



Department for Levelling Up,  
Housing & Communities

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Our ref: APP/H0900/V/21/3271069

Your ref: 4/17/9007

7 December 2022

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY WEST CUMBRIA MINING LTD  
FORMER MARCHON SITE, POW BECK VALLEY AND AREA FROM THE FORMER  
MARCHON SITE TO THE ST BEES COAST, WHITEHAVEN, CUMBRIA  
APPLICATION REF: 4/17/9007**

*This decision was made by the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE, who held a public local inquiry on 7-10, 14-17, 21-24, 28-30 September 2021 and 1 October 2021 into your client's application for planning permission for:
  - a new underground metallurgical coal mine and associated development including: the refurbishment of two existing drifts leading to two new underground drifts; coal storage and processing buildings; office and change building; access road; ventilation, power and water infrastructure; security fencing; lighting; outfall to sea; surface water management system and landscaping at the former Marchon site (High Road) Whitehaven;
  - a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line with adjoining office / welfare facilities; extension of railway underpass; security fencing; lighting; landscaping; construction of a temporary development compound, and associated permanent access on land off Mirehouse Road, Pow Beck Valley, south of Whitehaven;
  - a new underground coal conveyor to connect the coal processing buildings with the coal loading facility;

in accordance with application Ref. 4/17/9007, dated 31 May 2017.

2. On 11 March 2021, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.
3. At IR1.20, the Inspector notes that the wider proposed development includes an offshore mining area, beyond the mean low water mark. This does not form part of this application for planning permission, as all development on the seaward side of the mean low water mark falls under the remit of the Marine Management Organisation.

### **Inspector's recommendation and summary of the decision**

4. The Inspector recommended that the application be approved and that planning permission for the development be granted either on the basis of the underground conveyor being constructed by utilisation of the pipe-jacking or by cut and fill technique, subject to the conditions outlined and with the benefit of the obligations in the Section 106 Agreement and Supplemental Agreement. In his view, pipe-jacking is the preferred option.
5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to grant planning permission, on the basis of the underground conveyor being constructed by the utilisation of the pipe-jacking technique. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Environmental Statement**

6. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR1.9-1.16, the Secretary of State is satisfied that the 2018 Environmental Statement, together with the ES Addendum (April 2020) and the further information (September 2021) complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Matters arising since the close of the inquiry**

7. A list of representations received by the Secretary of State since the close of the inquiry is at Annex A. The Secretary of State does not consider that these post-inquiry representations, or the matter arising at paragraph 8 below, raise any new matters that would affect his decision or that would require him to refer back to the parties for further representations on them prior to reaching his decision on this application, and he is satisfied that no interests have thereby been prejudiced. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
8. On 22 June 2022, the Coal Authority granted an extension of the conditional licence to West Cumbria Mining Ltd in respect of Whitehaven (Cumbria) Mine South Prospect: <https://www.gov.uk/government/publications/coal-authority-licences-and-agreements/coal-authority-licences-and-agreements> This licensing decision, made by the Coal Authority, is completely separate from the present decision on whether to grant planning permission for this called-in application.
9. An application for a partial award of costs was made by South Lakes Action on Climate Change (SLACC) against West Cumbria Mining Ltd (WCM) (IR1.1). This application is the subject of a separate decision letter.

## **Policy and statutory considerations**

10. In reaching his decision, 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.
11. In this case the development plan consists of the Cumbria Minerals and Waste Local Plan 2015-2030 (CMWLP), the Copeland Local Plan 2013-2028 – Core Strategy and Development Management Policies Development Plan Document (CLP), the Copeland Local Plan 2013-28 – Proposals Map, and the Copeland Local Plan 2001-2016 Saved Policies. The Secretary of State considers that relevant development plan policies include those set out at IR5.4-5.5.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

14. The emerging plan comprises the draft Copeland Local Plan 2021-2038. Consultation on the Preferred Options draft of the emerging plan took place in September 2020. Consultation on the pre-publication draft of the emerging plan took place between Monday 10 January 2022 until Friday 18 March 2022. The Council submitted the Local Plan for independent examination on 16 September 2022.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The emerging plan has not been through examination, and the Inspector notes that no party at the Inquiry referred to any of the policies contained therein. Like the Inspector, the Secretary of State attaches little weight to the emerging plan (IR5.6).

## **Transboundary effects**

16. For the reasons given at IR2.1-2.5, the Secretary of State agrees with the Inspector at IR2.3 that the proposed onshore aspect of the development before him is not likely to have a significant effect on the environment in an EEA State. He therefore agrees that notification and consultation with EEA States in respect of transboundary effects is therefore not necessary.

## **Procedural consideration – the amended scheme**

17. The Secretary of State has carefully considered whether the amended scheme for the construction of the underground conveyor by pipe-jacking technique is capable of consideration in the determination of this application. For the reasons given at IR21.1-21.8, he agrees with the approach set out by the Inspector at IR21.8. For the reasons given at IR21.9-21.11, he agrees with the Inspector's assessment that the proposed change to the

use of pipe-jacking for the construction of a relatively small section of the underground conveyor route does not constitute a substantial amendment to the scheme. For the reasons given at IR21.12-21.18, he agrees with the Inspector at IR21.17 that the submitted environmental information relating to a change to the construction methodology to introduce pipe-jacking under the woodlands is adequate, and that the environmental effects of this change have been adequately addressed by the Regulation 22 submission and the additional environmental information provided during the course of the inquiry. For the reasons given at IR21.19-21.21, he agrees with the Inspector that there was no deprivation of opportunity of consultation on the changes proposed so as to materially compromise the principles set out in the Wheatcroft judgment. He further agrees that the amended scheme is capable of consideration in the determination of this application (IR21.22).

## **MAIN ISSUES**

### **Need for the coal**

18. The Secretary of State has carefully considered the Inspector's analysis of the need for the coal. For the reasons given at IR21.25-21.34 and IR21.59-21.60, he, like the Inspector, is satisfied that there is currently a UK and European market for the coal (IR21.33), and that although there is no consensus on what future demand in the UK and Europe may be, it is highly likely that a global demand would remain (IR21.60). He agrees with the Inspector's conclusion at IR21.128 that in the period up to 2049, the development of the mine would not encourage the continued use of blast furnace production methods that would otherwise have been closed or converted to lower carbon technologies. For the reasons given at IR21.35-21.38, he agrees with the Inspector that there is no certainty in the pace that commercial and viable alternatives to Blast Furnace-Basic Oxygen Furnace (BF-BOF) may come on stream and therefore the longer-term demand for coking coal cannot be predicted with any degree of certainty (IR21.38). He further notes that the Inspector's subsequent discussion of alternative technologies and approaches at IR21.39-21.47 highlights those uncertainties.
19. He notes that the evidence before the inquiry points to the fact that BF-BOF production is likely to continue in the UK and Europe to around at least 2040 and possibly to 2050 but with the increased use of Carbon Capture and Storage (CCS) or Carbon Capture Utilisation and Storage (CCUS) (IR21.59).
20. For the reasons given at IR21.39-21.40, the Secretary of State, like the Inspector, does not consider that there is a compelling case that hydrogen direct reduction (H-DRI) will result in a significant reduction in the demand for coking coal over the next decade. He agrees that whilst this technology may have the potential to be scaled up there is no certainty on the pace or extent of this (IR21.40). For the reasons given at IR21.41-43, the Secretary of State agrees that there is no certainty that Electric Arc Furnaces (EAF) will make a significant contribution to UK steel production in the short (5-10 years) to medium term (10-15 years) and agrees that whilst there is a likelihood that its use will increase across Europe, the extent to which this may be the case cannot be predicted with any degree of certainty (IR21.43). For the reasons given at IR21.44-21.45, the Secretary of State agrees that increased materials efficiency is not likely to result in a significant reduction in the demand for steel in the short to medium term (IR21.45). For the reasons given at IR21.46-21.47, he further agrees that there is a recognition that (CCS) needs to be integrated into steel making capacity, but this does not necessarily imply a reduction in blast furnace production (IR21.47).

21. For the reasons given at IR21.48-21.52, the Secretary of State agrees with the Inspector at IR21.48 that the demand for coking coal is led by the demand for steel. He further agrees at IR21.51 that the proposed development would contribute a very small fraction of global supply and is unlikely to materially impact on the price of coking coal or the demand for steel. In reaching this conclusion, the Secretary of State has accepted the evidence put forward by the applicant at IR7.63-7.69 and IR7.71. He notes that Mr Truman is the only expert with a detailed understanding of the metallurgical coal market to give evidence at the inquiry, and finds the applicant's detailed and informed evidence more persuasive than that of SLACC at IR10.79. He further agrees for the reasons given at IR21.50-21.51 that the WCM coal would be at a competitive advantage over US coal and therefore it is highly likely that there is the potential for a significant degree of substitution to occur (IR21.52). Given the Secretary of State's conclusion above that the proposed development is unlikely to materially impact the demand for steel, it follows that the total amount of coking coal burnt in the steel-making process is unlikely to materially change, regardless of where that coal comes from. In reaching this conclusion the Secretary of State has taken into account and accepts the Inspector's characterisation that many mines in the USA operate towards the top of the cost curve and are regarded as 'swing suppliers' due to their role in switching production on or off to respond to demand (IR21.50). This means that if the coal were not needed it would not be extracted. The Secretary of State therefore does not agree with SLACC's assertion that 'it is impossible to see how the granting of permission to extract WCM coal could have any effect other than to add to greenhouse gas emissions' (IR10.80). For these reasons he does not consider that this proposal would have a material effect on total emissions from burning coal during the steel-making process, regardless of whether there is perfect substitution or not.
22. The Secretary of State notes that many of those in opposition to the development expressed a view that there is no need for a new coal mine as existing global reserves can satisfy the demand for HVA coal, and has taken into account that the 'IEA Net Zero – A Roadmap for the Energy Sector' identifies that 'existing sources of production are sufficient to cover demand through to 2050' (IR21.53).
23. However, for the reasons given at IR21.53-21.58, he agrees that this does not necessarily mean that the other resources should remain unused, particularly if such exploitation would be by mining methods that take into account the need to be net zero compliant (IR21.56). In reaching this conclusion the Secretary of State has considered the Inspector's comments at IR21.55 and IR22.16. While planning policy does not set out a purely prohibitive policy on coal in the same way as it does for peat, nonetheless the coal test set out in paragraph 217 of the Framework sets a high hurdle, with a prohibition on the granting of permission for extraction of coal unless it is environmentally acceptable, or unless the likely impacts are clearly outweighed by the national, local or community benefits of the proposal. He further agrees that in the event that the demand for coking coal falls more quickly than the forecasts that Wood MacKenzie predict, WCM's position on the cost curve of coking coal which is transported by sea means that its coal will continue to be in demand as other swing suppliers drop out of the picture (IR21.58).
24. For the reasons given at IR21.59-21.63 and at IR22.13 the Secretary of State agrees with the Inspector at IR22.13 that it is clear that the European and UK steel industry is currently reliant on a supply of suitable metallurgical coal, and further agrees that whilst there is a prospect that this reliance may decrease in the UK and Europe over the lifetime of the development, the evidence suggests that there would still remain a market for the coal. However, given that the demand for this type of coking coal is currently being adequately met from existing sources, the Secretary of State has considered how much weight the supply of coal should carry. For the reasons given at IR21.34, he agrees that the proposed

development gains some support from paragraph 209 of the Framework in relation to the supply of the home market, and has also taken into account the applicant's view at IR7.76 that a diverse and secure supply network can help to avoid disruption to supply chains as a result of natural disasters, poor weather, or geo-political considerations. He further agrees for the reasons given at IR21.37, IR21.56 and IR22.13 that this supply would be a national benefit. Overall he considers that the benefits attaching to the supply of the UK market carry moderate weight.

## **Climate change**

25. The Secretary of State has noted and agrees with the Inspector's assessment of the national policy background at IR21.64-21.73, including noting that the BEIS Industrial Decarbonisation Strategy of March 2021 'does not rule out the use of coking coal in an integrated steel making process together with CCUS as a net zero compliant option going forward...any mining of the coal itself need[s] to be net zero compliant in the future' (IR21.71).

### *The operation of the mine*

26. The Secretary of State has carefully considered the Inspector's analysis of Greenhouse Gas (GHG) emissions and climate change in respect of the operation of the mine at IR21.74- 21.101, IR21.125-21.128 and IR21.130-21.134. He has considered the question of downstream emissions separately at paragraphs 32-36 below.

27. The Secretary of State notes that the assessment in Ecolyse 2 (IR21.74-21.83) concludes that taking into account all the mitigation (avoidance, reduction and compensation through off-setting), the residual likely effects of the proposed development (i.e. the extraction process on site, not the downstream emissions from the use of the coal) on GHG emissions would be relatively neutral and not significant (IR21.80). It further concludes that there is broad consistency between assumptions underlying the Climate Change Committee's net zero pathway for the mining sector and the projected emissions from the mine by 2050 (IR21.82). Like the Inspector, the Secretary of State has gone on to assess criticisms of the assessment's conclusions.

28. In respect of exclusions, the Secretary of State notes that the GHG assessment has been compiled to broadly accord with the Institute of Environmental Management and Assessment (IEMA) guide 'Impact Assessment Guide to Assessing Greenhouse Gas Emissions and Evaluating their Significance', which advises that elements of up to 5% of total energy and mass (i.e. inputs) can be excluded, but all inputs and outputs for which data is available should be included in the assessment (IR21.85). For the reasons given at IR21.84-21.88, he agrees with the Inspector's conclusion that the exclusions are likely to be well below the 5% cut off adopted in the IEMA guidance (IR21.88).

29. For the reasons given at IR21.89-21.94 and IR21.132, the Secretary of State agrees that on the basis of the evidence provided, the proposed measures to capture methane represent best available practice (IR21.94). He further agrees at IR21.132 that the proposal would be consistent with paragraph 215(d) of the Framework which encourages coal extraction development to capture and use methane from active coal mines, and agrees that it would also be consistent with Policy SP13 of the CMWLP which requires that proposals for mineral development should demonstrate that energy management and carbon reduction measures have been included in their design. Taking into account that by capturing and storing methane it will be possible to use that methane as a decentralised supply of energy from year 4 of the mine's planned operational period, he further agrees

the proposals would comply with paragraph 15 of the Framework, which requires local planning authorities to expect development to comply with local plan policies on decentralised supply (IR21.132).

30. The Secretary of State agrees with the Inspector's analysis and conclusions in relation to the internationally accepted GMP100 metric at IR21.95-21.96 for the reasons given there.
31. The Secretary of State recognises the views of many objectors to the scheme that the use of offsetting is contrary to the attainment of a net zero model. However, it is acknowledged as a valid approach by the CCC to achieving net zero in the sixth carbon budget (IR21.126 – NB: the IR contains two paragraphs numbered IR21.125 – this refers to the second of those paragraphs). In this case, the Secretary of State accepts that some small amount of GHG release from the proposed development is inevitable, and notes that the proposal provides for any residual emissions remaining after mitigation to be offset through the purchasing of recognised Gold Standard or equivalent offsets (IR21.98). For the reasons given at IR21.97-21.101 and IR21.126, he agrees with the Inspector that its use is neither unusual nor inappropriate in the proposed development (IR21.101).

#### *Consideration of 'Downstream Emissions'*

32. The Secretary of State has carefully considered a number of different issues associated with downstream emissions (i.e. the emissions arising from the use of the coal in the manufacture of steel). In reaching his conclusions he has taken into account the Inspector's comments and analysis at IR1.22-1.26 and IR21.102-21.134.
33. The Secretary of State has firstly considered whether downstream emissions should be taken into account in the consideration of the overall effect of the proposed development on climate change. In doing so he accepts the approach set out in the Court of Appeal decision in *Finch* which held that the question of whether downstream emissions 'must' be assessed is a question of fact and judgement for the planning decision-maker (IR21.106).
34. Like the Inspector, the Secretary of State has considered whether there is sufficient causal connection between the proposal and the impact on the environment associated with downstream GHG emissions as a consequence of the use of the coal in a blast furnace, and whether this constitutes a significant indirect effect of the proposed development (IR21.109). He has taken into account that the Court of Appeal held that the EIA Directive and Regulations do not compel the assessment of the environmental effects resulting from the consumption or use of an end product where those environmental effects are not actually effects of the proposed development; and has also taken into account that there are a number of distinct and intervening processes from the extraction of the coal as part of the proposed development and its use in a blast furnace to make steel (IR21.113), as set out in IR21.116. He agrees with the Inspector at IR21.117 that the applicant would have no knowledge or control over the above processes and the avoidance or mitigation measures employed by any particular blast furnace when using coke made from WCM coal, or indeed a coke maker, and further agrees at IR21.118 that the 'essential character' of the proposed development does not extend to the subsequent use of metallurgical coal by the facilities and processes beyond the planning application boundary and outwith the control of the applicant (IR21.118).
35. Overall, the Secretary of State agrees with the Inspector that the impacts of GHG emissions from the subsequent use of the coal, as part of a blended coke product, at indeterminate proportion and in an indeterminate quantity, with no knowledge at this stage of the nature and efficiency of the particular blast furnace and any GHG mitigation

measures that may be installed, cannot reasonably be regarded as indirect significant effects of the proposed development (IR21.123). Therefore he agrees with the Inspector on this matter and in the application of the Finch judgement (IR21.123).

36. The Secretary of State has gone on to consider the impacts of using coal from WCM. He agrees with the Inspector that to some extent the emissions from the use of coking coal are inevitable whether coal from the proposed development or other sources is used (IR21.122), and further agrees for the reasons given at IR21.121 that the effects of downstream emissions may well be considered neutral or slightly beneficial when compared with other extractive sources. He has concluded at paragraph 21 above that it is highly likely that there is the potential for a significant degree of substitution to occur. He agrees for the reasons given at IR21.120 and IR21.129 that the proposed development would have a broadly neutral effect on the global release of GHG from coal used in steel making, whether or not end use emissions are taken into account, and would enable some of the coal used to be sourced from a mine that seeks to be net zero (IR21.129).

### *Conclusions on climate change*

37. For the reasons given at IR21.125-21.134, the Secretary of State agrees that given no evidence was provided to suggest that any other metallurgical coal mines in the world aspire to be net-zero, the proposed mine is likely to be much better placed to mitigate GHG emissions than from comparative mining operations around the world (IR21.125). He further agrees that the commitment in the proposed development to be net zero over the whole life-time is entirely consistent with the approach proposed by the Industrial Decarbonisation Strategy (IR21.130), and that the proposal would be consistent with paragraph 215(d) of the Framework which encourages coal extraction development to capture and use methane from active coal mines, as well as paragraph 15 of the Framework (IR21.132). He further agrees that the proposal would be consistent with Policy SP13 of the CMWLP which require that proposals for mineral development should demonstrate that energy management and carbon reduction measures have been included in their design (IR21.132).
38. Overall, the Secretary of State agrees at IR21.131 that the proposed development is consistent with paragraph 152 of the Framework, and would to some extent support the transition to a low carbon future. He further agrees that the proposed development would have an overall neutral effect on climate change and is thus consistent with Government policies for meeting the challenge of climate change (Framework Chapter 14), and also Policy SP13 of the CMWLP, and agrees that this should be afforded neutral weight in the overall planning balance (IR21.134).

### **Ecology**

39. For the reasons given at IR21.135-21.138, the Secretary of State agrees with the Inspector's analysis and conclusions that subject to the imposition of appropriate planning conditions, the impact of the proposed development on the MMS and the restoration of the Main Band Colliery site would not result in a materially detrimental impact to ecology or biodiversity interests (IR21.138).
40. For the reasons given at IR21.140-21.147 and IR22.6-22.7, the Secretary of State agrees with the Inspector that the effects of construction of the underground conveyor using 'cut and fill' are likely to be adverse, permanent and significant at a local level, and would result in a small loss of irreplaceable ancient semi-natural woodland. He has gone on to consider the construction of the underground conveyor using 'pipe-jacking'. For the reasons given



at IR21.148-21.152, IR21.166 and IR22.6, the Secretary of State agrees with the Inspector that the utilisation of pipe-jacking as a construction methodology would not cause any unacceptable impacts on ecology nor result in a net loss in biodiversity (IR22.6). He agrees that consequently, the use of pipe-jacking as a construction technique for the conveyor beneath the identified woodlands would not result in any conflict with paragraph 180(c) of the Framework or Policies ENV3 and DM25 of the CLP (IR21.152). For the reasons given, he further agrees that the proposed pipe-jacking technique should be the preferred approach for the construction of the underground conveyor (IR21.152).

41. For the reasons given at IR21.153-21.160 the Secretary of State agrees with the Inspector's conclusions on protected and rare species. For the reasons given at IR21.161-21.163 and IR21.166, the Secretary of State, like the Inspector, is satisfied that the Supplemental Undertaking would ensure that the proposed development would provide for a minimum net gain of 10% prior to the commencement of production and further net gain to be achieved on restoration. He agrees that consequently, there would be no conflict with Policy SP15 and DC16 of the CWMLP, Policy DM25 of the CLP or paragraph 179 of the Framework.
42. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR21.164-21.165 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives. Those sites are River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC), Lake District High Fells SAC, Wast Water SAC, Morecombe Bay and Duddon Estuary Special Protection Area (SPA), River Ehern SAC, Drigg Coast SAC and proposed Solway Firth SPA.
43. The Secretary of State agrees with the assessment and findings in Annex G of the IR, and like the Inspector is content that the development would not result in any likely significant effect alone, or in combination with other plans and projects, on the existing and proposed internationally designated sites (Annex G, paragraph 36). In reaching this conclusion he has taken into account the Inspector's comments at IR1.27-1.30. He therefore adopts Annex G as the necessary Appropriate Assessment in his role as the Competent Authority on this matter.

### **Character and appearance of the area**

44. The Secretary of State agrees with the approach taken by the Inspector at IR21.168-21.171. For the reasons given at IR21.172-21.184 the Secretary of State agrees that the impact of development on the Main Mine Site (MMS) on landscape character would be offset by the landscape benefits as set out at IR21.183, and agrees that overall the proposed development on the MMS would have a neutral effect on landscape character (IR21.184). For the reasons given at IR21.185 he agrees that the installation of the underground conveyor would not have any material effect on the character or appearance of the area (IR21.186).
45. For the reasons given at IR21.187-21.193 the Secretary of State agrees that the Rail Loading Facility (RLF) would likely appear as an isolated, uncharacteristic and visually dominant structure within the northern section of the valley (IR21.190), and that in localised views along the valley bottom, the sidings would appear as a significant structure in the local landscape (IR12.191). He further agrees that the magnitude of landscape change as a consequence of the construction of the RLF would be substantial in the immediate vicinity of the site, to slight at the periphery of the Landscape Character Area, averaging moderate

overall. He agrees that the proposed RLF would have a major effect on the landscape of the surrounding area and that this effect would be adverse and significant (IR21.193).

46. The Secretary of State has followed the approach set out by the Inspector in IR21.194-21.195. He agrees with the Inspector's analysis at IR21.196-21.208 of visual effects on residential properties from development on the MMS and for the reasons given there agrees that overall, the magnitude of change would be moderate resulting in a moderate adverse visual effect upon residents. He further agrees that as the proposed planting establishes, the development would integrate better with the landscape with the consequence that there would be a slight adverse effect in the longer term (IR21.208). For the reasons given at IR21.209-21.212 the Secretary of State agrees with the Inspector's analysis that the visual effects on Public Rights of Way from development on the MMS would be major/moderate adverse and significant.
47. For the reasons given at IR21.213-21.217 the Secretary of State agrees with the Inspector's analysis of visual effects on residential properties of the RLF.
48. For the reasons given at IR21.218-221 he agrees that as a consequence of the open rural nature of the location of the RLF, the magnitude of visual change associated with its construction in close views would be high. He agrees that users of the part of the Coast-to-Coast path that passes in relatively close proximity of the RLF would be sensitive to this change, and further agrees that overall, the adverse effect on users of this part of the path would be major (IR21.219). For the reasons given at IR21.222-21.226 the Secretary of State agrees with the Inspector's analysis there of visual impacts on road and rail users.
49. The Secretary of State agrees with the Inspector at IR21.229 that there would be some landscape benefits associated with the reclamation and reuse of the derelict Marchon site and the restoration of the Main Band Colliery site, and further agrees at IR22.15 that these benefits should be afforded moderate weight.
50. Overall, for the reasons given above and at IR21.227-IR21.229 and IR22.5 the Secretary of State agrees with the Inspector at IR22.5 that substantial harm would occur to the character and appearance of the Pow Beck Valley, contrary to Policy DC18 of the CMWLP and Policy ENV5 of the CLP. He further agrees at IR21.229 that there would be an unacceptable environmental impact, and like the Inspector at IR22.5, he attaches significant weight to this harm.

## **Heritage**

51. For the reasons given at IR21.230-21.234 and IR21.237 the Secretary of State agrees that there would be one impact of more than minor significance that will affect a heritage asset, in respect of the construction of the Rail Loading Facility on the setting of Scalegill Hall and adjoining barn (a Grade II listed building). He further agrees at IR21.238 that the presence of the A595 provides a dominating effect on the setting of Scalegill Hall and severs the heritage asset from the landscape to the west, and that whilst distant views of the RLF will be possible, these will be at a considerable distance. The Secretary of State agrees that consequently, the harm to the setting of the heritage asset would be less than substantial (IR21.238). He has taken into account, in line with paragraph 199 of the Framework, that great weight should be given to the asset's conservation. However, in the particular circumstances of this case, and taking into account the matters at IR21.232-21.234 and

IR21.237-21.238, he considers that the less than substantial harm should carry moderate weight.

52. In line with paragraph 202 of the Framework, he has weighed this harm against the public benefits of the proposal, as summarised at paragraph 70 below. He agrees with the Inspector at IR21.240 and IR22.19 that these benefits outweigh the less than substantial harm that would be caused to the setting of the heritage asset at Scalegill Hall, and the Framework heritage test is therefore favourable to the proposal. He further agrees that the proposed development would not be in conflict with the relevant provisions of Policy DC17 of the CMWLP, Policy ENV4 of the CLP nor with the relevant provisions of the Framework.
53. The application does not propose any mitigation to minimise the effect of the proposed development on the setting of Scalegill Hall; however, as part of the mitigation for impacts upon historic assets overall, enhancements to local heritage assets of high value are proposed at Barrowmouth Gypsum and Alabaster Mine, Saltom Coal Pit (which is on the Historic England at risk register) and Haig Colliery (IR21.235-21.236). For the reasons given at IR21.236-21.237 the Secretary of State agrees that there will be benefits which include those resulting from enhanced knowledge of historic industrial mining heritage and enhancements to the setting of a number of high sensitivity assets (IR21.239). He considers these benefits carry moderate weight.

### **Integrity of the Sellafield Nuclear Processing Facility**

54. The Secretary of State notes that a number of concerns were raised by interested parties regarding the effect of the proposed development on the integrity of the Sellafield Nuclear Reprocessing Facility (IR21.241). He further notes that no objections were received from the Office for Nuclear Regulation, the Coal Authority, the Health and Safety Executive and the MMO in respect of this matter (IR21.242). For the reasons given at IR21.242-21.245 the Secretary of State agrees with the Inspector that whilst the risk of a seismic event cannot be ruled out, in the absence of concerns raised regarding this matter from technical consultees, and on the basis that impacts will be monitored and managed whilst the mine is operational, the potential impacts in respect of future seismic events should be afforded limited weight (IR21.245).

### **Employment and the local and national economy**

55. The Secretary of State has carefully considered the economic benefits put forward by the applicant (IR21.246-21.250) and the detailed economic analysis of the local, regional and national benefits of the proposed development set out in the report on the 'Economic Impact of Cumbria Metallurgical Coal Project', prepared by NERA Economic Consulting (IR21.253-21.55). He notes that the contents and conclusions of the NERA report were not challenged in the inquiry (IR21.253).
56. For the reasons set out in IR21.246-21.250, the Secretary of State agrees with the Inspector that on the basis of the evidence provided there are no justifiable reasons to suggest that the job numbers identified in the Applicant's 'Operational Organogram' may be incorrect (IR21.246). He further agrees with the Inspector that many of these jobs would be skilled and well-paid jobs, and that the jobs provided by the proposed development would make a significant contribution to the local economy, both directly and due to a multiplier effect (IR21.247).
57. Like the Inspector, the Secretary of State accepts that the intention to achieve targets for the recruitment of 80% of the workforce from within 20 miles of the site cannot be

guaranteed but agrees with the Inspector that even if endeavours to achieve this were partially unsuccessful, the migration of persons to work at the mine and reside in the local area would nonetheless add to the spending and use of local facilities and services (IR21.249).

58. For the reasons given at IR21.251-21.252, the Secretary of State agrees that it was clear from some of the evidence presented at the Inquiry that the local area has a compelling need for additional investment and employment opportunity, and agrees that against this background, the proposed development would provide significant opportunity for employment and investment in local products and services, particularly during the construction period (IR21.252).
59. The Secretary of State has also taken into account that the proposed development would sustain 1127 indirect and induced jobs nationally, with 146 of these at a regional level (IR21.254); and has taken into account the increase to national output, the impact on GVA and the contribution to the UK balance of payments (IR21.254-21.255 and IR22.14).
60. He agrees that in light of the evidence put forward, the proposed development would make a substantial contribution to the national and regional economy and provide significant employment benefits (IR21.256). He agrees with the Inspector that the proposal would be compliant with Policy SP14 of the CMWLP, and further agrees these benefits should be afforded substantial weight (IR21.256 and IR22.14).

### **Tourism and recreation**

61. For the reasons given at IR21.257-21.261 the Secretary of State agrees at IR21.260 that the development would affect only a very small part of the coastal route. He further agrees that there was no conclusive evidence provided in the Inquiry to make any reasonable judgement of the effect of the proposed development on the local tourist economy and agrees that the development would not deter users to any significant extent. For the reasons given he agrees at IR21.26 that the impact on tourism should be afforded little weight.

### **Other matters**

62. The Secretary of State agrees with the Inspector's conclusions on the impacts of air quality, dust, noise, water pollution and light pollution arising from the proposed development (IR21.262).

### **Planning conditions**

63. The Secretary of State has given consideration to the Inspector's analysis at IR19.1-19.30, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of his decision. Given the Secretary of State's decision that this development should be granted on the basis of the underground conveyor being constructed by utilisation of the pipe-jacking technique, and noting the Inspector's comments at IR19.17, the following numbered conditions which relate to the cut and fill technique have been removed from the list in Annex F of the IR: Condition 28, Condition 29 and Condition 30. They have been replaced by Condition 28A, Conditions 29A and Condition 30A. As per the list in Annex F of the IR, Plans 869/AC/010 C, 869/AC/011 C, 869/AR/015 A and

869/AR/016 B have also been inserted at the end of Condition 2 to reflect the choice of pipe-jacking.

### **Planning obligations**

64. Having had regard to the Inspector's analysis at IR20.1-20.12, the Section 106 Agreement dated 28 October 2021 and Supplemental Agreement also dated 28 October 2021, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR20.5 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

### **The coal test**

65. The Secretary of State agrees with the Inspector at IR22.1 that paragraph 217 of the Framework and Policy DC13 of the CMWLP (which largely reflects paragraph 217) are the key considerations in the planning balance that applies in this case. The Secretary of State agrees with the approach set out by the Inspector at IR22.2-22.4.

66. The Secretary of State agrees with the Inspector at IR22.5-22.10 that on the basis of utilising pipe-jacking as a construction methodology (see paragraph 40 above), the following matters would give rise to elements of environmental harm: substantial harm to the character and appearance of the Pow Beck Valley (paragraph 50 above); less than substantial harm to the setting of a heritage asset (paragraph 51 above); the impact on tourism (paragraph 61 above); and the potential impacts of future seismic events (paragraph 54 above).

67. Overall the Secretary of State therefore agrees that the proposal fails to meet the requirements of paragraph 217(a) of the Framework and fails to meet the first two bullet points of Policy DC13 of the CMWLP (IR22.11). He has gone on to consider whether the proposed development meets the requirements of paragraph 217(b) of the Framework and the third bullet point of Policy DC13.

68. In reaching his conclusion he has taken into account benefits associated with the supply of coal (paragraph 24 above), landscape benefits associated with restoration of the Main Band Colliery site and the eventual restoration of part of the former Marchon site (paragraph 49 above), heritage benefits (paragraph 53 above) and economic benefits (paragraph 60 above). Overall the Secretary of State agrees with the Inspector at IR22.19 that the likely impacts (taking all relevant matters into account, including any residual environmental impacts) are clearly outweighed by the national, local or community benefits of the proposed development. He therefore agrees with the Inspector at IR22.20 that the proposal accords with paragraph 217(b) of the Framework and the third bullet point of Policy DC13 of the CMWLP. The coal test in both the Framework and the development plan is therefore favourable to the proposal. The Secretary of State further agrees that the proposal is in accordance with national policy regarding the sustainable use of minerals (Chapter 17 of the Framework) (IR22.20).

### **Planning balance and overall conclusion**

69. For the reasons given above, the Secretary of State considers that there is conflict with Policy DC18 of the CMWLP and Policy ENV5 of the CLP. However, given the centrality of Policy DC13 to this case, the fact that the Policy DC13 test takes into account the conclusions on Policies DC18 and ENV5, and the overall conclusion that the Secretary of

State has reached on accordance with Policy DC13, he considers that the proposal is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

70. Weighing in favour of the proposal are the economic benefits which attract substantial weight; the provision of an indigenous source of supply to the UK steel industry which attracts moderate weight; local heritage benefits which attract moderate weight; and landscape benefits associated with restoration of the Main Band Colliery site and the eventual restoration of part of the former Marchon site which attract moderate weight.
71. Weighing against the proposal are landscape harm which attracts significant weight; potential impacts on the integrity of Sellafield Nuclear Reprocessing Facility which attract limited weight; the impact on tourism which attracts little weight; and the 'less than substantial' heritage harm which attracts moderate weight. The Secretary of State has concluded that the heritage test at paragraph 202 of the Framework is favourable to the proposal.
72. The Secretary of State has considered the proposal in relation to the criteria of the coal test at paragraph 217 of the Framework, and has concluded that this test is favourable to the proposal.
73. Overall the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.

### **Formal decision**

74. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for the development on the basis of the underground conveyor being constructed by utilisation of the pipe-jacking technique, subject to the conditions set out in Annex B below, and with the benefit of the obligations in the Section 106 Agreement and Supplemental Agreement, for:

- a new underground metallurgical coal mine and associated development including: the refurbishment of two existing drifts leading to two new underground drifts; coal storage and processing buildings; office and change building; access road; ventilation, power and water infrastructure; security fencing; lighting; outfall to sea; surface water management system and landscaping at the former Marchon site (High Road) Whitehaven;
- a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line with adjoining office / welfare facilities; extension of railway underpass; security fencing; lighting; landscaping; construction of a temporary development compound, and associated permanent access on land off Mirehouse Road, Pow Beck Valley, south of Whitehaven;
- a new underground coal conveyor to connect the coal processing buildings with the coal loading facility;

in accordance with application Ref. 4/17/9007, dated 31 May 2017.

75. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

76. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
77. A copy of this letter has been sent to Cumbria County Council and SLACC and Friends of the Earth, and notification has been sent to others who asked to be informed of the decision.

*Planning Casework Unit*

*This decision was made by the Secretary of State, and signed on his behalf*

## ANNEX A SCHEDULE OF REPRESENTATIONS

**General representations, including those received after the Inquiry and not seen by the Inspector**

<b>Party</b>	<b>Date</b>
Bethany Jackson	10/08/2021
Mrs O. M. Hillen	03/09/2021
Simon Burdis	16/09/2021
Neil Wilson	02/10/2021
Paul Dillon (1 of 3)	12/10/2021
Marianne Birkby (1 of 4)	01/11/2021
Miranda Whall	20/11/2021
Dawn Fuller	12/12/2021
Correspondence signed by Mike Starkie, Elected Mayor of Copeland, and 33 Councillors representing Copeland Borough Council and Cumbria County Council	15/12/2021
Mark Jenkinson MP, attaching correspondence signed by 35x MPs	22/12/2021
Marianne Birkby, on behalf of Radiation Free Lakeland (2 of 4)	03/01/2022
Marianne Birkby, on behalf of Radiation Free Lakeland (3 of 4)	17/01/2022
Marianne Birkby, on behalf of Radiation Free Lakeland (4 of 4)	21/01/2022
Steven Goodman, on behalf of Reading Friends of the Earth	11/03/2022
Morag Carmichael on behalf of Hammersmith and Fulham Friends of the Earth	09/02/2022
Becca Cole on behalf of Blackwater Valley Friends of the Earth	19/02/2022
Mike Starkie, Elected Mayor for Copeland	09/03/2022
Nick Brown MP, attaching correspondence from Jacky Doran on behalf of Climate Action Newcastle	11/03/2022
Chi Onwurah MP, attaching correspondence from Jacky Doran on behalf of Climate Action Newcastle	11/03/2022
Paul Palley (1 of 10)	14/03/2022
Lee Anderson MP, attaching correspondence signed by 35x MPs	22/03/2022
Paul Palley (2 of 10)	25/03/2022
Rosie Cooper MP, attaching correspondence from Andrew Morris on behalf of Ormskirk and District Friends of the Earth	25/03/2022
Mr John C Hall	26/03/2022
Philip Davies MP	28/03/2022
Jill Hudson	11/04/2022
Chris Walsh	13/04/2022
David Douglass	14/04/2022
Rt Hon Greg Clarke MP, attaching correspondence from constituent Colin Sefton	14/04/2022
Paul Dillon (2 of 3)	15/04/2022
Paul Dillon (3 of 3)	17/04/2022
13 NGOs, via Miriam Turner and Hugh Knowles (Friends of the Earth England, Wales and NI)	26/04/2022
Paul Palley (3 of 10)	28/04/2022
Richard Thomson MP, summarising correspondence from multiple unidentified constituents	06/05/2022



Matt Rodda MP, attaching correspondence from an unidentified constituent	09/05/2022
K J Alderson	Undated
Colin Hatton	Undated
Sir Bill Wiggin MP, attaching correspondence from Beth Hartness	06/06/2022
Kate Green MP, attaching correspondence from Helen Carr	09/06/2022
Brian Batty	10/06/2022
Peter Atkinson	27/06/2022
Jean Warnes	29/06/2022
Sir Stephen Timms MP, on behalf of constituent Mr Matthew Nash	29/06/2022
David Topping	28/06/2022
The Rt Hon Diane Abbott MP	01/07/2022
Mr James	01/07/2022
Catherine McKinnell MP, summarising correspondence from multiple unidentified constituents	05/07/2022
Derek Twigg MP, attaching correspondence from Samantha Parr	06/07/2022
Ruth Hall	06/07/2022
Molly Hogg	06/07/2022
Gillian Kelly	06/07/2022
Julia Robinson, Climate Emergency West Cumbria	06/07/2022
Helen Wilkinson	06/07/2022
John Ormiston	06/07/2022
Kamran Hyder (Ward Hadaway) on behalf of the applicants (1 of 3)	07/07/2022
Matthew Simons	07/07/2022
Ciara Shannon, Green Finance Community Hub (1 of 2)	08/07/2022
Mr D R Drimmer	13/07/2022
Rt Hon Penny Mordaunt MP, attaching correspondence from Simon Thornton	22/07/2022
Dr Adrienne Calsy	27/07/2022
Rt Hon Alok Sharma MP, attaching correspondence from constituent Richard Croker	01/08/2022
Rt Hon Greg Clark MP, attaching correspondence from constituent Steve Walter	02/08/2022
Marieke de Jonge	02/08/2022
Martin Wilkinson	05/08/2022
Sir Bill Wiggin MP, attaching correspondence from Peter and Janice Ford	08/08/2022
Peter Bone MP, attaching correspondence from constituent Stephen Reynolds	08/08/2022
Angela Richardson MP, attaching correspondence from constituent Anna Deadman	11/08/2022
Rt Hon Sir Iain Duncan Smith MP, attaching correspondence from constituent Laura Bevan	11/08/2022
Rt Hon Damian Hinds MP, on behalf of unidentified constituent	12/08/2022
Kamran Hyder (Ward Hadaway) on behalf of the applicants (2 of 3)	15/08/2022

David Morris MP, attaching correspondence from constituent Jo Looker	15/08/2022
Hetty Benson	17/08/2022
Peter Kyle MP, summarising correspondence from multiple unidentified constituents	26/08/2022
Rt Hon. Mel Stride MP summarising correspondence from an unidentified constituent	01/09/2022
Yvonne Fovargue MP, attaching correspondence from constituent John Logan	01/09/2022
Guy Opperman MP, attaching correspondence from constituent Adam Wilson	05/09/2022
Ciara Shannon, Green Finance Community Hub (2 of 2)	07/09/2022
Mark Jenkinson MP	08/09/2022
Mike Starkie, Elected Mayor for Copeland	20/09/2022
David Simmonds CBE MP, on behalf of constituent Roger Emmot	26/09/2022
Mary Glindon MP, on behalf of Austin McCarthy	26/09/2022
Paul Palley (4 of 10)	04/10/2022
Paul Palley (5 of 10)	17/10/2022
Paul Palley (6 of 10)	18/10/2022
Paul Palley (7 of 10)	24/10/2022
Paul Palley (8 of 10)	24/10/2022
Mike Starkie, Elected Mayor for Copeland	26/10/2022
Cllr Mike Johnson, Leader of Allderdale Council	27/10/2022
25 Organisations, via Tom Fyans CPRE	04/11/2022
Kamran Hyder (Ward Hadaway) on behalf of the applicants (3 of 3)	04/11/2022
Paul Palley (9 of 10)	21/11/2022
Paul Palley (10 of 10)	23/11/2022

## **Annex B List of conditions**

- 1) For the purposes of conditions of this planning permission, the following definitions shall apply to the permission hereby granted:

### **DEVELOPMENT PHASES:**

#### **Preliminary Phase**

The works associated with:

At the Main Mine Site - Securing the site, site investigation (contamination and geotechnical), remediation of contaminated land (including the installation of temporary covers), site clearance (removal of remnants of the sites former use as a chemical production factory. This phase precedes the Construction Phase.

At the Rail Loading Facility – Securing the site, archaeological investigation, site investigation (geotechnical), any archaeological excavation (required as a result of the archaeological investigation), any remediation of contamination (if there is any at presently unknown contamination), site clearance/soil strip and formation of soil storage bunds.

Along the route of the conveyor – Archaeological investigation, Site investigation (geotechnical), any archaeological excavation (required as a result of the archaeological investigation), any remediation of contamination (if there is any at presently unknown contamination)

#### **Construction Phase / Construction Works**

##### **The phase / works associated with:**

At the Main Mine Site – vehicular access improvements, creation of construction and operational parking areas and construction compounds, site levelling to formation layer and installation of services and drainage connections, the construction of all the built and engineered components of the development, removal / decommissioning of construction compounds.

At the Rail Loading Facility - creation of construction and operational parking areas and construction compounds, site levelling to formation layer and installation of services and drainage connections, the construction of all the built and engineered components of the development, removal and decommissioning of construction compounds and restoration of laydown areas/ construction compounds.

Along the line of the conveyor route – soil stripping and soil storage, haul roads, excavation, installation and burial of the conveyor culvert, installation of the conveyor infrastructure, soil replacement, and restoration. At the underground mining area - driving drifts to the target coal reserves, creation of pit bottom.

For each component of the development the Construction Phase follows the Preliminary Phase and precedes the Operational Phase.

#### **Operational Phase**

The stage of the development comprising the Winning and Working of High Vol A Coking Coal from underground mining areas, the processing of coal to separate High Vol A Coking Coal and waste. The dispatch from site of coal products and the return underground and placement of waste/paste.

This Operational Phase follows the Construction Phase and precedes the Restoration Phase.

### **Restoration Phase**

Following the completion of the Operational Phase, the Restoration Phase comprises the removal of all above-ground buildings and structures, and removal of conveyor infrastructure (but retention of the conveyor culvert) and the restoration of the above ground components of the site in accordance with the approved restoration scheme.

### **DEVELOPMENT COMPONENTS:**

#### **Main Mine Site (MMS)**

That part of the development site which accommodates the mine portals, coal handling and processing plant, offices and other development associated with the administration and operation of the mine as illustrated on drawing reference 869/AM/002 Rev E and which includes the landscape mounds to the north and south of the buildings, plant and equipment.

#### **Rail Loading Facility (RLF)**

The facility to be used for taking coal transported by the conveyor and loading it onto trains, including the rail loading building, the railway sidings, the RLF office and RLF Conveyor access station and ancillary development as illustrated on drawing 869/AR/002 Rev C and including the land formerly occupied by the Main Band colliery.

### **MINE PRODUCTION:**

#### **High Vol A Coking Coal**

Coal with particular physical and chemical characteristics that makes it suitable for use in the production of coke for steel-making and separated from reject material during processing at the Coal Handling and Processing Plant. For the avoidance of doubt 'High Vol A Coking Coal' shall be defined as having [a maximum ash content of 8% and a maximum sulphur content of 1.6% and an average (mean) sulphur content of no more than 1.4%.

#### **Winning and Working of Minerals / Mineral Extraction**

The Winning of Minerals comprises the driving of drifts and installation of infrastructure to reach and access the mineral targeted for extraction. The Working of Minerals or Mineral Extraction is the extraction of the target mineral.

#### **Approved Plans and Documents**

- 2) The development shall be carried out in accordance with the approved documents and plans, hereinafter referred to as the approved scheme. The approved scheme shall comprise the following:

The submitted planning application form

Plans numbered and named:

869/AP/001 Rev F Location Plan & Planning Application Boundary  
869/AP/002 Rev D Sandwith Anhydrite Mine Abandonment Plan  
869/AM/001 Rev C Main Mine Site - Existing Plan  
869/AM/002 Rev F Main Mine Site - Proposed Plan  
869/AM/003 Rev C Main Mine Site - Construction Phase Drawing 1  
869/AM/004 Rev E Main Mine Site - Construction Phase Drawing 2  
869/AM/005 Rev C Main Mine Site - Construction Phase Drawing 3  
869/AM/006 Rev D Main Mine Site - Site cross sections  
869/AM/007 Rev C Main Mine Site - Existing Site Topography  
869/AM/008 Rev D Main Mine Site - Finished Level Cut and Fill Representation  
869/AM/010 Rev A Main Mine Site - Site Entrance  
869/AM/011 Rev A Main Mine Site - Office and change building, Proposed elevations  
869/AM/012 Rev A Main Mine Site - Office and change building, Proposed Plans  
869/AM/013 Rev A Main Mine Site - Gatehouse, Proposed Plan & elevations  
869/AM/015 Rev A Main Mine Site- Workshop, Proposed Plan & elevations  
869/AM/017 Rev A Main Mine Site - East (S) drift canopy, Proposed plan and elevations  
869/AM/019 Rev A Main Mine Site - Fan House, Proposed plan and elevations  
869/AM/021 Rev A Main Mine Site - Auxiliary power plant - Gas, Proposed plan & elevations  
869/AM/023 Rev A Main Mine Site - Auxiliary power plant - Diesel, Proposed plan & elevations  
869/AM/025 Rev A Main Mine Site - Substation, Proposed plan & elevations  
869/AM/027 Rev E Main Mine Site - Clean/raw coal & CHPP building, Proposed Plan  
869/AM/028 Rev C Main Mine Site - Clean/raw coal & CHPP building, Proposed elevations 1 of 2  
869/AM/029 Rev D Main Mine Site - Clean/raw coal & CHPP building, Proposed elevations sheet 2 of 2  
869/AM/030 Rev C Main Mine Site - CHPP Access & Welfare building, Proposed Plan & elevations  
869/AM/031 Rev C Main Mine Site - Methane Management and Reject Store, Proposed plan  
869/AM/032 Rev C Main Mine Site - Methane Management and Reject Store, Proposed elevations  
869/AM/033 Rev A Main Mine Site - Water Storage Tank- Proposed Plan & Elevation  
869/AM/034 Rev A Main Mine Site - RLF Conveyor drive building, Proposed plan & elevations  
869/AM/038 Rev A Main Mine Site - (East) N Drift Access, Proposed Plan & elevations  
869/AM/040 Rev C Main Mine Site - External Lighting Layout  
869/AM/041 Rev H Main Mine Site - Proposed Landscaping Plan  
869/AM/042 Rev E Main Mine Site - Restoration Plan  
869/AM/201 Rev B Main Mine Site - South Landscape Mound Cross Sections  
869/AC/001 Rev F RLF Conveyor Culvert - Existing Plan  
869/AC/002 Rev G RLF Conveyor Culvert - Proposed plan  
869/AC/003 Rev C RLF Conveyor Culvert - Construction Phase drawing  
869/AC/006 Rev A RLF Conveyor Culvert - Typical Construction Phase Cross Sections  
869/AC/008 Rev A RLF Conveyor Culvert - Intermediate station  
869/AC/009 Rev A RLF Conveyor Culvert - Conveyor Access Station at Rail Loading Facility

869/AR/001 Rev C Rail Loading Facility - Existing Plan and Topography  
 869/AR/002 Rev C Rail Loading Facility - Proposed Plan  
 869/AR/003 Rev B Rail Loading Facility - Construction Phasing Plan  
 869/AR/006 Rev B Rail Loading Facility - Site Cross sections  
 869/AR/007 Rev C Rail Loading Facility - Lighting  
 869/AR/008 Rev A Rail Loading Facility - Site Entrance  
 869/AR/009 Rev A Rail Loading Facility - Rail loading building, Plan and elevations  
 869/AR/011 Rev A Rail Loading Facility - Office & Welfare Facilities, Plan and elevations  
 869/AR/012 Rev C Rail Loading Facility - Proposed screen Tree Planting  
 869/AR/013 Rev I Rail Loading Facility - Post Construction Restoration  
 869/AR/014 Rev L Rail Loading Facility - Post Decommissioning Restoration  
 869/AO/001 Rev D Underground Mining - Onshore and Offshore Mining Areas  
 869/AO/002 Rev D Underground Mining - Access to Onshore and Offshore Mining Areas  
 869/AO/003 Rev D Underground Mining - Inseam Access Routes Onshore to Offshore  
 869/AO/004 Rev D Underground Mining - Onshore cross measure drift zone  
 Figure 14.1 Rev 01 Noise Monitoring and Receptor Locations

Additional Information / Documents (as amended): Planning Statement ES Chapter 5 – Project Description ES Chapter 8 – Road Transport ES Chapter 9 – Rail Transport ES Chapter 11 – Ecology ES Chapter 12 – Hydrology and Hydrogeology ES Chapter 13 – Land Contamination ES Chapter 14 – Noise and Vibration ES Chapter 15 – Air Quality ES Chapter 16 – Historic Environment ES Chapter 17 – Marine Environment ES Chapter 19 – Greenhouse Gas Emissions Coal Mining Risk Assessment – ref WCM-PA-EIA-CMRA Process Change

869/AC/010 C Roskapark conveyor cross section  
 869/AC/011 C Bellhouse Gill conveyor cross section  
 869/AR/015 A Rail Loading Facility - Post Construction Restoration pipe-jack option  
 869/AR/016 B Rail Loading Facility - Post Decommissioning Restoration pipe-jack option

### **Timescales**

- 3) The development shall commence within 3 years of the date of this permission. The Mineral Planning Authority shall be notified in writing of the date of commencement of Construction Works at least 7 days, but not more than 21 days, prior to the commencement of such works.
- 4) The permission hereby granted authorises the Winning and Working of High Vol A Coking Coal suitable for use in steel manufacture only.
- 5) The mining operational phase hereby approved shall cease by no later than 31 December 2049. Following the cessation of operations, the site shall be fully restored in accordance with the approved scheme within 24 months of the date of cessation.

