepted that the Framework draws a distinction between peat and other minerals in so far as it restricts the sites from which further supply may be obtained for nature conservation reasons. This has been explained in the appellant's previous submissions.

351. The Framework can only be interpreted as Salford contends if it can be established that the Government has taken the view that there is sufficient domestic supply to meet the residual need for peat to 2030. Salford's submissions do not identify the evidence that establishes that this is the case. Indeed, for reasons already set out in the appellant's submissions this is not the case. In a context where the Government is aware that the residual need for peat cannot be met from existing supply and where policy continues to be that supply should be met from indigenous sources Salford's view should be rejected.

352. In respect of paragraph 142 of the Framework, Salford's submissions fail to recognise that the overall objective of ensuring a sufficient supply of materials to provide the goods that the country needs applies to peat. No doubt this is because, in the face of all the evidence Salford maintains the Nelsonian view that there is no need for further supply of peat to 2030. Salford's view in this regard should be rejected.

353. Salford's view is that there is a clear distinction between peat and other minerals and that stemming from this, the entirety of the appellant's planning case can be disregarded. This rejected. Salford has failed to address or understand the nature of the peat market, the Government's intentions for that market and the significant adverse consequences environmentally, socially and economically that would flow from a refusal of the appeal proposals.

354. Salford doubts as to whether restoration can be carried out to a high standard, but if the appeals are not allowed then the full potential of restoration to peat forming capability will not be realised.

355. It is agreed that the Framework does not change the policy regarding the truly exceptional circumstances in which a bond to secure restoration may be required. Salford complains that it has not been provided with information, but it never requested such information either before or during the inquiry. It should be noted that Wigan is not seeking a bond; no doubt because it does not consider that the exceptional circumstances exist to justify one.

356. It is considered that the conclusions reached by Salford on the Framework implications in respect of the appeal proposals are flawed and should be rejected.

Response to Wigan's Framework submissions

357. Paragraphs 1 to 9: Like Salford, Wigan argues in general terms that the appeal proposals are "unsustainable". This assertion is misconceived for the reasons already dealt with. Wigan's other Framework arguments have been addressed in the appellant's comments on what Salford has said about the Framework.

Response to the Trust's framework submissions

358. The Trust claims that the appeal proposals are "unsustainable". The appellant's view is that such an assertion is misconceived for the reasons that have already been given both in the appellant's submissions generally and also in what the appellant has had to say in respect of Salford's Framework submissions.

359. The Trust says that in refusing planning permission, Salford and Wigan were taking a long term view as to the effect on climate change. This is in contrast with the appellant's view that refusal of the planning permissions would only result in peat deposits further away in Europe being exploited with all that means for CO_2 emissions from transport. This has already been dealt with in the appellant's response to Salford's Framework submissions. Further, the Trust fails to recognise that its own evidence indicates that the appeal scheme would leave sufficient peat in situ to ensure that restoration would achieve a return to peat forming capability.

360. In its comments on paragraphs 143 and 144 of the Framework, the Trust fails to have regard to the objectives of paragraph 142 whatsoever in making its submissions. Its submissions are thus flawed. The remaining matters raised by the Trust in respect of paragraphs 143 and 144 are dealt with elsewhere in the appellant's case.

361. The further Framework submissions made by the Trust point to a distinction being drawn between the need for an adequate supply of minerals from indigenous sources and the phasing out of the use of peat. However, the further submissions ignore the fact that the Government intends for there to be a period of transition. Within that period there will be a residual need for peat. This was the subject of evidence at the inquiry. Thus, it is Government policy that that peat should be sourced indigenously (that is, from within England) and not imported. It is noted that the Trust does not suggest that where a mineral is needed Government policy permits it to be sourced via imports.

362. In its further submissions, the Trust says that a more satisfactory interpretation of sustainable development in paragraph 8 of the Framework would be that there should be a net economic, environmental and social gain. This is agreed. Elsewhere, the appellant has identified that the grant of planning permission would result in net economic, environmental and social gains. Neither of the planning authorities addressed sustainability in this way and neither has the Trust. Instead a simplistic approach has been adopted of assuming that peat extraction is unsustainable without analysing the net economic, environmental and social gains.

363. Neither of the local authorities or the Trust has identified a net economic gain that would result from refusal. None of those parties has identified a net social gain that would result from refusal. Their approach to the existence of environmental gains is flawed and parochial, ignoring the fact that if the appeals are refused the evidence has established that peat would be imported to meet the residual need arising in any event.

364. In its further Framework submissions, the Trust claims that there has been no demonstration of "objectively assessed need", but this is to misunderstand the evidence presented by the appellant and by Dr Hockaday on behalf of Salford. In his appendix 7, Dr Hockaday demonstrates that it is the Government's view that there will continue to be a need to import peat into the future. In addition, Dr Hockaday's rebuttal evidence demonstrates that on the basis of his own assessment there will be a residual need to 2025. Mr. Burns gave evidence based upon a robust assessment that there would be a residual need for peat to 2025. The evidence is overwhelming in establishing a residual need for peat to 2025, if not beyond.

365. The Trust's view is that the adverse impact of continued peat extraction would outweigh the benefits of continued peat extraction, but no reference is made to the evidence. This point has been addressed elsewhere in the appellant's case.

The Case for Salford City Council

Principle of Development

Sustainability

366. The central principle underlying land use and other decisions is that of sustainability. PPS1 (CD1.1) states at paragraph 3 that "Sustainable development is the core principle underpinning planning." It continues: "at the heart of sustainable development is the simple idea of ensuring a better quality of life for everyone, now and for future generations."

367. Paragraph 4 continues: "the Government set out four aims for sustainable development in its 1990 strategy. These are:

- Social progress which recognises the needs of everyone;
- Effective protection of the environment;
- The prudent use of natural resources; and
- The maintenance of high and stable levels of economic growth and employment".

368. The climate change supplement to PPS1 (CD1.2) makes the point that where there is apparent conflict between principles in national policy; the policies concerning sustainability are to prevail.

369. It is clear that Government policy asserts and recognises that the use of peat in horticulture is unsustainable (see paragraph 3.13 on page 11 of CD3.13). Hence in the White Paper (see paragraph 2.64 at CD3.15) the point is made: "making the transition to peat-free alternatives would put the [horticulture] industry on a sustainable footing …"

370. Self-evidently, the White Paper recognises that the industry, at this juncture, is not sustainable.

371. Virtually all (see CD3.19) peat that is extracted in the UK is devoted to the horticulture industry. The draft Framework Impact Assessment (see CD3.3) at page 43 states: "as peat is a non-renewable resource, the extraction of peat for horticulture is unsustainable and contributes to greenhouse gas emissions and the destruction of rare habitats and archaeology."

372. For all the circumlocution and obfuscation in the evidence of the appellant, these clear statements recognise unequivocally two points. First, the use of peat in horticulture is unsustainable; and second, the extraction of peat for horticultural use is unsustainable. As such, the development is, by definition, harmful.

Need for Peat

373. MPG13 (1995) (see CD1.17) signalled a clear intention of concerted policy and action by Government to reduce the use of peat in horticulture. Paragraph 1 of MPG13 had stated that the extraction of peat from British bogs had been a source of concern. Paragraph 4 expressed the view that it was Government policy to maintain and encourage a competitive UK horticultural industry. It continued: "the Government believes that there continue to be market demands for peat which should, in part, continue to be met by peat extraction from sites in Great Britain."

374. Paragraph 5 stated: "….it is also Government policy that peat bogs which retain a high level of nature conservation interest which represent a part of the country's "critical natural capital", or are important for the archaeological heritage, should be protected and conserved for the benefit of future generations. In accordance with these policies, continued and future peat extraction should be limited to areas which have already been significantly damaged by recent human activity…"

375. At the time of MPG13 (July 1995) UK usage of horticultural peat was 2.55Mm^3 per annum, of which 87% was used as growing media and 13% as soil improver. Paragraph 40 of MPG13 stated that "the Government wishes to continue to encourage the development of alternatives to peat for both the less demanding uses and of more specialised alternatives for more demanding uses."

376. It was anticipated (see paragraph 41 of CD1.17) that the UK peat extraction industry would require some new areas for extraction. The policy formulated was that "it is therefore the Government's intention that the future extraction of peat in England from any new sites should be restricted to areas which have already been significantly damaged by recent human activity and are of limited or no

current nature conservation or archaeological value" (See paragraph 43 of CD1.17).

377. It is interesting to note given the discussion as to what is meant by a "new" site that in this paragraph a "new" site would encompass one that had been subject to previous extraction.

378. In addressing the requirement for peat MPG 13 and the more recent DEFRA project (see CD3.13) noted that in the UK 99% of peat is used in growing media products or soil improvers.

379. The Habitat Action Plan: Lowland Raised Bog – UKBAP Tranches 1 and 2 (1995 – 1999) (see ID26) set a target of 90% of the total market for growing media and soil improvers to be peat free. As noted earlier, as the UK horticulture industry used 99% of the peat extracted, this document anticipated that only 10% of the industry would utilise peat as a growing medium.

380. Within a short time, the policy direction "ramped up" the pressure on the reduction of the use of peat for horticultural use. The DEFRA publication "Consultation on Reducing the Horticultural use of Peat in England" (see CD3.14) is dated December 2010. Although a consultation document, it is clear that evidence based decisions had been made that had informed the approach that now was the elimination of all peat in horticulture.

381. The "overarching goal" (see page 15 of CD3.14) was for peat use in all horticultural sectors to be eventually phased out. The reasoning elides the environmental case for the elimination of peat extraction to the use of waste. Paragraph 3.2 states that "there is a strong argument for industry (and consumers) to move towards a complete phase out of peat use in horticulture. There are growing media products of excellent quality now available that perform as well as, if not better, than peat in the vast majority of general garden uses, and innovative peat-free products continue to be launched, including for professional use and ericaceous (acid-loving) plants. Switching to these alternative products will also contribute to the development of a more sustainable, zero waste economy, and in some cases is likely to reduce the amount of waste that goes to landfill."

382. It had earlier recognised (see paragraph 1.13 of CD1.13) that "as well as depleting the carbon store and impacting on biodiversity, archaeology and the landscape, extraction activities result in annual greenhouse gas emissions of at least 400,000 tonnes of carbon dioxide (CO_2) from UK extraction sites. This is equivalent to 1,000,000 cars on the road each year and does not take account of the peat that we import from overseas, principally from Ireland (which supplies 60% of our horticultural peat) and the Baltic States (8%). Current estimates of emissions from domestic extraction activities are also likely to be underestimates, as they exclude emissions associated with the initial drainage of peat and subsequent emissions from the bare peat surface. In the context of the Climate Change Act 2008, and the Government's legally-binding carbon budget and target to reduce the UK's emissions to 80% below 1990 levels by 2050, all emission reductions are important."

383. The appellant through Mr Burns asserts that there will be a shortfall in available growing media to supply the market and the consequence will be a requirement for further peat extraction. In the event that the UK market (or

even the market for England) does not provide sufficient peat, it will be imported with significantly greater environmental consequences.

384. That is not a concern that is expressed in the DEFRA consultation document, although the arguments advanced by the horticultural industry were acknowledged within it. At paragraphs 1.21 - 1.26 of CD3.14, the "International Context" is addressed. The following points can be noted:

- There is recognition that 32% of peat used in the UK is extracted from domestic sites;
- Dramatically reducing or eliminating English consumption of peat would deliver on domestic priorities leading to admission savings for carbon budgets and a move towards a zero waste economy;
- Domestic extraction and use is closely interlinked with the wider European market for growing media and cannot be considered in isolation;
- Peat extracting countries that supply the UK horticultural market show few signs of slowing their activities;
- The UK has limited legal grounds for unilaterally banning the import of peat from other EU countries;
- However, peat degradation and restoration is increasingly the focus of political and technical discussions in high level European and international fora. The importance of peat lands has recently been emphasised in international discussions at the Convention on Biological Diversity in Nagoya;
- The importance of raised bogs for biodiversity and also recognised by the EU Habitats Directive see CD8.1) recognise the value of such sites for nature conservation;
- In respect of waste policy, there continue to be moves to reduce the amount of waste material that goes to landfill; and
- The EU Soil Framework Directive would require all European countries to determine whether the degradation of their soils, including peat, is acceptable.

385. The DEFRA consultation document therefore concludes at paragraph 1.26: "given the multiple drivers for action, it is therefore likely that there will be ever growing pressure to reduce the greenhouse gas emissions from peat extraction, to preserve internationally valuable biodiversity in lowland peat habitats and to reduce the amount of waste to landfill (by switching to waste-derived peat-free products). There may also be a "first mover" advantage for those sectors and countries that make the transition first. In the meantime, the Government is committed to working in European and international fora to achieve an effective response to these challenges, whilst also recognising the need for the UK's domestic industry to remain competitive."

386. Thus it can be seen that the initiative of the Government is not to allow the "market" to prevail, but to direct, through policy, the changes that it wants to achieve. Paragraph 4.5 of CD3.14 appears in the section that deals with "Peat Extraction and the English Planning System" and provides: "Looking ahead, it is

expected that all minerals planning authorities will take into account the proposed phase out of peat in the horticultural sector and will therefore not grant new applications for extraction. Under the proposals set out in this consultation document, the horticultural sector is projected to use a further 17.4Mm^3 (equivalent to 6 years' worth of peat at current levels of use) before its use is phased out (in 2020 for the amateur sector and 2030 at the latest for the professional sector). Any future peat requirements should therefore be easily accommodated from existing extraction sites, and it is expected that new sites will not need to be opened up to meet expected market demands. However, if considered necessary, it would also be possible to legislatively prohibit the extraction of peat from any new lowland peat sites, where permission to extract has not already been granted."

387. This evidence base was the subject of the e-mail correspondence reproduced by Dr Hockaday in appendix 7 of his proof of evidence. That makes it clear that the projections of peat use for the proposed policy were not based on actual assessment of the available peat reserves. It went on to make the observation that the assessment was based on a number of assumptions that were set out in the consultation document to be tested rather than as a clear conclusion. It then set out the observation that appears in the consultation document and observes: "annual UK peat use is currently (2009) at 3Mm^3, so that this suggests that we need a capacity for another 6 years' worth of peat extraction at the current rates of extraction. We already import 2/3rd of the peat that is used, if the proportion of domestic versus imported peat is maintained, we need the existing domestic peat extraction sites to be viable at the current rate of extraction for 6 years…Based on discussion with stakeholders, this did not seem unreasonable and we received no comments on this in the consultation responses."

388. In the absence of a challenge to the argument developed in paragraph 4.5 of CD3.14, the approach of DEFRA was demonstrably reasonable. As such in the context of there being an adequate supply of peat from existing permitted reserves the advice to planning authorities that "new applications" for extraction should not be granted means **all** applications irrespective of the debate on whether it is a new site.

389. The key point to bear in mind throughout is not that the peat extraction industry is expected to perform in market terms. The policy drive is to achieve a result by requiring the market to act. This is acknowledged in paragraph 5.8 where the DEFRA research highlighted that "ramping up" the sourcing and production of good quality alternative materials would be challenging. It went on at paragraph 5.9: "however, our analysis has concluded that with continued domestic investment in wood processing, the development of strengthened coir supply chains from India and Sri Lanka and continued innovation in the use of other waste-derived materials (...) phasing out peat in horticulture should be achievable."

390. The Impact Assessment on the DEFRA document (see CD3.19) at its summary recognises that "peat is an important and effectively non-renewable natural asset and the continued extraction of peat for horticulture at the current rate is unsustainable, also contributing to climate change and destruction of important habitats, biodiversity and archaeology".

391. The Government through its publications has emphasised that the extraction of peat and its cost to the consumer does not reflect a "level playing field" with peat alternatives. This is because the impact and costs of extraction are not borne in the market price of peat: "these external impacts and costs of extraction are not reflected in the market price of peat, and Government intervention is necessary to facilitate a shift to peat-free alternatives" (see summary of CD3.19).

392. Hence, it is clear that the Government is being proactive in order to move the industry towards peat-free alternatives. Nowhere is this made clearer than in paragraph 8 of CD3.19 that states: "the central objective of this (voluntary) policy is to address a market failure - the current market price at which peat is sold for horticultural use does not take account of its value as natural capital or the full costs imposed on society by the extraction and domestic use of peat. These impacts of peat use and extraction on habitats, biodiversity and wildlife, climate change and cultural heritage, and the external costs associated with these, are not factored into the current price of peat charged to consumers … Factoring the carbon externality alone into the price would lead to a switch to alternative materials."

393. The overall policy objective at paragraph 1 was stated to be "the overall long-term goal is to work towards reducing to zero the unsustainable use of peat in all horticultural markets in England. By significantly reducing and eventually replacing the use of peat in growing media and soil conditioner products that are sold and consumed in England, the objective is to protect valuable habitats, biodiversity and wildlife, carbon stores and other ecosystem services."

394. The means by which that is achieved is addressed. Paragraph 9 states that "a voluntary approach is being adopted, based on setting phase-out targets that reflect evidence on costs, benefits and future availability of peat-free materials and striking the right balance between environmental ambition (driving innovation and new product development) and achievability. The policy builds on recent progress in reducing peat use in all horticultural markets, but promotes further and faster action to be taken in order to significantly reduce peat use and work towards an eventual and full transition to more sustainable peat-free materials."

395. It can be seen that the approach adopted includes the expectation that the imposition of the "phase out" would drive innovation and new product development. In short, the Government is interfering with the market.

396. As was clear in the cross examination of Mr Burns, there is no document of recent Government policy that expresses the view that:

- Peat extraction is sustainable;
- Peat extraction should continue at present rates;
- That there is a need for further permissions to be granted (contrast this with MPG13 at paragraph 43); and
- That to avoid the prospect of the importation of peat, the indigenous supply of peat needs to be increased.

Mineral Planning Policy

397. General mineral planning policy in MPS1 (see CD1.12) and paragraph 100 of the draft Framework (see ID12) identify that it is the Government's objective for the planning system to secure an adequate supply of indigenous minerals needed to support sustainable growth whilst encouraging the recycling of suitable materials to minimise the requirement for new primary extraction.

398. Upon this broad policy the appellant seeks to hang its case for further peat extraction at Chat Moss.

399. It is undoubtedly the case that the general minerals policy contained in MPS1 and paragraph 100 of the draft Framework are material considerations. The question is one of weight. Essentially, where there is a bespoke policy, especially founded upon a clear evidence base, for a particular mineral, greater weight must be given to the bespoke policy advice in respect of that mineral. In the specific case of peat that is recognised in the Framework Impact Assessment (see CD3.3) that states at page 43 in respect of the policy changes: "the proposed policies set out in the Framework do not seek to change the overarching objective of mineral planning. However; policies on (i) peat and (ii) land banks had been refined as follows: peat - removing the requirement for local Councils to set criteria for the selection of sites for future peat extraction (that is, to identify new sites)."

400. Thus, it can be seen that the overarching objective of mineral policy has been "refined" in the specific instance of peat. In the specific instance of peat there are bespoke policies that are of direct application.

401. The Impact Assessment sets out a rationale for the intervention that refers to the aim to phase out the use of peat in the UK. It further addressed:

- The extraction of peat being unsustainable;
- Its contribution to greenhouse gas emissions and the destruction of rare habitats and archaeology;
- The external cost not being reflected in the cost of extraction or the market price;
- The need for intervention to facilitate the shift to peat free alternatives.

402. The observation that justified the "refinement" of the overarching objective was the intention to eliminate peat use and "… There should be no further need to identify new peat extraction sites".

403. Paragraph 101 of the draft Framework states: "In preparing mineral plans locals planning authorities should:

- Not identify sites or extensions to existing sites for peat extraction".

404. Paragraph 103 states of the draft Framework that "when determining planning applications local planning authorities should:

- Not grant planning permission for peat extraction from new or extended sites …".

405. These policies have to be seen in the light of the DEFRA consultation document (see CD3.14) and the Impact Assessment of the draft Framework (see CD3.3). Page 44 of CD3 .3 states that "it is estimated that existing sites have sufficient

capacity to service current levels of use for 6 years. Given the intention to phase out the horticultural use of peat, these domestic reserves may last longer than 6 years, providing time for users to seek peat-free alternatives."

406. It can be readily seen that the analysis which informed the policy and the Government's own assessment of the impact of that policy does not anticipate the need for any further sites in order to supplement domestic reserves. In that context there is no need for new or extended sites. Extension would include temporal extensions that would extend the life of the mineral extraction activity on the site. The policy therefore, properly interpreted, excludes new (that could include the opening up of a virgin site) or extended sites which would include both the physical extension and the temporal extension of existing sites.

407. Given that the observation of the Government is that the extraction of peat for horticultural use is unsustainable and that there are sufficient domestic supplies available to meet the expected future requirement such an interpretation has the benefit of logic.

408. Conversely, the appellant's case carries with it the imperative that the Secretary of State is being invited to grant planning permission for a development recognised to be unsustainable in circumstances where there is not a need for that mineral.

Peat Free Alternatives

409. DEFRA projects have monitored the horticultural use of peat and its alternatives. The DEFRA project of July 2010 (see CD3.13) at Table 3 identifies the trends and material used by market sector in both soil improvers in growing media for the period 1999 - 2009. It will be seen that across all four sectors the percentage of peat fell from 64% to 42% over the relevant period. The fact is that notwithstanding an increased demand for growing media, this has not seen a comparable increase in peat extraction. In fact, there has been an actual 14% reduction in peat extraction over this period (see paragraph 133 on page 43 of Dr Hockaday's proof of evidence).

410. In his evidence, Dr Hockaday identifies a range of producers positively promote peat free alternatives as being as good as, if not better than, peat as a growing media (see pages 44 to 46 of Dr Hockaday's proof of evidence).

411. Indeed, in this regard it should be noted, as Mr Burns had to accept in cross examination, that it is the appellant's case that the company has a peat free product that is currently available that could eventually completely replace all peat use in the UK. That peat free product uses a by-product from the compost industry the current generation of which is sufficient to provide all necessary source material (see page 10 of the company accounts as contained in appendix 1 of Mr Horsfall's proof of evidence).

412. Consequently the approach by Government in seeking to drive innovation and alternatives to peat free products is wholly vindicated.

Conclusion on Need for Further Mineral Extraction

413. As 99% of peat extraction is devoted to use in the horticultural industry it is inevitable that the phasing out of peat in the horticultural industry ends any case for future extraction. The Government policy of reduction is driven because

extraction and use of peat is unsustainable. The outcomes of the policy in terms of the dates by which the elimination in peat shall be achieved is not driven by market factors. On the contrary, it is driven by the need to achieve the objective of the policy. The expectation of the Government is that the market will respond by making investment decisions and other choices in order to secure the objective of elimination.

414. The "market led" approach of the appellant is therefore both pessimistic and inconsistent with the approach adopted by the Government in the White Paper.

Carbon Issues

415. The evidence of Simon Aumônier seeks to develop the argument that the objective of reducing carbon emissions is best met through continued extraction of peat from Chat Moss rather than alternative sites. That argument is in large measure dependent upon the assertion that for every shovelful of peat not brought to the UK market from Chat Moss the exact same quantity of peat would be brought to the UK market from further afield, including the Baltic States.

416. This argument is fundamentally flawed. It is fundamentally flawed because it is diametrically opposed to the anticipation and expectation of Government policy. MPG13 (see CD1.17) drew attention to the reduction in the removal of commercial peat extraction affecting raised bog sites. A number of those sites were acquired by Natural England resulting in a total of 4,240ha where extraction was taking place (see paragraph 21 of CD1.17). It also drew attention to the use of peat free alternatives being brought to the market.

417. It seems absurd that peat extraction sites with permission for the reserves to be exploited are being acquired for nature conservation by public bodies at considerable cost to avoid further extraction only to be met with the case that those sites need to be replaced to contribute to the future supply of peat to serve the horticultural industry.

418. As Dr Hockaday demonstrates in his evidence, the analysis of the removal of peat extraction sites for broad nature conservation reasons cannot be uncoupled from Government policy in respect to waste. The Waste Strategy of 2007 (see CD3.6) set a target to recycle or compost waste as follows:

- 2010 - 40%
- 2015 - 45%
- 2020 - 50%.

419. The target for 2010 was met (see paragraph 39 on page 13 of Dr Hockaday's proof of evidence).

420. In the review of Waste Policy (see CD3.5) composting is addressed. At page 53 of the document it sets out that Government encourages the production of compost:

- The removal of potential expense and bureaucracy associated with environmental permitting would be encouraged;
- There is an expectation that there will be a market for waste;

- Government affects the economics of the open market (including the removal of expense associated with bureaucracy and fiscal measures).

421. The DEFRA research project "Availability and Supply of Alternative Materials for Use in Growing Media" (see CD3.11) examined the potential availability of alternative materials for use in horticulture as growing media over a 10 - 15 year projected period.

422. The overall project conclusion (see page 3 of CD3.11) was that the availability of suitable peat replacement materials was insufficient within the 5 - 15 year timescale set to permit a faster rate of peat reduction than is currently occurring. This was because of the need to import key materials as substitutes. In the discussion section relating to compost it was observed that the supply was likely to be available in large quantities. To be a replacement to peat considerable investment would be required and: "It is unlikely this investment will occur without more incentives for composters and for peat replacement generally".

423. As noted above, the Government approach is to redress the market failure whereby the true environmental cost of peat is addressed. Granting planning permission for peat extraction will not drive the composting industry to make these investment decisions.

424. Dr Hockaday (see paragraph 71 on page 21 of his proof of evidence) considers that the Government downward pressure on natural peat extraction in the UK plus the economies of scale of production of alternatives can create the right circumstances for change.

425. The converse is also true. If there is a weakening in the downward pressure on the provision of peat alternatives by grants of planning permission for peat extraction (thereby making peat available to the growing media market) that message will reduce the prospect of investment in the infrastructure to develop peat free alternatives.

426. The approach of Government policy, both in respect of the elimination of peat in horticultural use and in waste strategies, is informed by the environmental consequences of the significant releases of CO_2. The Natural England publication "England's Peatlands: Carbon Storage and Greenhouse Gases" (see CD3.16) makes the point clearly. In the Foreword the following appears: "They (peatlands) are natural carbon reservoirs. Globally peatlands store approximately double the amount of carbon that is stored in all the world's forests, an estimated 550 billion tonnes. This means peatlands are a vital irreplaceable part of regulating the climate. By storing such huge stocks of carbon in the soil, they prevent it from being emitted to the air as carbon dioxide (CO_2). If all the carbon was to be lost to the atmosphere, it would be nearly 80 times more than annual global CO_2 emissions from our burning of fossil fuels."

427. Page 35 of CD3.16 states: "We can no longer approach peatlands as limitless resources to exploit only for food, timber, game or growing media. Instead peatlands should be recognised as important carbon stores that are vital to help regulate our climate."

428. The key point in Dr Hockaday's evidence (see paragraph 92 on page 28 of his proof of evidence) is that the Government's approach to achieving improved sustainability is an integrated one. There is support for the enhanced recycling

initiatives that would utilise waste (such as that ironically promoted by the appellant) and the limits placed on emissions.

429. As mentioned earlier, the Government is well aware of the international context in which its actions are taking place. It does not anticipate that there will be a shift to greater importation of peat from further afield. Government policy in the White Paper (see CD3.15) states at paragraph 2.64: "Making the transition to peat free alternatives would put the industry on a sustainable footing, contributing to our goal of increasing food and other production sustainability and protecting our natural capital. The industry has made progress in reducing peat use in response to a previous voluntary reduction target, but the market is still only 57.5% peat free. In order to support industry in making increased reductions, we are introducing a new voluntary partnership. The Government is working with industry to unblock barriers to change."

430. It continues at paragraph 2.65: "The long term aim is for peat use to be reduced to zero. This will contribute to the protection of important lowland peat habitats (both here and overseas) and significant carbon stores, and will promote a shift towards the greater use of waste derived in by-product materials. Ambitious targets are required to drive action and provide clarity about the long-term direction of policy".

431. The definition of "long term" is clear from paragraph 2.66. The total phase out of peat use in horticulture is anticipated to be no later than 2030 in all sectors of horticulture. But the majority of the eradication of peat use will have been achieved well before then. The greatest use is by the amateur sector that is required to be peat free by 2020. The longstop date of 2030 is for the professional sector that only accounts for 30% of the use of peat in horticulture (see paragraph 34 of CD3.19). Thus the policy itself creates different times within which the public sector, the amateur gardener sector and professional growers will be subject to the phase out of peat. The reference to the protection of important lowland peat habitats: "both here and overseas" is clearly anticipation by the Government that it does not expect peat extraction in the UK (or any part of the UK) to be replaced by extraction activities elsewhere in Europe or beyond.

432. Thus the argument of Mr Aumônier flies in the face of the Government's own judgement in the policy expressed in the White Paper. Indeed, for Mr Aumônier to be correct in his assumption that the refusal of planning permission at Chat Moss will lead inexorably to the replacement of similar volumes of peat sourced from overseas is a conclusion that can only be reached on the basis that the Government analysis is fundamentally flawed.

Climate Change Policy

433. The Planning and Climate Change Supplement to PPS1 (see CD1.2) recognises that tackling climate change is a key Government priority for the planning system. Where there might be a difference of emphasis in national policy PPS1 is stated to take precedence.

434. Emerging policy in the draft Framework makes it clear that the Government objectives are that the planning system should support the transition to a low carbon economy. That involves "radical reductions" in Greenhouse Gas emissions.

435. This can hardly come as a surprise when Natural England advise (see the foreword to CD3.16): "They (peatlands) are natural carbon reservoirs. Globally peatlands store approximately double the amount of carbon that is stored in all the world's forests...."

436. The possible response of the peat extraction industry to the downward pressure on the use of peat in horticulture was anticipated in the Government's Impact Assessment (see CD3.19). At paragraph 42, the issue was addressed as a "perverse incentive". It states: "During the consultation, a key risk which has been highlighted has been the potential to introduce perverse incentives to peat extractors with large peat bogs. A complete phase-out may create an incentive to extract and sell greater quantities of peat before the bogs lose their extraction value after the phase-out dates. This would mean that companies would be willing to sell peat at lower prices (possibly even below marginal costs, as overheads such as bank loans still have to be serviced). To deliver ambitious targets, year on year, reductions in peat use are expected in annual monitoring of peat sales and a policy review will gauge whether unintended consequences have been introduced." This unintended consequence is domestic use of peat.

437. The implicit threat that Estonian supplies will replace, measure for measure, the peat lost if planning permission is refused does not sit comfortably with the appellant's own environmental policy. Mr Horsfall (see paragraph 39 on page 12 of his proof of evidence) draws attention to the appellant's policy (see appendix 2 to Mr Horsfall's evidence) to introduce and promote peat alternatives. In 2010, 370,000m^3 of peat free alternatives were used with the expectation that this volume would increase to 600,000m^3. This is to be compared with the extraction proposals for Chat Moss. At paragraph 12.44 of the ES (see CD11.22) the assumption of annual milling of 10cm of peat over the 60ha at Chat Moss would produce 60,000m^3 of peat that would bulk up to 100,000m^3 prior to transport. (Upon the assumption that the method of extraction utilised would be that set out in the ES).

Carbon Sink/Store

438. Salford's first reason for refusal refers to a "carbon sink". In truth, the appeal site is both a carbon store and sink. The appeal site incorporates the Twelve Yards Road SBI which is being restored by the Trust to lowland raised bog (The SBI falls within the application site proposed for extraction. It is clear from the appellant's case that they are not proposing to extract peat from the SBI and if granted permission a condition should be in place to secure that outcome). Even if it has not achieved the status as a "sink" a key principle of the draft Framework (see paragraph 19 of ID12) is that decisions should take account of environmental quality or **potential** quality regardless of its previous or existing use.

439. A real concern identified in this reason for refusal was the contention that the development would lead to significant CO_2 emissions from oxidisation of peat removed as part of the proposal. The ES at paragraph 12.37 recognises that "ultimately" the extraction will result in emissions of 12,100 tonnes of CO_2 in respect of each year of peat extraction.

440. Compared to the assumption that a restored site would sequester 246 tonnes of CO_2 per year (see paragraph 12.50 of CD11.22) (it should be noted that this figure is challenged by Mr Aumônier, the witness called by the appellant) it would

take on that basis 49 years for the restored site to recapture the carbon lost as a consequence of one year's extraction.

Biogenic Carbon

441. IPCC Guidance (see paragraph 16 on page 6 of Mr Horsfall's rebuttal evidence) recognises that Greenhouse Gases emissions to be comparable to that of fossil fuels. Consequently it is appropriate to treat peat as fossil carbon. Indeed, as Mr Horsfall points out in paragraph 17 on page 6 of his rebuttal evidence the age of carbon sequestered at Chat Moss was some 1,500 - 5,000 years ago. These are the lengths of time over which the sequestration occurs.

Conservation Value of the Site and Surroundings

Annex 1 Habitat

442. Mr Webb on behalf the appellant asserts that in the absence of the appeal scheme and, in particular, the restoration proposals the land cannot be considered as an Annex 1 Habitat (see paragraph 4.7 on page 12 of his proof of evidence). This is a further example of the appellant backtracking and vacillating on important issues surrounding this case, this being an issue which Salford believed had been agreed within the SOCG. The importance of this issue was self-evident from the cross examination of Mr Webb. If the appellant is wrong and the site should be considered as an Annex 1 habitat the appellant has significantly underestimated the importance of the ecological value of the land in the planning balance.

443. The position adopted in paragraph 7.101 on page 92 of the ES (see CD11.22) drew attention to the definition of degraded raised bog "capable of natural regeneration". The conclusion clearly expressed at paragraph 7.107 on page 93 was that it was considered that the site: "does not meet the criteria for Annex 1 habitat "degraded raised bog" at the current time due to its ease of restorability and is therefore not of international ecological value".

444. In this section of the ES the same issues that are addressed in the Mr Webb's proof of evidence at paragraphs 4.4 - 4.7 are those addressed in the ES. There is nothing new in the case advanced in the evidence of Mr Webb that was not considered in the ES. In short there is no change of circumstances that would apparently justify a view being taken differently.

445. It was always the appellant's case that there was not the ability on the part of Salford to require the land to be restored to peat forming bog. This is spelt out in paragraph 4.14 of the ES.

446. The ES therefore addressed a clear understanding of what was comprised in the Annex 1 definition and understood the conditions covering the restoration of the site.

447. CD11.34 was the measured and informed response by SLR Consulting to the consultation upon the ES. Table 1 summarised the consultation responses and specific attention was drawn to those of Natural England, the Environment Agency, GMEU and the Trust. Their comments were all to the same effect, that because the Chat Moss site could be restored within 30 years it would meet the criteria for "degraded raised bogs which are capable of natural regeneration".

448. Paragraph 3.3 of the letter then states: "in the light of comments from (the consultees above) it is accepted that our interpretation of the Interpretation Manual has been more strictly applied than for other UK sites and therefore cut-over raised bogs (bare peat) within the site does meet this definition of an Annex 1 habitat".

449. In the table on page 5 of the letter, SLR's assessment it is accepted that the site met the broad definition of lowland raised bog published by UK HAP. The conclusion at paragraph 3.6 could not be clearer. It states: "It is accepted that bare peat habitats at Chat Moss can meet the definition of "degraded raised bog", published in the EU Interpretation Manual and by JNCC, insofar as the site is considered restorable within 30 years. It is also shown to meet the broad habitat definition of Lowland Raised Bog published in the UK HAP. However, the evaluation above shows the site does not meet published criteria for designation as a SAC, SSSI or Greater Manchester SBI".

450. Thus the conclusion that the "site does meet this definition of an Annex 1 habitat" was made in the context of the site being restorable within 30 years. That was the case put forward by Natural England and others by reference to the JNCC Manual. It is an approach consistent with the Government's Impact Assessment (see CD3.19) where in paragraphs 2 and 3 the following appears: "Lowland raised bogs, from which peat is predominately extracted for horticultural use, are one of Europe's rarest and most threatened habitats. … This biodiversity value to society is recognised in the EU Habitats Directive which sets out additional requirements for this habitat so that good quality sites must be protected and uniquely degraded sites restored." Paragraph 4 continues: "Whilst new extraction is no longer permitted on pristine habitats in England that have been designated as SSSIs under domestic legislation, even degraded sites (including some currently used for peat extraction) are considered to be priority habitats with significant value at a European level…"

451. The issue is addressed further in Mrs Hughes's rebuttal evidence. The fundamental assumption of the appellant is that to qualify as an Annex 1 Habitat there needs to be in place a management package that ensures peat-formation could be achieved within 30 years. The protected reserve resource extends beyond the statutorily designated SACs.

452. It is simply wrong to conclude that all qualifying degraded lowland bogs capable of restoration have resource and management options that implicate they will be restored within 30 years (see paragraph 7 on page 3 of Mrs Hughes's rebuttal).

453. The JNCC definition (see CD3.24) states: "Provided they (degraded raised bogs) are capable of natural regeneration, the following land cover types are considered to fall within the definition of degraded raised bogs:

- Conifer plantations
- Improved pasture
- Scrub woodland
- Bare peat

- Impoverished vegetation dominated by species including purple moor grass…"

454. Mrs Hughes makes the point that if a conifer land cover can be so qualified then such plantations with a 60 year or so life cycle could not be Annex 1 habitat because that would lead to the cropping of the plantation prematurely. The reference in the site selection rationale to the prospects of the site for restoration having been carefully assessed relates to SACs. In the context of SAC selection the advice continues: "Judgements have been made about the ease of restorability if appropriate management was introduced now or at a later date. As a result, some sites composed substantially of bare peat and some afforested sites have been selected. The large resource of former peatland now under agriculture was not considered in site selection as such land is not likely to satisfy the restorability requirements".

455. As Mrs Hughes demonstrates her rebuttal evidence the JNCC definition is such that the site would qualify when hydrology could be repaired and appropriate management devolved. The site qualifies when hydrology can be repaired and with appropriate management there is a reasonable expectation that peat forming capability can be achieved within 30 years.

456. This is clearly set out in the correspondence from Natural England (see pages 381 – 383 in appendix 2 of the documents attached to Mr Birnie's evidence). Natural England in addressing the significance of the site summarises the position as follows: "…We would suggest the identification of the "degraded raised bog" at Chat Moss as both an Annex 1 and UK BAP habitat, and its inclusion on England's S41 list, which suggests that the site has considerable conservation value at a national level."

457. It should not be ignored that Natural England's role is that of adviser to the Government on nature conservation issues.

458. Two matters follow:

- The site should be regarded as an Annex 1 Habitat and be seen as considerable conservation value at **national** level; and
- Consequently, the appellant has seriously underestimated the value of the site in nature conservation terms and afforded its protection insufficient weight in the planning balance.

Twelve Yards Road SBI

459. The SBI falls within the application area. It is currently managed by the Trust who are restoring it to active lowland raised bog. It was designated a grade A SBI in 2003. The original ES of March 2010 failed to recognise its value and considered no mitigation was required.

460. Mrs Hughes in paragraph 109 on page 32 of her evidence refers to the fact that throughout Greater Manchester sites of importance were identified in accordance with selection guidelines. They were graded to reflect their importance:

- Grade A - county/regional importance
- Grade B - district importance

- Grade C - importance within an identified geographical locality.

461. As indicated previously, Twelve Yards Road SBI is Grade A and must therefore be regarded as of significant conservation value at least at County level. PPS9 (see CD1.6) recognises the value of regional and local sites. Paragraph 9 states: "Sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Sites, have a fundamental role to play in meeting overall national biodiversity targets; contributing to the quality of life and the well-being of the community; and in supporting research and education."

Mosslands Vision Plan

462. In 2007 Salford, Wigan and Warrington Councils, with the support of the North West Development Agency, produced the "Mosslands Vision Project" (see CD5.1) to inform the development of planning policy and land use decisions.

463. The approach in the Mosslands Vision is consistent with the UK objectives for the Chat Moss wetland complex and other policy. As Mrs Hughes points out in paragraphs 81 – 85 on pages 23 of her proof of evidence, Chat Moss is specifically referred to in the Habitat Action Plan Annex Lowland Raised Bog (see CD3.26). It is clear from the plan (reproduced as a larger version as appendix 2 to Mrs Hughes's evidence) that the appeal site sits centrally within it.

464. The importance of this particular area is that there is clearly a move away from the geographic definition by a boundary to sites of nature conservation interest following the Lawton Review (see CD3.17). In short, the emphasis is on creating networks to increase diversity and connectivity as Mrs Hughes points out on pages 106 and 107 of her proof of evidence.

Proposals

465. In this part of Salford's case the following will be addressed: hydrology; the efficacy of the proposals; and the need for a financial bond or other Security.

Baseline

466. It is necessary, given the case being put by the appellant, to have an appreciation of what can be achieved under the existing obligation to restore the site by reference to the restoration conditions.

467. Although there was an element of dissembling, Mr Leay for the appellant accepted that despite the multiplicity of planning permissions governing development, the site would be restored on a comprehensive basis rather than by reference to the individual applications.

468. For Salford there is a consistent condition that requires on the completion of peat extraction that the site be: "the subject of minor regrading and drainage alterations necessary to restore the land to a condition fit for amenity use."

469. There is a requirement for a 5 year programme of after-care. That after-care will be self evidently in **addition** to any restoration programme of works.

470. Additionally, there is a planning obligation (see CD9.4) that governs the whole of the Salford permitted area. Paragraphs 5, 6 and 7 of the schedule to the

planning obligation are most relevant. The obligations placed upon the site include:

A. Upon the cessation of extraction to submit a programme of works necessary to secure the future of the site for the purposes of nature conservation to be agreed between the company and the Council.

B. The programme is to be carried out in accordance with the timescale set out in the obligation.

C. The works will have regard to the need to provide within the site areas where:

- Tree planting will be carried out;
- Natural regeneration of vegetation will be allowed to occur;
- The emphasis will be on the provision of relatively wet areas where "wetland" vegetation and fauna can become established.

D. A scheme for the management of the natural history interest of the site to be agreed. That scheme to make arrangements for the longer term monitoring and management of the site. The management scheme to be carried out in accordance with the timescale set out therein.

471. It is clear what the objective of the obligation sought. Paragraph 5 is clear that the site is to be secured "for the purposes of nature conservation". As such the first observation to make is that alternative uses including various forms of agriculture would not be consistent with the clear terms of the obligation.

472. It is accepted that there is no provision of any specifics as to what areas would be devoted to various uses. The emphasis in the agreement would be on the provision of "relatively wet areas where "wetland" vegetation and fauna can become established". That "emphasis" would not be provided if the site was to be planted in its entirety with trees. Given that there is an "emphasis" to provide wet areas, a degree of control is provided to Salford in its ability to reject proposals that did not provide a very significant proportion of the area to be restored that would be suitable for use as wetland area where "vegetation and fauna" can become established.

473. It is accepted that this falls short of an ability on the part of Salford to insist on lowland raised bog restoration. However, it enables the provision of circumstances where such restoration proposals can, in the fullness of time, become established. Importantly, the wording does not exclude the prospect of a restoration proposal in accordance with the obligation being submitted for lowland raised bog.

474. Although the relevant condition on the planning permissions anticipated a 5 year after-care it is clear from paragraph 7 of the planning obligation that aftercare would be expected to be the subject matter of the submission of that scheme. Although an end date is not set, it is clear that there is to be provision of "long term monitoring and management" of the site. A scheme that did not make provision for the management of the natural history interest in the site could be rejected by the local planning authority under the terms of this obligation. It would therefore be necessary to make a judgement as to the

reasonableness, dependent upon the form of restoration provided in accordance with paragraph 6, for the determination of what that "longer term" ought to be.

475. There is more than a whiff of desperation emanating from the contrived argument advanced by the appellant that "minor regrading" would preclude restoration to lowland raised bog on the site in accordance with the current conditions. In truth the appellant's argument is untenable.

476. First, "minor regrading" must encompass the consideration of the size of the site and the activities that have taken place upon it. A minor regrading consisting of the provision of modest bunds to impound rainwater can hardly be regarded as a significant civil engineering operation requiring the separate grant of planning permission. This is, as set out above, a contrivance in an attempt to enable the appellant to argue that the existing planning permission cannot "deliver" a lowland raised bog restoration proposal.

477. Second, the site has already been subject to those modest works in accordance with the existing permission to create the bunds that support the Twelve Yards Road SBI. There is no case (and it has not been asserted by the appellant) that the creation of those bunds on the former mineral workings that are currently under restoration to lowland raised bog constitute a breach of planning control because the bunds are engineering works that go beyond "minor regarding".

478. Most importantly of all, in cross examination Mr Burns acknowledged that the appellant would not seek to frustrate restoration to lowland raised bog, this question being posed to Mr Burns in light of the whole site and not just those areas which have already come into formal or informal restoration to date.

479. It was further acknowledged by a number of witnesses (Mr Burns, Dr Turner and others) that a restoration to lowland raised bog would comply with the obligations under the existing permissions granted by Salford in the 1990s. Such a restoration would be consistent with the appellant's environmental policy.

480. It is furthermore clear that restoration to lowland raised bog is not precluded by the landowner, Peel Environmental Ltd. On the contrary Peel has environmental credentials that would support the use of land for environmental purposes. The rebuttal evidence put forward by Salford effectively invited the appellant to approach Peel with a view to it confirming that the probability would be that the land, once restored, would be used for agriculture. It must be all too obvious to the appellant that Peel in its letter of 12 March 2012 (see ID6) gave no such indication. On the contrary, any alternative use of the land would need to be considered by Peel on the merits of the proposal as and when they came forward, as is clear from that letter.

481. There is one further issue to bear in mind. Whilst Salford accepts that it cannot through the conditions and planning obligation **require** restoration to lowland raised bog that is not the case of Wigan. If the Wigan argument is successful and the conclusion is reached that it is entitled to insist upon a restoration scheme to lowland raised bog, the logic of the wider restoration proposal would effectively secure that it be extended to the Salford portion of the site. This is a site that has been developed as one comprehensive extraction site. The conditions were developed to restore an extraction site. If it is correct

that it would not be the intention to "frustrate" restoration to lowland raised bog then the logic of the approach would secure the wider restoration proposal.

Hydrogeology

482. Consideration of the appeal applications has been dogged by the intransigence of the appellant and its advisers to provide timely and appropriate levels of information upon which the applications could be judged.

483. Time and time again the appellant has continued to complain of an alleged failure on the part of the Councils and the statutory consultees to have asked for information or made such other requests. The appellant misses the point. An environmental appraisal requires the applicant to provide such information as is necessary to enable an informed decision to be reached. The inability of the appellant to recognise that simple process does not bode well for any future development of this site.

484. The chronology of such dealings with this case was set out helpfully in the appendices to the evidence of Mr Thewsey. In brief, the planning applications were validated by Salford in May 2010. It was apparently the view of Dr Edwards for the appellant that sufficient information had been provided within the ES so as to be sufficient for the determination of the applications.

485. That clearly was not the view of the statutory consultees. Mr Thewsey's appendix 2 demonstrated that there was an objection based upon the inadequate information provided. The Environment Agency particularised the area where the ES was inadequate. In the context of hydrology and hydrogeology the detailed criticisms were set out. It should also be noted that this included a requirement to provide further vertical cross sections to scale both north-south and east-west across the site. The other criticisms at that stage included the influence and relative levels of the drainage ditches, the correlation of groundwater levels in the boreholes and the inadequate monitoring data being too short to identify seasonal fluctuations. The importance of that issue was emboldened at the end of the letter: "Adequate monitoring and hydrogeological understanding is essential to the precise water level control that will be necessary to restore the site and protect adjacent habitats".

486. The level of information was so poor that it led to a Regulation 19 request by Salford in August 2010 (see CD11.33) in which hydrology figured prominently in the information that was now required. This led to the revision to the ES which was a wholesale substitution of that which had been previously submitted. The revised ES is CD11.22.

487. Again, at that stage, the appellant was little chastened by its previous experience. The response of the Environment Agency to the revised ES is provided at Mr Thewsey's appendix 3. It is a letter dated February 2011 where the Agency maintains its objection on the basis of insufficient and conflicting information. The section dealing with hydrology and hydrogeology again observes that there were considerable gaps in the data supplied, omitting key periods when natural condition or site activities were likely to have a significant impact on groundwater levels. The observation was made that the current drainage ditches were having a detrimental impact on water levels in Twelve Yards Road SBI and Water Vole Habitat. There had been a failure on the part of

the appellant to demonstrate how the proposed additional extraction would further impact upon the SBI.

488. At a meeting that involved the Environment Agency and the appellant in April 2011 the reason put forward for the data gaps was that one of the appellant's on-site operatives, was tasked with collecting the data. A task that he either failed or forgot to perform.

489. In these circumstances the criticism of Mr Birnie during cross examination, when it was being suggested that proceeding to refuse the applications in the absence of data when that data could only be collected at a later point, is plainly laughable. It was dependent upon operatives remembering to collect the data. There appears to have been no rigorous and robust mechanism of reminders and ensuring that key data (that had been the subject matter of trenchant correspondence and criticism) was actually collected. It was, as was suggested to Dr Edwards in cross examination, a deeply unimpressive state of affairs. One would be right to share the view of Dr Thomas of Natural England in his e-mail dated 6 April 2011 (see page 317 of appendix 2 of documents provided by Mr Birnie) when he observed laconically: "I must say as it stands I was not at all convinced by their (Sinclair's) explanations regarding the hydrological data. Indeed at one point they told us that the data was missing due to the on-site staff forgetting (to) collect the water levels over the critical summer seasons".

490. Following that meeting, in May 2011 further information was submitted by the appellant (see CD11.34). Again the Environment Agency responded. This response is contained in Mr Thewsey's appendix 4. The objection letter referred to "significant uncertainties and ambiguities in the data supplied". It went on to observe that "the existing passive dewatering is already impacting upon the groundwater levels at the edge of the SBI". Again the Agency provided detailed observations attached to its letter addressed to Salford. The record from the boreholes was described as "scattered" providing data from 9 different months of the year spread out over some 3 years. The 30m stand off proposed by the Appellant then was criticised.

491. This led to yet further correspondence from the appellant (see CD11.37). However that did not change the Environment Agency's view and it maintained its objection. This is at Mr Thewsey's appendix 5.

492. It was only after the refusals and the appeals had been submitted that further information was submitted in September 2011 (see CD11.49), which addressed the issue of the western boundary. It was this additional information that provided a section demonstrating a significant drawdown at the southern edge of the SBI. As a consequence, the Environment Agency was concerned to address that aspect in the light of the knowledge **now** provided by the appellant. The Agency's position as statutory consultee is set out in the correspondence of 6 January 2012 (see Mr Thewsey's appendix 11).

Hydrological Impact on SBI

Western Boundary

493. The information submitted in May 2011 demonstrated that the drawdown in relation to the boundary extended to more than 20m within the SBI. This had the effect of lowering groundwater by about 40cm (see paragraph 3.4 on page 5 of

Mr Thewsey's proof of evidence). Additional data (to fill in the gaps of missing data) had a radius of drawdown from the perimeter drain varying in distance between 21 and 60m (see paragraph 3.6 on page 5 of Mr Thewsey's proof. See also appendix 9, 12.10 and 12.11 to Mr Thewsey's evidence).

Southern Boundary

494. Mr Thewsey's appendix 12 and particularly the plan at appendix 12.2, was part of the original ES that was submitted in March 2010. It purported to show drains and the direction of flow in those drains. As was clear from the evidence of Mr Thewsey it did not, as a matter of fact, show any drains to the south of the SBI where the "toe" is proposed to be worked. (The "toe" is the area of appeal 3. It is shown as area C on the map of planning permission boundaries contained as the second of the bundle of maps at plan B. This plan is taken from Mr Leay's appendix2).

495. When information was provided concerning the southern boundary (note that it had been requested at a significantly earlier date in July 2010, see page 68 of appendix 2 of Mr Birnie's documents) the section provided (see appendix 12.12 of Mr Thewsey's evidence) showed a section D-D running north-south with an area of influence marked on the plan by Mr Thewsey as 51m.

496. There is a short point to observe that if there is logic in providing a 60m stand off to the west of the SBI that should also apply to the south. The reasoning of Mr Thewsey as explained in cross examination was that the expectation would be that the peat would have a similar hydrogeological property in terms of its permeability.

497. Mr Thewsey's appendix 12.15 shows the shallow ditch and deep perimeter drain that were the subject matter of evidence. The ownership boundary is the deep perimeter drain. The formal SBI boundary is the shallow ditch. The distance between the deep drain and the SBI is 12.5m (see paragraph 4.11 on page 9 of Mr Thewsey's evidence). This information indicates that the horizontal radius of drawdown is at least 19m from the deep perimeter drain. As such it penetrates the SBI boundary.

498. As Mr Thewsey explained in paragraph 4.5 on page 7 of his proof, the cross-section in appendix 12.15 shows minimum water levels recorded in June to November 2011. The lowest water levels recorded in the shallow ditch were **higher** than a low water table gradient extrapolated between boreholes B and C on appendix 12.15. That is a clear indication that it is the deep perimeter drain and not the shallow ditch that dominates the removal of groundwater from the SBI. Furthermore because the water flows in the deep perimeter drain run in an easterly direction it can be expected that the deep perimeter drain is progressively deeper as it moves eastwards. Consequently the expectation must be that there would be a greater radius of influence at the eastern portion of the site. The drawdown at the SBI boundary significantly is between 1.25 and 1.5m (see paragraph 4.11 on page 9 of Mr Thewsey's proof).

499. The Environment Agency is unconvinced by the explanations put forward by SLR that the water in the shallow ditch may be perched. This is explained in Mr Thewsey's rebuttal evidence. There are a number of points to make in respect of it. The formal SBI boundary is the red/magenta line on the plan in appendix 12.17. The formal boundary of the SBI to the west is therefore on the perimeter

ditch and not, as had been assumed by SLR, 30m away from it. It is clear from the aerial photograph that there has been some working within the western boundary.

500. Furthermore, the significant perimeter bund on the west side of the SBI is, on average, about 20m from the vegetation boundary of the SBI. This is where the active management of the SBI has taken place and should not be confused with any demarcation of the formal SBI boundary.

501. One should be able, by providing a sufficient stand-off, at the southern boundary to achieve the result that there would be no need for active management on the SBI site itself whether by water impounding, creation of bunds or otherwise. The presence of trees to the north of the deep perimeter drain is indicative of a compromised wetland under stress. The likelihood is that the trees have colonised the area because of the conditions created by the deep perimeter drain (see paragraph 3.9 on page 5 of Mr Thewsey's rebuttal).

Conclusion on Hydrology

502. The Environment Agency maintains a fundamental concern concerning the retention of the deep perimeter drain. The appellant's argument that the same was present at the time of the designation of the SBI is profoundly unattractive. The proposal is for the continuation of extraction. The deep perimeter drain is an inevitable part of the proposal to maintain the conditions that would be permissive of extraction. Its retention is, therefore, part of the applications and the impact of it needs to be considered. If the impact of its retained use would continue to have a deleterious effect upon the nature conservation interest in the SBI it is a material disbenefit that needs to be considered in the planning balance.

503. The evidence of the Environment Agency is that it remains an objector to the proposal by reason of the unacceptable impact on the SBI, particularly at its southern boundary, which has not been adequately mitigated. There is nothing in the point taken in cross examination of Mr Birnie about the need for Salford's officers to take further instructions from the relevant Planning Committee to maintain a case in respect of the impact of the southern part of the SBI affected by the deep perimeter drain. That is because the reason for refusal does not discriminate between parts of the SBI.

Restoration Bond/Security

504. The appellant would have been well aware that had its proposals been considered appropriate for the grant of planning permission that a restoration mechanism to secure the future use to lowland raised bog would be necessary. The appeal applications were, as was obvious, the subject matter of a clear recommendation to refuse permission. However, the appellant would have been well aware of the statutory consultation responses, including that of GMEU, in respect of its submissions.

505. In its letter of February 2011 (approximately 4 months before the determination of the applications), GMEU (see paragraphs 303 – 310 of the appendix 2 of Mr Birnie's documents) raised a number of issues. At paragraph 5 on page 307 there is a reference to the long term aftercare and a proposal to transfer ownership and responsibility to a nature conservation organisation. It

continues: “The mechanism for achieving this should be explained more fully in any legal agreement attached to a permission, even if a subsequent legal agreement would be required at a future stage…”. Specifically the following appears: “A bond should be established so if the operator/owner of the site are unable to fulfil the restoration and after-care (for example, if they cease to trade or go bankrupt) monetary means are available to ensure that restoration/after-care can be completed.”

506. The appellant’s restoration proposals (see CD11.48) have been developed. The position is that over 60% of the site would be unrestored at the point when extraction ceased. Those parts that have been restored are predominantly the areas (Area B on the plan at appendix 2 to Mr Leay’s evidence) where extraction has ceased. Those areas, in breach of planning control, have been excavated beyond the restriction of conditions requiring at least 2m depth of peat to be retained. The “progressive” restoration is effectively deployed at those parts of the site that are at or close to exhaustion in terms of available reserves of peat. The extent of the restoration proposals can be seen on Plan CM4/3.

507. The evidence of Mr Burns demonstrates that the potential restoration scheme is an expensive one. The evidence of others including Dr Turner demonstrates that resources and deployment of manpower is required in order to maintain an appropriate degree of control over the site in the long term. The aftercare period in this case as proposed is 15 years. Other evidence suggests a significantly longer period of time may be required (see correspondence from Natural England at page 54 of appendix 2 to Mr Birnie’s evidence).

508. This is a spectacular “own goal” by the appellant. In its efforts to demonstrate that the existing 5 year aftercare condition is inadequate (it should be noted that the planning obligation at CD9.4 has a requirement for the submission of a scheme of aftercare and maintenance for a longer term) they are drawing attention to the fact that it is clear from the same document that their proposal for a 15 year aftercare period is also inadequate. MPG 7 (see CD1.16) deals with the reclamation of mineral workings. Paragraph 76 provides: “Use is made of planning obligations in mineral planning to deal with issues which cannot adequately be controlled by planning conditions. Examples of situations where planning obligations may be appropriate include:

i. Retention of the afteruse: to guarantee the proposed afteruse will be implemented or maintained into the longer term;

ii. Long term maintenance and management for land to be returned successfully to beneficial use, it is important that it is managed in the long term (that is, beyond the statutory 5 year aftercare period). For some after uses such as nature conservation, which may not generate sufficient funds to be self-sufficient, it may be appropriate to seek a planning obligation between the owner or operator and the planning authority to secure such funding;

iii. Maintenance of water levels: some nature conservation sites may require regular flooding to maintain certain habitats, where drainage and pumping may be required for other uses such as sports pitches to prevent flooding in winter, and reclaimed land at low levels for agriculture;

iv. Provision of facilities for sport, recreation, nature conservation and other amenity uses."

509. Whilst national policy recognises that such restoration bonds or other financial provision would be exceptional (see paragraph 94 of MPG7, CD1.16) the circumstances apply in this particular case. This is a project where only limited progressive reclamation is provided. The vast majority of the site would be requiring reclamation at that point when the income producing value of the site would cease upon extraction ending. The restoration and after-care period reflects the difficulty in establishing the nature conservation interests in the site. The data already provided to the inquiry would suggest that there will be a requirement for resources and manpower to be deployed over a significant period of time in order to secure anything like the **beginning** of a natural regeneration process towards lowland raised bog.

Impact of the Proposals and Efficacy of Restoration Scheme Risks

510. There are multiple risks associated with the working of the Chat Moss site (see pages 186 -190 of Mrs Hughes's proof of evidence). These include:

- Interaction with fen peat;
- The reduction in ombrotrophic (bog) peat;
- Risk of breaching the underlying geology. If this occurs it is a catastrophic failure that cannot be recovered;
- Inability to maintain stable hydrology in the remaining peat; and
- The more peat that is taken out the greater the topographic variation of the surface layer post the extraction in 2025 and, therefore, there is the increasing need for the 'paddy-field' terraces. This will make it very difficult to establish the correct water levels and will be reliant on rigorous and accurate behaviour from the extractor and the necessity of high degree of observation and control by the Councils.

Impact of Proposals

511. The hydrogeological impact has been addressed earlier. MPG 13 (see CD1.17) at paragraph 99 states: "It is established Government policy that restoration after-care will be required to make mineral workings environmentally acceptable and fit for beneficial after-use. This may include restoration to peatland habitats, agriculture, forestry, and other forms of amenity use. Applications for extraction of peat need to include information which demonstrates that the site can be restored satisfactorily; and if there is serious doubt whether a new extraction proposal can meet this requirement then it is doubtful whether permission for working should be given."

512. Appendix 12 to Mrs Hughes's evidence demonstrates the difficulties in securing the provision of adequate and sufficient information concerning the determination of the applications. There remain significant areas where either agreement or information is outstanding in relation to the site.

513. The aim is to restore the Twelve Yards Road SBI to lowland raised bog. In order to achieve that restoration aim it is critical to achieve a stable hydrological regime. Therefore, the Environment Agency needs to identify whether peat

extraction is impacting the SBI. That is a point that is made in Annex D to MPG 13 (see paragraph 164 on page 48 of Mrs Hughes's proof of evidence).

514. The presence of birch scrub to the south of the SBI has, in all probability, developed in substantial part as a consequence of water drawdown associated with peat extraction. The continued presence of that birch scrub as an invasive species, will continue to pose a threat to the rehabilitation of the SBI. It is correct as a matter of fact that only in May 2011, as the matter was to be presented to Salford's Planning Committee, did the appellant relent and offer for the first time the prospect of increasing the buffer to 60m at the western boundary.

515. Mrs Hughes in paragraph 183 of page 52 of her proof of evidence also speaks in terms of the Chat Moss wetlands lowland raised bog complex. There was a need to consider the impacts on the adjacent sites that were highlighted to the appellant and its agents. These sites are not currently subject to active restoration and the Council has not proposed that the sites be subject to buffering. However, the longer term impact of drawdown will continue and drying is likely to hinder any restoration proposals that may arise in the future. It will be reasonable to expect the appellant to ameliorate the impact in its final phase of restoration.

Efficacy of Restoration

516. It is Salford's case that the appeal proposal offers no greater benefit than the current position with the amenity restoration in place. Although the planning permissions for peat extraction have expired, there remain conditions to restore the site to amenity and a planning obligation (previously referred to) that binds the land. The restoration to achieve lowland raised bog habitat is not precluded by the restoration conditions.

517. The restoration scheme (see CD11.47) that was submitted purported compliance with the conditions but was robustly rejected. What was then proposed is described in the evidence of Mrs Hughes at paragraph 222 on page 63 of her proof of evidence. It is clear that on any fair reading of the conditions/planning obligation in force in respect of this land that was a wholly inadequate "Aunt Sally" put to the planning authority. The grass species proposed would need drainage and they are typical for a restored landfill or opencast site. It is difficult to avoid the conclusion in Salford's letter of March 2010 (see Mrs Hughes's appendix 14) that the scheme was "low in quality and information". It did not even provide a suitable starting point for discussion.

Restoration to Amenity

518. Mrs Hughes addresses this in her evidence (see paragraph 223 on page 67 of her proof) and under this scenario the preservation of the peat mass will be assured. As some of that peat mass would be waterlogged the requirement in the planning obligation (referred to above) would also be relevant to the subsequent submission of the scheme for restoration. The consequence, in the judgement of Mrs Hughes, would produce a diversity of habitats and a matrix of wet and dry zones. This may fall short of full restoration to lowland raised bog but it would secure the preservation of the peat mass and would not preclude any future intervention.

Abandonment

519. This scenario is discussed in the evidence of paragraph 242 on page 69 of Mrs Hughes's proof of evidence. The balance of wet to dry habitats will be variable in the event that the peat extraction activities ceased and no action was possible against either the extractor or owner. In this scenario it is likely that the natural balance would support a reasonable proportion of wet habitat types. The expectation is that this would be an improvement over the restoration plan that was submitted in 2010.

Appellant's Restoration Scheme

520. Even upon the assumption that the restoration scheme as submitted by the appellant was achievable, enforceable and successful there are a number of consequences that represent disbenefits in the planning balance:

- The deep drainage mechanism would need to remain in place to dewater the milling fields to 2025;
- It would retain a basal depth of peat of 2m meaning that up to 3m would be removed from portions of the site;
- Consequently a significant proportion of the peat mass would be removed.

521. As indicated previously nearly 2/3rd of the site (some 62%) would not come into restoration before 2025.

522. The extent of the peat mass removal is only controlled by the requirement to maintain a 2m depth of peat overlying the geological substrate.

523. The restoration proposed a 15 year aftercare period. Mrs Hughes at paragraph 271 on page 78 of her proof of evidence expresses a view that timescales of 30 years or more are needed to assess the success of restoration schemes. Existing techniques are, in that sense, experimental because ultimate success has not, as yet, been achieved. Where there has been limited success it has been a consequence of high resource input or trials of limited geographical extent.

524. The appellant places enormous reliance upon the "success" at Gardrum Moss, Falkirk. A more detailed and sober analysis of the proposal demonstrates that it does not provide a sufficient degree of comfort that there would be a demonstrable measure of success at Chat Moss. The reports referred to in the evidence of Dr Turner demonstrate that the experimental areas are a small area of approximately 5ha in a total of 285ha. This will be dealt with later.

Shallow Depth of Peat

525. Both Mrs Hughes and Dr Stoneman on behalf of the Trust opine that vegetation establishment is more likely to be successful where less peat is removed from the original mass.

526. Mrs Hughes at paragraph 286 on page 82 of her proof of evidence explains the reasoning as including:

- The subsurface geology and its potential to influence the peat is reduced;
- The revised ES only provides spot heights;

- Depth of peat cannot be related to the subsurface geology; and
- Mrs Hughes's appendix 19 and figure 11 shows the variation in the subsurface geology.

527. Breaching the subsurface mineral substrate is capable of presenting significant risks of irreparable under drainage of the peat mass. The Stratigraphy Survey of June 2008 (see CD11.15) identifies itself the need for a levelling survey to relate the peat surface with base depth. The survey itself is dated. The surface will have changed as a consequence of 3 years of peat extraction. The presence of underlying sand is noted in the survey. It states: "A second part of concern is the discovery of a layer of sand beneath the peat. It is not clear from this survey how thick this layer is, nor whether it is continuous across the site. However, its presence may have implications with regard to a possible dewatering effect upon adjacent land that could occur if the site drains are deepened sufficiently to cut through the sand stratum."

528. A further significant reason for ensuring the greatest amount of depth of peat to develop a successful restoration scheme is that the hydrological capacity is better with depth (see Mrs Hughes's proof at paragraph 306 on page 88). Consequently, Mrs Hughes states that:

- The larger the mass of peat the higher the water storage capacity of the mineral (it would be more resilient to hydrological stress); and
- Surface compaction is reduced."

529. Within the 2m of peat a minimum of 0.5m of ombrotrophic peat (bog peat) is to be left in situ. The prospect of developing active lowland raised bog is greater where a depth of bog peat is retained. The mineralisation of fen peat (underlying the bog peat) would have a deleterious effect on the prospect of returning to lowland raised bog. Thus only retaining 0.5m of bog peat creates a danger of not achieving the restoration objective in this particular case.

530. What cannot be denied in respect of the working of the site is that despite a similarly worded condition, Area B (see the map at appendix 2 to Mr Leay's evidence. It is the area covered by appeal 3) was worked in breach of planning control. The explanation provided by the peat extractors (see appendix 3 to Dr Stoneman's evidence) to a letter dated 15 March 2005 demonstrates the degree of risk. More importantly, it clearly demonstrates that Mrs Hughes is correct in her assessment that the underlying geology and peat mass is not uniform and easy to interpret. That letter states: "There was no intention to extract peat from below the 2m level. The breach of the planning consent occurred due to the high incidence of sand/clay lenses below the peat which had not been evidenced from previous surveys and there are many areas between the lenses where the depth of peat is in excess of 2m."

531. Once the 2m minimum retention level of bog peat is breached there is no conceivable mechanism by which the planning authority can return the site to a status whereby restoration to lowland raised bog can be successfully achieved.

532. Indeed, the whole history of the use and users of the site demonstrate the profound difficulty that has been experienced by the planning authorities in securing compliance with conditions. This has included:

- Breach of the 2m depth condition despite an apparent intention not to do so;
- Failure to submit a compliant scheme for restoration. This is a continuing breach;
- Breach of the condition relating to the cessation of mineral working. Salford needed to resort to the use of a Temporary Stop Notice in order to prevent continued working. That was not effective because as soon as the Notice had expired, work in breach of planning control resumed. Notwithstanding letters before action it was only at the High Court hearing before His Honour Judge Pelling QC of the Salford application for an injunction under section 187B of the 1990 Act did the appellant finally give an undertaking to the Court not to win and work peat without the benefit of an express grant of planning permission, to which a Penal Notice was attached (see pages 9-11 of appendix 3 to Mr Birnie's evidence);
- With the words of the Judge still ringing in their ears it is astounding to note that the appellant then simply moved onto that part of the site in Wigan and continued to extract peat. Whatever the competence of the legal advice was up to the point of the hearing there could have been no doubt after it that the continuation of working was unlawful (see pages 1-8 of appendix 3 to Mr Birnie's evidence).

Gardrum Moss

533. The site near Falkirk relied upon as a "proxy" for the proposed restoration at Chat Moss has been examined by Mrs Hughes. The position is addressed in her rebuttal evidence. It is relied upon by the appellant to demonstrate two propositions: first, an ability to restore to lowland raised bog and second, a track record of success.

534. The experience at Gardrum Moss demonstrates neither proposition.

535. The trial pits and scrapes occupy 5ha of a 283ha site. Save for that 5ha area the site is not in restoration, despite:

- A restoration scheme submitted with the 1999 application where the restoration conditions imposed were challenged;
- The economic reserves were said to have been "substantially exhausted" by 2003 (see appendix 6 to Mrs Hughes's rebuttal evidence); and
- No further progress toward widespread restoration has taken place.

536. At appendix 5 to the evidence of Dr Turner is an appraisal of the restoration project at Gardrum Moss, Falkirk. It should be noted in view of the persistent assertions by others on the appellant's team that this is described as "experimental peat bog restorations". The report establishes:

- The appellant commissioned a report in 1992 to assist with planning the restoration of the peat bog as an active raised bog;
- The main conclusion of the 2010 study was that, after 18 years, the 1992 scrapes are close to having some vegetation analogous to normal raised

bog vegetation, but only over a small proportion of their area; most is still occupied by shallow open water or early stages of the development of a sphagnum moss carpet.

537. In the context of the "scrapes" paragraph 3.6 of the report states: "Whilst this aim (vegetation profile set out in the 1991 report) has now been met it is arguable as to whether it really represents a regenerating raised bog. The type of National Vegetation Classification (hereafter called NVC) plant communities present and the topography of the bog surface as hummocks, lawns and pools are as important as the overall species list."

538. Section 4 of the report deals with the "pits". Paragraph 4.9 states: "Table 8 shows that none of the vegetation of the pits has yet developed to the same extent as the dry margins of some of the scrapes."

539. The overall discussion is set out in section 5 of the report. Paragraph 5.4 states: "The outcomes of the scrapes and pits have some way to go when matched against the present day indicators of success as described above. Nevertheless, the 1991 objectives, expressed in Figure 3, have been met. Given that the pits lacked some of those species, and critically, vegetation close to the NVC M18 plant community that do occur in the scrapes, the scrapes have so far been more successful than the pits." Paragraph 5.5 continues: "It is clear that the pits are at a disadvantage compared to the scrapes, in that they are much smaller, and there is insufficient room to provide the variation in wet conditions between the permanent open water and permanently dry peat available around the edges of the scrapes. Only pit 8 seems to be attracting the species and developing the more diverse hummocks seen around the scrapes, and the degree of knowledge and fine tuning of the water table has simply not been available to steer toward a more favourable outcome."

540. Consequently, the proposal at Chat Moss does not derive a confidence boost from the experience at Gardrum Moss, Falkirk. To deploy the technique across 65ha of land where there has been such limited success associated with high resource implications on 5ha in Scotland does not demonstrate the feasibility of a successful restoration to lowland raised bog.

541. As stated earlier there is a risk of mineral enrichment if there is interaction between bog peat and fen peat. At Chat Moss there is, below the bog peat, strata consisting of fen peat. The proposal to have only 0.5m of bog peat provides little margin for error in a site where there has been a demonstrable track record of failure to comply with such a condition.

Maintenance

542. Mrs Hughes in her rebuttal evidence at paragraph 46 on page 15 refers to issues of maintenance that challenged the restoration proposals at Gardrum Moss. These included leaking bunds, ditch problems and insufficient staff to respond in order to maintain water levels. That, it will be remembered, consisted of a site of no more than 5ha. This restoration proposal is over an area of 75ha for a period of 15 years proposed as aftercare.

543. Overall, Salford accepts that there has been a measure of success at Gardrum Moss but this needs to be qualified and the applicability to Chat Moss cannot be established. This is because:

- Chat Moss is a much larger proposition in terms of restoration;
- There continue to be maintenance and management issues (no bond is proposed in this particular case);
- The trials at Gardrum Moss have not as yet demonstrated a successful restoration to lowland raised bog;
- The risk factors remain including the overall depth of peat, the level of bog peat and the risk of mineral enrichment and/or interference with sand or other geological substrata allowing dewatering.

544. Mrs Hughes makes the point that the risk factors and maintenance issues that she identifies will not work independently of each other. Those risk factors will work together such that the overall presentation is one of significant risk associated with the proposal.

Policy

545. MPG13 (see CD1.7) is national policy in relation to the extraction. The Policy dates from July 1995. At paragraph 34 on page 11 of her proof of evidence, Mrs Hughes makes the point that the full definition and interpretation of the Habitats Directive (1992) (see CD8.1) in relation to lowland raised bog was not appreciated until 1999 with the publication of the "Interpretation Manual of European Habitats" (see CD8.2). Consequently, the status of degraded raised bogs was not fully reflected in MPG13.

546. At paragraph 99 of MPG 13 it is clear that planning authorities should have regard to the practicality of the operator's proposals for restoration of the site and aftercare. As mentioned earlier, there are two propositions that are clear from the analysis of Government policy and evidence:

- That the Government regards the use of peat by the horticultural industry as unsustainable; and
- That peat extraction is recognised as being unsustainable.

547. This is clear from the White Paper of June 2011 (see CD3.15) where at paragraph 2.64 there is the statement that: "making the transition to peat free alternatives would put the industry on a sustainable footing …". This necessarily means that, at this moment in time, as far as the Government policy is concerned in the White Paper the industry is not on "a sustainable footing". It will only achieve that status once the transition to peat free alternatives has been achieved.

548. The lengthy answers given to questions do not address the key point. The appellant simply has no answer to the point made by the planning authority that the proposal before the Secretary of State is, in accordance with his own definition, "unsustainable".

549. There is a complete failure to engage with that consideration. It is not put into the balance. An unsustainable development by its nature is "harmful" to the wealth of national policy that exhorts decision makers to sustainable outcomes.

550. There is a plethora of information that supported that conclusion as to unsustainability. Much of this has been addressed by the Council in the

presentation of its case. Additionally the review commissioned by the IUCN (see CD3.27) the UK Peatland Programs Commission of Inquiry on Peatlands is dated December 2010. Consistent with the evidence of Mrs Hughes and the Trust at page 32 it is succinctly stated: "Arguably preservation of the existing stocks should be the first priority in peatland restoration."

551. Refusal of planning permission in this case achieves that objective. There would be preservation of the existing stock of peatland. The DEFRA consultation (see CD3.14) was clear that it had a proposal in its sights notwithstanding its "consultation status". It addressed the international market as referred to earlier in the Council's case. The option of do nothing and allowing the market to decide was robustly rejected as an option in this process. The overarching goal (page 15) was for peat use in all horticultural sectors to be phased out. It recognised that 2/3 of peat used in the horticultural industry in the UK was imported. That was an assumption it was prepared to continue with.

552. It would be absurd to suggest, as the appellant apparently does, that in order to provide a supply of indigenous unsustainable material planning permission should be granted to offset imports. The practicality of the issue as was demonstrated in the cross examination of Dr Hockaday was that Government policy makers are proceeding upon the assumption that there will be continuation of the current levels of peat importation. On that basis the supply required from UK peat extraction can be "easily accommodated" within the existing supply of permitted reserves in the UK.

553. The appellant consistently fails to appreciate that the objective set out in the policy contained in the White Paper for the elimination of peat use in horticulture is driven by an expectation that the market will respond to the requirement. It is not an analysis which is founded upon a "Market driven direction of existing travel". The Government has set the objectives of peat reduction in the use of horticulture with a view to them being achieved by innovation and product development (that currently does not exist).

554. That much is clear from the Impact Assessment (see paragraphs 8 and 9 at CD3.19). Part and parcel of the achievement of the voluntary targets will depend on changes in consumer behaviour as it recognised at paragraph 13 of the Impact Assessment.

555. All this background has fed into the draft Framework (see ID12). The draft Framework is:

- Consistent with the Government White Paper that represents existing policy;
- Is a continuation of existing policy expressed in MPG13; and
- Is consistent with the "evidence base" provided by DEFRA.

556. In these circumstances the draft Framework carries more than limited weight in the determination of these appeals.

Local Policies

557. The Statutory Development Plan for Salford consists of the RSS (see CD4) and the saved policies of the UDP (adopted in 2006) (see CD6.2 – CD6.12).

558. In terms of RSS a key theme of the proposal is that of sustainability. It includes promoting sustainable economic development and reducing emissions.

559. This is a policy directed to reducing emissions and adapting to climate change. It recognises the "urgent" regional priority to: "Contribute to the reduction in the region's carbon dioxide emissions from all sources …". The appeal proposal is self-evidently contrary to this proposal. This is a regional requirement to reduce CO_2 emissions. A development which increased the region's carbon dioxide emissions and was recognised to be "unsustainable" contradicts both the detail and thrust of RSS policies. Looked at as a whole the appeal proposal is contrary to the provisions contained within RSS.

560. In terms of the saved policies of the UDP, Policy EN8 (see CD6.6) is a policy of protection for SBIs. The gradation of importance of the SBI network is acknowledged in paragraph 12.23. The SBI in question at Twelve Yards Road is of county importance. Such sites are of "fundamental" importance to the nature conservation network (see paragraph 19 of PPS1, CD1.1).

561. The question of whether the development "would" adversely affect an SBI is a judgement as to the degree of risk that a development proposal exerts on the nature conservation interests. It is quite ridiculous to suggest that there would have to be an establishment of actual harm when the development is prospective. The evidence points to a robust conclusion that the proposal would adversely affect the SBI at its southern boundary.

Emerging Policy

562. The Greater Manchester Joint Minerals Plan DPD (see CD5.2) deals with peat at page 32 and the following pages. It states at page 32 that: "The evidence base prepared for the North West Regional Spatial Strategy indicates that there are sufficient peat workings with planning permission to meet existing and future demand and no planning permissions need to be granted for new peat workings".

563. Consequently Policy 6 provides that a planning permission for peat extraction will only be granted where the purpose of its removal is to facilitate restoration. The Inspector at the Examination in Public of this document raised no issue with the soundness of Policy 6.

Conclusions

564. The Secretary of State is invited to accept:

- That the use of peat in horticulture is unsustainable;
- That the extraction of peat for use in horticulture is unsustainable;
- That the proposal is contrary to existing national, development plan and emerging policy;
- That the site is of clear nature conservation value and is an Annex 1 Habitat. It is of national importance;
- The nature conservation value of the site is such that it ought to be protected;
- The development proposals would harm the adjacent SBI;

- The restoration proposals are uncertain and unclear as to their efficacy. The degree to which they are likely to be successful is seriously in doubt and it is not believed by Salford that conditions can adequately deliver restoration to lowland raised bog.

565. In these circumstances the appeals should be dismissed.

Submissions of Salford City Council as to the Framework

566. This submission is structured with reference to the relevant sections of the Framework, namely:

- Achieving sustainable development;
- Meeting the challenge of climate change;
- Conserving and enhancing the natural environment; and
- Facilitating the sustainable use of minerals.

567. The conformity of the Council's Development Plan and its emerging policies to the Framework is discussed under the following headings. However, for clarity, appended to this submission are details in tabular form as to how policies used by the Council conform to the Framework.

Achieving Sustainable Development

568. It is abundantly clear from the Framework that: "The purpose of the planning system is to contribute to the achievement of sustainable development." As was set out in the Council's case, it is the Government's position that the extraction of peat for horticulture is unsustainable. There is nothing contained within the Framework that suggests anything to the contrary and the default position must be that the proposals do not constitute sustainable development.

Meeting the Challenge of Climate Change

569. As is made clear by paragraph 93 of the Framework, climate change is a key consideration when making planning decisions: "Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development." This highlights the importance of climate change as a planning consideration and supports the stance which the Council has taken within its first reason for refusal. It is particularly important to note in the context of these appeals that the Framework considers climate change to be central to the economic and social dimensions of sustainable development as well as the environmental.

570. The Council's position in relation to climate change is further supported by paragraph 94, which states: "Local planning authorities should adopt proactive strategies to mitigate and adapt to climate change". This is exactly what the Council has done, both through planning policy (for example policy BG1 in CD6.1) and broader climate change policy (see CD5.3 and CD6.14). The positive, proactive planning which the Council has undertaken by designating a

Mossland Heartland (see CD6.8) and now Biodiversity Heartland (see CD6.1) at Chat Moss will help with both mitigation of and adaptation to climate change.

571. Climate change will be mitigated through the retention in situ of the carbon which is stored within the peat at Chat Moss, and, in time, through the further sequestration of carbon by bog vegetation. This is an action which is already starting to re-establish itself within the Twelve Yards Road SBI, part of the boundary for the applications which are the subject of these appeals. The restoration of degraded bog will help to increase the resilience of habitats and species to climate change and assist with climate change adaptation as required by paragraph 99 of the Framework.

Conserving and Enhancing the Natural Environment

Paragraph 109

572. Paragraph 109 of the Framework sets out the overarching framework in relation to the natural environment. It states: "The planning system should contribute to and enhance the natural and local environment by:

- Protecting and enhancing valued landscapes, geological conservation interests and soils;
- Recognising the wider benefits of ecosystem services;
- Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."

573. The protection of soils (the first bullet point) should be read in the context of the White Paper (see CD3.15) which, at paragraph 2.60, recognises the carbon storage value of soils. Also of relevance is the Lawton Review (see CD3.17) which, at page 75, specifically aligns peaty soils, lowland peat and their carbon storage abilities. As has been demonstrated in the Council's evidence (particularly that of Mrs Hughes and Mr Horsfall), the best way to secure the protection and enhancement of the soil at the Site is the cessation of peat extraction.

574. The "wider benefits of ecosystem services", as set out in the second bullet point above, are key to the peat preservation and restoration debate. The details of this have been set out in Mrs Hughes's proof at paragraphs 70, 73-74 and 198-199). As Mrs Hughes explains, there is a clear link between ensuring the provision of ecosystem services such as carbon storage and the preservation of existing stocks of peat. This element of the Framework therefore further supports the first and fourth reasons for refusal as set out in the Decision Notices

(CD11.38) and the wider benefits of ecosystem services remain a strong policy reason for dismissal of these appeals.

575. The requirement in the third bullet of paragraph 109, "minimising impacts on biodiversity and providing net gains in biodiversity, where possible" is particularly relevant to the Council's case. Mrs Hughes's evidence together with earlier comments from Natural England made clear that the site's position within the wider Chat Moss Wetland Lowland Raised Bog Complex is an important consideration. The explicit references within the Framework to providing net gains in biodiversity where possible and establishing coherent ecological networks further strengthen the support that national policy gives to the Council's case.

576. This paragraph contains the first of several references within this section of the Framework to ecological networks. As was set out in Mrs Hughes's evidence (and demonstrated by her appendices 2 and 3), the Annex 1 status of the Site and its location within the wider Chat Moss complex are key considerations in this case. The Chat Moss Wetland Lowland Raised Bog Complex has been identified as nationally important (see CD3.26) due to the EU Annex I Habitats Directive lowland degraded bog habitat. The Wetland Lowland Raised Bog Complex goes across local authority boundaries, supports SACs & SSSIs (within the landscape scale ecological network) and SBIs adjacent to the appeal site. The site itself has been recognised as an Annex I habitat in line with the Habitats Directive (see CD8.1 and at Mrs Hughes's proof of evidence at paragraphs 76-79 and rebuttal proof paragraphs 3-11), as well as the Remnant Mossland, contributing and adding to the coherence of the network. It is clear from the emphasis that the Framework places on ecological networks that this approach is now a key part of national planning policy on biodiversity.

577. With reference to the fifth and final bullet point, the Council's case was clearly set out at the inquiry and in its closing statement that the existing conditions do not preclude suitable restoration to lowland raised bog and, indeed, read within the context of the supporting 1991 S106 agreement (CD9.4), an emphasis should be placed on this type of wetland restoration.

Paragraph 113

578. Paragraph 113 is also of relevance to these appeals. It relates to the formation of criteria based planning policies for judging proposals affecting protected wildlife sites. It is considered that the SUDP Policy EN8 (see CD6.6) complies with this paragraph of the Framework.

579. For the avoidance of doubt, the application of Policy EN8 to priority habitats also complies with this paragraph. The footnote to this paragraph references Circular 06/2005, which notes at paragraph 84 that: "The potential effects of a development, on habitats or species listed as priorities in the UK Biodiversity Action Plan (BAP), and by Local Biodiversity Partnerships, together with policies in the England Biodiversity Strategy, are capable of being a material consideration in the preparation of regional spatial strategies and local development documents and the making of planning decisions."

580. In comparison to PPS9 (see CD1.6), wording has been added to paragraph 113 of the Framework to state: "…so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks". This further supports the emphasis

that the Council has placed on the status of the site as an Annex 1 habitat and its location within the wider Chat Moss Wetland Lowland Raised Bog Complex.

Paragraph 114

581. The first bullet point of paragraph 114 states that planning authorities should: "…set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure". Such a strategic approach can be clearly seen in both existing and emerging policies referred to by the Council within these Appeals and as detailed in paragraphs 99-102 of Mrs Hughes's proof. The Framework therefore increases the weight that should be given to the aspiration to create, protect and enhance networks of biodiversity and green infrastructure contained within UDP Policy EN11 (see CD6.8) and emerging policies SF3F and BG1 (see CD6.1).

Paragraph 117

582. The first three bullets of paragraph 117 are of particular relevance to Chat Moss: "To minimise impacts on biodiversity and geodiversity, planning policies should:

- Plan for biodiversity at a landscape-scale across local authority boundaries;
- Identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;
- Promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan."

583. The requirement to plan for biodiversity at a landscape scale across local authority boundaries (which is expanded on in the second and third bullet points) is further confirmation of the approach that the Greater Manchester Councils, and Wigan and Salford in particular, have been taking for a number of years, as set out in Mrs Hughes's evidence at paragraphs 99-107. As stated above, this increases the weight that can be given to existing and emerging policies. It therefore further supports the Council's reasons for refusal 2-4.

584. The requirement in the third bullet point of paragraph 117 of the Framework to promote the preservation and restoration of priority habitats is clearly highly relevant to these appeals. As already referred to by the Council, the preservation and restoration of the Annex 1 habitat at the Site is more likely to be achieved through dismissing than allowing the Appeals.

Paragraph 118

585. The first bullet point of paragraph 118 is in effect a more concise paraphrase of paragraph 1(vi) of PPS9 (see CD1.6). National policy therefore continues to support the refusal of planning permission on the basis of harm to biodiversity interests.

586. With reference to "irreplaceable habitats" (fifth bullet of paragraph 118), the non-renewable nature of peat and its role as an integral part of the habitat and its ecosystem services was fully demonstrated in the Council's evidence (by way of example, paragraph 117 of Mrs Hughes's proof). Paragraph 118 therefore supports the refusal of planning permission for further peat extraction at the site.

Facilitating the Sustainable Use of Minerals

The Principle of Peat Extraction

587. Section 13 of the Framework deals specifically with 'Facilitating the sustainable use of minerals'. Introducing this section, paragraph 142 states: "Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation." As has been demonstrated by the Council's evidence (particularly that of Dr Hockaday), peat is clearly **not** one of those goods that the country **'needs'**. As such, there is no requirement to ensure a "sufficient supply" of peat under the Framework.