### **Construction and Environment Management Plan (see Schedule ref duplication)**

- 6) No development shall take place until a Construction and Environment Management Plan (CEMP) has been submitted to and approved in writing by the Mineral Planning

Authority. The CEMP shall, for the Preliminary and Construction Phases, include details of all on-site Construction Works, including remediation works, post-construction reinstatement, drainage, mitigation, and other restoration, together with details of their timetabling including details of:

- a) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures;
- b) provisions for environmental emergency planning and environmental incident response arrangements;
- c) Considerate Constructors scheme and compliance arrangements;
- d) Environmental Permits, Licences and Consents required;
- e) Code of Construction Practice (relating specifically to local community impacts and management);
- f) liaison with the public and contact information for community concerns;
- g) the programme of Construction Works;
- h) parking areas for the vehicles of construction workers and visitors;
- i) areas to be used for the loading and unloading of plant and materials;
- j) details of site offices and welfare facilities;
- k) areas for the storage of plant and materials used in construction of the development;
- l) formation of the construction compound(s) and access tracks and any areas of hardstanding;
- m) a scheme for the management of noise during construction;
- n) a scheme for the management of air quality and dust during construction;
- o) site signage;
- p) how the environmental aspects of historic environment works will be managed;
- q) the management of waste on site, including provision for waste segregation, compliance with Duty of Care regulations;
- r) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;
- s) management of construction traffic;
- t) ecological management including plans for the monitoring of:
  - i) Pow Beck surface water discharge flows and water quality;

- ii) surface water quality in attenuation pond(s) on Main Mine Site prior to discharge to the Surface Water Outfall;
- iii) marine water quality and scouring around the surface water discharge pipe;
- u) seasonal and daytime restrictions on certain activities to mitigate for effects on ecological receptors;
- v) covering or infilling of any trenches overnight to prevent animals being trapped and/or provision of a ramp to allow escape;
- w) contaminated land management
- x) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
- y) the appearance, erection and maintenance of boundary treatments and security fencing & site signage and the timescales for their erection and removal;
- z) the management of vermin;
- aa) working hours;
- bb) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;
- cc) details of wheel washing facilities including any drainage requirements and maintenance;
- dd) cleaning of site entrances and the adjacent public highway;
- ee) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway;
- ff) all fixed lighting and procedures to ensure temporary lighting equipment is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife; and
- gg) post-construction restoration / reinstatement of any temporary working areas.

Once approved, the CEMP shall be implemented and the development shall be undertaken in accordance with the approved CEMP.

### **Construction Traffic Management Plan**

- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Mineral Planning Authority. The CTMP shall include details of:
  - a) the construction of the site accesses and the creation, positioning and maintenance of associated visibility splays;
  - b) access gates, shall be hung to open away from the public highway no less than 10m from the carriageway edge and shall incorporate appropriate visibility splays;



- c) the pre-construction road condition established by a detailed survey for accommodation works within the highways boundary conducted with a Highway Authority representative and shall include confirmation of the routes used and network to be assessed;
- d) details of road improvement, construction specification, strengthening, maintenance and repair commitments if necessary as a consequence of the development;
- e) details of proposed crossings of the highway verge;
- f) areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the development;
- g) the surfacing of the access roads from the public highway into the site, which shall extend for a minimum of 25m from the edge of the carriageway;
- h) construction vehicle routing;
- i) the management of junctions to and crossings of the public highway and other public rights of way/footway;
- j) the scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs and banksman.
- k) parking areas (including cycle parking) for the vehicles of construction workers and visitors;
- l) details of wheel washing facilities including any drainage requirements and maintenance;
- m) cleaning of site entrances and the adjacent public highway; and
- n) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway.

The approved CTMP shall be implemented and the development shall be carried out in accordance with the approved details.

### **Ecology mitigation - Construction**

- 8) No development shall take place until details of a scheme for habitat creation, maintenance, monitoring and management (HCMMM) has been submitted to and approved in writing by the Mineral Planning Authority. The HCMMM scheme shall include details of:
  - a) Reptile Survey and Mitigation Plan prior to commencement of any remediation, site investigation, site clearance or Construction Works. Such Plan shall include details of the proposed translocation of reptile species to "Translocation Site 1" to the immediate west of the Main Mine Site and "Translocation Site 2" within the grounds of 'Lake View' cottage as identified in the report by BSG Ecology entitled "Reptile Translocation and habitat Creation Method Statement" dated 17 August 2021;

- b) A pre-commencement survey for badgers on the application site and within a 50m buffer of the planning permission boundary;
- c) A detailed pre-commencement otter survey which shall cover all watercourses within the Zone of Influence of the application, and at least 250m up and downstream of the proposed developments and within a 100m terrestrial buffer zone away from each watercourse to search for natal holts;
- d) A pre-felling survey for red squirrel in all woodland affected by the conveyor route to check for dreys and other signs of use by red squirrel. The survey report shall also assess any temporary fragmentation effects that may be caused;
- e) A pre-felling survey for bat roosting and nesting birds. The survey report shall identify mitigation measures and any necessary buffer zone required; and
- f) set out the measures for the maintenance of the areas of habitat creation as illustrated on drawings 869/AM/041 2948 Rev H and 869/AR/013 Rev I and shall demonstrate a net gain for biodiversity. Areas for habitat creation shall be taken to include Species Rich Grassland, Wet Grassland, new hedgerow planting, native woodland planting and ancient woodland mitigation planting and shall also provide for additional hedgerow planting to offset the section of hedgerow that would be removed in the vicinity of the railway sidings.

No development shall occur until those aspects of the HCMMM relating to the Reptile Survey and Mitigation Plan have been carried out and duly completed at the identified translocation sites. In all other respects, the approved HCMMM scheme shall be implemented and the development shall be carried out in accordance with the approved details.

### **Landscape Management Plan**

- 9) No development shall take place until a Landscape Management Plan (LMP) for the development has been submitted to and approved in writing by the Mineral Planning Authority. The LMP shall detail all proposed landscaping measures to minimise the impacts of the development during both the Construction and Operational Phases and shall include:
  - a) temporary and permanent security and other fencing design details, including location, purpose, height and type of fencing and finish;
  - b) the annual maintenance / management regime for all landscaped areas;
  - c) the measures to monitor the health and progress of the planting within landscaped areas and procedure for reporting the outcomes of monitoring to the Mineral Planning Authority including trigger levels for remedial action;
  - d) The remedial measures to be taken in the event that the deterioration of landscaped areas exceeds trigger levels; and
  - e) A timetable for the implementation of the measures identified in a) to d) above.

The development shall thereafter be carried out and the landscaping maintained and replanted in accordance with the approved details.

## **Archaeology**

- 10) No development shall take place within the areas of the site that require archaeological mitigation as outlined in paragraph 16.9 of the ES 'Further Mitigation' (chapter 16), until the applicant has secured the implementation of a programme of archaeological work in accordance with Written Schemes of Investigation (WSI) which have been submitted to and approved in writing by the Mineral Planning Authority. The approved programme shall be carried out in its entirety prior to works to those areas of the site that require archaeological mitigation and the development shall thereafter be carried out in accordance with the approved details.

Where significant archaeological remains are revealed by the programme of archaeological work, the following shall be carried out within one year of the completion of that programme on site, or within such timescale as otherwise agreed in writing by the Mineral Planning Authority:

- a) an archaeological post-excavation assessment and analysis;
- b) the preparation of a site archive ready for deposition at a store;
- c) the completion of an archive report; and
- d) preparation and submission of a report of the results for publication in a suitable specialist journal

## **Contaminated Land and Remediation**

- 11) Remediation strategies shall be prepared for each of the components of the development identified below. The remediation strategies shall be submitted to, and approved in writing by, the Mineral Planning Authority prior to the Preliminary Phase (which for this condition only shall not include site investigation (contamination or geotechnical)) or the commencement of Construction Works (whichever is the sooner) of each of the following components:

- a) Main Mine Site;
- b) Subsurface Conveyor between the Main Mine Site and Rail Loading Facility; and
- c) Rail Loading Facility.

The remediation strategy for each component shall set out the measures to deal with the risks associated with contamination of that part of the site and shall include the following components:

- (i) A preliminary risk assessment which identifies:
  - a) All previous uses;
  - b) Potential contaminants associated with those uses;
  - c) A conceptual model of the site indicating sources pathways and receptors; and
  - d) Potentially unacceptable risks arising from contamination at the site.

(ii) A site investigation scheme based upon the preliminary risk assessment to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. The site investigation schemes for each component of the development shall be informed by the preliminary risk assessment and include all of the following elements, unless any element(s) is/are deemed unnecessary by the Mineral Planning Authority in the light of the results of the preliminary risk assessment:

- a) programme, timing and locations of all proposed site investigation works;
- b) sampling and laboratory/field testing methodology employed to ensure that the locations and methods of site investigation (for the main mine site these should be designed so that they can be used to refine the existing 3-dimensional conceptual site model of the site);
- c) surveying/monitoring techniques and sampling methods and equipment for chemical and radiological assessment of ground conditions in, on and under the land;
- d) quality control protocols for sampling and laboratory analysis; and
- e) pollution prevention measures to be employed to minimise the potential for the mobilisation of any pollutants which may be encountered during the site investigation.

The site investigation shall be designed and carried out in accordance with the guidance presented in CLR11 and BS10175, considering both potential risks identified in the desk study and details approved in the scheme. Changes to any of the details of this scheme which may result from initial findings of the scheme or for other reasons shall be agreed in writing in advance with the Mineral Planning Authority. Following completion of the site investigation, an interpretive report will be prepared detailing the findings of the site investigation and including completion of an initial risk assessment to quantify risks associated with contaminants in soil and groundwater. The report will include appendices of factual data e.g. logs, records and sample analysis on which the interpretive report is based. Any quantitative risk assessment will include a sensitivity analysis and justification of input parameters. The findings will need to acknowledge the existing condition of undisturbed land and, dependent on the findings of this initial phase of site investigation, need to identify additional phases of more detailed site investigation that may be required to better assess the volumes and extents of any contamination hotspots identified.

(iii) An options appraisal and remediation strategy based upon the results of the site investigation and the detailed risk assessment. The options appraisal and remediation strategies for each component of the development shall be informed by the findings in stages (i) and (ii) above. The options appraisal and remediation strategies for each component shall include all of the following elements unless any element(s) is/are deemed unnecessary by the Mineral Planning Authority in the light of the results of stages (i) and (ii) above:

- a) Utilising the historical data available for the site, together with the results from the investigation work undertaken earlier, refine the existing conceptual site

model for the site, and complete an initial qualitative risk assessment to identify potential contaminants of concern which may pose a risk to identified receptors (including human health, controlled waters, and ecological receptors) during the construction, operation and decommissioning of the development. The risk assessment shall interpret available data sources to assess the presence of contamination over the entirety of the site, its locations, depths, and concentrations.

- b) Assessment of options for remediation/mitigation measures to be employed during construction, operation, decommissioning and restoration of the development to minimise the risks identified. The assessment shall include:
  - i) an examination of the options for the removal of concrete slabs to eliminate/minimise the potential mobilisation of contaminants;
  - ii) provide details of the measures, locations, and program for the remediation or disposal of all contaminated material;
  - iii) an assessment of the likelihood of contaminants to become mobilised, the possible pathways along which mobilised contaminants may travel, the concentrations of contaminants and timescales over which receptors might be exposed, the sensitivity of potential receptors to exposure to contaminants of the type which may be mobilised, and the significance of the impacts on receptors; and
  - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy are complete and identifying any requirements for longer term monitoring of pollutant linkage, maintenance and arrangements for contingency action.

Once approved, the remediation works shall be implemented in full and in accordance with the approved details prior to Construction Works commencing of the element of the site to which they relate.

#### **Details of Site Investigation Rain Protection Covers**

- 12) Prior to the commencement of the Preliminary Phase or any site investigation works (whichever is the sooner), a scheme providing details of the temporary rain protection covers shall be submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
  - a) Dimensions, finish, colour, locations and approximate duration of each position; and
  - b) Measures to be implemented to prevent surface water ingress into the area over which the cover is positioned; and
  - c) A timetable for the implementation/provision of the above measures.

The development shall be undertaken in accordance with the approved details.

#### **Restoration Scheme – Preliminary Phase**

- 13) No development shall take place until a scheme for the restoration of the site which shall be implemented in the event that the development does not progress beyond the Preliminary Phase (Preliminary Phase Restoration Scheme) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:
- a) The ground levels / landform to be created;
  - b) Measures to ensure that no new pathways have been created to allow legacy contamination to migrate from the site;
  - c) The depths of subsoils and topsoils to be placed or replaced over the site area;
  - d) The cultivation steps and soil treatments to be carried out following soils placement;
  - e) Seed mixes and seeding application rates;
  - f) Tree/shrub planting species mix, spacing, size, method of planting, protection measures; and
  - g) A programme for carrying out the steps above.

In the event that the development does not progress beyond the Preliminary Phase, the Preliminary Phase Restoration Scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 89.

### **Coal Mining Risk Assessment**

- 14) No development shall take place until the site investigation proposed in Table 2-2 of the Coal Mining Risk Assessment (with the exception of those relating to mine shaft 297514-001) has been undertaken and a report setting out the findings of the investigation and results of gas monitoring included as part of a scheme of remedial works has been submitted to and approved in writing by the Mineral Planning Authority. The scheme of remedial works shall include timescales for the completion of the works. Once approved, the remedial works shall be implemented in accordance with the approved scheme.

### **Community Liaison Group**

- 15) No development shall take place until a scheme detailing the establishment and operation of a community liaison group (CLG) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be in the form of terms of reference for the CLG which shall include reference to review monitoring, updating and implementation of a Health Impact Assessment (HIA) and Travel Plans. The terms of reference shall set out:
- a) the aims and purposes of the group;
  - b) the membership of the group;
  - c) the operation of the group (including regularity of meetings) / standard agenda items and voting;

- d) accountability of the group;
- e) publicity of meetings;
- f) recording of meetings; and
- g) access to the record of meetings.

Once approved the CLG scheme shall be implemented in accordance with the approved terms of reference throughout the construction, operation and restoration of the development.

### **Access and Parking**

- 16) No other development shall take place until the works to improve the accesses have been completed in accordance with approved drawings reference 869/AM/002 Rev F, 869/AM/010 Rev A, 869/AR/002 Rev C, 869/AR/008 Rev A and 869/AC/008 Rev A. The construction parking areas approved under condition 7 (Construction Traffic Management Plan) shall be retained until construction has been completed. Operational parking areas shall be provided in accordance with approved drawings reference 869/AM/002 Rev F and 869/AR/002 Rev C prior to the site entering use. The operational parking areas and access to the site shall be retained and be capable of use throughout the Operational Phase of the development.

### **Drainage and Surface Water Management – Main Mine Site**

- 17) No Construction Works shall take place until a scheme (Main Mine Site (MMS) Surface Water Management Plan) detailing how surface water flows will be managed at the main mine site during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The MMS surface water management plan shall include the following and be implemented before construction starts:
  - a) An assessment of potential flows that would need to be managed at the main mine site during operation;
  - b) Details of the measures which would be put in place to capture, manage, and discharge flows identified in part a above;
  - c) Details of all measures which would be put in place to prevent surface water discharging onto or off the highway;
  - d) A programme for the installation, maintenance and removal of the measures set out in part b above;
  - e) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;
  - f) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works; and
  - g) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).

There shall be no surface water discharge to either Sandwith Beck or Rottington Beck. Once approved, this surface water management plan shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.

### **Drainage and Surface Water Management – Rail Loading Facility**

- 18) No Construction Works shall take place until a scheme (RLF Surface Water Management Plan) detailing how surface water flows will be managed at the Rail Loading Facility (RLF) during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The RLF surface water management plan shall include the following and be implemented before construction starts:
- a) An assessment of potential flows that would need to be managed at the main mine site during operation;
  - b) Details of the measures which would be put in place to capture, manage, and discharge flows identified in part a above;
  - c) Details of all measures which would be put in place to prevent surface water discharging onto or off the highway;
  - d) A programme for the installation, maintenance and removal of the measures set out in part b above;
  - e) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;
  - f) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works;
  - g) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).

Once approved, this surface water management plan shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.

### **Drainage and Surface Water Management – Conveyor**

- 19) No Construction Works shall take place to construct the Conveyor until full drainage design details for the conveyor system and route have been submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
- a) The results of a suitably designed ground investigation to determine ground and groundwater conditions and the provision of a hydrogeological assessment informed by such investigations;
  - b) Full specification of the design of the drainage of the conveyor culvert including longitudinal and cross sections;



- c) The identification of existing points where ditches, pipes, watercourses and surface water drains cross the route;
- d) Details of how any intercepted features noted in (c) are to be cut and sealed within the works boundary and any flows intercepted and subsequently managed;
- e) Specification of any groundwater management measures along any part of the route to be constructed;
- f) Potential routes where surface water runoff may enter the works site shall be identified with references to surface water flood risk maps and any local knowledge;
- g) Measures, including bunding, ditches or construction of temporary French drains, shall be employed to collect such water and convey it to areas where it may be stored, settled or otherwise treated to remove sediment prior to discharge;
- h) Water pollution control measures to minimise sediment release and discharge during construction; and
- i) The phasing/programme for the implementation of any measures necessary to be installed/provided prior to the commencement of the construction of the conveyor.

The conveyor system and route shall be constructed in accordance with the approved details.

### **Management and Maintenance of Sustainable Drainage Systems**

- 20) No Construction Works shall take place until a Sustainable Drainage Management and Maintenance Plan (SDMMP) of the Main Mine Site, Rail Loading Facility and conveyor route for the lifetime of the development has been submitted to and approved in writing by the Mineral Planning Authority. The SDMMP shall include as a minimum:
  - a) Arrangements for adoption of the sustainable drainage system by an appropriate public body or statutory undertaker, or, management and maintenance by a Management Company;
  - b) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime. The development shall subsequently be completed, maintained and managed in accordance with the approved plan;
  - c) Details of the permeable paving to be used in the parking areas on the main mine site; and
  - d) The programme for the implementation of the requirements of the SDMMP.

Once approved the scheme shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.

### **Marine Monitoring Plan**

- 21) No surface water discharge from the site to the marine environment shall take place until a Marine Monitoring Plan has been submitted to and approved in writing by the

Mineral Planning Authority. The Plan shall indicate the type, frequency and duration of monitoring to be undertaken and shall include collation of baseline evidence of the marine environment within the Zone of Influence of the proposed discharge to Saltom Bay, to include water quality, substrate and marine flora and fauna. Monitoring in accordance with the approved scheme shall be undertaken for the duration of the development.

### **MMO Licence**

- 22) No Construction Works shall take place, until such time as
- i) a Licence from the Marine Management Organisation (MMO) is granted for the proposed extraction of High Vol A Coking Coal from under the seabed, which forms part of this development proposal, but is not permitted under the planning permission hereby approved, or
  - ii) if a Licence is not required, that this information has been submitted to and agreed in writing by the Minerals Planning Authority.

### **Construction Travel Plan**

- 23) No Construction Works shall take place until a Construction Travel Plan (CTP) has been submitted to and approved in writing by the Mineral Planning Authority. The CTP shall cover the Construction Phase of the development and shall include details of:
- a) The measures to be undertaken to promote the use by staff of public transport, cycling, walking and sharing vehicles to the site;
  - b) The measures to manage shift patterns to avoid cumulative traffic issues; and
  - c) The measures to be employed to monitor the effectiveness of the CTP and reporting to the outcomes of the Mineral Planning Authority.

The development shall be carried out in accordance with the approved CTP.

### **Mineral Conveyor Construction**

- 24) No construction works in relation to the construction of the mineral conveyor shall take place until details of the final design, route and method of construction have been submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
- a) drawing(s) to illustrate the vertical and horizontal alignment of the conveyor culvert for the entire length of the conveyor at 25m intervals;
  - b) construction techniques;
  - c) soil handling techniques;
  - d) soil storage locations;
  - e) management of excavated material;
  - f) temporary haul roads;

- g) construction and operational access arrangements;
- h) highway and services crossings;
- i) water management; and
- j) mitigation for impacts to ancient woodland.

The conveyor culvert and approved construction method shall be implemented and the development shall be undertaken in accordance with the approved details.

### **Landscape Planting and Seeding Programme – Main Mine Site**

- 25) The Landscape Planting and Seeding for the Main Mine Site as identified on drawing 869/AM/41 Rev H shall be fully implemented in accordance with a programme to be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of Construction Works on the Main Mine Site. The programme shall provide for planting and seeding to be undertaken at the earliest available opportunity. Notwithstanding the details shown on drawing 869/AM/41 Rev H, full details of the landscaping and tree planting along the frontage of the site with High Road shall be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of Construction Works on the Main Mine Site. For seeding and planting on the landscape mounds and alongside the frontage of the site with High Road, this shall be taken to mean the first available planting/seeding season following completion of the construction of the mounds and provision of a suitable layer of soil. For all other seeding and planting this shall be taken as meaning the first available season following the completion of any Construction Works which are required in advance of tree planting and seeding taking place. The approved details shall be implemented in full and the development shall be undertaken in accordance with the approved details.

### **Landscape Planting and Seeding Programme – Conveyor Route and Rail Loading Facility**

- 26) The Landscape Planting and Seeding for the Conveyor Route and Rail Loading Facility as identified on drawing 869/AR/013 Rev I shall be fully implemented in accordance with a programme to be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of Construction Works at either the Rail Loading Facility or the conveyor route. The programme shall provide for planting and seeding to be undertaken at the earliest available opportunity. For the replacement planting at Bellhouse Wood and the mitigation planting to the east of the Cumbrian Coast Rail Line (also illustrated on Drawing 869/AR/012 Rev C) this shall be taken to mean the first available planting/seeding season following the completion of the Preliminary Phase. For all other tree and hedgerow planting this shall be taken as the first available planting season following the completion of the relevant construction activity and in the case of the part of the application site which relates to the former Main Band Colliery seeding and planting shall follow in the first available planting season following the completion of the works to break up the existing concreted pads and the importation, placement and preparation of sub and topsoils.

### **Main Band Colliery – Restoration Works**

- 27) Prior to the commencement of Construction Works at the Rail Loading Facility, a scheme and programme of works to restore the Main Band Colliery Site shall be

submitted to and approved in writing by the Mineral Planning Authority. The scheme and programme shall comprise:

- a) The method for the breaking up of the existing concrete pads;
- b) The depth of subsoil to be spread over the site;
- c) The depth of topsoil to be spread over the site;
- d) The work to prepare the soils to alleviate soils compaction, remove from soils any potential impediments to cultivation, works to prepare a tilth suitable for seeding; and
- e) A programme for the works set out above and for the planting and seeding of the site.

The restoration of the part of the former Main Band Colliery site within the application site shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 86.

#### **Ancient Woodland (pipe-jacking)**

28(A) Prior to the commencement of any construction activity, a scheme detailing the methods of construction for the conveyor culvert beneath the ancient woodland shall be submitted to and approved in writing by the Mineral Planning Authority. The submitted scheme shall ensure that a 15m standoff is maintained between the edges of the Benhow Wood and Roska Park Wood and pipe jacking related surface level activity.

The approved details shall be implemented in full and the development shall be undertaken in accordance with the approved details.

29(A) Prior to the commencement of any works within the ancient woodland, a scheme and programme of replacement planting within the area of Benhow Wood identified as "Biodiversity gain planting" on drawing 869/AR/013 Rev G shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:

- a) A programme for the works;
- b) A survey to establish the location, species, and condition of all existing trees within the replacement planting area; and
- c) A planting design and schedule including species mix, spacing, plant sizes, method of planting, support and protection measures.

All planting shall be carried out in accordance with the approved programme and planting scheme.

30(A) The trees planted in accordance with condition 29 above shall be maintained for the duration of the development. Maintenance of the planting shall include an annual check on the condition of all trees planted, weed-killing, and maintenance and/or replacement of protection and support measures and thinning as necessary. Any trees which die or become damaged or diseased during the duration of the development shall be replaced with plants of the same species or any such other species as may be agreed in writing with the Mineral Planning Authority.

### **Construction details of buildings and structures**

- 31) No construction of buildings and structures shall take place until full details of finished floor levels and ground profile levels have been submitted to and approved in writing by the Mineral Planning Authority. The details shall be provided for all parts of the development and the following levels shall be recorded as metres and centimetres Above Ordnance Datum:
- a) Finished floor levels and maximum height of all buildings and structures;
  - b) Levels and fall for all areas of car parking and hardstanding; and
  - c) Levels and contours for all other areas of the site.

The development shall be carried out in accordance with the approved details.

### **Materials and finishes**

- 32) No construction of buildings or structures shall take place until a scheme providing full details of the materials to be used on all external surfaces of all buildings and structures (including the roofs), has been submitted to and approved in writing by the Mineral Planning Authority. The details shall include their colour, texture, profile and finish. The scheme shall also include a rationale and justification for the proposed details, including colours of proposed materials. The development shall thereafter be carried out in accordance with the approved details.

### **Secure By Design**

- 33) No construction of buildings shall take place until a scheme to demonstrate that the development is Secure by Design has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following details:
- a) Perimeter security fences;
  - b) Security lighting;
  - c) Building resistance to burglary;
  - d) Internal access controls;
  - e) Consideration of deployment of an intruder alarm system;
  - f) Waste bin management;
  - g) Secure storage for staff personal belongings;
  - h) Consideration for deployment of CCTV, observing exterior and internal communal spaces; and
  - i) Consideration of the safety of pedestrians and cyclists.

The development shall thereafter be carried out in accordance with the approved details.

### **Operational Lighting Scheme**

34) No external lighting shall be installed for the operational phase of the development until a scheme and programme for external lighting has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be designed in accordance with Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light and shall generally accord with the details shown on drawing 869/AM/040 Rev C – Main Mine Site External Lighting Layout and drawing 869/AR/007 Rec C – Rail Loading Facility External Lighting Plan. The scheme shall also include the following detail:

- a) Location, type, purpose and intensity of lights;
- b) Control mechanism (i.e. switch, timer, sensor) and anticipated duty Cycles;
- c) Types of masking or baffle at head;
- d) Type, height and colour of lighting columns / bollards;
- e) Number and size of lighting units per column / bollard;
- f) Light spread diagrams showing lux levels at the site boundary and assessment of the impact of these on adjacent land uses, railway line, habitat and nearby residential properties;
- g) Phasing of the implementation of the lighting scheme;
- h) procedures to ensure lighting equipment is positioned so as to minimise nuisance or disturbance to surrounding properties, public highways or wildlife; and
- i) Measures to ensure that lighting installed at the Rail Loading Facility is directed or shielded to prevent dazzle of drivers on the operational railway.

All external lighting shall be designed not to illuminate potential bat habitat (e.g. hedgerows and trees). The lighting shall be installed and operated in accordance with the approved scheme and programme.

### **Cycle Storage**

35) Prior to the commencement of Construction Works at the Rail Loading Facility, a scheme for cycle storage at the Rail Loading Facility to cover the construction and operational phases of the development shall be submitted to and approved in writing by the Mineral Planning Authority. The cycle storage shall be provided in accordance with the approved scheme.

### **Gas pipeline**

36) No Construction Works shall take place within 25 metres of the high pressure gas pipeline until a Gas Pipeline Protection Scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall set out the measures for the protection of the high pressure gas pipeline in the vicinity of the main mine site and conveyor route during the construction and operation of the development. The scheme shall also include detailed design proposals in respect of the conveyor design and its relationship to the gas pipeline.

The approved scheme shall be implemented and the development shall thereafter be carried out in accordance with the approved details.

### **Materials Management Plan**

- 37) Prior to the commencement of Construction Works, a Materials Management Plan shall be submitted to, and approved in writing by the Mineral Planning Authority. The Materials Management Plan shall be developed following the site investigations and risk assessments and shall:
- a) Identify all locations (above and below ground) of the main mine site, conveyor and rail loading facility from which material will be excavated;
  - b) Utilising the information contained within the contaminated land investigation, identify those areas of excavation which may be subject to contamination;
  - c) For areas of excavation which are subject to contamination estimate the volume of material arising, the approximate volumes of material to be remediated on site and provisional volume to be disposed of off-site;
  - d) Illustrate where and how the remediation of contaminated material would take place;
  - e) Illustrate where and how remediated material would be re-used, including volumetric calculations to demonstrate that the material can be accommodated within the proposed area of use and any measures for containment for this material;
  - f) Detail the frequency of testing and testing specification for soils generated during the cut and fill operations, including how the materials are to be segregated and stored;
  - g) Identify screening criteria for assessment of whether the materials can be reused without treatment or mitigation;
  - h) For areas of excavation which are not subject to contamination provide the volume of material arising, and illustrate where and how non-contaminated material would be re-used including volumetric calculations to demonstrate that the material can be accommodated within the proposed area; and
  - i) Provide full construction details for the emplacement of materials to form any bunds on site. Such information shall include but not be limited to details of the quality of materials, drainage management, volumes and as-built plans.

The approved Materials Management Plan shall be implemented and the development shall be undertaken in accordance with the approved details.

### **Landfill Safeguarding Scheme**

- 38) Prior to the commencement of Construction Works, full details of any proposed works or development over or directly adjacent to the Marchon / UFex and Hutbank landfills or any of their associated infrastructure shall be submitted to and approved in writing by the Mineral Planning Authority. The approved scheme shall be implemented and the development shall be undertaken in accordance with the approved details.

### **Construction – Site Waste Management Plan**

- 39) Prior to the commencement of Construction Works, a Site Waste Management Plan (SWMP) shall be submitted to and approved in writing by the Mineral Planning Authority. The SWMP shall include details of:
- a) the anticipated nature and volumes of waste that will be generated by construction work;
  - b) the measures to minimise the generation of waste as a result of demolition, building, engineering and landscape works;
  - c) measures to maximise the re-use on-site of such waste;
  - d) measures to be taken to ensure effective segregation at source of other waste arising during the carrying out of such works, including the provision of waste sorting, storage, recovery and recycling facilities as appropriate; and
  - e) compliance with Duty of Care Regulations.

The approved SWMP shall be implemented throughout the period of Construction Works on site.

### **Phasing and Management for Paste Placement**

- 40) Prior to the commencement of Construction Works, a phasing and management plan for the placement of paste in the mining voids shall be submitted to and approved in writing by the Mineral Planning Authority. The plan shall include details of the phasing of proposed filling activities, the volumes of paste to be transferred to the voids, the location and depth of the voids to be filled, an assessment of any risks associated with the transfer of paste to the identified voids and any mitigation measures necessary to ensure the transfer of paste to the voids to manage the risks identified.

The approved plan shall be implemented and the development shall be undertaken in accordance with the approved details.

### **Construction – Surface Water Quality Management Plan**

- 41) Prior to the commencement of Construction Works a scheme detailing how surface water flows will be minimised and managed during the Construction Phase of the development shall be submitted to and approved in writing by the Mineral Planning Authority. The Construction Phase surface water management plan shall include the following and be implemented before construction starts:
- a) An assessment of potential flows that would need to be managed at the main mine site, conveyor route and rail loading facility site during construction;
  - b) Details of the measures which would be put in place to capture, manage, and discharge flows from the component parts of the site identified in part a above;
  - c) A programme for the installation, maintenance and removal of the measures set out in part b above;



- d) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;
- e) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works; and
- f) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).

Once approved, the Construction Phase surface water management plan shall be implemented in full and the development shall be undertaken in accordance with the approved details.

### **Construction – Foul Water Management Plan**

- 42) Prior to the commencement of Construction Works a scheme detailing how foul water flows will be managed during the Construction Phase of the development (i.e. all flows anticipated prior to the connection to mains sewer) shall be submitted to and approved in writing by the Mineral Planning Authority. The Construction Phase foul water management plan shall include the following:
- a) An assessment of maximum foul water flows based upon estimates of numbers of construction workers at the main mine site, conveyor route and the rail loading facility;
  - b) Details of the measures which would be put in place to manage and discharge flows from the component parts of the site identified in part a above; and
  - c) A programme for the installation, maintenance and removal of the measures set out in part b above.

Once approved the Construction Phase foul water management plan shall be implemented in its entirety and the development shall be undertaken in accordance with the approved details.

### **Heritage Trails & Paths**

- 43) Notwithstanding the trails and paths shown on approved plan 869/AM/041 Rev H, no Construction Works shall take place until a scheme and programme for the erection of interpretation boards for heritage assets and for the creation of heritage trails and paths at the Main Mine Site has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
- a) The location of the interpretation boards;
  - b) The design, contents and construction of the interpretation boards;
  - c) The final alignment of routes for heritage trails and paths;
  - d) The details of the construction of the heritage trails;
  - e) The provisions for ensuring public access and maintenance of the trails;
  - f) A programme for the implementation of the scheme.

The development shall be implemented in accordance with the approved scheme and programme.

### **Foul Water Drainage Scheme**

- 44) No Construction Works shall take place until a foul water drainage scheme (during the operation and restoration of the proposed mine) has been submitted to and approved in writing by the Mineral Planning Authority. The foul water drainage scheme shall include:

- a) the location of the point of connection for foul water to the existing public sewer;
- b) the timing arrangements for the pumped foul discharge;
- c) the storage requirements for the pumped foul discharge; and
- d) the rate of discharge for the pumped foul discharge.

No surface water, land drainage or highway drainage shall connect with the existing public sewerage system. There shall be no connection of foul water to the public sewer other than in accordance with the Foul Water Drainage Scheme approved by the Mineral Planning Authority. The development shall be constructed and implemented in accordance with the approved details.

### **Construction Phase – Restoration Scheme**

- 45) Prior to the commencement of the Construction Phase a scheme for the restoration of the site which would be implemented in the event that the development does not progress beyond the Construction Phase (Construction Phase Restoration Scheme) shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:

- a) The methods for the removal of all buildings, equipment, plant and hardstandings from the site for each stage of construction;
- b) The ground levels/landform to be created for each stage of construction;
- c) The depths of subsoils and topsoils to be placed over the site area;
- d) The cultivation steps and soil treatments to be carried out following soils placement;
- e) Seed mixes and seeding application rates;
- f) Tree/shrub planting species mix, spacing, size, method of planting and protection measures; and
- g) A programme for carrying out the steps above.

In the event that the development does not progress beyond the Construction Phase, the Construction Phase Restoration Scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 86.

### **Rail Loading Facility – Design Detail**

- 46) Prior to the commencement of construction of the Rail Loading Facility (RLF), detailed designs of the following components of the RLF development shall be submitted to and approved in writing by the Mineral Planning Authority:
- a) The new underbridge required beneath the proposed rail siding immediately adjacent to the Network Rail underbridge; and
  - b) The new rail sidings and the interface with the existing network rail embankment.

These designs shall include a rationale for the chosen design based upon geotechnical site investigation work which will be undertaken, together with all other design considerations including functional and aesthetic. Once approved these components of development shall be carried out in accordance with the approved designs.

#### **Rail Loading Facility – Vehicle Incursion**

- 47) Prior to the commencement of the construction of the site road leading to the RLF a scheme to avoid vehicle incursion onto the railway lines shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall detail all the measures which will be put in place during construction of the road, its subsequent use during the Operational Phase of the mine and during decommissioning to prevent vehicle using the site road entering the railway lines and associated area required for the safe passage of trains. Once approved the scheme shall be implemented and adhered to through all phases of the development.

#### **Rail Loading Facility – Electric Pylon Relocation**

- 48) Prior to the commencement of the construction of the RLF, a scheme for the relocation of the electricity pylon(s) which would be required to facilitate the development of the RLF shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
- a) Location of the existing pylon, its type and height and span of its connection with other pylons;
  - b) The revised location of the new pylon;
  - c) The type and height of new pylon
  - d) The span and height of the connections from the new pylon to unaffected pylons; and
  - e) The programme for the relocation of the pylon and its associated revised connections.

Once approved the pylon relocation and revised connections shall be carried out in accordance with the approved scheme and programme.

#### **Rail Loading Facility (RLF) – Landscaping Scheme**

- 49) Prior to the commencement of construction of the RLF, a landscaping scheme for the proposed planting to the east of the railway line shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:

- a) Tree/shrub planting species mix, spacing, size, method of planting, protection measures;
- b) objective criteria to monitor the health and progress of the planting within landscaped areas and procedure for reporting the outcomes of monitoring to the Mineral Planning Authority including trigger levels for remedial action;
- c) A programme for carrying out the steps above; and
- d) Management of the planting for the duration of the development.

Once approved, the landscaping scheme shall be carried out in accordance with the approved scheme and programme.

### **Construction – Hours of Working**

- 50) No works related to the construction of the development shall take place other than between the following hours:

Monday to Friday	0800 hours to 1800 hours
Saturday	0800 hours to 1300 hours
Sunday & Bank Holiday	No working

For the avoidance of doubt this condition shall not prevent the operation of pumps or other essential safety equipment outside of these hours.

### **Construction – Traffic Numbers**

- 51) During the Construction Phase, no more than 53 Heavy Goods Vehicles (HGVs) shall enter and leave the Main Mine Site per day. A record of the numbers of HGVs visiting the site per day shall be maintained. This shall be submitted to the Mineral Planning Authority in writing on a quarterly basis during the mine Construction Phase of development until that phase has been completed.

### **Construction – Noise (Temporary Operations)**

- 52) The equivalent continuous noise level attributable to temporary operations relating to the construction of the development in the vicinity of the noise sensitive properties identified in condition 73 shall not exceed 70dB(A) (LAeq 1hour free field) for a total of 56 working days in any 52 week period. During periods of temporary operations, a daily record shall be maintained noting the location and type of operations occurring within 200m of a noise sensitive property. The operator will afford the Mineral Planning Authority access to this record on request.

### **Piling Methodology**

- 53) No piling shall take place until details of, and a methodology for, any piling have been submitted to, and approved in writing by, the Mineral Planning Authority. The methods proposed shall involve rotary piling only. The details and methodology shall detail any required measures, including any monitoring, to protect utilities, residential properties and ecological receptors from the impact of noise, dust and vibration generated by the

piling. The works shall be carried out in accordance with the approved details and methodology.

### **Main Band Colliery – Reptiles**

- 54) Prior to the commencement of any works at the part of the former Main Band Colliery within the application site, a scheme for surveying for the presence of reptiles shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall set out:

- a) the survey technique;
- b) frequency of survey;
- c) acceptable weather conditions for the survey; and
- d) minimum qualifications and experience of surveyor.

Once approved, the scheme(s) shall be implemented in advance of any site clearance, remediation or Construction Works at the former Main Band Colliery. Should reptile presence be identified, additional population surveys will be required together with submission of a Reptile Mitigation Plan (RMP) which shall be submitted to and approved in writing by the Mineral Planning Authority. All works thereafter shall be undertaken in accordance with the approved Reptile Mitigation Plan.

### **Mine Phasing, Operations and Spoil Management**

- 55) No working underground or associated engineering operations underground shall take place until a Mine Phasing, Operations and Spoil Management scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of:

- a) Phases of working as indicated on a plan with locations and dates;
- b) A description of the working methods and techniques, however, no blasting of any description, either above or below ground, shall be permitted;
- c) The measures employed to minimise the potential for environmental impact;
- d) Details of mine spoil management including:
  - i) Identification of the types and volumes of waste materials that will be generated through the underground mining operations;
  - ii) (ii) The measures by which these materials shall be managed and disposed of underground within the mine workings; and
- e) Provision for review and updating on an annual basis to take account of developments in available technology and changing environmental conditions.

The approved scheme shall be implemented and the development shall be undertaken in accordance with the approved scheme.

### **Footpath through Main Mine Site**

- 56) The Operational Phase shall not commence until details of the footpath within the Main Mine Site from High Road to the north western boundary of the site has been submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
- a) the precise alignment including to allow for connection to surrounding paths;
  - b) boundary fencing with a gap on the north western boundary to allow for connection to surrounding paths; and
  - c) a management scheme for maintenance, management and public access.

Within 6 months of mineral working commencing, the footpath shall be constructed and completed in accordance with the approved details. Thereafter the public access along the footpath shall be provided and the footpath maintained and managed in accordance with the management scheme.

### **Operational Travel Plan**

- 57) The Operational Phase shall not commence until an Operational Travel Plan (OTP) has been submitted to and approved in writing by the Mineral Planning Authority. The OTP shall include details of:
- a) The measures to be undertaken to promote the use by staff of public transport, cycling, walking and sharing vehicles to the site;
  - b) The measures to manage shift patterns to avoid cumulative traffic issues; and
  - c) The measures to be employed to monitor the effectiveness of the OTP and reporting to the outcomes of the Mineral Planning Authority.

The development shall be carried out in accordance with the approved OTP.

The OTP shall be assessed in accordance with the details submitted every 5 years from the date of approval and reported to the Mineral Planning Authority in writing. Where the assessment identifies shortcomings with the existing travel plan, a revised travel plan shall be prepared and submitted to and approved in writing by the Mineral Planning Authority within three months of the assessment having been carried out.

### **Operational Environmental Management Plan**

- 58) The Operational Phase shall not commence until an Operational Environmental Management Plan (OEMP) has been submitted to and approved in writing by the Mineral Planning Authority. The OEMP shall include details of:
- a) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures
  - b) provisions for environmental emergency planning and environmental incident response arrangements;
  - c) Environmental Permits, Licences and Consents required;
  - d) liaison with the public and contact information for community concerns;

- e) parking areas for the vehicles of workers and visitors;
- f) areas to be used for the loading and unloading of plant and materials;
- g) areas for the storage of plant and materials;
- h) noise and vibration mitigation measures to be employed during the Operational Phase, including the provision for noise levels to be updated and reviewed every 5 years following the commencement of Construction Works;
- i) a scheme for the management of air quality and dust during the Operational Phase;
- j) site signage;
- k) how the environmental aspects of historic environment works will be managed;
- l) the management of waste, including provision for waste segregation, compliance with Duty of Care regulations;
- m) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;
- n) management of traffic;
- o) ecological management including plans for the monitoring of:
  - i) Pow Beck surface water discharge flows and water quality;
  - ii) surface water quality in attenuation pond(s) on Main Mine Site prior to discharge to the Surface Water Outfall;
  - iii) marine water quality and scouring around the surface water discharge pipe;
- p) seasonal and daytime restrictions on certain activities to mitigate for effects on ecological receptors;
- q) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
- r) the management of vermin;
- s) working hours;
- t) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;
- u) all lighting including procedures to ensure lighting equipment is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife.

Once approved, the OEMP the development shall be undertaken in accordance with the approved OEMP.

### **Dust Management Plan**

- 59) The Operational Phase shall not commence until a Dust Management Plan (DMP) for the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The DMP shall include details of:
- a) Dust suppression equipment attached to vents and other openings to any processing, conveyor or storage buildings at the site;
  - b) The location and type of monitoring;
  - c) Frequency of monitoring;
  - d) Provision for the reporting of results; and
  - e) Provisions for review of the DMP at the written request of the Mineral Planning Authority.

Development shall be undertaken in accordance with the approved DMP.

### **Noise Management Plan**

- 60) The Operational Phase shall not commence until a Noise Management Plan (NMP) has been submitted to and approved in writing by the Mineral Planning Authority. The NMP shall include details of:
- a) A Method Statement for and provision of periodic compliance monitoring during the Operational Phase, in relation to the receptors at the locations listed in condition 73;
  - b) the use of the back-up generators and how any unacceptable noise will be mitigated;
  - c) the establishment of long-term monitoring locations, including an 8 figure OS grid reference for each monitoring point;
  - d) a procedure for investigating and responding to noise complaints whether received directly from a member of the public or via any local authority;
  - e) provision for written reports to be submitted to the Mineral Planning Authority following compliance noise monitoring and complaint investigation. If the monitoring reveals that the noise from the operation of the development exceeds those within condition 73 the scheme shall set out the measures to be taken to reduce noise levels to approved limits; and
  - f) mitigation actions and timescales for their implementation to be agreed in writing with the Mineral Planning Authority (within the above report) if monitoring shows exceedance of the noise limits set out in condition 73.

Development shall be undertaken in accordance with the approved NMP.

### **Mine Gas Capture**

- 61) The Operational Phase shall not commence until a Mine Gas Capture Management Scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall:



- a) identify the methods for the capture and subsequent management of methane, carbon dioxide, carbon monoxide and hydrogen sulphide or other mine gases which may impact upon the climate or environment during the operational lifetime of the mine;
- b) identify the potential for beneficial use of the gases;
- c) identify measures to prevent uncontrolled emissions of mine gases to the atmosphere;
- d) include the date for installation; and
- e) include provision for review and updating no less than once every five years, to take account of updates in available technology and changing environmental conditions.

The development shall be carried out and the gases captured, managed and used beneficially in accordance with the approved Mine Gas Capture Management scheme. Once the system is installed, the level of methane extracted shall not be lower than 95% of the total methane produced from the mine during any calendar month.

### **Seismic Activity – Monitoring**

- 62) The Operational Phase shall not commence until a Seismic Activity Monitoring Scheme (SAMS) for onshore mining has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:
  - a) the methodology for monitoring all seismic activity. This shall identify the potential receptors which will be the subject of monitoring, and the equipment to be utilised for monitoring;
  - b) the location for the installation of the seismic monitoring array to effectively monitor the seismic activity impacts on the receptors identified at (a); and
  - c) the arrangements including timescales and frequency of reporting the outcome of monitoring to the Mineral Planning Authority.

Once approved, the SAMS shall be fully implemented prior to the commencement of onshore coal mining and shall continue for a period of 6 years after the cessation of onshore coal mining. All monitoring and reporting shall be undertaken in accordance with the approved scheme.

### **Seismic Activity – Investigation**

- 63) In the event that seismic activity which is attributable to onshore mining activity at any of the receptors identified at condition 66 exceeds a Peak Particle Velocity (PPV) of 6mm/sec the operator shall, as soon as reasonably practicable, carry out an investigation into the reasons for that exceedance. This investigation will confirm whether or not the seismic activity was induced by mining activity and, if so, identify the mining activities taking place, immediately prior to, the time the exceedance was detected. The outcome of that investigation shall be set out in a report and submitted to the Mineral Planning Authority within 7 days of the exceedance for approval in writing by the Mineral Planning Authority.

### **Seismic Activity – Mitigation**

- 64) Where a seismic activity investigation has been undertaken and reported to the Mineral Planning Authority under condition 63, and where the conclusion of that investigation is that the seismic activity was attributable to onshore mining operations, within 14 days of the receipt by the Mineral Planning Authority of the investigation report, mineral extraction shall cease and a scheme and programme for seismic activity mitigation shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall:
- a) provide the rationale for the development of the mitigation measures with reference to the outcome of the investigation;
  - b) detail the measures to be taken to reduce seismic activity;
  - c) provide a programme for the implementation of the mitigation measures derived from the investigation report; and
  - d) provide for an increase in the frequency of monitoring reporting to assess the efficacy of the mitigation measures which have been put in place.

Once approved the scheme shall be implemented in accordance with the approved programme.

### **Subsidence – Monitoring**

- 65) No working of minerals shall take place until a subsidence monitoring scheme has been submitted to and approved in writing by the Mineral Planning Authority. The monitoring scheme shall provide for monitoring the potential effects of subsidence on sensitive receptors. The scheme shall include the following:
- a) The methodology for subsidence monitoring including establishing the maximum zone of influence of onshore mining by projecting from the outward edge of extraction a line outwards and upwards from the relevant seam at 35° from a line perpendicular to that seam so as to intersect the surface, the methods for recording existing ground levels, method for monitoring changes in ground levels, equipment to be utilised and duration of monitoring following the cessation of onshore mining;
  - b) The subsidence monitoring locations and the rationale for the number of monitoring points and the locations selected;
  - c) The frequency of subsidence monitoring, and the rationale for the frequency selected;
  - d) The arrangements for reporting the outcome of subsidence monitoring to the Mineral Planning Authority which routinely shall be no less than annually;
  - e) The method for the derivation of trigger subsidence levels at sensitive receptors which would represent a subsidence event; and
  - f) Proposals for increasing the frequency of subsidence monitoring and for the reporting of that increased frequency of monitoring to the Mineral Planning Authority in the event that a subsidence event occurs.

Surface subsidence monitoring and reporting shall be undertaken in accordance with the approved monitoring and reporting scheme.

### **Subsidence – Investigation and Reporting**

- 66) In the event that a subsidence event occurs, the zone of influence of the sensitive receptor shall be established by projecting downward and inward at an angle of 35o to the depth of seam being worked. Coal production within the zone of influence of the sensitive receptor shall be suspended until a subsidence investigation has been completed. The subsidence investigation shall determine the reason(s) for the subsidence event. The investigation shall review the mining activities taking place prior to the subsidence event being detected and determine which of these activities led to the subsidence event occurring. The findings of the investigation shall be set out in a subsidence investigation report which shall also identify the mitigation measures and a programme to be adopted to prevent a reoccurrence of a subsidence event. Where a subsidence investigation report has been concluded it shall be submitted to and approved in writing by the Mineral Planning Authority. Any mitigation measures shall be carried out in accordance with the Mineral Planning Authority's written approval and the approved programme.

### **Subsidence – Mitigation**

- 67) Coal mining shall only recommence within the zone of influence of the sensitive receptor which was the subject of the subsidence event under condition 66 after the Mineral Planning Authority provide written notification to confirm approval of the investigation report and that the proposed mitigation measures are acceptable. Coal mining within the zone of influence of the sensitive receptor which was the subject of the subsidence event shall thereafter only take place in accordance with the mitigation measures approved within the subsidence investigation report.

### **Operation of Rail Loading Facility – Hours of Working**

- 68) No operations at the Rail Loading Facility shall take place other than between the following hours:

Monday to Saturday	0600 hours to 2200 hours
Sunday & Bank Holiday	No working

### **Operation of Rail Loading Facility – Noise Assessment**

- 69) Notwithstanding condition 68 above, no operations shall take place at the Rail Loading Facility (RLF) between 0600 hours and 0700 hours (Monday to Saturday) until a noise assessment demonstrating that the night-time noise limits will not be exceeded for locations R5 to R8 (inclusive) as identified within the table in condition 73, has been submitted to and approved in writing by the Mineral Planning Authority.

### **Departure and Arrival of Trains during Daytime Only**

- 70) No trains shall be permitted to arrive at or depart from the Rail Loading Facility or manoeuvre in the associated sidings other than between the following hours:

Monday to Saturday	0700 hours to 2200 hours
Sunday & Bank Holiday	No departure or arrival or movement of trains permitted

### **Mine Production**

- 71) No more than 2,780,000 tonnes of processed High Vol A Coking Coal shall be exported from the site in any calendar year. A record of the tonnage and type of the coal exported from the site in each calendar month of the preceding year shall be maintained and submitted to the Mineral Planning Authority before the 31 January annually whilst the mine is operational. Written records shall be filed on a monthly basis and shall be available for inspection on request by the Mineral Planning Authority.
- 72) Upon commencement of operations the operator shall commence recording the sulphur content of each shipment of coal dispatched from the mine. No type of coal other than High Vol A Coking Coal with a sulphur content not exceeding 1.6% shall leave or be transported from the mine at any time. On each and every anniversary of the commencement of that record, or upon request, the operator shall submit to the Mineral Planning Authority copies of the records of those shipments to evidence the sulphur content of each shipment of coal and the average (mean) sulphur content for the coal exported in the preceding year. The submission of records shall also include all records of any communication from a customer concerning the accuracy of the sulphur content of the coal. After the first 12 months of production, or at the maximum anticipated level of coal production for the mine, whichever is the sooner, the average (mean) sulphur content of the coal exported from the mine in any 12-month period shall not exceed 1.4%.

### Noise Limits

- 73) The noise level emitted from the operation of the site shall not exceed the levels detailed in the table below at the locations given insofar as they are shown on Figure 14.1 Rev 01 Noise monitoring and Receptor Locations as set out in condition No 2 above. Any measurement shall be made at a height of 1.2m and at a minimum distance of 3.5m from any façade or acoustically reflective surface.

Location	Period	Noise limit dB LAeq, 1hr
R1 – Proposed housing to north	Daytime	37
	Night-time	34
R2 – 24 Woodville Way	Daytime	41
	Night-time	36
R3 – Cabbage Hall	Daytime	40
	Night-time	38
R4 – 1 Clarendon Drive	Daytime	41
	Night-time	36
R5 – Property known as Lake View	Daytime	43
	Night-time	37
R6 - Stanley House	Daytime	43
	Night-time	37
R7 – Woodend Gardens	Daytime	43
	Night-time	37
R8 – Property known as Linethwaite Bower	Daytime	43

	Night-time	37
M2 – Proposed housing to east of site	Daytime	41
	Night-time	36

For the avoidance of doubt within the above table, 'Daytime' refers to the period between 0700 and 2200 hours and 'Night-time' refers to the period between 2200 and 0700 hours.

### **Transport**

- 74) No minerals, products or wastes extracted from the mine or mine processing site shall be transported from the site by road.
- 75) There shall be no vehicular access to or egress from the site other than via the approved accesses as shown on drawings 869/AM/002 Rev F, 869/AM/010 Rev A, 869/AR/002 Rev C, 869/AR/008 Rev A and 869/AC/008 Rev A.
- 76) No infill materials required for the construction of the RLF site or associated sidings shall be delivered to the RLF site other than via the railway.
- 77) No more than six trains per day shall enter and leave the Rail Loading Facility (RLF). A record of the numbers of trains entering, loading, and leaving the RLF each day shall be maintained and submitted to the Mineral Planning Authority on the 31 January each year for the period 1 January to 31 December of the previous year until the mine is closed and the site is restored. These records shall be made available to the Mineral Planning Authority at any time on request.
- 78) No more than 13 Heavy Goods Vehicles (HGVs) shall enter and leave the Main Mine site per day. A record of the numbers of HGVs visiting the site per day shall be maintained and submitted to the Mineral Planning Authority on the 31 January each year for the period 1 January to 31 December of the previous year until the mine is closed and the site is restored.