588. Moreover, the glossary to the Framework lists "Minerals of local and national importance" as follows: "Minerals which are necessary to meet society's needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including hydrocarbons), tungsten, kaolin, ball clay, potash and local minerals of importance to heritage assets and local distinctiveness." Conspicuous is the absence of any express reference to peat and, to quote from the appellant's case, the list of minerals of local and national importance would appear to include: **"all minerals apart from peat."** As such it is clear that the Government does not consider that there is any need to provide for an ongoing supply of peat. This point is borne out by further examination of the detailed mineral policy within the Framework.

589. Paragraph 143 notes that in preparing local plans, planning authorities should, amongst other things: "Identify and include policies for extraction of mineral resource of local and national importance in their area, but should not identify new sites or extensions to existing sites for peat extraction." This emphasis contained in the Framework is clear in that it seeks to use the planning system to support the Government's aim of phasing out the use of peat in the UK by 2020/2030. It draws a clear distinction between peat and other minerals.

590. Both extant and emerging minerals policies (see CD 6.1, CD 6.4, CD 6.12 and CD 5.2) are broadly in line with the Framework and in particular paragraph 143 relating to the preparation of local plans. Where there are differences in emphasis between extant minerals policies ST17 and M2 (see CD6.4 and CD6.12) and the Framework, these are discussed in the appendix. These UDP policies can still be given significant weight.

591. Paragraph 144 notes that when determining planning applications, planning authorities should, amongst other things: "not grant planning permission for peat extraction from new or extended sites." Although peat has been extracted from

the Chat Moss site for some period of time and this is therefore not a 'new site' for the extraction of peat, the applications are **new** planning applications seeking a fresh period of time for peat extraction at the site. The appeal proposals represent a temporal extension to enable the extraction of peat. In that sense there is plainly an extension to peat extraction at the site. The wording of the bullet point is taken as realising that, where there are unexpired and ongoing permissions elsewhere for peat extraction (with some sites going on to 2050 or even 2080), there will be remaining scope for the reconfiguring of those permissions to achieve better outcomes in terms of restoration, biodiversity, etc. within the terms of this policy approach.

592. Moreover, the requirement in the Framework to **not** grant planning permission for peat extraction from new or extended sites has the impact of the Government intervening in the market by restricting the supply of domestic peat. It is thus now Government policy to influence the extraction and supply of peat, and not just its use, as has been previously asserted by the appellant.

593. The requirement in MPS1 (see CD1.12) for an "adequate and steady supply" of material, much quoted by the appellant, is now confined in the Framework to aggregates (paragraph 145) and industrial minerals (paragraph 146). Both of these terms are defined in paragraph 54 of the Technical Guidance to the Framework, and neither of these includes peat. Contrary to the appellant's assertions, there is therefore no policy requirement to provide an adequate and steady supply of peat, indigenous or otherwise.

594. Moreover, RSS Policy EM7 (see CD4.6) is therefore not in conformity with the Framework so far as peat is concerned. Both the need to make provision for a "steady and adequate supply" and the "national significance of the Region's reserves of […] peat" must be considered as outdated and irrelevant in light of the Framework.

595. In summary, there is a clear distinction within the Framework between peat and other types of minerals, which has been significantly clarified in comparison to the draft Framework (see ID12). Much of what the appellant has said on this topic can therefore now be disregarded, together with the main part of its planning case.

Restoration Provision

596. The sixth bullet point of paragraph 144 requires that local planning authorities should: "provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards…". The arguments relating to what constitutes the earliest opportunity for restoration were well rehearsed at the inquiry. As was clearly stated in the evidence of Mrs Hughes and Mr Horsfall for the Council and also in the evidence of Dr Stoneman for the Trust), earlier opportunities for restoration at the site to high environmental standards are presented by dismissing rather than allowing the appeals.

597. Mrs Hughes's evidence at paragraphs 270–326 of her proof and paragraphs 25-51 of her rebuttal showed that there was significant doubt that allowing the appeals would result in restoration being carried out to high environmental standards. This has been dealt with at length previously by the Council.

598. The sixth bullet of paragraph 144 also states: "Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances". The relevant exceptional circumstances have already been set out by the Council. In this regard there is effectively no change between the combination of the Framework and its Technical Guidance and the replaced MPG7 (see CD1.16).

599. In this context, paragraph 49 of the Technical Guidance to the Framework should also be considered: "Responsibility for the restoration and aftercare of mineral sites lies with the operator and, in the case of default, with the landowner. Applicants should, therefore, demonstrate with their applications what the likely financial and material budgets for restoration, aftercare and after-use will be, and how they propose to make provision for such work during the operational life of the site. No payment of money or other consideration can be required when granting planning permission except where there is specific statutory authority." This information has not been provided and the Council is therefore unable to have any confidence that restoration and aftercare will be provided as asserted by the appellant.

Conclusion

600. There are a number of areas in which the Framework adds significant weight to the Council's case:

- Lack of support for peat extraction as sustainable development;
- Further support for the importance of the site within the wider ecological network; and
- No requirement for a steady and adequate supply of peat.

601. The Framework continues to support the Council's case by continuing the previous national planning policy approach by:

- Continued emphasis on the importance of tackling climate change through the planning system (as referenced in reason for refusal 1);
- Continued protection for designated wildlife sites (as referenced in reasons for refusal 2 and 3);
- Continued requirements for suitable restoration for minerals sites (as referenced in reason for refusal 4); and
- Continued protection for biodiversity in the wider environment such as priority habitats (as referenced in reason for refusal 4).

602. In consideration of the above, the appeals should be dismissed.

603. On the following pages are appended Salford's comments on the relationship of development plan and emerging policies to the Framework.

Appendix to Salford's Submissions on the Framework: relationship of development plan and emerging policies to the Framework

UDP Policies

UDP Policy	**Relevant Framework Paragraph(s)**	**Comment**
ST13 Natural Environmental Assets	Paragraphs 7-9, 14, 109-114 and 117-125	Judgement of what constitutes an "unacceptable impact" will need to have regard to the Framework, including the presumption in favour of sustainable development. **Full weight** can be given to this policy.
ST14 Global Environment	Section 10. Meeting challenge of climate change, flooding and coastal change Paragraphs 93 – 98	Generally in conformity to the Framework and can be given **full weight**.
ST17 Mineral Resources	Paragraphs 142-143	Use of this policy would need to have regard to paragraph 144 of the Framework. **Significant weight** can be given to this policy.
EN1 Development Affecting the Green Belt	Paragraphs 79 - 89	There are some differences between this policy and the Framework with regard to built development, which are not relevant to these appeals. **Significant weight** can be given to this policy.
EN7 Nature Conservation Sites of National Importance	Mainly paragraphs 113 (requirement for criteria based policies) and 118 (criteria for proposals that would have an adverse impact on SSSI). Also paragraphs 14 (footnote 9), 109, 114, 117 and 118	Generally in conformity to the Framework and can be given **full weight**.

UDP Policy	Relevant Framework Paragraph(s)	Comment
EN8 Nature Conservation Sites of Local Importance	Mainly paragraphs 113 (requirement for criteria based policies) and 118 (determining planning applications) Also paragraphs 109, 114, 117 and 118	The Framework indicates that criteria based policies should be set out for development affecting protected sites. These criteria should reflect the relative importance of local sites. This policy is in line with this approach and with more general references in the Framework to minimising impacts on, conserving and enhancing biodiversity. **Full weight** can be given to this policy, providing that all relevant material considerations are taken into account.
EN9 Wildlife Corridors	Paragraph 117 planning policies to identify and map components of local ecological networks, including wildlife corridors	The UDP Proposals Map identifies Wildlife Corridor 'Key Areas of Search'. **Full weight** can be given to this policy, providing that all relevant material considerations are taken into account, particularly the extent to which the land is actually functioning as a wildlife corridor.
EN11 Mosslands	Paragraph 117 (policies should plan for biodiversity at a landscape scale, to identify and map components of local ecological networks and to promote the preservation, restoration and re-creation of priority habitats) Paragraph 109 (planning system should minimise impacts on biodiversity and provide net gains where possible) Also paragraphs 7, 14 and 118	**Full weight** can be given to this policy, providing that all relevant material considerations are taken into account. Emerging policy within the Core Strategy should also be taken into account where it differs from EN11.

UDP Policy	**Relevant Framework Paragraph(s)**	**Comment**
EN17 Pollution Control	Paragraphs 109 and 110	Generally in conformity to the Framework and can be given **full weight**.
EN18 Protection of Water Resources	Paragraphs 7, 109 and 143	Generally in conformity to the Framework and can be given **full weight**.
M2 Mineral Development	Paragraphs 142-149. Especially paragraphs 143 and 144	There is a requirement (Framework paragraph 144) to "give great weight to the benefits of the mineral extraction, including to the economy". Reference to MPG3 in Bullet xi is no longer relevant. Bullets x and xii are considered to be stricter requirements than the NPPF. Framework paragraph 143 notes that some noisy short-term activities which are otherwise unacceptable are necessary for minerals extraction. With these exceptions, the policy is in conformity with the Framework and can be given **significant weight**.
A8 Impact of Development on the Highway Network	Paragraph 32	The Framework defines what an unacceptable impact on the highway network is. This policy can be given **significant weight,** when used in conjunction with the Framework.

RSS Policies

RSS Policy	**Relevant Framework Paragraph(s)**	**Comment**
DP1 Spatial Principles	Paragraphs 6-17	All of the principles set out in policy DP1 also appear in the opening sections of the Framework on sustainable development and core planning principles. This policy conforms to the Framework and **full weight** can be given to this policy.
DP7 Promote Environmental Quality	Paragraph 17 (4th, 5th, 7th, 8th & 10th bullets) Conserving and enhancing the natural environment (paragraphs 109-125) Conserving and enhancing the historic environment (paragraphs 126-141) is also relevant to policy DP7 but not to the Chat Moss appeals	Only some parts of DP7 are relevant to these appeals. Of these, there is no conflict between DP7 and the Framework. No comment is made here on the degree of conformity of other aspects of DP7 to the detail of the Framework, although it does appear to conform to the Core Planning Principles in Framework paragraph 17. This policy conforms to the Framework and **full weight** can be given to this policy.

RSS Policy	Relevant Framework Paragraph(s)	Comment
DP9 Reduce Emissions and Adapt to Climate Change	Paragraph 7 (environmental role of planning system within sustainable development) Paragraph 17 (6th bullet) "support the transition to a low carbon future in a changing climate" Meeting the challenge of climate change, flooding and coastal change (paragraphs 93-108)	Policy DP9 goes into more detail than the Framework in citing measures that could be used to mitigate and adapt to climate change. However, there is no conflict between DP9 and the Framework. Indeed, the emphasis that is placed on climate change within the Framework, and within paragraphs 93-99 in particular, tends to add weight to policies such as DP9. This policy conforms to the Framework and **full weight** can be given to this policy.

RSS Policy	Relevant Framework Paragraph(s)	Comment
EM1 Integrated Enhancement and Protection of the Region's Environmental Assets	Conserving and enhancing the natural environment (paragraphs 109-125)	The reference in EM1 to "no net loss in resources as a minimum requirement" could be argued to give stronger protection to environmental assets than the Framework, which includes a reference in paragraph 109 (3rd bullet) to "minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity…" With this small exception, policy EM1 is in conformity with the Framework. In general, the Framework emphasises the importance of planning positively for biodiversity and envisages that the planning system will "enhance the natural and local environment" (paragraph 109). The objectives of what the policies are trying to achieve are very similar. It is considered that **significant weight** can still be given to this policy.

RSS Policy	Relevant Framework Paragraph(s)	Comment
EM1(B) Natural Environment	Conserving and enhancing the natural environment (paragraphs 109-119)	EM1(B) states that "Plans, strategies, proposals and schemes should secure a 'step-change' increase in the region's biodiversity resources by contributing to the delivery of national, regional and local biodiversity objectives and targets for maintaining extent, achieving condition, restoring and expanding habitats and species populations". Comparison of EM1(B) and the Framework suggests that the policy is fully in conformity with the Framework. There is a very strong emphasis within the Framework on the creation and enhancement of ecological/biodiversity networks (paragraphs 109, 113, 114 and 117). The result of collectively applying the requirements to plan positively for biodiversity set out in the Framework would be the 'step-change' referred to in RSS. Therefore it is considered that **full weight** can be given to this policy.

RSS Policy	Relevant Framework Paragraph(s)	Comment
EM7 Minerals Extraction	Facilitating the sustainable use of minerals (paragraphs 142-149)	As discussed in the text (paragraphs 28-30), the requirement for a steady and adequate supply is only applied by the Framework to "aggregates" and "industrial minerals", both of which are defined in the Technical Guidance and neither of which includes peat. Moreover, the glossary to the Framework includes a definition of "minerals of local and national importance", which does not include peat. The references in paragraphs 143 and 144 to not allocating, and not granting permission for, peat extraction on new and extended sites make it clear that national policy on peat extraction is now very different from the policy set out in EM7. Whilst large parts of policy EM7 are in conformity with the Framework, it can only be given **very limited weight** so far as peat is concerned for the reasons above.

Core Strategy Policies

Publication Core Strategy Policy	**Relevant Framework Paragraph(s)**	**Comment**
SF3F Chat Moss	Paragraph 17, 4th bullet (take account of the role and character of different areas) Paragraph 28, 2nd bullet (agricultural and land-based business) Paragraphs 73 and 75 (public access to high quality open spaces) Paragraph 99 (green infrastructure to adapt to climate change) Paragraphs 109, 113, 114 and 117 (ecological networks) Paragraph 114 (plan positively for biodiversity and green infrastructure) Paragraph 143, 1st bullet and 144, 5th bullet (peat extraction)	Policy SF3F covers a wide range of different topics as it sets out the vision for the area. A representation has been received from the Appellant that part 5 of this policy ("avoid unnecessary peat extraction") is inconsistent with national policy. How the Framework relates to peat extraction is discussed in some detail in the main text of this submission. Policy SF3F is considered to be consistent with this. However, whilst it is considered that this policy is fully in conformity with the Framework, in light of the unresolved objections paragraph 216 makes it clear that only **limited weight** can be given to this policy.

Publication Core Strategy Policy	**Relevant Framework Paragraph(s)**	**Comment**
BG1 Biodiversity spatial strategy	Conserving and enhancing the natural environment (paragraphs 109-119)	Policy BG1 is an example of the positive planning for biodiversity which the Framework requires in paragraphs 109-119. It is considered to be wholly compliant with the Framework. A representation has been received from the appellant to the effect that it wishes to see the 3rd paragraph of the policy amended to read: "A Biodiversity Heartland" in Chat Moss will provide the largest area of potential habitat improvement and restoration in Salford. This will deliver a range of priority habitats, with a particular emphasis on securing the restoration of lowland raised bog. Where such restoration is to follow permitted peat extraction, a phased restoration and aftercare programme will be required. Where restoration to lowland raised bog cannot be achieved, other complementary wildlife habitats, especially wetlands, should be created." The representation from the appellant appears to ignore the fact that the plan needs to be read as a whole. There is nothing in policy BG1 which is inconsistent with the Framework. This is true even if the appellant's interpretation of the Framework were to be correct, as both the Core Strategy and the Framework must be read as a whole. It is not considered that the appellant's proposed change to policy BG1 would substantively change the policy, and therefore despite the objection it is considered that this policy can be given **some weight**.

Publication Core Strategy Policy	**Relevant Framework Paragraph(s)**	**Comment**
BG2 Development and biodiversity	Conserving and enhancing the natural environment (paragraphs 109-119)	As discussed with reference to RSS policy EM1, the requirement that development should not result in a net loss in the city's biodiversity value could be construed as being stricter than the requirements of the Framework. However, in general, the Framework emphasises the importance of planning positively for biodiversity and envisages that the planning system will "enhance the natural and local environment" (paragraph 109). Moreover, this policy has been developed for the specific local circumstances of Salford and in line with paragraphs 109-117 of the Framework. This policy is therefore considered to be largely in conformity with the Framework. The appellant's representation on the Core Strategy does not raise any issues with policy BG2. In contrast, Lancashire Wildlife Trust have commented that it does not consider this policy to be in conformity with the Framework as the latter seeks "net gains in biodiversity" (paragraph 109) and it considers that the final paragraph of policy BG2 does not go far enough. There were no objections raised regarding this policy being too strict. Therefore, in spite of the unresolved objection, it is considered that this policy can still be given **significant weight**.

Publication Core Strategy Policy	**Relevant Framework Paragraph(s)**	**Comment**
MN1 Minerals		A number of those making representations have raised issues with regards to the first part of policy MN1 which relates to peat and, in particular, the reference to temporal extensions to sites that have previously been worked. The objections are considered to be based on a misinterpretation of the Framework. The Government had the opportunity to clarify in response to consultation that extensions referred only to spatial extensions but chose not to do so. There is, therefore, no reason not to assume that the reference to extended sites in the Framework also relates to time extensions. However, whilst it is considered that this policy is fully in conformity with the Framework, in light of the unresolved objections paragraph 216 makes it clear that only **limited weight** can be given to this policy.

The Case for Wigan Metropolitan Borough Council

Sustainability

604. Sustainability is central to decisions on land use as made clear in PPS1 (CD1.1) at paragraph 3: "Sustainable development is the core principle underpinning planning." Paragraph 4 of PPS1 continues: "the Government set out four aims for sustainable development in its 1990 strategy. These are:

- Social progress which recognises the needs of everyone;
- Effective protection of the environment;
- The prudent use of natural resources; and
- The maintenance of high and stable levels of economic growth and employment".

605. Where there is apparent conflict between principles in national policy, the policies concerning sustainability are to prevail (introduction to Climate Change Supplement to PPS1, CD1.2).

606. In CD 3.14, the DEFRA document "Consultation in reducing the horticultural use of peat in England" it is considered in section 3 on page 15 that the continued use of peat is unjustifiable.

607. In the White Paper "The Natural Choice" (see paragraph 2.64 at CD3.15) the point is made: "Making the transition to peat-free alternatives would put the [horticultural] industry on a sustainable footing…". A sustainable footing it does not yet possess. The draft Framework Impact Assessment (CD3.3) at page 43 states: "as peat is a non-renewable resource, the extraction of peat for horticulture is **unsustainable** and contributes to greenhouse gas emissions and the destruction of rare habitats and archaeology" (emphasis added).

608. The Impact Assessment (CD.3.19) on the DEFRA document "Consultation on Reducing the Horticultural use of Peat in England" (CD.3.14) at its summary recognises that "Peat is an important and effectively non-renewable natural asset and the continued extraction of peat for horticulture at the current rate is unsustainable, also contributing to climate change and destruction of important habitats, biodiversity and archaeology".

609. Both Councils invite the Secretary of State to conclude that the use of peat in horticulture is unsustainable and the extraction of peat for horticultural use is unsustainable. Thus the proposed development is *a priori*, harmful.

610. The DEFRA publication "Consultation on Reducing the Horticultural use of Peat in England" (CD.3.14) is dated December 2010. It is a consultation document but is clear that the direction of policy is for the elimination of peat in horticulture. The "overarching goal" (see paragraph 3.2 of the document) was for peat use in all horticultural sectors to be eventually phased out: "There is a strong argument for industry (and consumers) to move towards a complete phase out of peat use in horticulture."

611. At paragraph 4.4 of the document it states that the proposed Framework "presents an opportunity to more strongly emphasise the importance for

greenhouse gas mitigation of protecting carbon stores such as peat, in addition to maintaining the existing protection of lowland peats".

612. Mr Burns for the appellant maintains if the UK market does not provide sufficient peat, it will be imported with significantly greater environmental consequences than if the appeal proposals receive consent. These concerns are acknowledged in paragraphs 1.21-1.26 of CD.3.14 ('the International Context').

613. Domestic control of peat use is limited with the bulk of peat already coming from Ireland and the Baltic states. As a result domestic initiatives must be closely linked to the wider European market. Paragraph 1.22 of CD.3.14 states that "The UK has very limited legal grounds for unilaterally banning the import of peat from other EU countries and restricting the free movement of goods within the European Community. However, high-level European and international recognition of peat degradation and restoration is increasingly the focus of political and technical discussions."

614. Paragraph 1.23 of CD.3.14 notes the wider international context: 'The importance of peatlands has also been emphasised in recent (October 2010) international discussions at the Convention on Biological Diversity in Nagoya. Peatlands are also recognised under the inter-governmental Convention on Wetlands of International Importance, more commonly known as the 'Ramsar Convention', which provides the framework for national action and international cooperation on wetlands and their resources. The importance of raised bogs, mires and fens for biodiversity are also recognised by the EU Habitats Directive…'.

615. The DEFRA consultation document (CD.3.14) therefore concludes at paragraph 1.26: "Given the multiple drivers for action, it is therefore likely that there will be ever growing pressure to reduce the greenhouse gas emissions from peat extraction, to preserve internationally valuable biodiversity in lowland peat habitats and to reduce the amount of waste to landfill (by switching to waste-derived peat-free products). There may also be a "first mover" advantage for those sectors and countries that make the transition first. In the meantime, the Government is committed to working in European and international fora to achieve an effective response to these challenges, whilst also recognising the need for the UK's domestic industry to remain competitive."

616. The Government policy is to actively intervene in market to achieve the goal of reducing peat use in horticulture. The policy drive is to achieve a result by requiring the market to act. Paragraph 8 of CD3.19 (The DEFRA Impact Assessment) states: "The central objective of this (voluntary) policy is to address **a market failure** (emphasis added) - the current market price at which peat is sold for horticultural use does not take account of its value as natural capital or the full costs imposed on society by the extraction and domestic use of peat. These impacts of peat use and extraction on habitats, biodiversity and wildlife, climate change and cultural heritage, and the external costs associated with these, are not factored into the current price of peat charged to consumers … Factoring the carbon externality alone into the price would lead to a switch to alternative materials."

617. The DEFRA Consultation (CD.3.14) concludes that the reduction of the horticultural use of peat is 'challenging' (para.5.8) but 'achievable' (para.5.9).

618. Paragraph 4.5 of the DEFRA consultation document (CD3.14) advises that "looking ahead, it is expected that all minerals planning authorities will take into account the proposed phase out of peat in the horticultural sector and will therefore not grant new applications for extraction. Under the proposals set out in this consultation document, the horticultural sector is projected to use a further 17.4 million m^3 (equivalent to 6 years' worth of peat at current levels of use) before its use is phased out (in 2020 for the amateur sector and 2030 at the latest for the professional sector). Any future peat requirements should therefore be easily accommodated from existing extraction sites, and it is expected that new sites will not need to be opened up to meet expected market demands. However, if considered necessary, it would also be possible to legislatively prohibit the extraction of peat from any new lowland peat sites, where permission to extract has not already been granted."

619. In short, the Government is interfering with the market. Indeed, in cross examination Mr Burns accepted that the appellant has developed a peat free alternative which has the potential to eliminate peat from the market. The Government's approach has met with success in the response of the appellant. To grant planning permission for these proposals would be a retrograde step and undo some of the progress so far achieved.

Mineral Planning Policy

MPG13

620. The 1995 document MPG13 (CD1.17) is the national policy document for peat. Even back in 1995 the Government noted that peat extraction was a matter of concern (see paragraph 1 of CD1.17). Presciently, MPG13 raised the issue of peat's hidden value as 'natural capital'. Paragraph 5 states "...it is also Government policy that peat bogs which retain a high level of nature conservation interest which represent a part of the country's "critical natural capital", or are important for the archaeological heritage, should be protected and conserved for the benefit of future generations."

621. On that basis the policy concluded that extraction should be limited to areas already 'significantly damaged by recent human activity'. However, in 1995 it was still expected that new extraction would be required for the industry. Paragraph 5 was echoed in paragraph 43 of MPG13: "it is therefore the Government's intention that the future extraction of peat in England from any new sites should be restricted to areas which have already been significantly damaged by recent human activity and are of limited or no current nature conservation or archaeological value."

622. General mineral planning policy in MPS1 (CD.1.12) and paragraph 100 of the draft Framework (ID.12) identify that it is the Government's objective for the planning system to secure an adequate supply of indigenous minerals needed to support sustainable growth whilst encouraging the recycling of suitable materials to minimise the requirement for new primary extraction. These general principles are the basis for the appellant's contention that policy supports continued extraction at the appeal sites.

623. It is of course correct that these general principles are material considerations. However, where specific, or 'bespoke', policy exists it must outweigh general policies. The Impact Assessment (CD.3.3) for the draft Framework outlines just

such a bespoke or 'refined' policy at page 43: "The proposed policies set out in the Framework do not seek to change the overarching objective of mineral planning. However; policies on (i) peat and (ii) land banks had been refined as follows: peat - removing the requirement for local Councils to set criteria for the selection of sites for future peat extraction (that is, to identify new sites)."

624. Paragraph 101 of the draft Framework states that "in preparing mineral plans locals planning authorities should not identify sites or extensions to existing sites for peat extraction". Paragraph 103 states that "when determining planning applications local planning authorities should not grant planning permission for peat extraction from new or extended sites …".

625. These policies have to be seen in the light of the DEFRA consultation document (CD.3.14) and the Impact Assessment (CD.3.3). Page 44 of CD3.3 states that "it is estimated that existing sites have sufficient capacity to service current levels of use for 6 years. Given the intention to phase out the horticultural use of peat, these domestic reserves may last longer than 6 years, providing time for users to seek peat-free alternatives."

626. The Government does not anticipate the need for any further sites in order to supplement domestic reserves. In that context there is no need for new or extended sites. Extension would include temporal extensions that would extend the life of the mineral extraction activity on the site. The policy therefore, properly interpreted, excludes new (that could include the opening up of a virgin site) or extended sites which would include both the physical extension and the temporal extension of existing sites. The Government's assessment defines a required reserve of 6 years extraction and then states that no new or extended permissions should be granted. It would be entirely illogical, where a required volume is identified, to assume that the phrase extension is purely in area not time. The volume of peat which can be extracted is a function of the area harvestable and the time allowed for that harvest (the harvest of peat being constrained by weather and seasons).

627. The Council maintains that the appellant is inviting the Secretary of State to grant permission for an unsustainable development where there is no recognised need. The appellant's approach is inconsistent with Government policy to lead the world in the reduction of peat use.

Carbon Balance

628. The position of the appellant as elucidated by Simon Aumônier is that the objective of reducing carbon emissions is best met through continued extraction of peat from Chat Moss rather than alternative sites. This is based on spurious assumptions first, that every m^3 of peat not extracted from Chat Moss will be extracted from peat reserves abroad and second, that the extraction of peat abroad will have exactly the same 'base' carbon costs as peat extraction from Chat Moss.

629. Mr Aumônier accepted in cross examination that there would be a net carbon gain if it was accepted that the Wigan planning conditions currently in force could require restoration to lowland raised bog.

630. The vast majority of Mr Aumônier's calculations were undermined by the evidence of Mr Burns under cross examination where he accepted that the

exorbitant costs of imported peat would be likely to promote the use of the appellant's proprietary peat harvesting technologies at other bogs belonging to the appellant in Scotland (which have extant planning permissions) rather than leading to importation from Ireland, Germany or, worst of all, Estonia. The appellant's first and second new harvesting technologies allowing wet working should have been the focus of Mr Aumônier's calculations, not spurious studies into Estonian peat the importation of which Mr Burns said would occur 'over his dead body'.

631. The appellant maintains that the 'Estonian option' must be considered because the rejection of the proposed development will force the appellant into the Irish market and thereby force its competitors into Estonia. This is a false assumption. Mr Burns accepted in cross examination that the appellant's innovative technology could allow full exploitation of their Scottish holdings. The appellant's own expertise in wet working would therefore allow the appellant's need for peat to be met from insulated sources which would not affect the wider market.

632. The appellant has sought to limit the significance of their large holdings in Scotland. At least three different Scottish 'mosses' were discussed by Mr Burns in his evidence to the inquiry. It in fact became clear from Mr Burns's cross examination that the use of the Scottish 'mosses' was the likely result of the refusal of these appeals. The Scottish 'mosses' have extant planning permissions, peat reserves and due to the appellant's advances in peat harvesting technology are more economically efficient than imports from outside the UK (including Ireland, Germany and Estonia). This was accepted by Mr Burns in cross examination. Mr Burns also admitted that the second of the appellant's new peat harvesting technologies, which has only just completed testing, has the potential to be 'environmentally positive' in its low energy usage.

633. In light of these admissions the evidence of Mr Aumônier became even more confusing. The planning authorities were left wondering whether Mr Aumônier had even been briefed when he carried out his hypothetical calculations. Indeed, as Mr Dickman pointed out in his cross examination, why did Mr Aumônier carry out calculations for hypothetical peat bogs outside the UK when presumably the appellant must have had to consider alternative peat sources in preparation for the expiry of the previous permissions in 2010?

634. It should be noted that Mr Dickman made clear in his rebuttal proof, in examination in chief and in cross examination that despite his criticisms of Mr Aumônier's evidence, the Council's fundamental position is that such analysis is superfluous. The consideration of planning applications by planning authorities should not involve the kind of quasi-scientific analysis Mr Aumônier engages in. Local planning authorities can rely on national government policy and guidance to direct their approach to the issue of the carbon balance. National policy has done this and the direction of government policy is clear: the use and extraction of peat in the UK is to decrease and be phased out (see above).

Indigenous peat

635. The appellant has sought to downplay the importance of Mr Burns's admissions by noting references in national policy to the importance of indigenous peat and claiming that such peat must be English in origin only. It should be noted that Wales produces no peat. The appellant emphasises that planning policy is a devolved power in Scotland and Northern Ireland and therefore English planning

policy cannot have effect in those parts of the UK. This is correct and Mr Dickman readily accepted this in cross examination. However, he made a subtler point: whilst the policy of the centralised UK government can only direct planning in England it can express through policy the UK's wider aspirations. It should be noted that carbon policy (so intimately tied in with emerging peat policy) is, accepting Mr Aumônier's observation, an international issue. Foreign policy remains a reserved matter and as such in this inquiry we encounter a tension between central government and the devolved administrations in the devolution settlement. That point does not however reduce the strength of Mr Dickman's point that where UK government policy emphasises the need to reduce peat use it is addressing the whole UK.

636. The appellant, in the re-examination of Mr Leay, noted that at the time of MPG13's release planning policy was not a devolved power (indeed it was pre-devolution) and as such there was a difference between a policy expressing itself as applying across the UK then and one that notes its English limitations now (see paragraph 2 of MPS1, CD.1.12). That neglects the fact that pre-devolution Scottish planning policy never rested with the same Secretary of State as English planning policy (pre-devolution it lay with the Secretary of State for Scotland) so to pretend that such policy was previously unified is a fiction. Of course Wigan accepts that pre-devolution all planning policy lay under the legal fiction of 'One Secretary of State'.

637. Mr Leay's observations on devolution also neglect the clear statement in the Impact Assessment for the Framework (page 43 of CD.3.3) that the Government's aim is 'to phase out the use of peat in the UK' – a statement of intent in the post-devolution world.

638. The appellant's position appears to be that Scottish peat should be considered to be foreign peat. It is not imported peat but it is not English peat. One wonders whether it is 'stateless peat' or 'peat with leave to remain'. As Mr Dickman made clear Wigan considers that in its aspiration national policy addresses the need for the UK, including Scotland, to move towards the reduction in the use and extraction of peat (see page 43 of the Framework Impact Assessment, CD3.3). In cross examination, Mr Leay eventually accepted that at the very least there was a hierarchy of peat supply where Scottish peat was more appropriate for continued use than non-UK peat. In Mr Leay's interpretation the use and supply of peat from Scotland is preferable to Irish, German or Estonian peat. The Council considers that it follows that in carrying out the planning balance, the Secretary of State should consider the preferability of Scottish peat with extant planning permissions to extract over the granting of new permissions to allow the extraction of English peat.

639. The Government is not ignorant of the international context in which its actions are taking place. And yet the Government does not anticipate that there will be a shift to greater importation of peat from further afield. Government policy in the White Paper (CD.3.15) states at 2.64: "Making the transition to peat free alternatives would put the industry on a sustainable footing, contributing to our goal of increasing food and other production sustainably and protecting our natural capital. The industry has made progress in reducing peat use in response to a previous voluntary reduction target, but the market is still only 57.5% peat free. In order to support industry in making increased reductions, we are

introducing a new voluntary partnership. The Government is working with industry to unblock barriers to change."

640. The appellant's approach to the carbon balance issue seems to be that where the need to tackle an identified problem is presented, and it is not possible to fully control the means of tackling the problem in a European or worldwide sense, then any such attempt to tackle the problem is by definition futile. A counsel of despair. This dilemma is not merely restricted to the 'carbon balance' impact of the use of peat, but to a wide range of ecological or ethical considerations.

641. In this context, the argument follows that if there is any likelihood that the ecological benefits of the cessation of peat extraction at Chat Moss would be counter-balanced by activity elsewhere, then this would negate those benefits and thus justify a further period of extraction.

642. This is a counterintuitive presumption, and if followed to its conclusion would undermine any attempts by Government, or others, at achieving an objective where powers are not available to fully control all means of attainment.

643. As Mr Aumônier acknowledges at paragraph 3.14 of his proof of evidence, 'the Government's approach internationally is to be seen as leaders in tackling climate change, encouraging other countries to follow and to ensure progress towards a legally binding international climate change agreement'.

644. As noted in "The Natural Choice" White Paper (see CD3.15), the Government itself recognises the limitations of its controls, but does not give any indication that this fact lessens its determination to achieve its stated aims. This is the basis on which Wigan has had to approach the appeal proposals, and it should not be swayed by considerations of decisions which may be taken by others. It is not the role of the local planning authority, to provide its own analysis of the science of climate change, but to represent policy where it forms a material planning consideration.

645. Mr Aumônier's argument is contrary to the Government's judgement in the policy expressed in the White Paper. Mr Aumônier can only be correct if the Government analysis is fundamentally flawed in its analysis.

Biogenic Carbon

646. Mr Aumônier raised the issue that, despite international guidance to the effect that peat should be considered as a fossil fuel in carbon storage terms, it could also be considered to be biogenic carbon as it lies between easily renewed sources such as woodland and the irreplaceable carbon stores in the form of fossil fuels. It is of course correct to say that peat is an unusual carbon store which lies upon a spectrum between two extremes but that does not justify ignoring guidance on the status of peat. The unique position of peat has clearly been taken account of in the specific policies which government has considered and devised. The point does not require further discussion and a veil should be drawn over this part of Mr Aumônier's evidence.

Carbon sink

647. Mr Dickman addressed the issue of the appeal site's status in his rebuttal proof at para.2.11 and also in examination in chief. The site is, in his opinion, not currently a carbon sink but has the potential with restoration to lowland raised

bog to become a carbon sink again. Currently the site is a carbon store. Mr Dickman did not address the issue of whether the SBI within Salford is a carbon sink. Mr Dickman did emphasise that carbon sinks have a **dual** function as a carbon store and also carbon sequestration function. He went on to note that in his opinion that double function was not evenly balanced: the carbon store was the major function, a function currently fulfilled by the wider site, whilst the carbon sequestration was a useful and significant function to be brought on with restoration as soon as possible.

Annex I Habitat – Degraded Raised Bog Still Capable of Natural Regeneration (see JNCC Habitat Account 7120 at CD3.24)

648. The appellant's position is that "in the absence of the appeal scheme the land is not an Annex I Habitat" (see Mr Webb's proof of evidence at paragraph 4.7). Mr Webb has misinterpreted the Annex I definition for the habitat on several levels and this has pervaded the remainder of the analysis across the appellant's team.

649. The appellant has come to the conclusion that in order to qualify as the Annex I habitat a site needs to have in place a management package which ensures that peat formation could be achieved within a 30 year timescale. However, this is clearly not the intention of the definition for the reasons set out in the following paragraphs.

650. The maps showing the distribution of formally designated SACs of raised bogs, mires and fens as against the distribution of this resource within the UK resource (see these maps at figure 1 on page 22 of Mrs Hughes's proof of evidence). All the UK qualifying degraded lowland raised bog sites that are still capable of natural regeneration are represented on the JNCC map do not have the resources and management options which indicate that they will be restored within the next 30 years.

651. In addition, the JNCC definition states that qualifying land use includes conifer plantations, improved pasture, scrub woodland, bare peat or impoverished vegetation. Mrs Hughes has pointed out that it would be nonsensical to consider that conifer plantations in a commercial rotation of more than 60 years would need to be cropped within a curtailed timescale in order to meet their Annex I status.

652. Secondly, both the ES (CD11.22) and ecology proof of evidence produced by Mr Webb on behalf of the appellant incorrectly state that it is the **"ease of restorability"** that applies in this context (see paragraph 4.2 of Mr Webb's proof of evidence). However, examination of the JNCC definition requires that the consideration of ease of restorability is a criterion for SAC designation, under the heading 'Site Selection and Rationale' rather than as a qualifying feature for the Annex I habitat. Within the SAC site selection guidelines it is clear that judgements have been made "...about the ease of restorability if appropriate management was introduced now, or at a **later date**" (see CD3.24) (emphasis added). Therefore there is an obvious understanding that even at the time of a designation, many of the SAC suite would not/still do not have any firm prospects for the introduction of restoration management.

653. In conclusion, when viewed accurately the JNCC definition indicates that a site qualifies as the European Habitats Directive Annex I habitat when the hydrology

can be repaired and that once appropriate management is put in place, there is a reasonable expectation that peat forming capability can be achieved in the 30 year timescale.

654. In this context, the appeal site should be valued appropriately within the Environmental Impact Assessment process and it is the appeal site's significant national value which should be used when considering the planning balance against the national policy context. In addition, it should be noted that **all** of the alternative outcomes as presented in Mrs Hughes's proof of evidence (see section of her proof entitled "Consideration Of Alternative Restoration Scenarios At The Site In Relation To Ecosystem Delivery" at paragraphs 214–269) would qualify as Annex I habitat and, as discussed, each has a significantly better certainty of positive outcomes than allowing the appeal proposals.

655. CD11.34 was the letter from SLR Consulting to Salford and the Environment Agency which responded to the consultation upon the ES. Table 1 summarised the consultation responses and specific attention was drawn to those of Natural England, the Environment Agency, GMEU and the Trust. They all concluded that because the Chat Moss site could be restored within 30 years it would meet the criteria for "degraded raised bogs which are capable of natural regeneration".

656. Paragraph 3.3 of CD11.34 then states that "in the light of comments from (the consultees above) it is accepted that our interpretation of the Interpretation Manual has been more strictly applied than for other UK sites and therefore cut-over raised bogs (bare peat) within the site does meet this definition of an Annex 1 habitat".

657. The conclusion at paragraph 3.6 of CD11.34 states that "it is accepted that bare peat habitats at Chat Moss can meet the definition of "degraded raised bog", published in the EU Interpretation Manual and by JNCC, insofar as the site is considered restorable within 30 years. It is also shown to meet the broad habitat definition of Lowland Raised Bog published in the UK Habitat Action Plan. However, the evaluation above shows the site does not meet published criteria for designation as a SAC, SSSI or Greater Manchester SBI".

658. The conclusion that the "site does meet this definition of an Annex 1 habitat" was come to with the possibility to restore within 30 years in mind. That was the case put forward by Natural England and others by reference to the JNCC Manual.

659. It is noted that Natural England's role is that of adviser to the Government on nature conservation issues. Natural England in addressing the significance of the site summarise the position as follows: "…We would suggest the identification of the "degraded raised bog" at Chat Moss as both an Annex 1 and UK BAP habitat, and its inclusion on England's S41 list, which suggests that the site has considerable conservation value at a **national** level (emphasis added)." (See pages381 – 382 of appendix 2 of the documents produced by Mr Birnie)

660. Salford and Wigan would recommend two conclusions to the Secretary of State. The site should be regarded as an Annex 1 Habitat and be seen as considerable conservation value at **national** level; and consequently, the appellant has seriously underestimated the value of the site in nature conservation terms and afforded its protection with insufficient weight in the planning balance.

Mosslands Vision Plan

661. In 2007, Salford, Wigan and Warrington produced the "Mosslands Vision Project" (CD.5.1) to inform the development of planning policy and land use decisions. The approach in the Mosslands Vision is consistent with the UK objectives for the Chat Moss Wetland lowland raised bog Complex. From the plan (reproduced as a larger version in appendix 2 to Mrs Hughes's evidence) the appeal site sits centrally within the Wetland Habitat Action Plan Annexes (CD3.26).

662. Mrs Hughes emphasised the need to view the appeal site within the wider network of sites of nature conservation. To focus upon specifically designated sites is false specificity which does not recognise the need for connectivity between important habitats to maintain their value (see paragraphs 92-102 of Mrs Hughes's proof of evidence).

Wigan Council's Restoration Conditions

Application number A/31651/89 (see CD10.1) (Inspector's note: this planning application relates to appeal 4. For the boundary of this application site see the second plan in the bundle of plans and drawings (plan B) entitled "planning permission boundaries". This plan is also to be found in Mr Leay's appendix 2. The application is site E on these plans).

663. The full description set out on the decision notice is 'extraction of peat and restoration of the land for **amenity use (nature conservation)**' (emphasis added). This approval relates directly to the present appeal application A/10/74592.

664. The planning permission was subject to a Section 106 Agreement between Wigan and the then applicant A.L.I.H (Farms) Limited, dated 21 January 1991 (CD10.3), the terms within which also encompassed the previous approval A/16111/80 on this site.

665. Paragraph 5 of the Schedule to the Section 106 Agreement states: "As soon as the site ceases to be required for the purposes of peat extraction and in any event not later than the expiration of the relevant planning permission for such extraction a programme of works necessary to secure the future of the site **for the purposes of nature conservation** (emphasis added) shall be agreed between the company and the Council". Paragraph 6 goes on to state that: "the works in question will have regard to the need to provide within the site areas where (a) tree planting will be carried out; (b) natural regeneration of vegetation will be allowed to occur; and (c**) the emphasis will be on the provision of relatively wet areas where 'wetland' vegetation and fauna can become established"** (emphasis added).

666. There was discussion at the inquiry as to the meaning of 'emphasis' in this context. It is a simple word and in this context Wigan contends that it means the 'majority' of provision will be relatively wet areas.

Application number A/36475/91 (see CD10.2) (Inspector's note: this planning application relates to appeal 5. For the boundary of this application site see the second plan in plan B entitled "planning permission boundaries". This plan is also to be found in Mr Leay's appendix 2. The application is site F on these plans).

667. The full description as set out on the decision notice as 'Peat working and restoration to **nature conservation/ amenity after use** (emphasis added) – proposed variation of conditions 1 to 21 of permission A/16111/80 to conform with condition 1 to 15 of permission E/24741' (Salford application approved 19 December 1990). This approval relates directly to the present appeal application A/10/74593.

668. As the planning permissions that relate to applications A/31651/89 and A/36475/91 are no longer extant, following their expiration on the 31 December 2010, the dismissal of the current appeals would prevent the further extraction of peat from the land within Wigan (and also Salford), and enable the restoration of the land. Wigan does not accept the appellant's contention that the terms of reference of the conditions attached to the earlier approval will of necessity result in a standard of restoration which is less beneficial in establishing lowland bogland habitat on the site.

669. It is Wigan's contention that the appellant's assumptions regarding the relative benefits of the proposed restoration envisaged in these appeals, compared with that required from the earlier planning permissions, adopts the wrong baseline. In paragraph 8.8 of the appellant's Statement of Case it says "the development would mean the site will not be restored in the immediate future to amenity, but will importantly provide the mechanism for the progressive restoration of the site to bog habitat therefore enabling the Annex 1 Habitat potential of the site to be realised". It is implied that this would therefore result in environmental and ecological benefits over the established position.

670. Paragraph 4.12 of the Planning Supporting Statement suggests that the term 'amenity' implies "restoration for public access and benefit", continuing at paragraph 4.13 to suggest that "a reasonable definition of amenity involves a significant element of public access". Paragraph 12.3 of the ES takes a different approach that the term 'amenity' "… is considered to include a mixture of woodland, grassland and water features".

671. Wigan is clear that there is no justification in the information associated with the previous applications to support any of these assertions. It is noted that the word 'amenity' does not appear in the original planning application submission nor in any of the supporting information. However, Mr Dickman noted that Schedule 5 of the Town and Country Planning Act 1990 (see appendix 2 of the documents attached to Mr Dickman's evidence) contains the following definition of 'aftercare condition': "a condition requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, (a) use for agriculture; (b) use for forestry; or (c) **use for amenity**" (emphasis added).

672. As such the first observation to make is that alternative involving various forms of agriculture would not be consistent with the clear terms of the obligation.

673. The definition remains unchanged from the Town and Country Planning (Minerals) Act 1981, and thus pre-dates the planning permissions A/31651/89 and A/36475/91. It would therefore have been in force at the time those permissions were granted

674. Schedule 5 of the 1990 Act continues to differentiate between the aforementioned three aftercare types, paragraph 3(4) noting that "where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants".

675. In November 1996, MPG7 (CD1.16) was published. Annex B of MPG7 deals with various types of after use, and clearly distinguishes between 'Reclamation to Agriculture', 'Reclamation to Forestry', and 'Reclamation to Amenity Uses'. Paragraph B38 refers to uses which fall into the 'broad category amenity use', which may include "open grassland for informal recreational use, basic preparations for more formal sport facilities, amenity woodland, lagoons for water recreation, and the conservation of landscape and wildlife".

676. It is clear that the term 'amenity' is intended as a **residual** category covering a wide range of after-uses of substantially different end uses, though not agriculture or forestry which are clearly distinguished in the aftercare definition.

677. In the absence of firsthand knowledge of the origin of the use of the term amenity (in the specific context of the earlier applications), evidence can be obtained from the supporting documentation as to what was in the minds of the decision taker, and the applicant, at that time. Both application descriptions, as set out in the decision notices, do not limit description to 'amenity', but in the case of A/31651/89 to 'amenity use (nature conservation)' and A/36475/91 to 'nature conservation/ amenity after-use'.

678. The references in the description of development in the decision notices to 'nature conservation' illustrate the thinking to some degree. Further evidence comes from the restoration details set out in the planning submission, from the conditions of the planning approval and from the Section 106 Agreement.

679. The planning application form on application A/31651/89 (see appendix 3 of the documents attached to Mr Dickman's evidence) in response to the Part 5 questions regarding after-use and restoration (54 – proposed after use) states "Subject to negotiation it is generally thought appropriate that it should be a wet land nature reserve with limited public access". It continues (55 – general method of restoration and after-treatment) "To be negotiated but it is suggested that there should be wet lands and bogs and a limited number of island sites created and a scheme of tree planting and natural regeneration of indigenous plant species encouraged".

680. A number of supporting documents were submitted during the processing of application A/31651/89. These included a document entitled "Ecological Assessment and Restoration Proposals for Two Application Sites" (see appendix 4 attached to Mr Dickman's evidence). Section 6.2 of this document concludes "as noted above, the applicants have agreed to maintain the water table at as high a level as possible during extraction and normal working practices will maintain wet ditches and depressions to act as refuges for semi-aquatic acidophilus plants. This will be helpful in the final restoration phase when the applicants intend to flood both application sites and re-create the conditions necessary for moss peat growth".

681. The planning officer's report (see appendix 5 attached to Mr Dickman's evidence) further notes that the application refers to a 'wetland nature reserve' as appropriate aftercare.

682. Application A/36475 sought to continue the winning and working of peat on that site, and for the restoration of the site to be amended from agriculture to 'amenity/nature conservation use'. The earlier application A/16111 required restoration to agriculture. This illustrates that a change of emphasis for restoration had taken place during the interim period, assumedly in response to the evolving understanding of the best ecological means of restoration.

683. The officer report on A/36475/91 (see appendix 7 to Mr Dickman's evidence) confirms this in commenting that "The Council has expressed increasing concern in recent years about the adverse effects of peat extraction and agriculture on the ecological value of the old, former peat mosslands, such as Chat Moss. It is worth noting that there is a Section 106 Agreement, signed in conjunction with more recent permissions for peat working on land at Chat Moss, which specifies that the area shall be restored for the purposes of nature conservation rather than agriculture".

684. The Council considers that the form of restoration now proposed does not differ significantly from that required under the previous conditions. It is appreciated that there are differences in Wigan and Salford's position. However, as contiguous, single operational sites it is logical that the same type of restoration will be applied across administrative boundaries. It remains the Council's position that the extant restoration conditions within Wigan are sufficient to require the restoration to lowland raised bog without the dubious scheme proposed by the appellant.

685. The Council is unimpressed by the argument advanced by the appellant that "minor regrading" would preclude restoration to lowland raised bog on the site in accordance with the current conditions. This argument is contrived to frustrate the restoration clearly envisaged under the current Wigan conditions. A minor regrading consisting of the provision of modest bunds to impound rainwater cannot be regarded as a significant civil engineering operation requiring the separate grant of planning permission.

686. Mr Leay maintained that in his mind the works to create the bunding would exceed minor regrading and breach the conditions and involve engineering operations. This contradicts the evidence of Dr Turner that the collection and banking of the peat to form the bunds would simply require the redeployment of existing equipment on site to mill peat and then push and pack it into bunds.

687. In cross examination, Mr Burns acknowledged that the appellant would not seek to frustrate restoration to lowland raised bog, this question being posed by Mr Barrett to Mr Burns on the basis of the whole site and not just those areas which have already come into formal or informal restoration to date.

688. It was further acknowledged by a number of the appellant's witnesses (Mr Burns, Dr Turner and Mr Leay) that a restoration to lowland raised bog would not be precluded by the obligations under the expired planning permissions. Restoration to lowland raised bog is consistent with the appellant company's environmental policy. Restoration to lowland raised bog is not precluded by the landowner, Peel Environmental Ltd. All parties agree Peel has environmental credentials that would support the use of land for environmental purposes.

Hydrology

689. The Environment Agency maintains a reservation over the retention of the deep perimeter drain. The deep perimeter drain is a key requirement of continued extraction and as such its continued existence needs to be considered as part of this application. If it would continue to have a negative effect upon the nature conservation interest in the SBI it is a negative material consideration that needs to be considered in the planning balance. The evidence of Mr Thewsey of the Environment Agency is that it remains an objector to the proposal by reason of the unacceptable impact on the SBI, particularly at its southern boundary, which has not been adequately mitigated.

690. In cross examination, Mr Thewsey conceded that the Environment Agency's objection was of little effect to the Wigan administrative area. However, the Council would emphasise that at all times it has viewed the appeal site as a single whole worked in the same manner the whole way across. Indeed the evidence of Mrs Hughes has emphasised the fundamental interconnectedness of the bogland habitat. Furthermore, the ES submitted by the appellant addresses the whole site in both Salford and Wigan. It is in this context that Wigan has approached the site as a whole and considered impacts across the site including the Twelve Yards SBI. As such it has been at all times necessary to treat the site as one. This is a matter that Mr Leay accepted in the questions put to him by the Inspector.

Impact of the Proposals and Effectiveness of Restoration Scheme

Impact of Proposals

691. MPG 13 (CD.1.17) at paragraph 99 states: "It is established Government policy that restoration aftercare will be required to make mineral workings environmentally acceptable and fit for beneficial after-use. This may include restoration to peatland habitats, agriculture, forestry, and other forms of amenity use. Applications for extraction of peat need to include information which demonstrates that the site can be restored satisfactorily; and if there is **serious doubt** whether a new extraction proposal can meet this requirement then it is doubtful whether permission for working should be given" (emphasis added).

692. Mrs Hughes's appendix 12 identifies MPG13's requirements and indicates when the individual issues were first raised by the Councils, when the appellant provided information, whether the information provided is considered satisfactory and/or accurate and if the Councils consider there are any outstanding issues.

693. Mrs Hughes has emphasised repeatedly the importance of the appeal site to the wider Chat Moss Wetland lowland raised bog complex. The long term impacts on these sites as a result of the operations to facilitate the passive drainage of the milling fields will continue for the duration of the proposed extraction. These impacts are the continued hydrological drawdown and the consequent contribution to the drying of these sites. This effect is highly likely to hinder any restoration interventions that may occur on these sites. Such impacts are detrimental to the achievement of the UK Biodiversity Action Plan objectives for the nationally identified Chat Moss Wetland lowland raised bog complex, which are for restoration and hydrological sustainability across the surviving elements of the area.

694. Mrs Hughes has noted it will be reasonable to expect the appellant to ameliorate the impact in its final phase of restoration (see paragraph 185 of Mrs Hughes's proof of evidence).

Effectiveness of Restoration

695. It is Wigan's case that the appeal proposals offer no greater benefit than the current position with the amenity restoration in place. Although the planning permissions for peat extraction have expired, there remain conditions to restore to amenity and a planning obligation (referred to above) that binds the land. The restoration to achieve lowland raised bog habitat is not precluded by the restoration conditions.

Restoration to Nature Conservation and Wetland Habitats in Wigan via Condition on Expired Permission

696. As discussed within Graham Dickman's proof of evidence, Wigan contends that the existing conditions attached to the expired permission are both achievable and enforceable. If the Secretary of State agrees with this assessment, the state of the site going forward is likely to be:

- Immediate work to undertake the required drainage works (drain blocking and infilling), which will immediately provide a carbon benefit in terms of preserving the existing peat stock in a water-logged condition.
- Present information in relation to habitat recreation, including tree planting, natural regeneration with an emphasis on 'wetland' vegetation.
- Aftercare period of 5 years.

697. Restoration to bog habitats can be begun as soon as the hydrological works have been undertaken. Transitory carbon gains will be achieved within the 10 year timescale suggested by the International Union for Conservation of Nature up to 2022 as discussed above. It should be noted that this will be reached before extraction would cease (2025) if the appellant's proposals were to be implemented.

698. Biodiversity gains will begin as soon as the site becomes revegetated. The detailed mechanisms by which these gains would be achieved would need to be agreed; however the matrix of habitats that might be expected to be suitable for the local landscape, with the required emphasis on wetland habits which, as stated in the application form, also includes bog habitat. Effective timescales for revegetation and rewetting would be 2-4 years. Even under full planned restoration, a matrix of transitory and more permanent habitats will develop, including elements of water-logged successional stages to bog habitat, with drier habitats of heath, acid grassland and scrub naturally colonising on the drier and higher bunds. However, the majority of the Site will be developing towards active raised bog.

699. Under this scenario, the Wigan part of the Site will begin immediate progression towards active raised bog establishment well within a 30 year time scale at 2042.

Longer term maintenance of habitats after 5 years

700. Although the aftercare period is shorter than would be required to ensure complete establishment of active raised bog, the required drainage works would be established and the longer term management of the site would return to the landowner who would be able to avail themselves of the other land-use schemes (for example, Higher Level Stewardship). Changes to management such as planning proposals or conversion to agriculture would be governed and controlled either via the planning system or the Agricultural EIA Regulations (2006) (see CD7.8) process as discussed in Mrs Hughes's proof of evidence.

701. Dr Turner accepted in cross examination that across such a large site with such a large number of bunded cells there was a chance for lowland raised bog precursors to establish themselves in a small number of cells in the 5 year aftercare timescale.

Appellant's Restoration Scheme

702. Even upon the assumption that the restoration scheme as submitted by the appellant was achievable, **enforceable** and successful there are a number of consequences that represent disbenefits in the planning balance. First, the deep drainage mechanism would need to remain in place to dewater the milling fields to 2025; second, it would retain a basal depth of peat of 2m meaning that up to 3m would be removed from portions of the site; and third, consequently a significant proportion of the peat mass would be removed.

703. In addition, nearly two thirds of the wider site would not come into restoration before 2025.

704. The extent of the peat mass removal is only controlled by the requirement to maintain a 2m depth of peat overlying the geological substrate.

705. The appellant proposes a 15 year after-care period. In paragraph 273 of her proof of evidence, Mrs Hughes considers that timescales of 30 years or more are needed to assess the success of restoration. Even Dr Turner's restoration 'successes' at Gardrum Moss are limited to a small number of experimental zones supervised by Dr Turner directly.

706. The appellant points to the "success" at Gardrum Moss, Falkirk. Despite the limited establishment of sphagnum moss at Gardrum it should be noted that the experiments have been limited to a very small proportion of the wider site (approximately 5ha in a total of 285ha) and have required significant resources and the supervision of a post-doctoral director in the person of Dr Turner.

Shallow Depth of Peat

707. Both Mrs Hughes and Dr Stoneman for the Trust consider that the re-establishment of active lowland raised bog is more likely to be successful where less peat is removed from the original mass – 'the more peat the better'.

708. In her evidence, Mrs Hughes explains the reasoning for this as including: first, the subsurface geology's potential to influence the peat is reduced; second, the revised ES only provides spot heights not related to ordnance datum; third, the depth of peat cannot be related to the subsurface geology; and fourth, the variation in the subsurface geology (see figure 11 in Mrs Hughes's appendix 19 for the variation in subsurface geology).

709. Breaching the subsurface mineral substrate is capable of presenting significant risks of irreparable drainage of the peat mass. The effect of such piercing has been likened to pulling out a plug below the peat mass. The Stratigraphy Survey of June 2008 (see CD11.15) identifies itself the need for a levelling survey to relate the peat surface with base depth. The survey itself is dated. The surface will have changed as a consequence of 3 years of peat extraction. The presence of underlying sand is noted in the survey. It states that "a second part of concern is the discovery of a layer of sand beneath the peat. It is not clear from this survey how thick this layer is, nor whether it is continuous across the site. However, its presence may have implications with regard to a possible dewatering effect upon adjacent land that could occur if the site drains are deepened sufficiently to cut through the sand stratum."

710. A further significant reason for ensuring the greatest amount of depth of peat to develop a successful restoration scheme is that the hydrological capacity is better with depth. Consequently in paragraph 306 of her proof of evidence, Mrs Hughes states that: "first, the larger the mass of peat the higher the water storage capacity of the mineral (it would be more resilient to hydrological stress); and second, surface compaction is reduced."

711. Within the 2m of peat, a minimum of 0.5m of ombrotrophic peat (bog peat) is to be left in situ. The prospect of developing active lowland raised bog is greater where the depth of bog peat is retained. The mineralisation of fen peat (underlying the bog peat) would have a deleterious effect on the prospect of returning to lowland raised bog. Thus, only retaining 0.5m of bog peat creates a danger of not achieving the restoration objective in this particular case.

712. The risk of over extraction is not illusory. Despite a similarly worded condition, the part of the site of appeal 2 to the south of Twelve Yards Road (see the second plan in plan B entitled "planning permission boundaries". This plan is also to be found in Mr Leay's appendix 2. This part of the site lies within area B on these plans) was worked in breach of planning control. The explanation provided by the peat extractors in a letter dated 15th March 2005 (see appendix 3 of the documents produced by the Trust) demonstrates the degree of risk. That letter states: "there was no intention to extract peat from below the 2m level. The breach of the planning consent occurred due to the high incidence of sand/clay lenses below the peat which had not been evidenced from previous surveys and there are many areas between the lenses where the depth of peat is in excess of 2m."

713. Once the 2m minimum retention level of peat is breached there is no conceivable mechanism by which the planning authority can return the site to a status whereby restoration to lowland raised bog can be successfully achieved. Dr Turner considered the risk of piercing the substrate or extracting too deep as very small but accepted that the consequence of such a risk crystallising was very serious. The Council maintains that the risk is greater than Dr Turner acknowledges and the consequence is so serious that extraction to a shallow depth calls the effectiveness of any proposed restoration into question.

Gardrum Moss

714. The site near Falkirk relied upon as a "proxy" for the proposed restoration at Chat Moss has been examined by Mrs Hughes. The position is addressed in her rebuttal proof of evidence. It is relied upon by the appellant to show the ability

to restore degraded bog to lowland raised bog and the appellant's particular expertise and past success in restoration. The rebuttal evidence of Mrs Hughes is clear that neither claim is made out.

715. The trial pits and scrapes occupy 5ha of a 283ha site. The rest of the site remains unrestored and apparently mothballed potentially for further extraction. Despite restoration trials only applying to a tiny proportion of the site it is understood that the financial reserves for the remainder of the site were said to have been "substantially exhausted" by 2003 (see appendix 6 to Mrs Hughes's rebuttal).

716. At appendix 5 to the evidence of Dr Turner is an appraisal of the "experimental peat bog restorations" project at Gardrum Moss, Falkirk. The main conclusion of the 2010 study was that, after 18 years, the 1992 scrapes are close to having some vegetation analogous to normal raised bog vegetation, but only over a small proportion of their area; most is still occupied by shallow open water or early stages of the development of a sphagnum moss carpet. The overall discussion is set out in section 5 of the study. Paragraph 5.4 states that "the outcomes of the scrapes and pits have some way to go when matched against the present day indicators of success as described above. Nevertheless, the 1991 objectives, expressed in figure 3, have been met. Given that the pits lacked some of those species, and critically, vegetation close to the NVC M18 plant community that do occur in the scrapes, the scrapes have so far been more successful than the pits."

717. Paragraph 5.5 continues: "it is clear that the pits are at a disadvantage compared to the scrapes, in that they are much smaller, and there is insufficient room to provide the variation in wet conditions between the permanent open water and permanently dry peat available around the edges of the scrapes. Only pit 8 seems to be attracting the species and developing the more diverse hummocks seen around the scrapes, and the degree of knowledge and fine tuning of the water table has simply not been available to steer toward a more favourable outcome."

718. Consequently, the effectiveness of the proposal at Chat Moss is not endorsed by the Gardrum Moss experience. There has been extremely limited success at Gardrum over a very small area with significant application of resources. The feasibility of expanding such a scheme over 65 ha is questionable.

Mineral enrichment

719. There is a risk of mineral enrichment through migration from the fen to bog peat. Leaving only 0.5m of bog (ombrotrophic) peat provides little margin for error in a site where there has been previous failure to comply with similar depth conditions.

Maintenance

720. Mrs Hughes in her rebuttal proof refers to issues of maintenance that challenged the restoration proposals at Gardrum Moss. These included leaking bunds, ditch problems and insufficient staff to respond in order to maintain water levels. That, it will be remembered, consisted of a site of no more than 5ha. This restoration proposal is over an area of 75ha for a period of 15 years proposed as aftercare. Mrs Hughes makes the point that the risk factors and

maintenance issues that she identifies will not work independently of each other but are rather synergistic.

721. Paragraph 99 of MPG 13 requires that planning authorities should have regard to the **practicality** of the operator's proposals for restoration of the site and aftercare. Additionally, the review commissioned by the International Union for the Conservation of Nature (CD.3.27) into the UK Peatland Programme entitled "Commission of Inquiry on Peatlands" is dated December 2010. It is consistent with the evidence of Mrs Hughes and the Trust and at page 32 it succinctly states that *"arguably preservation of the existing stocks should be the first priority in peatland restoration."*

722. Refusal of planning permission in this case achieves preservation. There would be preservation of the existing stock of peatland. The draft Framework (ID.12) was in line with the Government White Paper that represents existing policy and is a continuation of existing policy expressed in MPG13. Despite the appellant's reservations it is clear it is consistent with the "evidence base" provided by DEFRA. In these circumstances the draft Framework would have carried more than limited weight in the determination of these appeals.

Local Policies

723. The local development plan applicable to the application site is the WUDP, which was adopted in April 2006. WUDP policies were saved by the Secretary of State on 26 February 2009. The following policies were considered in assessing the applications: Policy EV1 (CD6.16); Policy EV1B (CD6.17); Policy EV2 (CD6.18); Policy EV2B (CD6.19); Policy EV2C (CD6.20); Policy EV2D (CD6.21); and Policy EV2E (CD6.22).

724. The policies listed above reflect national guidance in PPS9 and seek to protect both the generality of valuable ecological interests and those which promote biodiversity, but also particularly to ensure that those areas which are recognised for their value and afforded protection under formal nature conservation designation are appropriately safeguarded. Developments will only be permitted where conditions or legal agreements can be applied to protect those valuable ecological interests, or where other material benefits of sufficient weight to override any identified harm exist.

Emerging Policy

725. The Greater Manchester Joint Minerals Plan DPD (CD.5.2) deals with peat at page 32 et seq. It states at page 32 that: "the evidence base prepared for the North West Regional Spatial Strategy indicates that there are sufficient peat workings with planning permission to meet existing and future demand and no planning permissions need to be granted for new peat workings".

726. Policy 6 provides that a planning permission for peat extraction will only be granted where the purpose of its removal is to facilitate restoration. The Inspector at the Examination in Public of this document raised no issue with the soundness of Policy 6.

Conclusion

727. Wigan Metropolitan Borough Council concurs with Salford City Council and invites the Inspector to find that the continued use of peat in horticulture is

unsustainable and that the continued extraction of peat at the site is unsustainable. It is submitted that it is clear that the proposal is contrary to existing and emerging policy both at a local and national level. It is clear that the site is of significant conservation value at a national level as an Annex 1 Habitat and should be protected. The Inspector is invited to find that the proposal will harm the adjacent SBI and that the restoration proposals are speculative and their effectiveness is uncertain due to the interaction of risk factors increasing with further peat extraction. For these reasons it is submitted that the appeals should be dismissed.

Submissions of Wigan Metropolitan Borough Council as to the Framework

728. In response to the publication of the Framework on 27 March 2012, the Inspector invited all parties to make written submissions on any relevant sections of the Framework.

729. The box at paragraph 5 of the Framework notes that one of the five 'guiding principles' of sustainable development, as set out in the Sustainable Development Strategy Securing the Future, is "living within the planet's environmental limits". As already noted by Wigan, the extraction and use of peat is unsustainable and therefore not living within the planet's environmental limits.

730. On the economic role in sustainable development (see paragraph 7 of the Framework) Wigan has argued that Government does not see peat as being a necessary constituent of the contribution towards economic objectives. The Government addresses the consideration of how its objectives will impact on the 'Peat industry' (an economic impact) in DEFRA's "Impact Assessment on Reducing and Phasing Out the Horticultural Use of Peat in England" (see CD3.19), and whilst it is recognised that this could be adverse, at least in the short term, the Government does not move from its position that peat should ultimately be phased out. However, it does suggest there might be economic benefits for 'indigenous' business by getting a head start on their competitors and being at the forefront of the move to sustainable alternatives. In that sense, the Government has considered the economic strand. Wigan has taken this approach into consideration and concurs with the Government's conclusion.

731. In his rebuttal proof, Mr Dickman writes: "I would contend that the Council has fully and properly considered the three strands of sustainable development in reaching its decision. However, in respect of economic considerations, the role of the Local Planning Authority must primarily focus on the local impact and the effect on the local economy as it pertains to the application proposals. Macro-economic factors, including the impact of national policy on particular sectors of industry, are rightly a matter for Government and it would be improper for the Local Planning Authority to draw its own conclusions in such circumstances". The Framework does not fundamentally change from the draft (on which this comment was based) and therefore Wigan would seek to reiterate the point.

732. It is noted that one of the three dimensions of sustainable development listed at paragraph 7 of the Framework is the 'environmental role' which includes "*helping to improve biodiversity, use natural resources prudently… and mitigate and adapt to climate change"*. This is emphasised in paragraph 9 where one of the positive improvements to be sought through sustainable development is listed as *"moving from a net loss of bio-diversity to achieving net gains for nature".*

733. The twelve 'Core Planning Principles' are set out from paragraph 17 and include:

- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it; (bullet point 5);
- Contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework; (bullet point 7); and
- Promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production); (bullet point 9).

734. Section 10 of the Framework is entitled 'Meeting the challenge of climate change, flooding and coastal change'. Paragraph 99 emphasises that planning must take account of "climate change over the longer term". Paragraph 93 notes that Government policy is pursuing *'radical'* reductions in greenhouse gas emissions. Wigan notes that the position of both Councils has been to refuse permission, recognising the medium to longer term policy to eliminate peat usage. The Council also notes that Government is committed to 'radical' action, as was submitted in the Closing Submissions with regard to peat. The Government requires a radical change not simply a gentle decrease in usage over time.

735. Section 11 is entitled 'Conserving and enhancing the natural environment' and at paragraph 109 lists five means by which the planning system should "enhance the natural and local environment". The Council notes in particular by:

- Protecting and enhancing valued landscapes, geological conservation interests and soils; (bullet point 1)
- Recognising the wider benefits of ecosystem services; (bullet point 2)
- Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; (bullet point 3) and
- Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate' (bullet 5).

736. Wigan notes the importance of peat soil and in particular reiterates paragraphs 98 and 99 of Mrs Hughes's proof of evidence. With regard to ecosystem services the Council once again submits the importance of preserving the existing stock for maintenance of the ecosystem and the risk of ecosystem loss with peat extraction. In particular, Wigan recalls paragraphs 70, 73, 74, 198 and 199 of Mrs Hughes's proof of evidence. The Council notes that the fourth bullet point strengthens the argument made by Mrs Hughes on the importance of the appeal

site to the Chat Moss Wetland Lowland Raised Bog Complex network. With regard to the fifth bullet point, Wigan reiterates its contention that the extant conditions on the Wigan sites allow for appropriate restoration.

737. Paragraph 111 of the Framework states: "Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), **provided that it is not of high environmental value**. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land' (emphasis added). Whilst the appellant may submit that this paragraph supports the 'reuse' of the appeal site by allowing continued extraction, Wigan's view is that the recognised **national** environmental value of the site and Chat Moss Lowland Raised Bog Complex precludes its reuse.

738. The Council submits that paragraph 113 of the Framework builds upon the previous policy of PPS9: "Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, **so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks**" (emphasis added).

739. The Council emphasises the importance of the Chat Moss Wetland Lowland Raised Bog Complex and its evaluation by the statutory body responsible for nature conservation, Natural England. Particular attention is drawn to Mrs Hughes's appendices 2 and 3 to her evidence. Accordingly, significant weight should be given to the importance of this site within the Complex.

740. Amongst other things, paragraph 114 of the Framework states that "local planning authorities should set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure'.

741. The Council draws attention to the Mosslands Vision project produced jointly by a number of parties including both Salford and Wigan Councils. The Council has planned positively with a strategic vision for the future. This is indicated at paragraphs 99 to 102 of Mrs Hughes's proof of evidence.

742. Paragraph117 of the Framework states that "to minimise impacts on biodiversity and geodiversity, planning policies should:

- Plan for biodiversity at a landscape-scale across local authority boundaries;
- Identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;
- Promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan;

- Aim to prevent harm to geological conservation interests; and
- Where Nature Improvement Areas are identified in Local Plans, consider specifying the types of development that may be appropriate in these Areas".

743. Wigan maintains that in their approach to these appeals, both Councils have followed the approach required in the first bullet point. The Council considers that the immediate cessation of peat working and the commencement of restoration, promotes the preservation, restoration and re-creation of priority habitats as required in the third bullet point.

744. Paragraph 118 of the Framework is drawn from the previous PPS9 and is addressed in Mrs Hughes's evidence.

745. The sixth bullet point of paragraph 143 states that "set out environmental criteria, in line with the policies in this Framework, against which planning applications will be assessed so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health, including from noise, dust, visual intrusion, traffic, tip- and quarry-slope stability, differential settlement of quarry backfill, mining subsidence, increased flood risk, impacts on the flow and quantity of surface and groundwater and migration of contamination from the site; and take into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality".

746. Wigan considers that both Councils in their Core Strategies and the Greater Manchester Minerals DPD are consistent with this provision of the Framework.

747. In the determination of planning applications for the working of minerals, paragraph144 of the Framework provides:

- "ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality"; (bullet point 3) and
- "not grant planning permission for peat extraction from new or extended sites"; (bullet point 5)

748. Paragraph 145 requires a steady and adequate supply of **aggregates** only. The requirement for an adequate supply does not apply to peat. The Government is not committed to the continued provision of a quality peat product. Similarly paragraph 146 does not apply to peat.

749. Paragraph 178 of the Framework emphasises the need for cross boundary planning where issues cross administrative boundaries. In this case, the two Councils have been consistent in approaching this set of appeals as a whole.

750. With regard to the Glossary, the Council notes that peat does not fall within the definition of 'minerals of local and national importance'.

The Case for Lancashire Wildlife Trust

The Value of Chat Moss to the Trust

751. It is worth restating at the outset why areas of potential lowland raised bog like Chat Moss are so important to the Trust. The following paragraphs from Dr Stoneman's proof of evidence summarise the value and significance of the site to the Trust.

752. "Chat Moss contains some of the region's most significant areas of valuable lowland raised bog habitat or potential bog habitat, only a small proportion of which (Astley and Bedford Moss) is currently designated as a SSSI and SAC. It is located within a heavily urbanised area, which includes substantial areas of high social deprivation. It is therefore, along with other mosslands in our area, a very high priority for action by the Trust" (paragraph 3.1 from Dr Stoneman's proof).

753. "Lowland raised bogs are internationally important nutrient poor, rainwater fed peatland habitats which support many rare and threatened species. They are a UK BAP habitat and are listed as an Annex One habitat within the European Habitats Directive (see CD8.1). The nutrient poor conditions found on a raised bog mean that only a small range of specialist (and increasingly rare) plant species can survive in this habitat. They also support over 20 priority BAP species including the iconic Brown Hare and Water Vole. Lowland raised bogs can also hold a huge diversity of invertebrate species. The Humberhead Peatlands in Yorkshire, a restored peat extraction site, has recorded over 5,500 species of invertebrate including a number of RDB and BAP species. The wider Chat Moss area contains 363 ha of restorable bog habitat of which the Chat Moss peat extraction site represents some 25%" (paragraph 3.2 from Dr Stoneman's proof).

754. "The Trust was recently successful in obtaining substantial funding from the Heritage Lottery Fund. This funding is to enable improved access and community use of local mossland areas. As part of the project the Trust is currently finalising the purchase of a key mossland area to the west of Chat Moss (Little Woolden Moss) currently subject to peat extraction. We will commence restoration of this site in 2012. This demonstrates the Trust's commitment to restoration of lowland raised bog, combined with its commitment to opening up mossland areas for enjoyment by the local communities" (paragraph 3.3 of Dr Stoneman's proof).

755. "Coupled with the huge historical heritage value of Mosslands they are also fantastic wildlife havens, and are home to a range of unique and often rare species, including water voles and common lizard, both priority BAP species. The Mosslands nature reserves in the Trust's ownership support more than 300 species of butterfly and moths, 40 species of flies, and 79 species of spider. Combined with this natural heritage is the vast carbon storage potential of Mosslands, which can help combat climate change. However across the Trust's area, (Lancashire, and parts of Greater Manchester and North Merseyside), 98% of this habitat has been lost. There is therefore an urgent need for action to be taken to halt the decline of this increasingly rare and heritage rich habitat" (paragraph 3.6 of Dr Stoneman's proof).

756. "However this fantastic source of natural and historical heritage is under extreme threat, from peat extraction, agriculture, forestry, development and general neglect. We have already lost 98 % of this habitat in the Trust's area. If

action is not taken this 10,000 year old habitat will disappear from the North West, a number of rare and endangered species will be lost, millions of tonnes of carbon will be lost to the atmosphere, and we will have lost a key piece of our natural heritage and history. The Chat Moss Lowland Raised Bog complex once covered 3,569 ha of which 96% has been lost. The peat extraction site in question represents a substantial proportion of the remaining restorable mossland in Greater Manchester" (paragraph 3.8 of Dr Stoneman's proof).

757. "Over 1.5 million people live within less than 10 miles of Chat Moss, in the conurbations of Manchester, Bolton, Wigan and Warrington. Therefore the loss of this natural heritage would not just have an impact on the communities which live next to these rare and precious sites, but on the 1.5 million inhabitants which make up the wider community. Objectors to the Salford applications and the Wigan applications were certainly not limited to people living in the immediate vicinity of the site" (paragraph 3.9 of Dr Stoneman's proof).

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora – "The Habitats Directive" (see CD8.1)

758. One key area of debate during the inquiry was whether Chat Moss was an Annex 1 Habitat under the Habitats Directive. The position of the appellant appears to be that although they recognize that the extraction site is an Annex 1 Habitat (degraded bog), they argued that there was no "reasonable expectation of re-establishing vegetation with peat-forming capability within 30 years". The rationale behind this assertion appears to be that a viable plan needs to be in place, and the only viable plan is the appellant's proposals contained within the ES of November 2010 (see CD11.22) to restore the site to lowland raised bog after another 15 years of peat extraction.

759. It was clear from the evidence of Mrs Hughes that a plan did not actually need to be in place for there to be a "reasonable expectation" of successful restoration within 30 years. In addition, Dr Stoneman gave evidence that whilst the Trust believes that the appellant is required to restore the site under the terms of the current permissions, in the event that the appeal is refused the Trust would be prepared to step in, if it had to, to do the job itself.

760. The appellant challenged the Trust's ability to do this, but Dr Stoneman was able to cite numerous examples of the Trust's fund raising ability and potential sources of funds. Hence, the option for the Trust to have a major role in future restoration if necessary was shown to be perfectly realistic, and therefore the appellant's proposals would not be the only viable way forward.

761. The following extracts from Dr Stoneman's proof summarises the position.

762. "The appellant challenged the Trust's ability to do this, but Dr Stoneman was able to cite numerous examples of the Trust's fund raising ability and potential sources of funds. Hence, the option for the Trust to have a major role in future restoration if necessary was shown to be perfectly realistic, and therefore the appellant's proposals would not be the only viable way forward. The Trust has already secured funds to purchase and commence restoration of the neighbouring Little Woolden Moss peat extraction site, which is of a very similar size to the Chat Moss site. We are in negotiations with the landowner to sell us both the Chat Moss extraction site, and the associated Twelve Yards Road SBI, if we are able to raise the necessary funds. We are the Lead Partner in the Greater

Manchester Wetlands Partnership which is still seeking funding to carry out restoration work, despite not getting funding in the current round of the Nature Improvement Area competition. Funding options include European Funding or application to the Heritage Lottery Landscape Partnership Fund together with appeals to our members" (see paragraph 9.3 of Dr Stoneman's proof).

763. "It is essential that peat extraction immediately ceases, in line with both local and national policies. Under the previous planning application, the Appellant should bear the cost of restoration and to co-operate with interested parties, such as the Trust, in implementing restoration plans. However, in extremis, the Trust is committed to seeking the necessary resources to bring about site restoration, given its long-standing expertise and experience on the Manchester mosslands to raise the necessary funds and implement successful restoration" (paragraph 9.4 of Dr Stoneman's proof).

764. Dr Stoneman went on to demonstrate that the UK government has a responsibility under Article 10 of the Habitats Directive (see CD8.1) to use other measures to improve the coherence of the Natura 2000 Network. He went on to give evidence that both Chat Moss and the adjacent Little Woolden Moss were geographically situated between other fragments of the Manchester Mosses SAC. Their restoration would improve the connectivity between these fragments and add greatly to the resilience and coherence of the SAC.

765. Dr Stoneman's evidence on the significance of the Habitats Directive to the inquiry is summarised in the following paragraphs from his proof of evidence.

766. The Habitats Directive (see CD8.1) is particularly pertinent in this case. The Directive requires member states to**:** "contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies". The Directive sets out the habitats and species that are particularly at risk in Annex 1 and Annex 2 respectively. Both active (that is, peat-forming) and degraded (that is, non peat forming) lowland raised bog types are listed in Annex 1" (paragraph 4.5 of Dr Stoneman's proof).

767. "More detailed guidance on the habitats and species are set out in the Interpretation Manual for European Habitats (1999) (see CD8.2). Degraded lowland raised bog is defined as lowland peatland where the sites are "judged to be still capable of natural regeneration will include those areas where the hydrology can be repaired and where, with appropriate rehabilitation management, there is a reasonable expectation of re-establishing vegetation with peat-forming capability within 30 years" (page 82). There are many examples of successful restoration of lowland raised bog from bare peat. Thorne and Hatfield Moors are perhaps the most well known example in England, with very large areas of former bare peat now supporting cotton grass and Sphagnum mosses (mostly Sphagnum fallax and Sphagnum cuspidatum), both of which form peat as evidenced in the palaeoecological record within the peat itself (that is, the vegetation remains that form peat). Indeed, many of the sites selected by the UK Government for inclusion in the Natura 2000 network included, at the time, significant areas of bare peat, for example, Thorne and Hatfield Moors, Wedholme Flow, Flanders Moss East and Bolton Fell Moss, although some of these have now been successfully restored and now support peat forming vegetation" (paragraph 4.6 of Dr Stoneman's proof).

768. "The Directive (see CD8.1) requires Member States to undertake "measures … designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest". Favourable conservation status for habitats is defined as being achieved when "its natural range and areas it covers within that range are stable or increasing, and the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and the conservation status of its typical species is favourable." One of the measures to achieve favourable conservation status for the listed habitats and species is the designation of a network of Natura 2000 sites, composed of Special Areas of Conservation and Special Protection Areas. The final list of sites chosen by the UK Government is not exhaustive, but is representative of habitat types" (paragraph 4.7 of Dr Stoneman's proof).

769. "However, this is only one measure and it is clearly incumbent on Member States to use other measures to ensure the natural range and area lowland raised bog covers is stable and increasing. This is alluded to in Article 10 of the Directive (see CD8.1), "Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora." In England, other measures include SSSI designation under the Countryside and Rights of Way Act (2000) (see CD7.3) and crucially protection through the land-use planning system" (paragraph 4.8 of Dr Stoneman's proof).

770. "Accordingly, it would be a clear contravention of the European Habitats Directive (see CD8.1) for a Local Authority to give planning permission for continued peat extraction of degraded lowland raised bog" (paragraph 4.9 of Dr Stoneman's proof).

771. In summary, the Habitats Directive places responsibilities on the UK government which can be readily delivered through the planning system. It would be entirely consistent with those responsibilities to refuse the appeal, and set in motion steps which would restore an Annex 1 Habitat (degraded bog) to lowland raised bog in a much shorter period than 30 years. The appellant's proposals are not the only viable mechanism to provide "appropriate rehabilitation management" which would give "a reasonable expectation of re-establishing vegetation with peat-forming capability within 30 years".

772. The Trust is of the view that the appellant has seriously underestimated the value of the site in nature conservation terms at a national level, and afforded its protection insufficient weight in the planning balance.

The definition of amenity after use

773. In the Trust's view, the definition of amenity use is critical to the outcome of the inquiry. This definition is of course relevant only in the event that the appellant is unsuccessful in its appeal. In that case, the appellant would be bound by the conditions in the Section 106 Agreements (see CD9.4 to 9.6 and CD 10.4 to 10.6) some of which they are already in breach of.

774. For example, paragraph 12.7 of Dr Stoneman's proof of evidence references Schedule 2 of the February 1999 Agreement (CD9.4). Paragraph (m) of the

Schedule 2 states: “broad principles for the future management of the site as shown on Plan SJ8099NE will be submitted within twelve months of the date of this Agreement, such submission shall be in writing. And the City Council and the Applicant shall pursue discussions on the principles submitted and agree a final submission within eighteen months of the date of this Agreement” (that is, by the end of September 2000)”.

775. In cross examination, neither Mr Burns nor Dr Turner disagreed that this clause had not been complied with. The fact that the date for compliance predated the appellant’s interest is not relevant. The clause is still valid and could and should have been complied with at any time after the appellant’s interest in the site began, as Dr Stoneman’s proof of evidence goes on to say:

776. “The Trust maintains that the Section 106 Agreement, which is legally enforceable, sets out a very clear framework within which to agree the principles of restoration, the restoration plan itself, and the implementation timetable. If the Appellant or its predecessors had failed to abide by this requirement by the September 2000 deadline (which appears to be the case, since no such agreed documents have been identified in the application process), there would still have been over a decade during which those discussions could have continued” (paragraph 12.8 of Dr Stoneman’s proof).

777. “Instead of working constructively with the Local Authority to agree the restoration plan, as required by the Section 106 Agreement, the Appellant has consistently claimed that the current planning permission required restoration to amenity and did not require restoration to lowland raised bog. The Appellant appears to have turned a blind eye to the clear requirements of the Section 106 Agreement and, in our view, have misunderstood, or deliberately misconstrued, the context in which the term “amenity” is used” (paragraph 12.9 of Dr Stoneman’s proof).

778. The Trust maintains that if the appellant had complied with this Clause (detailed above), then it would have held discussions with both Salford and Wigan to agree the principles which would determine the design and emphasis of the restoration plan, and to clarify the Council’s expectations in respect of the word “amenity”. Instead the appellant submitted a plan, to Salford only, which it must have known was not compliant with the requirements of the Section 106 Agreements. In the Trust’s view the appellant was behaving unreasonably to fail to discuss the principles of the plan before submitting it. Salford was not only acting perfectly reasonably, but also correctly, in rejecting this inappropriate and undiscussed plan.

779. The evidence of Dr Rob Stoneman set out very clearly in paragraphs 12.15 to 12.18 of his proof of evidence why the Trust believes that the appellant’s interpretation of the word amenity is completely wrong in the context of the Section 106 Agreements. “MPG7 clarifies the statutory definitions of many of the terms used within MPG13 (CD1.17) including: “after use which is used to mean: The ultimate use after mineral working for agriculture, forestry, amenity (including nature conservation), industrial or other development.””(Paragraph 12.15 of Dr Stoneman’s proof of evidence).

780. “MPG7 further clarifies that meaning of the term amenity use: “Amenity including Nature Conservation: An increasing proportion of mineral workings are being reclaimed for a wide range of subsequent uses, which fall into the broad

category ‘amenity use’. These may include open grassland, country parks, informal recreational areas, conservation of landscape, natural features and wildlife, basic preparations for more formal sports facilities, amenity woodland, and water areas. In many instances a number of after-uses, including agriculture and forestry, may be integrated on a single site. Mineral workings reclaimed to amenity use can therefore contribute to Government policies in respect of recreation and nature conservation, including making a contribution to the UK Biodiversity Action Plan (see PPG7 "The countryside and the rural economy", PPG9 "Nature conservation" and PPG17 "Sport and leisure"). PPG2 "Green Belts" contains advice on mineral workings in Green Belts. Policies and proposals in structure and local plans provide the opportunity for local authorities to set a suitable strategic framework on these matters.” ” (Paragraph 12.16 of Dr Stoneman’s proof of evidence).

781. “It is clear that “amenity use” is completely consistent with restoration to lowland raised bog, as envisaged by the Mossland Strategy of 1989 and the more recent Mosslands Vision (CD5.1) (see also the letter of 10 August 2006 from Marion Raines of Salford to Martyn Walker of Lancashire Wildlife Trust (attached as Appendix 2 to Dr Stoneman’s proof). In the letter, which sets out a summary of the planning history of the Chat Moss site, she says: “From the above mentioned documents it is possible to see that the whole of the 75.9 ha peat extraction site in Salford will be restored to an amenity use (which with the retention of a 2 metre depth of peat will allow for bog restoration) following the end of peat extraction in 2010.” (Paragraph 12.17 of Dr Stoneman’s proof of evidence).

782. “In summary, the Trust firmly repudiates the claim by the Appellant that it is not required by the current permissions to restore the site, and that the only route to future restoration is via continued peat extraction. There is a clear, valid and enforceable requirement already in place through the 1991 and 1999 Section 106 Agreements (CD9.4 and CD9.6) and there is no reason why this should be abandoned or ignored. “Amenity” in the context of restoration plans is clearly an umbrella term intended to include nature conservation and specifically restoration to lowland raised bog. It is very clear that the word amenity specifically excludes uses such as agriculture or forestry which are alternative after-uses (see para 12.15). In our view, the Section 106 Agreements and the subsequent correspondence from Salford (Appendix 2) make it clear that the intent has always been to restore the whole site to lowland raised bog, with an enforceable commitment through those Agreements”. (See 12.18 of Dr Stoneman’s proof of evidence).

783. If the appellant’s interpretation of “amenity after-use” was accepted, it would lead to an end use for Chat Moss which is completely at variance with the Section 106 Agreements and with what Salford and Wigan Councils have said that they want. Mr Horsfall in his evidence made clear that Salford would like to see the site restored to lowland raised bog in line with the Mossland Vision.