### **Mine Production Power**

- 79) All in-seam underground mining equipment shall be powered only by electricity.
- 80) No mineral wining or working shall take place until details of the renewable electricity tariff to be used during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. Further approval shall be obtained in writing for any proposed change to the tariff during the operational life of the mine. During the Operational Phase of the mine, only electricity purchased through the approved renewable electricity tariff may be used to power the mine operations.

### **Fuel Storage**

- 81) All facilities for the storage of oils, fuels and hazardous chemicals shall be placed on impervious bases with impervious bunds placed around them and with all vents, filling points and hoses contained within the bunds. All tanks are to be double-skinned and the bunds shall have a capacity of 110% of the cumulative capacity of the tanks. The bunds shall be kept free of precipitation which, if removed, shall be disposed of at a suitably permitted facility.

## **Nesting Birds**

- 82) No clearance of vegetation shall take place within the bird breeding season (the period from March to September inclusive) unless measures supervised by an ecologist have previously been taken to exclude nesting birds. Any vegetation that must be cleared during the bird breeding season should only proceed after a detailed breeding bird survey has been conducted by an ecologist and submitted to and approved in writing by the Mineral Planning Authority. This shall identify any nest on site and present measures to avoid disturbing the identified breeding species. A further checking site inspection by an ecologist shall be conducted on the site immediately before any work commences. This shall identify any nest on bare earth on site and present measures to avoid disturbing the identified breeding species.

## **Soils Handling**

- 83) All soil handling operations shall be carried out in accordance with the DEFRA Code of Practice for Sustainable Use of Soils on Construction Sites (2011). Prior to the commencement of soil stripping details of the methodology to be used in the stripping, storage and replacement of soils and overburden on that phase shall be submitted to and approved in writing by the Mineral Planning Authority. The development shall be undertaken in accordance with the approved methodology. The stripping, movement and re-spreading of soils shall be restricted to occasions when the soil is in a suitably dry and friable condition and the ground is sufficiently dry to allow passage of heavy vehicles and machinery over it without damage to the soils and the topsoil can be separated from the subsoil without difficulty.

## **No External Storage**

- 84) No minerals, waste or other bulk materials shall be handled or stored at the surface of the main mine site or Rail Loading Facility except within the buildings shown on drawings 869/AM/002 Rev F and 869/AR/002 Rev C.

## **Restrictions on Permitted Development**

- 85) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other order revoking and re-enacting that Order), planning permission shall be sought and obtained from the Mineral Planning Authority, before any buildings, structures, or erections, plant or machinery are erected on those parts of the site comprising the conveyor route and RLF only or on any ancillary mining land in the vicinity of these two parts of the development.

## **Decommissioning & Restoration Scheme**

- 86) A Decommissioning and Restoration Scheme (DARS) shall be submitted to and approved in writing by the Mineral Planning Authority, for approval by the earlier of:
- a) 3 months from the end of a continuous period of twelve months throughout which the Winning and Working of mineral has ceased; or
  - b) two years before the expiry of this planning permission.

The decommissioning and restoration scheme shall be in accordance with the Main Mine Site Restoration Plan drawing reference 869/AM/042 Rev E and the Rail Loading

Facility Post Decommissioning Restoration Plan drawing reference 869/AR/014 Rev L and shall include, but need not be restricted to:

- a) The removal of buildings, railway sidings and other built infrastructure;
- b) Removal of plant, equipment and above ground structures;
- c) Treatment/capping of mine shafts;
- d) Treatment and capping of the underground conveyor including the removal of all conveying equipment and plant and associated above ground buildings;
- e) The number of vehicle movements at each site during the Restoration Phase;
- f) Ground levels and landform to be created at the Main Mine Site and Rail Loading Facility to be illustrated by drawings with proposed contours and cross and long sections;
- g) The methods and depths of soil replacement;
- h) Cultivation, seeding and planting measures; and
- i) A programme setting out the timescales within which restoration will occur.

The restoration scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 89.

### **Decommissioning & Restoration Environment Management Plan**

- 87) A Decommissioning and Restoration Environment Management Plan (DREMP) for the restoration operations following decommissioning shall be submitted to and approved in writing by the Mineral Planning Authority by the earlier of:
- a) 3 months from the end of a continuous period of twelve months throughout which the Winning and Working of mineral has ceased; or b) two years before the expiry of this planning permission.

The DREMP shall include, but need not be restricted to:

- i) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures
- ii) provisions for environmental emergency planning and environmental incident response arrangements;
- iii) Considerate Constructors scheme and compliance arrangements;
- iv) Environmental Permits, Licences and Consents required;
- v) Code of Construction Practice (relating specifically to local community impacts and management);
- vi) liaison with the public and contact information for community concerns;

- vii) the programme of works;
- viii) parking areas for the vehicles of workers and visitors;
- ix) areas to be used for the loading and unloading of plant and materials;
- x) details of site offices and welfare facilities;
- xi) areas for the storage of plant and materials;
- xii) formation of the construction compound(s) and access tracks and any areas of hardstanding;
- xiii) a scheme for the management of noise;
- xiv) a scheme for the management of air quality and dust;
- xv) site signage;
- xvi) the management of waste, including provision for waste segregation, compliance with Duty of Care regulations;
- xvii) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;
- xviii) management of traffic;
- xix) ecological management including plans for the monitoring of Pow Beck surface water discharge flows and water quality; surface water quality in attenuation pond(s) on the Main Mine Site prior to discharge to the Surface Water Outfall; and marine water quality and scouring around the surface water discharge pipe;
- xx) seasonal and daytime restrictions on certain activities to mitigate for the effects on ecological receptors;
- xxi) covering or infilling of any trenches overnight to prevent animals being trapped and/or provision of a ramp to allow escape;
- xxii) contaminated land management;
- xxiii) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
- xxiv) the appearance, erection and maintenance of boundary treatments and security fencing & site signage and the timescales for their erection and removal;
- xxv) the management of vermin;
- xxvi) working hours;



- xxvii) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;
- xxviii) details of wheel washing facilities including any drainage requirements and maintenance;
- xxix) cleaning of site entrances and the adjacent public highway;
- xxx) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway;
- xxxi) all lighting including procedures to ensure temporary lighting equipment required is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife; and
- xxxii) post-construction restoration / reinstatement of the working areas.

Once approved, the DREMP shall be implemented and the all works shall be undertaken in accordance with the approved DREMP.

### **Decommissioning of Rail Loading Facility**

- 88) Prior to the commencement of decommissioning the Rail Loading Facility (RLF), details of the following decommissioning and reinstatement works shall be submitted to and approved in writing by the Mineral Planning Authority:
- a) The removal of the underbridge under the proposed rail siding and appropriate reinstatement of the original underbridge;
  - b) The removal of the rail sidings and appropriate reinstatement of the existing Network Rail embankment; and
  - c) A review of the drainage systems to determine whether the removal of the underbridge and the sidings necessitates changes to the surface water drainage infrastructure installed under condition 46 above to ensure surface water is effectively drained from the site. Where that review reveals that the installed drainage system is inappropriate a revised surface water drainage system shall be submitted to and approved in writing by the Mineral Planning Authority.

Once approved the reinstatement works shall be carried out in accordance with the approved details within 2 years of the commencement of decommissioning.

### **Aftercare scheme**

- 89) Within six months of the date of the written approval of each of the restoration schemes required under conditions 13, 27, 45 and 86 above, a scheme and programme for the aftercare of the site for a period of 10 years to promote the agricultural and ecological after-uses of the site, shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme and programme shall contain details of the following:
- a) the management of the site to promote its agricultural use including details of seeding, grazing, cultivation or cropping;

- b) details for soil sampling in each year of the aftercare period to determine requirements for fertilizer and lime application and provision for the submission of annual soil sampling results and proposed fertilizer/lime application to the Mineral Planning Authority for approval in writing;
- c) the management of ecological and recreational areas;
- d) details of any drainage installation including measures for replacement of any field drainage system damaged during the development;
- e) details of any further works to relieve compaction or regrading to alleviate surface ponding;
- f) details of any measures required to control noxious weeds;
- g) details for the maintenance of any grassland, tree or hedge planting including replacement of failures, weed control, maintenance of protection measures, thinning works and cutting or laying regimes to be followed; and
- h) management of any surface water run off including maintenance of surface water ditches and repair of any damage caused by surface water runoff.

Thereafter, aftercare works shall be undertaken in accordance with the approved scheme and programme for a period of five years from the date that the Mineral Planning Authority certifies in writing that the works of restoration are complete. On the first anniversary of the certification of completion of restoration and at annual intervals thereafter an inspection of restored areas of the site involving representatives of the operator and Mineral Planning Authority shall be undertaken. Within one month of each inspection, a schedule of aftercare works to be undertaken in the following year in accordance with the above shall be submitted to and approved in writing by the Mineral Planning Authority. The approved schedule of aftercare works shall be carried out.



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# **Report to the Secretary of State for Levelling Up, Housing and Communities**

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

**an Inspector appointed by the Secretary of State**

**Date 7 April 2022**

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## **TOWN & COUNTRY PLANNING ACT 1990**

### **SECTION 77**

#### **APPLICATION BY WEST CUMBRIA MINING LTD**

Inquiry Held on 7-10, 14-17, 21-24, 28-30 September 2021 and 1 October 2021.  
Site visit held on 4 October 2021

Former Marchon Site, Pow Beck Valley and area from the former Marchon Site to the St Bees Coast,  
Whitehaven, Cumbria

File Ref: APP/H0900/V/21/3271069

**File Ref: APP/H0900/V/21/3271069**

**Former Marchon Site, Pow Beck Valley and area from the former Marchon Site to the St Bees Coast, Whitehaven, Cumbria**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 11 March 2021.
- The application is made by West Cumbria Mining Ltd to Cumbria County Council.
- The application Ref 4/17/9007 is dated 31 May 2017.
- The development proposed is:
  - a new underground metallurgical coal mine and associated development including: the refurbishment of two existing drifts leading to two new underground drifts; coal storage and processing buildings; office and change building; access road; ventilation, power and water infrastructure; security fencing; lighting; outfall to sea; surface water management system and landscaping at the former Marchon site (High Road) Whitehaven;
  - a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line with adjoining office / welfare facilities; extension of railway underpass; security fencing; lighting; landscaping; construction of a temporary development compound, and associated permanent access on land off Mirehouse Road, Pow Beck Valley, south of Whitehaven;
  - a new underground coal conveyor to connect the coal processing buildings with the coal loading facility.
- The reason given for making the direction was that the Secretary of State considered that this application raises planning issues of more than local importance, and further considers that the limbs of the call-in policy relating to potential conflict with national policies in Chapters 14 and 17 of the National Planning Policy Framework and substantial cross-boundary or national controversy are satisfied.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - a. the extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change, flooding and coastal change in the NPPF (NPPF Chapter 14);
  - b. the extent to which the proposed development is consistent with Government policies for facilitating the sustainable use of minerals in the NPPF (NPPF Chapter 17);
  - c. the extent to which the proposed development is consistent with the development plan for the area; and
  - d. any other matters the Inspector considers relevant.

**Summary of Recommendation:**

**The application be approved and that planning permission for the development is granted either on the basis of the underground conveyor being constructed by utilisation of the pipe-jacking or by cut and fill technique, subject to the conditions outlined and with the benefit of the obligations in the Section 106 Agreement and Supplemental Agreement.**

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**Documents handed up to the Inquiry (Inquiry Documents) and Core Documents can be accessed via the electronic library at <https://www.cumbria.gov.uk/planning-environment/wcm.asp>**

## ABBREVIATIONS USED IN THIS REPORT

AET1.5	Accelerated Energy Transition 1.5 scenario
AET2	Accelerated Energy Transition 2.0
AMM	Abandoned Mine Methane
BEIS	Department for Business, Energy & Industrial Strategy
BF-BOF	Blast Furnace-Basic Oxygen Furnace
BNZP	Balanced Net Zero Pathway
CafS	Cumbria Action for Sustainability
CBC	Copeland Borough Council
CCC	Climate Change Committee
CCS	Carbon Capture and Storage
CCUS	Carbon Capture Utilisation and Storage
CD	Inquiry Core Document
CHPP	Coal Handling and Processing Plant
CIL	Community Infrastructure Levy
CLCGT	Cumbria Landscape Character Guidance and Toolkit (2011)
CLG	Community Liaison Group
CLP	Copeland Local Plan
CMWLP	Cumbria Minerals and Waste Local Plan
CSLCA	Copeland Settlement Landscape Character Assessment
DC&R	Cumbria County Council's Development Control and Regulation Committee
EAF	Electric Arc Furnace
EIA	Environmental Impact Assessment
EP	Environmental Permit
ES	Environmental Statement
FoE	Friends of the Earth
LEP	Local Enterprise Partnership
GDS	Geological Disposal Site
GHG	Greenhouse Gases
GST	Green Steel Tracker
GVA	Gross Added Value
GWP	Global Warming Potential
HCMMD	Habitat Creation, Maintenance, Monitoring and Management
HMS	Habitat Management Scheme
HRA	Habitats Regulations Assessment
HVA	High Volatile A Coking Coal
ID	Inquiry Document – document submitted at the Inquiry
IEA	International Energy Agency
IEMA	Institute of Environmental Management and Assessment
IPPC	Intergovernmental Panel on Climate Change
LDNP	Lake District National Park
LMP	Landscape Management Plan
LP&S	Legacy Ponds and Silos
LSOA	Lower Super Output Area
LVIA	Landscape and Visual Impact Assessment
LWSs	Local Wildlife Sites
MMO	Marine Management Organisation
MMS	Main Mine Site
MPA	Mineral Planning Authority
MPI	Materials Processing Institute

Mt	Million tonnes
MtCO <sub>2</sub> e	Million tonnes CO <sub>2</sub> equivalent
Mtpa	Million tonnes per annum
NDA	Nuclear Decommissioning Authority
NDC	Nationally Determined Contribution
NE	Natural England
NMP	Noise Management Plan
NZE	Net Zero Emissions Scenario
NPH	Northern Powerhouse
NPPF	National Planning Policy Framework
ONR	Office of Nuclear Regulation
ONS	Office for National Statistics
OTP	Operational Travel Plan
PCI	Pulverised Coal Injection
PD	Permitted Development
PPG	Planning Practice Guidance
ProWs	Public Rights of Way
RLF	Rail Loading Facility
ROM	Run of Mine
RTO	Regenerative Thermal Oxidiser
RTS	Round Table Sessions
S106	Section 106 of the Town and Country Planning Act 1990
SAC	Special Area of Conservation
SDS	Sustainable Development Scenario
sHRA	shadow Habitats Regulations Assessment
SLACC	South Lakes Action on Climate Change
SDMMP	Sustainable Drainage Management and Maintenance Plan
SoS	Secretary of State
SPA	Special Protection Area
WCM	West Cumbria Mining Ltd
WM	Wood Mackenzie



## 1. PROCEDURAL AND BACKGROUND MATTERS

- 1.1 At the Inquiry an application for costs was made by South Lakes Action on Climate Change (SLACC) against West Cumbria Mining Ltd<sup>1</sup> (WCM). This application is the subject of a separate Report.
- 1.2 The application was called in for determination by the Secretary of State (SoS) by letter dated 11 March 2021 on the grounds that *'this application raises planning issues of more than local importance, and further considers that the limbs of the call-in policy relating to potential conflict with national policies in Chapters 14 and 17 of the Framework and substantial cross-boundary or national controversy are satisfied'*.
- 1.3 Friends of the Earth (FoE) and SLACC were accorded Rule 6(6) party status pursuant to The Town and Country Planning (Inquiries Procedure) (England) Rules 2000. Both parties presented evidence in support of their objections to the proposals with regard to matters relating to the need for the coal and the impact of the proposals on climate change. However, each of the Rule 6 parties also presented topic specific evidence in relation to other matters. In particular, FoE took the lead in providing evidence in relation to matters relating to character and appearance. SLACC provided evidence in relation to biodiversity and ecology, planning and employment/economic matters.
- 1.4 The Inquiry opened on 7 September 2021 and sat for a total of 16 days (7-10, 14-17, 21-24, 28-30 September 2021 and 1 October 2021). The sitting days were livestreamed. I undertook a site visit on an accompanied basis on 4 October 2021, following an extensive and comprehensive itinerary prepared by the parties. I closed the Inquiry in writing on 1 December 2021 following receipt of the executed Section 106 Agreement and updated schedule of suggested planning conditions.
- 1.5 The Inquiry was conducted on the basis of topic based round table sessions (RTS) involving discussions in relation to the effect on ecology, the effect on the character and appearance of the area and discussions on proposed planning conditions and obligations. All other matters were considered by the formal presentation of evidence.
- 1.6 Following decisions made by the Council on 20 April and 5 May 2021, the Council's position at the Inquiry was one of strict neutrality, involving neither support for, nor opposition to, the application. Consequently, the Council did not participate substantively in the Inquiry save by way of providing an opening statement and in the RTS discussion regarding proposed planning conditions and obligations.
- 1.7 Prior to the application being called in for determination by the SoS it was considered by the Council's Development Control and Regulation (DC&R) Committee on three occasions. On each occasion (19 March 2019, 31 October 2019 and 2 October 2020) the DC&R Committee resolved to approve the application. For various reasons these resolutions never resulted in the issue of a planning permission.

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<sup>1</sup> ID71 (SLACC's application), ID78 (Applicant's rebuttal) and ID86 (SLACC's response)

- 1.8 Notwithstanding the description of the proposed development on the application form, the Council changed the description to that shown on the banner heading above. This description was used in each of the three reports to the Council's DC&R Committee. It is a more accurate description of the proposed development which I have therefore used in my consideration of this application.
- 1.9 The planning application was accompanied by an Environmental Statement (June 2017) (ES) which was followed by the submission of Supplementary ES (September 2017 and January 2018). A revised and consolidated ES was submitted in December 2018 (2018 ES) and Addendum (April 2020) to reflect amendments made to the planning application. Prior to the submission of the planning application an Environmental Impact Assessment scoping request, accompanied by a Scoping Report, was submitted to the Council in February 2016. A Scoping Opinion was adopted by the Council on 1 June 2016 pursuant to Regulation 13 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (2011 EIA Regulations).
- 1.10 The 2011 EIA Regulations have been superseded by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (2017 EIA Regulations) which came into force on 16 May 2017. However, transitional arrangements provided in Regulation 76 of the 2017 EIA Regulations set out that where an applicant requested the relevant planning authority under regulation 13(1) of the 2011 EIA Regulations to adopt a scoping opinion in respect of the development to which the application relates the 2011 EIA Regulations will continue to apply. Therefore, the provisions of the 2011 EIA Regulations continue to apply in the determination of this application.
- 1.11 Following the notification that the application is to be called in for determination of the SoS, a further review of the consolidated ES and Addendum was undertaken by the Planning Inspectorate which culminated in a request on 30 June 2021 for further information pursuant to Regulation 22 of the 2011 EIA Regulations<sup>2</sup>.
- 1.12 The further information requested related to a need to update the traffic modelling; an assessment of any likely significant effects from operational vibration; a need to update the assessment of likely significant effects presented in ES Chapter 13 (Greenhouse Gas Emissions) to consider the implications of the Carbon Budget Order 2021 (the Sixth Carbon Budget); based on the outcome of the updated assessment, the identification of any measures to prevent, reduce or offset any significant adverse effects on the environment as a result of greenhouse gas emissions; a description of measures to prevent, reduce or offset any significant adverse effects on reptiles, clarification of the extent of the onshore mining area and; a revised non-technical summary.
- 1.13 The applicant submitted the entirety of its response to the further information request on 3 September 2021<sup>3</sup>. This also included a Biodiversity Net Gain assessment and a review of the assessment of the impacts of the proposed development on Scalegill Hall, a Grade II listed building. In addition, the

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<sup>2</sup> CD16.1

<sup>3</sup> CD16

applicant also submitted information in respect of an alternative proposed technique to install the underground coal conveyor beneath Bellhouse Gill and Roska Park Woods known as 'pipe jacking'. This comprised an assessment of the environmental effects of the use of pipe-jacking beneath these woodland areas.<sup>4</sup>

- 1.14 In simple terms, pipe-jacking is a tunnelling technique where a tunnelling shield is pushed forwards via a series of hydraulic rams fixed into position within a launch shaft, with the ground excavated by an excavation machine within the tunnel shield. The hydraulic rams push pre-cast concrete rings to be progressively inserted behind the machine and 'shoved' forwards by the rams. Thus, the tunnel lining is 'jacked' forwards as the tunnel face is excavated.
- 1.15 Whilst not a statutory requirement, the applicant publicised the availability of the further information with a consultation exercise running between 7–29 September 2021. No responses to this consultation exercise were received. However, comments on the information and assessment relating to pipe-jacking were provided by SLACC in submissions dated 30 September 2021.<sup>5</sup> These submissions are considered later in this Report.
- 1.16 I am satisfied that the 2018 ES, together with the ES Addendum (April 2020) and the further information (September 2021) meets the requirements of Schedule 4 of the 2011 EIA Regulations. I have also considered the adequacy of the submitted environmental information in the context of the recent Court of Appeal judgement in *Finch*<sup>6</sup> which is set out later in this Report.
- 1.17 The main parties could not agree on the content of a draft Statement of Common Ground (SoCG) and a draft SoCG – Matters not Agreed. These were signed by the Council only in respect of the SoCG and the applicant only in respect of the SoCG – Matters not Agreed. Consequently, I consider that these documents should be afforded little weight.
- 1.18 Two SoCG were provided to the Inquiry covering matters relating to Landscape<sup>7</sup> and Ecology.<sup>8</sup> These were signed by the applicant and the relevant witness on behalf of FoE in respect of Landscape and the applicant and the relevant witness on behalf of SLACC in respect of Ecology. Given the Council's position of neutrality in the Inquiry, it was not a signatory to either of these SoCG.
- 1.19 A draft deed of agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted at the outset of the Inquiry setting out a range of obligations, covenants and undertakings. A final executed agreement dated 28 October 2021 was provided after the end of the oral sessions. In addition, a Supplemental Undertaking, also dated 28 October 2021, was provided relating to the provision and implementation of a Biodiversity Net Gain Scheme. The provisions secured in the agreement and

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<sup>4</sup> Ibid

<sup>5</sup> ID66

<sup>6</sup> [2022] EWCA Civ187

<sup>7</sup> ID33

<sup>8</sup> ID55

undertaking are material considerations which are dealt with in more detail later in this Report.

- 1.20 The wider proposed development also includes an offshore mining area, beyond the mean low water mark, covering approximately 2,400 hectares (ha). This does not form part of this application for planning permission as all development on the seaward side of the mean low water mark falls under the remit of the Marine Management Organisation (MMO). All development on the landward side of mean low water mark is subject to this application for planning permission.
- 1.21 Therefore, the elements of the proposed development under the sea below mean high water mark will require the benefit of a licence from the MMO pursuant to the requirements of the Marine and Coastal Access Act 2009. An Environmental Permit (EP) will also be required to cover discharges of water from the main site to sea during storm events and any other discharges as may be required, together with placing controls on the management of any wastes and for the crushing, screening and loading of the coal. In addition, the development would also require an operating licence from the Coal Authority under Part II of the Coal Industry Act 1994. No MMO Licence, EP or operating licence applications had been made at the time of the Inquiry.
- 1.22 During the Inquiry considerable evidence was presented regarding the approach that was taken by the High Court in *R (Finch) v Surrey County Council*.<sup>9</sup> This case related to the granting of planning permission to Horse Hill Developments Limited to retain and expand the existing Horse Hill Well Site (including two existing wells) and to drill four new wells for the production of hydrocarbons over a period of 25 years. Although the ES assessed the Greenhouse Gas emissions (GHG) that would be produced from the operation of the development, the challenge related to the non-assessment by the ES of GHG emissions caused by the subsequent use of oil produced from the site after being refined elsewhere.
- 1.23 In that case, the Court explained at paragraph 101 of the judgment that despite the fact that the environmental effects of consuming an end product will flow inevitably from the use of a raw material in making that product, it does not mean that those effects can properly be treated as effects of the development on the site where the raw material will be extracted.
- 1.24 The applicant and the Rule 6 parties were aware during the Inquiry that *Finch* had been granted permission to appeal to the Court of Appeal. However, by the time the Inquiry closed, there was no knowledge of any date when the outcome of an appeal may be known.
- 1.25 On 17 February 2022, after the close of the Inquiry but prior to the issuing of this Report, the Court of Appeal dismissed the challenge, albeit that decision was not unanimous. The three judges considering the case ruled 2:1 that the decision to grant planning permission was lawful.<sup>10</sup> However, all three Court of Appeal judges held that downstream emissions could be required to be

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<sup>9</sup> [2020] EWHC 3566 (Admin)

<sup>10</sup> [2022] EWCA Civ187

assessed. The question of whether downstream emissions must be assessed is a matter of fact and judgement for the planning decision maker.

- 1.26 Given the relevance of the Court of Appeal decision to the consideration of the planning application in this case, the applicant, SLACC and FoE were invited to make further submissions to address the implications of the decision on the matters on which the Secretary of State wished to be informed. All three parties provided such submissions on 4 March 2022.<sup>11</sup> I have considered these in Section 21 of this Report.
- 1.27 On 16 March 2022 Natural England (NE) updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments. The advice outlined that an increasing number of waterbodies, in or linked with European Sites, are now deemed to be in 'unfavourable' conservation status for the purposes of the Habitats Regulations.
- 1.28 The additional habitats sites in unfavourable condition due to excessive nutrients which require a Habitats Regulations Assessment (HRA) and where nutrient neutrality is a potential solution to enable development to proceed are set out in Annex 2, Table 2 of the NE advice.<sup>12</sup> This includes the River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC). This only applies to catchments of Bassenthwaite Lake (River Derwent and Tributaries SSSI unit 1) and River Marron (unit 124 of River Derwent and Tributaries SSSI) with particular concerns relating to phosphorus.
- 1.29 The application was accompanied by a shadow Habitats Regulations Assessment (sHRA).<sup>13</sup> This considered potential likely significant effects of the project on existing and proposed internationally designated sites including the River Derwent and Bassenthwaite Lake SAC.
- 1.30 Although the sHRA concludes that the proposed development would not have an adverse effect on the integrity of the existing and proposed international designated sites, it did not include any assessment of any potential impact on the River Derwent and Bassenthwaite Lake SAC as a result of increased nutrient levels, specifically phosphorus. The applicant was invited to submit an Addendum to the sHRA to consider this matter. This was submitted on 5 April 2022<sup>14</sup> and is considered in Annex G of this Report.

## **2. TRANSBOUNDARY EFFECTS**

- 2.1 A letter dated 17 February 2021 was received from Fermanagh and Omagh District Council in Northern Ireland, raising concerns about potential transboundary effects resulting from drilling in the Irish Sea. The SoS has a duty under Regulation 53 of the 2011 EIA Regulations to consider whether development in England is likely to have significant effects in a European Economic Area (EEA) State. Before a recommendation to the SoS is made, the

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<sup>11</sup> PCID1 – Submission by applicant, PCID2 – Submission by SLACC, PCID3 – Submission by FoE.

<sup>12</sup> PCID4 – Appendix 1

<sup>13</sup> CD1.146

<sup>14</sup> PCID4

duties of the SoS under Regulation 53 are carried out by the Planning Inspectorate on behalf of the SoS.

- 2.2 Whilst offshore mining forms part of the wider proposed development, the application for planning permission before me relates only to the onshore components. Potential effects on the environment in an EEA State resulting from the offshore components would be considered by the relevant consenting authorities, in particular the Marine Management Organisation, for any such application.
- 2.3 Considering the duties in Regulation 53, on the basis of the current information available from the Applicant and given the intervening distance between the onshore elements of the proposed development and the administrative boundary of Fermanagh and Omagh District Council, I am of the view that the proposed onshore aspect of the development before me is not likely to have a significant effect on the environment in an EEA State. Notification and consultation with EEA States in respect of transboundary effects is therefore not necessary.
- 2.4 In reaching this view I have applied the precautionary approach (as explained in the Planning Inspectorate's Advice Note Twelve: Transboundary Impacts<sup>15</sup>) and taken into account the information currently supplied by the Applicant.
- 2.5 Any correspondence received in relation to transboundary issues will be passed to the SoS who must have regard to transboundary considerations and to any responses made.

### **3. THE SITE AND SURROUNDINGS**

- 3.1 The application site has three distinct and inter-connected elements comprising the Main Mine Site (MMS), the Rail Loading Facility (RLF) and the underground conveyor route which would transport coal from the MMS to the RLF.

#### *Main Mine Site*

- 3.2 The MMS would be located on the southern part of the former 'Marchon' chemical factory and anhydrite and coal mine works located on the south western boundary of the town of Whitehaven and approximately 2km from the town centre. It would occupy approximately 23 hectares of the total 'Marchon' site area which extends to approximately 52 hectares.
- 3.3 Most of the site is relatively flat and is covered with concrete hardstanding and former internal roads which are colonised with scrub vegetation. The eastern boundary of the site abuts High Road with the existing Woodhouse housing area and new residential development under construction located on the eastern side of the road. To the north, beyond the remaining former Marchon site is the Kells residential area. Several public rights of way (PRoWs) are located to the north and west of the site, including the Cumbria Coastal Way.

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<sup>15</sup> The Planning Inspectorate's consideration of transboundary issues is based on the principles set out in the Annex to Advice Note Twelve, available on our website at <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>. Whilst this advice note relates to Nationally Significant Infrastructure Projects, the principles are applicable to Town and Country Planning Act schemes.



There is no dispute from any parties that the whole of the former Marchon site comprises anything other than previously developed land.

- 3.4 Immediately to the west of the site the land rises relatively steeply to form a noticeable bank before falling away to the coast. A PRow runs along the top of the bank and descends to the south towards the restored Hutbank landfill site which is one of two restored landfill sites located adjacent MMS. To the south beyond agricultural and open land is the village of Sandwith. Existing access drifts to the former anhydrite mine are located in the south western corner of the site.
- 3.5 There is no direct intervisibility between the site and the coast. However, the site is quite visible from public vantage points as a consequence of its size, in forming a significant area of land having a relatively unkempt appearance, and its proximity to PRowS and High Road.
- 3.6 Overall, the land use of the surrounding area is mixed. To the north and east it is predominantly urban, dominated by residential development. To the south and west the land use is predominantly rural/coastal and is dominated by agricultural fields, a poultry rearing unit and associated buildings, a rail line, smaller settlements and individual properties.
- 3.7 The MMS is not subject to any landscape designation although part of the coast to the west is designated as the St Bees Head Heritage Coast and an area to the south, including the site of the RLF is identified as Landscape of County Importance. These matters are discussed later in this Report.

#### *Rail Loading Facility*

- 3.8 The proposed RLF would be constructed on a greenfield site located immediately to the west of the existing railway forming part of the Cumbrian Coast Line which runs north/south along the valley floor of the Pow Beck Valley. The rail sidings to serve the RLF would be located principally on agricultural land which is bisected by the railway line, as well as the former Main Band Colliery which is currently unrestored. Vehicular access to the RLF would be off Mirehouse Road and partly through the site of the former Main Band Colliery.
- 3.9 Other than the railway line, this part of the Pow Beck Valley in the vicinity of the proposed RLF is largely undeveloped and primarily in agricultural use with occasional dispersed residential properties, the closest of these being 'Lake View' and 'Stanley House'. The valley's flat bottom and in places steep sides, provides a relatively tranquil and rural character with relatively long-distance views along the valley floor. The route of the Coast-to-Coast footpath from St. Bees to Robin Hoods Bay crosses underneath the railway line in the vicinity of the proposed RLF.

#### *Underground Conveyor Route*

- 3.10 The proposed underground conveyor would be approximately 2.3 kilometres in length and would be located primarily beneath agricultural land. However, it would also pass partly beneath Bellhouse Gill Wood, which is an ancient woodland, and Roskapark Wood and Benhow Wood. Other than two small access structures for maintenance purposes, the conveyor itself would have no material visible impact after construction. However, the effect of the

construction works on the integrity of these woodlands was a matter of considerable discussion in the Inquiry and is considered later in this Report.

#### **4. THE PROPOSED DEVELOPMENT<sup>16</sup>**

- 4.1 The proposal is for the mining and processing of metallurgical coal. Metallurgical coal, otherwise known as coking coal, is a descriptive term for a range of coals which have a chemical composition which makes them suited to use in the process of steel manufacture. There are no metallurgical coal mines currently operating within the UK. The proposal provides for the cessation of coal extraction by 31 December 2049.
- 4.2 The proposed mine, which would be known as Woodhouse Colliery, would produce High Volatile coal, known as High Vol A Hard Coking coal (HVA) for use in the manufacture of steel only. The coal would be blended with other coals sourced from elsewhere to produce coke. Coke production would occur either at the steelworks or at a separate coking plant. Coking coal is a very different product from industrial or thermal coal which is usually of lower quality and has historically been used as fuel.
- 4.3 Coke is an essential ingredient in the steel produced from a blast furnace. To make iron in a blast furnace, coke, limestone and iron ore are heated and oxygen added which causes the coke to burn and trigger a chemical reaction with the iron ore. This melts the iron in the ore, enabling molten iron to be recovered from the bottom of the blast furnace.
- 4.4 The main components of the proposed development comprise:
- Underground winning and working of metallurgical coal in an onshore area of 302 hectares located between Whitehaven and the St Bees coast;
  - The construction of buildings and plant within the MMS including mine portals, a processing facility for coal, storage buildings, ventilation and power infrastructure, office space, car parking etc.;
  - The construction of an underground conveyor 2.3 kilometres long to transport the coal products to the RLF;
  - The construction of railway sidings alongside the Cumbria Coast Rail line and the construction of a Rail Loading Facility to load coal onto rail wagons for onward transportation to its markets.
- 4.5 The principal seams to be worked would be the Bannock Band and Main Band, which are at a depth of approximately 350 metres. The coal seams would be accessed via the existing two drift tunnels from the existing portals of the abandoned anhydrite mine, located within the MMS, which would be refurbished and extended.
- 4.6 Excavation rates would build over a five-year period to reach a maximum coal output of approximately 2.8 million tonnes per annum. All mined material would be sent to the coal storage and processing plant on the surface via a

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<sup>16</sup> More detail can be found in, *inter alia*, the Planning Statement 2020 Update (CD1.59), ES Chapter 5 Project Description (CD1.83), Design and Access Statement (CD1.66) and the proofs of evidence of Mr Kirkbride and Mr Tonks.



series of buried conveyors. The processing plant would separate any mined rock from coal, passing rock to a paste plant adjacent to the coal processing plant. The paste plant would add cement and water to the rock and unsaleable coal to form a paste which would then be pumped back underground for deposit in the void spaces created by mining. The saleable coal product would be sent via the underground conveyor to the RLF, prior to being sent by train to onward destinations.

- 4.7 The mine would use the nearby Cumbrian Coast line to transport coal to UK steelworks at Scunthorpe and Port Talbot and the port of Redcar for export to European steel and industrial plants. At full mine production, this would involve up to six trains per day operating up to six days per week. The intended market for the coal was a matter of considerable discussion in the Inquiry which will be considered later in this Report.
- 4.8 The proposed development would comprise separate elements located in four different locations being the MMS, the underground mine, the buried conveyor and the RLF. Construction of all these elements would take approximately two years to complete.

#### *Main Mine Site*

- 4.9 The MMS would accommodate the majority of above ground structures for the storage and processing of the coal, facilities management and servicing of the underground mine. The majority of the buildings undertaking the processing and storage of coal would take the form of domed structures, constructed of steel tubes to create a skeleton upon which galvanized steel or aluminium panels would be installed. The largest buildings would be the Coal Handling and Process Plant (CHPP) and associated structures comprising the raw coal, clean coals and reject store buildings.
- 4.10 The CHPP would comprise of a central dome, approximately 126.5m in width, with domed arms extending to the northwest and southwest. The south western arm (raw coal store) would be approximately 147m in length and 78.5m wide, and the north western arm (clean coal store) would be approximately 149m in length and 78.5m wide. The central dome would be the tallest part of the structure (34m above ground level) with the arms proposed to be 27m above ground level at their highest points. The clean coal store would hold this material prior to onward transportation to the RLF via the underground conveyor.
- 4.11 Other proposed buildings include a three-storey office building, a single storey changing rooms building, a workshop building, fan house, south drift access canopy, north drift access building, water storage tank, gas and diesel backup generators and electricity sub-station. Vehicular access to the MMS would be via the existing entrance to the Marchon site from High Road at the southern end of the site which would be upgraded and marginally re-aligned.
- 4.12 Perimeter landscape mounds would be formed to the north and east of the proposed built development using materials created through cut/fill from the construction of the development.

### *Underground Conveyor*

- 4.13 The application as considered by the Council provided for the 2.3km long underground conveyor linking the MMS to the RLF to be installed using a “cut and cover” technique involving the excavation of a flat-bottomed trench. Concrete box sections approximately 5m wide by 2.8m high would then be installed and joined to create a continuous culvert. The excavated material would be stored within adjacent mounds prior to being returned to the excavation to cover the conveyor with the surplus material being taken to the main mine site to form part of the new landscape mounds.
- 4.14 The vertical alignment of the conveyor would generally follow the terrain with the top of the culvert typically 2m below the surface. The typical width of the corridor on the surface during construction is estimated to be around 45m, however, it would be wider in some areas where the construction is deeper. The corridor would also be narrower in areas where sheet piling support is proposed, such as the proposed crossing of the Bellhouse Gill.
- 4.15 During construction of the crossing of Bellhouse Gill, the watercourse would be pumped over the construction area and then returned to its former line on completion. The area of ancient woodland lost would be replanted, together with some additional areas of new woodland to provide compensation.
- 4.16 Construction of the conveyor is estimated to take two years. Once installed, the conveyor would be contained underground. However, two “Intermediate Station” buildings are proposed along the route of the conveyor to provide access and allow changes to the alignment of the conveyor as it feeds into the RLF section of the conveyor. These buildings are proposed to have a footprint of approximately 14.3m x 15.4m and be just under 8m in height to the ridge. The structures are proposed to be surrounded by 2.4m high chain-link fencing and gates. One of the buildings would be adjacent to St Bees Road, with the other proposed to the north of the RLF site.
- 4.17 As mentioned earlier, as part of the submission of additional information required pursuant to the Planning Inspectorate’s request for additional environmental information pursuant to Regulation 22 of the 2011 EIA Regulations, the applicant also submitted information in respect of an alternative proposed technique to install the underground coal conveyor beneath Bellhouse Gill and Roska Park Woods known as ‘pipe-jacking’.<sup>17</sup>
- 4.18 Utilisation of the pipe-jacking technique is proposed for only the parts of the buried conveyor route which would pass beneath St Bees Road (designated as Zone 1) in the vicinity of Roska Park Wood and under a section of Bellhouse Wood & Bellhouse Gill (designated as Zone 2). Cut and cover would remain as the construction methodology for the remainder of the route.
- 4.19 The Zone 1 tunnel length is anticipated to be a maximum of 80m, at a minimum depth of 2m below surface to the top of the tunnel lining. The Zone 2 tunnel length is anticipated to be a maximum of 50m, also at a minimum depth of 2m below surface to the top of the tunnel lining. Over these pipe-jacking zones the structure housing the conveyor would be formed

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<sup>17</sup> CD16.14 and CD16.15

of pre-cast concrete circular sections with an internal diameter of approximately 2.5m.

- 4.20 The pipe-jacking tunnel would be driven from the launch shaft into the reception shaft. The launch and reception shafts are temporary construction works. They are proposed to be constructed using driven sheet piles. The launch shafts would be approximately 9m long and 6m wide and the reception shafts would be approximately 6m long and 6m wide.
- 4.21 The applicant indicates that Zone 2 will also be accessed from the RLF worksite. The reception shaft for Zone 1 and Launch shaft for Zone 2 will be accessed via a temporary route established from the former Main Band Colliery site to avoid any impacts upon Bellhouse Wood.
- 4.22 The applicant indicates that this revised construction methodology avoids the need to disturb any of the existing woodland for this section of the work. However, there is some dispute between the applicant and SLACC regarding the extent to which the pipe-jacking proposals can be considered in the Inquiry and submissions have been provided by both these parties regarding this matter.<sup>18</sup>
- 4.23 SLACC submits that the applicant has made a substantial amendment to the application, well after its application was submitted to the Council and called in by the SoS, such that the SoS does not have the power to consider the development as amended. SLACC further considers that if the amended development is considered, it would be unlawful for the SoS to grant permission as the development has not been subject to a lawful environmental impact assessment in respect of the new construction method or its impacts. These matters are considered later in this Report.

#### *Rail Loading Facility*

- 4.24 The RLF would involve the construction of a rail loading building and railway sidings. The proposed sidings would be approximately 1,500m long which will require construction fill to be imported by rail to bring the adjacent land up to the current level of the existing railway line.
- 4.25 The building housing the train loading equipment would be a pitched roof structure approximately 75m long by 9m wide and have a maximum height of 15m. This would be constructed of rubble stone plinths, timber cladding and composite deck roofing. A small office building is also proposed and would be finished in the same materials as the main RLF building.
- 4.26 As part of the proposed scheme, the surface of the former Main Band Colliery will be restored following construction of the RLF, as a substantial part of the Main Band Colliery site forms part of the proposed site.

## **5. PLANNING POLICY**

- 5.1 The proposed site lies entirely within the administrative area of Copeland Borough Council (CBC). Cumbria County Council is the mineral planning authority (the Council). In addition to the National Planning Policy Framework

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<sup>18</sup> ID66 and ID77

(the Framework) and the Government's Planning Practice Guidance, reference was made to policies in the development plan.

5.2 The development plan for the purposes of section 38 (6) of the Planning and Compulsory Purchase Act 2004 is:

- The Cumbria Minerals and Waste Local Plan 2015 – 2030 (CMWLP).<sup>19</sup>
- The Copeland Local Plan 2013 – 2028 – Core Strategy and Development Management Policies Development Plan Document (CLP)<sup>20</sup> and
- The Copeland Local Plan 2013 – 2028 – Proposals Map and Copeland Local Plan 2001-2016 Saved Policies.<sup>21</sup>

5.3 The former Marchon site is designated in the CLP as an Employment Opportunity Site. The route of the conveyor and the site of the rail loading facility are designated as countryside. The access to the rail loading facility is via the former Main Band Colliery site which is still awaiting restoration.

5.4 The most relevant policies within the development plan are:

*Cumbria Minerals and Waste Local Plan 2015 – 2030*

- Policy DC13 (Criteria for energy minerals) sets out that planning applications for coal extraction will only be granted where: the proposal would not have any unacceptable social or environmental impacts; or, if not it can be made so by planning conditions or obligations; or, if not it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission. The policy further explains the potential impacts to be considered and mitigated for underground coal mining proposals. These include the effects of subsidence, potential hazard of old mine workings, treatment and pumping of underground water, potential gas emissions and the encouragement of the use of sustainable transport and coal mine methane capture and utilisation.
- Policy DC16 (Biodiversity and geodiversity) requires that proposals for minerals development will be required to identify any potential impacts on important biodiversity and their potential to enhance, restore or add to these resources; and to contribute to national and local biodiversity objectives and targets. In addition, appropriate measures to mitigate any adverse effects (direct, indirect and cumulative) should be identified and secured. Where adverse impacts cannot be avoided or mitigated appropriate compensatory measures should be identified and secured.
- Policy DC17 (Historic environment) requires mineral developments to, where necessary, preserve and, where appropriate, enhance Cumbria's heritage assets and their settings. Any such proposals that would result in harm to, or total loss of, the significance of a designated heritage asset, or its setting, (or a non-designated heritage asset of national significance, or its setting), will be permitted where it can be clearly demonstrated that

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<sup>19</sup> CD5.12

<sup>20</sup> CD5.8

<sup>21</sup> CD5.11

public benefits outweigh the harm and that the harm is necessary to achieve those benefits.

- Policy DC18 (Landscape and visual impact) requires, amongst other things that proposals for development should be compatible with the distinctive characteristics and features of Cumbria's landscapes and should avoid significant adverse impacts on the natural and historic landscape. Development proposals should use Landscape Character Assessment to assess the capacity of landscapes to accept development. In addition, development proposals should avoid significant adverse visual impacts.
- Policy SP13 (Climate change mitigation and adaptation) requires that proposals for minerals and waste management developments should demonstrate that energy management, carbon reduction and resource efficiency have been determining design factors for the development.
- Policy SP14 (Economic benefit) sets out that proposals for new mineral development should demonstrate how they would realise their potential to provide economic benefit, including matters such as direct or indirect jobs created and the support that proposals give to other industries and developments. The policy further sets out that relevant adverse economic impacts on other industries, or on regeneration and development initiatives, will be weighed against the overall economic benefits of the proposal.
- Policy SP15 (Environmental assets) sets out a number of criteria that proposals for mineral developments will need to satisfy. These include the protection of people's overall quality of life and the protection of natural, historic and distinctive features that contribute to the environment and character of Cumbria. Proposals should also conserve the settings of these environmental assets, improve the linkages between these assets and provide buffer zones around them where this is appropriate. The policy also recognises that mineral developments can provide opportunities for increasing environmental resources, including adapting and mitigating for climate change, help to secure net gains in biodiversity resources and help to create new green infrastructure.
- Policy SP16 (Restoration and aftercare) requires that restoration, afteruse and aftercare schemes for mineral working sites should include, where appropriate, consideration of the potential for biodiversity, geodiversity and landscape enhancement, flood risk mitigation and water quality, maintaining agricultural land quality, ameliorating contaminated land and securing land stability.
- Policy DC2 (General criteria) is an overarching policy that requires mineral proposals to demonstrate that appropriate assessments have been undertaken to address potential impacts on the natural and historic environment or human health. It further states that proposals should not give rise to significant adverse impacts on air quality, not adversely affect a public right of way, show that the carbon footprint has been minimised and address issues of ground instability including mining subsidence.

*Copeland Local Plan 2013 – 2028 – Core Strategy and Development Management Policies Development Plan Document*

- Policy ENV3 (Biodiversity and Geodiversity) requires, amongst other things, that development incorporates measures to protect and enhance any biodiversity interest.
  - Policy ENV4 (Heritage Assets) seeks, amongst other things, to maximise the value of the Borough's heritage assets by protecting listed buildings, conservation areas and other townscape and rural features considered to be of historic, archaeological or cultural value. In addition, strengthening the distinctive character of the Borough's settlements that respects this character and enhances the settings of listed buildings.
  - Policy ENV5 (Protecting and Enhancing the Borough's Landscapes) states that the Borough's landscapes will be protected and enhanced by protecting all landscapes from inappropriate change by ensuring that development does not threaten or detract from the distinctive characteristics of that particular area. In addition, where the benefits of the development outweigh the potential harm, ensuring that the impact of the development on the landscape is minimised through adequate mitigation, preferably on-site.
  - Policy DM25 (Protecting Nature Conservation Sites, Habitats and Species) requires, amongst other things, that development proposals should protect biodiversity value and minimise fragmentation of habitats as well as maximising opportunities for conservation, restoration, enhancement and connection of habitats. Development proposals that would cause a direct or indirect adverse effect on locally recognised sites of biodiversity and geodiversity importance, including County Wildlife Sites, and Local Nature Reserves will not be permitted unless: i) The benefits of the development clearly outweigh the impacts on the features of the site and the wider network of natural habitats, and; ii) Prevention, mitigation and/or compensation measures are provided. Where compensatory habitat is created, it should be of equal or greater size than the area lost as a result of the development.
  - Policy ER10 (Renaissance through Tourism) explains that the Council will maximise the potential of tourism in the Borough and will seek to expand tourism outside the Lake District National Park boundaries, with a complementary offer that takes pressure off the National Park's busiest locations, and delivers economic benefits in the Borough.
- 5.5 The 'Saved' Policies from the Copeland Local Plan 2001-16 also identifies the former Marchon Site as an Employment Opportunity Site. Saved Policy EMP 3 (Employment Opportunity Sites) sets out that these areas are being investigated as to their future development potential and contribution they can make to the regeneration strategies in the Borough. However, there are no other 'saved policies' that are particularly relevant to the consideration of this application.
- 5.6 Copeland Borough Council are in the process of producing a new local plan. The Copeland Local Plan 2017-2035 Preferred Options Draft was published for consultation in September 2020. This plan is in the early stages of preparation



and no party has referred to any of the policies contained therein. I have attached little weight to this emerging plan in the consideration of this application.

*National Planning Policy Framework*

- 5.7 Shallow and deep mined coal are defined in the Glossary to the Framework as minerals of local and national importance which are necessary to meet society's needs. Paragraph 209 states that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs.
- 5.8 Paragraph 217 of the Framework provides a two-stage approach to the consideration of development for the extraction of coal. This states that planning permission should not be granted for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions and obligations; or if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including residual environmental impacts).

## **6. THE POSITION OF CUMBRIA COUNTY COUNCIL**

This section is based largely on the opening submissions for Cumbria County Council.

- 6.1 Since its original submission in 2017 the application has had a long and protracted history leading up to this inquiry. The complexity of the project, amendments to it over time, the ever-evolving debate concerning how to tackle climate change and the controversy of the proposals, reflected in strong support from some quarters but vehement opposition from others, has presented the Council as mineral planning authority with no easy task. The measure of that task may be gauged by the fact that, in the course of its consideration of the application, the Council has been subject to not just one but two sets of proceedings for judicial review, one from an opponent of the mine and one from WCM itself.
- 6.2 The application has been considered by the Council's Development Control and Regulation (DC&R) Committee on no fewer than three occasions. On each occasion (19<sup>th</sup> March 2019, 31<sup>st</sup> October 2019 and 2<sup>nd</sup> October 2020) the Committee resolved to support the application. For various reasons these resolutions never resulted in the issue of a planning permission.
- 6.3 Most recently, following amendments to the application by WCM to remove "middlings coal" from the project and the submission by the company of an additional greenhouse gas assessment, the DC&R Committee considered the application on 2<sup>nd</sup> October 2020 and resolved again to support it.
- 6.4 However, the Council was legally unable to issue the planning permission following that resolution because a direction from the Secretary of State was in place which prevented this from happening and a Section 106 legal agreement to secure various planning obligations had not been completed.
- 6.5 Those factors remained unchanged when, in December 2020, the Climate Change Committee published its Report on the Sixth Carbon Budget but by the end of January 2021 the Council would have been in a position to issue the

planning permission because the direction had then been lifted and the Section 106 agreement had been completed to the point where all that was required was execution of it by the Council.

- 6.6 However, the Council was now faced with the dilemma whether, in the light of the Sixth Carbon Budget Report, it was appropriate that it should refer the application back to the DC&R Committee in order to consider whether the Report affected its previous resolutions. After careful consideration, the Council's Executive Director Economy and Infrastructure decided on 8<sup>th</sup> February 2021 (in due accordance with her delegated powers under the Council's Constitution and entirely reasonably in the circumstances) that the application should be referred back to the Committee for reconsideration.
- 6.7 The events that then unfolded overtook that decision with remarkable rapidity. WCM instituted judicial review proceedings on 5<sup>th</sup> March 2021 challenging the decision to refer the application back to the Committee. However, on 11 March 2021 the Secretary of State decided that the application should be called-in meaning that from that date the fate of the application is now entirely for him, and not the Council, to decide. The call-in letter cited, among other things, both the delay that the outcome of the litigation would cause to the determination of the application were it not called-in and the fact that the implications of the Sixth Carbon Budget Report for the application should be explored within a public inquiry. Unsurprisingly, WCM then withdrew its judicial review.
- 6.8 Subsequently, in decisions made (again in due accordance with the Executive Director's delegated powers under the Council's Constitution) on 20 April and 5 May 2021 it was concluded that, in all the circumstances, the Council's position at the Inquiry should be one of strict neutrality, involving neither support for nor opposition to the application, and that the Council would not participate substantively in the Inquiry save by way of this opening statement and in the session devoted to conditions/the Section 106 agreement.