784. Dr Stoneman’s proof of evidence outlines the relevant clauses of the Section 106 Agreements which required the appellant to “agree” various matters with Salford and Wigan. Paragraph 12.3 of Dr Stoneman’s proof refers to paragraph 5 of the Schedule of the 1991 Agreement which says that “as soon as the Site ceases to be required for the purposes of peat extraction and in any event not later than the expiration of the relevant planning permission for extraction, **a**

programme of works necessary to secure the future of the site for the purposes of nature conservation shall be agreed between the Company and the Council" (emphasis added).

785. Paragraph 12.4 of Dr Stoneman's proof says that paragraph 6(c) of the Schedule of the 1991 Agreement goes on to clarify that ""**The emphasis will be on the provision of relatively wet areas where "wetland" vegetation and fauna can become established**" (emphasis added).

786. Paragraph 12.5 of Dr Stoneman's proof refers to Schedule 2 paragraph (e) of the Section 106 Agreement dated 8 February 1999. This says: "A detailed restoration plan for the Site shall be submitted to and agreed between the Applicant and the Council by not later than two years prior to the completion of peat extraction on the Site. **The implementation of the restoration plan shall be carried out in accordance with the provisions set down therein***" (emphasis added).*

787. The appellant testified that it can't control the agreement of the Council, somehow implying that the above Clauses were inappropriate or unreasonable. In the Trust's view, Salford was right to reject the "amenity" plan submitted in February 2010 (CD11.47) because it was pretty much the opposite of what they wanted and the "emphasis on predominantly wet areas" required by the 1991 Section 106 Agreement, which in the view of the Trust relates to the whole plan not just to portions of it, was quite simply not there.

788. The appellant might not have been able to control agreement from the Council, but they can certainly control their own actions. The Trust contends, and demonstrated in cross examination of Dr Chris Turner, that the appellant had never engaged in a process that was likely to get remotely close to agreement. They have therefore failed to comply with the relevant Clauses set out above. Submission of their plan, inappropriate as it was shown to be by the Trust under cross examination, simply does not meet the terms of these Clauses. Instead of an emphasis on "the provision of relatively wet areas where "wetland" vegetation and fauna can become established", the plan submitted by the appellant (see CD11.47) refers to "recolonising acid grassland, dry modified bog, woodland and scrub vegetation". It went on to say "....the complete restoration of the site to bog habitat is not proposed or required. Instead the perimeter drain network is to be monitored and maintained."

789. In the view of the Trust, far from the "emphasis on predominantly wet areas" that the 1991 Section 106 Agreement required, the emphasis of the appellant's amenity plan was on predominantly dry areas, and was therefore inappropriate. The reference to maintaining the perimeter network confirms the intention to keep the site dry rather than wet.

790. Finally, the appellant argues that the requirement contained in the current permissions for "minor regrading works" would preclude the construction of bunds etc to facilitate rewetting of the site, and therefore preclude restoration to lowland raised bog. This view was seriously challenged in cross examination of Dr Turner by Salford and Wigan in view of the low height and width of the necessary bunds. In the Trust's view, even if it was deemed that planning permission would be required for the bunding works, this should not in itself be seen as an insuperable obstacle.

791. The Trust's view is that the argument over "minor regrading" is spurious and that the Section 106 Agreements are an enabling mechanism which, given reasonable and responsible behaviour by the appellant, would provide all the flexibility required to start the restoration of the site to lowland raised bog and maintain it for a further five years. After that time period, whilst the restoration would not be complete, the burden of management of the site would be substantially less.

792. To summarise, in the event that the appellant's appeal is refused, the Trust is of the view that the appellant should comply with the requirements of the Section 106 Agreements. The appellant should engage in constructive discussions with the Councils and other stakeholders, and prepare and subsequently implement a plan that meets the reasonable expectations of the Councils. It should not seek to put barriers in the way of implementation especially where those barriers are not seen by anyone except the appellant as barriers of any great significance, and certainly capable of resolution. The Trust notes Mr Burns's assurance under cross examination that he would not "seek to frustrate restoration to bog".

793. The Trust accepts that the aftercare period of five years involved in such a scheme is less than would be desirable. Nonetheless, this should not be seen as a reason for not proceeding with the scheme, or as justification for granting the appeal.

The need for peat and the availability of alternatives

794. Much was made in the evidence of Mr Burns of the projected demand for peat and the difficulty of sourcing raw materials for making suitable peat free alternatives. The appellant's argument appears to be that policy documents such as MPG 13 (CD1.17) published 17 years ago require an "adequate and steady supply" of minerals. The appellant also interprets the Government targets contained in the Natural Environment White Paper (CD3.15) as evidence that the Government intends peat supply to continue till 2030.

795. The reality is that this is a serious distortion of what the Government is trying to achieve, and ignores the more recent policy initiatives which single out peat for special treatment as a mineral because of the damage being done to peat habitats. It also glosses over the sense of urgency and the need for ambitious action that the White Paper articulates. It is clear from those recent documents that the government's key intent is to reduce peat supply rather than to maintain it.

796. The opening paragraph of the draft Framework (CD3.2) sets out the context very clearly: "the overall long-term goal is to work towards reducing to zero the unsustainable use of peat in all horticultural markets in England. By significantly reducing and eventually replacing the use of peat in growing media and soil conditioner products that are sold and consumed in England, the objective is to protect valuable habitats, biodiversity and wildlife, carbon stores and other ecosystem services."

797. Furthermore, the Government has shown leadership at a European level in setting the targets in the Natural Environment White Paper (CD3.15) to reduce peat usage to zero. The target to reduce amateur use to zero by 2020 is the more demanding of the two targets, because it will require a reduction to one third of the current level of peat usage by that date. In cross examination, Mr

Leay did not disagree with the Government's own assessment that this would require a year on year reduction of some 200,000 m^3 per annum, which to put it in perspective is five times the annual output from Chat Moss.

798. The White Paper (CD3.15) is the most up to date statement of policy apart from the draft Framework, and it is the Trust's view that very substantial weight should be given to actions which help to implement the targets contained within it. In this context, allowing the appeal simply because the Chat Moss peat represents an "indigenous" source of peat simply does not make sense, because it ignores the wider context of the need for reduction in peat use.

799. In his evidence Mr Burns said that there was likely to be a shortage of material to manufacture suitable peat free alternatives. However, under cross examination, he conceded that there were large supplies of the raw material for the appellant's Superfyba product which uses a waste material called "oversize" that would otherwise go to landfill. He also stated that further investment would be needed and that the product was more costly than peat.

800. The Trust argues that this demonstrates that the argument is not really about availability but about cost. Mr Burns testified that imported peat added about £6 to the cost of a m^3 of peat. There are actually good reasons why a cost signal such as this could be beneficial as it would reduce the price differential (if there was one) between peat and peat free alternatives, and thus encourage the transition towards peat alternatives.

801. At the inquiry, there was a great deal of discussion about how the market for peat and peat free alternatives might move in the future. There was disagreement on whether or not there would be a shortfall in peat supply in future years. Mr Horsfall in his evidence pointed out that the Chat Moss supply constituted only 1% of the total UK market and therefore its availability or not would have a negligible impact on future outcomes.

802. The position is well summarised by Dr Hockaday in paragraph 71 of his proof of evidence where he says that "the outcome is that there is every prospect that economies of scale of production of alternatives, coupled with government downward pressure on the use of natural peat will lead to increased activity in developing suitable blended alternatives in line with adopted government targets. A weakening of that downward pressure is likely to lead to a reduced investment in alternatives and a slowing of progress away from the status quo."

803. The Trust's overall assessment of the evidence presented is that the overriding Government imperative is to move towards a more sustainable future. The Government has set out clearly, including a detailed impact assessment on phasing out the horticultural use of peat (CD3.19), how it sees the transition from peat to zero peat working, and it clearly expects both the growing media industry and local authorities to contribute towards implementation of this policy through their actions. A continuation of peat extraction at Chat Moss would do the opposite. It would reduce the "downward pressure" on natural peat by securing a cheap source of peat for another 15 years, thus removing the stimulus for innovation and development of alternatives that it seeks to promote.

The impact of further peat extraction on 12 Yards Road SBI

804. The Trust has always been concerned at the impact on water levels, and hence on ecology, of peat extraction in close proximity to the 12 Yards Road SBI that it manages on behalf of Salford. The Trust has managed the site since 2006, and has done a great deal of work there including water level control and scrub removal. This has been reflected in a steady improvement in quality over that time period. However, the difficulties of working next to the eastern perimeter drain which is designed to reduce water levels was illustrated in the evidence of Dr Stoneman, who testified that the observed drop in water levels on the west side of the "managed area" of the SBI in the central section was typical of the unexpected movements of water through peat when there was a significant hydraulic gradient. Implied criticism of the Trust for not "keeping the water in" was also rebutted by the evidence of Mr Thewsey of the Environment Agency who commented that it was not so much up to the Trust to keep the water in, as it was up to the appellant to stop draining it away through their drainage ditches.

805. The detailed and careful evidence from Mr Thewsey contrasts markedly with the evidence put forward by the appellant in its ES dated Nov 2010. On the drainage plan submitted with that statement, the southern ditch, over which there was very detailed discussion during the inquiry, does not even feature. This strongly suggests that the appellant did not provide relevant information, and did not consider the impact of the southern deep drain on the hydrology or ecology of the SBI. Salford and Wigan were therefore right to cite the potential impact on the SBI as a reason for refusing planning permission.

806. There now seems to be broad agreement that the perimeter ditch to the west of the SBI has a hydrological drawdown impact extending to some 20m. For reasons which were not fully explored in the inquiry, the current buffer zone, which has been stripped of vegetation and is used for access to the peat extraction area, is actually wholly within the boundary of the SBI as demonstrated by the evidence of Mr Thewsey. The "managed area" to the east of that buffer zone, which has now been bunded, does not, therefore, represent the whole area in need of protection. The buffer zone, although it provides some buffer to the managed area, is not acting as a buffer to the SBI because it is wholly contained within it.

807. Both Natural England and the Environment Agency are satisfied that the proposal to move the eastern perimeter ditch further to the west and create a genuine buffer zone (which will remain vegetated and will not be used for access) will give adequate protection to the SBI from the western side. However, the evidence of Mr Thewsey was clear that not only would a similar size buffer zone be required to the south of the SBI, but that the evidence from borehole water depths supported the need for one. In addition, it is eminently logical that the permeability of peat to the south is very likely to be similar to that on the west of the SBI, as suggested by Mr Thewsey. The Trust does not believe that there is any good reason supported by hydrological evidence for the absence of a suitable buffer zone to the south of the SBI.

808. The Trust shares the fundamental concern expressed by the Environment Agency regarding the retention of the deep drain to the south of the SBI. The appellant's argument that the drain was present at the time of the designation of the SBI is irrelevant. The deep southern drain is an integral part of the proposal

to maintain the conditions that would be permissive of further peat extraction. Its retention is therefore part of the application and the impact of it needs to be considered, which it clearly wasn't in the ES dated Nov 2010 (CD11.22). The Trust agrees with the Environment Agency that if the drain remains where it is then it will continue to have a deleterious effect upon the nature conservation interest in the SBI. The Trust therefore believes that this harmful impact should be a material concern that needs to be considered in the planning balance.

The impact on carbon emissions

809. The appellant argues that, if planning permission is refused to extract at Chat Moss, they will have to import peat from Scotland, Ireland or elsewhere in Europe and this would increase carbon emissions due to greater transport distances. There are several reasons why this statement is wrong.

810. It does not take into account that in the event of permission being refused, the site must be restored under the terms of the existing permission. Of course, the appellant disputes that restoration to lowland raised bog is even allowed by the permission. It is argued that the site will be restored in accordance with the amenity plan that the appellant submitted to Salford. However, as already discussed in preceding paragraphs and in the cross examination of Dr Turner, the amenity plan is totally inappropriate. It has already been rejected by Salford.

811. However, if the site is restored to lowland raised bog, as the Trust maintains it should be, then not only will the stored carbon on the site be safeguarded, but the site will once again become a carbon sink (once it has revegetated). Even if this extra sequestration was insufficient to offset the alleged increased carbon emissions from the extra transport, the disbenefit of increased transport emissions should be weighed against the benefits to biodiversity that would be secured through early restoration of the site.

812. It does not follow that increased imports of peat will inevitably result from refusal of the appeals. This is a decision that lies wholly with the appellant. The Trust has demonstrated during the course of the inquiry and in the evidence that it has called that there are other options open to the appellant such as ramping up the supply of peat free alternatives, as envisaged by the Government. The commercial viability of those other options will change with time as external factors change. Indeed it is important to recognise that a refusal at Chat Moss would itself move the market in the right direction by making peat more expensive, thus exerting "downward pressure" on peat. The superficial attractiveness of the cheap "home grown" peat with a lower carbon footprint would therefore be offset by the removal of "downward pressure" on peat sales.

813. Taking all this into account, the Trust is of the view that retention of the carbon store at Chat Moss is easily the most important objective with respect to carbon and one which would not be met if the appeals were allowed. The appellant's arguments put forward by Mr Aumônier in respect of carbon leakage do not hold up to robust scrutiny.

Planning conditions if the appeals are allowed

814. Some 36 conditions were discussed in an open session on the last day of the inquiry. Whilst the Trust is satisfied that these conditions (accepting that some are in dispute) would theoretically allow adequate control of activities on the site

if the appeal were allowed and peat extraction continued, this view has to be tempered by the experience in past years of accidental (or more recently very deliberate) breaching of the planning conditions, and difficulty in monitoring and enforcement by Salford and Wigan.

815. The Trust is disappointed that the appellant has withdrawn the offer of a Section 106 Agreement. This withdrawal only increases our concerns that the desired outcomes for the site might not actually be delivered and that in that case there would be no legal redress. There would be a high degree of reliance on good will and a willingness to engage with local stakeholders like the Trust, to ensure delivery. Regrettably, it was clear from the evidence put forward at the inquiry that the past record of engagement with stakeholders has been poor or non-existent, so we have little confidence that this will happen effectively in the future.

Conclusions

816. The following represent the Trust's conclusions from the balance of evidence presented at the inquiry:

- The extraction and subsequent use of peat in horticulture is unsustainable;
- The proposal is contrary to local, national and emerging policies;
- The site is an Annex 1 Habitat, requiring protection under the Habitats Directive;
- The proposals do not provide adequate mitigation against harm to the adjacent 12 Yards Road SBI;
- The existing permissions allow for restoration of the site. Continued extraction will increase the risk that future restoration will not be successful; and
- Increased extraction will prevent the site being restored for 15 years and continue to erode a valuable carbon store.

817. In these circumstances, the Secretary of State is requested to dismiss these appeals.

Submissions of Lancashire Wildlife Trust as to the Framework

818. The Framework was published in its final form on 27 March 2012. It was not therefore possible to refer to its content during the inquiry. Instead it was agreed that any matters pertinent to the inquiry could be dealt with by written submissions. The following represents the Trust's views in relation to the relevance of the Framework to the inquiry.

819. The following identifies those parts of the Framework that are relevant to the appeals and then looks at the reliance of the appellant's arguments on now outdated planning guidance such as MPG13 and MPS1.

820. In the Trust's view, the most relevant sections of the Framework, in relation to the appeals, are the following, which are discussed fully in the subsequent paragraphs:

- Achieving sustainable development;

- Meeting the challenge of climate change;
- Conserving and enhancing the natural environment; and
- Facilitating the sustainable use of minerals.

Achieving Sustainable Development

821. The Framework, in line with all Government policies, reiterates the principles of sustainable development. In the opening statement of the document, the minister says: "The purpose of planning is to help achieve sustainable development". Since the Government has already made clear in other recent documents that peat extraction is unsustainable, it follows that the Framework provides an immediate presumption against peat extraction.

822. DEFRA's document "Impact Assessment on Reducing and Phasing out the Horticultural Use of Peat in England" (June 2011) (CD 3.19) states that: "Peat is an important and effectively non-renewable natural asset and the continued extraction of peat for horticulture at the current rate is unsustainable, also contributing to climate change and destruction of important habitats, biodiversity and archaeology".

823. The White Paper on the Natural Environment (CD3.15) clearly recognises that peat extraction is unsustainable and takes steps to put the industry onto the path of sustainability. It states that "making the transition to peat-free alternatives would put the [horticulture] industry on a sustainable footing …"

Meeting the Challenge of Climate Change

824. It is quite clear that the Government intends the Framework to be a tool to facilitate the fight against climate change. Paragraph 93 of the document states that: "planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions..." and goes on to state in paragraph 99: " local Plans should take account of climate change over the longer term, including factors such as flood risk, coastal change, water supply and changes to biodiversity and landscape."

825. It is clear that in refusing the applications, Salford and Wigan were taking account of climate change in the longer term by protecting the carbon stored in Chat Moss. The value of carbon storage is identified early in the Framework as one of the Core Principles (see paragraph 17). This contrasted with the short term arguments put forward by the appellant at the inquiry which assumed that peat extraction had to continue somewhere in Europe, and effectively proposed another 15 years erosion of the Chat Moss carbon store.

826. In rejecting the applications, the Councils were also correctly taking account of the impact on biodiversity and the landscape. Continued peat extraction would reduce the resilience of the Manchester Mosses SAC, and deny to the local community for another 15 years the opportunity of a site restored to lowland raised bog with all its associated benefits to biodiversity, health and well being.

827. In contrast, restoration of the site as required by the existing permissions, if this was to lowland raised bog as was argued by the Trust at the inquiry), would not only protect the carbon store, but would result in extra sequestration of

carbon by bog vegetation. This was demonstrated both in the evidence of Mrs Hughes and Dr Stoneman.

Conserving and Enhancing the Natural Environment

828. At paragraph 109, the Framework recognises the importance of the natural environment and sets out how the planning system will protect and enhance it. It states: "the planning system should contribute to and enhance the natural and local environment by:

- Protecting and enhancing valued landscapes, geological conservation interests and soils;
- Recognising the wider benefits of ecosystem services;
- Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; and
- Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."

829. The rejection of the applications by Salford and Wigan was completely consistent with all four of the above bullet points.

830. In relation to the first bullet point, the value of peat soils is recognised by the Government's document "Safeguarding our Soils – A Strategy for England and Wales" (CD3.21) which states in the opening paragraph of Chapter 3: "The size of the soil carbon store means that soils have a vital role to play in climate change mitigation. We must prevent the loss of soil carbon to the atmosphere and explore the potential to increase existing carbon stores as a contribution to meeting the Government's climate change targets." It goes on to say: "Over half of the UK's soil carbon is within peat habitats, so a key part of our work on mitigating climate change is the protection of peat soils."

831. In relation to the second bullet point, the Government correctly recognises the benefits of taking an integrated view in consideration of ecosystem services. Peatland systems are an excellent example of how the planning system can achieve the "win, win" objective where multiple benefits are delivered by cessation of peat extraction and restoration to lowland raised bog. The multiple benefits of ecosystem services were explored fully in paragraphs 195 – 269 of Mrs Hughes's proof of evidence and in her evidence to the inquiry. Dr Stoneman's evidence on the stand was also clear on this issue. The benefits include:

- Protection of stored carbon;
- Cessation of carbon loss from bare peat;
- New sequestration of carbon from bog vegetation after restoration;
- Improvements to biodiversity in line with local and national BAP;
- Improved resilience of the Manchester Mosses SAC;
- Improved opportunities for local recreation and enjoyment; and

- Improvements to health and well being of the local community.

832. In relation to the third bullet point, the importance of ecological networks is specifically highlighted. The Manchester Mosses SAC is part of the wider Chat Moss landscape (as identified within the Chat Moss Wetland LRB Complex) with the SAC in turn being part of the EU Natura 2000 Network. The improved resilience of this network that would be achieved by cessation of peat extraction has already been referred to above. Its importance as an Annex 1 Habitat under the Habitats Directive was well established during the inquiry, as was the national importance accorded to it by Natural England. In addition, the reference to "minimising the impacts on biodiversity" reinforces the need to protect the adjacent 12 Yards Road SBI from the acknowledged hydrological pressures. As the Trust made clear in Dr Stoneman's proof of evidence and in submissions, there is an existing impact on the SBI. Thus, the rejection of further peat extraction was completely consistent with the need to minimise the impact on biodiversity both at a local and a national level, and to enhance biodiversity by making the existing networks more resilient.

833. In relation to the fourth and final bullet point regarding remediation, the Trust argued strongly in the inquiry that the existing permissions and associated Section 106 Agreements required restoration where: "the emphasis will be on the provision of relatively wet areas where "wetland" vegetation and fauna can become established." It is clear that the Framework reinforces the expectation of suitable restoration. The appellant maintains that their proposals are the only route to restoration to lowland raised bog, but the Trust has always maintained that the requirement, or at the very least the mechanism for restoration to lowland raised bog, already existed.

834. Paragraph 111 of the Framework states: "planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value." The appellant argued at the inquiry that it should be permitted to continue to use the Chat Moss site for peat extraction because it has already lost its value (because it has been stripped of vegetation and no longer sequestrates carbon). The Trust rejected these arguments and pointed to the high value of the site both in its own right and in conjunction with the other sites comprising the Manchester Mosses SAC, and to the potential contribution it could make by the achievement of restoration at the earliest opportunity (that is, under the existing permissions). The inquiry also heard that Natural England considered the site to be of national importance. It is clear therefore that the site is indeed of "high environmental value" and therefore should not qualify for re-use.

835. Paragraph 113 of the Framework states: "distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks." Both Councils have established biodiversity policies, namely in the UDPs: Salford UDP Policies EN8, EN11 and Wigan UDP Policies EV2, EV2C and MW1D and in the Salford CS Policies SF3F, BG1 and BG2 and Wigan CS CP12. These are directly supported by Natural England's evaluation of the national importance of both the site as an Annex 1 habitat and the Chat Moss complex as a whole. The fact that the site itself is not classified as a SSSI is not relevant, as

the Natural England evaluation (which is quite independent of any SSSI classification) demonstrates. In any event the SSSI classification says nothing about a site's potential value (as discussed by Mrs Hughes in her proof of evidence and in her evidence to the inquiry) or its contribution to wider networks. In the Trust's view, considerable weight should be given to this paragraph of the Framework and the obvious intention within it to preserve the intrinsic value of sites currently subject to peat extraction like Chat Moss.

836. The opening sentence of paragraph 117 of the Framework states: "to minimise impacts on biodiversity and geodiversity, planning policies should:

- Plan for biodiversity at a landscape-scale across local authority boundaries".

837. It is of course precisely this type of landscape scale approach that is referred to in Dr Stoneman's proof of evidence at paragraphs 3.4, 3.5, and 9.3 and which was the subject of a Nature Improvement Area (NIA) bid by the Greater Manchester Wetlands NIA Partnership. The Partnership still exists and is actively seeking further funds to progress the plans developed in the bid. Both Salford and Wigan Councils are part of the Partnership which is led by the Trust. A major component of the plans is the imminent purchase of Little Woolden Moss by the Trust and its subsequent restoration, as referred to in Dr Stoneman's proof of evidence. This initiative on the part of the Trust has been made possible with Heritage Lottery Funding that is secured. Completion of purchase is expected by the end of April or early May 2012. The landscape scale plans for nature improvement are therefore still being delivered, despite the failure to get extra funds through the NIA bidding process. Needless to say, rejection of the appeals would be completely consistent with paragraph 117 of the Framework.

Facilitating the sustainable use of minerals

838. Paragraph 143 of the Framework states: "in preparing Local Plans, local planning authorities should:

- Identify and include policies for extraction of mineral resource of local and national importance in their area, but should not identify new sites or extensions to existing sites for peat extraction"

839. Paragraph 144 goes on to state that planning authorities should: "not grant planning permission for peat extraction from new or extended sites". In this regard the final version of the Framework is unchanged from the draft Framework. It draws a clear distinction between peat and other minerals. The reasons for this are clear. The Government has already declared in the Natural Environment White Paper (CD3.15) its intention to reduce the amateur use of peat to zero by 2020. It recognised in its impact assessment (CD3.19) that this would require a ramping up of peat alternatives, but also made the assessment that existing supplies of peat were sufficient to meet the national need.

840. The Government is clearly satisfied that there are adequate reserves of peat, despite the appellant's arguments to the contrary which fail to take into account the impact that refusal of permission at Chat Moss would have on the market for peat and the stimulus that this would provide for peat free alternatives. The Trust's view is that paragraphs 143 and 144 of the Framework should be interpreted as meaning that no new planning permissions or extensions in time

to existing permissions should be granted. The Trust's arguments have been clearly set out earlier. The Trust's interpretation of the Framework is completely consistent with the Government's stated objective of reduction in peat use.

Planning Guidance Revoked by the Framework

841. The appellant in its evidence to the inquiry, and in the planning applications, leant heavily on two particular planning documents. First, MPS1 (CD1.12) which advocates the need for an adequate and steady supply of indigenous minerals, but which did not exclude peat. Second, MPG13 (CD1.170, produced in 1995, which gave an overview of peat provision, recognised concerns about peat extraction, but failed to recognise the impact of peat extraction on climate change. It was produced long before the Government recognised the unsustainable nature of peat extraction and the need to reduce its use to zero.

842. Both of these documents are now superseded by the Framework, which is supported by the Natural Environment White Paper (CD3.15) and other documents that recognise the impact of peat extraction, and seek to instigate urgent action to reduce peat use. It follows that arguments put forward by the appellant that relied on the support of those particular guidance documents no longer stand. For instance, it is no longer valid to argue that peat should be treated in exactly the same way as other minerals of strategic national importance, as the Trust has made clear elsewhere. There is no stipulation in the Framework that the planning system should provide an "adequate and steady supply" of indigenous peat. On the contrary, the emphasis is on a much more "joined up" approach which removes previous inconsistencies, and allows the planning system to deliver the government's stated intent of improving biodiversity, reducing carbon emissions, reducing peat use and stimulating the production of sustainable peat free alternatives.

843. Paragraph 4 of MPG 13 (CD1.17) states that: "the Government believe that there continue to be market demands for peat which should, in part, continue to be met by peat extraction from sites in Great Britain." There is no such stipulation in the Framework so Government Policy is now consistent with the targets in the White Paper (CD3.15) and the need to "drive action and provide clarity about the long term direction of policy." By revoking MPG 13 and the other planning guidance, the Trust believes that the Government has provided the clarity which was signposted in the White Paper. All its policies are now aligned to see an end to peat extraction and peat use, and an encouragement to the horticultural industry to innovate in the production of non peat alternatives.

Conclusion

844. The Framework, and the associated revocation of previous planning guidance, means that Government policy in relation to the unsustainability of peat extraction, and the need to reduce peat use, is now fully integrated. It therefore provides material support for the decision by Salford and Wigan Councils to refuse planning permission for further peat extraction at Chat Moss.

845. It is clear that the Government intent is to prevent further peat extraction and to stimulate the production of sustainable alternatives to peat. The Framework provides the clarity that was previously lacking because of the outdated planning guidance, and therefore gives substantial extra weight to the case for dismissal of the appeals.

Further Submissions of Lancashire Wildlife Trust as to the Framework

846. In these paragraphs, the Trust addresses points raised in the appellant's submissions of 19 April 2012 on the Framework.

Minerals Policy

847. Paragraph 4 of the appellant's submissions point to the statement in para 143 of the Framework relating to sourcing minerals supplies indigenously. Whilst it may well be an objective of the Framework to source minerals indigenously, it is clear that the document draws a distinction between peat and other minerals. The Government's over-riding aim for peat is to reduce its use to zero.

848. Paragraph 7 of the appellant's submission argues that: "the Framework cannot be read as precluding the grant of permissions for time extensions relating to sites that have been previously extracted; to do so would result in the failure to achieve the policy objective set out in paragraph 142 within the Growing Media market". The appellant has set great store by this argument that peat should be provided from indigenous sources, but the Trust's view is that this argument has little weight because it is clear that the Government's overriding aim is to reduce peat use to zero. The issue of supply from indigenous sources is clearly aimed at strategically important minerals, as opposed to peat, and is therefore only of secondary importance in relation to peat, and then only during the transition period from current peat use to zero peat use. In the case of horticultural supplies of peat for the amateur market, that target is zero by the year 2020.

Sustainable Development

849. Paragraphs 13 and 14 of the appellant's submissions argue that because it is possible to identify gains under each of the headings of sustainable development then the development must be sustainable "within the terms of the Framework". Paragraph 15 then goes on to argue that "refusal of the appeals is unsustainable in Framework terms."

850. The Trust completely rejects this distorted view of what the Framework regards as sustainable or unsustainable development. A much more reasonable interpretation of paragraph 8 of the Framework would be that there should be **net overall** economic, environmental and social gains. In other words, it is a question of balancing the gains and losses under each aspect of sustainable development. The appellant has not done this, instead they have emphasised the gains that they have identified but not balanced them against the losses that the Trust and others have identified.

851. Sections 16 and 17 of Dr Stoneman's proof of evidence look at the benefits of continuing peat extraction and set them against the benefits of cessation of peat extraction. In the Trust's view, the benefits of immediate cessation through rejection of the appeal far outweigh any benefits that the Appellant has identified in favour of allowing the appeal. The Trust does not believe that there is any credible case to be made for continued peat extraction at Chat Moss to be considered as sustainable development.

852. In addition, as the Trust has pointed out previously in respect of the Framework, the Government have already stated that peat extraction is

unsustainable. This is the driving rationale behind the targets to reduce peat use to zero

The Presumption in Favour of Sustainable Development

853. The appellant argues that because there is a presumption in favour of sustainable development, the "objectively assessed need" of supplying more English peat should be met unless: "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole;". First, the Trust believes that the appellant has not demonstrated any such "objectively assessed need". On the contrary, Dr Hockaday in his evidence showed how refusal of the appeals to extract more peat could have the beneficial effect of stimulating the market in peat alternatives, which would be a significant step in the right direction towards meeting the Government's targets.

854. Secondly, the Trust believes that it was demonstrated at the inquiry that the adverse impacts of continued peat extraction would substantially outweigh any benefits. There is therefore no merit in the appellant's arguments, and the presumption in favour of sustainable development in the Framework should not be applied because the development is quite simply unsustainable.

Conclusion

855. In conclusion, having considered the arguments put forward in the appellant's submission on the Framework, the Trust has no reason whatsoever to alter its previously expressed view that the Framework provides material support for the decision by Salford and Wigan Councils to refuse planning permission for further peat extraction at Chat Moss, and gives substantial extra weight to the case for dismissal of the appeals.

Views put to the inquiry from Third Parties/Interested Persons

856. **Ms Keeley**, Member of Parliament for Worsley and Eccles South. Ms Keeley supports Salford in its decision to refuse planning permission for the applications to extend the period over which peat extraction is to take place. She points out that a very large number of local residents objected to the planning applications. Ms Keeley supports them in their objection. Early in 2010 she went on a walk across Chat Moss which had been organised by local residents. She was concerned, and indeed angry, at the impact of peat extraction on Chat Moss. Some areas had seen over extraction, whilst attempts to return other areas into bog had not been successful. (Inspector's note: for the full statement made by Ms Keeley to the inquiry see ID13).

857. Ms Keeley makes the point that Chat Moss is a tract of countryside of great value to those living in surrounding urban communities, particularly Irlam. In addition to its agricultural importance, Chat Moss has great potential for informal recreation for those living nearby. The mosslands are important for nature conservation value and particularly for their birdlife.

858. The proposals, if approved, would delay returning the site to lowland raised bog. The Trust has a track record of acquiring peat workings and restoring them to lowland raised bog. This work opens up sites for public access as well as restoring valuable habitats. Ms Keeley supports the Trust in this work and backs the Trust in its wish to restore the appeal site. The appeal proposals are short

sighted and do not address the bigger picture of the effect that continued peat extraction would have on the mosslands, the amenity of local people who would be denied access to this open space and on climate change from the release of carbon.

859. **Ms Rimmer**, North West Campaigner with Friends of the Earth. Ms Rimmer said that Friends of the Earth objected to the appeal proposals. She said that the appellant's case in respect of a continuing need for peat was flawed. The appellant's argument displays a lack of regard for national targets aimed at zero peat use and ignores the availability and improvement of peat alternatives. The proposals are contrary to local planning policies which indicate that further peat extraction should not be permitted. Local policy is in line with national policy which is aimed at phasing out the use of peat in the UK.

860. Ms Rimmer argues that further peat extraction at Chat Moss would lead to loss of biodiversity and would be contrary to the urgent action that needs to address climate change. It is pointed out that peat bogs are significant stores of carbon which when disturbed by extraction would release vast amounts of CO_2 into the atmosphere. She argues that the UK's remaining mosslands need to be managed and suitably restored to ensure that their carbon sequestration potential is realised. (Inspector's note: for the full statement made by Ms Rimmer to the inquiry see ID14).

861. **Mr Carr**, local resident living between Chat Moss and Holcroft Moss. He objects to the appeal proposals. Mr Carr says that the experience of mineral extraction on and around the mossland over many years has not resulted in the restoration benefits for the community that were originally claimed. Many of the sites have been used for the landfilling of waste. There has often been scant regard for planning controls. In the case of the appeal proposals, it is doubted whether the proposed restoration benefits will be realised and this would be for a mineral that is no longer needed. (Inspector's note: for the full statement made by Mr Carr to the inquiry see ID15).

862. **Mrs Moss**, local resident living close to Astley Road, one of the main access routes onto Chat Moss. Mrs Moss objects to the appeal proposals. Her primary concern is the effect of traffic taking peat away from Chat Moss. Extraction of peat for a further period would prolong the impact of heavy vehicles on local roads and on those living nearby. She points out that the roads and tracks onto and across Chat Moss are narrow and poorly surfaced; they were never designed to take 38 tonne wagons full of peat. The wagons pose a danger to walkers, horse riders and to motorists using these single track routes. They often have to go onto the verge to let wagons pass. The verges and surfaces of the tracks across the mosslands are in a poor state of repair because of the traffic associated with peat working. (Inspector's note: for the full statement made by Mrs Moss to the inquiry see ID16).

863. **Mr Steel**, local resident living in the neighbouring community of Irlam. He objects to the appeal proposals. Mr Steel says that continued extraction of peat would prevent the early restoration of this part of Chat Moss to lowland raised bog. He considers that this is the appropriate habitat for the appeal site. Restoration to a lowland raised bog would lift the spirits of visitors to this special landscape which sits cheek by jowl with the built-up areas of Salford and Manchester. Mr Steel points to the rich bird life found on Chat Moss. He

considers that an appropriate restoration of the lowland raised bog habitat, as is happening on the Twelve Yards Road SBI and the Trust's other managed site at Cadishead Moss, would enhance the bird life of the moss lands. (Inspector's note: for the full statement made by Mr Steel to the inquiry see ID17).

864. **Mr Edwards**, local resident living in Elmholme on Astley Moss. He objects to the appeal proposals on a number of grounds. He points out that the continued extraction of peat would lead to the further loss of habitats for birds, mammals, insects and plants. Mr Edwards says that the continued extraction of peat close to his property will cause noise and disturbance from the machinery used to milling the peat and also generate large volumes of dust which in the past has coated windows, cars and garden furniture.

865. Mr Edwards points to the problems that peat extraction has had on the structural integrity of his property. He maintains that peat extraction from the adjacent land in recent years has led to the shrinkage of the ground in and around his property so that the foundations are now exposed and the property sits well above ground levels. He has had to take remedial action to make his property habitable, for example, by re-connecting services and by installing new steps so that the front door can still be used. Mr Edwards considers that continued working of peat would worsen these problems. (Inspector's note: for the documents submitted by Mr Edwards in support of his evidence, including photographs of the problems of shrinkage in and around his property, see ID22. See also the correspondence between Joseph Metcalf Limited, the former peat operators on the appeal site, and Mr Edwards at ID23 and ID24).

Written Representations

866. As a result of the letters of notification, 51 representations were received by the Planning Inspectorate. Some 48 representations were from local residents or members of the public living further afield who object to the appeal proposals. The grounds of objection include the damage that would be done by continuing to extract peat on this site. It is pointed out that peat bogs are increasingly rare habitats supporting important bird, mammal, insect and plant species. Another ground of objection points to the important role of peat bogs in storing large amounts of carbon. If continued extraction of peat was permitted it would release large quantities of CO_2 into the atmosphere, thus frustrating efforts to mitigate the effects of climate change. Other objections point to peat extraction being unnecessary as there are now non peat alternatives available for use in the horticultural industry and also to the appeal proposals being contrary to national and local policy which seek to phase out the use of peat in horticulture. (Inspector's note: see copies of the letters of notification at OD1 and OD2 and the bundle of representations received at OD3).

867. Three representations were received from public bodies and statutory undertakers. **Network Rail** does not object to the proposals. Attached to its letter is previous correspondence that it has had with the planning authorities which indicate that Network Rail's concerns as to the effect of extended peat extraction on the Liverpool to Manchester railway line revolve around the width of undisturbed land around the line and the possible effects of dewatering of the peat. (Inspector's note: see copy of Network Rail's representation at OD3).

868. The representation from **Natural England** includes background information as to its involvement in this site and with the appeal proposals. This background

explains that both the area where peat has been milled and the re-wetted area, the SBI, are degraded raised bog, which is a Habitat Annex 1 and UKBAP habitat. It goes on to explain that Natural England's interest in this site has been to protect the bog and water vole habitat and also to realise, through the planning system, the biodiversity potential of the peat extraction site for the future, through appropriate restoration. (Inspector's note: see copy of Natural England's representation at OD3).

869. Natural England's representations also include a summary of the correspondence it has had with the appellant and the two planning authorities. Natural England explains that following receipt in September 2011 of the appellant's additional hydrogeological information with its proposal for a 60m buffer zone along the western boundary of the SBI, its previously expressed concerns as to the hydrogeological and ecological impacts on the western side of the SBI have been addressed. However, Natural England says that the additional hydrogeological information shows a draw down of 50m along the southern boundary of the SBI with no buffer zone proposed. Accordingly, Natural England considers the existing lowland raised bog and water vole population within the SBI are still not adequately protected and on this basis it maintains its objection. (Inspector's note: see the additional hydrogeological information at CD11.49. Also see the appellant's response to Natural England dated 11 November 2011 as part of the bundle of representations etc at OD3).

870. The other strand to Natural England's objection is its concerns as to the details of the proposed phased restoration of the site. These concerns include risk of foot drains entering the sand beneath the peat thereby unintentionally draining the peat and also allowing nutrient rich water to well up. The concerns also include very limited phased restoration in the extraction areas near to the SBI and the needs for additional peat to form the network of bunds and dams to form wet areas. (Inspector's note: see phased restoration and mitigation phasing at CD11.48 and Natural England's representation at OD3. See also the appellant's response of 11 November 2011 to the concerns raised about the proposed phased restoration at OD3).

871. The **Environment Agency** indicates that the additional hydrogeological investigations and the phased restoration and mitigation report submitted in September 2011 address the majority of the concerns previously expressed by the Agency. However, the cross section DD submitted with the hydrogeological investigations shows that there is a significant draw down at the southern edge of the SBI which is due to the drainage channel along the route of a disused railway track. The Agency confirms that what is needed along the southern boundary of the SBI is a similar buffer zone to that being proposed for the western boundary. Until that is done, the Agency maintains its objection. (Inspector's note: see phased restoration and mitigation phasing at CD11.48 and additional hydrogeological information at CD11.49. See also the Environment Agency's representation at OD3).

Conditions

872. At the inquiry there was considerable discussion between the parties as to the conditions that should be attached to the planning permissions if the appeals were to be allowed. The discussion led to a considerable degree of agreement between the parties. The result is that the majority of suggested conditions are

agreed. However, there were a number of conditions on which the parties agreed to disagree. These were partly the result of the different stances taken by the parties on certain matters, such as the need for a buffer zone along the southern boundary of the SBI. (Inspector's note: see OD10 for the list of conditions submitted by Salford. The list is substantially agreed between the parties but also indicates the areas of dispute with the appellant. See OD11 for Wigan's suggested wording of condition 1 in respect of the appeals within Wigan. See OD12 for the appellant's suggested wording for the disputed conditions and also a new condition setting out the plans, drawings and other documents which define the appeal proposals).

873. The suggested conditions have been considered in the light of the guidance given in Circular 11/95 "The Use of Conditions in Planning Permissions". This explains that as a matter of policy, conditions should only be imposed where they satisfy all of the tests set out in the Circular. The tests are that conditions should be necessary; relevant to planning; relevant to the development being permitted; enforceable; precise; and reasonable in all other respects. The conditions that meet these tests and which should be imposed if the appeals are allowed are appended at Annex C. In my consideration of the conditions suggested by the parties in the following paragraphs, I have used the same numbering of the conditions as the parties. (Inspector's note: see paragraph 14 of Circular 11/95, this is at CD2.1).

874. **Condition 1** sets out the application boundaries to which any new planning permission should relate. This is necessary as it defines the extent of the permissions. The wording of the condition is different between Salford and Wigan to reflect the different application boundaries. **Condition 2** sets out a time limit for extraction, restoration and aftercare. This is also necessary. It seeks to secure the restoration and aftercare of the site within a time frame to realise the potential of the site to become lowland raised bog. **Condition 3** establishes time limits for the removal of plant, machinery and other paraphernalia associated with peat extraction. This is needed in the interests of realising the potential to become lowland raised bog and also to avoid visual clutter within the countryside.

875. **Condition 4** is needed. It protects the amenity of those living nearby and along routes into and out of Chat Moss by establishing hours of operation for peat extraction, storage and removal from the site and by restricting these operations to weekdays only. There is a dispute about whether maintenance of machinery should be permitted at weekends and on Bank Holidays. I take the view that in order to safeguard the peace and quiet of local residents on these days, only emergency maintenance should be permitted. Routine maintenance should be something that is done as a matter of course during weekdays. In the interests of protecting the amenity of those who live nearby, the noise limits for operations within the site set out in **Condition 5** and the noise management and monitoring measures set out in **Condition 6** are necessary.

876. To protect those who live nearby from dust emanating from operations within the site, **Condition 7** requires a dust management plan to be in place. All parties sought advice on the wording of the last sentence of the condition. I share their reservations about this sentence. It lacks the necessary precision to enable enforcement action to be taken, if this is needed. I have suggested a simpler, clear wording of this sentence in Annex C. To safeguard watercourses

and groundwater across the area from pollution, **Condition 8** requires oil and fuel storage to be within bunds on an impervious surface. As such, it is a necessary control. In the interests of highway safety and to safeguard the amenity of those living along roads and tracks across Chat Moss, **Condition 9** identifies the route to be taken by vehicles going to and from the site. This is needed; it should prevent other, less suitable routes being used.

877. **Condition 10** is disputed. In the version put forward by Salford and Wigan, the access to the extraction area which is the subject of appeal 3 should avoid any buffer zones to the west and south of the SBI. The appellant disagrees with the need to have a buffer zone to the south of the SBI as made clear in the appellant's evidence. For reasons spelt out in my conclusions, I consider that a buffer zone should be provided south of the SBI. Bearing this in mind, I take the view that the version put forward by the two Councils is necessary to avoid machinery and vehicles damaging this buffer zone. **Condition 11** is concerned with the removal of permitted development rights. As the paraphernalia often associated with mineral operations can litter the countryside, this condition serves a purpose. **Condition 12** requires areas for the storage of peat to be identified and for all peat to be duly stored within these areas. This condition is needed to avoid numerous ad hoc piles of peat from adversely affecting this tract of countryside. Likewise, **Condition 13** is needed to protect the appearance of the locality by setting a maximum height on the stored piles of peat.

878. **Condition 14** restricts soils or other materials being brought onto the site. This is necessary to safeguard the nature of the peat substrate. The importation of soils etc could make the restoration to lowland raised bog more difficult. **Condition 15** restricts the method of working the peat. This is important as other methods have not been assessed in the ES and these could have an effect on the duration of working and possibly on adjoining areas, including the SBI. **Condition 16** requires a scheme to be submitted which provides for the phasing of extraction and restoration operations. This is necessary if there is to be early restoration of parts of the site where extraction has come to an end. **Condition 17** is also needed. It provides for the submission of annual updates to the phased working plan. This is to ensure that changes in operations are reflected.