## **7. THE CASE FOR THE APPLICANT**

This section is based largely on the closing submissions for the applicant.<sup>22</sup>

### ***Introduction***

- 7.1 At the outset of this inquiry SLACC identified what it alleged were a series of myths that have been spun around the new development, but here are a few of the real myths:
- a. that we and the EU do not need any new coal mines and can continue to off shore our emissions for the next thirty plus years by importing coal or by importing steel products;
  - b. that we can stand aside whilst the global steel demand is fed by polluting mines from around the world, indeed, FoE's witness Mr Nicholas appeared anxious to share the news that another large new metallurgical coal mine has opened during the inquiry on the US eastern seaboard;

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<sup>22</sup> ID76



- c. that we can turn our back on jobs and economic growth because of a conservative estimate of 9000 “green jobs” for Cumbria which are “possible”, but for which there are absolutely no plans, still less funding or consent;
  - d. that many of the people of Whitehaven are long term unemployed and unlikely to take up the opportunities offered by the mine;
  - e. providing well paid jobs will only “poach” people from the few decent jobs in the area (Mr Bedwell abandoned this part of Ms Diski’s case); and
  - f. that creating well paid jobs for a net zero mine for 15 plus years amounts to a stranded asset. Better we are told for someone not have a job rather than they have it for only 15 years.
- 7.2 Dr Cullen for Friends of the Earth fairly agreed that his research (in materials efficiency) and the research areas promoted by other academic colleagues were all “credible options” but that we need to look at reality if we are to achieve the climate change targets. In a climate emergency it is time to act not talk.
- 7.3 It has been a continuing theme of SLACC to suggest elements of dishonesty on the part of the applicant. The rule six parties have called no experts in the field of mining, the metallurgical coal market, steel making or with relevant experts in delivering renewable projects.

#### ***Employment and Economic Benefits***

- 7.4 Despite the obvious and undeniable economic benefits of the scheme, SLACC presented a whole host of flawed and internally inconsistent reasons as to why the benefits would not materialise or should be disregarded and/or given little weight. They focused on finding fault, rather than carrying out any alternative analysis, and were simply borne out of an inherent objection to the Development.
- 7.5 Ms Diski’s evidence focused on what she thought “needed” to happen, or “hoped” would happen, rather than presenting a fair analysis of the actual economic benefits of the scheme. First, it was suggested that the figure of 532 direct jobs was unreliable. Ms Diski noted that she was not offering an opinion on whether the figures were robust and did not believe that the figures were plucked out of thin air.<sup>23</sup> Instead, the principal criticism was that there was no methodology that enabled her to understand why each of the jobs was required. There is no substance to this view, not least because Ms Diski went on to explain that it was for WCM to decide how to illustrate jobs and decide what methodology to use. Each job is clearly set out in a detailed organogram that is provided in Mr Kirkbride’s evidence.<sup>24</sup>
- 7.6 As is clear from the document, the organogram was a confidential operational document that had been produced for internal purposes before the Secretary of State had even decided to call-in the application. The organogram had been developed and re-worked from the ground up by WCM’s operations’ which had

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<sup>23</sup> RD in EiC.

<sup>24</sup> WCM/MK/2/4.

resulted in some small (but insignificant) changes<sup>25</sup> to the employment figures included in the original application. The organogram also provides details of how regulatory requirements for the mine relating to the need for specific job roles will be met.

- 7.7 Plainly, SLACC had no real interest in understanding any more about the detail behind the Development's employment structure, the only objective was to try and cast doubt over the accuracy of the numbers. Nevertheless, it was clear from Mr Kirkbride's response to a number of questions asked by the Inspector regarding specific roles, that Mr Kirkbride had a very clear understanding of all of these jobs and why they were required.
- 7.8 It was argued that Whitehaven was not really that deprived or in need of the jobs. That assertion contrasted sharply with the views expressed by many local people and politicians, who are in a much better position to judge the reality of the situation.<sup>26</sup> This criticism was founded upon an analysis which looked at the County as an average, including the more affluent areas of South Lakes District Council, rather than adopting a more qualitative assessment. When considering the figures, the relative deprivation of Copeland is also masked by the relatively high-paid jobs at Sellafield.
- 7.9 Ms Diski also sought to make the point in her evidence in chief that the deprivation figures relied upon did not include all seven deprivation indices. However, in cross-examination, Ms Diski accepted that the indices had different weightings and those that had been referred to were three of the most importance indices. She also clarified that she was "not saying the area does not need jobs" and "not saying that well-paid jobs are a bad thing". Instead, her position was that although people have a right to look for better work, they should be looking for jobs that are compatible with the green economy.
- 7.10 The Honourable Jake Berry MP, who had served three years as the Northern Powerhouse and Local Growth Minister and therefore has considerable experience of what is needed to kick-start development, spoke compellingly about the natural challenges West Cumbria faces when seeking to encourage additional investment due to its geographical location and distance from key transport infrastructure. The level of local support, not only from the four MPs, but also the mayor, is reflected in the local population.
- 7.11 It was argued that the jobs would not, in fact, go to local people, notwithstanding the commitment which WCM have entered into in the Section 106 Agreement on this matter which is robust and the considerable interest that Mr Kirkbride explained has been expressed in working at the mine. The factsheets produced by WCM provide a clear example of the steps which have been taken to try and inform local people about what it would be like to work at the development,<sup>27</sup> what qualifications might be required, and, most importantly, what steps they can take to satisfy the necessary criteria.<sup>28</sup>

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<sup>25</sup> 491 vs 518 vs 532 job

<sup>26</sup> See, for example, the representation from Mark Jenkinson MP; Trudy Harrison MP; and Mr Starkie, the elected Mayor

<sup>27</sup> ID9.5, Working Underground

<sup>28</sup> ID9.2, Education

Mr Kirkbride described that these factsheets had been produced precisely because of the number of requests that they had had from local people who were interested in working at the mine.

- 7.12 During the course of the evidence, it became clear that SLACC's concern about whether jobs would be able to go to local people was founded upon a misunderstanding of what was meant by "relevant experience". Mr Kirkbride explained that "relevant experience" does not mean "previous mining experience", which is only required for a relatively small number of roles, such as shift supervisors and managers.<sup>29</sup> Moreover, there will be scope for employees to be trained on the job and move up through the ranks as the operation expands.
- 7.13 Paradoxically, at the same time as maintaining that jobs would not go to local people, it was also argued that the mine would lead to "poaching" people from existing jobs, which seemed to be almost entirely founded upon a letter from Cumbria Council's economic development officer. There are differences between people leaving one job for another in the normal operation of the labour market and actively trying to "poach" employees from their existing jobs. WCM would categorically not engage in the latter practice. However, even if "poaching" (more commonly known as recruitment) did occur, it is difficult to see what the real economic objection would be. The process would nevertheless create an additional vacancy and encourage further migration and investment into the area. In short, notwithstanding the Applicant's clear commitment to provide jobs to local people wherever it is possible to do so, even if that did not happen, it would not diminish the considerable economic benefits of the scheme.
- 7.14 The suggestion of "poaching" was equally inconsistent with the claim that the mine would leave a generation of workers stranded in a dead industry and unable to retrain. As Mr Kirkbride explained, the reverse is true. The mine would be a major local employer that would provide considerable training in transferable skills, such as electrical, mechanical and engineering skills,<sup>30</sup> many of which will be in high demand in the green economy.
- 7.15 Ms Diski confirmed that she was not arguing with Mr Kirkbride's evidence on the availability of transferable skills.<sup>31</sup> Her issue was simply that she had not seen the detail. However, that does not mean that it does not exist. For example, WCM has developed a close relationship with the Lakes College at Lillyhall, who will offer up to 50 apprenticeships on a rolling three yearly basis.<sup>32</sup>
- 7.16 This mine could actively reverse the jobs and skills shortage in Cumbria that is inhibiting the development of more green jobs, by providing the necessary investment and training that has hitherto failed to materialise. The very recent report produced jointly by the LSE, the Grantham Research Institute on

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<sup>29</sup> See ID9.3, where previous mining experience is required, it is expressly referred to, in contrast to other roles which simply refer to "relevant experience". As explained by MK in EiC and xx.

<sup>30</sup> MK in EiC

<sup>31</sup> RD in EiC

<sup>32</sup> MK in EiC and factsheet on apprenticeships

Climate Change and the Environment and the Centre for Climate Change Economics and Policy (23 September 2021),<sup>33</sup> refers to the knowledge skills that would result for the UK from the presence of Carbon Capture and Storage (CCS), particularly in areas targeted by government for levelling up. The same is equally true of the spin off skills, consultancy and overseas work arising for the UK from this project which will seek to deliver a world leading net zero mine.

- 7.17 The economic analysis of the local, regional and national benefits of the development carried out by NERA was not challenged in any way save for the general assertion that it could not be trusted because it relied upon data provided by WCM. Moreover, Mr Kirkbride's evidence on the tax benefits that would arise from the scheme and the extent to which it would help in addressing the balance of trade deficit also went unchallenged. Therefore, notwithstanding SLACC's refusal to engage in the completion of a statement of common ground on the economic benefits, it should be noted that there has been no substantive challenge to the evidence regarding:
- a. The creation of 1,077 indirect and induced jobs in the wider supply chain;
  - b. An average beneficial impact on annual regional output of £299m, supporting 637 regional positions, with an average regional GVA of £185m;
  - c. An average annual additional impact on national output of £495m, with an average national GVA of £380m; and
  - d. The fact that the export of WCM coal to the EU would be likely to result in a 1.8% improvement in the existing balance of trade deficit, which currently stands at £14.3 billion.<sup>34</sup>
- 7.18 This development has attracted significant international inward investment. It will not also serve the UK domestic market but also more widely EU and elsewhere. It is an exemplar of "Global Britain".
- 7.19 In this context, it is unsurprising that the development has received considerable support from the local councils,<sup>35</sup> a large number of local MPs and the Copeland Elected Mayor. Indeed, this proposal, which involves substantial private investment, in an area that has suffered from decline of jobs in skilled industrial activity, is precisely the sort of project that accords with the Government's "levelling-up" agenda. Speaking from his own detailed experience of achieving these goals, Jake Berry MP described how it would be "an absolute tragedy if we let an opportunity like this pass us by". Similar observations were made by Mark Jenkinson MP, who explained how private investment of this magnitude aligns with the "Build Back Better" plan for growth and does not come along every day, or even every decade.
- 7.20 Mr Bedwell on behalf of SLACC relied upon the unreliable Ms Diski for his evidence on tourism harm, and rightly abandoned his economic benefit off set based upon alleged harm to the tourist economy. He conceded that there was

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<sup>33</sup> ID45.

<sup>34</sup> WCM/MK/2

<sup>35</sup> Including Copeland Borough Council, Allerdale Borough Council, Whitehaven Town Council and St Bees Parish Council.

no evidence before the Inspector upon which he could rationally take such a view. He formally withdrew it as a material consideration.

***Need***

- 7.21 There is no policy or legal requirement to demonstrate need, but it is relevant as an overall benefit of the development, and when considering the potential Greenhouse Gas (GHG) emissions of the development.

***Coal classification /quality***

- 7.22 The Woodhouse Colliery will produce premium HVA coking coal with a number of characteristics which will make it very attractive to the market. These include:
- a. Low ash content: the ash content is expected to be under 5%, seaborne traded coals from the US are most commonly in the range of 7% to 8% and those from Australia are normally between 10.0% and 10.5%.<sup>36</sup> Therefore, the ash in the WCM coal will be much lower than it is in other imported coals. Steel mills pay a premium for lower ash coals.
  - b. Low phosphorus: the phosphorus content for WCM coal is expected to be very low at <0.005. Imported coals from Australia normally have phosphorus content at 0.05, or ten times the value expected in WCM's product.<sup>37</sup> If high phosphorus levels make their way into the coke the steel produced becomes more brittle. Low phosphorus is an extremely favourable quality characteristic for a metallurgical coal.
  - c. High fluidity: the coal produced at WCM is expected to have a fluidity of 30,000 ddpm. This is the maximum number attainable from standard laboratory equipment used to test metallurgical coal properties. Fluidity at 30,000 ddpm is one of the defining characteristics of a HVA coking coal and, globally, very few coals have fluidity at this high level. Having coals with high fluidity gives a coke maker the flexibility to include a wider range of other coals to use.<sup>38</sup>
  - d. Reflectance over 1.0%: for a high-volatile coal, having reflectance over 1.0% is one of the most important features to be classified as a HVA coal. The reflectance of the WCM production is estimated to be 1.02%, placing it within the HVA category. Reflectance is a key indicator of the rank of a coking coal.<sup>39</sup>
- 7.23 Mr Truman explained that the attractiveness of WCM coal (not only its quality and cost) will also be further enhanced by the low GHG emissions associated with its production and its geographical proximity to UK and European steel mills.
- 7.24 Nevertheless, despite presenting no evidence from anyone with experience in the coking coal market, SLACC continue to maintain that WCM coal cannot be

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<sup>36</sup> WCM/JT3, p. 16, para. 6.4

<sup>37</sup> JT in EiC and xx

<sup>38</sup> JT in EiC

<sup>39</sup> JT in EiC.

categorised as HVA coking coal and will not be marketable in its target market of the UK or Europe,<sup>40</sup> or indeed globally.<sup>41</sup> As Professor Haszeldine confirmed, SLACC's position is based entirely on the relatively high sulphur content of the WCM coal, a point which is not in dispute. SLACC called no witness with expertise in the global coal market, still less the metallurgical coal market. This may explain why their approach is fundamentally flawed in a number of ways.

- 7.25 First, Professor Haszeldine has focused on what he estimates the Run of Mine (ROM) sulphur content of the target seams to be, rather than the processed coal. This analysis is flawed and does not accord with the detailed data that WCM has collected and had independently verified through reports carried out by a Competent Person in order to progress through different stages of the project and secure funding.<sup>42</sup>
- 7.26 These reports and the underlying data remain confidential and cannot be disclosed without a non-disclosure agreement because of the considerable intellectual property value that they contain. However, the issue for present purposes is not what the ROM sulphur content is, but what the sulphur content of the processed coal is. Parnaby Cyclones, who have designed the coal handling and processing plant (CHPP) have confirmed that WCM have provided historical raw coal data and have confirmed that "the target seams are metallurgical coal...that is suitable for the production of premium High Volatile 'A' Metallurgical Coal".<sup>43</sup> Furthermore, they have confirmed that the output product coal parameters from their design will meet the proposed planning condition, by having an average sulphur content of 1.4% and a maximum sulphur limit of 1.6%.
- 7.27 Professor Haszeldine confirmed that he was not an expert in coal washing and he did not challenge the expertise of Parnaby Cyclones on this issue. Moreover, he agreed that Parnaby Cyclones would ensure that they had sufficient data before making such a statement.<sup>44</sup> The letter<sup>45</sup> from Parnaby Cyclones regarding the output of the CHPP comprehensively concludes that there are no live issues on this point. This puts to bed any issue regarding the ROM data or the need to see it.
- 7.28 Second, Professor Haszeldine's analysis of the marketability of WCM coal failed properly to take into account the way in which different coals are blended to meet the coke-maker's overall desired specification. As Mr Truman explained,<sup>46</sup> this is a common feature of coke production that is always required. Since WCM coal would only represent a proportion of the overall blend, there is plenty of scope to ensure that that blend does not exceed the desired sulphur limit, especially given that the Australian low volatile coal that makes up much of the blend typically has a very low sulphur content of between 0.5 - 0.6%.<sup>47</sup> This is consistent with the views expressed by Wardell

<sup>40</sup> SLACC/SH/1, para. 9.8; SLACC/SH/3 paras. 2.19 and 2.22.

<sup>41</sup> SLACC/SH/1, para. 9.1 and SLACC/SH/3, para. 2.16.

<sup>42</sup> As explained by MK in EiC

<sup>43</sup> WCM/MAK/2/3

<sup>44</sup> SH in xx

<sup>45</sup> WCM/MAK/2

<sup>46</sup> JT in EiC

<sup>47</sup> WCM/JT/2, para. 2.12



Armstrong and Javelin Global Commodities, when independently contacted by the Council last year, which explained that WCM coal would be likely to substitute HVA coal imported into Europe from the USA providing that its sulphur content did not exceed 1.7%.<sup>48</sup>

- 7.29 Third, Professor Haszeldine also sought to rely upon the written statement from the Materials Processing Institute (MPI), as well as his speculation about future EU legislation on emissions, to suggest that there were environmental permitting restrictions on the sulphur content of coal that goes into the blend (as opposed to the sulphur content of the overall blend). Mr Kirkbride explained that the MPI's understanding of the limit on the operation of the British Steel plant at Scunthorpe was incorrect.<sup>49</sup> The actual letter confirms that the limit is applied to the coal blend, rather than the individual elements of it.<sup>50</sup>
- 7.30 Correspondence provided from German steel producers (Rogesa and ThyssenKrupp Steel Europe) to Professor Haszeldine's student also confirms that it is the sulphur content of the overall blend rather than the individual coal that matters,<sup>51</sup> with ThyssenKrupp indicating that individual coals may have a sulphur content of up to 5%. Indeed, given that the blending of coal itself does not result in any emissions, it is difficult to see why a limit would ever be placed on the individual components of that blend.
- 7.31 Fourth, Professor Haszeldine had only focused on the sulphur content of the coal, rather than providing an assessment of the marketability of the coal as a whole, taking into account all of its characteristics. Mr Truman and Mr Kirkbride gave clear evidence on the many highly attractive characteristics of WCM coal, which Professor Haszeldine confirmed he did not dispute.<sup>52</sup> Mr Truman also explained that the market considers and assesses chemical characteristics above and below the typical specification by imposing price penalties and premiums. Mr Truman recognised that WCM's higher sulphur content would be likely to result in a price penalty, but he explained why this would be offset by premiums for its other qualities, such as low ash and low phosphorus.
- 7.32 Much has been made about the fact that various documents have referred to different specifications, and this is used to suggest that "WCM's position on the composition of the coal keeps shifting".<sup>53</sup> However, the reality is quite different, as is clear when these changes are seen in their proper context, which is as follows:
- a. WCM's original application never defined "metallurgical coal" as having a sulphur content of 1.25%, contrary to what is said at paragraph 8 of SLACC's opening submissions, because metallurgical coal does not have a

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<sup>48</sup> CD2.72 and CD2.73.

<sup>49</sup> MK in xx on day 4

<sup>50</sup> See email from British Steel dated 3 August 2020 at CD2.75, pp. 265-266

<sup>51</sup> SLACC/SH/2/1, p. 24

<sup>52</sup> SH in xx

<sup>53</sup> See para. 8 of SLACC's Opening Submissions

specific sulphur limit.<sup>54</sup> Instead, this definition was imposed by the Council when it originally resolved to grant planning permission.<sup>55</sup>

- b. When WCM submitted its updated Planning Statement in 2020 in response to a regulation 22 request from the Council, it suggested that the condition should be amended to a maximum sulphur content of 2% because the 1.25% limit imposed by the Council was not justified and would not be consistent with the product produced by the mine. The 2% limit was suggested as a maximum and not an average.
- c. A briefing note submitted to the Council to explain the changes to the coal processing stated that the revised plant design would have a maximum cut-off at 1.8%,<sup>56</sup> which fell within the 2% maximum that had been suggested as an upper limit for the condition.
- d. When considering the additional information submitted by WCM, the Council carried out its own independent research about how sulphur content may affect the potential for substitution, and a letter from Javelin indicated it considered that 1.7% could be regarded as a maximum for HVA coal that would be likely to substitute for HVA coal from the USA.<sup>57</sup> The letter also indicated that, from their own discussions with WCM, Javelin expected the typical sulphur content of the WCM coal to be around 1.4%, albeit with some variation. However, the Council took this as suggesting that HVA coal should generally have an average sulphur content of 1.4% and sought to impose a condition on this basis.<sup>58</sup>
- e. Whilst WCM did not agree with this revised definition, it did not contest it because it would be able to meet it by adjusting the CHPP.

7.33 The applicant maintains that it is not necessary to impose a condition, because the demand for WCM coal will be regulated by the market. However, since the CHPP can be adjusted to lower or raise the sulphur cut-off, the output from the mine can meet the condition which was proposed by the Council. As Mr Kirkbride explained, the reduction in sulphur limit simply reduces the overall yield because there will be a greater proportion of reject. Therefore, the applicant does not object to the imposition of the condition suggested by the Council if it is considered necessary in order to make the development acceptable.

7.34. As with so much of SLACC's case, the issue around shifting coal specification is a red herring. The bottom line on the issue of coal quality/classification is that it is a matter for the market. Indeed, Professor Haszeldine candidly acknowledged as much, during his evidence in chief, when he indicated that he had not been able to find a single definition regarding the chemical composition of HVA coal, which he then went on to recognise seems to be set

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<sup>54</sup> As explained by JT in EiC

<sup>55</sup> CD4.1, p. 141.

<sup>56</sup> CD2.68, p. 200

<sup>57</sup> CD2.73, p. 259

<sup>58</sup> CD4.5, p. 887, paras. 7.89 – 7.94, which explains the rationale for imposing condition 77 at p. 959



by the market and what the market wants to purchase.<sup>59</sup> That is plainly correct, and all the evidence before the Inquiry from those with a detailed knowledge of the market confirms that the indicative coal specification provided by WCM would be classified as premium HVA coal and would substitute US HVA coal that is currently imported into Europe.

***"Forecasts" and "scenarios"***

- 7.35 There is no dispute between the main parties that there is an existing need for HVA coking coal in the UK and Europe that is currently met by considerable imports from the USA. Nor is there any serious dispute that that need, even on a results driven scenario, will continue until at least just beyond 2040.
- 7.36 The only forecast of likely future need for coking coal in the UK and Europe that is before this Inquiry is the forecast presented by Mr Truman on behalf of Wood Mackenzie. Contrary to the assertion by various witnesses on behalf of the Rule 6 Parties,<sup>60</sup> this forecast has not simply been produced for the purposes of this Inquiry. As Mr Truman explained,<sup>61</sup> the data provided in the report by Wood Mackenzie has been taken from Wood Mackenzie's global coking coal forecasts which it provides to clients around the world based upon its own considerable expertise and market analysis. There can thus be no doubt that this is the objective systematic expert forecast of what is likely to happen.
- 7.37 This forecast shows that there will continue to be an addressable market for WCM in the UK and Europe throughout the lifetime of the development. No forecast was provided by any of the Rule 6 Parties, still less one which is systematic in its analysis. Such analyses provided, or relied upon, by witnesses for the Rule 6 Parties are based upon "scenarios". Even then only one set of bespoke scenarios was produced.<sup>62</sup>
- 7.38 Whilst there was some academic debate about the definition of a scenario, how it compares to a forecast, and whether a forecast is a type of scenario, the essential difference in this case is clear. A scenario is based upon a set of fixed/predetermined assumptions.<sup>63</sup> In the present case, these scenarios typically have a fixed end point relating to climate change, domestic or international climate change commitments. The scenario then presents a possible trajectory or "pathway" towards that commitment. In doing so, these scenarios expressly confirm that they are not intended to be a forecast or prediction of what is likely to happen.<sup>64</sup>

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<sup>59</sup> SH in EiC

<sup>60</sup> For example, SLACC/BW/3, para. 5.3.

<sup>61</sup> JT in EiC

<sup>62</sup> SLACC/PE/2/3

<sup>63</sup> PE in xx

<sup>64</sup> The explanation of the approach of the PRIMES model provided by E3 modelling explains that "both scenarios present a projection, not a forecast, of the evolution of the EU energy system, transport system and GHG emissions. They do not predict how these will look in the future, but provide a model-based simulation of a possible future outlook, given the applied policy context" [Underlining added] [SLACC/PE/2/3]. Similar caveats are made in respect of the IEA Roadmap, as Mr Truman highlighted at [WCM/JT/3, paras. 3.31 – 3.36, and the CCC's BPNZ [CD8.10, p. 1038]

- 7.39 The following scenarios have been placed in evidence before the inquiry:
- a. Wood Mackenzie's Accelerated Energy Transition (AET) 2.0 degree and 1.5 degree scenarios.
  - b. The scenarios from the PRIMES model provided by Professor Ekins, which include a Base Scenario and a Policy Scenario.
  - c. The Balanced Net Zero Pathway (BNZP) produced by the Climate Change Committee in its report on the Sixth Carbon Budget.
  - d. The International Energy Agency (IEA) Net Zero by 2050 – A Roadmap for the Energy Sector.
- 7.40 A number of witnesses pointed out that all forecasts are inherently uncertain and can turn out to be unreliable. However, this misses the basic point, which is that the Wood Mackenzie forecast ("the WM Forecast") is the only systematic analysis that has sought to predict how the likely global (including UK and EU) coking coal demand will develop over the lifetime of the development.
- 7.41 The WM Forecast was also criticised on the basis that it would be inconsistent with the UK's obligations under the Paris Agreement.<sup>65</sup> This is incorrect. The criticism is based upon the following false premises:
- a. That the illustrative sectoral pathways to net-zero in the Climate Change Committee's Balanced Pathway to Net Zero is prescriptive; and
  - b. That there is no potential for further improvements in technology relating to CCS and Carbon Capture Utilisation and Storage (CCUS), which could allow continued use of coking coal without the associated GHG emissions.
- 7.42 Nevertheless, given the "Herculean" effort that every witness recognised is required to meet the incredibly challenging targets that have been set, it is somewhat surprising that so much criticism was levelled at Wood Mackenzie for adopting a more realistic and currently foreseeable approach.
- 7.43 As Mr Thistlewaite stated, account should be taken that the existing legal commitments<sup>66</sup> relating to climate change will be met, however challenging or difficult those commitments may seem. It is the applicant's case that granting planning permission for this development will not conflict with achieving those commitments. In carrying out that assessment it is imperative that the Inspector and the Secretary of State also take into account the expert market analysis of what is likely to happen in terms of the UK, EU and global continuing need for coking coal.
- 7.44 As a number of witnesses for the Rule 6 Parties recognised, the WM Forecast does not result in a breach of the existing commitments because they do not contain any sectoral budgets or limits. Indeed, the Climate Change Committee expressly recognises that "there are multiple ways to meet the Net Zero 2050

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<sup>65</sup> See FOE/JC/3, paras. 2.5 – 2.7; SLACC/PE/3

<sup>66</sup> He noted that the NPPG has not been updated to reflect the net zero teaget: Paragraph: 003 Reference ID: 6-003-20140612

target and many routes to our recommended Sixth Carbon Budget. While our Balanced Pathway is the basis for our recommended budget it is not intended to be prescriptive. Rather it is illustrative of what a broadly sensible path based on moderate assumptions would look like. A little more or a little less may be achieved in any area, or alternative low-carbon options could be used, but the overall level of ambition and delivery must match.”<sup>67</sup>

- 7.45 If it is not possible to reduce reliance upon coking coal in blast furnace steel production as quickly as the sectoral pathway hopes, as the WM Forecast suggests, then this slack can be picked up by other sectors or additional measures that would be required to compensate for this. Indeed, the corollary of the submission advance by SLACC and FOE on this point is that the Inspector and the Secretary of State are required to proceed upon the basis that any additional emissions resulting from WM’s Forecast will be addressed elsewhere so that the climate change commitments that have been enshrined in law are not breached.
- 7.46 Nevertheless, even if the net-zero “scenarios” are used for the basis of assessing the need for coking coal, it is clear that they all demonstrate a continued need for coking coal until at least just beyond 2040 in the UK and Europe; and beyond 2050 in the rest of the world:
- a. The PRIMES scenario produced by Professor Ekins shows that there will continue to be a need for coking coal in the UK and Europe until 2040.<sup>68</sup> No PRIMES scenario has been produced for wider global demand.
  - b. The AET 1.5 degree scenario produced by Wood Makenzie shows that there will continue to be a need for coking coal in Europe until 2043,<sup>69</sup> with global need, particularly in Southeast Asia, continuing beyond 2050.
  - c. The IEA Roadmap to Net Zero indicates that the share of coal use in iron and steel production will still be 22% in 2050.<sup>70</sup> In doing so, it states that: “The steel industry remains one of the last sectors using significant amounts of coal in 2050, primarily due to its importance as a chemical reduction agent, albeit mostly in conjunction with CCUS”.
  - d. The Climate Change Committee’s BPNZ does not provide a figure for continued coking coal use as part of its pathway to 2050. However, CCS makes up a considerable proportion of the abatement of remaining emissions in the iron and steel sector at 2050.<sup>71</sup> It is clear from the preceding pages, which explain that CCS will be applied to half of the UK’s integrated steelwork capacity in the early 2030s and contribute to 4MtCO<sub>2</sub>e per year in 2045,<sup>72</sup> that this includes continued blast furnace production and therefore continued need for coking coal.

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<sup>67</sup> CD8.10, p. 1038

<sup>68</sup> Figure A3.5 and A3.6 at SLACC/PE/2/3, pp. 34 – 35, and confirmed by PE in xx.

<sup>69</sup> ID1, para. 1.14

<sup>70</sup> CD8.16, p. 1906

<sup>71</sup> See Figure 3.3.d at CD8.10, p. 1125, and Table 1 at WCM/CL/1

<sup>72</sup> CD8.10, p. 1123

- 7.47 Therefore, it is clear that, on any basis, there will continue to be a strong demand for coking coal for a number of decades as part of the transition towards net-zero.

***Alternative technology and materials efficiency***

- 7.48 The potential emergence of alternative technologies, such as hydrogen direct reduction (H-DRI), Carbon Capture and Storage (CCS), increased secondary steel production via Electric Arc Furnaces (EAF) or materials efficiency have been discussed at length. However, this selection of qualitative discussion of the prospects of different alternatives goes nowhere in respect of the essential questions relating to the issue of “need”, which are: (a) what is the quantitative need for coking coal; and (b) how is this likely to change over the lifetime of the development?
- 7.49 No systematic analysis was produced by the Rule Six Parties. These are questions which cannot be answered in a vacuum, but if the consensus is that all the identified new technologies have to be pursued as per the recognised pathways (e.g. as set out in the Six Carbon Budget), if indeed it were possible (which is not accepted) for these pathways to be seriously challenged as no longer relevant, it would at the very least be necessary to produce a comprehensive assessment and systematic forecast of future demand for all technologies.
- 7.50 Nevertheless, with that general caveat in mind, a number of general observations can be made before considering the key technologies that have been raised in more detail:
- a. First, there is common ground that steel will be a very “difficult-to-mitigate sector”.<sup>73</sup> The EU regards coking coal as a critical raw material and the European Commission<sup>74</sup> takes the view that: “There is no other satisfactory material available which can replace completely metallurgical coal in the blast furnace charge.” It considers that Pulverised Coal Injection (PCI) as an alternative in the industry “has already reached the technical limits of replacement.” There is thus an obvious public relations incentive for organisations, such as steel companies, to emphasise the steps that they are taking towards decarbonisation through the introduction of green steel production. This is illustrated most starkly by the press release from Arcelor Mittal Europe provided by Professor Nilsson.<sup>75</sup> Whilst the headline trumpets the start of production of ‘green steel’ in 2020 and the sub-heading refers to hydrogen technologies being at the heart of this, closer examination of the article shows that the technologies referred to are in fact hydrogen injection into the blast furnace (replacing PCI), a natural gas DRI plant that is “hydrogen-ready”, and a smart carbon technology that involves the carbon capture of waste gas from the blast furnace and converting it into an ethanol to use as biofuel, which Professor Nilsson accepted was controversial.<sup>76</sup> Indeed, most of the evidence in relation to hydrogen is from

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<sup>73</sup> ID38

<sup>74</sup> Study on the EU’s List of Critical Raw Materials (2020) at p.176, SLACC/LN/2 appendix 6

<sup>75</sup> SLACC/LN/3/R2

<sup>76</sup> LN in xx.

press releases from steel companies. The “Green Tracker” relied upon by Professor Nilsson tracks public announcements and not actual delivery.<sup>77</sup>

- b. Second, as Dr Cullen candidly observed, each group of academics or industries are promoting their own particular area of research/focus as the solution to the climate challenge.<sup>78</sup>
- c. Third, given uncertainty in the development of technologies, it is widely accepted that they all must be pursued.<sup>79</sup>
- d. Fourth, the scale of the challenge faced, which was repeatedly emphasised by every witness, also demonstrates that it is not sensible to rely upon one particular solution.

### ***H-DRI***

7.51 The Rule 6 Parties have largely focused on hydrogen, and in particular green hydrogen, as being the primary solution to decarbonise the steel industry. There are a number of considerable obstacles in the short to medium term, which covers the life of this development:

- a. First, fully green hydrogen steel production is still only in its infancy with a number of demonstration or pilot plants and has yet to be scaled up on a commercial basis. Even if one takes the announcements at face value and assumes that they will all be successful, it still only amounts to around 10mt of hydrogen-based steel production in Europe in 2030,<sup>80</sup> which compares to an existing EU steel production of more than 160mt (less than 7% of overall production). Whilst announcements or pilot projects demonstrate that hydrogen is being explored, they do not assist with the residual blast furnace capacity that remains, or how long it will take to phase this out. The need also for renewable energy accounts for the lead taken by Sweden, where hydro-electric is most readily available. Professor Nilsson highlighted this noting the desire to bring back production of secondary products to Sweden where there is a greater availability of hydroelectricity. The UK Government has noted that “a lack of available hydrogen is currently hindering development.”<sup>81</sup>
- b. Second, whilst there are a growing number of hydrogen projects, many of these involve hydrogen injection into the blast furnace, or “hybrid blast furnace/DRI”,<sup>82</sup> which would replace PCI and not coking coal, and therefore would not result in a reduction in the need for coking coal.
- c. Third, the production of green hydrogen, as opposed to blue or grey hydrogen that would still result in GHG emissions, will require considerable investment in electrolyzers, which in turn require vast amounts of green electricity and considerable infrastructure to transport the hydrogen. The

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<sup>77</sup> Nilsson in xx

<sup>78</sup> JC in xx when asked about the LSE Report [ID 45] on CCS

<sup>79</sup> JC and JB in xx

<sup>80</sup> SLACC/LN/1, para. 3.29

<sup>81</sup> ID26

<sup>82</sup> LACC/LN/3/R2

high cost of electricity and availability are acknowledged to be very real issues.<sup>83</sup>

- d. Fourth, hydrogen is not just in demand from the steel industry. As is shown in the Sixth Carbon Budget, which shows the main impact of hydrogen only towards the end of the transition period, there would be a considerable demand for hydrogen from many sectors, all of which will have to compete for capacity.<sup>84</sup> Moreover, some of these alternative sectors may have a stronger case to utilise that capacity, for example where alternative options are more limited.

7.52 These issues may explain why there is a considerable disconnect between the confidence expressed by witnesses for SLACC and FoE when giving qualitative evidence about the potential role for hydrogen in decarbonising the steel industry and much more limited reliance that is placed upon it in the quantitative scenarios before the inquiry, all of which are consistent on this point.

### ***EAF secondary steel production***

7.53 EAF technology is by far the most advanced alternative technology. It already represents a material proportion of steel production in many countries, and it is agreed by all parties that its share should continue to increase over time. However, it is not without its limitations and challenges, which include the following:

- a. EAF secondary steel production requires scrap, which is in limited supply. Whilst developed countries require less additional primary steel, it is not possible to single out Europe and the UK because, as Dr Cullen accepted,<sup>85</sup> the steel market must be looked at on a global basis.<sup>86</sup> It is therefore artificial to look at one country or continent, such as Europe, when considering the demand for additional primary steel production. As Dr Cullen acknowledged,<sup>87</sup> even if Europe has sufficient scrap metal to largely meet its own demand, the reality is that it will either continue to produce primary steel for export elsewhere, or alternatively export its own scrap so that it needs to produce more primary steel to meet its own demand.<sup>88</sup>
- b. Even in markets with a higher degree of saturation, such as Europe, there are still countries with a growing demand for primary steel production.<sup>89</sup> As Dr Cullen pointed out, once saturation is reached there continues to be a 50 years lag of continued steel demand. Furthermore, as a result of the inevitable loss of around 15% of steel that cannot be recovered,<sup>90</sup> there will always be a need for additional primary steel.

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<sup>83</sup> SLACC/LN/2 Appendix 4

<sup>84</sup> CD8.10, p. 1146, Figure 3.5.b

<sup>85</sup> Dr Cullen in xx.

<sup>86</sup> The Material Economics Report JC1/10, p. 56 and the article on Steel all over the world JC1/3, p. 22

<sup>87</sup> Dr Cullen in xx

<sup>88</sup> FOE/JC1/10, p. 59

<sup>89</sup> Examples given by JC in xx included: Greece, Hungary, Portugal and Poland

<sup>90</sup> Which can occur through corrosion, steel stuck underground, in infrastructure or in water, as Dr Cullen explained in xx and at FOE/JC1, para. 5.3.



- c. Secondary steel production is not suitable for all types of steel, particularly sheet steel, due to the presence of “tramp elements” in the scrap that can cause issues with the quality of the finished product. Copper is particularly problematic.<sup>91</sup> Whilst it may be possible to reduce this issue through better scrap collection, sorting and shredding, as in the USA, all of this requires a fundamental change to the operation of the entire scrap industry, which will not be quick to bring about. Nevertheless, even then, the problem with “tramp elements” increases along with the proportion of secondary steel production. For this reason, Dr Cullen explained that the 72% which the USA has reached was “about as far as you can go”.<sup>92</sup> This also coincides with the maximum proportion of production allocated to EAF in Wood Mackenzie’s AET 1.5 scenario, which seeks to maximise all reasonable alternatives to reduce emissions in order of efficiency.
- d. Whilst developed countries may have a greater saturation of steel, they also have a greater requirement for high grade sheet steel, in contrast to developing countries that continue to need a lower grade construction re-bar.<sup>93</sup> Again, this mismatch in demand for different types of steel emphasises the need to look at the market on a global basis.
- e. As with green hydrogen production, EAF production uses considerable amounts of energy for the necessary electricity supply. Indeed, it is the availability of large quantities of low cost (and often non-renewable) energy in the USA which is recognised to be one of the main reasons for the much higher levels of steel recycling that take place there which is not the position in the UK where energy cost are high is a major barrier.<sup>94</sup> Dr Cullen admitted he was unable to give any satisfactory answer to the Inspector’s question as to what the UK could do to improve its recycling to the levels achieved in the USA. Professor Nilsson produces an academic article on the possibilities of carbon reduction in European industry via direct electrification of heat supply. This notes that in Sweden “the difference between electricity and gas prices is almost half that of the European average” and as a result “industry (in Sweden) is leading very ambitious projects to electrify cement and steel”.<sup>95</sup>
- 7.54 Given all of the above challenges, Wood Mackenzie’s estimates regarding the likely increase in EAF production are realistic. Indeed, it was rather telling that, when the Inspector asked why the UK was so far behind the USA in its secondary steel production,<sup>96</sup> Dr Cullen was unable to explain why this was, what needed to be done to address it, and how long this was likely to take.<sup>97</sup>

### ***Material efficiency***

- 7.55 Dr Cullen gave evidence on the potential for materials efficiency, which has been the focus of his research. At one level, this would seem to provide the

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<sup>91</sup> FOE/JC1/6, p. 6605

<sup>92</sup> JC in EiC and xx

<sup>93</sup> FOE/JC1/6, p. 6604

<sup>94</sup> ID26

<sup>95</sup> SLACC/LN/2 at Appendix 5

<sup>96</sup> 34% vs 72%

<sup>97</sup> JC in xx

most straightforward solution to reducing GHG emissions from the steel industry, by reducing demand for steel in the first place. However, on closer examination, it is clear that it is fraught with difficulties:

- a. First, it would be contrary to all recent trends, which have shown a steady growth in materials consumption and use.<sup>98</sup> Dr Cullen accepted, that this growth is part of the measure of GDP in most countries. Furthermore, changing human behaviour on a massive scale is something that is very difficult to do and hard for the Government to regulate in a democratic society.
- b. Second, there are economic incentives which act as a barrier to materials efficiency, particularly in more developed countries such as the UK and Europe, where the price of materials is cheaper than the price of labour.<sup>99</sup>
- c. Third, there are numerous policy challenges. It is likely to be politically difficult in many democratic societies, and taxes may not prove to be a workable alternative in practice. Furthermore, it is likely to have harmful effects on global trade and, in doing so, damage the prospects of developing economies.
- d. Fourth, materials efficiency does not necessarily equate with a reduction in demand for steel. Instead, it may simply be set-off against a greater rise in the demand for steel that would have otherwise occurred. It is important to bear this point in mind when looking at the scenarios that Dr Cullen was taken to in re-examination to show that they had placed reliance upon materials efficiency, because these graphs show that materials efficiency is relied upon to abate a proportion of GHG emissions, not that it will result in an overall reduction in the demand for steel. Wood Mackenzie had not ignored the possibility for materials efficiency. However, they considered that any savings in their AET scenarios were likely to be offset by the requirement for increased steel to provide the considerable infrastructure that would be required to support the transition towards net zero. This assumption appeared to be supported by Dr Cullen's analysis that the increase in wind turbines that is required in the UK would result in a 5% increase in demand for steel,<sup>100</sup> and that is just wind turbines. In reality, there will be a requirement for large amounts of steel for electrolyzers to produce hydrogen, pipes to transport it and CO<sub>2</sub>, and new industrial plants.<sup>101</sup>

7.56 Ultimately, Dr Cullen was fair in recognising that materials efficiency would not provide the central solution. Rather, the way in which he put it was that it was challenging, but should be considered in the event that other options such as CCS failed to deliver. Nevertheless, it is clear that it is unlikely to result in a reduction in the demand for steel, which is why Mr Truman and Professor Ekins both considered that the global demand for steel was likely to increase, and set their models accordingly.

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<sup>98</sup> FOE/JC1/7, p. 2

<sup>99</sup> FOE/JC1/7, p. 11

<sup>100</sup> JC in EiC

<sup>101</sup> JT in EiC



## CCS

- 7.57 It is not suggested by the applicant that CCS/CCUS, at least in its current form, provides the perfect solution to the problem of decarbonisation. Wood Mackenzie have fairly recognised that there are a number of difficulties and challenges that need to be overcome<sup>102</sup> and that it is likely to be needed as part of the transition, rather than as a long-term solution.<sup>103</sup>
- 7.58 Nevertheless, there are several clear indications that CCS will be used by the steel industry to abate its emissions and allow for a more rapid decarbonisation. Firstly, as Wood Mackenzie and a number of Rule 6 Parties noted, one of the historic problems with the development of CCS which has prevented its roll-out, despite the availability of the essential technology for many years, is the high cost of doing so.<sup>104</sup> However, this is being addressed by the huge government funding that is now being channelled into it and the likely introduction of some form of carbon pricing/tariffs, which enhance its economic justification.<sup>105</sup> Secondly, CCS is recognised to be particularly suitable to industries which have a large amount of GHG emissions concentrated in one location, such as the iron and steel industry. This is reflected in the UK Government's plan to develop CCS clusters, which are currently being consulted upon,<sup>106</sup> and explains why the Climate Change Committee has identified CCS as such a large source of abatement for emissions in the iron and steel sector by 2050.<sup>107</sup>
- 7.59 The very recent report produced jointly by the LSE, the Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy (23 September 2021)<sup>108</sup> draws attention to the UK's comparative advantages in production and innovation along the CCUS value chain, which can support large numbers of net-zero-aligned jobs in the short and longer term in many regions of the country. It highlights that "The UK cannot afford any further policy failure or delays deterring investments in CCUS". In the forward to the Report, Professor Lord Nicholas Stern observes: "As the Climate Change Committee has pointed out, CCUS is a necessity, not an option, for the UK to reach net-zero by 2050. The UK should urgently mobilise investments in CCUS physical infrastructure, innovation and skills during this decade. This will also help the UK to lead by example and create a shared global agenda of investment in a net-zero future among countries at COP26."<sup>109</sup>
- 7.60 As the AET 1.5 scenario by Wood Mackenzie illustrates, even if all other technologies are maximised to their absolute limit, however unlikely that may be in practice, there is still a need for CCS in order to reduce emissions and ensure that the 1.5 degree global warming target can be met.<sup>110</sup> This

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<sup>102</sup> WCM/JT/2, paras. 1.54 – 1.58

<sup>103</sup> See AET 1.5

<sup>104</sup> ID31

<sup>105</sup> ID43

<sup>106</sup> As explored with Professor Grubb in xx

<sup>107</sup> CD8.10, p. 1124, Figure 3.3.c and p. 1125

<sup>108</sup> ID45

<sup>109</sup> Ibid

<sup>110</sup> ID/1, appendix 1, p. 5

reinforces the point, which was accepted by Dr Cullen and Professor Barret, that there is no one single solution.

- 7.61 Despite the criticisms of CCS, it is significant that both the IEA's Roadmap to Net Zero and the Climate Change Committee's BPNZ identify it as the principal source of emissions abatement in the iron and steel industry by 2050. This analysis, which the Rule 6 Parties rely upon heavily in many other respects, provides a comprehensive and holistic analysis of what these bodies consider to be the optimum way to reach net zero. This is important, because unlike the qualitative analysis of different technologies carried out by Professor Nilsson, Professor Barrett and Dr Cullen, these overarching pathways have considered the demands of all sectors and the allocation of abatement resources between them.
- 7.62 Once it is recognised that CCS must play an important role in the decarbonisation of the steel industry, it becomes clear that the predicted reductions in GHG emissions should not be equated with a corresponding drop in the need for coking coal. Indeed, it is clear from the Climate Change Committee's BPNZ, that large drop in emissions forecast to take place in the 2030s that some witnesses<sup>111</sup> were taken to is largely made up from the installation of CCS to the UK's integrated steelwork capacity,<sup>112</sup> rather than a reduction in blast furnace production.

### ***Substitution***

- 7.63 It is recognised by all parties that the demand for coking coal is led by the demand for steel. Professor Ekins' explained that this is what is known as a "derived demand" or a "derived market". In practical terms, this means that when demand for steel increases or decreases, coking coal production will adjust accordingly. This was acknowledged by Mr Nicholas, who has some knowledge of coal markets, and agreed that mining companies will scale back or ramp up production in response to a change in demand.<sup>113</sup> Indeed, Mr Nicholas provided a very recent example of Arch Resources Ltd's new Leer South mine that has opened this month in response to the high demand for coal from China following its ban on the importation of Australian coal.
- 7.64 Mr Nicholas also recognised that the USA will ramp up production to meet any drop in supply when Queensland is hit by cyclones, which are "not uncommon". Mr Truman provided detailed evidence on this phenomenon, explaining that many mines in the USA, which are located at the top of the cost curve,<sup>114</sup> are regarded as "swing suppliers" because of their role in switching production on and off in order to respond to demand.<sup>115</sup>
- 7.65 Professor Ekins acknowledged that the evidence provided by Mr Truman demonstrated substitution taking place at around 50% in the coking coal market, but suggested that the graph provided by Mr Truman does not demonstrate 100% substitution. However, that is not surprising because the

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<sup>111</sup> PE in EiC

<sup>112</sup> CD8.10, p. 1123, bullet point 4

<sup>113</sup> FOE/SN1, para. 3.18

<sup>114</sup> See Figure 2.2 at WCM/JT/2, p. 25

<sup>115</sup> WCM/JT/3 paras. 2.10-2.13 and JT in EiC

graph only shows USA and Australian Metallurgical Coal exports, and does not illustrate other markets, which would also have picked up the drop in Australian supply. The fact that it is not shown on Mr Truman's graph, which was simply intended to illustrate the effect of substitution, does not mean that does not occur to a much greater extent once the whole global market is factored in.

- 7.66 Professor Ekins accepted that he does not have any experience of the coking coal market or the way in which it operates. Instead, his evidence that substitution would not occur in a derived market was founded entirely upon his generalised application of basic market economics relating to supply and demand.<sup>116</sup> In essence, Professor Ekins' argument is that the additional supply of coking coal from the Woodhouse Colliery would reduce the cost of coking coal, which would in turn reduce the cost of steel and therefore increase the demand for steel and coking coal consumption.<sup>117</sup> This generalised analysis was predicated upon a fundamental misunderstanding of key characteristics of the coking coal market and did not withstand scrutiny.
- 7.67 It is not correct that the additional supply of WCM coking coal would affect the price of coking coal. There are several reasons for this:
- a. First, and most importantly, the price for HVA coking coal, such as the coal that will be supplied by WCM, is set by the benchmark price for premium low volatile Australian coking coal.<sup>118</sup> This premium coal is the benchmark coal. The price of other coals are set by reference to this benchmark. In other words, as the price of the benchmark coal goes up or down, the prices of the other coals that are benchmarked against it will follow suit. Applying Professor Ekins' analysis, it would be a change in the supply of the benchmark coal that would affect its price and the price of other coals that are benchmarked against it. Increased supply of HVA coking coal will not make any difference to the price of HVA coking coal or the benchmark. This point was also recognised by the Materials Processing Institute<sup>119</sup> and Mr Nicholas. When asked in re-examination if he was aware of any other markets that operated in this way, Professor Ekins declined to comment. Plainly, this is precisely the sort of "special and rare characteristic" which explains why substitution does not operate in this particular derived market.
  - b. Second, and notwithstanding the particular approach to pricing metallurgical coal, the supply of WCM coal is far too insignificant to affect the global price.
- 7.68 The second major flaw in Professor Ekins' analysis, is that it failed to take into account the way in which different types of coking coals are blended together to make coke before being used in blast furnace steel production. Professor Ekins' evidence was predicated on the assumption that coking coal is a "major input" in the cost of steel production. However, HVA coking coal would typically only represent 15% of the coke blend. Mr Truman's rebuttal explains that this 15% would represent \$13 per tonne out of an average steel

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<sup>116</sup> PE in xx

<sup>117</sup> SLACC/PE/1, paras. 3.1 – 3.12 and PE in EiC

<sup>118</sup> WCM/JT/3, para. 3.9

<sup>119</sup> SLACC/SH/3, p. 18

production cost in European steel mills of \$536 per tonne. Therefore, HVA coking coal only accounts for around 2.5% of the total production cost of steel, which plainly does not represent a “major input” cost. Furthermore, any variation to the price of HVA coking coal would be within that 2.5%. Whilst WCM coal will be highly cost competitive, Mr Truman explained that coal producers are not in the business of selling their product at a huge discount and, given the other benefits of WCM coal, it is reasonable to assume that it only needs to be provided at a small discount to encourage substitution.

- 7.69 Taking a 10% discount as an example, this would only represent \$1.3, or 0.25%, of the cost of production. It is simply inconceivable that such a small change in input costs would be passed on to the consumer, especially bearing in mind the variation in other input costs. Even if it was, a reduction of \$1.3 per tonne of a product which currently costs around \$1,200 a tonne cannot possibly have any material effect on demand or consumption.
- 7.70 Finally, Professor Ekins’ assertion that cheaper coking coal will result in more steel being produced through the traditional blast furnace method is expressed as being the likely outcome “in the absence of policy incentives”. However, there are very considerable policy incentives to reduce blast furnace steel production.
- 7.71 In short, there is no basis for saying that substitution will not occur. Professor Ekins’ general analysis on this issue has been thoroughly undermined, and the professional opinion of Mr Truman, who is the only expert with a detailed understanding of the metallurgical coal market to give evidence at the Inquiry, that substitution will occur and high cost “swing suppliers” will scale back their production should be preferred. This conclusion is also supported by the written comments from others with a detailed knowledge of the industry, such as British Steel.<sup>120</sup>

### ***Need for new mines***

- 7.72 Another key component of the Rule 6 Parties’ case is that, although there is recognised to be a continued need for coking coal, there is no need for new coking coal mines. This proposition is said to be supported by the following documents:
- a. The IEA Roadmap to Net Zero;<sup>121</sup>
  - b. The article by Ekins and McGlade<sup>122</sup>; and
  - c. The analysis at appendix 1 to Professor Ekins’ proof.
- 7.73 None of these sources provide a more detailed analysis of the existing reserves of different types of coking coal. The article by Ekins and McGlade does not provide any distinction between different types of coal, let alone sub-categories of coking coal. The IEA Report does make specific reference to coking coal, but does not go any further in analysing the need for different types of coking coal. Although various witnesses for the Rule 6 Parties

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<sup>120</sup> CD2.75, p. 265

<sup>121</sup> CD8.16

<sup>122</sup> CD8.19

speculated that the IEA must have taken this into account and Mr Truman was wrong to suggest otherwise,<sup>123</sup> no evidence has been provided to confirm that this is the case. Furthermore, the Coal Classification for the IEA's Coal Information Database,<sup>124</sup> confirms that data is not held on individual sub-categories of coking coal, such as high volatile and low volatile hard coking coals.

- 7.74 Wood Mackenzie's own data, which has been accumulated from a number of sources, including clients, indicates that there will be a need for additional hard coking coal mines from 2027. In addition, the analysis of existing reserves does not take into account the future viability of these mines, in the event that there is a reduction in the future price of coking coal, or a reluctance from steelworks to continue to use mines with comparatively high GHG emissions. It therefore cannot be assumed that all existing mines will continue to operate until their reserves have been fully depleted.
- 7.75 Nevertheless, even if the coking coal reserves in existing mines around the globe are theoretically sufficient to meet the current demand for coking coal, that does not mean that they should continue to do so. A similar point is made in the article by Ekins and McGlade, which notes that whilst there may be sufficient reserves this does not mean that other resources should remain unused. Indeed, Professor Ekins fairly agreed that, on the assumption that substitution would occur, it would be better as a matter of general principle for coking coal to be sourced nearer to its point of use to avoid offshoring emissions. Despite the surprising statement in the opening submissions from Friends of the Earth that steelworks in the UK and Europe should continue to be supplied by coal that is imported from the USA and Australia, Professor Barrett and Dr Cullen made similar concessions.
- 7.76 Aside from the potential GHG benefits, which are addressed further below, given the critical importance of coking coal for blast furnace steel production, which is essential for many industries and critical infrastructure,<sup>125</sup> there are other important reasons why it is better to have a more diverse and secure supply network. These include a need to avoid disruption to supply chains as a result of natural disasters, poor weather, or geo-political considerations and securing the benefits of an indigenous supply.
- 7.77 These benefits are clearly recognised in both UK and EU policy. The Framework continues to identify coal as a minerals resource of local and national importance, even following a review and amendment to this definition as recently as July 2021. In addition to this, the Industrial Decarbonisation Strategy recognises that "coking coal is currently essential for primary steel manufacturing using the basic oxygen furnace route, which produces the highest quality steel and is the dominant technology in Europe".<sup>126</sup> The strategy does not rule out the use of coking coal as a net zero compliant option going forward, simply noting that any mining of the coal itself will need to be net-zero compliant in the future. The Decarbonisation Strategy therefore acknowledges the "essential" role that coking coal currently plays and

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<sup>123</sup> WCM/JT3, para. 3.37

<sup>124</sup> ID41

<sup>125</sup> WCM/MAK/4, p. 109

<sup>126</sup> CD8.14, p. 1632

anticipates that it may be mined in the UK providing that it is net-zero compliant in the future.

- 7.78 Similarly, the European Union continues to classify coking coal as a “critical raw material”.<sup>127</sup> Furthermore, the EU Commission has recognised “the indispensable role of coking coal during the steel industry’s transition to climate neutrality”.<sup>128</sup> In doing so, the Commission identified the EU’s need to address its high dependence on imports of coking coal and mobilise domestic potential for new mining projects. The benefits of a new UK source of coking coal are also identified by a number of steel makers and raw materials’ suppliers, who have expressed support for the project.

***If need position changes / future uncertainty***

- 7.79 It is self-evident that there will always be some uncertainty when seeking to predict future need and demand for coking coal, or indeed any raw material, over a number of decades, particularly when set against the backdrop of a global decarbonisation and the transition towards net-zero. However, the real question is not whether there is uncertainty, but what the consequences of any uncertainty might be and how it should be addressed in this decision.
- 7.80 In the event that the demand for coking coal falls more quickly than the forecasts from Wood Mackenzie predict, Mr Truman explained that WCM’s position on the seaborne costs curve,<sup>129</sup> and its comparative GHG emissions,<sup>130</sup> mean that it will continue to be in demand as other mines drop out of the picture.
- 7.81 Similarly, even if there ceases to be a market for seaborne metallurgical coal in the UK and Europe before 2050,<sup>131</sup> Mr Truman explained that there would continue to be a demand which WCM coal would satisfy. That evidence was not challenged, and is consistent with the global forecasts provided by the IEA. In that alternative, the evidence from Mr Truman indicates that it would be better, both from a cost perspective and a GHG emissions perspective, for the residual global demand to be supplied by WCM coal rather than HVA coal from the USA.
- 7.82 Even if, contrary to all the current evidence and expectations, there is some hitherto unforeseen change in circumstances that means that the demand for coking coal completely falls away before the end of 2049, any consequential harm remains entirely illusory.
- 7.83 The only “harm” which the Rule 6 parties are able to point to is the suggestion that the development will become a “stranded asset”. Plainly, if there is no longer a demand for coking coal, it will not continue to be mined. If the extraction of coal ceases for a continuous period of twelve months at any point in the lifetime of the development, the draft conditions (93 and 94 at the time

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<sup>127</sup> ID26

<sup>128</sup> WCM/MAK/4, p. 136

<sup>129</sup> See Figures 2.2 – 2.4 at WCM/JT/2, pp. 25 – 26

<sup>130</sup> See Figures 3.2 – 3.6 at WCM/JT/2, pp. 33 – 36

<sup>131</sup> As shown, for example, in the AET 1.5 Scenario or the PRIME Policy Scenario, when this demand ceases at 2043 or 2040 respectively



of the Inquiry) require the submission of a decommissioning and restoration scheme, the implementation of which is secured by a restoration bond.

- 7.84 To the extent that this alleged “harm” relies upon the assertion that it will leave the future employees of the development unemployed and without any transferable skills, the point has already been comprehensively addressed when considering the economic benefits of the scheme. Needless to say, if the possibility that there may be a future change in circumstances decades in the future were a legitimate objection to development promising to bring considerable economic investment and benefits, then no development would ever be permitted. The reality is that this is an entirely self-serving objection, that would never be raised if it wasn’t for the Rule 6 Parties’ in principle objection to the nature of the development.
- 7.85 If the development is not permitted because there is some uncertainty as to what may happen to the need for coking coal in the 2040s, then there will be a number of real and immediate detrimental consequences. First, a significant investment opportunity will be lost in West Cumbria, along with all the associated economic benefits, that would have provided a clear opportunity to “level up” an area of the country that often misses out on private investment.
- 7.86 Second, the opportunity to redevelop, and eventually restore, a brownfield site that is agreed to be an “eye-sore” will be lost. Third, the UK and EU will continue to offshore the emissions associated with its coking coal requirements, relying on imports from mines in the USA that have considerably higher GHG emissions and longer transportation emissions.
- 7.87 Finally, the lifetime of the mine can be controlled by condition. During the passage of this application, the applicant has agreed to the imposition of a condition limiting the development to 2049, a year before the end of the transition period. The evidence clearly shows that during that vital transition period this mine could play an important role in helping the UK and the world reach the necessary targets. It would also play a key role in the Government’s global Britain and levelling up objectives.

## ***Greenhouse Gas Emissions***

### ***Scope of emissions***

- 7.88 An unusual feature of this application is that, hitherto, the real GHG objection to this development relates not to the GHG emissions that are caused by the operation of the mine, but the GHG emissions that are caused by the steelworks which will use coal produced by this development. FoE never called any evidence on the Ecolyse work, but now seek to adopt SLACC’s case.
- 7.89 There is no requirement to assess the environmental effects associated with downstream greenhouse gas emissions generated as part of the steel manufacturing process. The position set out by Holgate J in *R (oao Finch) v Surrey County Council*<sup>132</sup> is unequivocal and, in the applicant’s submission, correct.<sup>133</sup> It has also already been applied by the Planning Inspectorate when

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<sup>132</sup> [2020] EWHC 3566 (Admin); [2021] PTSR 1160

<sup>133</sup> The Applicant is aware that Finch has been granted permission to appeal to the Court of Appeal. The reasons why permission was granted have not been disclosed to this Inquiry.

considering the scope of what needs to be included within the GHG Assessment.<sup>134</sup>

- 7.90 The true legal test to be applied in considering whether an effect falls within the scope of Regulation 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations") is whether that effect is an effect of the development for which planning permission is sought.
- 7.91 Finch cannot be distinguished on the basis that, in this case, the product will inevitably be used for a particular purpose, namely as part of a blend of coke used in steel manufacturing. Holgate J. made clear that even where the environmental effects of consuming an end product will flow inevitably from the use of a raw material in making the product, this does not mean that those effects are to be treated as effects of the development for EIA purposes. An effect that occurs after the extraction of a raw material, and when the raw material has passed through one or more developments which are not the subject of the application and do not form part of the same project, is not an effect which falls within the scope of the EIA process for a proposal. Following Finch, the environmental effects of using WCM coal as part of the steelmaking process are not effects that can lawfully be taken into account in an environmental impact assessment.<sup>135</sup>
- 7.92 This position is clearly correct for a number of reasons. First, it is not the case that a failure to assess downstream emissions as part of an EIA will mean that there will be no control over those emissions in the development consent process. Any future BF-BOF steel manufacturing project would itself need to apply for planning permission and undertake any EIA required.
- 7.93 Second, assessing the downstream emissions associated with the use of WCM coal as part of this application would lead to substantial double-counting of emissions within the development consent process. Steel manufacturing emissions would need to be considered both at the mining consent stage, and the manufacturing plant consent stage. The same emissions would also need to be taken into account at the planning consent stage for any other inputs inevitably destined for the BF-BOF industry, such as in manufacturing plants producing parts used in blast furnaces. This double-counting would place a disproportionate burden on developers and unnecessarily block off development consenting.
- 7.94 Third, coking coal is not simply put straight into the blast furnace as the Rule 6 Parties' appear to have assumed. It is blended with other coking coals before being put into a coke oven to make coke, a process which can take place at the steel works or at a different location in a different development altogether. Therefore, the product that is being used in the blast furnace has already undergone another process to create a second product. It is the use of that secondary product which it is suggested should be taken into account when

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Publicly available information suggests that Lewison LJ considered Holgate J's reasoning to be cogent, if open to proper challenge, and that part of the reason why permission was granted was that he considered that question of the assessment of downstream emissions has far reaching emissions, and was of sufficient importance to justify hearing the appeal.

<sup>134</sup> See Letter form PINS dated 30 June 2021

<sup>135</sup> See Finch at [101], [110]



considering GHG emissions. Once this becomes clear, it is impossible to see how the line should be drawn when it comes to other products, or other phases of production. For example, once the coke has been used to make steel that is then made into a wind turbine, should the renewable energy that is produced from the use of that wind turbine then be set off against the emissions from the coke in the first place?

- 7.95 Fourth, it is not clear why the approach advocated by the Rule 6 parties should only apply to GHG emissions. The same rationale would, presumably, be equally applicable to air quality and pollution impacts from the use of the coke or noise impacts from the steelworks.
- 7.96 Fifth and finally, there is no sensible test that could be applied to determine whether, as a matter of law, downstream emissions should be taken into account during a proposal's EIA. In the present case, the submission has been made that WCM coal will only serve one market and will inevitably be used in a way which will generate emissions and that, as a result, it would be easy to quantify the end-use effects of the coal. It is unclear why, as a matter of law, the inevitability of the use of WCM coal means that proposal should be treated differently to developments which generate products whose end-use is more varied, and whose emissions are therefore more difficult to quantify. This would effectively place a heightened burden on particular types of development simply because of the type of market they serve.
- 7.97 For the reasons given above in respect of EIA development, the downstream emissions associated with the use of WCM coal in the steel manufacturing process cannot amount to a material consideration, as they do not fairly and reasonably relate to the proposed development. The downstream emissions at issue here would relate to BF-BOF steel manufacturing plants using the coking coal, not to the proposed mine itself.
- 7.98 Even if the downstream emissions associated with the end use of WCM coal were a material planning consideration, they could not rationally be given any more than minor weight because they are impossible to effectively quantify. Whilst Professor Barrett sought to suggest that an average could be used, to take into account variations in blast furnaces, this does not provide a sensible basis for decision-making, and would not account for the considerable variation that is likely to emerge as more blast furnaces are fitted with CCS. He rightly conceded that you would be unable to assess "the likely effects."
- 7.99 PINS has made its position clear to the applicant and all the parties in the Regulation 22 letter dated 30 June stating that "The applicant's position regarding the judgement *R (Finch) v Surrey County Council [2020] EWHC 3566* (the Finch judgement) and its approach to the Greenhouse Gas Emissions assessment presented in ES Chapter 19 is noted. The Finch judgement is currently subject to an appeal to the Court of Appeal. The applicant is advised that should the legal position established in the Finch judgement change during the course of the Inquiry, there may be a need to request further information on the environmental effects from the use of the coal originating from the development. This may result in the Inquiry being adjourned for the parties to consider this matter further and to submit any necessary evidence."

- 7.100 The applicant and the parties are advised that PINS does not presently require any further information in respect of downstream emissions. In such circumstances, the level of downstream emissions cannot be capable of being a material consideration and certainly not one to which any weight could be given. We note that neither Rule 6 Party has challenged this decision, which they should have done if they disagreed with it, nor have they made any formal request to this Inspector to issue a Regulation 22 request on this (or indeed any other matter).
- 7.101 In any event the WCM product would be substituting for other coal which has not come from a net zero mine. Professor Grubb's analysis of a failure of what he calls "perfect" substitution did not take into account that the other 99% substitute was from mines with no defined GHG capture systems and certainly none seeking or obliged to be net zero. Even if there were a failure completely to substitute this would have to be considerable for the environmental GHG balance to run into the negative.

### ***GHG Assessment***

- 7.102 No alternative assessment of GHG emissions has been provided by either of the Rule 6 Parties, nor have any alternative figures for any aspect of it been presented to the inquiry. Professor Grubb, who did seek to challenge the GHG Assessment on behalf of SLACC, explained he did not consider that it was his role to provide an assessment of the likely emissions. His evidence therefore focused on various points of the assessment. Before addressing those various criticisms, it is worth providing an overview of what the Institute of Environmental Management and Assessment (IEMA) Guidance requires, and the conservative assumptions that have been adopted in the GHG Assessment, which provide important context for the complaints that have been raised by SLACC.
- 7.103 As Ms Leatherdale explained, the GHG Assessment fully complies with the IEMA Guidance. Her evidence on this point was not challenged, but it is of course highly relevant to the various complaints made by SLACC. Of particular relevance, are the approach that has been taken to exclusions and the conservative assumptions that have been applied throughout the assessment.

### ***Exclusions***

- 7.104 A number of points have been made during the Inquiry regarding exclusions from the GHG assessment. These include acknowledged exclusions (or assumptions), such as the assumption that decommissioning emissions would be net zero in the Likely Mitigated Scenario.<sup>136</sup> They also include minor emissions sources that are not explicitly assessed, such as emissions from land disturbance, methane emissions from cutting through non-target seams during construction, or some products, goods and services required by the mine. In all cases, exclusions cover only a very small component of inputs to the overall assessment and are sources that are both minor and hard to estimate. This is justified and accepted by the IEMA guidance on the assessment of GHG emissions and evaluation of their significance.

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<sup>136</sup> See p. 35 of Ecolyse 2 in Appendix B8

- 7.105 Section 5.5.2 of the guidance includes a section on cut-off rules, which explains that elements comprising up to 5% of total energy and mass (i.e. inputs) can be excluded.<sup>137</sup> It is generally accepted that the cut off rules are applied in the context of a GHG footprint prior to the application of mitigation as the assessment approach must follow a natural progression of gathering input data, compiling the GHG footprint, applying mitigation and then quantifying the GHG emissions with mitigation.
- 7.106 The total 'likely unmitigated' GHG emissions are 8,199,705 tonnes.<sup>138</sup> The cut off rules (5%) would therefore apply at around 410,000 tonnes. No exclusions of anything like this magnitude have been made and it is unlikely that any exclusions would total even a fraction of 1% of the unmitigated lifecycle footprint. Furthermore, applying the 5% cut-off to the mitigated lifetime emissions would equal circa 90,000 tonnes, which is roughly equal to the whole construction phase emissions, again reinforcing that any exclusions will be well below 5% of any of the scenarios and are not material.

*Conservative approach*

- 7.107 The likely mitigated scenario is intended to provide a robust estimation of the likely GHG emissions to inform the assessment of likely significant effects. Nonetheless, a number of conservative assumptions have been made in this analysis that ensures the total GHG emissions presented in Ecolyse 2 are higher than would likely occur in reality and are therefore precautionary:
- a. No account has been made for energy efficiency improvements during the lifetime of the mine. This applies to both electricity consumption and fuel use on site, which are assumed to be fixed/constant.<sup>139</sup> However, it is likely that energy efficiency improvements will be needed in all sectors and it is therefore reasonable to assume that they would occur over the lifetime of the development.
  - b. All staff are assumed to travel independently to and from the mine site by private car.<sup>140</sup> No account is therefore taken for sustainable travel such as walking, cycling or car share, which is highly likely given the development's location on the edge of Whitehaven and immediately adjacent to large areas of residential development.
  - c. Waste disposal is assumed to be by landfill,<sup>141</sup> which has a higher carbon intensity compared with other disposal forms such as recycling or energy recovery (incineration), which are likely to continue to increase.
  - d. The decarbonisation profiles that have been used in the assessment contain some of the most precautionary assumptions. These include:
    - i. Purchased goods and services are not assumed to decarbonise at all through the life of the mine.<sup>142</sup> As the UK and global economies

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<sup>137</sup> CD8.22, p. 2081

<sup>138</sup> Table C-2, Ecolyse 2

<sup>139</sup> As described in Table B-1 and Table B-2 of Ecolyse 2

<sup>140</sup> Table B-2 of Ecolyse 2

<sup>141</sup> Ibid

<sup>142</sup> As described in the final row of Table B-3

decarbonise between now and 2049 (end year), the carbon intensity of purchased goods and services will considerably decrease towards zero. The emissions assumptions from purchased goods and services are therefore extremely precautionary.

- ii. The electricity decarbonisation profile in Table B-4 does not reflect the latest strategies for decarbonising the power sector,<sup>143</sup> which include the net-zero (rather than 80%) decarbonisation target and the advice from the Sixth Carbon Budget.
- iii. Rail and road emissions are also expected to reach net zero by 2050, but the decarbonisation profiles applied to these emissions sources are far more conservative than this.<sup>144</sup> Both road and rail sources can be seen to have significant residual emissions in 2049.

e. Finally, not all the GHG mitigation measures and policies being put forward by WCM have been accounted for in the likely mitigated scenario. Those measures which cannot be guaranteed, but which WCM will do its best to secure, have not been quantified.<sup>145</sup>

7.108 Having set out the very precautionary approach that has been taken to the GHG Assessment, we then turn to consider the specific concerns and issues that have been identified by SLACC.

*Points taken by SLACC and Professor Grubb*

7.109 One of the initial concerns raised by Professor Grubb related to the extent to which embedded carbon emissions for the construction of the underground mine other than steel roof bolts, such as the concrete and aggregate required, and the embedded emissions of heavy machinery used during mining operations.<sup>146</sup> These points were addressed by Ecolyse 2, which Professor Grubb agreed was a welcome addition.<sup>147</sup> Although some uncertainty remained over whether the methane mitigation machinery had been included, the note provided by Ms Leatherdale and Mr Caird<sup>148</sup> explains that the estimate that was originally used by AECOM considerably exceeds the bill of quantities that has been produced (and which includes the methane capture plant). Adopting a precautionary approach, the original estimate has been retained, but it is now clear that it provides more than sufficient headroom to account for the methane capture plant.

7.110 Professor Grubb's rebuttal and evidence therefore focused on the fugitive methane emissions. The points raised by Professor Grubb were not based upon any operational experience of coal mining or methane capture plants and he does not have an engineering background. Instead, he explained that he was adopting the position of an informed observer when considering these issues.

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<sup>143</sup> Ecolyse 2, Appendix B4

<sup>144</sup> Ibid

<sup>145</sup> As described in Table 5-1 of Ecolyse 2

<sup>146</sup> SLACC/PG/1, paras. 4.15 – 4.17

<sup>147</sup> SLACC/PG/3, para. 2.29 and xx

<sup>148</sup> ID67

- 7.111 Mr Tonks has very considerable experience of methane capture and management, including direct experience of the design, construction and operation of the UK's first methane capture plant. He drew upon his considerable expertise to provide a comprehensive response to each of the points raised by Professor Grubb:
- a. First, he explained how he had modelled the methane content of the in-seam coal based upon the 19 borehole samples that have been obtained. The figures used did not represent an average of the boreholes samples, as SLACC had assumed. Instead, he had taken the range between the lowest figure onshore (2m<sup>3</sup>/t) and the highest figure offshore (6m<sup>3</sup>/t) and made reasonable assumptions about the increase based upon the borehole data, his experience of methane contours and the historical data.<sup>149</sup> In carrying out this analysis, he adopted a conservative approach by assuming that the highest methane content of 6m<sup>3</sup>/t was reached sooner than was likely to be the case. Professor Grubb did not challenge Mr Tonks' approach, he agreed that it was not implausible but said that some doubt would always remain because you could not search the entire area.<sup>150</sup> That is plainly correct and a proportionate approach must be adopted, particularly where there will be further opportunity to monitor and update these calculations during the operation of the development.
  - b. Mr Tonks also set out the basis for his assumptions regarding when methane was likely to be released. In doing so, he explained how these assumptions were founded upon a "catch all basis", so that if a little less or a little more was released at one stage, there would be a corresponding increase or reduction at the next. Insofar as the final stage and the residual 5% was concerned, Mr Tonks is confident that this is a conservative estimate and that there will not be any more because no methane will be left in the coal once the top-size falls below 5mm. However, as with all stages of the process, additional monitoring can be undertaken to ensure that it remains accurate in practice. Again, Mr Tonks' evidence on the point was not seriously challenged by Professor Grubb, who had not seen all of Mr Tonks' evidence and did not suggest any alternative approach.
  - c. Professor Grubb's concern about the potential for methane leakage failed to recognise that, for safety reasons, coal mines all operate under a negative pressure. The same would also apply to the pipes used to carry methane drained from the pillar coal, until the final short distance between the drainage plant and the generator sets. Even then, the pressure would be no higher than pressure experienced in a residential property, so the comparison with oil and gas installations that operate under very high pressure and require leak detection equipment was not appropriate.
  - d. Mr Tonks gave evidence about his previous experience of monitoring the efficiency of Regenerative Thermal Oxidisers (RTOs) and generator sets to demonstrate that Professor Grubb's speculation that they may not be 100% effective was unfounded.

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<sup>149</sup> WT in EiC

<sup>150</sup> PG in xx

- e. The issue regarding the potential for additional fugitive emissions to be caused during the construction of the drifts has been addressed in the note provided by Mr Tonks, Mr Kirkbride and Mr Caird, which illustrates how insignificant these emissions are likely to be.<sup>151</sup> For the reasons set out above, these additional emissions fall within the category which can be excluded from the assessment due to insignificance and, in any event, are easily offset by the conservative assumptions that have been taken in the GHG Assessment.
- f. Mr Tonks's rebuttal provides detailed evidence on the likelihood of abandoned mine methane (AMM) and how the mine can be sealed to prevent any post-closure methane leakage. That evidence was not challenged by Professor Grubb, who accepted that it was possible in theory to seal off a mine against leakage.<sup>152</sup> Again, his real concern was one of monitoring, which Mr Tonks explained would be carried out by the Coal Authority.<sup>153</sup> Although Mr Tonks was cross-examined on the existence of methane leakage from other abandoned mines, the answer to this, as he had already set out in his rebuttal,<sup>154</sup> was that in the past vents were deliberately installed in abandoned mines to allow them to breathe as there was no particular concern about methane leakage.

7.112 In short, Professor Grubb put forward no positive case about how any of the assumptions/modelling undertaken by Mr Tonks should have differed. Instead, his complaint was that there remained some uncertainty as to the figures, or insufficient information had been provided to support those assumptions. These complaints do not provide any assistance to the decision-maker in reaching a conclusion on the likely GHG emissions and the accuracy of the GHG Assessment. Moreover, Professor Grubb had not even attempted to contact Mr Tonks to request any additional information where he considered that it was required, which was in contrast to the approach taken by SLACC on a number of other issues.

7.113 The suggestion that Mr Tonks should have provided more detail to support his analysis in the first place was wholly unjustified. Plainly, he did not expect many of these matters to be in issue until he received Professor Grubb's rebuttal during the course of the inquiry, following which he provided clear and cogent responses to the issues raised during his evidence in chief and the supplementary note.

7.114 Furthermore, the complete answer to all of the issues raised by Professor Grubb regarding any uncertainty with the GHG assessment, is that these matters can and will be routinely monitored throughout the lifetime of the development in order to provide annual emissions reports which need to be submitted to and approved by the Council.<sup>155</sup>

*Methane and the GWP20 metric*

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<sup>151</sup> ID61

<sup>152</sup> SLACC/PG/3, para. 2.46

<sup>153</sup> WCM/WT/3, para. 5.1

<sup>154</sup> WCM/WT/3, para. 3.1

<sup>155</sup> Section 106



- 7.115 Professor Grubb suggested that the methane emissions from the mine should not be calculated by reference to the internationally accepted Global Warming Potential (GWP) metric of GWP100, but should instead be calculated using a much higher short-term GWP20. Interesting though this scientific debate may be, it is important to think about where it actually takes us, especially since Professor Grubb has not provided any alternative calculations that should be used. In order to be relied upon, these alternative calculations would clearly need to include other calculations for the entirety of the GHG Assessment, and not just the fugitive methane emissions.
- 7.116 When cross-examined on his suggestion, Professor Grubb accepted that:
- there may be many aspects of GHG calculations where scientific experts take different views;
  - the use of GWP100 is the most common metric used to standardise the assessment of different greenhouse gases;
  - the Paris Agreement and Nationally Determined Contributions (NDCs) are based upon GWP100;
  - the Climate Change Act 2008, UK carbon budgets, the sixth carbon budget, and current pathways to net-zero are all based upon GWP100;
  - if the standardised approach to GWP was reconsidered, as Professor Grubb suggested it should be, the approach to other non-CO<sub>2</sub> gases would also need to be reconsidered, some of which have a much longer effect than 100 years;
  - if the approach is to be changed, it would require a comprehensive review of the entire process; and
  - this issue is not even on the agenda at COP-26.
- 7.117 As with so much of SLACC's case, this is yet another example of seeking to pick and choose things that suit their in principle objection to this development and things that do not. On the one hand, SLACC seeks to emphasise the importance of meeting the Paris Agreement and the UK's Carbon Budgets, but on the other hand SLACC invites the Inspector and the Secretary of State to throw the whole basis for measuring compliance with those targets out of the window and start again.
- 7.118 It is self-evident that there will be all sorts of disagreement in scientific communities about the way in which climate change is modelled. Those disagreements may pull in all sorts of different directions on different issues. However, the only way to implement, monitor and enforce compliance with particular targets is to adopt a standardised basis for doing so which is reached on the basis of a broad consensus. Notwithstanding the inevitable presence of scientific debate, the Inspector and Secretary of State are entitled to adopt and rely upon the method of GHG monitoring and reporting that enjoys a broad international consensus.
- 7.119 Of course, there may become a point at which one particular scientific opinion becomes so widespread that it informs a change to the internationally agreed approach. However, as this issue is not even on the agenda for COP26, it

seems unlikely that it is going to happen any time soon. Furthermore, as Ms Leatherdale explained, if there were to be a change to the GWP metric over the lifetime of the development, this would need to be taken into account when the required annual emissions monitoring report is prepared.<sup>156</sup>

- 7.120 Finally, even if (contrary to all of the above) Professor Grubb's recommended approach to methane emissions were relied upon by the Inspector and Secretary of State, it simply serves to emphasise the comparative benefits of this mine, which will capture 95% of its fugitive methane emissions, over other mines that WCM coal will replace.
- 7.121 Many of these other mines, such as the new Leer South mine, which is a longwall mine, produce considerably more methane in the first place. Others, such as the open cast strip mines found in the Appalachian Mountains, are not able to capture methane that is released.

### ***Comparative GHG emissions of other mines***

- 7.122 There are no other net-zero metallurgical coal mines in the world. Furthermore, Mr Truman and Ms Leatherdale both gave evidence that they are not aware of any metallurgical coal mines that are aiming to be net-zero. That evidence has not been challenged.
- 7.123 The emissions benchmarking curves produced by Wood Mackenzie show that, once the likely mitigated case is taken into account, the Woodhouse Colliery will perform significantly better than almost any other mine contributing to seaborne metallurgical coal exports.<sup>157</sup> Although Professor Ekins sought to criticise this analysis on the basis that the other mines were shown on an unmitigated basis, Mr Truman explained that this would not make much difference because, in his experience, there was very little GHG mitigation present at other mines. Wood Mackenzie's analysis was also criticised on the basis that it adopted a favourable year (2029) for the purposes of this comparison. That is not the reason for the approach that has been taken. However, criticism may be considered to be unfounded when one considers that the actual emissions of the mine will be net-zero, as required by the binding emissions limit. That same point also applies to the marginal increase in GHG emissions in Ecolyse 2, which had not been reflected in Wood Mackenzie's work. Therefore, the analysis carried out by Wood Mackenzie has actually been undertaken on a more conservative basis, by adopting the likely mitigated emissions for the purposes of the comparison rather than the net-zero emissions which the mine will be required to meet.
- 7.124 If it were appropriate to compare any displaced shipping emissions against end use emissions in order to derive a net GHG impact depending on the extent of substitution that may be reached, as Professor Grubb seeks to do in his

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<sup>156</sup> Section 106 agreement defines the Emissions Monitoring Report as: "an annual report to be prepared by the Owner and/or the Developer in accordance with up to date legislation government policy national guidance and other nationally accepted standards as shall be in force and/or published from time to time..."

<sup>157</sup> WCM/JT/2, pp. 33 – 34



Table 1,<sup>158</sup> the comparatively low emissions of the development plainly also need to be taken into account, as Professor Barrett recognised.

### **Offsetting**

- 7.125 There can be no doubt that off-setting is an essential tool in reaching a net-zero target. Furthermore, when asked what he meant by “truly net-zero”, Sir Robert Watson explained that this would include a situation where any emissions would be compensated or offset, which could be through the funding of an afforestation programme.
- 7.126 Although it was put to Ms Leatherdale that the Sixth Carbon Budget does not expressly endorse off-setting for the fuel-supply sector, it clearly does not rule it out. Moreover, as Ms Leatherdale observed, the decarbonisation strategy clearly does recognise that offsetting may have a specific role to play in the mining of coking coal, by stating that any mining of coking coal itself will need to be net-zero compliant in the future.<sup>159</sup> Since coking coal mines cannot be zero carbon, the strategy implicitly recognises that off-setting will need to play in role in the development and operation of future coking coal mines in the UK.
- 7.127 Mr Broekhoff, who was specifically called to give evidence on carbon off-setting, also recognised that carbon credits are going to play a “critical” and “essential” role in the transition to net-zero. In the Guide to Using Carbon Offsets, which Mr Broekhoff has co-authored, it is recognised that companies and organisations will need to use “every tool at their disposal to achieve emission reduction goals”,<sup>160</sup> and that carbon offset credits are “the primary tool” for achieving reductions that cannot readily be eliminated.<sup>161</sup>
- 7.128 Mr Broekhoff’s written and oral evidence in chief qualified this position by focusing on what he described as an important anterior question when considering the acceptability of using offsets. Namely, whether the new source of GHG emissions is aligned with the broader net zero decarbonisation scenario.<sup>162</sup> However, he agreed that this issue was outside the scope of his evidence. Turning to those matters within the scope of his evidence, he accepted that the WCM have employed the mitigation hierarchy, which was in accordance with good practice, and that it was certainly a good thing to have a legally binding obligation requiring the mitigation hierarchy to be followed.
- 7.129 Whilst Mr Broekhoff identified a number of problems that can exist in the carbon off-setting industry, he agreed that these problems will need to be overcome if we are to reach net-zero and acknowledged that this is one of the things that will be discussed, and hopefully resolved, at COP26. Insofar as Gold Standard accredited offsets are concerned, Mr Broekhoff agreed that they “are as professional and effective as any of the standards out there”.
- 7.130 The letter from the Gold Standard Foundation which is appended to Mr Broekhoff’s evidence also emphasises the important role which the voluntary carbon market can play within the mitigation hierarchy to assist in taking

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<sup>158</sup> SLACC/PG/1, p. 19

<sup>159</sup> CD8.14, p. 1632

<sup>160</sup> FOE/DB/3/5, p. 5

<sup>161</sup> FOE/DB/3/5, p. 13

<sup>162</sup> FOE/DB/3, para. 3.3.4

responsibility for unavoidable emissions. However, the comments about whether or not there is a need for the proposed development, and therefore whether its emissions can be regarded as truly unavoidable, do not appear to have taken into account any of the evidence that has been provided by WCM to this Inquiry. Nevertheless, the letter confirms that, irrespective of their views of the project, it does not have the ability to forbid companies from purchasing their carbon credits.

7.131 Whilst it is unfortunate that the Gold Standard Foundation did not attend the Inquiry so that their understanding of the development could be explored in more detail, it is clear that their general approach is the same as that of Mr Broekhoff. In essence, carbon off-sets and the voluntary carbon market have an essential role to play in decarbonising unavoidable emissions as part of the established mitigation hierarchy.

7.132 WCM's approach to the mitigation hierarchy is fully in accordance with the IEMA guidance, which explains that 'compensation' includes offsetting or sequestering emissions off site to which Mr Broekhoff agreed.

### ***"Virtue signalling"***

7.133 The Rule 6 Parties have increasingly sought to rely on a substantial amount of evidence concerning the way that any grant of planning permission will be perceived both nationally and internationally. In doing so, the case that has been advanced by witnesses for both of the Rule 6 Parties is that, irrespective of what the evidence actually shows, the effect of granting permission would be harmful because the details will be ignored in favour of the headline decision to grant planning permission for a new coal mine.

7.134 Sir Robert Watson provided the most accurate definition of "virtue signalling", which he described as someone who wants to look good but not for the real reason and not looking at the evidence, but simply trying to take the moral high ground without looking at the scientific evidence.

7.135 After one month of detailed evidence on the impacts of the development, it is deeply unattractive to assert that the evidence should be ignored in favour of some general (and inaccurate) perception. This is not a sensible approach to decision-making and cannot be capable of constituting a material planning consideration. As such, the issue of virtue signalling should be given no weight in determining the application.

7.136 The law on what may or may not amount to a material planning consideration is extensive and well-established. A decision-maker is required to have regard to all considerations that are material to an application, but to be material they must be planning considerations.<sup>163</sup> A planning consideration is one which has a planning purpose, i.e. it relates to the character of the use of land.<sup>164</sup>

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<sup>163</sup> Per Lord Keith in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759

<sup>164</sup> Per Viscount Dilhorne in *Newbury DC v SSE* [1981] AC 578 at 599-601 and *R (oao Wright) v Resilient Energy Severndale Ltd and Forest of Dean DC* [2019] UKSC 53; [2019] 1 WLR 6562 at [34]; *East Barnet Urban DC v British Transport Commission* [1962] 2 WB 484 at 491

- 7.137 When determining an application for planning permission, a decision-maker cannot take into account ulterior objects, however desirable those objects may be in the public interest. The Planning Practice Guidance makes clear that such irrelevant considerations include public views which do not relate to relevant planning matters. Such views cannot justify a grant or refusal of planning permission.<sup>165</sup>
- 7.138 The extent to which the UK Government will be “virtue signalling” by granting permission for the mine cannot conceivably fall within the definition of a material planning consideration. The “signals” that the Rule 6 parties have suggested will be sent by a grant of permission have no bearing on the character of the use of land beyond the application site. Moreover, any negative perception of the mine would be founded on a misunderstanding of its impact on the UK’s ability to meet its climate change obligations. As such, those views would not fairly or reasonably relate to the development.
- 7.139 Friends of the Earth has indicated that it relies on a number of authorities to support the contention that precedent that may be set by granting permission in this case is a material planning consideration.<sup>166</sup> These authorities are simply not relevant to the case at hand. The question whether a grant of permission will have a precedential effect, in the sense that it will increase the likelihood that developments will be permitted on a local level based on the facts of the development which is permitted, is entirely different to the case being put by the Rule 6 Parties. The reason why the precedential effect of granting permission is capable of being a material consideration locally is that it increases the likelihood that a planning authority, respecting the desideratum of consistency in decision-making, will find it more difficult to reject a future application for a similar factual proposal submitted within the same legislative and policy framework. The same cannot be said of hypothetical future coal mines that are factually different (i.e. not seeking to be net zero).
- 7.140 The case by the Rule 6 parties seems to be that, by granting permission for a net zero mine in the UK, other countries will be encouraged to forsake their climate change obligations and to engage in harmful fossil fuel extraction and open mines which are not net zero. Notwithstanding that this cannot seriously amount to a planning consideration, it relies on the assumption that other countries, in particular developing countries, will fail to grasp the distinction between thermal and metallurgical coal, will fail to recognise the world-leading mitigation that is offered by WCM, and will blindly follow the UK’s lead in what they perceive to be an abandonment of its climate change obligations.
- 7.141 If you accept these submissions you would have to apply the same approach to all development. There would be a moratorium on development as almost all development either emits or uses embedded CO<sub>2</sub>. The Rule 6 Parties argument if followed would be a levelling down of the economy.
- 7.142 In any event, even if it were to be concluded that any signals that would be sent by granting planning permission for the mine were capable of being a material planning consideration, the signals sent by the Secretary of State by

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<sup>165</sup> Planning Practice Guidance, Paragraph: 016 Reference ID: 21b-016-20140306

<sup>166</sup> For example, *Collis Radio Limited v Secretary of State for the Environment* (1975) 29 P&CR 390

granting permission would be wholly positive. As Ms Leatherdale explained,<sup>167</sup> the application before the Inspector is a world-leading proposal to construct a net-zero coking coal mine, which will meet an established European need from a much more proximate location, which a number of witnesses for the Rule 6 Parties agreed was a positive step.<sup>168</sup> Any weight that is ascribed to the perception of the development should, as a material consideration, therefore have to be positive.

### ***Character and Appearance***

- 7.143 It is clear that the landscape and visual effects of the development are acceptable when considered as a whole. The technical concerns raised by FoE regarding the quality of the visualisation and the quality of some of the supplementary photographs goes nowhere. As Mr Flannery explained, the guidance advises the adoption of a proportionate approach having regard to the nature and extent of the harm, which is precisely the approach that has been followed in the present case. Moreover, by the end of the first round table session, all experts were largely in agreement that there was sufficient evidence before the inquiry for the Inspector and the Secretary of State to form a view on the likely impacts of the scheme, especially since much of this will ultimately be informed by the site visit carried out by the Inspector.
- 7.144 There are two main geographical areas in which the development is likely to have an impact in terms of character and appearance: the former Marchon Site, where the main mine will be situated, and the Pow Beck Valley, which will house the RLF. While there are subtle differences between the parties as to the extent of these impacts, the parties' positions are not, in the words of the Inspector, "wildly apart".

#### ***The Main Mine Site***

- 7.145 There is only slight disagreement between the parties on what the landscape and visual impact of the proposed development at the Marchon site will be. The parties agree that most of the magnitudes of effect identified in the LVIA are correct. Mr Radmall also agreed that the character of the Marchon site itself does not currently make a contribution to the character or amenity of the local area. He described it as "an eyesore", which is neither attractive nor contributes to the amenity of local views.
- 7.146 The proposed development will convert what is essentially a disused, derelict brownfield site on the urban fringe of Whitehaven into an active, developed and landscaped site. Footpaths will allow access across the site to be connected into the existing public right of way network. Overall, this will lead to a moderate beneficial impact of the proposals on the landscape character of the site.
- 7.147 Three pieces of mitigation measures are nonetheless being proposed at the Marchon site, despite the site itself not being highly sensitive. First, the applicant is proposing the creation of landscape mounds in order to screen the main mine site. Second, planting will be introduced on those mounds to

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<sup>167</sup> CL in xx

<sup>168</sup> PE and PC in xx.

enhance screening. The elevated position of that planting will mean that it is effective at an earlier stage, before the planting has fully established.

- 7.148 Third, the applicant is proposing to enclose the development in geodesic domes. Although Mr Flannery did not consider that the existing montages illustrated that the domes would be black, it was agreed that there was plenty of flexibility for a sensitive colour to be selected by the Council when discharging the relevant conditions relating to details so as to ensure that any landscape and visual impact will be softened. The effect of the domes will be to obscure any industrial machinery or materials from view. They are likely to become iconic features within the landscape, which will become an intrinsic part of the identity of the area. It will of course be a matter of entire personal judgment but the modern domes containing the world's first carbon net-zero mine will be regarded as something of interest in the landscape. It can be contrasted with the depressing landscape of industrial dereliction and will send out a landscape levelling up message of Global Britain.
- 7.149 Moving beyond the Marchon site itself, the applicant accepts that landscape and visual sensitivity will increase. However, both parties' experts also concurred that the further away one gets from the development, the more integrated into the landscape setting it will appear. This will reduce its visual impact from further afield.
- 7.150 The magnitude of visual change from the St Bees Heritage Coast specifically will not, therefore, be significant. Furthermore, as explained by Mr Flannery, there is a ridgeline along the heritage coast. The development will effectively be screened from the heritage coast itself by that ridgeline, and only visible from viewpoints on top of the ridge.
- 7.151 Similarly, in terms of the coastal path, there is unlikely to be more than a minor visual impact arising from the development. The main purpose of the coastal path is to enjoy views of the coast. Walkers will likely be looking out to sea and appreciating the coast itself when travelling along that path, as opposed to focusing on views of the main mine site.
- 7.152 Overall, the development at the Marchon site will have a surprisingly limited impact on the landscape and visual character both at the site and more broadly and has the potential to introduce innovative and iconic features to the landscape in the form of the geodesic domes.

#### *The Rail Loading Facility*

- 7.153 The applicant agrees that there will be a greater degree of impact in landscape and visual terms from the proposed RLF. The Pow Beck Valley is a landscape of relative high quality and sensitivity. It provides the setting for a section of the coast-to-coast path, as well as for local public rights of way and a cycleway. It is not entirely unspoilt, however, as the railway line runs through it and there are a number of detracting features surrounding it, and clearly apparent from within it, as Mr Radmall recognised.
- 7.154 Although the effect of the development will be greater in respect of the RLF, it will not be as significant as Mr Radmall suggests. The RLF structure itself has already been worked down to a smaller scale of 15 metres in height, and the applicant will design the building so that it resembles a large agricultural

building, not uncommon in a rural context. From viewpoints, such as LVIA VP10, the RLF will appear against a backdrop of woodland, which will reduce its obtrusiveness.

- 7.155 As Mr Flannery explained, there are restrictions on other types of mitigation that can be achieved in respect of this structure, given the location of the site within flood zone 3 and the operational requirements of the railway, but the applicant will nonetheless secure mitigation planting allaying with the railway line. Combined with existing vegetation, this will restrict the extent to which the RLF will be visible. Mr Radmall has agreed that views of the RLF from the cycleway, for example, will largely be obstructed by vegetation.
- 7.156 Overall, while the RLF will have a greater impact than the development at the main mine site, its impact in landscape terms will not be so great as to be unacceptable. Indeed, given the scale of the proposed development, it is striking just how limited the landscape and visual impacts of the proposed development will be. Again a matter of personal judgement, but the use of sustainable rail transport rather than road as well as state of the art environmentally friendly trains will be a source of visual interest in the landscape.

### ***Ecology***

#### ***Impacts on biodiversity assets of international and national importance***

- 7.157 The Environmental Statement (ES) concludes that there will be no likely significant impacts upon the most important level of ecological assets in the vicinity of the proposed development, namely internationally and nationally designated sites. Detailed consideration has been given to these impacts and tested through the Environmental Impact Assessment (EIA) and the Habitats Regulations Assessment (HRA) undertaken by the Minerals Planning Authority (MPA), with external detailed legal review undertaken by the law firm Freeths. This involved a review by a partner with particular expertise in environmental law. There are no outstanding objections from the Council or the statutory consultees in respect of any of these issues.
- 7.158 Dr Martin remains silent in relation to the conclusions of the ES and the HRA, because he says he has not taken the time to consider these matters. But significantly he does not challenge the findings of the assessments or the advice that has been provided to the Council by specialist advisers and statutory consultees. Instead, he simply remains neutral.<sup>169</sup>
- 7.159 The assessment of impacts on these internationally and nationally important sites has been robustly considered by the competent authority through the HRA process and by the Council through the ES, both in consultation with Natural England (NE). The Inspector and Secretary of State can be confident that there will not be any likely significant effect on these biodiversity assets. It is worth noting that this project has been exceptionally long in the application process.

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<sup>169</sup> See section 5 of the Ecology SoCG at ID55



- 7.160 It has been subject not only to careful scrutiny by the MPA and NE but also to committed opponents of the scheme. SLACC cannot be accused of not taking or overlooking any point which might be taken in connection with this project and the environment in particular. Despite the intensity of opposition, SLACC have failed to come up with any environmental point of substance which has not been properly addressed by the applicant, MPA and NE. It is therefore testament to confidence the Inspector and the Secretary of State can have.
- 7.161 The issues that have been considered in detail at the inquiry relate to impacts on biodiversity assets of a lesser value, at most of county importance for woodland habitat and lower than county importance for other habitats and species scoped into the EIA. As such, the significance of any impacts cannot be considered greater than at a county scale. It is agreed in the SoCG that, with the exception of the woodlands, that residual effects are likely to be of less than county significance.<sup>170</sup>
- 7.162 The conclusion of the ES, which is supported by Dr Shepherd, is that impacts on features of biodiversity are of significance at no more than the local geographical scale. Dr Martin in his oral evidence to the inquiry disagreed with this conclusion of the ES and considered some impacts on assets other than the woodlands were more likely to be significant at the parish scale. Even if the inspector were minded to accept Dr Martin's opinion that some impacts are significant at the Parish scale, these do not amount to a significant impact in EIA terms as this represents a less than district level significance of impact and should be weighed accordingly in consideration of the application.
- 7.163 The three main matters in dispute are:
- a. The impact of the construction of the conveyor on the woodland that the route crosses;
  - b. The adequacy of some survey work on protected species; and
  - c. The approach to the biodiversity net gain calculation for the Main Mine Site.

### ***Woodland***

#### ***Classification as ancient woodland***

- 7.164 There is agreement that Bellhouse Wood is an ancient woodland.<sup>171</sup> There is also agreement that Roska Park Wood and Benhow Wood are not identified on the Ancient Woodland inventory, although that is not determinative,<sup>172</sup> and that parts of Roska Park Wood and Benhow Wood are likely to support strands of woodland that have a continuous link of undisturbed soils to 1600 and as such could be considered ancient semi-natural woodland.<sup>173</sup>
- 7.165 However, there is a dispute between the experts on whether the area of Roska Park Wood that would be directly affected by the cut and cover option is ancient or not, as defined in the Framework. As set out by Dr Shepherd in his

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<sup>170</sup> Para 3.1.6

<sup>171</sup> ID55, para. 3.1.3

<sup>172</sup> As agreed by PS in the RTS

<sup>173</sup> ID55, para. 3.1.4

written and oral evidence, there is clear evidence in the form of historical maps of quarrying and lime kiln operations either side of the St Bees Road within the gill, and features within the woodland indicative of past industrial activity. These include the presence of tipped material filling the gill and lying at right angles to the natural alignment of the gill, parallel to the alignment of the St Bees Road, the presence of industrial infrastructure in the form of a large metal pipe that runs across the woodland on the alignment of the conveyor route and the culverted section of the gill stream than runs deep beneath the St Bees Road. This strongly indicates the area affected by the conveyor route cannot be considered to be ancient.

- 7.166 Dr Martin placed great weight on the presence of ancient woodland indicator plants (which is not disputed by Dr Shepherd) as demonstrating the area affected by past quarrying activity should be considered ancient woodland and treated as such in planning policy terms. However, the reliance upon this would suggest that it is possible for ancient woodland to be re-created through natural colonisation following cessation of industrial activity. This is fundamentally incorrect. As Dr Shepherd explained, the essence of ancient woodland is that it is considered irreplaceable in the Framework and that this is because it is not possible to replace the continuous history of undisturbed ground once broken by agricultural or industrial activity.
- 7.167 Whilst it is accepted by Dr Shepherd that the woodland at Roska Park is of value in a County context as supporting semi-natural broadleaved woodland, this part of Roska Park Wood cannot be considered to be ancient woodland and as such should not be considered in terms of paragraph 180(c) of the Framework. However, from an ecological perspective, regardless of the status of ancient woodland, there is agreement that in EIA terms both Roska Park Wood, Benhow Wood and Bellhouse Gill Wood are of importance in a county context by way of their designation as Local Wildlife Sites<sup>174</sup>.

#### *Method of construction*

- 7.168 The next dispute relates to the method of construction which has been proposed. The applicant will respond to SLACC's arid legal submissions objecting to the "amendment" to the construction methodology in due course. However, it is right to note at this stage that it is highly surprising that SLACC continues to object to an "amendment" which its own expert ecologist considers would represent an improvement to the scheme by reducing harm to the woodland, and its planning witness considers can be dealt with adequately and routinely through the imposition of a Grampian condition.
- 7.169 At the outset of the Inquiry, the applicant suggested that the approach adopted by SLACC was not directed by any real concern for the woodland and was simply motivated by an attempt to stop the development whatever the cost. Sadly, the evidence has simply reinforced that this is indeed the case.
- 7.170 Recognising that the dispute regarding the appropriate method of construction can only ultimately be resolved by the Secretary of State, the impacts of both methods are considered in the alternative.

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<sup>174</sup> ID55, para. 3.1.3



### *Cut and cover*

- 7.171 Dr Martin did not agree with the assessment of the ES that the impacts of the cut and cover option, taking account of the mitigation measures, would result in an impact of significance at the local level. However, Dr Martin does not specifically state what he considers the level of significance of impact to be, just that it should be greater than that assigned in the ES. Dr Martin considered that the likely impact on the woodlands was underestimated as he considered the extent of damage and disruption to the woodland habitats during construction would be much greater than described due to various uncertainties. However, during the round table discussion, the concerns about the difficulties of engineering were discussed and robustly addressed by Mr Kirkbride, who clearly explained why the construction of the culvert is not a complicated or difficult engineering exercise and therefore confidence can be placed on the constraints of the construction area as set out in the ES. There is no challenge to that evidence.
- 7.172 Dr Shepherd stated in his written and oral evidence that the temporary loss of woodland habitat under the cut and cover method can be restricted to the narrow band through the woodlands as set out in the ES. This represents a very low level of temporary disturbance of woodland habitat (less than 1% of the woodland area in both cases).
- 7.173 This low level of temporary loss, combined with the proposed mitigation measures that will restore the woodland habitat once the conveyor has been constructed using soils retained during construction, is the reason why the ES assesses the significance of the impacts being at the local level. It is accepted that the loss of ancient woodland by way of excavation of the soils within Bellhouse Wood cannot be fully compensated, but the mitigation proposed using saved soils will ensure the woodland is likely to be recolonised over time by a similar suite of ground flora species to that which currently exists within the woodland and its ecological function for fauna will be retained. In addition, compensation for the loss of ancient woodland is proposed in the form of woodland planting in the southern end of Benhow Wood, which is considered to be suitable, a point which the Council has previously acknowledged on three separate occasions.

### *Pipe-jacking*

- 7.174 Dr Martin expressed concerns that the proposed pipe-jacking will result in impacts on the stream habitat within the gill woodland and thereby result in harm to the quality of the woodland, in particular the loss of species of damp ground. However, potential impacts on hydrology have been robustly considered by Mr Harding in the appendix to Dr Shepherd's rebuttal proof, which takes a precautionary approach and assesses a number of different ways in which hydrology and hydrogeology might be affected. In all cases, Mr Harding concludes, taking account of standard mitigation measures, that there will be no loss in terms of water supply or flow or deterioration in water quality in the gill streams as a result of the pipe-jacking. On this basis, Dr Shepherd has concluded that there will be a negligible impact on the woodland habitats in Roska Park Wood and Bellhouse Wood from pipe-jacking. Evidence presented by SLACC's hydrological witness, Mr Buss, has also been considered by Mr Harding who concludes that should the ground conditions proposed by

Mr Buss be found to be present, any potential loss of water through the unsaturated ground to lower saturated ground can be readily addressed through the design of drainage mitigation measures associated with the pipe-jacking.

- 7.175 Both Mr Harding and Mr Buss agree that prior to approval of the pipe-jacking methodology, detailed ground investigations will be required and that these can be tied up in a condition. However, Mr Harding is clear that this data will inform the need for, and if required, the design of appropriate mitigation measures and not an assessment of whether there will be an adverse effect on the water supply to the gill streams. Mr Harding is confident that no such adverse effect is likely to arise whatever the outcome of those ground investigations.
- 7.176 Therefore, the Inspector can be confident that pipejacking will not adversely affect the water supply or quality within the gill streams and that this method of construction will avoid loss of woodland habitat and ancient woodland. This is a significant betterment compared to the cut and cover option (as Dr Martin accepted) and is the preferred approach from an ecological perspective. Nevertheless, it is considered that both approaches are acceptable in planning terms as the scale of impact is such that it is of limited significance in EIA terms.