879. **Condition 18** is needed. In the interests of ensuring that the site can be restored to lowland raised bog, this condition requires at least 2m depth of peat to be retained, including 0.5m of ombrotrophic peat. There is one area of dispute and that is over whether auger surveys should take measurements at 50m centres, as is suggested by the Councils, or 100m, as is proposed by the appellant. Given the likely variations in the surface of the underlying geology, it is important that as detailed picture as possible is gained of peat depths and this is more likely to be provided by a survey at 50m centres. **Condition 19** requires that if a survey identifies that the minimum depth of peat has been reached then extraction shall cease and restoration begin. This is a necessary step to providing the proper restoration of the site.

880. **Condition 20** requires the carrying out of a survey of the invert level of perimeter drains. This is an important and necessary requirement. Deepening of perimeter drains has the potential to significantly alter the hydraulic regime of the site which could have a major impact on adjacent sites, including the SBI. **Condition 21** requires the submission of details as to how invert levels within perimeter ditches will be maintained and monitored. This is needed for the same

reason as given for the previous condition. There is disagreement as to the wording of **Condition 22**. Essentially, the condition has two arms: to require a survey of existing foot drains and to require the depth of the foot drains to be maintained at certain levels with regard to the mineral substrate and the surface of the peat. There is no dispute about these elements of the condition; nor is there any disagreement that the condition for the same reason as the previous two conditions. The disagreement revolves around the requirement of the Councils that approval should be given for altering the position of foot drains. I am far from being convinced about this requirement and prefer the appellant's version of the condition which is more concise, clearer and likely to be more easily enforced.

881. **Condition 23** is concerned with the infill of any redundant perimeter drains and the provision of new perimeter buffer zone drains. The condition is necessary to maintain the hydraulic regime of the site. If this regime is not maintained there could be a significant effect on adjacent sites. There is a dispute over the interval at which surveys should be carried out. In order to obtain a full picture of the existing drains I consider the appellant's proposal for surveys to be conducted at 100m centres to be unlikely to deliver sufficient detail. Rather, this should be left to the appellant and the planning authorities to agree the distance between centres.

882. **Condition 24a** is concerned with the provision and maintenance of a buffer zone on the western side of the SBI. It is agreed that this is needed to protect the ecology and hydrology of the SBI. There are two areas of disagreement as to wording. One is over the scale of the plan for the buffer zone. I consider that the Council's requirement as to scale is more appropriate; it will provide the necessary level of detail. I also consider it necessary to provide details of planting or seeding of the bunds to ensure their stability.

883. **Condition 24b** is concerned with the provision and maintenance of a buffer zone on the southern side of the SBI. The appellant disputes the need for this buffer zone. Instead, the appellant suggests mitigation measures being carried out in the southern part of the SBI. For reasons set out in the conclusions, I consider that a buffer zone should be provided along the southern side of the SBI to safeguard the SBI's hydrology and ecology. Accordingly, I consider that the condition as put forward by the two Councils is to be preferred to the appellant's condition.

884. There is a wide measurement of agreement between the parties as to the need for **Condition 25** which provides for a scheme to monitor the hydrology of the buffer zones and to provide for remediation if there are any untoward drops in water levels. The only disagreement is that the appellant does not consider that the condition needs to refer to a buffer zone along the southern edge of the SBI, but as already mentioned I have concluded elsewhere that such a buffer zone is needed. The condition is required to ensure that over time the buffer zones continue to protect the hydrology and ecology of the SBI.

885. To safeguard the hydrology and ecology of the SBI when extraction in adjacent areas has lowered levels to well below that of the SBI, **Condition 26** requires terracing to be carried out to worked out areas and areas undergoing restoration. The area of dispute relates to the width of the terraced buffering to be provided along the southern and western edges of the SBI. I can see no reason why the

area of the terraced buffering needs to be narrower for the southern boundary of the SBI than the western boundary. **Condition 27** requires the submission of a scheme for the restoration of the site to a lowland raised bog. This is necessary if the nature conservation value of the site is to be eventually realised. The only disagreement is whether there should be a requirement to provide details of planting or seeding of the bunds to ensure their stability. As already mentioned, I consider this to be necessary in order to provide a degree of stability to bunds.

886. **Condition 28** requires the submission of updated restoration plans at certain intervals during the working life of the site. This is needed to ensure that the restoration of the site reflects any changes to the working and restoration of the site. **Condition 29** requires the provision of an aftercare plan for a 15 year period. An extended period of aftercare is critical to ensure that a lowland raised bog can be realised. To ensure that the site can be successfully restored and that extraction operations are proceeding as intended, including any changes to drainage, **Condition 30** requires an annual monitoring report to be submitted. This is needed if the restoration of the site is take account of any changing circumstances. **Condition 31** establishes a date when the planning authorities are notified of when restoration works are completed in any part of the site, whilst **Condition 32** requires aftercare to start after the completion of restoration. Both are necessary to ensure that the site is restored to lowland raised bog.

887. As active de-watering of the site by means of pumping etc could significantly alter the hydraulic regime of the site and have an impact on the hydrology and ecology of adjacent areas, **Condition 33** prohibits such operations. **Condition 34** prohibits the deposit of waste within the site. This is important. Waste could affect the peat substrate and hinder the restoration of the site. **Condition 35** seeks the establishment of a liaison group to oversee the restoration and aftercare of the site. It is important for the restoration and the long period of aftercare to be overseen by not only the planning authorities but others with experience in nature conservation. It would also be helpful if the liaison group included members of the local community so that those living near the site can have some “ownership” of the restoration scheme.

888. To ensure the necessary structural stability of the Manchester to Liverpool railway line, **Condition 36** requires no peat to be worked within 30m of the railway fence along the northern boundary of the site. The appellant has suggested **Condition 37** with a list of plans and documents which it is claimed define the appeal proposals. This condition was not discussed at the inquiry and I am not aware of there being any subsequent conversations between the appellant and the two planning authorities as to this condition. I am not convinced of the need to identify these plans and documents. The plans showing the application boundaries and identified in the first condition are sufficient to define the extent of the proposals. Other matters, such as peat thickness and proposed hydrology monitoring, are dealt with by other conditions.

889. I have dealt above primarily with the need or necessity for the conditions. I am satisfied that the conditions meet the other tests of Circular 11/95 insofar as they are, amongst other things, relevant to the development being proposed, pertinent to planning and enforceable.

890. Proposed heads of terms for a planning obligation were set out in the ES. The heads of terms were repeated at paragraph 7.9 of the appellant's statement of case. However, no planning obligation was forthcoming from the appellant.

Conclusions

891. From the foregoing submissions and representations, I am on the view that the main considerations in this case are:

- Relevant policies of the development plan and the weight to be given to emerging planning policy;
- Relevant national planning policy and other sources of national policy;
- The need for peat and the availability of non peat alternatives;
- Effect of the proposals on climate change;
- The nature conservation status of the site;
- Restoration of the Site – existing situation and the proposals;
- Effect of the proposals on the hydrology and ecology of the adjacent Twelve Yards Road SBI;
- Effect of the proposals on the amenity of those living nearby in terms of noise and disturbance, dust, traffic and the stability of properties;
- Adequacy of the Environmental Statement; and
- Overall conclusion, including assessment of the proposals against development plan and national policies.

892. In the following paragraphs, the figures in brackets refer to earlier paragraphs of my report which contain material on which I have based my conclusions.

Development Plan and Emerging Policy

893. The Development Plan for the purposes of these appeals includes the SUDP, WUDP and RSS (see SUDP policies at CD6.2-6.12, WUDP policies at CD6.15-6.32 and RSS policies at CD4.1-4.6). These documents are given statutory force by Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which requires that planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. (23, 557 and 723)

894. Whilst the SUDP and WUDP were adopted six years ago, the policies within them which are relevant to these appeals have been saved for the time being by Direction of the Secretary of State. In effect, they are saved until they are superseded by the adoption of documents forming the LDF. (23, 557 and 723)

895. Although the Localism Act 2012 (see CD7.1) provides for the abolition of RSSs, this is to be undertaken only after an assessment has been made of the implications of abolishing individual RSSs. No announcement has yet been made by the Secretary of State as to when an assessment is to be undertaken into the abolition of the RSS for the North West. Accordingly, I take the view that the RSS for the North West remains a component of the Development Plan for the time being.

896. The Development Plan contains three broad strands of policy which are of relevance to these appeals. The first strand is concerned with biodiversity. SUDP Policies ST13 and EN8; WUDP Policies EV1, EV2, EV2B, EV2C, EV2D and

EV2E; and RSS Policies DP7, EM1 and EM1(B) seek to protect and enhance environmental assets, including nature conservation assets. Policies at individual planning authority level, particularly SUDP Policy EN11 and WUDP Policy EV2C point to the importance of the habitats within the Mosslands. EN11 is more specific. It says that the focus for the protection and restoration of lowland raised bog within Salford is the Moss heartland on Chat Moss. It goes on to say that development which does not prevent restoration to lowland raised bog will be permitted. (25, 26, 27, 29, 30, 33, 34, 560, 723 and 724)

897. The second strand of development plan policy is concerned with rising to the challenge of climate change. SUDP Policy ST14 and RSS Policies DP1 and DP9 point to the importance of considering the global impact of development and ensure that development contributes towards reducing CO_2 emissions. (25, 33 and 559)

898. The third strand is concerned with mineral extraction. SUDP Policies ST17 and M2; WUDP Policies MW1 and MW1E; and RSS Policy EM7 seek an appropriate contribution towards the supply of minerals, whilst requiring unacceptable impacts to be avoided and the achievement of high standards of restoration. Specifically in respect of Chat Moss, WUDP MW1D says that peat extraction on the remaining fragments of the Remnant Mossland will not be resisted but goes on generally to require peat workings to be restored to lowland raised bog. (25, 31, 34, 125, 126, 127 and 723)

899. A number of emerging documents seek to take forward local policy. The draft SCS has gone out on a round of public consultation and is thus at a very early stage in the process that will eventually lead to its adoption (see SCS policies at CD6.1). The draft WCS and draft Greater Manchester Joint Minerals DPD are slightly further along the path leading to adoption in that both have commenced their examination in public (see WCS policies at CD33-6.39 and the Joint Minerals DPD at CD5.2). Given the early stage in the plan making process, only a little weight can be attached to the emerging plans. Their policies may change as they go through the examination in public process. In particular, little weight can be given to the SCS which has not yet reached the examination in public stage. Nevertheless, the emerging plans provide a clear indication of the direction of travel that planning authorities wish to see policy take. (35, 36, 40, 42, 131, 132 and 133)

900. The emerging plans continue the three themes in the development plan which are relevant to these appeals and which have been identified above. However, the emerging plans go further in emphasising the nature conservation importance of Chat Moss and the need to restore peat workings within Chat Moss to lowland raised bog. The emerging plans also take a much more restrictive stance towards the grant of planning permission for peat extraction. (35, 38, 39, 41, 42, 131, 132, 133, 562, 563, 725 and 726)

901. In terms of seeking to safeguard biodiversity, SCS Policies BG1 and BG2 and WCS Policies CP9 and CP12 are of note, whilst SCS Policy SF3F and BG1 and also WCS Policy CP9 point to the biodiversity importance of Chat Moss and emphasise the need to achieve restoration of areas within Chat Moss to lowland raised bog. (37, 38 and 41)

902. In respect of reducing the emissions of CO_2 and helping to reduce the impact of climate change, WCS Policy CP14 is of note. (41)

903. With regard to mineral related development, and particularly proposals to extract peat, SCS Policy MN1, WCS Policy CP16 and Greater Manchester Joint Minerals DPD Policy 6 all take a more restrictive stance towards the extraction of peat. The former indicates that extensions to peat working times, either in terms of physical extensions or an extension in time, will not be permitted except where the extraction would secure restoration to lowland raised bog. Before further peat extraction is permitted, WCS Policy CP16 requires consideration to be given to the nature conservation and climate change implications of proceeding. In respect of the latter document, this establishes criteria for deciding whether planning permission should be granted for peat extraction: the site needs to have been previously worked for peat, the only peat that is to be extracted is that needed for restoration and the only restoration is to lowland raised bog. (39, 41, 42, 563 and 726)

904. There is one other local policy document which is of particular note and that is the document entitled "Mossland Project – The Vision" (see CD5.1). This has been produced by the two planning authorities represented at this inquiry and also by Warrington Borough Council. Whilst it does not form part of the Development Plan, it sets out the nature conservation importance of Chat Moss within the wider context of the mosslands which stretch across the areas of three local authorities. (462 and 661)

905. I shall return to the performance of the proposals against the Development Plan and emerging plans.

National Planning Policy and Other Sources of National Policy

906. One of the material considerations to be taken into account in the determination of planning proposals is national planning policy. National planning policy, and in some cases non planning sources of national policy, provide the context in which local policy is drawn up and also provides the wider context in which planning applications are considered.

907. The Framework issued in late March 2012 provides national planning policy on a wide range of topics, with the exception of waste. It replaces previously issued policy in the form of PPSs, PPGs, MPSs and MPGs, including MPG13 issued in July 1995 which previously provided guidelines on peat provision in England and the place of alternative materials (see MPG13 at CD1.17). (43)

908. At the heart of the Framework lies a presumption in favour of sustainable development. The document explains that the purpose of the planning system is to assist in achieving sustainable development. It goes on to explain that there are three aspects or dimensions to sustainable development which can give rise to different roles for the planning system: an economic role in terms of building a strong economy; a social role in developing strong and healthy communities; and an environmental role in protecting and enhancing the environment. (45, 46, 326, 338, 568 and 729)

909. The Framework contains three strands of policy which are of relevance to the appeals. One strand is concerned with tackling the challenge of climate change. Paragraph 17 indicates that planning can support the transition to a low carbon future, whilst paragraph 93 points to the important role that the planning system has in securing reductions in the emission of greenhouse gases and reducing the impact of climate change. (47, 48, 328, 331, 569, and 824)

910. Another strand is the safeguarding of the natural environment. Paragraph 17 says that planning can make a contribution to the conservation and enhancement of the natural environment, whilst paragraph 93 indicates that in the determination of planning applications the aim should be the conservation and enhancement of biodiversity. It goes on to say that this should be done by applying certain principles. Where significant harm cannot be avoided or satisfactorily mitigated then planning permission should be refused, but development should be permitted where the primary objective is to conserve or enhance biodiversity. (47, 48, 325, 334, 572, 575, 735 and 828)

911. The other strand of relevant policy is provided by paragraphs 143 and 144 of the Framework. The former sets out guidance to planning authorities in drawing up local policy on mineral extraction. Although planning authorities are required to identify nationally and locally important minerals and policies for their extraction, new peat sites or extensions to existing peat extraction sites should not be identified. The latter sets out considerations to be taken into account by planning authorities in determining mineral planning applications. Whilst it points out that great weight should be given to the benefits, including economic benefits, of mineral extraction, it again makes the point that planning permission should not be granted for new or extended peat sites. (49, 50, 316, 317, 318, 320, 324, 587, 591, 592, 747, 748, 838, 839 and 840)

912. In respect of nature conservation and climate change, the Development Plan accords with the Framework. In its stance on not granting planning permission for new or extended peat sites, the Framework takes a more restrictive stance than is taken by the Development Plan or indeed was taken by previous national planning policy in the form of MPG13. Despite this difference in emphasis, the Framework makes it clear that Development Plan policies should continue to be given weight for a year following the Framework's publication in the event of there being a limited degree of inconsistency with the Framework. (335, 336 and appendix to Salford's submissions on the Framework on pages 99 to 106)

913. The stance taken by the Framework in respect of peat extraction was explained at page 43 of the Impact Assessment into the draft Framework in the following terms: "as peat is a non-renewable resource, the extraction of peat for horticulture is unsustainable and contributes to greenhouse gas emissions and the destruction of rare habitats" (see the Impact Assessment of the draft Framework at CD3.3). (371, 623 and 624)

914. The more restrictive position taken by the Framework towards the grant of planning permissions for new peat extraction sites or extensions to existing sites stems in large measure from Government policy published in June 2011 in the White Paper entitled "The Natural Choice: Securing the Value of Nature" (see CD3.15). It is clear that the drawing up of emerging local policy in respect of both the imperative in restoring peat sites to lowland raised bog and restricting the grant of planning permissions for peat extraction has also been influenced by the White Paper. This is what I would expect. It explains the direction of travel that emerging policy is taking. I note that the Inspector dealing with the examination in public of the Greater Manchester Joint Minerals DPD has found no soundness issue in respect of peat policies. This suggests that there is no significant conflict with national planning policy. But this conclusion was reached before the publication of the Framework. In any case, for reasons already explained, emerging local policy is at an early stage in the process leading to its

adoption and in these circumstances can be accorded little weight. (130, 133, 337, 562, 563, appendix to Salford's submissions on the Framework on pages 107 to 110, 725 and 726)

915. The White Paper is the result of a prolonged and detailed research and consultative process on, amongst other things, peat extraction and use. White Papers are often used as a basis for a Bill to be put before Parliament (see some of the documents issued in the run up to the publication of the White Paper, in particular CD3.13, 3.14 and 3.17). The publication of White Papers offers Governments an opportunity to gather reaction from different quarters before going forward to present the policies contained in the White Paper as a Parliamentary Bill. Accordingly, I consider that the White Paper forms a clear and up to date statement of Government policy in respect of the value of the natural environment. As such, it should be given very substantial weight. (798)

916. Before turning to what the White Paper has to say about the extraction and use of peat, I note the executive summary explains that the Government's objective is for this generation "to leave the natural environment in England in a better state than it inherited". The White Paper also points to a healthy natural environment as being important to contributing towards economic growth, prospering communities and the well being of individuals. Thus, the White Paper is at one with the Framework in putting sustainability at the heart of its approach to the natural environment.

917. References are made to the then to be published draft Framework in paragraphs 2.33 to 2.37 of the White Paper. This is a further indication that the approach taken in the White Paper accords with the Government's intentions as to the future direction of national planning policy.

918. In terms of what the White Paper has to say about peat, paragraph 2.64 acknowledges that as peat is formed over many thousands of years, "it is effectively a non-renewable resource". It goes on to recognise that making the transition to peat free alternatives would place the horticultural industry on a sustainable footing. This recognises that currently the horticultural industry, through its use of peat, is not sustainable. The paragraph acknowledges that the industry has made progress in reducing the use of peat but makes the point that the market is still only 57.5% peat free. To assist the industry in making further reductions, the Government is introducing a new voluntary partnership. (64, 369, 429, 547, 607 and 823)

919. Paragraph 2.65 emphasises that its long term aim is for peat use to be reduced to zero. The White Paper makes it clear that the achievement of this aim would, amongst things, contribute to the protection of important lowland habitats and safeguarding significant carbon stores. (64 and 430)

920. To achieve the aim of zero peat use, paragraph 2.66 of the White Paper sets out a number of milestones. By 2015 it is proposed that there should be no Government or public sector purchase of peat; by 2020 there should be a voluntary phasing out of the use of peat by amateur gardeners; and a final voluntary phase out of the use of peat by professional growers of fruit, vegetables and plants by 2030. (65, 431 and 797)

921. I shall return to national policy as contained in the Framework and the White Paper as the various implications of the proposals are discussed.

The Need for Peat and the availability of non peat alternatives

922. At the heart of the appellant's case for planning permission to be granted for an extension in the duration of peat extraction on the appeal site is the claim that there is an on-going need for peat extraction from indigenous (that is, English) sites to meet the likely demand from the horticultural industry for peat during the period in which the use of peat is to be phased out.

923. An important document that looks at the supply and demand for peat in England is the December 2010 DEFRA document entitled "Consultation on Reducing the Horticultural Use of Peat in England" (see CD3.14). It makes the point that the Government's overarching goal in relation to peat is to reduce its use by the horticultural industry to zero. In the time frame for phasing out the use of peat, paragraph 4.5 envisages that the horticultural industry will use a further 17.4 million m^3 of peat, which is reckoned to be about 6 years worth of peat at current levels. It goes on to opine that "any future peat requirements should therefore be easily accommodated from existing extracted sites and….that new sites will not need to be opened up to meet expected market demands". (115, 381, 386 and 618)

924. Given the Government's aim to reduce the use of peat to zero, paragraph 4.5 of the document goes on to say that planning authorities will need to take into account the phasing out of the use of peat and will thus "not grant new applications for extraction". (115, 386 and 618)

925. The appellant makes much of this being a consultative document, but it is a statement of Government intentions as far as policy regarding peat is concerned. Within a relatively short timescale, the document influenced both the White Paper (see CD3.15) and the Framework which contain statements of Government policy on peat. (116, 610 and 611)

926. Much is also made by the appellant of the concentration of policy generally on the use of peat, that is, the demand for peat products, but the Framework also places a restriction on new sites being granted planning permission. This is tackling the supply side of the peat question. Taken together, I consider that the White Paper and the Framework represent a co-ordinated approach to dealing with both the use of peat and its extraction.

927. The appellant points out that paragraph 144 of the Framework, which translates the Government's wider objectives in respect of the use of peat into national planning policy, refers not to new applications for peat extraction being granted, but to new sites and to extensions to sites not being granted planning permission. The appellant makes the point that the appeal site is not a new extraction site, but one where peat has been worked for some years. (116 and 320)

928. The two Councils argue that as the period in which peat extraction on Chat Moss was permitted has expired, the site should be treated as a new site. To reinforce this point, reference is made to paragraph 41 of MPG13 (see CD1.17) which regards the new sites being found from sites that have been considerably damaged. However, MPG13 no longer provides national planning policy in respect of peat. It has been superseded by the Framework. In any case, MPG13 was written in an entirely different context; when there was seen to be a need to

bring forward to meeting a need for peat for the horticultural industry. (386, 388, 406, 591 and 626)

929. As paragraph 144 of the Framework is written there is no reference to the point made in the DEFRA document of December 2010 that no further peat extraction planning permissions should be granted. As worded, the Framework relates to new sites or to extended sites. In my view, the common sense interpretation of the Framework must be that it relates to **physically** new sites or to **physical** extensions of existing sites. It is quiet on whether any new planning permissions can be granted for peat extraction.

930. This does not mean that sites that have been previously worked should necessarily receive planning permission to extend the duration of peat extraction. Each case needs to be considered on its merits taking account to any arguments as to need for the peat and having regard to the impact on climate change and biodiversity from continued extraction. I shall turn to the impact on climate change and biodiversity in subsequent sections of my conclusions.

931. With regard to the appellant's argument that there is a continuing need for peat extraction, I note that the Framework does not set out a requirement for there to be a landbank for peat. The appellant's planning witness said that this is because peat is not listed within the Framework as a mineral of national or local significance. It is more than this. It is because the Government's stated policy as set out in its White Paper is that the use of peat in the horticultural industry is unsustainable and that the horticultural use of the peat should eventually be reduced to zero. Thus, there is no requirement in the Framework for new sources of peat supply to be found. (119)

932. There is also no requirement within national planning policy for identified deposits of peat to be safeguarded for later extraction. This contrasts with the stance taken within the Framework of requiring planning authorities to safeguard known locations of minerals of national or local importance to avoid them being sterilised by other proposals. Again, it is because the use of peat is regarded by the Government as being unsustainable. (390)

933. Indeed, the actions of the Government point in a wholly different direction. In this respect, I note that the Government has funded the acquisition of the peat workings at Bolton Fell in Cumbria for nature conservation purposes. This site, which has the benefit of planning permission, is capable of producing some 200,000 m^3 of peat per annum. (In contrast, it is estimated that the appeal site would produce some 40,000 m^3 of peat per year). If the Government was at all concerned at the adequacy of peat supplies in England and considered that it was necessary to maintain a supply of peat from English extraction sites, it is difficult to envisage that it would fund taking such a significant source of peat out of the market. (169, 416 and 417)

934. The appellant argues that the loss of existing sites such as Bolton Fell means that the claim made in the DEFRA document of December 2010 that there are sufficient sites to support the transition to a peat free scenario no longer holds true. Given the policy stance of releasing no new peat sites within England, the loss of sites such as Bolton Fell is likely to result in the accelerated working of existing sites elsewhere or the take up of imports. I deal with the repercussions of increased imports below. As for accelerated working of other UK sites, this is what the appellant proposes to do if these appeals are dismissed. The appellant

referred at the inquiry to two Scottish mosses that it owns and would work using new extraction techniques which would enable considerable quantities of peat to be taken irrespective of weather conditions, although I accept the appellant's point that the output from these sites would not make up for the alleged shortfall. Both these sites have extant planning permissions for peat extraction and are currently mothballed. (169, 173 and 176)

935. The appellant has made much of national policy being focused on the indigenous or domestic supply of minerals. The inference being that English needs should first and foremost be met from English sites. This may have been the case under previous national minerals policy in MPS1 (see CD1.12), but this has been superseded by the publication of the Framework. There is nothing in the Framework or the White Paper to suggest that the priority is for peat to be met from English sources. Rather, the emphasis is on seeing the supply of peat from English sites dwindle as new sites and new extensions to existing sites are not granted planning permission. It is a reflection of the unsustainability of peat use and extraction. (93 and 94)

936. In any case, the assertion that English demand for peat should be met from English sources misses the reality of what has been happening in the market for many years. As the DEFRA Impact assessment into reducing and phasing out of peat in England (see CD3.19) points out in paragraph 5, English businesses and consumers in 2009 used five times as much peat as English peat sites produced. There is nothing within any policy document to suggest that the Government is minded to reverse this situation. To do so would be to reverse established policy to phase out the use of peat and, by not granting planning permission for new or extended sites, to phase out peat extraction in England. During the phasing out of the use of peat in England, the market will continue to be reliant on imports from elsewhere in the UK and from further afield. This is the reality of the situation. (79, 80, 382, 384, 390, 612, 613, 635, 638 and 639)

937. The appellant maintains that the use of peat is much greater than the DEFRA document of December 2010 recognises and that non peat alternatives are not likely to come forward in the quantities and of the quality needed to supplant peat in the horticultural industry. This is a view of despair which I do not share. (136, 137, 138, 139 and 141)

938. The target for the elimination of the use peat by local authorities and the Government has been all but met. Considerable progress has been made on the reduction of the use of peat by amateur growers and by the professional horticultural industry. I accept that much more needs to be done. In part, this is a matter of education, to make amateur growers in particular more aware of the consequences of using peat. In part, this is a matter of encouraging non peat alternatives to come forward. (82 and 375)

939. Although there was much talk at the inquiry of the market need for peat, the reality is that through its policies the Government is seeking to manipulate the market. This is because of market failure. It is recognition that allowing market forces to prevail would just lead to continued demand for peat to be used in horticulture. The problem is that the price of peat does not reflect the true environmental costs arising from the extraction of peat. One way in doing so would be for some form of tax on the use of peat, an idea floated by the appellant at the inquiry. This argument was deployed in support of an innovative

non peat product that the appellant has developed, Superfyba. Although there is no sign that the Government is actively contemplating this, there is nothing in the various documents that have been released in recent years by DEFRA to suggest that this has been ruled out. (386, 391, 392 and 616)

940. Another way is to erode the price differential between peat and non peat alternatives. Although a significant amount of peat is provided from UK sources, about 2/3rd of all peat used in the United Kingdom is imported, mainly from Eire but also from northern Europe, mainly the Baltic States. As the appellant fairly points out there is nothing in EU legislation that would enable the Government to prevent the importation of peat from EU sources. The appellant made the point at the inquiry that English peat is the cheapest available to the English consumer followed by peat from Scotland. Imported peat is the most costly, by dint of the transportation costs that are incurred. These costs inevitably have to be represented in the costs of the imported peat to UK consumers. As the appellant again fairly conceded at the inquiry, those providing peat and peat based products to the English market try to avoid imported peat because of the greater costs involved. As supplies of peat from English sources reduce, the cost of supplying peat from elsewhere and the price paid for peat by the consumer are likely to rise. If sources of English peat become exhausted sooner rather later then this could lead to increased demand for peat from elsewhere in the UK and overseas but this will have the inevitable effect of pushing up the cost of peat. (171, 177, 190, 383, 384, 391, 612, 613 and 800)

941. As for non peat materials, I note that these have increasingly come onto the market in recent years, particularly as soil improvers. I recognise that there are difficulties associated with the development and expansion of the production of a number of the peat substitutes. The importation of disease is causing many trees to be felled and burnt rather than being used to provide bark. This could well affect the supply of bark in the years to come. Likewise, competition for wood fibre for use in energy generation is also likely to affect the availability of wood fibre as a peat substitute. I also accept that substantial investment has yet to be seen to being made in the Indian sub-continent and elsewhere in facilities that involve the production and transportation of coir. However, there is unlikely to be significant investment in the production and distribution of coir if there is market uncertainty over the demand for coir. The restriction on peat supplied from English sources would help to raise the cost of peat for reasons set out above. Providing new supplies of peat from sites in England would act as a disincentive to investing in new coir capacity. (148 to 157 and 409)

942. It seems to me that the use of peat substitutes from by-products of waste recycling offers much more promise both in terms of the quantity and quality of peat substitutes. The DEFRA document of December 2010 (see page 15 of CD3.14) points to the role that waste materials can make in the production of non peat substitutes. There are fiscal measures in place to reduce the amount of waste that is landfilled. In an effort to avoid the high and rising rate of landfill tax, local authorities provide facilities for green waste to be deposited and in areas also arrange for the collection of green waste from residential properties. With increasingly more challenging targets to divert waste away from landfill, more green waste is likely to become available. (142 to 144, 418 and 419)

943. I note what the appellant has to say about green compost being included in peat alternatives in low concentrations because of raised electrolyte levels in the

compost. However, the volumes of green waste coming forward provide the potential for this to be used in large quantities in non peat substitutes. What is needed is for investment in more facilities to store and process green waste. This investment may not materialise if further peat extraction is permitted. (142 and 143)

944. The appellant has produced a peat substitute which is marketed as Superfyba. This is produced from the oversized elements of green waste, such as branches of shrubs and trees, which would otherwise be landfilled. Apparently, it is a product that is capable of being widely used in the market as a growing media. It is a costly technology and requires care to avoid contaminants in the waste. Nevertheless, the appellant has invested in one manufacturing plant, but has shelved plans for two other plants for the time being. The introduction of Superfyba is an illustration of what can be done. The block to further investment will not be lifted by allowing more peat to be extracted from English sites. As already mentioned, the appellant acknowledges that such sites represent the lowest cost for suppliers of peat and peat products to the market. (157, 158, 419 and 799)

945. The position is not the pessimistic one painted by the appellant at the inquiry. The DEFRA document of July 2010 on monitoring the horticultural use of peat (see CD3.13) illustrates the progress that has been made in moving away from using peat in horticulture. It reports that over the past decade the amount of peat used in the horticultural sector has decreased, whilst the use of peat alternatives has significantly increased. More needs to be done, but the switch from peat to peat substitutes is not going to be assisted by bringing onto the market new supplies of cheap English peat. (409)

946. In conclusion, given the thrust of national policy to reduce the use of peat by the horticultural industry over time to zero there is no national planning policy imperative for new sources of peat supply to be brought forward. The release of peat resources in Chat Moss would frustrate the move away from peat to non peat media and discourage the development and take up of peat substitutes. Accordingly, I am not convinced that a compelling need argument has been advanced to support the appeal proposals.

The Effect of the Proposals on Climate Change

947. The reasons for refusal refer to the site being a carbon sink, that is, an area where carbon is sequestered in the accumulation and breakdown of vegetative material at the surface and then gradually stored in the layers below as the decomposed material settles and is compacted. The only part of the site that is a carbon sink is the Twelve Yards Road SBI where part of the site at least is in water and is gradually being restored to an active bog. The planning conditions that have been agreed between the parties would ensure that the SBI would be untouched by restoration operations. (274, 438 and 647)

948. With the vegetation occupying the surface of the site having been removed some time ago when extraction operations began, the main part of the site over which planning permission is now being sought for a continuation of extraction is a carbon store. It does not have any ability to sequester carbon. In its current state with foot drains criss-crossing the site and deep perimeter drains surrounding the site, the site is in reality a slowly depleting carbon store. (274)

949. The importance of peat bogs or mosses as carbon stores is recognised in the Natural England publication "England's Peatlands: Carbon Storage and Greenhouse Gases" (see CD3.16). In the foreword to the document it makes the point that peatlands are natural carbon reservoirs and across the world they store twice as much carbon as all the world's forests. It goes on to say that in storing large amounts of carbon within the soil, peatlands prevent the carbon from being released to the atmosphere as CO_2. (435)

950. The White Paper (see CD3.15) cites the ability of peatlands to hold large quantities of carbon and the effect on climate change of releasing this during extraction as one of the driving forces behind the Government's policy of reducing the use of peat in horticulture to zero.

951. There is little disagreement that the continued extraction of peat from the appeal site would lead to emission of CO_2 to the atmosphere. The drying of the peat through de-watering and the subsequent removal of the peat by milling would lead to the considerable loss of stored carbon. Further losses would occur over a longer period as the peat was spread on gardens or used in greenhouse or the potting up of plants and gradually dried and decomposed. Paragraph 12.37 of the November 2010 version of the ES acknowledges that ultimately the extraction of the peat would result in emissions of 12,100 tonnes of CO_2 for each year of extraction. This figure is not disputed by the Councils. It represents a significant level of CO_2 emissions. (439)

952. The stance adopted by the appellant's climate change witness was that if extraction of peat from Chat Moss did not go ahead then there would be increased importation of peat from Estonia. This would lead to greater emissions of CO_2 as any peat extracted in Estonia would be transported by road through northern Europe to the Channel ports and then by road to Lincolnshire where the appellant would process the peat. I recognise that this scenario would result in higher CO_2 emissions than if the equivalent quantity of peat was taken from Chat Moss. (192, 194, 415, 437, 628 and 809)

953. Unfortunately, this argument was undermined by the witness representing the appellant company who said that if the appeals at Chat Moss were turned down, two Scottish mosses that it owned and were currently mothballed would be brought into use. The new extraction technology that has been developed by the appellant would allow these mosses to be worked when wet. Thus, the appellant's requirement for peat could be met from sites within the UK rather having to import peat from much further afield. In this case, the likely saving in CO_2 from harvesting peat from Chat Moss would be less than compared to the Baltic option. Moreover, a second extraction technology that has just been tested by the appellant would not only allow wet Scottish mosses to be fully exploited but would also have the advantage of being a low user of energy compared to convention milling techniques. This makes any CO_2 savings of using Chat Moss less certain. (193, 197, 437, 630, 631 and 632)

954. There is another flaw in this argument. It assumes that if peat extraction was not to go ahead at Chat Moss it would be replaced by an equivalent quantity of peat from elsewhere. However, it is possible that some of the peat at least could be replaced with peat substitutes. (416 and 813)

955. The appellant's argument is that if climate change benefits resulting from a cessation in peat extraction would be counter balanced by activity elsewhere,

then this would negate those benefits and justify a further period of extraction. Whilst decisions need to have regard to global repercussions when looking at climate change, the appellant's stance downplays the Government's stated ambition to be an international leader in environmental issues. As the Government says in paragraph 5.2 of the White Paper (see CD3.15) to influence international policies on the environment, we must first show "a real commitment in England to protecting and improving our environment". This strongly points to the Government's avowed aim of acting on problems in this country as an example to others as to what can be done. (200, 640, 641, 642 and 643)

956. The appellant's other argument with regard to CO_2 is that its proposed afteruse is to lowland raised bog and once this afteruse is successfully established the site would change from being a carbon store to a carbon sink. The appellant makes the point that if the appeals were dismissed there is little likelihood of the site being restored to lowland raised bog under the existing planning conditions and obligations. The Councils argue that the site can be restored to lowland raised bog under existing conditions and obligations and that to allow the appeals would be to delay the establishment of lowland raised bog and thus the sequestration of carbon. This is a matter that I turn to later. (623)

957. In the carbon analysis presented by the appellant's climate change witness there is an assumption that if the appeals were dismissed then the site would be restored to agriculture. There is no basis for this assumption. Whilst there was a debate about the meaning of amenity in terms of the existing Salford conditions, there has been no serious suggestion that this means agriculture. As intensive agriculture can be a major source of CO_2 emissions, this has led to the appellant significantly exaggerating consequences of a dismissal of the appeals in respect of CO_2 emissions.

958. In addition, the appellant's climate change witness has looked at whether non peat alternatives would have a greater or lesser impact than peat but he concludes that the most recent data contained in the report produced for DEFRA entitled "A Preliminary Assessment of the Greenhouse Gases Associated with Growing Media Materials" (see CD3.22) is inconclusive.

959. The witness explains that if peat was considered to be biogenic carbon, that is, similar to woodland which follows a relatively short life cycle of growing and then being harvested rather than a fossil carbon, such as coal which has a life cycle measured in millions of years, then if a biogenic carbon, according to the witness, peat may have less of a carbon footprint than peat substitutes. Guidance provided by the IPCC (see page 6 of Mr Horsfall's rebuttal evidence) places peat as a fossil carbon. I see no reason to depart from this established international position. The sequestration of carbon at Chat Moss has occurred over thousands of years. This places peat in its life cycle as a mineral carbon rather than biogenic carbon with its much shorter life cycle. (441 and 646)

960. In conclusion, it is not disputed that the continued extraction of peat from Chat Moss would release substantial amounts of CO_2 into the atmosphere. I am not convinced by the appellant's argument that if extraction was not to take place at Chat Moss it would inevitably lead to peat extraction elsewhere that would generate higher levels of emissions. This argument pays insufficient account of non peat media coming forward in the period that peat extraction is proposed on

Chat Moss. Whilst the proposal is to restore the site eventually to lowland raised bog, which when established would have the potential to sequester carbon, there would be a lapse of time before this happens. There are other restoration options that are likely to result in the sequestration of carbon without the emission, in the short term, of CO_2 from peat extraction, but this is a matter to be discussed later.

961. The loss of the carbon stored in the site through continued peat extraction and the difficulties that this would pose in meeting the challenge of climate change would be contrary to policies within the Development Plan which seek to minimise greenhouse gas emissions and to have regard to the need to minimise the impact of development on climate change. The pertinent Development Plan policies in this regard are SUDP ST14 and RSS DP1 and DP9. It would also be contrary to paragraph 93 of the Framework, which also seeks to reduce greenhouse gas emissions.

The Nature Conservation Status of the Site

962. The appeal site enjoys no formal international designation as an SAC and no formal national designation as a SSSI. The north-east corner of the appeal site which was worked some years ago by traditional peat extraction techniques is now being managed by the Trust and is being restored to a lowland raised bog. This area, which has a local designation of SBI, is excluded from the area which is now being proposed for continued peat extraction. The proposed peat extraction area has no local nature conservation designation. (257)

963. In paragraph 5.1 of the SoCG (see OD4), the parties agreed that the area supports land cover types, including that found on the site, which are 'Habitats Directive Annex I Habitats Degraded [Raised] Bogs still capable of natural regeneration…'. This is important. The European Habitats Directive 1992 (see CD8.1) is transposed into UK legislation by dint of the Habitat Regulations (Conservation of Habitats and Species Regulations 2010) (see CD7.2). The Directive confers certain obligations on member states, including the "maintenance or restoration of European protected habitats and species listed in the Annexes…". (442)

964. Annex I of the Directive identifies habitats of importance for nature conservation across Europe. Annex I lists a large number of European natural habitat types including a number of priority habitats, that is, habitat types which are in danger of disappearing. Degraded lowland raised bog is listed as one such habitat. Guidance on the definitions of European habitats covered by the Directive is provided in the UK by the JNCC in the document "Interpretation Manual of European Habitats" (see CD8.2). The JNCC definition of degraded raised bog still capable of restoration is provided within its habitat account (see CD3.24). (449, 450 and 650)

965. The Directive requires member states under Article 11 and 17 to monitor and report on the favourable conservation status of the Annex I resource. Additional guidance on these requirements has been provided. This indicates that this provision, that is, the monitoring and reporting on favourable conservation status, is not restricted to Natura 2000 sites and data needs to be collected both in and outside the Natura 2000 network to achieve a full appreciation of conservation status. (In the UK, Natura 2000 sites are designated as SACs).

966. By definition, Annex I habitats are rare and threatened habitats. Degraded raised bogs have an unusual status because they often encompass habitats that are not semi-natural and Annex I recognises that they require restoration. The DEFRA document "Reducing and Phasing Out of the Horticultural Use of Peat in England" (see CD3.19) indicates that only 5% of the original English lowland raised bog remains. The maps attached to the JNCC note on degraded raised bog (see CD3.24) indicate that the distribution of this habitat type has a very restricted geographical distribution. Outside of Scotland and Northern Ireland, this habitat is largely confined to the North West of England and West Wales. (450)

967. The appellant has since retreated from the agreed position as set out in the SoCG. This is to be deprecated. It smacks either of a SoCG being entered into with undue haste and with insufficient thought or of an unfortunate attempt to bolster a position at the inquiry which was adopted at a late stage. A SoCG is important. It is a means of identifying matters that are not in dispute, thereby saving valuable inquiry time. (265 and 442)

968. The appellant indicated at the inquiry that in the absence of the appeal scheme, in which it is proposed to restore the site to lowland raised bog following the cessation of peat extraction, "the land is not an Annex I habitat". (262 and 263)

969. In coming to his view, the appellant's ecology witness has concluded that to qualify as an Annex I habitat a site needs to have a package of restoration and management which would ensure peat has the expectation of re-establishing vegetation with peat forming capacity within 30 years. However, the maps within the JNCC note on degraded raised bog shows that this habitat resource, although limited geographically, is found on a much greater number of sites than those which have received statutory designation, that is, as SACs. It would be naïve to conclude that all, or the majority of all, the UK qualifying degraded lowland raised bog have the resources and management plan in place for restoration within the next 30 years. (262, 263, 451, 453, 454, 650, 651 and 652)

970. The JNCC definition indicates that qualifying land uses include, amongst others, conifer plantations, scrub woodland and bare peat. It would be unreasonable to expect a conifer plantation, which could have a life of 60 years, to be prematurely put to the axe just to meet their Annex I habitat status. (453, 454, 651 and 767)

971. The appellant's ecology witness indicates that it is the ease of restorability which is the critical factor in the identification of an Annex I habitat. This echoes what is said in the ES (see CD11.22). I acknowledge that the ease of restorability cannot be readily excluded from Annex I habitat qualifying factors. The relevant guidance is not unequivocal on this point. The 30 year expectation of re-establishing vegetation with peat forming capability is clearly mentioned in the JNCC note on degraded raised bog (see 'site selection rationale' in CD3.24) as an SAC site selection criterion. However, it could also be construed as a criterion for Annex I status itself (see the first sentence of the second paragraph of CD3.24 and also the Natura 2000 interpretation manual, see CD8.2). (260, 261, 443, 454 and 652)

972. Having said that the ease of restorability cannot be clearly excluded from the qualifying factors of Annex I habitat, the appellant's view that a package of measures needs to be identified is taking the argument too far. I consider that Annex I identification in this case depends upon the physical potential of the habitat to be repaired, so as to meet the test of being still capable of natural regeneration, rather than the procedural matter of whether a package of measures being in place at any particular point in time to achieve such a repair. (260, 261, 443, 454 and 652)

973. I note that in correspondence, Natural England has confirmed that the site is an Annex I Habitat. The appellant says that Natural England has offered no reasons for expressing this view as to the status of the site. However, Natural England was responsible for publishing Habitat Action Plans for the UK's most threatened habitats in the 1990s. These describe the status of each habitat, outline the threats they face and set targets and objectives for their management. (266, 456, 655, 659 and 868)

974. Subsequently, Natural England published an annex to the Habitat Action Plan to deal with lowland raised bog (see CD3.26). Within this document are a number of plans showing the location of lowland raised bog sites, including sites enjoying some form of designation. In my view, it is highly unlikely that Natural England would have advanced a view as to the status of a site without having the requisite information. Natural England is the Government's statutory adviser on nature conservation and its views should be accorded substantial weight. (457 and 659)

975. Accordingly, I take the view that as bare peat, the proposed area of continued peat extraction qualifies as an Annex I Habitat degraded raised bog capable of restoration. It is also a UKBAP habitat. It follows that the appellant has undervalued the current nature conservation value of the site.

Restoration of the Site – existing situation and the proposals

976. There is no disagreement between the parties that the restoration objective for the site should be to eventually restore it to lowland raised bog. Restoration to lowland raised bog would prevent further leakage from the carbon store and would eventually enable the site to begin to sequester carbon, that is, to act as a carbon sink. Restoration to a lowland raised bog would also bring back a rare and threatened habitat.

977. Restoration to lowland raised bog is supported by the Development Plan and by emerging policy. As far as the Development Plan is concerned, SUDP Policy EN11 seeks to protect land which has the potential to become lowland raised bog and supports proposals which would not prevent restoration to lowland raised bog, whilst WUDP MW1D seeks the restoration of peat workings to wetland, with a preference for lowland bog. Emerging policy continues the same theme. SCS Policy SF3F recognises that Chat Moss offers major opportunities for restoration to lowland raised bog. Although SCS Policy MN1 turns its face against further peat extraction, it makes an exception where extraction would secure restoration to lowland raised bog. (27, 31, 37 and 39)

978. The nub of the disagreement between the parties is as follows. The appellant maintains that the only certain way to achieve a restoration to lowland raised bog is to continue extraction and then to restore to lowland raised bog in line with

modern, enforceable planning conditions. The two Councils maintain that there are risks involved with the further extraction of peat and the appellant's restoration proposals. The Councils maintain that appropriate restoration can occur without delay through the conditions on the existing planning permissions and the planning obligations that are in place. I will deal with the latter point first. (232 and 684)

979. The mechanism for securing restoration of the site are contained in the conditions on the two planning permissions in Wigan and the three planning permissions in Salford (see CD9.1 to 9.3 for the Salford planning permissions and CD10.1 and 10.2 for the Wigan planning permissions) and also by the planning agreements that are in place in both Wigan and Salford (see CD9.4 and CD10.3 for the agreements). There are no material differences between the restoration requirements of the conditions and agreement between Wigan and Salford. The conditions require that following peat extraction, the land will be subject to minor regrading and drainage alterations necessary to enable there to be restoration to amenity use. The conditions also require there to be a 5 year aftercare programme to bring the site to the required standard for amenity use. (207, 468 and 474)

980. Insofar as restoration is concerned, the two agreements provide for a programme of works to secure the future of the site for nature conservation purposes and for the works to have regard to the need to provide areas where tree planting can be carried out, natural regeneration of vegetation allowed to take place and where the emphasis will be on the provision of relatively wet areas where wetland vegetation and fauna can become established. The two agreements also provide for management of the natural history of the site with long term management and monitoring arrangements put in place. (208, 470 and 665)

981. Although the restoration requirements stipulated in the conditions and agreements are, to all intents and purposes, the same in Wigan and Salford, a radically different view is taken between the two Councils as to whether there is a requirement to provide lowland raised bog. Wigan maintains that there is and Salford takes a contrary view. (209, 210, 211, 212, 472, 473 and 696)

982. In my interpretation of the existing conditions and obligations, I lean to the Wigan stance. My view is that Salford's officers have taken an unduly limited view of what can be required under these conditions and agreements. There are two physical elements involved in creating an environment where it is possible to begin the process of creating a lowland raised bog, a process that is likely to take a long time. These elements are the blocking of drains to create water logging and regrading to create bunds in which to contain the water within these wet or waterlogged areas. (207, 468 and 696)

983. These two elements are provided for by the existing conditions and agreements. The conditions require drainage alterations and minor regrading. The agreements require there to be a programme of works to secure the site for nature conservation purposes to enable, amongst other things, the natural regeneration of vegetation to take place with an emphasis on the provision of relatively wet areas. The conditions and agreements are clear and capable of being enforced. (207, 208, 468 and 696)

984. The appellant maintains that the numerous bunds needed for restoration to lowland raised bog would require planning permission and should be assessed within the environmental impact assessment process. I am not persuaded by this argument. The bunds involved are low and narrow. In this respect, I saw that the bunds separating the bodies of water on the land south of Twelve Yards Road where the appellant has carried out informal restoration are narrow and low and do not come up above the level of the surrounding ground. Only the tips of the bunds are above the level of the water. As such, I am extremely doubtful as to whether they require planning permission or their impact, such as it is, requires to be formerly assessed. (224, 225, 226, 475, 476, 685 and 686)

985. The appellant's planning witness argues that the creation of the bunds is a major operation, but this was contradicted at the inquiry by the appellant's restoration witness with many years experience in the peat industry. He explained that the bunds were created by an operator using mechanical plant to scoop up and then place and compact the peat in low mounds. This is hardly a major operation. The bunds involved in the creation of lowland raised bog are not of the size and proportions of bunds which can be found around sand and gravel workings or landfill sites to form noise attenuation barriers and the like. These are much bigger engineering operations. (686)

986. The appellant pointed to the many kilometres of bund that would be needed to create the areas in which lowland raised bog could be created, but the figures cited by the appellant have to be seen in the context of a very large site. (222, 223 and 476)

987. The proof of the pudding is that the informal restoration carried out by the appellant on about 12 ha to the south of Twelve Yards Road has been done without recourse to applying for planning permission or getting its impact formally assessed. There are bunds around the perimeter of the much larger Twelve Yard Road SBI but I am not aware that they have been the subject of an application for planning permission. The appellant has undertaken a project to restore 5 ha of former peat workings at Gardrum Moss near Falkirk to lowland raised bog. There has been no mention of the appellant seeking planning permission for the construction of bunds at this site. (18 and 477)

988. I accept the appellant's point that the term 'wetland areas' is capable of covering a wide range of habitats, including boggy meadows, bogs, marshes and ponds. A reasonable interpretation of 'wetland areas' is that it encompasses a range of habitats, including lowland raised bog. I acknowledge that the agreements do not stipulate what should be the extent of particular wet or damp habitats or in what parts of the site these should be provided, but I would expect this to be a matter for discussion and agreement when the programme of works necessary to enable particular habitats to become established is submitted in accordance with the existing agreements. This would include the creation of lowland raised bog. I note in terms of a discussion as to what habitats should be provided; the appellant said at the inquiry that it would not seek to frustrate the Councils' wish for restoration to lowland raised bog. (217, 472, 478, 687, 688 and 695)

989. Given that the term 'wetland areas' encompasses a range of damp or wet habitats, I would envisage that restoration under the existing conditions and agreements would lead to the establishment of a kaleidoscope or matrix of

habitats, from drier areas where trees and scrub dominate to damp, wet and waterlogged areas where different plant communities can become established, including bog species. (698)

990. Such a matrix of habitats is to be found even on sites where full restoration to lowland raised bog is being undertaken. On Twelve Yards Road SBI and on Cadishead Moss, which are both managed by the Trust, there is a mix of transitory and permanent habitats, including waterlogged areas where sphagnum and cotton grass are to be found to heath and acid grassland on the tops of bunds and in drier areas and also scrub in dry areas. It is this matrix of habitats which makes these places so fascinating. They are somewhere where a wide range of plant, insect and bird species can be found. (16)

991. At the inquiry there was much debate about the meaning of the word 'emphasis' in the agreement. A commonsense interpretation put forward at the inquiry is that it simply means majority. The word can also mean something being dominant or prominent. Read in the context of the agreements, the requirement is thus for wetland vegetation to cover the majority of the site or for wetland areas to dominate. This is important. The re-wetting of the site to create wetland areas would prevent further loss of carbon and would also lay the foundation of much of the site to be developed over time as a lowland raised bog. (472 and 666)

992. There was also a debate at the inquiry about the word 'amenity' in the conditions. I note that Schedule 5 of the Town and Country Planning Act 1990 contains the following definition of an aftercare condition: "a condition requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition namely (a) use for agriculture; (b) use for forestry; or (c) use for amenity." The Schedule then goes on at paragraph 3(4) to say that "where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or plants." (214, 671, 674, 781 and 782)

993. Further light is shed on this matter by MPG7 (see CD1.16) which has now be superseded by the recently issued Framework. Paragraph B38 refers to uses which fall into the broad category of amenity: "open grassland for informal recreational use, basic preparations for more formal sports facilities, amenity woodland, lagoons for water recreation, and the conservation of landscape and wildlife." (675 and 781)

994. I share the view put forward by the Wigan planning witness that the term amenity is intended as a residual category covering a wide range of uses though not to agriculture or forestry which are clearly distinguished in the aftercare definition. In this case, when the word amenity in the existing conditions is looked at in the context of what is required by the agreements, it is clear that at the appeal site there is an expectation of nature conservation being the dominant element. (676 and 773)

995. I accept the appellant's point that the 5 year aftercare required by the planning permissions is insufficient to ensure complete establishment of active raised bog. However, it would be long enough to enable the necessary drainage works to be put in place. It would also be long enough to enable a start to the long process of returning the site to appropriate habitats. In addition, the

agreements provide for longer term monitoring and management of the site. I recognise that in the longer term, the management of the site would become the responsibility of the land owner, although I note that both planning agreements require a longer term monitoring and management process to be put in place. This means that the land owner is unlikely to have an entirely free hand. (228, 229, 230, 469, 480 and 700)

996. There are various mechanisms that the land owner can deploy to enable the site to be managed in the long term. For example, there are schemes such as Higher Level Stewardship or there is the ability to licence or lease the site to the Trust, which has a track record of managing restoration for nature conservation. The period of aftercare provides an opportunity for proposals to be drawn up for longer term management. (474 and 700)

997. The appellant expresses the view that without its proposal going ahead, there is a real prospect of the site being returned to agricultural use. This may happen if a land owner has not the inclination or the resources to engage in the sort of management needed for nature conservation purposes. However, there are sufficient regulatory safeguards available to prevent significant harm occurring from changes of land use. In this respect, I note the existence of the system operated by Natural England to protect uncultivated and semi-natural areas from damage by agricultural activities, including drainage works, under the Environmental Impact Assessment (Agriculture) Regulations 2006. (700)

998. Having taken the view that the existing conditions and agreements provide for a range of wetland areas over much of the site and that this includes lowland raised bog, it seems to me that a restoration in accordance with the existing conditions and agreements would give rise to significant carbon and biodiversity benefits. (697 and 698)

999. In terms of carbon benefits, the works that are likely to be carried out include the sort of drainage works, such as drain blocking and infilling ditches, which would provide an immediate carbon benefit by safeguarding the stock of existing peat in a wet or waterlogged state. (697)

1000. With respect to biodiversity gains, these would begin as soon as the site becomes re-vegetated. Whilst the detailed means of planting and creation of wetlands would have to be agreed, the ecology witness called by the two Councils estimated that timescales for revegetation and re-wetting would be between 2 and 4 years. The result is likely to be the mix or kaleidoscope of habitats that I refer to earlier and which include a predominance of wetland habitats, including lowland raised bog. (698)

1001. It is the restoration to a mix of habitats with an emphasis on wetland habitats that are the first steps in the process of enabling the nature conservation value of the site, which is an Annex I Habitat, to be fully realised.

1002. I have given some thought as to what would happen in terms of restoration if Wigan and Salford maintained their different views as to whether lowland raised bog could be required under the existing conditions and agreements. The site has been operated as one unit. There is nothing on the ground to distinguish where one planning application site begins and another ends with the exception of those parts of the site lying to the south of Twelve Yards Road. Both these

parts are within Salford and are separated from the bulk of the site by this narrow, unmade track. (20 and 684)

1003. On the majority of the site lying to the north of Twelve Yards Road, it is difficult to conceive how wetland areas, including lowland raised bog, can be provided within the Wigan part of the site and not in the Salford area. The difficulties of restoring parts of the site very differently were recognised by the appellant. As for the areas south of Twelve Yards Road, the area covered by appeal 2 is already undergoing "informal" restoration to bog, whilst the area covered by appeal 3 is physically divorced from the rest of the site. If Salford maintained its view as to the practicality of requiring restoration to wetland habitats, including lowland raised bog, then I consider that the area covered by appeal 3 could be subject to a scheme of restoration different from the rest of the site.

1004. In February 2010, a scheme was submitted to Salford showing how the appellant proposed to restore the site in accordance with the existing planning conditions. In essence, this is how the appellant interpreted the requirement for a restoration to amenity. It is interesting to note that no similar scheme covering the remainder of the site was submitted to Wigan. (517)

1005. The scheme proposed to retain the Twelve Yards Road SBI. Over half of the site would be seeded to form acid grassland. The acid grassland would cover the area that is currently being informally restored. This would mean infilling the bodies of the water that have only recently been created. A further third or thereabouts of the site would be given over to mixed woodland plantation, whilst the blockage of perimeter drain between the Twelve Yards Road SBI and the site and the reprofiling of the drain slopes would enable a series of pools with marshy grassland and reed beds. This latter element of the scheme would occupy about 2% of the area of the site. Salford rejected the scheme. Although suggestions were made as to how the scheme could be improved, no further discussions about the scheme took place. (517)

1006. In my view, the scheme does not come anywhere near addressing the requirements of the existing conditions and agreements. These require an emphasis on wetland areas. In addition to safeguarding the SBI, which is under restoration to lowland raised bog, the scheme proposes the creation of a series of pools. The combined area of the SBI and the pools would come to about 16 ha. This is hardly an emphasis on wetland areas. Although the type of acid grassland chosen, UVC U20, is one that is often associated with wet bog habitats, the Salford ecology witness points out that is found on the transition from wetland habitats where the soil is free draining or where the underlying peat has become dry. As the current condition of the peat substrate is mainly waterlogged, the witness says that it is unlikely that this type of grassland will become established until measures are put in place to dry at least the surface of the peat. This is likely to be costly and require much management. This was not disputed by the appellant.

1007. The February 2010 restoration scheme would have some immediate carbon benefit in terms of protecting the remaining peat resource, but there would also be some on-going loss of carbon as the areas of acid grassland are drained. In terms of biodiversity, the grassland and woodland would provide habitats for mammals, such as the water vole, and birds. However, re-wetting parts of the

site to create bog habitats could only be attempted after any drainage systems were dismantled. This could result in loss of or damage to the acid grassland.

1008. I do not consider that the appellant's restoration scheme of February 2010 would take the site very far in realising the biodiversity potential of the site.

1009. The Councils have given some consideration to what would happen if the site was abandoned. This is the "do nothing" scenario. I have no evidence that this is what the appellant is intending to do if the appeals were to be dismissed. (519)

1010. Under this scenario, it is likely that drains would collapse and the peat store would remain waterlogged. This would result in the safeguarding of the carbon store. In terms of biodiversity, there would be gains but this would be over a period of time and would occur in an unplanned fashion without any active management of the water regime within the site. Gradually, natural re-colonisation would take place over time with a mix of wet and dry habitats likely to be formed. With the variability in the distribution and mix of habitats, it is difficult to say how abandonment of the site would realise the biodiversity potential of the site. (519)

1011. I now go on to consider the implications of the restoration proposals being advanced in the appeal proposals. The appeal proposals are for the extraction of peat from the site until 31 December 2025. The limit of peat extraction would be set by retaining a minimum of 2m of peat above the underlying geology. It is proposed that restoration would be completed by 31 December 2027 and that restoration would be to a lowland raised bog. It is also proposed that there would be a scheme of phased restoration and that there would be a 15 year aftercare period. (57, 58, 223, 520, 523, 702 and 705)

1012. The phased restoration scheme (see CD11.48) was submitted in September 2011, a long time after the submission of the planning applications. In the mitigation phase to be undertaken early on, Twelve Yards Road SBI is to be retained and buffered from the extraction area by a further 30m. This, together with the existing long narrow strip of bare peat along the western boundary of the SBI, would be placed in immediate restoration. The informal restoration area south of Twelve Yards Road would also be retained. This area has had peat extracted by another operator below the 2m depth of retained peat. Although these areas amount to about 16% of the site area, the areas to be the subject of new restoration would only amount to about 4% of the site area. Most of the remainder is already in the process of being restored. (These percentages are approximate and are taken from Mrs Hughes's evidence).

1013. In phase one, three further areas would come forward for restoration in 2016. These areas on the far western boundary of the near Railway View Farm, a long narrow strip north of Twelve Yards Road and a small rectangular area on the eastern boundary along the SBI buffer zone. These are areas where peat deposits are shallower than elsewhere on the site. This phase amounts to about 8% of the site area. (506)

1014. In phase two, three more areas would be restored in 2021. These include a further strip of land close to Twelve Yards Road, a block of land in the north-western corner of the site and an enlargement of the rectangular area along the

SBI buffer zone which was restored in phase one. This phase accounts for about 12% if the site area.

1015. The remainder of the site would be restored in the final phase in 2025. This involves about 62% of the site area (see Plans CM4/3A and CM4/3B within CD11.48 for the location of the different phases of restoration. The percentages are adduced from these plans. The percentages do not add up to 100% because there are pockets of scrub and woodland which are to be retained and not restored). (506, 521 and 703)

1016. In respect of carbon, there would be a loss of stored carbon within the peat with the continuation of extraction. Once established, the areas of lowland raised bog would begin to act as carbon sinks but this would not happen over most of the site until some time after the completion of restoration operations. Before this, as rewetting and restoration took place there would be some transitory carbon gains.

1017. In terms of biodiversity, a large proportion of the site would be developing towards lowland raised bog in the years following completion of restoration. This would be in line with what would be looked for in an Annex I Habitat degraded lowland raised bog. Under the proposed phased restoration scheme there would be elements of successional or transitory stages within the waterlogged areas leading to bog habitat with colonisation of heath, acid grassland and scrub on the drier, higher bunds. This would be what is now seen, albeit on a much smaller scale, on Cadishead Moss and at Twelve Yards Road SBI.

1018. I also consider that the longer period of proposed aftercare than set out in existing conditions and agreements would go some way to ensuring that restoration to active peat forming could be achieved.

1019. However, these biodiversity benefits have to be set against other considerations. They would be realised many years after when the biodiversity gains associated with the realisation of restoration under the current planning conditions and agreements are likely to be achieved. The appeal proposals offer delayed restoration rather than restoration commencing much sooner. In my view, the proposed phasing does not assist the appellant's case. It puts restoration over most of the site until after the end of peat extraction in 2025. The long term biodiversity benefits have also to be set against the considerable impact upon climate change through the release of substantial quantities of CO_2 in the short term and until such time as active bog conditions become established. (506, 521 and 703)

1020. The delay in restoration of the site is to enable the extraction of some 40,000 m^3 of peat per year. However, as I have already said in a previous section of these conclusions, I do not accept that there is a compelling need for the release of further supplies of peat.

1021. The delayed restoration of the site if the appeals were to succeed have also to be seen against a degree of uncertainty as to whether restoration to lowland raised bog could be achieved within the timescales being suggested by the appellant. One reason for the uncertainty is provided by the appellant's experience in restoration to lowland raised bog elsewhere.

1022. The appellant points to experience that it has gained at Gardrum Moss in restoring peat workings to lowland raised bog. It is claimed that this experience underlines the robustness of its claims to be able to secure lowland raised bog in the time envisaged. Whilst I welcome the appellant's commitment to investigate ways of restoring peat sites to lowland raised bog, the results at Gardrum Moss, which involved an experiment into the revegetation of a series of scrapes and pits, do not give unqualified support to the appellant's claim to be able to achieve active bog within the timeframe indicated in the appeal proposals. (235, 524 and 714)

1023. An independent report into the experimental peat bog restorations at Gardrum Moss was published in 2010; some 18 years after the scrapes had been formed. It concludes that these are close to having some vegetation which is analogous to normal raised bog vegetation but only over small proportions of their area. The report goes on to say that most are still occupied by shallow open water or the early stages of the development of sphagnum moss carpet. (236, 536, 537 and 716)

1024. The report says that "the outcomes of the scrapes and pits have some way to go when matched against the present day indicators of success". It goes on to say that whilst the 1991 objectives have been met, "given that the pits lacked some of those species, and critically, vegetation close to the NVC M18 plant community that do occur in the scrapes, the scrapes have so far been more successful than the pits". The report also says in respect of the lack of success of the pits that "the degree of knowledge and fine tuning of the water table has simply not been available to steer toward a more favourable outcome." (539 and 717)

1025. These reservations and the piecemeal outcome of the experiment do not convey the degree of confidence and certainty that is needed before embarking on a large scale and innovative restoration project. The Gardrum Moss experiment needs to be put into context. It involved only 5ha; the appeal site is by a very long way much larger and thus much more challenging. (535, 540, 715 and 718)

1026. At the inquiry there was much discussion about the risks that would be posed to the appellant's proposed restoration by continued peat extraction. Many of these points, such as the source of water for restored areas and the quantities of peat that would be needed for the creation of the bunds, were dealt with by the appellant in evidence and rebuttal evidence. This evidence should have been made available much earlier in the planning process, preferably before the determination of the planning applications by the Councils. Late disclosure of information is of no assistance to anyone. I will come back to this point.

1027. Much was made by the Councils of the need to retain the current depth of peat for restoration purposes on the basis of "more peat, the better", but I am satisfied that two metres depth of peat with at least a quarter of this being ombrotrophic peat would enable appropriate restoration to take place. No evidence was forthcoming from the Councils that pointed to examples elsewhere where two metre depth of peat was considered to be inadequate to secure restoration. (239, 240, 529 and 711)

1028. However, I am concerned at the lack of certainty in some of the information that has been provided about the depth of peat. The stratigraphy survey (see

CD11.15) was undertaken in 2008. It identifies the need for a levelling survey to relate the surface of the peat to the base depth. (243, 527 and 709)

1029. The survey is out of date. What should have been submitted is more up to date survey information that charts the surface of the peat which has altered with the extraction of peat in recent years. More detailed information is also needed to identify undulations in the surface of the underlying geology. The area was covered by ice sheets. When the ice sheet retreated it left hummocks and also troughs containing sand and debris carried by the ice. It was in the troughs and depressions that the first bog vegetation formed thousands of years ago. (527 and 708)

1030. The need for such information is not academic, and I realise that no matter how thorough a survey it cannot cover every eventuality, but if the depth of peat in one place is less than anticipated there is the risk of piercing the peat mass and intruding into the underlying geology. This could have a profound effect; water levels within the peat would be lowered as it finds the lowest point of exit. (709)

1031. The risk of over abstraction of the peat and of having insufficient information about the geology of the site was demonstrated when a previous operator was working the area south of Twelve Yards Road. A number of sand/clay lenses were found which had not been known about before and the extraction went below the two metres of peat that should have been retained. This has led to this part of the site being put into “informal” restoration, perhaps before it would have been restored in other circumstances. (530, 531, 532, 709, 712 and 713)

1032. The absence of detailed survey information does not provide a sufficient degree of confidence that extraction would be carried out in such a way so as to be “risk free”. To my mind, the uncertainty over information provides another reason for adopting a cautious stance towards the claim that the proposed restoration would necessarily take place within the suggested timescale or carried out as currently envisaged.

1033. This brings me onto my last point. For a scheme of extraction and then restoration to go ahead, any decision maker needs to be assured that planning conditions will be adhered to. What has happened on this site does not inspire such confidence. I have already referred to a former operator breaching the requirement to leave at least two metres of peat. But the appellant has also displayed a disregard for planning controls. (530 and 712)

1034. The appellant continued to extract peat from the Salford part of the site after the expiration of the period for peat extraction in the existing planning permissions. This unauthorised extraction only ceased after Salford took the matter to Court and the appellant gave a formal undertaking not to continue extraction. At the inquiry, the appellant blamed poor legal advice but it was clear that after giving this undertaking, the appellant merely continued its unauthorised extractions within Wigan. At best it shows an ignorance of the planning system and how it works and at worse it shows contempt for planning controls. (532)

1035. This style of behaviour has not ended with the submission of the planning applications and the making of the appeals. Information on the phased restoration scheme was submitted in the autumn of 2011, a long time after the

planning applications had been determined. It should have been submitted with the planning applications so that the two Councils could take it into account in arriving at their decisions. The appellant's proposed restoration scheme to meet existing planning conditions was submitted to Salford only and not to Wigan. When Salford rejected the scheme and made suggestions as to how it could be improved, there was no response from the appellant and no attempt at dialogue. Much of the information requested by the Councils in the run up to the inquiry arrived late, even in the rebuttal evidence submitted to the inquiry. (517, 776 and 777)

1036. The delay in submitting information and the failure to comply with existing planning conditions does not provide a high level of confidence that conditions relating to retaining a minimum depth of peat etc would be readily complied with.

1037. Given this pattern of behaviour, if the Secretary of State is minded to allow the appeals then a bond or some other financial guarantee should be sought. The technical guidance accompanying the Framework indicates that bonds should only be sought in exceptional circumstances. This case is exceptional. Here there is an operator with an unsatisfactory record in abiding by planning controls. The proposal is for an untested form of restoration on a large site. In addition, the long aftercare period extends well beyond the period of extraction and the appellant's likely financial interest in the site. (304, 305, 306, 307, 308, 323, 504, 505, 506, 507, 508, 598 and 599)

1038. I conclude that the site is capable of early restoration under existing planning conditions and agreements to make good progress in realising the site's nature restoration potential. In addition, the restoration under the existing planning permission would ensure that the site continues to be a carbon store. Whilst the appeal proposals seek to restore the site to lowland raised bog, the appellant's restoration proposals provide no compelling advantage. There would be a significant delay in realising the site's biodiversity potential. In addition, the appeal proposals are not without a degree of uncertainty. I recognise that SUDP Policy EN11 and WUDC Policy MW1D seek restoration to lowland raised bog. In this respect, the appeal proposals would be in conformity with these policies. However, the appeal proposals would result in a postponement of this objective being achieved.

Effect of the Proposals on the Adjacent Twelve Yards Road SBI

1039. The reasons for refusal from both Councils refer to concern that the continued extraction of peat from the appeal site would adversely affect the hydrology and ecology of the Twelve Yards Road SBI. The thrust of this concern is that the drainage works to dry out the peat so that it can be milled would reduce the level of groundwater within the SBI. Such a lowering of groundwater levels would be important. Management of the SBI has focused on the restoration of lowland raised bog. To do this, management of the SBI has sought to maintain waterlogged areas to enable vegetation to become established which will eventually lead to an active bog habitat. The SBI also provides a habitat for water vole, a protected species.

1040. The submission of the additional hydrological information in May 2011 indicates that drawdown from peat extraction would extend by more than 20m into the SBI. The effect would be to lower groundwater within the SBI by approximately 40cm. This would undermine efforts to establish lowland raised

bog and also reduce the attractiveness of the SBI as a habitat for the water vole. (493)

1041. This information led to the submission of mitigation measures along the western boundary of the SBI in the form of a buffer zone and terracing within the proposed extraction area. This amounts to a stand off of about 60m in width. It was agreed between the parties that, subject to the imposition of appropriate planning conditions, the mitigation measures being proposed would ensure that the SBI would not be affected by the proposed extraction to the west. (279, 806 and 807)

1042. With the release of further information, concern was expressed that the extraction of peat to the south of the SBI would also have an effect on the groundwater regime within the SBI. The proposed extraction would require the retention of a deep perimeter drain to the south of the SBI. Maintenance would be carried out to the drain to ensure that it continues to take surface water away from this part of Chat Moss. Concern was expressed by the Environment Agency that this deep drain draws down groundwater from within the SBI. (280, 497, 502, 689, 805 and 808)

1043. There is a shallow ditch within the SBI which forms its southern boundary. The appellant points out that there is water in this shallow ditch. On my site visit I saw that there was much surface water in the southern part of the SBI where the Trust's attempts to restore to lowland raised bog are most in evidence. (286)

1044. The appellant's view is that the deep drain cannot be having a drawdown effect on the southern part of the SBI because there is water in the shallow ditch and also there is surface water within this part of the SBI. If drawdown was taking place then the ditch would be dry and there would be little surface water in the SBI. The difficulty is that the hydrology of this area is complex. The northern part of the SBI is much drier than the southern part, but neither the appellant nor a member of the Trust, the body responsible for managing the SBI, could offer an explanation as to why this area is drier. This points to the complexity of the hydrology of the SBI. (287)

1045. Some criticism was made by the appellant about the management of the SBI by the Trust. This is misplaced. The southern part of the SBI is showing promising signs of restoration to a lowland raised bog. The northern part of the SBI is much drier for reasons no one could explain. This is a further indication of the complexity of the hydrology of this part of Chat Moss. As the Environment Agency's witness put it, the key is not requiring the Trust to keep water in the SBI but to prevent water from being taken out. (291 and 804)

1046. I accept that the difference between the parties is slight. The gradient of the alleged drawdown produced by the appellant's hydrologist is little different from that produced by the Environment Agency. However, my view is that a precautionary approach should be taken to the safeguarding of the SBI, which is of County wide importance. In my view, what is needed is needed is to take a long term view of the protection to be provided for the SBI so that the SBI is able to cope with any changes to the hydrology of this part of Chat Moss which might occur if continued peat extraction was to be permitted.

1047. I share the view taken by the Environment Agency, the Government's statutory adviser on drainage matters, and Natural England, the Government's

statutory adviser on nature conservation, that the same protection should be accorded to the southern boundary of the SBI as the western boundary. The mitigation measures sought by the Councils and the Environment Agency would see the deep drain filled in and replaced further away as well as by buffering etc. (869 and 871)

1048. Providing these measures are put in place, and they are the subject of conditions suggested by the two planning authorities, the proposals would have no undue effect upon the SBI. For both the western and southern boundaries of the SBI this would afford a much greater degree of hydrological protection than the SBI now has. As such, this represents a clear benefit of the appeal proposals. With the mitigation measures in place, there would be no breach of SUDP Policy EN8 or WUDP Policy EV2 which seek to safeguard SBIs.

Effect of the Proposals on Residential Amenity

1049. Mr and Mrs Edwards live in a property at the end of a track serving a small group of dwellings. These dwellings are surrounded on three sides by the appeal site. Mr and Mrs Edwards have lived cheek by jowl with peat extraction for some years and they find themselves with the prospect, if the appeals were to be allowed, of having peat extraction continuing for a further 13 years. (864 and 865)

1050. They complain about noise of, and dust generated by, milling operations. I note that the impact of noise and disturbance and of dust on those living nearby does not form any part of the case presented to the inquiry by the two Councils. It seems to me that the suggested condition restricting the hours of operation would safeguard peace and quiet which those living nearby have a right to expect in the evening and at night and also at weekends. The noise limit put forward in the suggested conditions and also the requirement to produce a dust management plan would go a significant way to safeguarding their living conditions. (864, 875 and 876)

1051. Mrs Moss complains about the traffic carrying peat from Chat Moss and the effect this is having on other users of the narrow and largely unmade tracks across Chat Moss. There is no objection to the appeal proposals from the Councils acting in their capacity as local highway authorities on the grounds of either highway safety or the adequacy of the means of access. I note that a condition has been suggested which stipulates a route for traffic to take. This would ensure that traffic generated by the appeal proposals would not use less satisfactory routes. Although conditions to limit the routes to be taken by traffic are often difficult to enforce as there is in law a right to use public highways, in this case routes into and out of this part of Chat Moss do not lead elsewhere. They are not through routes. They serve a few residential properties and farms and the appeal site. Large wagons carrying peat on routes other than the one identified in the condition could be easily identified. (862 and 876)

1052. In terms of the effect of continued peat extraction on the structural stability of Mr and Mrs Edwards's property, I saw that the ground beneath and around their home has shrunk considerably. The result is that the property now sits well above ground levels with foundations and services exposed to view. I have much sympathy for the predicament that Mr and Mrs Edwards find themselves in. (865)

1053. Although the drawdown of water with on-going peat extraction may be a cause of the problems encountered at their home, it may not be the only cause. The property lies surrounded by a stand of well established trees. These could be causing some lowering of water levels leading to shrinkage of the peat. In addition, there are extensive areas of hardstanding around the property. These too could be contributing to peat shrinkage through reducing rain getting into the underlying peat.

1054. I acknowledge that the effect of a development on the stability of adjoining land is capable of being a material planning consideration, but in this case the problem is likely to be the result of a number of factors, not all of them linked to the appeal proposals. This is a problem which requires specialist advice and is one, in the end, that may have to be resolved by litigation. I note that the effect of the proposals on the stability of nearby buildings is not a matter addressed by the planning authorities either in their reasons for refusal or in the cases presented at the inquiry.

1055. I conclude that the effect of continued peat extraction on residential amenity by dint of noise and disturbance, dust and traffic are matters that are capable of being controlled through the suggested planning conditions.

Adequacy of the Environmental Statement

1056. When the planning applications were originally submitted in March 2010, they were accompanied by an ES. After the receipt of a request for further information under Regulation 19 of the EIA Regulations, a revised ES was submitted in November 2010. The revised ES comprises a non-technical summary with a number of chapters detailing the proposal and exploring the main impacts likely to arise as a result of the proposals together with a discussion of possible mitigation measures. (9)

1057. No one has suggested that the necessary steps have not been taken with regard to the arrangements for consultation and publicity for the revised ES. I consider that the revised ES, in terms of its coverage of the main impacts and the mitigation likely to be required, is adequate and satisfies the requirements of the EIA Regulations.

1058. In their closing submissions, neither of the Councils has suggested that the revised ES is inadequate. Whilst the Trust indicated that it had a number of concerns about certain aspects of the ES, these were matters on which the Trust and the appellant held opposing views. Such differences are to be expected and were the subject of evidence at the inquiry. These differences do not alter my view as to the adequacy of the revised ES.

Overall Conclusion

1059. In both the White Paper “Natural Choice: Securing the Value of Nature” and the numerous consultative and other documents that were produced beforehand, the Government makes it clear that the use of peat in horticulture is unsustainable. Areas of lowland raised bog are a rare and threatened habitat and they also act as important carbon stores. The protection of peat sites is important for reasons of biodiversity and climate change.

1060. Whilst the Framework does not require planning authorities to identify new peat sites and indicates that planning permission for new or extended sites

should not be forthcoming, it is recognised that the Framework does not preclude planning permission for continued peat extraction on sites that have already been worked for peat. This does not mean that proposals on existing sites should automatically be approved. It means that careful consideration needs to be given to each case looking in particular at the consequences for climate change and biodiversity.

1061. It is recognised that the Framework requires the economic benefits of mineral extraction to be given significant weight; this has to be set within the context of the Government's view that the use of peat in horticulture is unsustainable. Also, it needs to be set against the consequences of peat extraction on climate change and biodiversity. To give effect to the Government's view that the use of peat is unsustainable, the White Paper seeks to phase out the use of peat for horticultural purposes to zero. Whilst it was previously identified that there were sufficient reserves of peat to meet six years of use, the Framework includes no land bank requirements for peat extraction. The Government has taken steps to acquire a site producing substantial quantities of peat for nature conservation purposes. It is an indication that the Government does not view the maintenance of a six year supply of peat as being critical to enable there to be a smooth transition to zero use of peat in the horticultural sector.

1062. Whilst some peat producers may look to make up supplies through imports from Eire or the Baltic states, this does not apply in this case. Dismissal of the appeals would result in two mothballed Scottish sites being brought back into production. The Government has no power to stop imports from outside of the UK. The higher costs associated with importing peat may well have some cost advantages in respect of developing and bringing forward non peat substitutes. As English peat is the cheapest peat for the English horticultural market, the extraction of peat from English sources may have a deterrent effect on encouraging investment in the manufacture of non peat substitutes. I recognise that dismissal of the appeals would result in a number of local jobs being lost. As such, the safeguarding of jobs associated with extraction of peat on Chat Moss would represent a benefit of the appeal proposals going ahead. However, investment in the manufacture of non peat substitutes would, in the longer term, create employment and support the Government's aim of being a leader on sustainability and the environment.

1063. The continued extraction of peat from the appeal site would result in substantial emissions of CO_2 with the attendant impact on climate change. The notion that there would be less climate change impact if the appeal site was to be worked and peat was imported from the Baltic is undermined by the appellant's intention to extract peat from its mothballed Scottish sites if the appeals are dismissed. In any case, to prefer domestic sources of peat rather than go for imports would be counter to the Government's objective of being an international leader in reducing the impact of development on climate change.

1064. The site has Habitat Annex I status recognising its value as a degraded lowland raised bog. The objective on the appeal site is the restoration to lowland raised bog, but the appellant's proposals would delay the restoration by many years. There are also doubts as to the appellant's ability to achieve the required restoration in terms of the indifferent restoration results achieved by the appellant on a small experimental site in Scotland. The appeal site is very much larger and with this comes uncertainty. The restoration to realise the nature

conservation value of the site is capable of being realised under the existing planning conditions and agreements. Such a restoration would have biodiversity and carbon benefits without needing to wait.

1065. It is acknowledged that the mitigation measures that can be put in place would lead to increased protection for the SBI. However, this benefit has to be set against the considerable harm to climate change and also harm to biodiversity if restoration was to be delayed.

1066. As such, I conclude that the appeal proposals are contrary to SUDP Policy EN8 and WUDP Policy EV2 which seek, amongst other things, to protect key biodiversity habitats. The proposals also conflict with RSS Policy EM1 which requires protection and enhancement of the region's environmental assets and RSS Policy EM1(B) which seek a step change to the delivery of biodiversity objectives. The proposals would also be contrary to RSS Policy DP9 which requires proposals, as a priority, to contribute to reducing the region's CO_2 emissions.

1067. In addition, the appeal proposals conflict with the objectives of the non statutory Mosslands Vision Project which has been produced by three Councils to inform the development of planning policy. The appeal site occupies an important position at the heart of the Chat Moss wetland complex. Inherent in the appeal proposals is a delay in the realisation of the biodiversity potential of the site. This would frustrate the early achievement of the objectives of the Mosslands Vision Project.

1068. In respect of national planning policy as reflected in the Framework, the proposals would be contrary to paragraph 14 which has a presumption in favour of sustainable development. Government policy as expressed in the White Paper, and also in the raft of documents supporting the preparation of the White Paper, indicates that the use of peat for horticultural purposes is unsustainable and the identification of lowland raised bog as a rare and threatened habitat and as important carbon stores. The proposal also conflicts with paragraphs 93 and 118 of the Framework which seek to secure reductions in greenhouse gas emissions and conserving and enhancing biodiversity. The delay in restoring the site to lowland raised bog which would result from the proposed continuation of peat extraction and the uncertainties associated with the proposed restoration scheme would be contrary to paragraph 144 of the Framework which seeks restoration at the earliest opportunity to high environmental standards.

Recommendation

1069. I recommend that the appeals be dismissed. If the Secretary of State disagrees and is minded to allow the appeals then I recommend that the conditions set out in Annex C be attached to any planning permissions. In addition, if the Secretary of State is minded to allow the appeals then I recommend for the reasons set out above that a financial bond is sought to secure the restoration and aftercare of the site to lowland raised bog.

Alan D Robinson

Inspector

APPEARANCES

FOR SALFORD CITY COUNCIL:

Mr John Barrett of Counsel	Instructed by Ms Debbie Charles of Cobbetts LLP, Solicitors, of 58 Mosley Street, Manchester
He called	
Mr Stephen Birnie	Planning Consultant with Urban Vision Partnerships Limited
Mrs Teresa Hughes	Senior Ecologist with the Greater Manchester Ecology Unit (also gave evidence on behalf of Wigan Metropolitan Borough Council)
Mr Mark Thewsey	Technical Officer with the Environment Agency
Mr William Horsfall	Team Leader Environmental Sustainability with Sustainable Regeneration Directorate, Salford City Council
Dr Malcolm Hockaday	Director of Nathaniel Lichfield and Partners, Planning, Design and Economics Consultants
Ms Elizabeth Beard	Associate Planning Consultant Urban Vision Partnerships Limited

FOR WIGAN METROPOLITAN BOROUGH COUNCIL:

Mr Anthony Gill of Counsel	Instructed by the Director of Legal Services, Wigan Metropolitan Borough Council
He called	
Mrs Teresa Hughes	Senior Ecologist with the Greater Manchester Ecology Unit (also gave evidence on behalf of Salford City Council)
Mr Graham Dickman	Development Manager with Wigan Metropolitan Borough Council

FOR LANCASHIRE WILDLIFE TRUST:

Mr David Crawshaw	Mosslands Campaigner with the Trust. Of The Barn, Berkeley Drive, Bamber Bridge
He called	
Dr Rob Stoneman	Chief Executive of the Yorkshire Wildlife Trust

FOR WILLIAM SINCLAIR HORTICULTURE LTD (THE APPELLANT):

Mr Reuben Taylor of Counsel	Instructed by Ms Annette Wood of Andrew & Co LLP, Solicitors, of St Swithin's Court, 1 Flavian Road, Nettleham, Lincoln
He called	
Mr Bernard Burns	Managing Director and Chief Executive Officer of William Sinclair Holdings PLC
Mr Simon Aumônier	Partner at Environmental Resources Management Limited
Dr Alan Edwards	Director and Hydrogeologist at SLR Consulting

	Limited
Mr Michael Webb	Technical Director and Head of Ecology at SLR Consulting
Dr Chris Turner	Technical Consultant at William Sinclair Horticulture Limited
Mr Martin Leay	Principal of Martin Leay Associates, Land Use and Environmental Planning Consultants

INTERESTED PERSONS:

Ms Barbra Keeley	Member of Parliament for Worsley and Eccles South
Ms Helen Rimmer	North West Campaigner with Friends of Earth. Of 11 Field Bank Centre, Manchester
Mr Jim Carr	Of Sunnymead, Holcroft Lane, Culcheth
Mrs Christine Moss	Of Plant Cottage Farm, Astley Road, Irlam
Mr David Steel	Of 43 Broadway, Irlam
Mr Paul Edwards	Of Elmholme Farm, Astley Moss, Astley

DOCUMENTS SUBMITTED DURING THE INQUIRY

ID1	Attendance Sheets
ID2	Opening Submissions on behalf of the appellant
ID3	Opening Submissions on behalf of Salford City Council
ID4	Opening Submissions on behalf of Wigan Metropolitan Borough Council
ID5	Opening Submissions on behalf of Lancashire Wildlife Trust
ID6	Letter dated 12 March 2012 from Mr Tames of Peel Environmental to Mr Burns of William Sinclair Holdings PLC
ID7	E-mail correspondence between Mrs Hughes (Greater Manchester Ecology Unit) and Mr Thomas (Natural England) and Mr Martin (Urban Vision)
ID8	Recolonisation after peat-cutting. Paper written by J M White and reported in Proceedings of the Royal Irish Academy, Section B: Biological, Geological and Chemical Science, Volume 39, 1930
ID9	SSSI boundaries of the Humberhead Peatlands: ecological and geomorphological considerations in determining the boundaries of SSSI at Thorne and Hatfield Moors, 1997. Thorne and Hatfield Moors Conservation Forum
ID10	Prioritisation of Lowland Peat – Programme Resources: English Nature Research Reports, no. 179, 1996. Money and Wheeler
ID11	Appendix 5 of the Wigan UDP: Sites of Biological Importance
ID12	Draft National Planning Policy Framework, Department of Communities and Local Government, July 2011
ID13	Statement submitted by Ms Keeley Member of Parliament for Worsley and Eccles South
ID14	Statement submitted by Ms Rimmer on behalf of Friends of the Earth
ID15	Statement submitted by Mr Carr, local resident
ID16	Statement submitted by Mrs Moss, local resident
ID17	Statement submitted by Mr Steel, local resident
ID18	Chat Moss Peat Extraction: Bog under threat. Article from The Guardian newspaper of 3 August 2010
ID19	Updated version of Policy CP16 from the Wigan Core Strategy dealing

with minerals

ID20 Mr Burn's appendix 1 to his proof of evidence amended to show growth in demand of 2.5%

ID21 Letter dated 16 March 2012 from Mr Tames of Peel Environmental to Mr Burns of William Sinclair Holdings PLC

ID22 Statement submitted by Mr Edwards, local resident. Includes file with bundle of documents etc

ID23 Letter dated 27 March 2010 from Mr Williams of Joseph Metcalfe Limited to Mr Edwards

ID24 Letter dated 11 August 2010 from Mr Williams of Joseph Metcalfe Limited to Mr Edwards

ID25 List of suggested conditions as at 26 March 2012

ID26 Habitat Action Plan: Lowland Raised Bog – United Kingdom Biodiversity Action Plan Tranches 1 and 2 (1995 to 1999)

ID27 Plans showing places visited during the site inspection

OTHER DOCUMENTS, INCLUDING DOCUMENTS SUBMITTED BEFORE THE WRITTEN CLOSURE OF THE INQUIRY

OD1 Salford City Council's letter of notification

OD2 Wigan Metropolitan Borough Council's letter of notification

OD3 Bundle of representations received

OD4 Statement of Common Ground dated December 2011

OD5 Minutes of pre-inquiry meeting of 14 December 2011

OD6 Lancashire Wildlife Trust's closing submissions

OD7 Wigan Metropolitan Borough Council's closing submissions

OD8 Salford City Council's closing submissions

OD9 Salford City Council's costs application

OD10 Salford City Council's list of suggested conditions indicating areas of agreement/disagreement with the appellant. Sent by e-mail dated 30 March 2012

OD11 Wigan Metropolitan Borough Council's amended wording for suggested condition 1

OD12 Appellant's amended wording to conditions in dispute

OD13 Appellant's reply to costs application

OD14 Salford City Council's response to appellant's comments on costs application

OD15 Appellant's closing submissions

OD16 Lancashire Wildlife Trust's NPPF submissions

OD17 Wigan Metropolitan Borough Council's NPPF submissions

OD18 Salford City Council's NPPF submissions

OD19 Appellant's NPPF submissions

OD20 Lancashire Wildlife Trust's further NPPF submissions

OD21 Appellant's further NPPF submissions

PLANS

A Plan Nos CM2/2A, CM2/2C (1) and CM2/2C (2) showing the application boundaries in red.