### ***Impacts on protected species***

- 7.177 A mitigation strategy for reptiles has been prepared and can be secured by condition. Dr Martin raised concerns about bats and birds in the woodlands affected by the conveyor. However, Dr Shepherd, who is a recognised bat expert, set out in his rebuttal proof<sup>175</sup> that the guidelines acknowledge that they should not be slavishly applied and that it is not always appropriate to apply the proposed methods and survey effort as set out in the guidance. In his oral evidence, Dr Shepherd was very clear that the survey guidelines were not engaged in relation to impacts of temporary severance and loss of a narrow section of woodland habitat as the impact can be confidently predicted without the detailed survey proposed by Dr Martin. This would be disproportionate and unnecessary.
- 7.178 Dr Shepherd is confident that the temporary loss of woodland cover will not prevent commuting or foraging within and along the woodlands. The primary issue in relation to bats relates to loss of roosts in trees. The woodlands have been surveyed and no evidence of roosting has been recorded. Proposed conditions will also require roosts surveys to be updated prior to commencement of construction.
- 7.179 In relation to impacts on birds, Dr Martin does not challenge the bird survey effort or method but merely expresses surprise at the survey results which did not meet his expectations. None of the birds recorded in the woodlands by BSG Ecology on six survey occasions over two seasons spread over the full breeding bird season are rare or threatened. As such, the Inspector can be confident that the temporary loss of a small area of woodland followed by woodland restoration will not adversely affect the breeding bird interest of the

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<sup>175</sup> WCM/PS/3, para. 2.12

site. Adverse impacts on birds during the breeding bird season will be avoided by ensuring removal of vegetation outside of the bird breeding season.

***Biodiversity Net Gain***

- 7.180 Dr Shepherd and Dr Martin both consider the DEFRA Metric 3.0 a useful tool to judge whether a biodiversity net gain has been achieved by the project and both agree that it is likely there will be a net loss during the operational phase of the project.<sup>176</sup> However, the scale of loss and the incremental improvement in biodiversity value during the operational phase of the development, as the habitat created during the construction phase matures, has not been agreed as the detailed landscaping plans have not been approved by the Council.
- 7.181 The question that arises in relation to biodiversity net gain in this case is the need for net gain to be provided in advance of, and therefore, in addition to, the restoration phase of the project. Dr Shepherd explained why, as a mineral extractive and restorative project, the development is fundamentally different from the other permanent development projects such as a housing development in that the land that has to be used for the mineral operation is required under the planning consent to be restored at the end of the operational phase. In this case to a biodiversity end use. In contrast, the moment construction begins on a housing site the loss is permanent and as such requires an immediate response in terms of habitat creation. There is no restoration phase that will also deliver net gain.
- 7.182 If, as proposed by Dr Martin, off site habitat creation should be started at the beginning of the operational phase to achieve a net gain during the operational life of the project, then the benefits and purpose of the restoration phase in terms of net gain are either superseded and restoration to a biodiversity end use is no longer required. In doing so, it effectively discourages on-site restoration, which is a key objective of biodiversity net-gain.
- 7.183 The net gain calculation, taking the approach advocated by Dr Shepherd for mineral sites, is estimated to deliver a net gain at the restoration phase of almost 30%. This is a significant uplift above the government proposed minimum net gain requirement of 10%.
- 7.184 It should also be noted that a proportion of this 30% will be delivered during the operational phase of the project through the creation of new woodland, grassland scrub and open mosaic habitats on the bunds along the northern and eastern boundary of the Main Mine Site and through the planting of new woodland at the southern end of Benhow Wood and the restoration of the habitats along the conveyor route. Over the operational period, as the habitats created at the end of construction mature, the biodiversity value of the operational site will increase over the operational lifetime of the development.
- 7.185 Dr Martin highlighted the potential uncertainty with future on-site restoration. However, in doing so, he apparently ignored that fact that any future development of the site following restoration would also need to be subject to an application for planning permission.

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<sup>176</sup> ID55, para. 3.1.8

- 7.186 Nevertheless, as was indicated during the ecology round table session, should the Inspector and Secretary of State take a different view on this matter, additional off-site compensation throughout the lifetime of the development can be secured by a Grampian condition requiring the applicant to provide a unilateral undertaking that secures an appropriate level of additional off-site biodiversity net-gain. The applicant will also seek to provide a unilateral undertaking in this form so that it can be relied upon if necessary.

### ***Policy Compliance and Overall Planning Balance***

#### ***Chapter 17 of the Framework***

- 7.187 The key chapter of the Framework for the purpose of determining this application is Chapter 17, 'Facilitating the sustainable use of minerals'. WCM's planning expert, Mr Thistlethwaite, has set out in detail the way in which the proposals comply with various paragraphs in Chapter 17. The applicant relies on Mr Thistlethwaite's analysis in this regard.
- 7.188 At the outset, it should be noted that for the purpose of this, Chapter 17, the Framework lists deep-mined coal as a mineral resource of "local and national importance". These minerals are defined in the Framework as minerals which the Secretary of State considers are "necessary to meet society's needs".<sup>177</sup>
- 7.189 Paragraph 209 of the Framework, which gives a headline statement of the Secretary of State's position on mineral extraction, provides that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. It recognises that minerals are finite natural resources which can only be worked where they are found. Paragraph 210(a) requires that planning policies should provide for the extraction of mineral resources of local and national importance, including coal. Paragraph 210(b) further recognises that planning policies should aim to supply minerals indigenously.
- 7.190 Overall, Chapter 17 recognises the continued need in the UK for deep-mined coal and encourages planning policies to provide for its continued extraction. This is in stark contrast to the position taken by the Framework on peat. Neither footnote 71 to paragraph 211, nor paragraph 217, question the continued need for and importance of deep-mined coal, nor the status afforded to coal by its inclusion in the Framework Glossary.
- 7.191 There is nothing in paragraph 217 to suggest any opposition by the Secretary of State to the continued extraction of coal, even at substantial levels. The purpose of those policies is simply to recognise the increased environmental risk associated with the extraction of coal, and to ensure that any proposals brought forward for its extraction account for that risk. The presumptive weight previously given to coal is removed. This does not mean that substantial weight cannot be given to the benefits of a coal mining proposal.
- 7.192 The policy provides a two-stage test. First, the decision-maker must consider whether a proposal for the extraction of coal is environmentally acceptable, or can be made so by planning conditions or obligations. Second, if the first limb

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<sup>177</sup> See page 69 of the Framework

is not met, the decision-maker must consider whether the proposal provides national, local or community benefits which clearly outweigh its likely impacts.

### *The First Limb*

7.193 There is no authority or specific guidance to assist in the interpretation of the words “environmentally acceptable” in the first limb of paragraph 217. The applicant endorses the approach recently taken by the Inspector assessing the Highborn proposals<sup>178</sup> should be adopted here. At C125, the Inspector made clear that the focus of the first limb is on environmental, rather than social or economic dimensions. At C126, the Inspector expanded on the meaning of environmental acceptability:

“C126. ‘Acceptable’ here, in terms of how high the bar is set for a threshold that would justify a grant of planning permission, has its ordinary meaning of ‘adequate’, ‘satisfactory’ or ‘tolerable’. Therefore, an environmentally acceptable proposal need not necessarily result in no harm, or even no ‘net’ harm. An unfavourable outcome (for the proposal) to the balancing of its environmental benefits against its environmental disadvantages, need not inevitably rule out a finding that the proposal was, nonetheless, environmentally acceptable. It is the overall judgement about the adequacy of the proposal, whether it would satisfy expectations or needs, and could be endured with forbearance, that would be determinative...”

7.194 It is thus not simply a balancing of environmental harm against environmental benefits. Looking at the plain and ordinary meaning of the word “acceptable”, the Inspector considered that environmental acceptability does not mean “provides environmental benefits”, or even “mitigates all environmental harm”. A proposal, when considered in the round, may be considered environmentally acceptable notwithstanding that it causes net environmental harm.

7.195 An example applying the Inspector’s reasoning in Highborn would be a major housing development or infrastructure project which causes minor environmental harm. When considered, for example, in light of the scale and purpose of the project itself, such a development could legitimately be considered “environmentally acceptable”. By contrast, a proposal for a single dwelling which causes the same amount of net environmental harm may not.

7.196 In this case, for the reasons set out in Mr Thistlewaite’s evidence, any environmental harm can plainly be made acceptable by way of the conditions and Section 106 Obligations proposed, and the test at (a) is passed. The particular environmental harms identified by the October 2020 planning committee related to three matters: ecology, landscape and historic environment. An additional issue before the Inspector is the acceptability of any GHG emissions associated with the development. It is clear that the proposal will be acceptable in each of these respects.

7.197 First, regarding ecology, the proposals have changed such that cut-and-cover is no longer proposed, but rather the use of pipe-jacking. The application as assessed by the Council was the cut-and-cover proposal, and the question was therefore whether the loss or deterioration of irreplaceable ancient woodlands

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<sup>178</sup> CD6.2

would be environmentally acceptable. That no longer remains an issue. The evidence given by Dr Shepherd, and the letter from the hydrologist Mr Harding, give sufficient certainty that there will be no loss or deterioration of irreplaceable habitats by way of pipe-jacking. The level of harm will be negligible and will therefore be acceptable from an ecological perspective.

- 7.198 Mr Thistlethwaite has nonetheless addressed the potential impact of the development on the ancient woodlands should the Wheatcroft amendment not be accepted, and the cut-and-cover technique be under consideration by the Secretary of State in his additional rebuttal.<sup>179</sup> It is accepted that the cut-and-cover technique would cause harm to the ancient woodland at Bellhouse Wood, although its design would be such as to minimise any impact and there would be compensatory tree planting.
- 7.199 Paragraph 180(c) of the Framework provides that harm to ancient woodlands can be justified in wholly exceptional circumstances. Footnote 63 to that paragraph gives, as examples, infrastructure projects where the public benefit would clearly outweigh the loss or deterioration of habitat.
- 7.200 Mr Thistlethwaite's view is that the substantial national and local benefits provided by this proposal, which will deliver a mineral of national and local importance, would be sufficient to outweigh the harm to the ancient woodland. The compliance of the proposals with local and national policy would render it environmentally acceptable when the development is considered in the round.
- 7.201 Ms Dehon and Mr Bedwell for SLACC sought to challenge Mr Thistlethwaite's analysis by suggesting that he had misinterpreted the "wholly exceptional circumstances" test under paragraph 180(c), failing to distinguish it from the supposedly lower "exceptional circumstances" test in other paragraphs. This criticism cannot stand. First, Mr Thistlethwaite did in his analysis regard the 180(c) test as the "highest test of all the policies...of the Framework".<sup>180</sup> Second, there is no practical distinction between an "exceptional" and a "wholly exceptional" circumstance. It is unsurprising that, when pressed, Mr Bedwell struggled to provide any example of a circumstance that he would consider to be wholly exceptional, rather than simply exceptional.
- 7.202 In relation to heritage impacts, the applicant's review of the Heritage Chapter by Headland Archaeology<sup>181</sup> identified that the impact of the development on Scalegill Hall may be less than the "moderate adverse at most" impact previously identified in the ES. The Report details that the setting makes only a minor contribution towards the heritage significance of the hall, which is itself dominated by the adjacent A595, the busiest road in Cumbria. The A595 cuts the proposals off from the landscape to the west within which the proposed development will be situated. The proposals will not, therefore, have any impact on Scalegill Hall.
- 7.203 Mr Bedwell's objection to this conclusion is based on two false premises. First, that the setting of Scalegill Hall can reasonably be defined as simply anywhere from which the building can be seen. Second, that somehow Scalegill Hall has

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<sup>179</sup> WCM/ST/5

<sup>180</sup> WCM/ST/5, p. 5

<sup>181</sup> CD1.138



not been severed from the fields to its west by the A595. Both positions are untenable and factually wrong, and this concern cannot therefore feed into the limb (a) test.

- 7.204 In terms of landscape and visual effects, Mr Flannery's evidence has demonstrated that, while the proposals will have some adverse impacts, these impacts are not sufficiently great to prevent compliance with national and local landscape policies. FoE's landscape witness, Mr Radmall, largely concurred with the conclusions of Mr Flannery and the LVIA. The proposal's effects in this regard cannot be considered anything but environmentally acceptable.
- 7.205 Finally, in respect of GHG emissions, the applicant's position, as set out above, is that the end-use emissions associated with steel manufacturing cannot amount to a planning consideration in the present case. In terms of the emissions that can be taken into account, the evidence of Mr Truman has clearly demonstrated that the development will lead to net-savings from emissions that would otherwise have come from alternative coking coal sources. Moreover, as demonstrated by Ms Leatherdale, the operation of the mine will provide considerable environmental benefits by supporting the transition towards net zero. The GHG impacts of the proposal are, therefore, environmentally acceptable.
- 7.206 Even if the Inspector disagrees with the applicant on the specific weighting of these environmental benefits and harms, it is important to recall that the correct approach to environmental acceptability is that set out above. It does not mean no harm, or even net harm. The question is whether any harm or benefits would be acceptable. WCM's position is that, even were the development to cause some environmental harm, no credible case has been put forward to suggest that such harm would be unacceptable.
- 7.207 The proposals cannot reasonably be seen as anything other than environmentally acceptable. The paragraph 217(a) test is met, and it is unnecessary for the Secretary of State to consider the wider harms and benefits under paragraph 217(b).

#### *The Second Limb*

- 7.208 In advising the Secretary of State, the Inspector will need also to look at Paragraph 217(b), in case he disagrees with the applicant's view as to (a).
- 7.209 In considering (b), it is plain that public benefits from the proposal are overwhelming. It is not just the economic benefits both local and nationally, the creation of valuable, well paid and skilled jobs which can be readily transferable. In addition, it is also the benefits from bringing forward the world's first net zero mine. This is something which can assist in meeting the challenge necessary to achieve the transition away from carbon. The project also makes use of an existing brown field site for the mine itself as well as utilising a sustainable and under used form of transport in the form of the railway.
- 7.210 It is important in respect of this balancing exercise to note that Mr Bedwell accepted that SLACC's own position on the economic benefits of the scheme was flawed in planning terms, agreeing that there would clearly be economic benefits with the scheme, and that a significant number of people would be

directly employed with up to 500 direct jobs, and perhaps twice as many indirect jobs. Mr Bedwell also accepted that he could not recall a situation in which less planning weight had been given to the benefits of job creation because of a fear of “poaching” of other skilled workers, clearly undermining SLACC’s own economic witness.<sup>182</sup>

- 7.211 While Mr Bedwell suggested that it may be beneficial to strengthen the planning obligation relating to the sourcing of employment locally, he was unsurprisingly unable to point to a way in which a stronger commitment could be made. Short of legislating to conscript the working age population of Whitehaven to work in WCM’s mine, there is little more that the applicant can do.
- 7.212 Mr Bedwell also conceded that his lack of expertise, evidence or analysis of the tourism impacts of the development meant that his weighting afforded to tourism as an economic disbenefit in the balancing exercise could not rationally be taken into account.
- 7.213 Overall, SLACC has done nothing to dispel the clear position that there are substantial benefits associated with the development which should be given great weight, and which plainly outweigh any disbenefits associated with the scheme.

#### ***Chapter 14 of the Framework***

- 7.214 Chapter 14 of the Framework concerns meeting the challenge of climate change, flooding and coastal change. The most relevant policy in this chapter is paragraph 152, which provides that the planning system should support the transition to a low carbon future, and should seek to shape places in ways that contribute to radical reductions in greenhouse gas emissions.
- 7.215 As Mr Thistelthwaite has acknowledged, the evidence provided by Ms Leatherdale, Mr Truman and Mr Tonks explained that the development will do precisely that. There is a continued need for metallurgical coal in the steelmaking process. The development will provide that coal to the steel industry in a way that radically cuts down GHG emissions, while simultaneously substantially minimising and offsetting carbon emissions at the application site from day one. The proposals fully comply with paragraph 152 of the Framework.
- 7.216 Furthermore, the proposals will also be in compliance with paragraph 154(b) of the Framework. The location of the mine, which will primarily serve the UK and EU market, within the UK will reduce the distance that coal has to travel to reach steel producers. This will substantially reduce any emissions associated with the transport of the coal.
- 7.217 The proposals will further comply with paragraph 157 of the Framework, which requires LPA’s to expect development to comply with local plan policies on decentralised supply. By capturing and storing methane, as Mr Tonks has detailed, it will be possible to use that methane as a decentralised supply of energy from year 4 of the mine’s planned operational period.

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<sup>182</sup> PB in xx



- 7.218 SLACC's planning witness, Mr Bedwell, based his assessment of the development's alleged climate change impacts largely on the flawed understanding of Professors Watson, Grubb and Ekins, which did not engage with the details of the proposal and conflated relevant emissions with irrelevant end-use emissions.
- 7.219 In cross examination, Mr Bedwell conceded that he had erroneously relied on paragraphs 171-172 of the Framework when weighing the benefits and disbenefits of the scheme. Paragraphs 171-172 apply only to plan-making, and to Coastal Change Management Areas respectively, which is clear simply by reading the policies. Mr Bedwell further accepted that, those paragraphs were drafted by the Secretary of State on a precautionary basis, taking into account the UK's net zero commitments and the Paris Agreement. The result of this is that it can be assumed that, for the purposes of the Framework, the unproven and fanciful suggestion that the proposal will directly cause erosion to the St Bees coastline can be entirely disregarded.
- 7.220 He also conceded that he had erroneously taken into account a number of paragraphs of the Framework in Chapter 14 that in fact had no bearing on Inspector's consideration of this case.
- 7.221 The development is, therefore, clearly in accordance with both Chapter 14 of the Framework and the definition of "sustainable development" set out in paragraph 7. Mr Bedwell was unclear as to whether coal's status as a locally and nationally important mineral should be given "weight", "substantial weight" and then in re-examination to "no weight." He has no real minerals planning experience. Mr Thistlethwaite by contrast is an expert in the field. His evidence was entirely consistent. He was direct and was prepared to agree when questions were put on hypotheticals with which he did not agree (it is important to note that these answers are not misrepresented as concessions).

### ***Compliance with the Development Plan***

- 7.222 The central policy in the development plan for the determination of the proposal is Policy DC13 of the Cumbria Minerals and Waste Local Plan (2015-2030). Policy DC13 in large part replicates the test set out in paragraph 217 of the Framework, with the important distinction that it does not solely focus on the environment but includes environmental and social impacts in the first limb.
- 7.223 The inclusion of social elements in the first limb of the test only strengthens WCM's case. As was demonstrated unequivocally in Mr Kirkbride's evidence, the development will deliver substantial social and economic benefits to the local area. On the whole, therefore, the balancing exercise carried out under the first limb falls even further in WCM's favour.
- 7.224 The second limb of the test replicates that in paragraph 217 of the Framework, meaning that compliance with that limb is also made out for the reasons given above. This was also the position taken by the Council with regard to the second limb of Policy DC13 and of paragraph 217 of the Framework on the three separate occasions on which it considered the application. This is a matter that should be afforded considerable weight, particularly taking into account that, when the proposal was considered by the Council, it included a

number of significant adverse impacts that have now fallen away.<sup>183</sup> The balance under the second limb has been greatly strengthened in favour of granting consent.

- 7.225 In respect of other key policies identified by Mr Thistlethwaite, he set out extensively in his Proofs of Evidence the other relevant policies in the Local Plan for the determination of this application. This analysis is not repeated in closing, but the applicant relies on his analysis of the development in respect of those policies.<sup>184</sup>

### ***Conclusions and Planning Balance***

- 7.226 In summary, the planning balance clearly falls in favour granting consent for the development. This is a pioneering proposal to construct the world's first net-zero mine and is consistent with both national and local policy.
- 7.227 The development is clearly compliant with the policies set out in the Cumbria Minerals and Waste Local Plan and the Copeland Local Plan. This position was endorsed by the Council not just once, but on three separate occasions when it resolved to grant planning permission for previous iterations of the development.
- 7.228 WCM's proposals satisfy the coal-specific policies in both the Framework and the local plan. The proposals clearly satisfy the first limb of paragraph 217 of the Framework in that they are environmentally acceptable, and by extension satisfy the first limb of Policy DC13. Even if the proposals were considered not to satisfy the first limb, the vast national, local and community benefits associated with the development clearly outweigh its likely impacts.
- 7.229 Deep-mined coal is listed in the Framework as a mineral resource of national and local importance. Metallurgical coal is currently clearly needed to serve the demand for steelmaking across the UK and Europe (as well as the globe). The Rule 6 parties have set out no credible case that a commercially viable alternative exists.
- 7.230 For these reasons, it is clear that the proposed development accords with the development plan, and no material considerations have been suggested which indicate that it would be appropriate to depart from it. Accordingly, permission should be granted for the development.

### ***Conclusion***

- 7.231 This is an important decision. It is important for the people in and around Whitehaven, an area which hopes to benefit from the Government's commitment to levelling up. It is important for the approach that we are to take to climate change.
- 7.232 You have been told that signalling and perception are critical – that people won't distinguish between thermal coal and metallurgical coal, they won't look at the methane capture or the net zero commitments that this mine will be

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<sup>183</sup> Such as the loss of ancient woodland, operational GHG emissions that will now be mitigated, and less than substantial harm to a designated heritage asset (Scalegill Hall)

<sup>184</sup> WCM/ST/1, pp.47-60 and Appendix 1

making as a unique world leader. If that is the route we follow, we are planning for failure. The climate does not alter due to a good or bad press release.

- 7.233 If we are to look at signals we really do need to dispel some myths: no-one seeking to open an emitting mine will decide to open it because the UK has permitted a trailblazing net zero mine. Despite the so-called expert evidence, no evidence has been called to show how mere signalling has in fact influenced countries such as the China or the USA. As the recent G7 statement makes clear, leadership is given by action, not gesture. Showing that these mines can be made by law to capture GHG emissions, and required to offset any residual impacts, is true environmental leadership.

## **8. SUBMISSIONS BY THE APPLICANT IN RESPECT OF THE AMENDMENT TO THE CONSTRUCTION TECHNIQUE FOR PARTS OF THE UNDERGROUND CONVEYOR**

- 8.1 This section is based largely on the Legal Submissions for the applicant in respect of the amendment to the construction techniques for parts of the underground conveyor.<sup>185</sup> They were made in response to Legal Submissions made by SLACC on this matter which are set out later in this Report.
- 8.2 The submissions by SLACC are considered to raise two issues. Firstly, the power to consider the amended application and secondly, the approach to the EIA of the amendment.
- 8.3 With regard to the first matter, it is not accepted that the proposed change to the construction methodology amounts to an 'amendment' to the development itself. Contrary to the assertion made by SLACC at paragraph 35 of its submissions, the applicant has always maintained that the change does not amount to an amendment to the development.
- 8.4 There does not appear to be any dispute that *R (Holborn Studios Ltd) v Hackney LBC* [2018] PTSR sets out the scope of amendments that can be made to planning applications and the relevant considerations that apply.
- 8.5 The decision in *Holborn Studios* clarified that it is necessary to distinguish between the substantive and procedural constraints on the power to grant planning permission for a development other than that for which an application was originally made (*Holborn Studios*, per John Howell QC sitting as a Deputy Judge at [64] – [74]):
- a. The substantive limitation on the scope of the changes that may be made by an amendment is "whether the change proposed is substantial or whether the development proposed is not in substance that which was originally applied for" (*Holborn Studios* at [66]).
  - b. The procedural constraint is concerned with ensuring that the rights of third parties are not sidestepped through a failure to consult on amendments that deprives third parties of the opportunity to comment on the consequences of the changes that have been proposed (*Holborn Studios* at [70] – [71]).

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<sup>185</sup> ID77

- 8.6 It is clear that SLACC's submissions now solely relate to the substantive constraint and not the procedural constraint. Given that this is the case, the relevance of the reference in paragraph E.1.2 of the Called-in Application Guidance in paragraph 33 of SLACC's submissions is not clear. This paragraph of the guidance is plainly dealing with the procedural constraint, as the reference to the potential for prejudice makes clear. The paragraph is making the uncontroversial point that even minor changes to a proposal can cause prejudice and procedural unfairness. It is not dealing with substantive constraint. The reliance placed upon this paragraph in the present context therefore falls into precisely the same conflation of the two separate constraints which John Howell QC cautioned against in *Holborn Studios* at [72] and deprives the terms "fundamental change" or "substantial difference" of any sensible meaning. Nevertheless, SLACC's reference to this paragraph provides a telling indication as to how SLACC views the scale of the proposed changes in the present case.
- 8.7 The question of whether a proposed change or amendment is "substantial", "fundamental" or would mean that the amended development is not in substance that which was applied for, is ultimately a matter of planning judgement.
- 8.8 The starting point for considering whether the proposed change is so substantial that the amended development is not in substance that which was originally applied for, is the description of development, which in this case is:
- "Development of of:
- a new underground metallurgical coal mine and associated development including: the refurbishment of two existing drifts leading to two new underground drifts; coal storage and processing buildings; office and change building; access road; ventilation, power and water infrastructure; security fencing; lighting; outfall to sea; surface water management system and landscaping at the former Marchon site (High Road) Whitehaven;
  - a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line with adjoining office / welfare facilities; extension of railway underpass; security fencing; lighting; landscaping; construction of a temporary development compound, and associated permanent access on land off Mirehouse Road, Pow Beck Valley, south of Whitehaven;
  - a new underground coal conveyor to connect the coal processing buildings with the coal loading facility"
- 8.9 It is self-evident that the introduction of the pipe-jacking construction technique would not cause any change to the development that has been proposed or the description of development, let alone a "substantial" or "fundamental" change. It simply relates to a change in the construction method for part of the underground coal conveyor, and SLACC's submissions fail to provide any cogent explanation as to why this would result in a substantial change to the development. Instead, SLACC's submissions are forced to focus on what it is alleged the policy consequences of the proposed change may be in order to elevate what, on any level, is a minor change into something of alleged greater significance.

- 8.10 The essential thrust of SLACC's submissions on this point are summarised at para. 37, which states that:
- "...the conveyor itself is a substantial aspect of the proposed development because it is critical to the operation of the mine, and the construction method used to install the conveyor is vital to whether it can come forward in a manner consistent with the national policies contained within the Framework..."
- 8.11 The applicant considers that these submissions are fundamentally misconceived for the following reasons.
- 8.12 First, they appear to be predicated upon the misapprehension that "the circumstances in which the application can be amended are extremely limited".<sup>186</sup> This is incorrect. As the Inspector and Secretary of State will be aware, amendments are routinely made to planning applications notwithstanding the absence of an express statutory provision permitting such amendments. There are obvious and strong public policy reasons why the substantive constraint on the changes that may be made to the application "should not be overly severe".<sup>187</sup> In practice, much more significant amendments than those proposed in the present case are frequently proposed and made to applications during the course of their determination. In this respect, it is instructive to consider the scale of some of the amendments that have been proposed in other cases without falling foul of the substantive constraint:
- a. In *Holborn Studios* the issue raised related to the procedural constraint. It was not suggested that the changes were so substantial that they were beyond the scope of the power to amend the application. Those changes included: "(i) an increase in the amount of Class B1 floor space proposed of 1,426 square metres (an increase of 34%, from 4,218 square metres to 5,644 square metres); (ii) a reduction in the number of residential units proposed by 14 units (a reduction of 22%, from 64 units to 50 units) and a change in the relative proportions of different sized units; (iii) the deletion of all the affordable housing previously proposed (14 units); (iv) the removal of the structural columns in the studios proposed in the basement; and (v) changes to the external appearance of one of the buildings facing the canal by the removal of six balconies."
  - b. In *British Telecommunications Plc v Gloucester City Council* [2001] EWHC (Admin) 1001 the changes, which were not found to be substantial, included the removal of a Magistrates Court and its replacement with a multiplex cinema and multi-storey car park, the removal of housing from one area of the development, and extensions of the site boundary to include areas not previously included.<sup>188</sup>

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<sup>186</sup> ID66 Para 35

<sup>187</sup> *Holborn Studios* at [74]. See, also, the following observations of Elias J. in *British Telecommunications Plc v Gloucester City Council* [2001] EWHC Admin 1001 at [33]: "It is plainly in the public interest that proposed developments should be improved in this way. If the law were too quick to compel applicants to go through all the formal stages of a fresh application, it would inevitably deter developers from being receptive to sensible proposals for change."

<sup>188</sup> *British Telecommunications Plc* at [27]

- c. In *Bernard Wheatcroft Ltd v SSE* (1982) 43 P & CR 233, the proposed amendment involved a reduction in size of the development from 420 dwellings on 35 acres to 250 dwellings on 25 acres.
- 8.13 Second, SLACC's submissions adopt the wrong test. The correct test, as set out in the authorities relied upon by SLACC,<sup>189</sup> is whether the change proposed is substantial or whether the resulting development is not in substance what was originally applied for. It is not whether the change, no matter how small or inconsequential, relates to something which is itself a substantial or critical part of the proposed development. The applicant is not proposing to move the underground conveyor altogether. It is hopeless to suggest that a change to the construction method of delivery of a small part of the conveyor is somehow substantial simply because the conveyor itself is an important part of the development. The amendment does not propose the introduction of a conveyor system into the scheme where none had been proposed in the first place.
- 8.14 Compliance with planning policy is not relevant to this exercise. Were SLACC's approach correct, it would mean that any changes to an application made to address issues of policy compliance would be unlawful. Moreover, it would mean that it was impossible to impose conditions to overcome some policy objection to a scheme, which is absurd when one considers that a planning condition can only be lawfully imposed where it is necessary to make the development acceptable in the first place.
- 8.15 Fourth, even if one adopts SLACC's flawed approach and takes compliance with national policy as the litmus test for whether an amendment is substantial, the adoption of the original "cut and cover" technique does not mean that the proposal would be inconsistent with national policy. On the contrary, the applicant's case is that it would comply with paragraph 180(c) of the Framework notwithstanding the loss of ancient woodland and it is notable that the Council previously reached the same conclusion on three separate occasions. Moreover, SLACC's case is that the proposed pipe-jacking technique may still result in the loss or deterioration of ancient woodland and therefore engages paragraph 180(c) of the Framework in any event.
- 8.16 Finally, in addition to the reasons above setting out why SLACC's approach is flawed, the applicant makes the following observations of the other reasons why the proposed change to the construction methodology does not amount to a substantial change:
- a. First, the recent Regulation 22 consultation, which (voluntarily) included a consultation on the proposed changes to the construction methodology for the conveyor, did not receive any consultation responses. Whilst that is plainly not determinative, it does show that none of the consultees considered that it represented a change that would require a further consultation response. The fact that there was not one single response is therefore indicative of the fact that it did not amount to a substantial change.

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<sup>189</sup> ID66 para 30



- b. Second, it is important to note that the timing of the proposed change is completely irrelevant for the purposes of considering whether the change falls foul of the substantive constraint. If SLACC is correct, and there is no scope to introduce such a limited change, that submission must equally apply at any stage of the application. Therefore, on SLACC's case, as soon as the application was submitted, it was not possible to alter the way in which the underground conveyor was proposed to be constructed and the only way to make such a change would have been to submit an entirely new planning application.
  - c. Third, SLACC's submissions on this issue undermine the whole rationale for undertaking an EIA and, indeed, its own submissions on the adequacy of the EIA process. The whole point of the EIA is to identify likely significant effects on the environment and see how those effects can be avoided or reduced through amendments to the design and the imposition of additional mitigation. However, if SLACC are right and it is not possible to amend the proposed construction methodology in the present case, it would mean that, even though a suitable alternative methodology has been identified which all the ecological experts agree will result in less harmful effects on the woodland, that alternative cannot be incorporated into the proposed scheme without submitting a new planning application.
- 8.17 In summary, there can be no doubt in the present case that the proposed change to the construction methodology is not "substantial" and would not alter the substance of the proposed development.
- 8.18 Turning to the second issue and the approach to Environmental Impact Assessment, Regulation 3(4) of the 2011 regulations provides that:
- "...the Secretary of State or an Inspector shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration..."
- 8.19 Environmental information is defined as follows:
- "environmental information" means the environmental statement, including any further information and any other information, any representations made by anybody required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development;"
- 8.20 An environmental statement is defined as: ""environmental statement" means a statement-
- (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
  - (b) that includes at least the information referred to in Part 2 of Schedule 4;"
- 8.21 The information referred to in Part 2 of Schedule 4 includes:

- "1. A description of the development comprising information on the site, design and size of the development.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the development is likely to have on the environment..."

8.22 Part 1 of Schedule 4 includes the following details:

- "3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.
4. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from—  
(a) the existence of the development; (b) the use of natural resources; (c) the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the applicant or appellant of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part..."

8.23 Since SLACC's complaint is, essentially, that insufficient environmental information has been provided, it is important to set out a number of general principles regarding the adequacy of information provided in an environmental statement:

- a. The EIA process is intended to be an aid to efficient and inclusive decision-making in special cases, not an obstacle-race (*R (Jones) v Mansfield DC* [2004] Env LR 21, per Carnwath LJ at [58])
- b. An environmental statement is not expected to include more information than is reasonably required to assess the likely significant environmental effects of the development proposed, in the light of current knowledge (see, for example, *R (Khan) v Sutton LBC* [2014] 11 WLUK 151, per Patterson J. at [121] – [134]; and *Preston New Road Action Group v SSCLG* [2018] Env LR 19, per Dove J. at [67]).
- c. An environmental statement is prepared by competent experts, relying on professional judgement.<sup>190</sup> There may be a range of reasonable

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<sup>190</sup> Whether a proposed development is likely to have significant effects on the environment involves an exercise of judgment or opinion. It is not a question of hard fact to which there can only be one possible correct answer in any given case." (*R (Jones) v Mansfield DC* [2003] EWCA Civ 1408, per Dyson LJ at [17]).



professional judgements and there may well be a difference in opinion between experts.

- d. It is unrealistic to expect that an applicant's environmental statement will always contain the "full information" about the environmental project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations (Tew was an example of such a case), but they are likely to be few and far between" (*R (Blewett v Derbyshire CC* [2004] Env LR 29 at [41]).
  - e. The mere fact that the contents of an ES may be controversial is not enough to invalidate it. As Ouseley J. observed in *R (Bedford and Clare) v Islington LBC* [2003] Env LR 22 at [203]: *"Whilst one should not be over-impressed by the volume or weight of documents – and even very lengthy documents can omit significant factors—I confess to approaching [counsel for the claimant's] submissions with a degree of doubt as to whether the deficiencies to which he drew attention could be such as to mean that Islington could not reasonably regard the material as constituting an Environmental Statement. It is inevitable that those who are opposed to the development will disagree with, and criticise, the appraisal, and find topics which matter to them or which can be said to matter, which have been omitted or to some minds inadequately dealt with. Some or all of the criticism may have force on the planning merits. But that does not come close to showing that there is an error of law on the local planning authority's part in treating the document as an Environmental Statement or that there was a breach of duty in Regulation 3(2) on the local authority's part in granting planning permission on the basis of that Environmental Statement"*.
- 8.24 The EIA process does not prevent reliance being placed on conditions, and the imposition of conditions requiring further survey work to be undertaken and additional details to be submitted is not inconsistent with the requirement for an environmental statement to contain the "full information". As Dyson LJ said in *R (Jones) v Mansfield DC* [2003] EWCA Civ 1408 at [39]:
- "39. I accept that the authority must have sufficient information about the impact of the project to be able to make an informed judgment as to whether it is likely to have a significant effect on the environment. But this does not mean that all uncertainties have to be resolved or that a decision that an EIA is not required can only be made after a detailed and comprehensive assessment has been made of every aspect of the matter. As the judge said, the uncertainties may or may not make it impossible reasonably to conclude that there is no likelihood of significant environmental effect. It is possible in principle to have sufficient information to enable a decision reasonably to be made as to the likelihood of significant environmental effects even if certain details are not known and further surveys are to be undertaken. Everything depends on the circumstances of the individual case."

- 8.25 The key point is that conditions should not be used as a surrogate for the EIA process, so that the description of likely significant effects and any measures to avoid, reduce or remedy those effects are not left to a later stage (*Gillespie* at [48]; *Buglife* at [79]; and *R v Rochdale MBC ex p. Milne* (No. 1) [2000] Env LR 1 at p. 29).
- 8.26 Furthermore, it is well-established that uncertainty, such as that relating to the precise ground conditions under the woodland in the present case, can be addressed by adopting a “worst case” approach and assessing all potential effects that may arise. This is known as a *Rochdale Envelope*, after the decision in (*R v Rochdale MBC ex p. Milne* (No. 2) [2001] Env LR 22, where Sullivan J. held at [122] that:
- “The assessment may conclude that a particular effect may fall within a fairly wide range. In assessing the ‘likely’ effects, it is entirely consistent with the objectives of the directive to adopt a cautious “worst case” approach. Such an approach will then feed through into the mitigation measures envisaged under para 2(c). It is important that they should be adequate to deal with the worst case, in order to optimise the effects of the development on the environment.”
- 8.27 The complaints raised in the present case about the level of detail provided and the adequacy of information are remarkably similar to those rejected by the Court of Appeal in *R (an Taisce) v SSECC* [2014] EWCA Civ 1111, which was a case that had been subject to EIA. In that case, before citing the comments of Dyson L J in *Jones* set out above with approval, Sullivan L J (with whom the other members of the Court agreed) observed at [48] that:
- “Many major developments, particularly the kind of projects that are listed in Annex I to the EIA Directive, are not designed to the last detail at the environmental impact assessment stage. There will, almost inevitably in any major project, be gaps and uncertainties as to the detail, and the competent authority will have to form a judgement as to whether those gaps and uncertainties mean that there is a likelihood of significant environmental effects, or whether there is no such likelihood because it can be confident that the remaining details will be addressed in the relevant regulatory regime...”
- 8.28 He then went on to reject a distinction between reliance upon additional controls which had already been designed in light of assessments already undertaken and those which will be based on future assessments of elements that may still be subject to design changes at [51]:
- “There is no basis for this distinction, which is both unrealistic and unsupported by any authority. The distinction is unrealistic because elements of many major development projects, particularly the kind of projects within Annex I to the EIA Directive, will still be subject to design changes, and applying Mr Wolfe’s approach those projects will not have “already been designed” at the time when an environmental impact [assessment] has to be carried out. The detailed design of many Annex I projects, in particular nuclear power stations, is an immensely complex, lengthy and expensive process. To require the elimination of the prospect of all design changes before the environmental assessment of major projects could proceed would be self-defeating. The promoters of such projects would be unlikely to incur the, in some cases, very considerable expense, not to mention delay, in resolving all the outstanding design issues, without the assurance of a planning permission. If the

environmental impact assessment process is not to be an obstacle to major developments, the planning authority (in this case the Defendant) must be able to grant planning permission so as to give the necessary assurance if it is satisfied that the outstanding design issues – which may include detailed design changes – can and will be addressed by the regulatory process.”

- 8.29 Applying these well-established principles to the present case, there is no substance to SLACC’s submissions for the following reasons:
- a. The complaint from SLACC relates to the adequacy of the information provided. This is ultimately a matter of judgement, but it is important to remember that there is no requirement to include every conceivable scrap of environmental information within the environmental statement (*Rochdale (No. 2)* at [135]).
  - b. Dr Shepherd gave clear evidence setting out why he considered that the environmental information that had been provided was sufficient to enable him to be certain that the proposed pipe-jacking would not result in any likely significant effects on the woodland. The outstanding matters that are proposed to be addressed by condition are matters of detail and implementation, they do not go to the principle of the mitigation or its effectiveness. Accordingly, this is not a case where reliance is being placed on the imposition of conditions as a surrogate for the EIA process and the requirement to describe the measures needed to avoid any likely significant effects on the environment. Accordingly, the case of *Buglife*, which is relied upon by SLACC, can be clearly distinguished.
  - c. Even on SLACC’s own case, the environmental information is sufficient. Whilst Dr Martin would prefer there to have been more detailed survey work, his evidence before the Inquiry was not that the environmental information did not describe the likely significant effects on the woodland and the measures required to avoid any likely significant effects. Nor did he suggest that the proposal would result in likely significant effects on the environment that have been left out of account or will remain unmitigated. Indeed, SLACC’s own submissions on the Wheatcroft point now tacitly recognise that there will not be any harm to the woodland in the event that part of the conveyor is constructed using the pipe-jacking methodology, noting that this will determine whether there is likely to be any loss or deterioration to the ancient woodland so as to engage paragraph 180(c) of the Framework. Pipe-jacking is not a novel procedure requiring detailed information (see e.g. *R (Jones) v Mansfield DC* [2003] EWCA Civ 1408). The planning witness for SLACC, Mr Bedwell, also agreed that, whilst he personally would have preferred further information, he was nonetheless satisfied as a matter of planning judgement the matter could be addressed by way of a condition as proposed.
  - d. Dealing specifically with the points raised at paragraph 53 of SLACC’s submissions:
    - i. Whilst further intrusive survey work will be required to ensure that the proposed mitigation responds to the precise ground conditions that are encountered, all potential mitigation that may be required to avoid likely significant effects on the environment has been adequately described (*Rochdale (No. 2)* at [122]).

- ii. Dr Shepherd explained why he did not consider that it is necessary to carry out a detailed survey of the woodland flora in order to understand the likely significant effects. Furthermore, SLACC only raises this objection in the context of the proposed pipe-jacking methodology, even though it recognises that the “cut and cover” methodology will be likely to result in a greater level of harm. There is no logical basis for suggesting that the survey work is only inadequate for the less harmful procedure.
- iii. The concerns raised about the topography of the gills have been addressed by the additional information provided by Mr Kirkbride during the RTS and in the additional plans provided. There is no basis for suggesting that insufficient topographical detail has been provided to understand the measures needed to avoid any likely significant effects.
- iv. The question of whether any likely significant effects can be avoided through the design of the pipe-jacking rig is an engineering and hydrogeological matter. The evidence from Joseph Gallagher Ltd, Mr Harding and Mr Kirkbride confirms that the measures proposed will avoid likely significant effects. Dr Martin is not an expert in this matter, and his comments on the potential for residual uncertainty which are relied upon by SLACC must be seen in this light.

8.30 Finally, notwithstanding all of the submissions above, it is recognised that the adequacy of the environmental information that has been provided is ultimately a matter of judgement for the Inspector and the Secretary of State. Therefore, if (contrary to the submissions above) the Inspector and the Secretary of State come to the view that there is insufficient information before them, then the correct course of action is to issue a further Regulation 22 request setting out the additional information that is required. Therefore, even if the Inspector or Secretary of State agree with SLACC, this opportunity provides the complete answer to the objection raised by SLACC. Given that this is the case, it is notable that, even at this late stage, SLACC have still not invited the Secretary of State to make such a direction.

8.31 For the reasons set out above, SLACC’s submissions on the power to consider the “amended” application and the adequacy of the EIA are devoid of any merit. The proposed change to the construction methodology to introduce pipe-jacking under the woodlands can lawfully be made and relied upon when considering the effects of the development. This change has been adequately addressed by the Regulation 22 submission and the additional environmental information provided during the course of the Inquiry. Furthermore, even if the Secretary of State disagrees and considers that more information is required, this can and should be addressed through an additional Regulation 22 request for further information. It is notable that at no stage did SLACC make a request for such a direction to be made.

## **9. SUBMISSIONS BY THE APPLICANT IN RESPECT OF THE COURT OF APPEAL JUDGEMENT IN *FINCH***

9.1 These submissions are provided on the basis of the law as it stands following the decision of the Court of Appeal in *Finch*. These submissions address the

meaning of the Court of Appeal's judgment and not the correctness of the judgment.

***Findings of the Court of Appeal in Finch***

- 9.2 The case of *Finch* involved an application for judicial review of Surrey County Council's decision to grant planning permission to Horse Hill Developments Limited to retain and expand the existing Horse Hill Well Site (including two existing wells) and to drill four new wells for the production of hydrocarbons over a period of 25 years. Although the Environmental Statement ("ES") assessed the greenhouse gas ("GHG") emissions that would be produced from the operation of the development, the challenge related to the non-assessment by the ES of GHG emissions caused by the subsequent use of oil produced from the site after being refined elsewhere.
- 9.3 At first instance, Holgate J. dismissed the challenge, holding that:
- a. The fact that the environmental effects of consuming an end product will flow inevitably from the use of a raw material in making that product does not provide a legal test for deciding whether they can properly be treated as effects of the development on the site where the raw material will be produced for the purposes of exercising planning or land use control over that development. Instead, the true legal test is whether an effect on the environment is an effect of the development for which planning permission is sought [101].
  - b. The scope of the obligation to assess environmental effects of a development or project does not, as a matter of law, include the environmental effects of consumers using an end product which will be made in a separate facility from materials to be supplied from the development being assessed [126].
  - c. Alternatively, the county council's judgement that GHG emissions from the combustion of refined fuels were not an environmental effect of the proposed development, because the essential character of the proposed development was the extraction and production of crude oil and not the subsequent process of refining and using the oil, was not beyond the range of conclusions which rational decision-makers could lawfully reach [131] – [132].
- 9.4 As Lindblom SPT set out at paragraph 4 of the Court of Appeal's judgment in *Finch*, the appeal raised the following 4 issues:
- a. First, was the judge wrong to hold that the "true legal test" of whether an impact constitutes an indirect likely significant effect of the development on the environment is whether it is "an effect of the development for which planning permission is sought"?
  - b. Secondly, was he wrong to hold that the EIA regulations are not directed at environmental impacts which result merely from the consumption, or use, of an "end product" – for example, a manufactured article or a commodity such as oil, gas or electricity?
  - c. Thirdly, was he wrong to hold that the EIA Directive and the EIA regulations did not require the assessment of "scope 3" or "downstream"

greenhouse gas emissions arising from the combustion of the refined products of the oil which would be extracted by the development?

- d. Fourthly, was he wrong to hold that the county council's reasons for not requiring an assessment of those greenhouse gas emissions were lawful?
- 9.5 The appeal was dismissed by Lindblom SPT (with whom Lewison LJ agreed), with a dissenting judgment given by Moylan LJ.
- 9.6 In respect of the first issue, the Court of Appeal held that:
- a. The Judge was correct to emphasise the project-centric focus of the EIA Directive and Regulations. The *regime* is not intended to regulate the environmental effects of economic or commercial activity, or the use of land, in general. It is only engaged when a grant of development consent for a particular project of development is necessary and the EIA legislation only requires the assessment of effects of the proposed development or project [35] – [40].
  - b. The question of whether a particular impact on the environment is truly a likely significant effect of the proposed development – be it direct or indirect – is ultimately a matter of fact and evaluative judgment for the authority [40]. What needs to be considered is the necessary degree of connection that is required between the development and its putative effects [41]. This is not simply a pure matter of law for the courts, it is a question for the decision-maker subject to the scrutiny of the court on public law grounds [42] – [43].
- 9.7 On the second issue, the Court of Appeal held that the EIA Directive and Regulations do not compel the assessment of environmental effects resulting from the ultimate consumption or use of an “end product” where those environmental effects are not actually effects of the proposed development itself [49].
- 9.8 Under the third issue, the Court of Appeal held that:
- a. The submission that the county council was legally obliged to require an assessment of “scope 3” GHG emissions, and that its failure to do so was irrational, was incorrect [52], [57]. It is a matter for the relevant authority to consider whether the information contained in the ES is sufficient to meet the requirements of the EIA Directive and Regulations [58] – [59].
  - b. The essential question for the decision-maker is whether there is, in fact, a sufficient causal connection between the project under consideration and a particular impact on the environment for the impact to constitute one of the indirect significant effects of the proposed development. The fact that certain environmental impacts are inevitable may be relevant to this question, but it does not compel the conclusion that they are effects of the proposed development [60].
  - c. In the circumstances of this case, the environmental effects of downstream GHG emissions could reasonably be seen as far removed from the proposed development, and not causally linked to it, because of the series of intervening stages between the extraction of the crude oil and the ultimate generation of those emissions, so that the county council could lawfully



conclude that they did not qualify as one of the likely significant effects of the proposed development on the environment [66].

- d. It makes no difference to the understanding of the EIA regime that the impacts of GHG emissions might not come to be assessed under that regime in the course of a decision-making process for another development in the future, and does not mean that it must therefore be made subject to EIA now [68].

9.9 In respect of the fourth issue, the Court of Appeal held (Moylan LJ dissenting), that the county council did not rely on immaterial considerations in judging how far the EIA should go in assessing GHG emissions [80]. Taking a straightforward approach to the officer's report, the essential lawful basis for the county council's decision not to require an assessment of the impacts of scope 3 emissions was its judgement that such impacts were not, in fact, effects of the proposed development [85]. In doing so, the Court of Appeal held that there was nothing inconsistent, let alone "*Wednesbury*" unreasonable, in a planning authority taking into account a relevant planning need when considering the merits of the application for planning permission before it but not requiring the environmental statement to include an assessment of impacts which it lawfully judges to lie beyond the direct and indirect significant effects of the proposed development. This did not result in an unlawful failure to balance the scales [92]<sup>191</sup>.

#### ***Implications of decision for present case***

- 9.10 There are two main implications for the purposes of the present case, which arise from the Court of Appeal's decision in *Finch*.
- a. The first relates to the approach which should be taken in the ES when considering whether downstream (or "Scope 3") GHG emissions should be assessed as indirect effects of the proposed development.
  - b. The second relates to the alleged inconsistency which the Rule 6 Parties submitted would arise from taking the need for coking coal into account without also taking the environmental impacts caused by the use of coking coal into account.

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<sup>191</sup> The dissenting judgment of Moylan LJ is not relevant, since it does not reflect the ultimate decision of the Court of Appeal. However, it is worth pointing out two very prominent factors in the reasoning of that judgment that can be distinguished from the present case.

First, Moylan LJ placed considerable emphasis on the fact that the EIA Directive was amended in 2014 to ensure that climate change and GHG emissions were taken into account in the decision-making process, which he regarded as "significant" [103] – [108]. However, it is common ground that this proposal is being considered under the previous version of the EIA Directive and Regulations, which pre-dated this amendment. Second, Moylan LJ found it to be particularly significant that one of the specific features of the development under consideration in that which warranted its inclusion within Schedule 1 of the EIA Regulations, and therefore triggered the requirement for an EIA, was the quantum of oil being extracted for "commercial purposes" [125]. Similar wording is not found in the applicable trigger for EIA of underground mining, which simply applies to all development except the construction of certain buildings (see the table at paragraph 2 of Schedule 2 to the EIA Regulations).

### ***Approach to indirect effects***

- 9.11 After the application was called in, the Planning Inspectorate (and ultimately the Secretary of State) became the competent authority for the purposes of the EIA Regulations.
- 9.12 After reviewing the ES, the Planning Inspectorate issued a regulation 22 request dated 30 June 2021 seeking further environmental information on various matters. The letter referred to the High Court's decision in *Finch*, which held that downstream GHG emissions caused by the end use of a product were incapable of being an indirect effect (for EIA purposes) of the development which extracted that product, and noted that the decision was currently subject to an appeal. The letter went on to state that:
- "The Applicant is advised that should the legal position established in the *Finch* judgement change during the course of the Inquiry, there may be a need to request further information on the environmental effects from the use of the coal originating from the development. This may result in the Inquiry being adjourned for the parties to consider this matter further and to submit any necessary evidence."
- 9.13 Following the decision of the Court of Appeal in *Finch*, the authority considering the application needs to consider whether, as a matter of evaluative judgement on the facts of this case, there is a sufficient causal connection between the proposed development and downstream GHG emissions from any blast furnace using WCM coal to constitute one of the indirect significant effects of the proposed development (*Finch* at [60]).
- 9.14 When this question is considered, it is plain in the present circumstances that downstream GHG emissions arising from the use of WCM coal, as part of a coke mixture going into the blast furnace, should not be regarded as an indirect effect of the proposed development for the following reasons:
- a. As in *Finch* at [65], there are number of distinct and intervening processes from the extraction of coking coal as part of the proposed development and its use in a blast furnace to make steel. First, the coal will be transported to a coke-plant, which may or may not be at the steelworks and blast furnace site. At the coke plant the WCM coal will be blended with up to 20 other coking coals, in different proportions depending on the desired characteristics of the final blend. The blended coal will then be heated in an oven to produce coke. This coke may be blended with other coke, and would then be placed into a blast furnace (which could be at the same site or a different site), along with various proportions of iron ore, limestone and other materials or fuels, such as PCI coal, natural gas or hydrogen, depending on the operation of the particular blast furnace. The blast furnace operation then produces GHG emissions, the quantity of which will depend upon the efficiency of the blast furnace and any mitigation measures installed to reduce GHG emissions.<sup>192</sup>
  - b. The precise nature and use of WCM coal, including the location of the coke ovens to make coke, and blast furnaces in which it may be used and the

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<sup>192</sup> For further detail, see the description at paras. 10 – 15 of CD1.69 and CD1.72.



point of use, is still subject to decisions yet to be made “downstream” (*Finch* at [65]).