B Bundle of plans and drawings requested by the Inspector. For convenience, this bundle brings together in one place the relevant plans

and drawings, including hydrogeological cross-sections, diagram showing water management within the Twelve Yards SBI, cross section showing potential safeguarding measures for the southern boundary of the SBI and phased restoration proposals.

ANNEX A

PROOFS OF EVIDENCE ETC

SCC1.1	Mr Birnie's proof of evidence (deals with chronology of events of the applications and appeals)
SCC1.2	Mr Birnie's summary proof
SCC1.3 - 5	Mr Birnie's three volumes of appendices
SCC1.6	Mr Birnie's rebuttal proof
GMEU1.1	Mrs Hughes's proof of evidence (deals with ecology issues, including impact on adjacent Site of Biological Interest and site restoration)
GMEU1.2	Mrs Hughes's summary proof
GMEU1.3	Mrs Hughes's appendices
GMEU1.4	Mrs Hughes's rebuttal proof
GMEU1.5	Mrs Hughes's rebuttal appendices
EA1.1	Mr Thewsey's proof of evidence (deals with hydrology)
EA1.2	Mr Thewsey's summary proof
EA1.3	Mr Thewsey's appendices
EA1.4	Mr Thewsey's rebuttal proof
SCC1.7	Mr Horsfall's proof of evidence (deals with carbon issues)
SCC1.8	Mr Horsfall's summary proof
SCC1.9	Mr Horsfall's appendices
SCC1.10	Mr Horsfall's rebuttal proof
SCC1.11	Dr Hockaday's proof of evidence (deals with minerals issues, including peat substitutes)
SCC1.12	Dr Hockaday's summary proof
SCC1.13	Dr Hockaday's appendices
SCC1.14	Dr Hockaday's rebuttal proof
SCC1.15	Dr Hockaday's rebuttal appendices
SCC1.16	Ms Beard's proof of evidence (deals with planning policy)
SCC1.17	Ms Beard's summary proof
SCC1.18	Ms Beard's rebuttal proof
SCC1.19	Ms Beard's rebuttal appendices
WMBC1.1	Mr Dickman's proof of evidence
WMBC1.2	Mr Dickman's summary proof
WMBC1.3	Mr Dickman's appendices
WMBC1.4	Mr Dickman's rebuttal proof
LWT1.1	Dr Stoneman's proof of evidence
LWT1.2	Dr Stoneman's summary proof
LWT1.3	Dr Stoneman's appendices
LWT1.4	Dr Stoneman's rebuttal proof
WSHL1.1	Mr Burns's proof of evidence (deals with market for peat and peat substitutes)
WSHL1.2	Mr Burns's summary proof
WSHL1.3	Mr Burns's appendices
WSHL1.4	Mr Burns's rebuttal proof
WSHL1.10	Mr Aumônier's proof of evidence (deals with carbon issues)
WSHL1.11	Mr Aumônier's summary proof
WSHL1.12	Mr Aumônier's appendices
WSHL1.21	Dr Edwards's proof of evidence (deals with hydrology)
WSHL1.22	Dr Edwards's summary proof
WSHL1.23	Dr Edwards's appendices

WSHL1.24	Dr Edwards's rebuttal proof
WSHL1.17	Mr Webb's proof of evidence (deals with ecology issues)
WSHL1.18	Mr Webb's rebuttal proof
WSHL1.19 - 20	Mr Webb's rebuttal appendices
WSHL1.13	Dr Turner's proof of evidence (deals with restoration issues and effect on adjacent Site of Biological Interest)
WSHL1.14	Dr Turner's summary proof
WSHL1.15	Dr Turner's appendices
WSHL1.16	Dr Turner's rebuttal proof
WSHL1.5	Mr Leay's proof of evidence (deals with planning issues)
WSHL1.6	Mr Leay's summary proof
WSHL1.7	Mr Leay's appendices
WSHL1.8	Mr Leay's rebuttal proof
WSHL1.9	Mr Leay's erratum sheet

ANNEX B

CORE DOCUMENTS

NATIONAL POLICIES CD1

CD1.1	Planning Policy Statement 1: Delivering Sustainable Development (PPS1)
CD1.2	Supplement to Planning Policy Statement 1: Planning and Climate Change (PPS1 Supplement)
CD1.3	Planning Policy Guidance Note 2: Green Belts (PPG2)
CD1.4	Planning Policy Statement 4: Planning for Sustainable Economic Growth (PPS4)
CD1.5	Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7)
CD1.6	Planning Policy Statement 9: Biodiversity and Geological Conservation (PPS9)
CD1.7	Planning for Biodiversity and Geological Conservation: A Guide to Good Practice (31 March 2006)
CD1.8	Planning Policy Guidance 13: Transport (PPG13)
CD1.9	Planning Policy Guidance 17: Planning for Open space, Sport and Recreation (PPG17)
CD1.10	Planning Policy Guidance Note 24: Planning and Noise (PPG 24)
CD1.11	Planning Policy Statement: Consultation 'Planning for a Natural and Healthy Environment' (March 2010)
CD1.12	Minerals Policy Statement 1: Planning and Minerals (MPS1)
CD1.13	Minerals Policy Statement 2: Controlling and Mitigating the Environmental Effects of Mineral Extraction in England (MPS 2)
CD1.14	Minerals Policy Statement 2, Annex 1: Dust
CD1.15	Minerals Policy Statement 2, Annex 2: Noise
CD1.16	Minerals Planning Guidance 7: Reclamation of Mineral Workings (MPG7)
CD1.17	Minerals Planning Guidance Note 13: Guidelines for Peat Provision in England Including the Place of Alternative Materials (MPG 13)
CD1.18	Minerals Planning Guidance 14: Environment Act 1995 – Review of Mineral Planning Permissions (MPG14)

CIRCULARS CD2

CD2.1	Circular 11/95: The Use of Conditions in Planning Permissions
CD2.2	Circular 05/05: Planning Obligations
CD2.3	Circular 02/99: Environmental Impact Assessment

REPORTS, REVIEWS AND CONSULTATION DOCUMENTS CD3

CD3.1	The Planning System: General Principles (January 2005)
CD3.2	Draft National Planning Policy Framework Consultation (July 2011)
CD3.3	Draft National Planning Policy Framework: Impact Assessment (July 2011)
CD3.4	Advice produced by the Planning Inspectorate for use by its Inspectors – National Planning Policy Framework: Consultation Draft (September 2011)
CD3.5	Government Review of Waste Policy in England (2011) (DEFRA)
CD3.6	Waste Strategy for England (2007) (DEFRA)
CD3.7	UK Biodiversity Action Plan (1994)
CD3.8	This has been left blank because of confusion over document titles. This document has now been correctly identified as *Habitat Action Plan:*

	Lowland Raised Bog - United Kingdom Biodiversity Action Plan Tranches 1 and 2 (1995 to 1999). It has been included as one of the documents submitted during the course of the inquiry as ID26. Several of the witnesses called by Salford City Council have referred to CD3.8. These shown be viewed as following: the references in Mrs Hughes' proof of evidence at paragraphs 79, 149, 333 refer to CD3.26, whilst the reference at paragraph 91 of Dr Hockaday's proof should be read as referring to ID26.
CD3.9	Report on the Species and Habitat Review. Report by the Biodiversity Reporting and information Group to the UK Standing Committee (June 2007)
CD3.10	Conserving Biodiversity – The UK Approach (October 2007)
CD3.11	Availability and Supply of Alternative Materials for use in growing media to meet the UKBAP target on reduced peat use in horticulture (DEFRA) (2009) (SP08019)
CD3.12	Costs to the horticulture sector of meeting the United Kingdom Biodiversity Action Plan target on peat use in horticulture (SP0577) DEFRA
CD3.13	Monitoring the Horticultural Use of Peat and Progress Towards the UK Biodiversity Action Plan Target (July 2010) (SP08020) DEFRA
CD3.14	Consultation on Reducing the Horticultural Use of Peat in England (December 2010) (DEFRA)
CD3.15	The Natural Choice: Securing the Value of Nature (June 2011) (DEFRA White Paper)
CD3.16	England Peatlands: Carbon Storage and Greenhouse Gases (Natural England) (March 2010)
CD3.17	Making Space for Nature ('the Lawton Review') (DEFRA) (September 2010)
CD3.18	Government Response to Making Space for Nature (DEFRA) (June 2011)
CD3.19	Impact Assessment Reducing and Phasing Out the Horticultural Use of Peat in England (DEFRA) (June 2011)
CD3.20	A Literature Review of Evidence on Emissions of Methane in Peatlands (DEFRA) (2009)
CD3.21	Safeguarding our Soils: A Strategy for England (DEFRA) (2009)
CD3.22	A Preliminary Assessment of the Greenhouse Gases Associated with Growing Media Materials, Warwick HRI report to DEFRA, IF0154 (2008)
CD3.23	Planning for Growth (March 2011)
CD3.24	Joint Nature Conservation Committee Habitat Account 7120
CD3.25	Second Report by the UK under Article 17 on the Implementation of the Habitats Directive from January 2001 to December 2006 (Joint Nature Conservation Committee 2007)
CD3.26	UK Habitat Action Plan Annex Lowland Raised Bog (Natural England, date unspecified)
CD3.27	Peatland Restoration (International Union for Conservation of Nature) (December 2010)
CD3.28	International Union for Conservation of Nature UK Committee Peatland Programme: Commission of Inquiry on Peatlands (October 2011)
CD3.29	Guidelines for selection of biological SSSIs: bogs (Joint Nature Conservation Committee Habitat) (1994)
CD3.30	UK National Ecosystem Assessment: Technical Report (2011) (Chapter 9 – Freshwaters, Open waters, Wetlands and Floodplains)
CD3.31	Letter of Secretary of State to local planning authorities dated 27 May

	2010
CD3.32	Statement by the Secretary of State dated 6 July 2010
CD3.33	Judgment of the Court of Appeal in the appeal by Cala Homes dated 27 May 2011
CD3.34	Guidelines for Ecological Impact Assessment in the United Kingdom (Institute of Ecology and Environmental Management 2006)
CD3.35	The Habitats Directive: selection of Special Areas of Conservation in the UK Part 1: Background to the site selection (Joint Nature Conservation Committee, 4 September 2009)
	REGIONAL POLICY (NW REGIONAL SPATIAL STRATEGY) CD4
CD4.1 – 4.6	Various policies of the Regional Spatial Strategy
	SUB-REGIONAL POLICY CD5
CD5.1	Mosslands Project – The Vision (Final Draft Vision, February 2007) – (Salford, Wigan and Warrington Councils) and the Mosslands Visioning Project (Final Report, March 2007)
CD5.2	The Greater Manchester Joint Minerals Plan Development Plan Document (Submission Draft November 2011)
CD5.3	The Greater Manchester Combined Authority (2011) Transformation, Adaptation & Competitive Advantage: The Greater Manchester Climate Strategy 2011-2020
CD5.4	Green Infrastructure to Combat Climate Change: A Framework for Action in Cheshire, Cumbria, Greater Manchester, Lancashire and Merseyside (March 2011) (Community Forests North West for Northwest Climate Change Partnership)
CD5.5	Habitats Regulations Assessment Screening (Stage 1) of the Greater Manchester Minerals DPD: Publication Report (March 2011)
CD5.6	Towards a Green Infrastructure Framework for Greater Manchester: Full Report (TEP September 2008 for the Association of Greater Manchester Authorities)
CD5.7	An Ecological Framework for Greater Manchester (Greater Manchester Ecology Unit 2008)
CD5.8	Greater Manchester Biodiversity Action Plan and Greater Manchester Lowlands Mosslands Biodiversity Action Plan (2008)
CD5.9	Greater Manchester Sites of Biological Importance Selection Guidelines (Greater Manchester Ecology Unit) (June 2008)
	LOCAL POLICY CD6
CD6.1	Salford City Council Development Plan Document Publication Core Strategy (February 2012) Policies: SF3F, BG1, BG2, MN1 and Figure 13
CD6.2 – 6.12	Various policies of the Salford Unitary Development Plan 2004 – 2016
CD6.13	Salford City Council Nature Conservation and Biodiversity Supplementary Planning Document (adopted July 2006)
CD6.14	Salford's Climate Change Strategy: Creating a City Prepared for the Future (June 2010)
CD6.15 – 6.32	Various policies of the Wigan Replacement Unitary Development Plan
CD6.33 – 6.39	Various policies of the Wigan Borough Council's Core Strategy
CD6.40	Wigan Council Development and Protected Species Supplementary Planning Document

LEGISLATION CD7

CD7.1 Localism Act 2011, Part 6 Chapter 1
CD7.2 Habitats Regulations (Conservation of Habitats and Species Regulations 2010)
CD7.3 Countryside & Rights of Way Act 2000 – Section 74
CD7.4 Natural Environment & Rural Communities Act 2006 – Section 41
CD7.5 Climate Change Act 2008 (Parts 1, 4, 5 and 6)
CD7.6 Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009
CD7.7 The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 – Schedule 3 and Regulation 19
CD7.8 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006

EUROPEAN DOCUMENTS CD8

CD8.1 Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora
CD8.2 Interpretation Manual of European Union Habitats – EUR 27 (European Commission DG Environment, July 2007)

PERMISSIONS AND LEGAL AGREEMENTS (SALFORD CITY COUNCIL) CD9

CD9.1 Planning Permission: 91/28449/FUL
CD9.2 Planning Permission: 91/28450/FUL
CD9.3 Planning Permission: 97/37333/FUL
CD9.4 Section 106 Agreement: 28/03/91, between the Council of the City of Salford and ALIH (Farms) Limited
CD9.5 Section 106 Agreement: 08/07/94, between the Council of the City of Salford and ALIH (Farms) Limited and Prime Horticultural Properties
CD9.6 Section 106 Agreement: 08/02/99, variation and supplemental agreement between the Council of the City of Salford and JM Limited and Prime Horticultural Properties Limited (varying/supplementing both Previous S106 agreements)
CD9.7 Lease: between Prime Horticultural Properties Limited and ALIH (Farms) Limited and the Council of the City of Salford dated 27 November 1997
CD9.8 Lease: between Prime Horticultural Properties Limited and ALIH (Farms) Limited and the Council of the City of Salford dated 19 February 1999
CD9.9 Lease: between Prime Horticultural Properties Limited and ALIH (Farms) Limited and the Council of the City of Salford dated 6 August 1999
CD9.10 Licence between Peel Environmental Limited and the Council of the City of Salford dated 8 March 2011 and Formal Extension of the Duration of the Licence dated 10 January 2012
CD9.11 Planning Permission: 17/3/1167

PERMISSIONS AND LEGAL AGREEMENTS (WIGAN METROPOLITAN BOROUGH COUNCIL) CD10

CD10.1 Planning Permission: A/31651/89
CD10.2 Planning Permission: A/36475/91
CD10.3 Section 106 Agreement: 21/01/91 between Wigan Borough Council and ALIH (Farms) Limited
CD10.4 Section 106 Agreement: 06/10/99 between Wigan Borough Council and Prime Horticultural Properties Limited and Joseph Metcalf Limited and ALIH (Farms) Ltd

APPLICATIONS AND SUPPORTING DOCUMENTS
REPORTS CORRESPONDENCE AND DECISION NOTICES CD11

CD11.1	Salford City Council Planning Applications: 10/58824/FULEIA, 10/58826/FULEIA and 10/58825/FULEIA
CD11.2	Wigan Metropolitan Borough Council Planning Applications: A/10/74592 and A/10/74593
CD11.3	Supporting documentation submitted March 2010 (this excludes the Environmental submitted in March but subsequently superseded by the revised Environmental Statement submitted November 2010): Planning Statement
CD11.4 – 11.19	Various supporting documentation submitted March 2010
CD11.20	Draft Heads of Terms (submitted to Salford City Council 20 April 2010)
CD11.21 – 11.31	Various amended supporting documentation November 2010: Letter from SLR Consulting to Urban Vision dated 19 November 2010
CD11.32	Additional information July 2010
CD11.33	Letter from Salford Urban Vision to SLR and appendices (19 August 2010)
CD11.34	SLR Correspondence to Salford City Council and Environment Agency (20 May 2011)
CD11.35	Officers report for Regulatory Panel (25 May 2011) (Salford)
CD11.36	Officers report for Regulatory Panel (30 June 2011) (Salford)
CD11.37	Response by Dr Turner of William Sinclair Horticulture Limited to report of May 2011 with letter 2 June 2011 submitted to Salford Urban Vision
CD11.38	Decision Notices for applications references 10/58824/FULEIA, 10/58825/FULEIA and 10/58226/FULEIA (issued 4 July 2010) (Salford)
CD11.39	Planning appeals for Salford applications submitted 5 July 2011 under references APP/U4230/A/11/2156165, APP/U4230/A/11/2156163 and APP/U4230/A/11/2156151
CD11.40	The Planning Inspectorate Questionnaire completed by Salford City Council on 2 September 2011
CD11.41	Correspondence about the validity of the applications: e-mail Wigan Council to SLR dated 30/04/10, letter Wigan Council to SLR x 2 dated 04/05/10, letter SLR to Wigan Council dated 06/07/10, e-mail Wigan Council to SLR dated 08/07/10, letter SLR to Wigan Council dated 13/07/10, letter Wigan Council to SLR x 2 dated 03/08/10 and letter SLR to Wigan Council dated 20/12/10
CD11.42	Officer's report x 2 for delegated items (Wigan)
CD11.43	Decision Notices for applications references A/10/58825/MIN and A/10/74593/MIN (issued 18 August 2011) (Wigan)
CD11.44	Planning appeals for Wigan applications submitted 5 July 2011 under references APP/V4250/A/11/2160319 and APP/V4250/A/11/2160321
CD11.45	The Planning Inspectorate Questionnaire completed by Wigan Metropolitan Borough Council on 6 October 2011
CD11.46	Site Plan from the Statement of Common Ground (December 2011)
CD11.47	Conceptual Restoration Scheme and covering letter from SLR Consulting (submitted to Salford City Council 16 February 2010)
CD11.48	Restoration Report – Chat Moss Restoration and Mitigation Phasing (William Sinclair Holdings Limited) (September 2011)
CD11.49	Additional Hydrological Investigations (SLR Consulting) (September 2011)

CD11.50 Letter dated 6 January 2012 from the appellant to the Inspector

ANNEX C

SCHEDULE OF INSPECTOR'S RECOMMENDED CONDITIONS

Plans

(Condition in respect of appeals 1, 2 and 3 only)

1. The development hereby approved relates to the historical permission boundaries as shown edged in red on plan Reference CM 2/2A (dated May 2010) being:
    - E/28449;
    - E/28450; and
    - 97/37333

(Condition in respect of appeal 4 only)

1. The development hereby approved relates to the historical permission boundaries as shown edged in red on plan Reference CM 2/2C(1) received on 15 July 2010.

(Condition in respect of appeal 5 only)

1. The development hereby approved relates to the historical permission boundaries as shown edged in red on plan Reference CM 2/2C(2) received on 15 July 2010.

Time Limit for Extraction, Restoration and Aftercare

2. The winning and working of peat shall cease not later than the 31st of December 2025. Restoration of the site shall be completed no later the 31st of December 2027. Aftercare of the site shall be undertaken until the 31st December 2042.

Time Limit for Removal of Peat, Plant, Machinery, Buildings, Trackways and Accessways from site

3. All stockpiles of peat and all plant, machinery, buildings and foundations, trackways and accessways shall have been removed from the site by the 31st December 2026. Should any plant, machinery, buildings, foundations, trackways or accessways be required to be retained for the restoration or aftercare of the site, full details of any plant, machinery, buildings, foundations, trackways or accessways to be retained shall be submitted to and approved in writing by the local planning authority prior to the 31st December 2026.

Hours of Operation – Peat Extraction, Storage and Export

4. All operations on the site including the winning and working of peat, stockpiling and subsequent loading and any works associated with the restoration and aftercare of the site shall only be carried out between the hours of 07:00 and 19:00 Mondays to Fridays.

    There shall be no Heavy Goods Vehicle movements to and from the site associated with peat extraction outside of the above hours.

Apart from emergency maintenance, no operations shall be undertaken on site on Saturdays, Sundays or Bank Holidays**.**

Noise from on-site operations

5. Between the hours of 07:00 and 19:00 hours noise from on-site operations shall not exceed 55dB $L_{Aeq1hour}$ when measured at a distance of 1 metre from the façade of the nearest noise sensitive properties.

Noise mitigation measures

6. No commencement of the winning and working of peat on the site shall take place until a noise management and monitoring plan detailing the proposals for the control of noise from any operations carried out on site has been submitted to and approved in writing by the local planning authority. The plan shall:
   - Define the responsibilities for managing noise emissions;
   - Define the methodology of specifying and procuring quiet plant and equipment, for the verification of noise emission levels from plant and equipment and the consultation and reporting processes on matters of noise between the developer, the local planning authority and the public;
   - Provide details of site notices which advise the public of contact names and numbers both during and out of hours in the event of noise problems;
   - Provide details of noise mitigation measures; and
   - Provide details of Noise Monitoring Protocol to detail the monitoring to be undertaken to show that the agreed $L_{Aeq,T}$ levels in condition 5 are not exceeded.

   The approved details and mitigation measures identified shall be implemented and maintained at all times.

Dust Management Plan

7. No commencement of the winning and working of peat on the site shall take place until a Dust Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Dust Management Plan shall identify all areas of the site and site operations where dust may be generated (including the loading and transportation of peat) and further identify control methods to ensure (as far as is practicable) that dust does not travel beyond the site boundary. Once approved, all identified measures shall be implemented and maintained at all times. Should any equipment used to control dust fail, peat milling, working and handling operations will cease until such equipment is either repaired or replaced.

Control of Chemical, Oil and Fuel storage

8. Any chemical, oil or fuel storage containers on the site shall be sited on an impervious surface with bund walls; the bunded areas shall be capable of containing 110% of the container or containers' total volume and shall enclose within their curtilage all fill and draw pipes, vents, gauges and sight glasses. There must be no drain through the bund floor or walls.

Location of Access and Egress to the Site

9. The sole highway access to and egress from the site shall be via the route along Astley Road and Cutnook Lane as shown in Chapter 11 of the Environmental Statement prepared by SLR Consulting dated November 2010.

Access to Permission Area 10/58825/FULEIA (Appeal 3)

10. No commencement of development shall take place on the area given permission reference 10/58825/FULEIA until a plan showing the proposed access into this area has been submitted to and approved in writing by the local planning authority, such plan to avoid any encroachment into the formal SBI boundary and any buffer zones to be established to the western and southern boundaries of the SBI.

Removal of Permitted Development Rights

11. With the exception of wheeled or tracked, self-propelled, excavating, loading, handling and transportation machinery, and the provisions of condition 6 above, the provisions of Part 19 Class A / Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 or any amendment, replacement or re-enactment thereof are excluded and shall not apply to this development. Any development referred to in that part shall only be carried out pursuant to a planning permission granted under Part III of the Town and Country Planning Act 1990 or any amendment, replacement or re-enactment thereof.

Areas for Storage of Peat

12. No commencement of the winning and working of peat on the site shall take place until a detailed plan (at a maximum 1:2500 scale) showing demarcated areas for the storage of peat has been submitted to and approved in writing by the local planning authority. Peat shall only be stored in the areas shown on the approved plan.

Storage Height of Peat

13. No stockpile of peat or waste material resulting from the winning or working of peat shall exceed a height of 5 metres above surrounding ground level.

No soil or materials to be brought onto the site

14. No soils or materials shall be brought onto the site except where specifically identified in the restoration scheme approved under the requirements of the conditions covering restoration or where such materials are required for maintenance and repair purposes for access routes, tracks, buildings, equipment or machinery. In the event that any soils or materials are proposed to be brought onto the site for maintenance and repair purposes for access routes, tracks, buildings, equipment or machinery, prior written approval of the soils or materials which are proposed to be brought onto the site, together with a plan identifying the location that such soils or materials are proposed to be

used, shall be sought from the local planning authority 7 days before such soils or materials are proposed to be brought onto the site.

Method of Extraction

15. Extraction of peat from the site shall be restricted to the milling of the surface layer only.

The method of extraction shall be restricted to that method which is described in paragraph 2.13 of the Environmental Statement (dated November 2010) and has been the subject of Environmental Impact Assessment, such method being limited to:

- Specialist milling machinery being towed by a low ground pressure tractor running over the whole of the exposed peat surface and milling the surface of the peat to a depth of around 10-20mm, with a depth of 10mm being typical;
- Milled peat being allowed to dry and regularly turned to assist this drying process;
- Once sufficiently dry, the peat shall be collected into windrows and stockpiled prior to removal from the site by HGV; and
- Such peat harvesting shall be completely dependent on the air drying of the peat to make it manageable.

Initial Programme of Phased Working and Restoration Scheme

16. No commencement of the winning and working of peat on the site shall take place until a scheme and programme to show the phased working and restoration of the site has been submitted to and approved in writing by the local planning authority.

The scheme and programme shall be informed by the results of the preliminary peat depth survey as required under condition 18.

The scheme and programme shall include details of the following:
- The results and plans from the preliminary peat depth survey (condition 18);
- Cut-and-fill balance analysis of requirements for creation of final restoration profile;
- Areas where further peat extraction is not proposed;
- Mechanisms to demarcate worked out areas; and
- Details of when each worked out area will come into restoration.

The winning and working of peat on the site shall be undertaken in accordance with the details of the approved scheme and programme of phased working and restoration.

Provision of Updated Phased Working Plans

17. Before 31st December of each year following the grant of planning permission, an updated phasing plan, incorporating any changes to the phased working or restoration of the site to the same level of detail as required in the preceding

condition shall be submitted to and approved in writing by the local planning authority. The phased working and restoration of the site shall be carried out in accordance with the approved details.

Minimum Depth of Peat

18. On any part of the site, a minimum of 2 metres depth of peat (including a minimum depth of 0.5 metres of ombrotrophic peat) shall remain undisturbed above the underlying substratum.

No commencement of the winning and working of peat on the site shall take place until a stratigraphic auger survey has been carried out at centres of 50 metres across the site in order to ascertain the depth and detail of the remaining peat deposit together with details of the underlying mineral substrate.

The stratigraphic auger survey shall be submitted to the local planning authority prior to commencement of the winning and working of peat on the site and shall include:

- Survey of the topography of mineral substrate;
- Survey of the peat Stratigraphy (at same centres);
- Survey of the total peat depth in relation to mineral substrate; and
- Survey of the topography of the surface layer.

Annual peat depth surveys shall be carried out not later than the 30th November in each subsequent year following the grant of planning permission.

With exception to the preliminary stratigraphic auger survey, each subsequent peat depth survey shall be submitted to the local planning authority before 31st December of each year following the grant of planning permission. No extraction on the site shall recommence in the following year unless and until such peat depth surveys have been submitted to the local planning authority.

Subsequent peat depth surveys shall include:

- Survey of the total peat depth in relation to mineral substrate.

The preliminary stratigraphic auger survey and all subsequent peat depth surveys shall be measured to ordnance datum.

The submission of the surveys to the local planning authority shall be accompanied by plans which plot the above survey details and shall be used to inform the submission of phased working and restoration scheme programme (in accordance with condition 16), and future restoration and drain construction on the site.

Peat Depth Survey Outcomes

19. Should the surveys required by the previous condition (18) identify that the level of remaining peat is at the minimum of 2 metres depth peat (including a minimum depth of 0.5m of ombrotrophic peat) above the underlying substratum, milling in these areas shall cease immediately and in perpetuity and the areas shall be set aside for restoration to lowland raised bog.

At least 12 months before peat extraction is anticipated to cease on any area of the site a scheme and programme for restoration of these areas to lowland raised bog and subsequent aftercare covering these areas shall be submitted to and approved in writing by the local planning authority. The scheme and programme for restoration and aftercare shall be prepared to the same level of detail and incorporate the same provisions of conditions 27 and 29 regarding restoration and aftercare.

The restoration and aftercare of these areas shall be carried out in accordance with the approved details.

Maintenance of Perimeter Drains – Invert Level Survey

20. No commencement of the winning and working of peat on the site shall take place until a survey identifying the invert level (measured to ordnance datum) of the ditches has been carried out and submitted to the local planning authority. Other than the maintenance of the ditches in order to the permit the free flow of water, the existing ditches in terms of position, depth and invert level shall be maintained as such thereafter.

Maintenance of Perimeter Drains – Invert Level Scheme and Monitoring

21. No commencement of the winning and working of peat on the site shall take place until a scheme to demonstrate how the current invert levels of the drainage ditches will be maintained throughout the life of the permission has been submitted to and approved in writing by the local planning authority. Such a scheme shall be based upon the initial survey submitted in accordance with condition 20. The maintenance of ditches shall be carried out in accordance with the approved scheme thereafter.

Maintenance and Monitoring of Foot Drains

22. No commencement of the winning and working of peat on the site shall take place until a survey identifying the existing depths of the foot drains in relation to the mineral substrate (measured to ordnance datum) has been carried out and submitted to the local planning authority.

The foot drains shall be maintained at a minimum of 0.75 metres above the mineral substrate and shall be no greater than 1.2 metres in depth below the surface of the peat.

Infill of any Redundant Perimeter Drains and the Provision of New Buffer Zone Perimeter Drains

23. Should infilling of any redundant perimeter drains or the provision of new perimeter drains be required at any time, prior to any such works being carried out a survey of the depth of the perimeter drain or drains proposed to be decommissioned shall be carried out and shall include the invert level (measured to ordnance datum) of such drain or drains.

Such surveys shall be carried out at centres agreed in writing by the local planning authority and the results of the same shall be submitted in writing to the local planning authority as part of the information submitted with the scheme of works as outlined in the subsequent paragraph.

A scheme providing full details of the works to be carried out where drains are to be decommissioned or new perimeter drains provided (including the method of infill of redundant drains and full details of the location of new drains) shall be submitted to and approved in writing by the local planning authority.

The scheme shall also include:

- A suitable built mechanism installed to maintain the invert level during extraction and to allow adjustment of ditch levels for restoration purposes; and
- Other internal sheet piling/damming mechanisms on in-filled drain.

Infill material of compacted peat shall be sourced from either the construction of the new drain and/or from materials won from the active extraction side of the new drain.

The new drains shall be constructed to the same depth as the existing drains and be constructed with the same ordnance datum invert level.

Prior to the recommencement of the winning and working of peat in the following year, the redundant drains shall be infilled and new drains shall be installed in accordance with the details approved by the local planning authority. Once installed, the new drains shall be managed in accordance with conditions 20 and 21.

Provision and maintenance of Buffer Zone to west of the SBI

24A. No commencement of the winning and working of peat on the site shall take place until a scheme including a plan (at a 1:1250 scale) for the buffer zone adjacent to the western boundary of the SBI has been submitted to and approved in writing by the local planning authority.

The buffer zone shall be established at a straight line between the coordinates SJ71628,96639 and SJ71307,97322 and extending for 60 metres (width) to the west of the stated coordinates.

The scheme and plan which shall include the details of the creation of a restoration profile shall include the following information:

- Topographic Survey (measured to ordnance datum), survey of invert levels on perimeter drain and cut-and-fill balance analysis;
- Provision of plans to show extent of terracing within new buffer zone and location of bunded cells (with a maximum dimension of 40x40 metres) within the new and old buffer zone, location of water level control mechanisms for each cell. The extent of the works shall be informed by the submitted topographic survey;
- Details of the method of construction of buffer zone cells (maximum dimension of 40x40 metres) and infill of foot/perimeter drains, including

the type of peat to be used, the source of peat to be used and installation of cell water level control mechanisms;
- Details of mechanism to control invert levels on new drains to be subsequently managed according to condition 21;
- Details of the proposals for planting/seeding of cells;
- Details of the proposals for planting/seeding of bunds to ensure structural stability;
- Plans showing details of all buffer zones and phasing;
- Source and type of peat to be used to create restoration profile; and
- Monitoring and remediation programme.

No winning and working of peat within the area given planning permission reference 10/58824/FULEIA shall be undertaken until:
- All boundary works, ditch and bank structures of the buffer zone have been established;
- Bunded cells have been satisfactorily implemented during the first year of operations following the grant of planning permission; and
- Such provision of bunded cells has been completed within 12 months of the grant of planning permission.

Within the buffer zone, there shall be no use of vehicles or plant other than that necessary for the construction, preparation and maintenance of the buffer zone. The establishment of the buffer zone shall be carried out in accordance with the approved scheme and maintained thereafter.

Provision and maintenance of Buffer Zone to south of the SBI

24B. No commencement of the winning and working of peat on the site shall take place until a scheme including a plan (at a 1:1250 scale) for the buffer zone adjacent to the southern boundary of the SBI has been submitted to and approved in writing by the local planning authority.

The buffer zone shall be established at a straight line between the coordinates SJ 71609, 96642 and SJ 71796, 96735 and extending for 60 metres (width) to the south of the stated coordinates.

The scheme and plan which shall include the details of the creation of a restoration profile shall include the following information:
- Topographic Survey (measured to ordnance datum), survey of invert levels on perimeter drain and cut-and-fill balance analysis;
- Provision of plans to show extent of terracing within new buffer zone and location of bunded cells (with a maximum dimension of 40x40 metres) within the new and old buffer zone, location of water level control mechanisms for each cell. The extent of the works shall be informed by the submitted topographic survey;
- Details of the method of construction of buffer zone cells (maximum dimension of 40x40 metres) and infill of foot/perimeter drains, including the type of peat to be used, the source of peat to be used and installation of cell water level control mechanisms;
- Details of mechanism to control invert levels on new drains to be subsequently managed according to condition 21 above;
- Details of the proposals for planting/seeding of cells;

- Details of the proposals for planting/seeding of bunds to ensure structural stability;
- Details of the method of remediation and water recharge to include trigger level for implementation of remediation, source of additional water, quality control specification, rates of application;
- Plans showing details of all buffer zones and phasing;
- Source and type of peat to be used to create restoration profile; and
- Monitoring and remediation programme.

No winning and working of peat within the area given planning permission reference 10/58825/FULEIA shall be undertaken until:

- All boundary works, ditch and bank structures of the buffer zone have been established;
- Bunded cells have been satisfactorily implemented during the first year of operations following the grant of planning permission; and
- Such provision of bunded cells has been completed within 12 months of the grant of planning permission.

Within the buffer zone, there shall be no use of vehicles or plant other than that necessary for the construction, preparation and maintenance of the buffer zone. The establishment of the buffer zone shall be carried out in accordance with the approved scheme and maintained thereafter.

Monitoring & remediation of buffer zones

25. No commencement of the winning and working of peat on the site shall take place until a scheme and programme of hydrological monitoring covering the zone between the active peat extraction area and the buffer zone/zones and SBI adjacent to both the southern and western boundaries of the SBI has been submitted to and approved in writing by the local planning authority.

The scheme and programme shall include the following information:

- Schedule of Monitoring Points;
- Schedule of Monitoring Activity;
- Baseline Monitoring Report;
- Details of maintenance of monitoring system;
- Methods for the collection and recording of data;
- Measurable trigger points for the implementation of remediation measures should levels reach or fall below the trigger points;
- Details of remediation, detailing the measures which are to be undertaken, whose responsibility it is to implement them and the timescales for implementation; and
- Details of reporting frequency.

Prior to the winning and working of peat, all equipment to undertake the monitoring programme approved by the local planning authority shall be installed and the development shall be carried out in full accordance with the approved scheme and programme of hydrological monitoring including remediation measures for the lifetime of the permission.

Terraced Buffering to worked out areas and phased restoration areas

26. No commencement of the winning and working of peat on the site shall take place until full details of the terracing to be provided have been submitted to and approved in writing by the local planning authority.

Notwithstanding the provisions of the phased extraction condition, extraction shall not exceed a depth of 0.5 metres lower than the adjacent worked out/restoration area when measured from the protected area's topographical level on the following boundaries:

- Where extraction has ceased as minimum depths have been reached;
- A phased restoration area has been established.

In places where this situation pertains additional terraced buffering shall be provided with the widths to be:

- 3 metres on areas (to be agreed), or any other worked areas within the milling fields;
- 13 metres on the boundary of any phased restoration area and on the western and southern boundaries of the SBI.

The terracing of these areas shall be carried out in accordance with these details and shall be maintained as such for the duration of winning and working of peat on the site, or until such time as these areas are brought into restoration.

Provision of Initial Restoration Plan to Lowland Raised Bog

27. No commencement of the winning and working of peat on the site shall take place until a scheme and programme for restoration of the site to lowland raised bog has been submitted to and approved in writing by the local planning authority.

The scheme and programme shall include details of the following:

- Restoration of areas where further peat extraction is not proposed;
- Topographic Survey (results of preliminary survey and final levels and slope gradients of worked out surface), survey of invert levels on perimeter drain and cut-and-fill balance analysis for creation of final restoration profile;
- Provision of a plan for final restoration profile including calculation of extent of terracing and number/location of bunded cells (with a maximum dimension of 40x40 metres), water level control mechanisms for each cell. The extent of the works shall be informed by the submitted topographic survey;
- The method of construction of bunded cells and infill of foot/perimeter drains, including the type of peat to be used, the source of peat to be used and installation of cell water level control mechanisms;
- The mechanism to control invert levels on drains and provision of details to raise water levels;
- Agreement of the source and type of peat to be used to create restoration profile;
- The planting on cell bunds and within cells, including species specifications;
- The timescale for planting on cell bunds (season after creation);
- The timescale of planting/inoculation within cells;

- Proposals for replacement of failed species like with like;
- Monitoring and remediation programme of hydrology across the site and on perimeter drains; and
- The anticipated timing of the restoration programme for each area of the site, such programme being confirmed at least six months before the end of extraction within any given part of the site, in line with the annual surveys of peat depth and compliance with condition 16.

The restoration of the site shall be carried out in accordance with the approved details, unless where otherwise amended by an alternate scheme submitted and approved in writing by the Local Planning Authority in accordance with condition 19.

Provision of Updated Restoration Plan

28. Prior to the 30th November at 2016, 2021 and 2025 a restoration plan including a scheme and programme for the restoration of the site to lowland raised bog (incorporating any changes to the restoration of the site agreed in condition 19 and to the same level of detail as required in condition 27) shall be submitted to the local planning authority for approval. The restoration of the site shall be carried out in accordance with the approved details.

Provision of Aftercare Scheme

29. No commencement of the winning and working of peat on the site shall take place until an initial scheme and programme of anticipated aftercare for a 15 year period (commencing upon the completion of restoration of the site and including any separate part of the site where it is anticipated that restoration will occur at an earlier time) has been submitted to and approved in writing by the local planning authority.

The scheme and programme shall include details of the following:

- Management of the drainage control measures to ensure that the water levels within the site are maintained at levels necessary to ensure lowland raised bog is established;
- Management of the planting and reseeding including replacement of failures, weed control and maintenance of protection measures;
- The measures to be undertaken to the development of bog vegetation;
- The management of the vegetation on cell bunds; and
- The measures to be taken to control invasive plants and weeds.

The aftercare of the site shall be carried out in accordance with the approved details, unless where otherwise amended by an alternate scheme submitted to and approved in writing by the local planning authority in accordance with condition 19.

Monitoring Report

30. A monitoring report shall be submitted to the local planning authority no later than the 31st December of each year following the approval of this permission until the end of the aftercare period referred to in this permission. The report shall include the following information:

- The operations carried out on the land during the previous 12 months in respect of peat extraction including the volume of peat extracted and the areas of land that were worked and the ditches which have been cleared;
- The measures taken to implement the progressive restoration and habitat creation proposals;
- The results of the monitoring of habitat creation and establishment of lowland raised bog habitat;
- The measures taken to implement the aftercare provisions;
- The intended operations for the next 12 months; and
- The results from the hydrological monitoring of the buffer zone.

Notification of Completion of Restoration

31. Written notification shall be provided to the local planning authority within 7 working days of restoration works ceasing in any area of the site. Completion of restoration in any areas of the site shall only be determined by the date when the local planning authority certifies in writing that the works of restoration in any area of the site have been completed to a satisfactory standard in line with the objective of establishing lowland raised bog.

Aftercare of Completed Restoration Areas

32. Upon certification in writing by the local planning authority of the completion of restoration in any area of the site, as defined in condition 31, aftercare of that area of the site to promote the lowland raised bog after-use of the site shall be carried out for a period of fifteen years in accordance with the scheme and programme of aftercare approved under the requirements of condition 29.

Active dewatering of site

33. There shall be no active dewatering of the site by pump, siphon or mechanical intervention.

Refuse or Other Material to be brought onto the site

34. No refuse or waste materials from outside the site shall be deposited within the site.

Liaison Group

35. No commencement of the winning and working of peat on the site shall take place until a written scheme detailing the proposals for the establishment of a liaison group to oversee the restoration and aftercare of the site has been submitted to and approved in writing by the local planning authority.

Such scheme shall include details of:

- The proposed members of the liaison group;
- The proposed date for the first meeting of the liaison group;
- The responsibilities of the liaison group; and

- The proposed frequency of liaison group meetings, both off-site and on-site and the level of information to be required at those meetings.

The liaison group shall operate as agreed for the full working, restoration and aftercare periods in respect of the site.

Standoff to Railway

36. No extraction of peat shall take place within 30 metres of the existing railway fence along the northern boundary of the site.

ANNEX D

GLOSSARY

BAP	Biodiversity Action Plan
DEFRA	Department of Environment, Food and Rural Affairs
DPD	Development Plan Document; in this case, the Greater Manchester Joint Minerals Development Plan Document
Draft Framework	The consultation draft of the National Planning Policy Framework
EIA Regulations	Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
ES	Environmental Statement submitted as part of the Environmental Impact Assessment process
Framework	The final issued version of the National Planning Policy Framework
GMEU	Greater Manchester Ecology Unit
JNCC	Joint Nature Conservation Committee
IUCN	International Union for Conservation of Nature
IPCC	Intergovernmental Panel on Climate Change
LDF	Local Development Framework
MPG	Minerals Planning Guidance
MPS	Minerals Policy Statement
NIA	Nature Improvement Area
NVC	National Vegetation Classification
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RSS	Regional Spatial Strategy; in this case the North West Regional Spatial Strategy
SAC	Special Area of Conservation
Salford	Salford City Council
SCS	Salford Core Strategy
SUDP	Salford Unitary Development Plan
SBI	Site of Biological Interest; in this case, the Twelve Yards Road Site of Biological Interest adjoining the proposed extraction areas
SoCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest
Trust	Lancashire Wildlife Trust
Wigan	Wigan Metropolitan Borough Council
WCS	Wigan Core Strategy
White Paper	White Paper entitled “The Natural Choice: Securing the Value of Nature” produced by the Government and published in June 2011
WUDP	Wigan Unitary Development Plan

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.