- c. Just as in *Finch* at [65], it is also not suggested by the Rule 6 Parties in this case that the GHG emissions from any of the intervening processes, such as the making of the coke, should be taken into account as indirect effects of the proposed development. Nor is it suggested that other likely significant environmental effects from the use of WCM coal, such as noise or air quality, should be taken into account.
- d. The Applicant would have no control over the avoidance and mitigation measures employed by any particular blast furnace when using coke made from its coal, or coke maker when using its coal, which the Court of Appeal held to be a relevant (although not singly determinative) factor (*Finch* at [70]).
- e. Unlike *Finch*, the Applicant does not accept that it is inevitable that a particular quantity of coal from this development will be used in blast furnaces. Furthermore, and more significantly, as explored in evidence before the inquiry, this development will not result in an inevitable increase in GHG emissions from blast furnaces. As above, this will ultimately depend on downstream decisions around the demand for its coal compared to other coals. Moreover, even if the quantum of additional end-use GHG emissions were inevitable, it does not mean that they must be indirect effects of the proposed development (*Finch* at [60]).

9.15 Accordingly, the Applicant’s position is that, although the decision-maker now needs to consider whether there is a sufficient causal connection between the proposed development and additional downstream scope 3 GHG emissions from a blast furnace using coke that includes WCM coal, when this exercise is carried out, it is clear that there is no such connection and therefore these emissions should not be regarded as a likely significant indirect effect of the proposed development

***Alleged inconsistency in the approach to benefits and harms of the need/use for coking coal***

9.16 In their closing submissions, both Rule 6 Parties asserted that it was inconsistent for the Applicant to rely on the need for coking coal, and the benefits of the proposed development which are associated with this need, while also maintaining that “scope 3” GHG emissions from the use of its coal were not indirect effects or material to the decision.<sup>193</sup>

9.17 Similar arguments were also raised by the (partially) same legal teams in *Finch* at [90] – [92]. These arguments were rightly rejected by the Court of Appeal, which held that:

“In principle, there is nothing inconsistent, let alone “Wednesbury” unreasonable, in a planning authority taking into account a relevant planning need when considering the merits of the application for planning permission before it but not requiring the environmental statement to

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<sup>193</sup> See para. 73 of the FoE’s closing submissions and para. 62 of SLACC’s closing submissions.

include an assessment of impacts which it lawfully judges to lie beyond the "direct and indirect significant effects of the proposed development". Contrary to Ms Dehon's submission, there was no unlawful failure here to "balance the scales".

- 9.18 Furthermore, the Applicant has not maintained that downstream GHG emissions are not capable, as a matter of law, from being a material planning consideration. As is set out at paragraphs 97 – 102 of the applicant's Closing Submissions, the Applicant's case is that they are not fairly and reasonably related to the proposed development on the facts of this case, for the same reasons that they should not be regarded as indirect effects of the proposed development for EIA purposes. In the further alternative, the Applicant's position is that they should not be given any weight for the same reasons.
- 9.19 The decision in *Finch* supports the Applicant's approach, noting that there is nothing inconsistent between giving weight to the benefits arising from a general national need whilst not having regard to a detailed assessment of downstream GHG emissions that would arise from the satisfaction of that need (*Finch* at [92]). That is plainly correct, since each matter needs to be considered separately, and it is too simplistic simply to assert that one cannot have regard to the benefits of the need for a mineral without having regard to the very specific environmental effects arising from the use of that mineral.
- 9.20 Furthermore, the position is even stronger in the present case because the Applicant's case is that it is fulfilling a need for a closer source of coking coal to Europe, which (on the particular facts of this case, as set out in the Applicant's closing submissions) means that the benefits from fulfilling that need can exist without an increase in adverse environmental effects, such as downstream GHG emissions. In this respect, it should also be noted that the position can clearly be distinguished from the approach that was taken in the cases involving *HJ Banks*, which were referred to by both Rule 6 Parties,<sup>194</sup> and which were in any event dealing with the use of thermal coal which does not need to be blended and then made into coke before being used.

### **Conclusion**

- 9.21 For the reasons stated above the position remains as presented by the Applicant at the inquiry and in its closing submission, that based upon the latest *Finch* decision by the Court of Appeal, the approach adopted for the consideration of "Scope 3" downstream GHG emissions, arising from the use of WCM coal, should not be regarded as an indirect effect of the proposed development for the purposes of EIA and whilst in principle capable of being material considerations the emissions in this case are not material to the decision to grant consent or in the alternative should only be given little or no weight

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<sup>194</sup> See para. 70 of FoE's closing submissions and para. 51 of SLACC's closing submissions.

## 10. THE CASE FOR FRIENDS OF THE EARTH

This section is based largely on the closing submissions for Friends of the Earth.<sup>195</sup>

### ***Introduction***

- 10.1 The overarching framework for the determination of this application is provided by Policy DC13 of the Cumbria Waste and Minerals Plan<sup>196</sup> and para 217 of the National Planning Policy Framework (the Framework).<sup>197</sup> Although there is a slight difference in the wording, it is common ground<sup>198</sup> that Policy DC13 and paragraph 217 are essentially the same. The test set out in both is unambiguous. The starting point is that planning permission should not be granted for coal extraction, unless the application can satisfy one of two exceptions, namely:
- a) that “the proposal is environmentally acceptable, or can be made so by planning conditions or obligations”; or
  - b) if the proposal is not environmentally acceptable, that it “provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).”<sup>199</sup>
- 10.2 Against that backdrop, FoE’s case is simple:
- a) The proposal is not “environmentally acceptable”, firstly because it will result in additional greenhouse gas (“GHG”) emissions and is therefore contrary to national policy on the need to limit climate change; and secondly because of the adverse impact it would have on the landscape;
  - b) Neither of those objections can be overcome by conditions or obligations;
  - c) The national, local or community benefits which the scheme might provide do not come close to outweighing the likely impacts;
  - d) Permission should therefore be refused.

### ***Climate Change: The Policy Framework***

- 10.3 It is a matter of agreement between the UK that it is a matter of agreement between the UK Government,<sup>200</sup> its scientific advisors,<sup>201</sup> the United

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<sup>195</sup> ID73

<sup>196</sup> CD5.9

<sup>197</sup> CD5.7

<sup>198</sup> Particularly in climate terms: Proof of Evidence of Samuel Thistlethwaite [WCM/ST/1], para 6.20

<sup>199</sup> NPPF para 217 [CD5.7]

<sup>200</sup> See e.g. Press Release: UK enshrines new target in law to slash emissions by 78% by 2035 (CD 8.21): “We must collectively keep 1.5 degrees of warming in reach and the next decade is the most critical period for us to change the perilous course we are currently on.”

<sup>201</sup> See e.g. the CCC’s report, Net Zero: The UK’s contribution to stopping global warming [CD 8.8], Executive Summary: “Now is a crucial time in the global effort to tackle climate change”. See also Chapter 2, p 578: “Human activity has already led to 1°C of global

Nations<sup>202</sup> and all the main parties at this inquiry that the climate crisis is a real and pressing concern, that it is caused by human GHG emissions, and that the crisis is unfolding as we speak. Only drastic action on our part can prevent environmental disaster.

10.4 Although many of the details of the UK's particular response to the environmental crisis are still evolving, the basic legal and policy framework is clear:

- a) Internationally, the United Kingdom has signed and ratified the Paris Agreement, thereby committing itself to holding the increase in the global average temperature to "well below 2°C" above pre-industrial levels and "pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels".<sup>203</sup>
- b) The UK's latest "nationally determined contribution" ("NDC") under the Paris Agreement, communicated to the United Nations Framework Convention on Climate Change on 12 December 2020, commits the UK to reducing economy-wide GHG emissions by at least 68% by 2030, as compared to 1990 levels. These commitments align with the published pathways from the Intergovernmental Panel on Climate Change (IPCC) for a 1.5°C goal. The communication describes delivery measures, including a range of policies that will be developed in the future, including the Prime Minister's Ten Point Plan for a Green Industrial revolution and the 6<sup>th</sup> Carbon Budget, and refers to the Climate Change Act 2008.
- c) Through the Climate Change Act, the UK has committed to achieving net zero GHG emissions by 2050, which will require a 78% reduction by 2035.<sup>204</sup>
- d) The decisions of the UK Government are, and will continue to be, informed by the Climate Change Committee ("CCC"), which has advised that:
  - i. "The UK should set and vigorously pursue an ambitious target to reduce greenhouse gas emissions";<sup>205</sup>
  - ii. "deeper decarbonisation of industries like steel and cement will be needed"; and
  - iii. The UK Government should "set targets for ore-based steelmaking ... to reach near-zero emissions by 2035. This is crucial to build

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warming from pre-industrial levels which has resulted in damaging impacts on lives, infrastructure and ecosystems that are apparent today."

<sup>202</sup> See e.g. IPCC's Sixth Assessment Report – Summary for Policymakers (CD 8.42), SPM-5: "It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred."

<sup>203</sup> Paris Agreement, Article 2(1)(a) [CD 8.1] page5

<sup>204</sup> The Carbon Budget Order 2021, Article 2 [CD 5.6] page248.

<sup>205</sup> CCC, The Sixth Carbon Budget: The UK's Path to Net Zero [CD 8.10], page 270

momentum following the step-change in ambition necessitated by Net Zero".<sup>206</sup>

- e) According to the BEIS Industrial Decarbonisation Strategy, decarbonising the UK's two blast furnace sites at Port Talbot and Scunthorpe "will be essential to the decarbonisation story of UK industry". In all of the BEIS modelled pathways, the iron and steel sector "is largely decarbonised by 2035".<sup>207</sup>
- f) The Framework advises that "radical reductions in greenhouse gas emissions" are required to support the transition to a low carbon future.<sup>208</sup>
- g) Planning Practice Guidance ("PPG") notes that "Addressing climate change is one of the core land use planning principles which the Framework expects to underpin in both plan-making and decision-taking".<sup>209</sup>
- h) There are important sectoral targets in the CCC's net zero pathways. Though this guidance is not strictly binding:
  - i. As the Balanced Net Zero Pathway ("BNZP") recognises, once started, decarbonising steel in the UK will be faster than decarbonising other sectors, such as food and drink. Alternative technologies such as Hydrogen-DRI are at an advanced stage and a relatively small number of sites (2) need to make the change.<sup>210</sup>
  - ii. Under the BNZP, by 2050 the steel sector has a more than proportional allocation of the residual industrial emissions budget (22% c.f. the 2018 figure of 18%). With steel already being allocated a proportionally higher carbon budget, it is unlikely that this could be further increased.
  - iii. The margins for error are so small that even if steel is allowed yet more leeway, it will make very little difference. The CCC have noted that the UK is simply not on track to meet the 4<sup>th</sup> or 5<sup>th</sup> Carbon Budgets.
  - iv. If the steel sector does not deliver its share, other sectors are left to pick up the tab: and clearly if every sector asks for more, we will fail to meet our targets collectively.
- i) In terms of international policy, on the world stage the UK holds itself out as a leader that is proud of its record on bringing other countries to the table on climate change issues. The CCC has repeatedly emphasised the importance of this role, and the need for the UK to lead by example.

10.5 In summary, the legal and policy framework recognises the overwhelming importance of the climate crisis, the urgency with which we need to act, and the importance of decarbonising our entire economy, including the steel sector,

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<sup>206</sup> 'The Sixth Carbon Budget: Manufacturing and construction', [CD 8.11], pages 1480 & 1495

<sup>207</sup> 'UK Industrial Decarbonisation Strategy', [CD 8.14], page 1632

<sup>208</sup> NPPF, para 152, [CD 5.7]

<sup>209</sup> Paragraph: 001; Reference ID: 6-001-20140306 [ID 62]

<sup>210</sup> UK Industrial Decarbonisation Strategy [CD 8.14] page 1732.

as quickly as possible. It is against this backdrop that we turn to consider the absurdity of a proposal which seeks to prop up and continue the most carbon-intensive method of producing steel there is.

### ***The current demand for coking coal***

- 10.6 The primary justification for the WCM mine is that it would supply steelworks in the UK and Europe. However, these steelworks are currently perfectly adequately supplied with coal from Australia and the United States. WCM's planning witness agreed that there would be no shortage of coking coal in the UK if this application is refused but it would not be sourced from the UK.<sup>211</sup> There is no suggestion that this position would not continue to be the case in the future nor any risk that any UK or European steelworks would have to close if permission is refused.
- 10.7 On the basis of the International Energy Agency's ("IEA") analysis,<sup>212</sup> if we are to adopt the measures necessary in order to keep global warming to 1.5 degrees, there is no need for any new metallurgical mine, anywhere in the world.
- 10.8 Reference was made by WCM about a single European Commission 'question and answer' to an individual politician noting coking coal's status in the EU as a "critical raw material".<sup>213</sup> However, despite coking coal being on the EU's list of critical raw materials, it is at best considered a borderline case by the EU. In particular, in the European Commission's Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the 2017 list of Critical Raw Materials for the EU,<sup>214</sup> the Commission stated in terms that "three raw materials (chromium, coking coal and magnesite) are not deemed critical based on the 2017 assessment" but that:
- "...coking coal, which was on the 2014 list of critical raw materials for the EU, is considered a borderline case. Although it narrowly misses the economic importance threshold, for the sake of caution, coking coal is kept on the list of critical raw materials for the EU and thus included in the table. However, it will be phased out from the next list should it fail to meet the criteria in full."<sup>215</sup>
- 10.9 Thus, to the extent that the EU's view on the importance of coking coal is relevant to the UK position (which it may not be, now that we have left the EU and are therefore no longer a "domestic source" for that market), even that must be taken with caution.

### ***The Wood Mackenzie 'Base Case'***

- 10.10 WCM's response on the issue of demand centres on Mr Truman's "Base Case", which forecasts an ongoing demand in Europe of 55Mt of metallurgical coal per annum up to 2050, on the basis of which Wood Mackenzie estimate that the global seaborne demand for metallurgical coal can only be met by existing

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<sup>211</sup> Mr Thistlethwaite XX by SLACC

<sup>212</sup> IEA, 'Net Zero by 2050: A Roadmap for the Global Energy Sector' [CD 8.16], page 1883

<sup>213</sup> [WCM/MAK/4], Appendix 4, pp 135-136

<sup>214</sup> CD9.14

<sup>215</sup> CD9.14, page 905



mines until 2027.<sup>216</sup> The Base Case is described as a “forecast”, whereas all the other figures before the Inquiry (including Mr Truman’s own AET2.0 and AET1.5) are described as “scenarios”.

- 10.11 In the present case, the insuperable difficulty with the Base Case is that it is not consistent with the objective of keeping global warming to well below 2 degrees, and even less consistent with keeping it to 1.5 degrees.<sup>217</sup> As such, it is an outcome which the UK and European Governments should strive to avoid. Despite this, the Base Case makes no assumption about any intervention in the market by Governments in order to ensure that they meet their obligations under the Paris Agreement.
- 10.12 As the IEA has observed, “new technology must be deployed at a blistering pace”.<sup>218</sup> It is self-evident (indeed, the Base Case demonstrates) that, left to its own devices, the free market is not going to carry out that deployment in time, and that if we are to keep global warming to anything like “well below 2 degrees”, significant Government intervention will be required.
- 10.13 The changes we have already seen in the electricity sector have been almost entirely driven by policy,<sup>219</sup> and the Government has now begun to set its sights on other sectors such as steel, including the provision of significant grant schemes.<sup>220</sup> It is wholly unrealistic to “forecast” demand on the assumption that Government intervention will not be forthcoming.
- 10.14 There are three further reasons why the Base Case is unrealistic. The first is that it makes no allowance for any measures which might be adopted to reduce the emissions associated with the production of steel by reducing demand.
- 10.15 The second is that all of the Base Case figures are global: there is no distinction in Wood Mackenzie’s scenarios (and/or forecasts) between different regions of the world. In reality, however, some regions will go harder and faster in investing in low carbon technologies. Wood Mackenzie’s AET1.5 scenario recognises that there will be significant regional differences, with the traditional Blast Furnace-Basic Oxygen Furnace (“BF-BOF”) method remaining dominant in India and China, but with all blast furnaces in the UK and EU27 closing as “Europe moves away from BF-BOF production”.<sup>221</sup> Europe is already leading the world on Hydrogen-DRI investment. The Base Case makes no allowance for this.
- 10.16 The third is that the market will itself drive change which reduces the demand for coal. In particular, the market for steel will become increasingly more discerning about the kind of steel it is buying. We are already seeing signs of this: in April this year, Volvo announced that starting in 2021 it will begin to use low-carbon steel from the coal-free “Hydrogen-Direct Reduced Iron”

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<sup>216</sup> Mr Truman’s Rebuttal Proof, para 3.38.

<sup>217</sup> In Mr Truman’s XX

<sup>218</sup> CD9.20 p.1072

<sup>219</sup> CD8.9 p. 816

<sup>220</sup> The rebuttal proofs of Professor Barrett at paras 2.7, 2.8 [FOE/JB3] and Miss Leatherdale at para 2.18 [WCM/CL/3]

<sup>221</sup> Wood Mackenzie Addendum [ID 1], paras 1.14 – 1.15.

production method ("Hydrogen-DRI") in its cars, and will increase its use through the 2020s: to a point where all steel is fossil-free by 2026.<sup>222</sup> Indeed, exactly the same principles are at play in WCM's own proposals to mitigate the direct impacts of the construction of the mine by ensuring that 50% of the steel used to construct the mine is recycled.

10.17 Having regard to all these matters, it would be perverse to accept the Wood Mackenzie Base Case as an accurate picture of need. If so, then this would effectively be accepting that the UK has no prospect of keeping global warming within the limits of the Paris Agreement, and agreeing that the Government has no intention of taking the steps needed to ensure that the UK meets its international or domestic obligations. Such position is not a tenable basis for any decision for any signatory to the Paris Agreement.

10.18 The only forecasts or scenarios to which any weight should be attached are those which are consistent with limiting global warming to well below 2 degrees or, in the case of demand in the UK and Europe, to 1.5 degrees. This is where WCM's need case falls apart. Although Wood Mackenzie estimate that, on their Base Case, existing mines will run out of metallurgical coal by 2027, they produce no comparable analysis for either AET2 or AET1.5. In the circumstances, the only evidence before the Inquiry is that of the IEA, which has concluded that:<sup>223</sup>

"No new coal mines or extensions of existing coal mines are needed in the NZE (Net Zero Emissions by 2050 Scenario) as coal demand declines precipitously. Demand for coking coal falls at a slightly slower rate than for steam coal, but existing sources of production are sufficient to cover demand through to 2050."

***WCM underestimates the likelihood of demand reduction and alternative steel production methods***

10.19 WCM's justification for opening a new metallurgical mine in Cumbria depends upon the combination of what it argues will be the scope for steel production via the BF-BOF method, associated with carbon capture, utilisation and storage ("CCUS/ CCS"); together with the advantages of providing a source for the coal which is closer to those steelworks.

10.20 However, even if there is any prospect of significant steel production in Europe using CCUS, it is clear from all of the scenarios that this will need to be accompanied by a raft of other measures, such as reduction, recycling and the use of Electric Arc Furnaces ("EAF"), and the introduction of plants using Hydrogen-DRI. Wood Mackenzie themselves estimate that, in order to keep global warming to 1.5 degrees, global steel production using BF-BOF will need to reduce from the 63% in their base case to just 22%.<sup>224</sup> WCM argue that this will not happen, because the alternatives to CCUS are too fraught with difficulty.

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<sup>222</sup> Professor Ekins' Proof of Evidence, Appendix 11

<sup>223</sup> CD8.16 p. 1883

<sup>224</sup> ID1 p. 12



- 10.21 There are similarities with the Highthorn Inquiry<sup>225</sup> in respect of proponents of fossil-fuel extraction pouring doubt on the delivery prospects of alternative technologies. As the Inspector's Report on the Highthorn application reveals, almost identical arguments were advanced by the witnesses for HJ Banks Ltd (the applicant in that case), who suggested that the UK would still be dependent upon coal-fired power stations for electricity long after 2025. However, even by the time of that Inquiry the demand for thermal coal had plummeted to levels which Banks' witnesses had suggested would not be reached until the mid-2020s. By the time of the Secretary of State's decision, Banks itself acknowledged that only 10% of the output from Highthorn would still be needed in power stations.<sup>226</sup>
- 10.22 The Government has now brought forward the date for closing the last coal-fired power station to 2024. The CCC has expressly advised<sup>227</sup>that:
- "The lessons from UK power sector decarbonisation must now be applied to other sectors."
- 10.23 This above suggests that when it comes to replacing fossil fuels, change will happen far more quickly than anyone expects. FoE's submission is that there is no reason why alternative means of reducing the demand for metallurgical coal should not happen for the following reasons:
- (i) Demand reduction*
- 10.24 Reducing the UK's demand for steel through a range of measures, including greater material efficiency and increasing product lifespans, is the easiest short-term solution for the steel industry to meet its emission targets. This requires no direct technological investment, and it is explicitly predicted and recommended by the CCC as part of the UK's strategy
- 10.25 The CCC also endorses material efficiency in the context of its Balanced Pathway in 'the Sixth Carbon Budget – The UK's Path to Net Zero'.<sup>228</sup> This suggests that improvements in resource and energy efficiency and material substitution in the Balanced Pathway reduce emissions by 12 MtCO<sub>2</sub>e per year by 2035 with resource efficiency abatement gradually increasing from 2020 to 2035. In addition, improvements that reduce end-user consumption of new resources cut emissions by 3 MtCO<sub>2</sub>e per year in 2035. This includes measures such as consumers using clothes and electronics products for longer, increased recycling and reuse, and material substitution measures in the pathway such as the partial substitution of clinker in cement and the use of wood in construction.
- 10.26 The Sixth Carbon Budget- Sector Summary - Manufacturing and construction also notes that "resource efficiency measures have the most substantial effect in the cement and lime and iron and steel sectors... Sectors with fewer sites, such as iron and steel, can see faster decarbonisation once started".<sup>229</sup>

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<sup>225</sup> CD6

<sup>226</sup> CD5.1 para 53

<sup>227</sup> CD8.9 p. 817

<sup>228</sup> CD8.10 p. 1121

<sup>229</sup> CD8.11 p. 1472

- 10.27 The IEA's Sustainable Development Scenario (SDS) for steel also expects material efficiency strategies to contribute a 29% reduction in global steel production by 2070.<sup>230</sup> A number of studies suggest reductions in steel demand of between 28% and 75% are required to meet climate change targets, under different low energy and material demand scenarios. It is surprising that the Wood Mackenzie Base Case scenario did not consider demand reduction, when so many other scenarios included it. In particular, there could be a 20-30% reduction in steel use and consumers would not even notice it at that level.
- 10.28 Given that demand reduction is the easiest way to reduce emissions from the steel industry, and that this reduction is included in many reputable scenarios, including the CCC's,<sup>231</sup> it is highly likely that significant demand reduction for steel through material and production efficiencies will occur before 2050. The failure of Wood Mackenzie to make any allowance for this in either their Base Case or in AET2.0 and AET1.5 runs directly contrary to the advice of the CCC and is a major failing in Wood Mackenzie's work.

*(ii) EAF*

- 10.29 Dr Cullen identified that there is the headroom for increasing the production of steel from scrap using EAF. Scrap melting in electric arc furnaces is powered by electricity and uses very small amounts of coal.<sup>232</sup> It can accordingly benefit from low-carbon grids such as the UK's, and the creation of steel via EAF in the UK would lead to a reduction in emissions of more than two-thirds per tonne compared to the global average for primary steel production.<sup>233</sup>
- 10.30 Regarding the 'headroom' for the UK increasing its use of EAF over BF-BOF, the global figures speak for themselves. In particular, the ratio of scrap steel to crude steel in 2016 in the USA was 72% whilst this was 34% in the UK, 54% in EU-28 and just 11% in China.<sup>234</sup> For the UK, this is a staggeringly low figure particularly as the UK economy is saturated with steel, and exports 80% of scrap overseas.
- 10.31 Several possible explanations for this discrepancy were put forward such as the USA having a different regulatory regime and may be better at stripping cars and other steel-heavy goods of impurities such as copper, and that the UK may for historic reasons have a stronger policy preference for "primary" steel. However, there is no suggestion that any of these differences are so fundamental that they could not be overcome. Indeed, given the significant headroom available, it is implausible that the UK Government will not try to increase steel production via the EAF route before 2050.

*(iii) Hydrogen-DRI*

- 10.32 Another important and growing steelmaking technology is Hydrogen-DRI, which does not involve the use of coking coal. The Hydrogen-DRI process

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<sup>230</sup> Dr Cullen's Proof of Evidence, para 7.5 (FOE/JC1)

<sup>231</sup> CD 8.10 p.1124

<sup>232</sup> Professor Nilsson's Proof of Evidence, para 3.12 (SLACC/LN/1)

<sup>233</sup> Dr Cullen's Proof of Evidence, para 5.6 (FOE/JC10)

<sup>234</sup> Dr Cullen's Proof of Evidence, Table 2

reduces GHG emissions by over 90% compared to the BF-BOF route.<sup>235</sup> WCM argue that an increase in the uptake of Hydrogen-DRI is unlikely, because of the difficulties associated with producing sufficient quantities of “green” hydrogen i.e. hydrogen produced from fully renewable sources. However, that argument overlooks the fact that, while Europe is ramping up its production of green hydrogen, it is possible to run DRI plants on natural gas, following which they can be converted to hydrogen plants at minimal cost.<sup>236</sup> Although FoE does not support the use of natural gas as a transitional fuel, in the short term this will mean that even DRI is associated with GHG emissions but those emissions would still be lower than those associated with BF-BOF. There is a pathway to a form of steel production which is increasingly green, increasingly affordable and easily upgradable, thus enabling steelworks to invest in DRI today in the knowledge that their investment will not be wasted.

- 10.33 It now appears that “hydrogen is leading the way” over other technologies such as CCUS. Recent developments in hydrogen provide much more confidence when compared with the relative slowing of developments in CCUS. There are a number of Hydrogen DRI projects currently in development.<sup>237</sup> Far from being a pipeline dream, Hydrogen-DRI is fast emerging as the preferred technology in Europe.

***WCM’s reliance on CCUS: the poor track record of CCUS***

- 10.34 Although CCUS features heavily in the CCC’s recommendations, it is far from clear that it will have any significant part to play in reducing steel industry emissions. WCM place emphasis on the statement in the BEIS Industrial Decarbonisation Strategy<sup>238</sup> that “coking coal is currently essential for primary steel manufacturing using the blast oxygen furnace route”. However, as that document makes clear, the BEIS strategy takes a “technology neutral approach”: while it does not rule out the use of coking coal, it also does not rule it in. It therefore does not answer the question whether steel-making with CCUS will actually happen in the UK. It also says nothing about the position in Europe, where WCM suggest the vast majority of their coal would be sold.
- 10.35 The prospects of CCUS being associated with steel production in either the UK or Europe are looking increasingly fragile. In particular, as CCUS is a technology which has been “on the books” and theoretically ready to roll out for almost 20 years, yet there has been almost no successful take up of it. Furthermore, Wood Mackenzie themselves observe that CCUS faces significant difficulties.<sup>239</sup> In particular, it is noted that CCUS is extremely expensive and some pilot projects have fallen through primarily because of the high costs.
- 10.36 Furthermore, CCUS is not currently capable of capturing all emitted gases. Whilst there may be technological improvements in this regard, all the witnesses to this Inquiry agree that CCUS is unlikely ever to be able to capture all the GHG emissions associated with steelworks. In those circumstances,

<sup>235</sup> Professor Nilsson’s Proof of Evidence, para 3.13 (SLACC/LN/1)

<sup>236</sup> CD9.5 and CD9.7

<sup>237</sup> Professor Nilsson’s Rebuttal Proof, Table 1 (SLACC/LN/3)

<sup>238</sup> CD8.14 p.53

<sup>239</sup> Wood Mackenzie Report (Appendix 1 to Mr Truman’s Proof of Evidence) paras 1.54-1.57

steel production using BF-BOF in association with CCUS is invariably going to need to purchase offsets in order to claim that it is “net zero”. The need to purchase offsets will be an ongoing “tax” on steel production using this method. In addition, it is not easy to identify storage locations which are suitably close to UK steelworks and Port Talbot, in particular, has no access to a carbon transport and storage network, resulting in the need to ship carbon dioxide to the Northwest Carbon Cluster.<sup>240</sup>

- 10.37 There is not a single example of CCUS associated with BF-BOF steel production anywhere in the world today, and there is no sign of it being rolled out in the immediate short term. There is therefore very limited scope for it to play a role in achieving carbon budgets in the next ten years.
- 10.38 Many blast furnaces in Europe will need significant reinvestment between now and 2030.<sup>241</sup> Retrofitting CCUS to a steelworks is a very capital intensive process. Operators considering either reinvestment or retrofitting will be concerned to ensure that they are not left with stranded assets by 2035. In that context, the Materials Processing Institute (“MPI”) has observed that “the transition to a DRI/hydrogen solution seems more secure”.<sup>242</sup> The accuracy of that prediction has been confirmed by the very recent decision of Tata Steel to pull out of the Athos CCUS project in the Netherlands in favour of developing a Hydrogen-DRI plant.<sup>243</sup>
- 10.39 There are already some member states in Europe in which CCUS is prohibited.<sup>244</sup> Wood Mackenzie themselves conclude that “CCUS cannot be part of the longer term solution as the industry will have to focus on sustainable and effective emission reduction technologies as opposed to offset measures”.<sup>245</sup> If CCUS is unlikely to happen in the short term, it is not a sustainable long-term solution.
- 10.40 In short, there are at least as many hurdles facing CCUS as there are facing EAF or Hydrogen-DRI. But there is one key difference. CCUS will be an ongoing burden which increasingly makes steel production using BF-BOF unattractive. WCM are seeking to gamble that CCUS will be a major part of the way forward in both the UK and Europe, all the way through to 2049, in circumstances where, if they are wrong, there will be no easy way of stopping production at the WCM site, in which case the coal that is mined there will instead be sold to Asia. At that point, all of WCM’s arguments about the savings on GHG emissions associated with transport, and the comfort of knowing that the coal will be burnt in steelworks which are subject to stringent controls on emissions under the EU’S Emissions Trading Scheme, would be turned on their head.

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<sup>240</sup> Miss Leatherdale’s Proof of Evidence, para 3.27 (WCM/CL/1).

<sup>241</sup> Agora Energiewende/Wuppertal Institute paper CD 9.5, page 251

<sup>242</sup> CD 9.7 p. 486

<sup>243</sup> ID 30 p. 797

<sup>244</sup> CD9.18 p. 1036

<sup>245</sup> ID1 p. 5

### ***The supposed need for coal "to support the transition"***

- 10.41 WCM make repeated reference to the requirement under paragraph 152 of the Framework to support the transition to a low carbon future. In that context, they contend that there will be a need for metallurgical coal during the transition. The principle is not in doubt: no-one is suggesting that either Europe or the UK can switch to coal-free steel-production overnight. However, supplying coal during that period does nothing to support the transition to greener steel as it merely enables existing, carbon-intensive technology to continue operating.
- 10.42 WCM's case relies upon CCUS playing a significant part in steel production in Europe, throughout the entire lifetime of the mine, when the scenarios overwhelmingly indicate that, whatever the position may be globally, Europe will be the first to abandon BF-BOF production altogether, and could do so by as early as 2035. In WCM's opening statement it was suggested that the need for metallurgical coal will continue through the 2020s and 2030s, but this is a proposal which is scheduled to operate until 2049.
- 10.43 In FoE's view, there is no basis for the assumption that the need for metallurgical coal during the transition will last for anywhere near as long as 30 years. Rather, it is highly unlikely that there will still be any significant role for BF-BOF production in Europe beyond 2035. In particular, the CCC's recommendation (reflected in the pathways in the Industrial Decarbonisation Strategy) is that the iron and steel sector in the UK should be decarbonised by 2035. Furthermore, under their 1.5-degree pathway, Wood Mackenzie themselves conclude that metallurgical coal demand in Europe "is minimal from around 2044" and "Blast furnace production would need to be abolished in the EU in the 2040s."<sup>246</sup> Lord Deben's letter to the Secretary of State suggests coking coal might be redundant in the UK as early as 2035.<sup>247</sup>
- 10.44 As existing BF-BOFs reach the end of their life in the run up to 2035 (or 2044), they will simply not be replaced. In the same way that the demand for thermal coal plummeted long before 2025, the demand for metallurgical coal will fall as existing plants close or switch to alternative technologies. These points are critical, because once permission is granted, there will be no way of bringing forward the 2049 end date which does not involve the payment of compensation for the "loss" of extraction rights. Consequently, as Lord Deben's letter to Mr Jenrick observed that "The decision to award planning permission to 2049 will commit the UK to emissions from coking coal, for which there may be no domestic use after 2035".

### ***The supposed advantages of a source which is closer to the UK and Europe***

- 10.45 WCM argue that coal from the mine would have to travel a shorter distance to markets in the UK and Europe than the equivalent from Australia or the USA. On WCM's own case, the mine would produce approximately 2.78Mt of coal per annum and that would need to be blended with coals imported from the US and Australia in any event. Consequently, even if permission is granted, UK

<sup>246</sup> ID1 Appendix p. 3

<sup>247</sup> CD8.13

and European steelworks will continue to be reliant on US and Australian mines for the vast majority of the coal they require. Therefore, any transport savings associated with the proportion sourced from WCM would be small.

- 10.46 More importantly, this entire argument assumes that the market for WCM's coal would in fact be the UK and Europe, when, for the reasons outlined above, there is no certainty that there would be any significant market for metallurgical coal in Europe after 2035. WCM's own evidence indicates that BF-BOF will have been "abolished" in Europe by around 2044.
- 10.47 No enforceable planning condition could be proposed which would then prevent sale to anywhere else in the world since it would only be binding on WCM and not any subsequent purchaser. In those circumstances, Wood Mackenzie indicate that WCM coal would be sold to Asia.<sup>248</sup> At that point, all the assumptions which underpin this application in terms of the alleged benefit of a reduction in GHG emissions caused by the need to transport coal would be turned on their head.

***Conclusion on the future need for metallurgical coal in the UK and Europe***

- 10.48 There is no evidence of any supply issues to the UK, now or in the future. Demand is currently being met, and will continue to be met, by existing global supplies. Rather than needing more metallurgical coal in the near future, the reality is that the UK and Europe will in fact need far less. WCM incorrectly assume that demand for metallurgical coal will not decline over the lifetime of the mine. The Wood Mackenzie Base Case assumes no net decrease in the demand for steel as a result of material and production efficiencies and the move to greener technologies. That assumption underpins WCM's case for the continuing need for coking coal in the UK and Europe.
- 10.49 That assumption is completely unrealistic. Increasing material and production efficiencies are supported and predicted by the CCC. Compared to alternative emissions reduction technologies, there is very limited initial investment required to simply use less steel and design products to last longer. Demand reduction as an emissions reduction strategy will clearly play a huge role in the UK meeting its legally binding carbon targets. In addition, EAF is also set to increase dramatically over the lifetime of the mine. There is substantial headroom in the UK to produce more steel from scrap using electricity, compared to the USA and EU which are way ahead of the UK on this. The suggestion that the US and EU are so fundamentally different to the UK that there is little prospect of increasing steel production through the EAF route is unjustifiable.
- 10.50 Hydrogen-DRI is now the leading alternative steel production technology in Europe. "Green steel" made using Hydrogen-DRI is being produced right now, and major car manufacturers and steel producers are already committing to using it. By contrast, CCUS, the only carbon reduction technology that allows for the same amount of metallurgical coal to be burnt, is lagging behind. WCM has been unable to point to any BF-BOF steel mill in the world which is currently using CCUS. In Europe, major steel manufacturers are walking away

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<sup>248</sup> ID1 para 1.15



from CCUS in favour of Hydrogen-DRI. It is therefore inevitable that the demand for metallurgical coal will decrease over the life of the mine.

***Paragraph 217 Framework: Is the proposal environmentally acceptable? The impact on Climate Change***

- 10.51 In FoE's submission, WCM's proposal is environmentally unacceptable because it will have a fundamental and overwhelmingly negative effect, both on climate change generally, and on the Government's policies in that regard. That effect will occur in a variety of ways as the construction and operation of the mine will result in GHG emissions; the combustion of the coal produced by the mine will add to GHG emissions globally; the production of coal which is cheaper than existing supplies from the USA and Australia will impact adversely on the competitiveness, attractiveness and development of alternative carbon-free technologies, at a time when it is essential that these alternative technologies are encouraged. The decision to grant permission would completely undermine the UK's claim that it is a world leader on climate change.

***Legal submissions on material considerations***

- 10.52 WCM will argue that the matters identified in the above preceding are irrelevant, such that, as a matter of law, the Secretary of State is required to ignore them. Case law is clear that material planning considerations are a very wide category indeed. A consideration is "material" for the purpose of section 70(2)(c) of the Town and Country Planning Act 1990 if it is "relevant".<sup>249</sup> Moreover, the term "material considerations" is treated as it is elsewhere in administrative law: that is to say, relevant "to the exercise of the particular power in its statutory context and for the purposes for which it was granted".<sup>250</sup>
- 10.53 In the planning context, the only consistent legal restriction on materiality is that the consideration must relate to the use of the land. It has long been accepted that the risk of setting a negative precedent is capable in law of being a material consideration in determining whether or not it should be granted.<sup>251</sup> Many planning permissions are refused on the basis that they might set a precedent, despite the fact that this does not obviously relate to the use of the land itself. The Courts have been clear that a decision-maker is entitled to conclude that the risk of setting a negative precedent is sufficient in and of itself to refuse permission, and that such a decision can only be challenged if it was so unreasonable no reasonable decision-maker could have reached that view.
- 10.55 Apart from those cases where a court has considered that planning permission has been bought and sold i.e. an unrelated financial benefit has been offered

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<sup>249</sup> per Lord Keith at p764g-h *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759

<sup>250</sup> Lord Carnwath JSC, R (Health and Safety Executive v Wolverhampton City Council [2012] UKSC 34, [2012] 1 WLR 2264, at [49]

<sup>251</sup> *Collis Radio Limited v Secretary of State for the Environment* (1975) 29 P&CR 390 per Widgery LCJ at p39; see also *R (Cooper) v Ashford Borough Council* [2016] EWHC 1525 (Admin)

by a developer, the Courts have been loath to find that a consideration taken into account by a local planning authority or Inspector is immaterial as a matter of law.

- 10.56 It is obvious that downstream emissions, impact on alternative technologies and the effect on the UK's status as a credible world leader are in principle capable of being material in this case, which has the climate crisis at its heart. In particular, the only commercial use for metallurgical coal is the steel making process. It is therefore self-evident that WCM coal will be used to make steel. The causal connection between granting permission for the extraction of the coal and its end use could not be clearer. If that end use is predictable, then so is the fact that there will be GHG emissions which need to be dealt with.
- 10.57 In respect of downstream emissions, it should also be noted that in a related statutory context, s.45 of the Climate Change Act<sup>252</sup> (which deals with trading schemes) states that "activities are regarded as indirectly causing or contributing to greenhouse gas emissions if they involve... the production or supply of anything whose subsequent use directly causes or contributes to greenhouse gas emissions" and that the Act "applies to activities carried on in the United Kingdom, regardless of where the related emissions, reductions or removals of greenhouse gas occur". This clearly recognises that something may be an "indirect cause" of GHG emissions simply because it produces something (like coal), the subsequent use of which (in making steel) will directly contribute to GHG, even if that subsequent use takes place in a different country.
- 10.58 Similar arguments apply to the impact of the WCM mine on the deployment of alternative technologies which would decarbonise the steel industry. The need to bring those alternatives forward is not in dispute. There is a disagreement between the parties about whether, as a matter of fact, there would be any such impact, but if FoE and SLACC are right, and there is a causal connection between the grant of permission and the likely take-up, for example, of EAF or Hydrogen-DRI, that is plainly a material consideration which is entitled to be taken into account.
- 10.59 The impact on the UK's role as a credible world leader is analogous to the concern that a particular decision might become a precedent. It falls squarely within the line of argument which is clearly capable of being a material consideration, and it would be contrary to longstanding authority to argue otherwise.
- 10.60 The relevance of the UK's role in this regard is reinforced by the fact that the Written Ministerial Statement on call-in<sup>253</sup> includes, among the factors which are likely to result in call in, the extent to which cases: "could have significant effects beyond their immediate locality; give rise to substantial cross-boundary or national controversy" or "may involve the interests of national security or of foreign Governments." Issues of national reputation and global leadership fall squarely within these categories and were plainly part of the reason for call-in in this case.

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<sup>252</sup> CD8.2 p. 59

<sup>253</sup> Hansard, 26 Oct 2012: Column 71WS- 72WS.



- 10.61 FoE understands that WCM's argument will rely on the decision in *R (Finch) v Surrey County Council* [2020] EWHC 3559 (QB).<sup>254</sup> However, that is not what Finch decided. The issue in Finch was whether the Environmental Statement for an application for the extraction of oil was, or should have been required, to address the GHG emissions associated with the "downstream" combustion of refined oil products. The High Court held that it was not. That decision is currently the subject of an appeal to the Court of Appeal, in which FoE has been given permission to intervene. It follows that FoE does not agree with the High Court's decision. However, it recognises that this is a matter which will be addressed by the Court of Appeal and so, for present purposes (and without prejudice) we proceed on the basis that the High Court decision is good law. Accordingly, FoE does not challenge the adequacy of WCM's Environmental Statement on this ground. But that does not mean that FoE agree that downstream emissions, or the effect of granting permission on the deployment of alternative steel-making technologies or the UK's status as a world leader, are all legally immaterial.
- 10.62 In particular, although Finch clearly holds that downstream emissions did not need to be addressed in the Environmental Statement, what Finch did not decide is that they were incapable of being material planning considerations in law. That much is clear from para 121 of the judgment,<sup>255</sup> where Holgate J noted that in *HJ Banks v SSHCLG* [2019] Env L.R. 433 (which concerned the Secretary of State's first decision to refuse permission for the Highborn coal mine), the developer had accepted that GHG emissions from the burning of coal were capable of being a material planning consideration in the determination of the application.
- 10.63 Finch thus itself explicitly recognises the distinction between the materiality of a consideration, and the obligation to address it in an Environmental Statement. Significantly, that distinction was explicitly accepted in the proof of evidence of WCM's planning witness, Mr Thistlethwaite, where it is specifically recognised that downstream emissions are capable of being a material consideration.<sup>256</sup> It was also accepted that if WCM was wrong about perfect substitution, downstream emissions would be relevant considerations.<sup>257</sup> Therefore, on WCM's own case there is an obvious and clear demarcation between the requirements of the Environmental Statement regarding end-user emissions, and the materiality of end-user emissions more broadly.
- 10.64 In FoE's submission, it is also important to note that in *Banks*, the Secretary of State agreed that GHG emissions were a material consideration to which he was entitled to give greater weight than his Inspector. It would be contrary to the Secretary of State's explicit position in *Banks* for him now to deny the materiality of end user emissions.
- 10.65 Finally, if and so far as WCM does still argue that downstream emissions are legally irrelevant, the Secretary of State will note that this is completely inconsistent with those other parts of WCM's case where it draws attention to the need for steel to produce wind turbines and electric cars. Those are

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<sup>254</sup> CD7.1

<sup>255</sup> CD7.1 p. 20

<sup>256</sup> Proof of Evidence of Mr Thistlethwaite (WCM/SM/1), para 5.140

<sup>257</sup> In XX by FoE.

matters which do not even take place at the steelworks where WCM coal would be used and are further downstream. Indeed, if what happens downstream is legally irrelevant, it is difficult to see how the Secretary of State could even take into account the fact that the intended market for WCM coal is the steel production industry. If that is so, then the whole rationale for this application evaporates.

***Emissions Associated with the Construction and Operation of the Mine***

- 10.66 In addition to the significant downstream emissions from the mine, there will also be significant emissions associated with construction and operation of the mine itself. As Lord Deben noted in his letter to the Secretary of State: "The opening of a new deep coking coal mine in Cumbria will... have an appreciable impact on the UK's legally binding carbon budgets. The mine is projected to increase UK emissions by 0.4Mt CO<sub>2</sub>e per year.<sup>258</sup> This is greater than the level of annual emissions we have projected from all open UK coal mines to 2050."<sup>259</sup>
- 10.67 While this letter was based on the estimate of emissions set out in the original AECOM report, which has now been revised in the Ecolyse 2 Report, even Ecolyse 2 identifies "residual emissions" that would need to be offset by the purchase of carbon credits.<sup>260</sup>
- 10.68 FoE adopts, but does not recite, the submissions of SLACC on the extent to which the Ecolyse Report(s) accurately deal(s) with actual quantum of emissions. Plainly there are a number of deficiencies which have been highlighted by SLACC. Even if SLACC's criticisms were to be rejected, the mine could not even claim to be "net zero" without the use of offsetting.
- 10.69 It is common ground that offsetting should only be applied as a last resort, after avoidance and reduction in accordance with the mitigation hierarchy.<sup>261</sup> WCM argue that they have applied that and are only seeking to offset the residual emissions which cannot be avoided or reduced. However, this argument overlooks the fact that there is no need for a new mine. In those circumstances, all of the emissions could be avoided simply by not opening a new mine.
- 10.70 In this regard, the Gold Standard<sup>262</sup> points out, offsets cannot be used to turn a source of emissions that is incompatible with global efforts to achieve net zero into one that is compatible. The Gold Standard have made clear that purchasing carbon credits to justify a new mine for fossil fuels is a fundamentally inappropriate use of offsetting. Given that the Gold Standard is the very scheme that WCM is proposing to purchase carbon credits from, their views on this are particularly pertinent. Their position is very clear that a new coal mine must be avoided in the context of the climate emergency. They

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<sup>258</sup> The figure of 0.4Mt was taken from WCM's May AECOM Report. That has since been superseded by the Report from Ecolyse (Ecolyse 2) (CD 16.6), which estimates that the total cumulative lifetime emissions in its mitigated scenario will be approximately 1.8Mt CO<sub>2</sub>e (up from 1.49 Mt in Ecolyse 1(WCM/CL/2, Appendix 1)).

<sup>259</sup> CD8.13

<sup>260</sup> CD16.6 para 5.7

<sup>261</sup> Proof of Evidence of Miss Leatherdale (WCM/CL/1), para 5.9

<sup>262</sup> ID7 Appendix 7 to Mr Broekhoff's Rebuttal Proof (FOE/DB/3), p. 271.

consider that WCM's failure to consider the emissions arising from this mine renders any claim to carbon neutrality not credible.

- 10.71 While WCM is perfectly correct in its assertion that the CCC specifically endorses the use of offsets, that argument overlooks the fact that the CCC also gives clear advice on the sectors with which that use is appropriate. Critically, while specifically recognising that offsetting may be necessary in truly hard to abate sectors such as agriculture and aviation, the BNZP makes no reference to offsetting in the context of manufacturing, construction and fuel supply. Therefore, the BNZP provides no support for the use of offsetting to mitigate the impacts of fossil fuel extraction.
- 10.72 Even if offsetting were to be considered acceptable, it is important to recognise its inherent limitations. It is clear that there are serious and unresolved obstacles to carbon offsetting achieving full compensatory value. This makes WCM's claim that its mine can be Net Zero untenable. Using carbon credits to offset greenhouse gas emissions is an imperfect and unreliable solution. It is not viable over the long-term as a GHG mitigation strategy.
- 10.73 There are various issues which have plagued offsetting schemes since they first emerged and this includes the Gold Standard scheme. Two fundamental themes in this regard are additionality and permanence. In considering 'Additionality', for offsetting to work creditably, mitigation must be additional to that which would otherwise have occurred. Carbon credits are meaningless if the mitigation efforts would have happened regardless. It requires comparison to a future counterfactual scenario where demand for carbon credits is not present. The issue of permanence is another significant challenge. Carbon emissions are very long-lived, which means that carbon credits to offset them must be as well. Offsetting schemes such as afforestation and other nature-based solutions pose significant risks in this regard. They cannot reliably neutralise or cancel out fossil carbon emissions in the long-term and at large scales, given that in essence what is happening is that carbon is being shifted from highly stable geologic reservoirs, such as coal seams, to far more precarious terrestrial ones, such as forests. The risks to the longevity of carbon offsets of this kind are only heightened in the context of the climate emergency as the offset projects are at risk of being destroyed by catastrophic wildfires.
- 10.74 The viability of carbon offsetting is not restricted to nature-based schemes and the direct air capture project in Iceland (called Orca) has been referred to by WCM to argue that technological advancements in CCUS are being made. However, carbon removals of this kind remain largely unproven at scale. This is clear from the fact that the Orca project in Iceland is only capable of capturing 4,000t of CO<sub>2</sub> per year.<sup>263</sup> For context, according to WCM's own calculations (in reference to enabling and construction, operational and decommissioning emissions only), the mine will have residual emissions of nearly 2 million tonnes of CO<sub>2</sub>e over its lifetime.
- 10.75 WCM acknowledges that there are inherent issues to offsetting. Its reliance on offsetting to justify its mine as carbon neutral is dependent on these all being

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<sup>263</sup> ID58

resolved in the very near future. It is the opposite to a precautionary perspective to addressing significant environmental harm.

- 10.76 In conclusion, given these inherent limitations, this mine cannot claim to be “net zero” through offsetting its residual emissions. Offsetting is not a silver bullet to somehow negate the climate impacts of this mine.

### ***Downstream Emissions***

- 10.77 If the operational emissions of the mine would be unacceptable in their own right, they are dwarfed by the “downstream” emissions which would flow from the combustion of the WCM coal in steelworks. Based on BEIS’ standard conversion factors, the combustion of WCM coal would release circa 194MtCO<sub>2e</sub>.<sup>264</sup>
- 10.78 WCM contends that these emissions will not be additional, because the coal will simply operate as a substitute for American or Australian coal, which will remain in the ground. Also, WCM argue that these figures do not make any allowance for mitigation, for example through CCUS, or for the fact that the emissions from steelworks in the UK and Europe are subject to regulation.

### ***The Relevance of Downstream Emissions as a Matter of Fact: the Substitution Argument***

- 10.79 The starting point is that, whereas coal which is left in the ground will not be combusted and therefore will not contribute to GHG, the sole purpose of extracting the coal is so that it can be used for combustion in the steel manufacturing industry, at which point it will contribute to GHG emissions.
- 10.80 Viewed in isolation, therefore, it is impossible to see how the granting of permission to extract WCM coal could have any effect other than to add to GHG emissions. The argument that the grant of permission will not lead to additional GHG emissions is dependent entirely upon WCM’s argument that the market for metallurgical coal is saturated, with the result that coal extracted by WCM will not add to the sum total of coal burnt, but will simply operate as a substitute for other coal. However, that argument runs contrary to all conventional economic theory.
- 10.81 The amount of coal required by steelworks is itself a function of the demand for steel. If the price of metallurgical coal falls, the cost of producing steel in a BF-BOF will also fall, reducing the cost of BF-BOF steel, and if the price of BF-BOF steels goes down, then demand for it will rise.
- 10.82 At the point at which this application was called in, WCM’s argued that displaced US coal would be left in the ground because that there was no established alternative market in Asia, and that the cost of transporting coal there from America would be prohibitive.<sup>265</sup> However, the data from the US Energy Information Administration shows that, in 2020, 30% of all US

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<sup>264</sup> Para 3.4.7 of Professor Barrett’s Proof of Evidence gives figures of 27.4MtCO<sub>2e</sub> associated with domestic use and 183.8 MtCO<sub>2e</sub> associated with international supply. In his evidence in chief, he noted that these figures should be corrected to a total of c. 194MtCO<sub>2e</sub> to reflect the gradual build-up of sales.

<sup>265</sup> CD9.13 Attachment 2

metallurgical coal was sold to Asia, and this proportion has since expanded: for the first quarter of 2021, the figure was 40%.<sup>266</sup>

- 10.83 China is now the largest destination for U.S. metallurgical coal exports. Clearly, this is an established market where distance from the source is not an issue. Further, as a result of the ban on Australian imports, China's demand for metallurgical coal far exceeds global supply.
- 10.84 There is no evidence for the suggestion that the current diplomatic row between China and Australia will be short-lived. The major Australian producer of coal (BHP) is planning on the basis that the ban will be in place for many years to come.<sup>267</sup> The contention that Asia will not be interested in high-vol coking coal is undermined by the Wood Mackenzie Addendum specifically predicts that the Asian market for US coal will expand.
- 10.85 There is an inherent contradiction in WCM's own case that if it is granted permission, the US or Australian coal which it displaces in Europe will not find another market, but will simply stay in the ground,<sup>268</sup> but if the intended UK and European market for WCM coal dries up, WCM coal will not remain in the ground but will instead be sold in Asia. WCM cannot have this both ways: if it can export coal to Asia from the UK when the European market dries up, there is no reason why the US cannot do the same for the part of its sales to Europe which WCM would displace.
- 10.86 Even if some degree of substitution is possible, that is not enough to make this coal mine carbon-neutral. In order to conclude that granting permission for the WCM mine would not result in an increase in downstream emissions, the Secretary of State would need to be satisfied that virtually all of the American or Australian coal which is displaced would remain in the ground i.e. that there will be perfect substitution. The GHG emissions associated with the combustion of coal are so much greater than those associated with extraction and transportation that if as little as 1.1% of WCM coal is not substituted, there will be a net increase in GHG emissions.<sup>269</sup>

#### *The Quantum of Downstream Emissions*

- 10.87 If the American or Australian coal which is displaced by WCM coal does not remain in the ground, and is instead shipped to Asia, the increase in GHG emissions will not be a function of whether CCUS has been fitted to the European steelworks where the WCM coal is burnt, but of whether it has been fitted to the steelworks in Asia. There is no certainty that WCM coal will actually be sold to Europe, where CCUS is likely to be a requirement for steel production using BF-BOF. WCM's own evidence suggests that as much as 25% could be sold to Turkey<sup>270</sup> and, if there is no market in Europe, that WCM coal would find its way to Asia.<sup>271</sup>

<sup>266</sup> Mr Nicholas' Proof of Evidence, para 3.10 and Appendix 6.

<sup>267</sup> Mr Nicholas' Proof of Evidence, Appendix 8 p. 9 (FOE/SN1).

<sup>268</sup> CD15.1 para 55

<sup>269</sup> Proof of Evidence of Professor Grubb (SLACC-MG-1), para 7.4

<sup>270</sup> Wood Mackenzie Report (Appendix 1 to Mr Truman's Proof of Evidence), p. 27, Figure 2.5

<sup>271</sup> ID1 para 1.15

10.88 Even if CCUS is fitted, it will not be able to recover all the GHG emissions. The Inquiry has heard various estimates of what might be possible, ranging from 70 to 90%,<sup>272</sup> but no witness has suggested that it will ever be possible to capture 100% of the emissions from BF-BOF steelworks. Even if they are reduced, not all the GHG emissions associated with the combustion of WCM coal can or will be collected. There will still be a significant net increase in GHG and no condition is being offered by WCM to offset any such downstream emissions with carbon credits.

***The Impact on the Deployment of Alternative Carbon-Free Technologies***

10.89 Where the potential for CCUS is limited, technologies which are carbon-free will clearly play a pivotal role in addressing the climate crisis. The IEA has advised that these now need to be deployed “at a blistering pace”. In the case of steel production, those technologies already exist, and are known to work, and the challenge is to deploy them at scale. Given the urgency of the situation, that is something which needs to start now.

10.90 One of the key obstacles to bringing forward alternatives such as Hydrogen-DRI is the comparative cost. WCM’s own evidence recognises that the lower cost competitiveness of BF-BOF will affect take-up of alternative technologies in India and China,<sup>273</sup> and if that is true in India and China, there is no reason why it should be any different in Europe. While production using BF-BOF remains cheaper, it will inevitably be more difficult to attract investment in Hydrogen-DRI.

10.91 Consequently, anything which assists in making BF-BOF (and the steel which is produced through that method) cheaper than the alternatives acts as a disincentive to use alternative technologies. In the years ahead, it is entirely likely that the Government will need to subsidise technologies such as Hydrogen-DRI in order to “kick start” them. The subsidy will be a function of the difference between the cost of production using Hydrogen-DRI, and the cost of BF-BOF. If the cost of BF-BOF falls, the amount of subsidy needed can only go up. That is patently not in the public interest.

10.92 WCM’s evidence expressly acknowledges that it will be able to produce coal more cheaply than Australian and American imports, and that this will make it more attractive to the market. Accordingly, a fundamental problem with this proposal is that it will undercut the very steps which will be needed in order to bring forward new, greener solutions at scale.

10.93 It is argued that the cost saving to steel mills as a result of using WCM coal will be a small percentage of the cost of switching to Hydrogen-DRI. However, Hydrogen-DRI will obviously become cheaper over the proposed lifetime of the mine, and on WCM’s own figures there is a potential saving to UK steelmakers with a production of 7 Mtpa of over USD20 million per year as a result of using WCM coal.<sup>274</sup> As Professor Ekins puts it “*the notion that this saving will not influence steel makers when they are considering whether to refurbish their*

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<sup>272</sup> ID1 p. 14

<sup>273</sup> Mr Truman’s Proof of Evidence, para 4.4

<sup>274</sup> WCM/JT/1 para 7.7 and WCM/JT/2 para 2.45; Professor Ekins’ evidence in chief.



*plants for continuing use of coking coal or switch to DRI runs against economic logic and common sense". These are important choices that steelmakers are already making.*<sup>275</sup>

***The impact of granting permission on the UK role as a credible world leader and the implications for Climate Change if we fail in that endeavour***

- 10.94 Holding itself out as a world leader is central to the Government's commitment to combat climate change and is an important part of national policy. The CCC has consistently advised that it is crucial for the Government to demonstrate leadership in combatting climate change. The CCC Progress Report to Parliament on reducing UK emissions notes that "The core goal of COP26 is to raise the ambition of countries' targets. As COP President, there will be huge expectations on the UK to do so. It has never been more important for the UK to demonstrate strong climate leadership, both for the world's future and for the UK's standing within it."<sup>276</sup>
- 10.95 The CCC's 6<sup>th</sup> Carbon Budget notes: "Delivering a positive outcome from the COP26 climate talks is key to the world's efforts to tackle climate change and to protecting the UK from the worst impacts of climate change... The UK's choices over the NDC and the Sixth Carbon Budget will affect its credibility as a climate leader, and will set an important context for commitments by other countries".<sup>277</sup>
- 10.96 The UN Environment Programme report 'The Production Gap' (2019) emphasises the problem of not matching words with deeds: "Indeed, though many Governments plan to decrease their emissions, they are signalling the opposite when it comes to fossil fuel production, with plans and projections for expansion. This hinders the collective ability of countries to meet global climate goals, and it further widens not just the production gap, but the emissions gap as well."<sup>278</sup>
- 10.97 It is clear from the CCC's advice that "leading" includes leading by example and that this extends to the decisions the Government makes on major projects such as the WCM proposal. Indeed, it is inherent in WCM's own case that the decision whether or not to grant permission is capable of influencing the way other countries behave. The impacts of granting permission on Britain's global climate leadership is therefore a vitally important material consideration for the determination of this application. Critically, the evidence before the Inquiry points overwhelmingly to the conclusion that those impacts will be severe and negative.
- 10.98 As Lord Deben's letter to the Secretary of State noted: "it is also important to note that this decision gives a negative impression of the UK's climate priorities in the year of COP26."<sup>279</sup> Furthermore, the evidence of John Ashton CBE, as the former Special Representative for Climate Change at the UK

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<sup>275</sup> EG Tat Steel ID30 page 797

<sup>276</sup> CD8.9 page 815

<sup>277</sup> CD8.10 p. 1037

<sup>278</sup> CD8.7 p. 454

<sup>279</sup> CD8.13

Foreign and Commonwealth Office, identifies exactly what it takes to persuade other countries to make the difficult decisions. That evidence was unequivocal. The first question other countries will ask when being told to leave their own coal in the ground will be "what are you doing?". If they see that the UK is consenting new mines, they will simply not understand why they should not do the same. Consequently, if the mine now goes ahead, we will be doing serious damage to our ability through diplomacy to push up ambition anywhere else, not just on coal but on climate generally. We will be acting against our national interest.

- 10.99 In addition, the evidence of Professor Sir Robert Watson CMG FRS, who is a former Chair of the IPCC, is equally clear that opening a new coal mine "would send totally the wrong signal to the rest of the world." As he expressed it in his Proof of Evidence: *"Granting permission for this mine would send a clear signal that the UK does not 'walk the walk' on climate, undermining its international diplomatic efforts to increase climate pledges and encourage countries to reduce reliance on coal, specifically. This would have material consequences in the form of reduced ambition from other countries, and therefore increased GHG emissions globally."*<sup>280</sup>
- 10.100 The views of these two eminent statesmen should be given very significant weight, given the depth of their experience on these matters. A number of other witnesses have supported the views of Mr Ashton and Professor Watson that the distinction which WCM draws between thermal and coking coal is too fine on a diplomatic level. In reality a lot of international discourse recognises coal overall is a problem, and sectors which rely on certain types of coal don't have an exemption".
- 10.101 The headline point in diplomatic terms is that, if permission is granted, the Chair of COP26 will be opening a new coal mine. Clarifications of the kind of coal being extracted will be taken as excuses rather than justifications. The distinction between coking coal and thermal coal is a fine one, and rightly so, as they are essentially the same fossil fuel with similar carbon impacts. There is no distinction in the Framework between extracting thermal coal and coking coal, both of which are covered by the same presumption against extraction.
- 10.102 There is one further aspect of WCM's case which also runs counter to the UK's aspirations to be a world leader. WCM argue that, if permission is not granted for their net zero mine, then other countries will simply open their own mines, which will not operate to the same standards. However, a decision based on what others might do shows a lack of confidence on our own ability to lead.
- 9.103 Accordingly, FoE invite the Secretary of State to find that the grant of planning permission for the WCM mine would fundamentally undermine any credibility the UK may have on the world stage. Instead of being a world leader, we would be seen as the worst hypocrite imaginable. We have already indicated that the GHG emissions from WCM coal are reason enough in themselves to refuse permission. However, the direct result will be new coal mines across the world. The impact on climate change would be devastating.

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<sup>280</sup> Proof of Evidence of Professor Sir Robert Watson (SLACC-RW-1), para 6.1.3



***Conclusions on environmental acceptability in terms of GHG emissions and climate change***

- 10.104 For all of the above reasons, the impact of this application on climate change alone is sufficient to render the proposal environmentally unacceptable, and there are no conditions or obligations which can make it acceptable. Accordingly, it fails the first limb of the test in paragraph 217 of the Framework.

***Paragraph 217 Framework: Is the proposal environmentally acceptable?***

***Landscape and visual impacts***

*(i) The Main Marchon site*

- 10.105 The Marchon site falls within the immediate setting of the Sandstone Coastal Downs Area of Local Character, which is a landscape of relatively high value and includes the St Bees Heritage Coast. The RLF in particular is located in the Pow Beck Valley, which is part of a Landscape of County Importance.<sup>281</sup>
- 10.106 In terms of the main Marchon site, there is a considerable degree of agreement as to the impacts of the proposed development. The existing site does not contribute to local views and makes a very limited contribution to the amenity of the local area. It is not located within any landscape designation.
- 10.107 However, as one extends the frame of reference around the site itself the sensitivity changes relatively quickly. Within the immediate vicinity are areas of landscape that are undisturbed or have been restored, such as land to west and southeast which has been restored into a gently undulating form, moving into the Sandstone Coastal Downs and then the Heritage Coast to the far west. To the immediate south is Sandwith village, a secluded and rural village in close proximity to the main Marchon site. The north of the main site reaches the coastal fringe quite suddenly, engaging a section of the coastal path which may in future form part of the Heritage Coast.
- 10.108 The mitigation proposed does not fully address the negative impacts. In particular, the block colour of the geodomes, in combination with their scale, will undoubtedly be an eyesore. Irrespective of the colour scheme agreed by the Council, a large block of any one colour will be a prominent feature against the landscape in particular conditions. The landscape mounding is an appropriate response in principle, but there are substantial gaps in the mounding, and in any event the mounding will only screen half of the domes, which will be 6-11 stories in height. In combination with the RLF, the main site will have a negative impact on the Coast-to-Coast path.
- 10.109 Overall, there will be some moderate landscape benefits of the main site, but these will be cancelled out by the adverse impact of the scale of the new structures.<sup>282</sup> The overall impact of the main Marchon site in landscape and visual terms is therefore neutral.

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<sup>281</sup> The Pow Beck Valley being a sub-unit of the Coastal Sandstone Landscape Character Type

<sup>282</sup> Mr Radmall Proof of Evidence (FOE/PR1) para 7.8-7.10

*(ii) The RLF*

- 10.110 It is agreed that the Pow Beck Valley has a high to high/medium level of sensitivity.<sup>283</sup> It is relatively unspoilt and surprisingly tranquil, the railway running through it not being an intrusive feature. The RLF would introduce an uncharacteristic industrial feature of substantial scale into the landscape, together with associated sources of impact such as train movements, lighting and noise. These impacts would harm the appearance and tranquillity of the valley, amounting to a significant adverse effect on its character.<sup>284</sup>
- 10.111 The RLF would also intrude into a range of views within and across the valley, giving rise to significant adverse effects on users of the nearest public rights of way ("ProWs"), including a section of the Coast-to-Coast Path, and potentially also on the nearest residential properties.<sup>285</sup> This impact is considered to be major-moderate.<sup>286</sup> This building is an incongruous new 15m high structure sitting astride a railway line in a sensitive area.
- 10.112 The Coast-to-Coast Path is an important local receptor of both the RLF and the main mine site. It is apparent that there is a high level of use of this particular section of the path. This observation is consistent with the famous Wainwright Guides to the Lakeland Fells, which describe the route as beginning from St Bees. These guides are religiously followed by serious walkers, with the result that many will begin the route from the west.

*(iii) Conclusion on landscape and visual impacts*

- 10.113 Overall, this proposal would cause a significant degree of harm to local character. It would also significantly harm the visual amenity of receptors such as local residents and users of ProWs, including the Coast-to-Coast Path. The landscape benefits of some aspects of the proposal would not outweigh the disbenefits of introducing a project of this type and scale into a rural, urban fringe and coastal setting.
- 10.114 The proposal is therefore contrary to the provisions of Framework paragraph 174 (a) and (b), and to the requirement in 174 (c) to "maintain...the character of the undeveloped coast". That conclusion takes into account the mitigation which is proposed. Even with that mitigation, the impacts are "unacceptable".

***Conclusions on the first limb of the paragraph 217 test***

- 10.115 The proposal fails the first limb of the test in paragraph 217. It is not environmentally acceptable and cannot be made so by the imposition of conditions. There are significant emissions associated with the construction and operation of the mine. WCM propose to offset "residual" emissions with Gold Standard "or equivalent" carbon credits, but this is a fundamental misuse of offsetting. There is no need for a new mine, and credits should not be used to offset a wholly new GHG generating activity, particularly one whose purpose is to produce a new fossil fuel. There are fundamental issues with relying on

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<sup>283</sup> ID33 Landscape Statement of Common Ground, para 3.1(f).

<sup>284</sup> Mr Radmall Proof of Evidence (FOE/PR1), para 7.5.

<sup>285</sup> Mr Radmall's Proof of Evidence (FOE/PR1), para 7.5.

<sup>286</sup> Mr Radmall's Proof of Evidence (FOE/PR1) para 4.43 and 7.11

carbon credits. The Gold Standard itself does not support the use of carbon credits to offset the emissions from this proposal.

- 10.116 In considering what is relevant for the purposes of the broad policy test of “environmental acceptability”, both downstream emissions and the effect on the UK’s global reputation are potentially relevant considerations. The downstream emissions can easily be calculated and could be as much as 194MtCO<sub>2</sub>e. WCM’s commitment to offsetting does not extend to these emissions.
- 10.117 The production of cheaper coal will hinder the deployment of urgently needed alternative technologies by increasing the competitive advantage which BF-BOF has over those alternatives. In addition, there would be a substantial negative impact of granting consent on the UK’s global climate leadership. If the example the UK sets is that it is acceptable to open a new coal mine, and other countries follow suit, the impact on GHG emissions would far exceed anything arising from the WCM mine on its own. This proposal would also have significant negative landscape and visual impacts.
- 10.118 Accordingly, permission should only be granted if it can be demonstrated that the proposed development “provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts)”.

***The second limb of paragraph 217: Alleged Local and Economic Benefits***

*1) The supposed benefits of becoming a leader in new technology*

- 10.119 WCM’s argues that the mine would become a world leader in net-zero extraction of coal, and that this is a material benefit to their case. However, there is no point to being a leader in yesterday’s technology. The biggest problem with coal is not the GHG emissions associated with its extraction, it is the far greater emissions associated with its subsequent combustion and use. However cleanly coal is extracted, that problem is never going to go away. The future in which we should be leading the way is not by extending the life of yesterday’s carbon-intensive methods of steel production, but by investing in alternative technologies which are carbon-free.
- 10.120 In that regard, the CCC’s 2019 Report ‘Net Zero – The UK’s contribution to stopping global warming’<sup>287</sup> sets out the kind of industries in which we really should be seeking to become a world leader such as green finance, low-carbon power and vehicles and low-carbon industrial products. Pioneering a lifeline to extractors of fossil fuels is not the way forward. Rather, we should be leaving fossil fuels in the ground, and pioneering the technologies which do not need them at all.

*2) Employment Benefits*

- 10.121 Employment benefits should be taken into account, but they are overstated by WCM. As Hayden Thorpe, a local Cumbrian resident, pointed out in his speech to the inquiry, WCM’s argument that they will create new, much needed jobs

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<sup>287</sup> CD8.8 p. 760

merely commits Cumbria to repeat history. He noted that in 1986, the closure of the Cumbrian Haig Colliery was catastrophic for local employment, not least because there was no alternative, more sustainable industry on hand to employ the redundant miners. As Mr Thorpe noted, this proposal will be no different. By 2049 when the mine would close, coal-mining skills will be redundant.

- 10.122 Various speakers have commented on the desirability of continuing steel production in the UK. That is not in doubt. However, the evidence is overwhelmingly clear that the kind of steel production for which there will be a demand, the kind in which the UK could be a world leader, the kind that is guaranteed to provide jobs not just for the next 10 years but for years beyond is not BF-BOF, but the recycling of scrap and the use of Hydrogen-DRI.

*3) Wider economic benefits*

- 10.123 FoE does not argue that this proposal would not have wider economic benefits. However, any economic benefits of the scheme have to be set against the costs of the consequences of climate change, to which this mine would directly contribute. The scale of this is reflected in the evidence of Ali Ross, who listed three major flood events in Cumbria alone, causing damage estimated at £200m, £278m and £500m.<sup>288</sup>

*4) Overall conclusion on paragraph 217: the balancing exercise*

- 10.124 Paragraph 217 of the Framework requires the decision-maker to undertake a balancing exercise, weighing the environmental impacts against national, local or community benefits. Permission can only be granted for the extraction of coal if those benefits “clearly outweigh” the environmental harm.
- 10.125 In that balance, the benefits of the WCM proposal come nowhere near outweighing the devastating impact it will have on climate change. This proposal would not only add its own construction and operational emissions to the atmosphere but it would also increase the global supply of coal, lock-in carbon-intensive steel production methods for a generation, and send a message to the rest of the world that coal should be considered favourably.
- 10.126 These negative environmental impacts are overwhelming. The potential impacts of climate change considerably outweigh the benefits of the scheme. If it is concluded that the scheme would have an adverse impact on climate change, then that would be a matter of the utmost importance. Accordingly, this proposal fails the test in paragraph.

***The matters listed by the Secretary of State in his Call-In Letter***

*1) The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change, flooding and coastal change in the NPPF (NPPF Chapter 14)*

- 10.127 This application is not consistent with government policies for meeting the challenge of climate change. Paragraph 8 of the Framework provides that sustainable development has an environmental objective, namely “minimising

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<sup>288</sup> ID95

waste and pollution” and “mitigating and adapting to climate change, including moving to a low carbon economy.” Extracting a significant amount of a dirty fossil fuel from the ground is clearly inconsistent with this objective.

- 10.128 Paragraph 152 states that “The planning system should support the transition to a low carbon future” and should “shape places in ways that contribute to radical reductions in greenhouse gas emissions.” Again, the conflict between a new coal mine and these objectives is glaring and significant. The application will do nothing to support the transition to a low carbon future. Instead, it will actively stifle it by perpetuating and reducing the costs associated with a carbon-intensive method of producing steel for a period of time long beyond that by which, on WCM’s own evidence, BF-BOF production will need to have ceased.
- 10.129 Paragraph 154 states that: “New development should be planned for in ways that a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and b) can help to reduce greenhouse gas emissions...” Contrary to paragraph 154, the mine will not “help reduce greenhouse gas emissions”. Instead, it will introduce an entirely new source of greenhouse gas emissions which will have to be offset.
- 10.130 Planning Practice Guidance (PPG) notes that “Addressing climate change is one of the core land use planning principles which the National Planning Policy Framework expects to underpin both plan-making and decision-taking”.<sup>289</sup> FoE considers that granting permission for this mine would be contrary to this core land use principle.
- 2) The extent to which the proposed development is consistent with Government policies for facilitating the sustainable use of minerals in the NPPF (NPPF Chapter 17)*
- 10.131 There is a specific presumption against granting permission for the extraction of coal in paragraph 217 of the Framework. Coal is unlike any other mineral in that regard and only peat extraction has a more onerous restriction placed on it in the Framework.
- 10.132 Under paragraph 217, the first limb requires the Secretary of State to look only at environmental acceptability. Potential social or economic benefits and disbenefits are irrelevant, and only come in under the 2<sup>nd</sup> limb of the test. The two exceptions that allow the grant of permission for coal extraction are not met here, for the reasons stated above.
- 10.133 Framework paragraph 209 indicates that it is “essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs”. However, only 6.5% of the coal from WCM is expected to be sold to UK steelworks. The remaining 93% will be sold abroad. To use the needs of UK steelworks to justify the mine would be inappropriate.

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<sup>289</sup> ID62

10.134 WCM argue that paragraph 209 of the Framework helps justify the development, even though between 87 and 94% of the coal would be sold overseas. WCM's planning witness, when challenged by FoE in cross-examination, stated that economies of scale might require a larger mine, but then accepted that the "element of scaling" was outside his expertise, and that there was no evidence before the Inquiry which justifies a mine which exports 90% of its coal on the basis that this is enabling development for domestic sales.

10.135 In any event, there is nothing in paragraph 209 which requires the supply to be domestic. This is important, because the Government must have been fully aware of the need for metallurgical coal to supply UK steelworks when it specifically removed coal from the list of minerals, the benefits of extracting which automatically attract significant weight under paragraph 211. It must follow that the Government did not regard it as critical for the supply of metallurgical coal to be domestic. This is important because there is no risk to the security of supply of metallurgical coal if the WCM application is refused.

*3) the extent to which the proposed development is consistent with the development plan for the area*

10.136 The development plan comprises the Cumbria Waste and Minerals Plan 2015-30 (CWMLP) (adopted 2017),<sup>290</sup> the Copeland Core Strategy and Development Management Policies (adopted 2013)<sup>291</sup> and the Proposals Map and relevant saved policies of the Copeland Local Plan 2001-2016.<sup>292</sup>

10.137 Policy DC 13 of the CWMLP is of particular relevance and is materially the same test as national policy on granting permission for coal extraction in paragraph 217 of the Framework. For the reasons already given, neither of the exceptions are met here. It follows that this application is not in accordance with the development plan. In FoE's submission, there are no material considerations which would justify a decision which was other than in accordance with the development plan. Permission should therefore be refused under s.38(6) of the Planning and Compulsory Purchase Act 2004.<sup>293</sup>

*4) Any other matters the Inspector considers relevant.*

10.138 With regard to the need for the coal having regard to the likely future demand and use of the coal in the steel industry, including the consideration of alternative technology for the steel industry, the evidence above shows that there is no future need for WCM coal. Coal extraction on this site will have a negative impact on the bringing forward of alternative technology for the steel industry.

10.139 With regard to the effect of the proposed development on employment and the national and local economy, the benefits of the scheme have been overstated. There would be some positive impact on local employment and the national economy. However, this cannot outweigh the cataclysmic cost of climate

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<sup>290</sup> CD5.13

<sup>291</sup> CD5.8

<sup>292</sup> CD5.11

<sup>293</sup> CD5.2



change, which has clear negative implications for the national economy. Moreover, it is telling that the national policy requirement to attribute “great weight” to the benefits of mineral extraction is specifically disappplied by the Framework in respect of coal extraction. Limited weight should be given to those benefits in this particular case.

### **Overall Conclusions**

- 10.140 The principle of sustainable development lies at the very heart of the planning system. The Framework defines sustainable development as “meeting the needs of the present without compromising the ability of future generations to meet their own needs”. Given the scale of the threat posed by the climate crisis, it is difficult to think of a situation where that definition could be more relevant. In our Opening Statement, we described the climate crisis as an “existential” issue, there was not one ounce of exaggeration in that phrase. The consequences of climate change do not merely “compromise” the ability of future generations to meet their own needs, they place even the prospect that there will be a future at risk.
- 10.141 As the evidence produced by FoE and SLACC has shown, there is no present need for WCM coal, but future generations desperately need us, today, to limit our global emissions to the greatest possible extent. Artificially extending the lifespan of a dying fossil fuel such as coal is a betrayal of those future generations. If coal is allowed to survive, many of the things we treasure today will perish.
- 10.142 Against that backdrop, our message to the Secretary of State is best summed up by someone who will be among those future generations. In the words of 9-year old Emily Graham, who addressed the Inquiry on 8 September 2021, *“If you stop making bad decisions now you will give us a chance. In nine years time, when I’m old enough to be in charge and make a difference, it will be too late.”*
- 10.143 We are at a pivotal moment in history. At the very tipping point of that pivot are the decisions which the UK Government makes today about the future of fossil fuel extraction. The decision on this application will set the tone, not just for the UK, but for the rest of the world, about the kind of future we want, not just for ourselves, but for our children and our children’s children. We have one chance to get that decision right. Looking at the possible outcomes of this application from the perspective of the future generations whose continued existence is at the heart of sustainability. The answer which our grandchildren will regard as selfish and short-sighted is the one that falls for the siren song attractions of short-term employment and ignores the consequences for climate change. Accordingly, the Secretary of State is urged to make a decision which shows the world that the United Kingdom truly was a leader in the global battle and refuse permission for the WCM Mine.

## **11. SUBMISSIONS BY FoE IN RESPECT OF THE COURT OF APPEAL JUDGEMENT IN *FINCH***

### **11.1 In summary:**

- a) The Court of Appeal decision in Finch entirely undermines WCM’s legal argument that the downstream emissions of the proposed development are



not a material planning consideration, or alternatively should be given limited weight.

- b) WCM's argument at the Inquiry rested on the finding of the High Court in Finch that these emissions were not an "effect" of the development as a matter of law. However, the Court of Appeal have now clarified that the High Court was incorrect on this point, and in fact whether downstream emissions are an effect of the development is a question for the decision-maker in each individual case.
- c) WCM also argued that downstream emissions are impossible to quantify. The Court of Appeal in Finch confirmed that they can be quantified.

### ***Finch***

- 11.2 As the Inspector will be aware, the decision under challenge in Finch was Surrey County Council's ("SCC's") grant of planning permission for an oil development in Horse Hill, Surrey. The main ground of challenge concerned the Council's non-assessment, as part of the EIA process, of the end-use GHG emissions that would inevitably result from the combustion of the oil by consumers.
- 11.3 In December 2020, the High Court dismissed the claim, holding that such end-use emissions were legally incapable of falling within the scope of EIA.
- 11.4 The Court of Appeal dismissed the appeal, but on a different basis to the High Court. The Court of Appeal found that although downstream emissions were capable of falling within the scope of EIA, this was a matter for the decision-maker, who in Finch had reached a reasonable view in excluding downstream emissions from EIA.

### ***Key findings of the Court of Appeal***

- 11.5 FoE considers that the key findings of the Court of Appeal relevant to the matters on which the Secretary of State wishes to be informed are as follows:
  - 1) The High Court was wrong to hold that the end-use emissions were legally incapable of falling within the scope of EIA. This was instead a matter of evaluative judgement for the decision maker ([43], [129] and [141]).
- 11.6 The Court of Appeal found that the High Court was incorrect in its finding that downstream emissions were not legally capable of falling within the scope of EIA. It is a matter for the decision maker in every case. The Court of Appeal's ruling was that SCC had acted lawfully in concluding that, in the particular context of that oil project, the downstream emissions were not indirect effects for the purpose of EIA. The Court's ruling was not, however, that it would have been unlawful for SCC to form the opposite view.
- 11.7 It is therefore for the Inspector to decide if downstream emissions are an indirect effect of this development. The Inspector may wish to request further information on end-user emissions from WCM, given that developers are required to provide information on the significant effects of their proposed developments to the decision-maker (although of course, both Professor

Barrett and Professor Grubb provided similar estimates of end-user emissions in their evidence, using the BEIS conversion factor for coking coal<sup>294</sup>).

11.8. In this case, and unlike the oil in *Finch* that was subject to further refinement, the coal that would be extracted from WCM's mine would be burned directly: there are fewer steps between extraction and combustion than in *Finch*. It is therefore entirely appropriate for end-user emissions to be considered as an effect of this particular development, and therefore part of the required EIA.

2) The Court of Appeal reiterated the important distinction between (1) end-user emissions as a requirement of EIA and (2) the impact of end-user emissions on climate change policies as a material planning consideration ([92]).

11.9 As FoE noted in closing, the High Court in *Finch* did not decide that downstream emissions were incapable of being a material planning consideration (FoE's closing, § 70). The Court of Appeal confirmed at [91]-[92] that climate change considerations could lawfully be taken into account despite a finding on the part of the decision maker that downstream emissions should be excluded from EIA.

11.10 This is contrary to WCM's submissions that "downstream emissions... cannot amount to a material consideration, as they do not fairly and reasonably relate to the proposed development" (WCM's closing, §97). Accordingly, even if the Inspector considers that end-user emissions do not need to be considered as part of EIA in this case, plainly they are still an important material consideration.

3) It is scientifically possible to calculate a theoretical level of GHG emissions from the combustion of a given quantity of hydrocarbons ([71]).

11.11 In *Finch* the Court of Appeal confirmed that "it is scientifically possible to calculate a theoretical level of greenhouse gas emissions from the combustion of a given quantity of hydrocarbons" and "a reliable estimate is not impossible" [71].

11.12 This finding is of course directly contrary to WCM's assertion that downstream emissions "are impossible to effectively quantify" (WCM's closing submissions, § 98). WCM said that for this reason they should therefore not be given much weight, even if they did amount to a material consideration. This argument falls away following the Court of Appeal decision in *Finch*.

11.13 It is also notable that in making this finding, the Court of Appeal referred to both UNEP's 2019 Production Gap Report (referred to in the Inquiry: CD 8.7) and the Hague District Court's finding in *Vereniging Milieudefensie and others v Royal Dutch Shell Plc C/09/571932* that "studies using elasticities from the economics literature have shown that for oil, each barrel left undeveloped in one region will lead to 0.2 to 0.6 barrels not consumed globally over the longer term" [71]. This finding of a causal link between hydrocarbon extraction and

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<sup>294</sup> Their evidence is that the scale of these end-user emissions is very significant, and of far greater climate impact than the emissions arising from the mere process of extracting the coal from the ground (which were assessed: albeit the evidence raised questions about whether the assessment was complete and accurate).

additional GHG emissions referred to by the Court of Appeal directly undermines WCM's "perfect substitution" argument (see FoE's closing at § 98).

### ***Conclusion***

- 11.14 In conclusion, the Court of Appeal decision in Finch confirms that FoE's arguments at the Inquiry on the materiality of downstream emissions were correct. It also confirms the position, that was already clear following the High Court decision, that the exclusion of downstream emissions from EIA does not affect the weight to be given as a material planning consideration. Finally, the Court of Appeal held that decision makers must decide for themselves whether EIA requires an assessment of downstream emissions in each individual case.

## **12. THE CASE FOR SOUTH LAKES ACTION ON CLIMATE CHANGE (SLACC)**

This section is based largely on the closing submissions for SLACC.<sup>295</sup>

### ***Introduction***

- 12.1 In March 2021 the UK, as hosts of the forthcoming Conference of Parties of the United Nations Framework Convention on Climate Change (COP 26), hosted a joint event with the International Energy Agency ("IEA") – a net zero summit with top energy and climate leaders from more than 40 countries.<sup>296</sup> The discussions at that event fed into the IEA's report: Net Zero by 2050 A Roadmap for the Global Energy Sector.<sup>297</sup> The IEA is the one international organisation that is pre-eminent in dealing with energy issues, as every Government goes to the IEA to get their advice on energy.
- 12.2 The IEA Report deals in a number of places with coal for power generation, but it also deals directly with decarbonising the steel industry and with coking coal. The IEA comes to a very clear conclusion on coking coal in that "No new coal mines or extensions of existing ones are needed in the Net Zero emissions Scenario (NZE) as coal demand declines precipitously. Demand for coking coal falls at a slightly slower rate than for steam coal, but existing sources of production are sufficient to cover demand through to 2050."<sup>298</sup> So while the IEA anticipates that there will be use of coking coal globally in 2050, with CCS, that is all from existing sources. There is no need for new sources of coking coal.
- 12.3 Both SLACC and FOE have relied on the IEA's Net Zero Report and its conclusion on coking coal. In response, the applicant sought to question the expertise and thoroughness with which the IEA's report was compiled. This approach has been deployed to mask fundamental weaknesses in the applicant's case. Matters asserted which are unevidenced and demonstrably flawed, which the Inspector and Secretary of State are asked to take on trust including a need case couched as sensible industry forecasting which ignores the UK and EU's climate obligations and assumes failure. This is an ever

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<sup>295</sup> ID75

<sup>296</sup> CD8.1 p. 1783

<sup>297</sup> CD8.1

<sup>298</sup> CD8.16 p. 1883

shifting case on what coal will actually be mined and it is still unclear what the quality of the coal is that will be produced.

***Preliminary Matters – The "Amended" Scheme***

- 12.4 The applicant has made a substantial amendment to the application, well after its application was submitted to the Council and called in by the Secretary of State. In short, the applicant has, via its Statement of Case<sup>299</sup> in May 2021 and proofs of evidence of 10 August 2021,<sup>300</sup> amended its application from a development with a sub-surface conveyor installed by a cut and cover method, to a development with a sub-surface conveyor installed partly by a cut and cover method and partly via trenchless tunnelling using pipe-jacking.
- 12.5 SLACC has provided separate legal submissions, dated 30 September 2020, addressing this amendment. In short, on the basis of the authorities cited in those submissions and the admissions by Mr Thistlethwaite that the amendment relates to an aspect of the development which is crucial to whether the development comes forward and central to the grant of planning permission, the Secretary of State does not have the power to consider the substantial amended scheme, which fails to comply with sections 65 and 327A of the Town and Country Planning Act 1990 ("the 1990 Act").
- 12.6 Furthermore, if the amended development is considered, it would be unlawful for the Secretary of State to grant permission as the development has not been subject to a lawful environmental impact assessment ("EIA") in respect of the new construction method or its impacts, given that information which should have been provided in order for these impacts to be understood will only be provided after the grant of permission, via discharge of conditions. That approach prevents the Inspector and the Secretary of State from taking into account the effects on the environment of the project at the earliest possible stage and is directly contrary to authority that environmental matters can be dealt with by Grampian-style conditions.
- 12.7 On the penultimate evening of the Inquiry it emerged that the applicant is seeking to make good the lack of compliance with sections 65 and 327A of the 1990 Act by adding two plans showing long sections of the pipe-jacking scheme at the two ancient woodlands. As set out in SLACC's legal submissions, these plans raise rather than allay concerns, given their divergence from the plan proffered by WCM earlier in the Inquiry and discussed in the Ecology Roundtable. They therefore do not address in any meaningful way the flaws detailed in Section 55 of the Legal Submissions.
- 12.8 For the detailed reasons given in the Legal Submissions, SLACC asks that the Inspector recommend that the Secretary of State consider the proposed development on the basis of the original 'cut and cover' method of conveyor construction, on which the Parties have provided evidence and which is addressed in detail in the application documents, in compliance with sections 65 and 327A of the 1990 Act.

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<sup>299</sup> CD15.1

<sup>300</sup> WCM/PS/1, §5.4; WCM/ST/1 §5.147

## ***Climate Change Impacts and NPPF Chapter 14***

### ***Seriousness of the Issue***

- 12.9 The Parties agree that human-induced climate change is happening and that it has dangerous consequences for both natural and human systems, in particular on human health and wellbeing. Sir Robert Watson, former chair of the Intergovernmental Panel on Climate Change, gave an overview of those impacts in his evidence. He described the heightened flood risk, the impacts of higher temperatures on human health and on biodiversity and the impacts on food systems caused by extreme weather.
- 12.10 Sir Robert's evidence also shows that the effects of dangerous climate change are likely to become even more severe in the coming decades, particularly if warming is not kept to 1.5°C. This impact will be felt by the generations that follow us. Those young now will face far greater impacts and more serious dangers if immediate action is not taken to curb GHG emissions. All parties to the Inquiry agree with this. Climate change is a very serious issue. It is an emergency and an existential threat and should be treated as such by planning policy and in planning decision-making.
- 12.11 Paragraph 152 of the NPPF requires that planning shapes places to achieve radical reductions in GHG emissions. The UK's Net Zero obligation requires the UK Government to ensure that the "net UK carbon account" for 2050 is "at least 100%" lower than the 1990 baseline.<sup>301</sup> The CCC's Sixth Carbon Budget is set at a reduction of 78% by 2035, so a 63% reduction from the 2019 position in GHG.<sup>302</sup> The UK's Nationally Determined Contribution under the Paris Agreement requires reductions of GHG of 68% by 2030.<sup>303</sup> Professor Grubb's evidence is that methane emissions are a major contributor to climate change and the IPCC's work, including the recent Sixth Assessment Report (dubbed the "Code Red" report by the UN Secretary General) shows a need for radical reductions in methane emissions in the next decade to stay on course for 1.5° temperature warming.<sup>304</sup>
- 12.12 In light of all these key commitments, all of which focus on, and require, significant reductions in GHG emissions, Mr Bedwell's position is that while paragraph 152 of the NPPF must be read as a whole, the wording requiring the planning system (which included decision-making) to shape places in ways that contribute to a radical reduction in GHG emissions is the thrust of the policy.
- 12.13 Furthermore paragraph 7 of the NPPF defines "sustainable development" as "meeting the needs of the present without compromising the ability of future generations to meet their own needs". This is clearly an important consideration when considering the climate impact of proposed development. Development which gives short-term benefit to the developer, but which leads to climate harms (which will impact ever more seriously on future generations) is the definition of unsustainable development under paragraph 7 of the NPPF.

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<sup>301</sup> Section 1 of the Climate Change Act 2008

<sup>302</sup> CD8.10

<sup>303</sup> Ibid

<sup>304</sup> SLACC/MG/1 §4.20; SLACC/MB/3 §3.3

- 12.14 This has been strengthened in the updated NPPF, which adds the 17 Global Goals for Sustainable Development from the UN's "Transforming our World: the 2030 Agenda for Sustainable Development" to paragraph 7. A number of these goals address matters integral to mitigating climate change, and Goal 13 requires urgent action to be taken to combat climate change and its impacts (acknowledging that the UN Framework Convention on Climate Change is the primary international forum for negotiating the global response to climate change).
- 12.15 In light of the seriousness of climate change and its effects, the urgency with which action to address that must be taken, and the focus of paragraph 152 on radical reductions in GHG emissions and the need to prevent compromising the ability of future generations from meeting their own needs, it is clear that the climate change impact of the proposal is central to whether it should be granted planning permission.
- 12.16 Furthermore, addressing climate change is not just a question of having net zero emissions in 2050. As both Professor Grubb and Sir Robert said, the key issue is what we do now and up to 2030. Sir Robert clarified in oral evidence that all the models suggest quite convincingly that we would have to reduce our GHG emissions globally by 2030, for even a fifty-fifty chance for further emissions reductions, to meet net zero and be on a pathway to 1.5°.
- 12.17 The CCC's position is clear. Action is required across all areas and all sectors and the crucial decade is the 2020s.<sup>305</sup> The UK needs to strengthen reductions and is not on track to meet the Fourth or Fifth carbon budgets.
- 12.18 The real question is what, in light of the science, are the implications in terms of planning policy and planning balance, focusing on this development. It is a new source of fossil fuel, to be mined from under the sea bed, for the next 25 years, resulting in emissions from just the operation of the mine that, frankly, dwarf those from other developments. It is development that results in years of methane that would otherwise remain trapped underground being released directly into the atmosphere. At precisely the time which the CCC and the IPCC have told us is the most crucial for securing rapid reductions to keep the 1.5°C temperature goal alive.

### ***Methane, Methane Capture and Overall GHG Emissions***

- 12.19 Professor Grubb's evidence, based on the recent IPCC Sixth Assessment Report,<sup>306</sup> is that methane is a major contributor to climate change. Methane emissions have been rising rapidly, with global concentrations increased by more than 150%. They account for almost a third of global temperature increase to date. Global methane emissions may be decisive in whether temperatures exceed 1.5°C in the next couple of decades.
- 12.20 The applicant relies on two crucial pieces of evidence to address the GHG emissions that will be caused by the operation of the mine. The first is the

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<sup>305</sup> CD8.10 p.1019

<sup>306</sup> CD 8.32 Figure SPM.2, Para A2.1. For a comparison of GWPs at different time horizons see Chapter 7, Table 7.15: the GWP-20 for fossil fuel methane (comparison with CO2 impact over a 20-year horizon) is 82.5, compared to the GWP-100 value of 29.8



Ecolyse 2 Report. Throughout the inquiry, SLACC has identified errors and omissions in the report. The second is Mr Tonks' evidence about the methane capture system.

- 12.21 Mr Tonks accepted that the mining technique that will be adopted by WCM is a "recent hybrid" technique which will be introduced into the UK for the first time. Accordingly, neither he nor anyone else has experience of deploying and operating a methane capture system in such a mine. In those circumstances, it would have been prudent for Mr Tonks to make conservative assumptions about, for example, the potential for leakage or for machinery not working 100% perfectly for the whole period of the capture system operating. But he did not do so.
- 12.22 Mr Tonks' analysis is based crucially on Sections 5.2 to 5.4 of his proof, where he determines how much methane will be left in the coal after it has been cut; travelled through the mine and crushed, once in the mine and again on the surface. If Mr Tonks' numbers are just a little off, then the methane release from the coal which would not be captured would be significantly affected. Professor Grubb calculated that if only an additional 1% of the methane remained in the coal (ie 6% not 5%), then this would increase the calculation of methane emissions by 20%. That is a serious underestimate when the total unmitigated emissions from the mine are, conservatively, 8,543,484 tonnes CO<sub>2</sub>e.<sup>307</sup>
- 12.23 Mr Tonks based his key analysis on something nowhere in his evidence which were figures produced by the National Coal Board sometime between 1987 and 1989 by the technical department which "arrived at a figure" that any particle of coal less than 5mm would not have any residual gas in it. Mr Tonks' other key figure, that 60% of the methane would be released when the coal is cut, was also based on NCB numbers. There is no evidence that this work is still in current use by anyone other than Mr Tonks and no evidence those numbers apply to a new hybrid form of mining.
- 12.24 Mr Tonks assumed that the coal will be crushed to 6 to 8mm – he takes the average to be 7 and says "I have been involved in crushing previously in my career" and the "majority of it is a lot smaller than 7 mil". So he has assumed that two thirds is smaller than 5 mil and has no methane at all, and that the remaining third which does retain its methane therefore has 5% - ie. 1/3 of 15%. Mr Tonks provided no source for these figures or supporting this methodology. He offered to "provide a note" but the note which came did not make good this omission.
- 12.25 If Mr Tonks is wrong on his "about 25% figure", and say it is only 20%, that means that there is still 20% of the methane in the coal when it leaves the mine and comes to surface. Even assuming that he is then right that two thirds is removed at the final crushing, that would mean 6.66% methane leakage which is a third more than his estimate. If Mr Tonks is wrong about the proportion under 5 mil and if say that is only half of particles being below 5 mil and not two thirds, that would mean that instead of 5% leakage there would be 7.5% leakage, which is 50% more than his estimate on methane leakage.

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<sup>307</sup> Ecolyse 2 p. 40.



- 12.26 While Mr Tonks was at pains to point out that there will be monitoring across the mine, this would not actually validate how much methane is lost in the cut coal that leaves processing. It would just tell you how much you are capturing at different points. While periodical testing of the coal may be possible to see how much residual methane was in the coal, that was not proposed by Mr Tonks.
- 12.27 Mr Tonks did provide a further document, which set out methane calculations for emissions which he had left out in his evidence. Those emissions to atmosphere from the construction phase of the development when the construction enters the coal measures and into the Main and Bannock seams. Neither WCM nor Ecolyse nor Mr Tonks thought to assess these emissions. While that omission was addressed through the late provision of the calculation, the fact that it was left out of account calls into question Mr Tonks' judgment.
- 12.28 It is highly unusual that application plans showing that system were in effect only provided on the last day of the Inquiry, and only by amending the name of the building over which Mr Tonks superimposed his image of the methane capture system in his evidence. Mr Thistlethwaite accepted that when he undertook his analysis, not a single application document or plan actually showed the methane capture scheme. Mr Tonks was never informed of the volume of reject material that has to be stored in the Clean Coal and Reject Building and this is in the context of the amendment of the application to remove the middlings coal, meaning there is every possibility that more rather than less reject material is required to be stored. The methane capture system appears to have been 'shoe-horned' into the application as part of the belated attempt to justify the pivot to being a "net zero" mine.
- 12.29 The second key element of the applicant's case on operational emission is the assessment undertaken by Ecolyse. Ms Leatherdale accepted that it does not take into account any emissions from possible leakage or failure in Mr Tonks' system. Ms Leatherdale confirmed that Ecolyse updated its assessment to include embedded emissions from the operational phase as a result of Professor Grubb's proof of evidence and in her additional note. It is asserted that the embedded emissions from the Regenerative Thermal Oxidisers (RTOs), as part of the methane capture system, were accounted for by Ecolyse because, even though they were not part of the scheme assessed by AECOM, there was sufficient slack in their assessment for the RTOs effectively to have been accounted for.
- 12.30 The Ecolyse Report also omits any possibility of fugitive methane emissions after abandonment and fails to calculate or take into account the level of CO<sub>2</sub> absorption from the trees, soils and any other natural absorption currently on the land, which will be lost if the land is developed for the mine. Accordingly, there are numerous questions about the robustness of the Ecolyse assessment.

### ***Finch and end use emissions***

- 12.31 The applicant and the Rule 6 Parties disagree on the correct approach to end use emissions and on the judgment in *R(Finch) v Surrey CC* [2020] EWHC 3566. SLACC agrees with and endorses FoE's position as set out in its

Statement of Case.<sup>308</sup> SLACC makes the following short points. First, the judgment in Finch is subject to appeal, which is to be heard by the Court of Appeal in November 2021. In the event that the Court's further judgment impacts the consideration of the present application, SLACC reserves the right to submit further written legal submissions on the relevant issues.

- 12.32 Second, the judgment in Finch is not authority for the proposition that end use emissions cannot be material planning considerations. Rather, Finch concerned the narrow technical question about what must (and may not) be assessed in the course of a lawful Environmental Impact Assessment.<sup>309</sup> Holgate J found that assessment of GHG emissions resulting from end-use of the product extracted by a development ([126])<sup>310</sup> was not necessary in that exercise. The exclusion of end-use emissions considerations from that particular aspect of the planning process does not exclude end-use emissions from being material planning considerations and the Finch judgment does not approach that controversial conclusion.
- 12.33 Third, the Finch case concerned a wholly different type of emission and can therefore be distinguished on the facts. Finch considered the production of hydrocarbons from oil wells in the Horse Hill Well Site in Surrey and noted that the end-use of that product could occur in a number of different industrial and domestic settings.<sup>311</sup> This case concerns development producing a single product, coking coal, which has a single application use in the production of steel. The GHG emissions of the use of coal in this context are therefore plainly an effect of the development itself, unlike in Finch.
- 12.34 Further, the Inquiry heard clear evidence from both Professor Grubb and Dr Barrett that the end use emissions of the proposed development are easily capable of quantification due to their necessarily determined end use. Indeed, both experts came to nearly identical conclusions using the BEIS emissions factor for coal, which is a standardised method for estimating such emissions.
- 12.35 It is therefore not SLACC's case that the EIA is deficient for failing to assess the relevant end use emissions as the Inspector has now been provided with that information and should take it into account. Instead, SLACC's case is that WCM's approach in failing to calculate the end-use emissions of the development at all (relying on an erroneously broad application of Finch) has obstructed the proper determination of this application because such emissions are plainly material considerations.
- 12.36 That conclusion is obvious even on the applicant's own case. Mr Thistlethwaite "recognises that these downstream emissions may nevertheless be capable of being a material consideration in the determination of the planning application."<sup>312</sup> The applicant's Revised Environmental Statement (Chapter 19) similarly confirms that the use of coal is capable of being a material planning consideration.<sup>313</sup>

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<sup>308</sup> CD7.1

<sup>309</sup> CD7.1,[1], p. 1

<sup>310</sup> CD7.1, [126], p. 21

<sup>311</sup> CD7.1, [3]-[7], p. 2

<sup>312</sup> WCM/ST/1, §5.140 and see also §5.142.

<sup>313</sup> Regulation 22 response, Revised ES Ch 19, §16, p. 6

- 12.37 Finally, the factual circumstances of the present application plainly commend consideration of the end-use of the coal product as a material consideration. The sole purpose of this application is to extract a fossil fuel whose only use is in a process which emits both Methane and CO<sub>2</sub>, and the effects of doing so can be accurately estimated, and indeed have been (albeit not by the applicant). Those emissions must be relevant to the instant decision given the Secretary of State's call-in letter specifically referred to the increased climate targets within the recommendations of the 6<sup>th</sup> Carbon Budget<sup>314</sup> and confirmed he wished to be informed, in particular of the extent to which the proposed development is consistent with Government policies for meeting the challenge of Climate Change.<sup>315</sup>
- 12.38 Further, end-use GHG emissions have been considered material by the Secretary of State in a development proposing the extraction of coal. In the recent Highthorn Appeal, the Secretary of State had regard to the "extraction, processing and combustion"<sup>316</sup> of the coal produced by that development following the Inspector's explicit consideration of the GHG emissions impact of burning the Highthorn coal.<sup>317</sup>
- 12.39 Further still, the applicant has invited the Inspector to consider the continued need for coking coal on the basis that burning it is necessary for the production of green infrastructure such as public transport and wind turbines. For these to come forward depends on a two-stage process first requiring the production of steel via BF-BOF and then the machining, processing and assembly of steel into the relevant product. It is nonsensical for the applicant to rely on such benefits as material to the present decision, whilst also maintaining that emissions from the single stage process of simply burning the WCM coal in a BF-BOF cannot be considered. The applicant appears to be inviting the Secretary of State to give weight to benefits which are two production steps away but to ignore harm which is one step away, and which is inherent in the production of the benefits on which it relies.

### ***The 'perfect substitution' error***

- 12.40 The applicant addresses the emissions from use of the coal by asserting that the coal produced will "displace"<sup>318</sup> and/or "replace"<sup>319</sup> and/or "substitute"<sup>320</sup> for coal currently being supplied by existing mines, predominantly located within the USA.
- 12.41 Professor Grubb addresses shipping emissions (both on the basis of the AECOM report and the Ecoyse Report) and his evidence demonstrates that, for the applicant's argument to work, there has to be not just "substitution" but "perfect substitution". If even 1% of the coal from the mine is net additional, this would result in more than a doubling of the existing Ecoyse estimate for "likely mitigated" emissions from the mine for every year that the mine is

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<sup>314</sup> SoS letter CD6.1, §6

<sup>315</sup> SoS letter CD 6.1, §11

<sup>316</sup> CD6.1, §62, p12

<sup>317</sup> CD6.2, see §C112-C115 and in particular, §C113, p.143-4

<sup>318</sup> WCM/JT/1 § 3.5

<sup>319</sup> Revised ES Chapter 19 (August 2021) §14.

<sup>320</sup> WCM/ST/1 §5.143.

operating at full capacity.<sup>321</sup> So if “only” 90% substitution took place, the actual emissions from the mine would be more than 11 times the Ecolyse estimates for every year the mine operates at full capacity.<sup>322</sup>

- 12.42 Mr Thistlethwaite suggested that the planning case did not rest on perfect substitution, but rather on the economics of coal closer to a steelworks having a competitive advantage and so displacing coal from further afield. Professor Ekins addressed that argument. The suggestion that opening a new line of coal supply in the UK would cause US producers to reduce their production on the basis they would now be supplying the UK/EU simply runs contrary to fundamental laws of supply and demand. An increase in supply will tend to depress the price of a good, in turn causing demand for that good to increase. The law of supply and demand still operated, despite the market being one where prices are benchmarked and despite the market having derived demand.
- 12.43 Applying this central principle of economic analysis, were the WCM mine to open in order to supply coal to the UK/EU market, US suppliers presently supplying the UK/EU would not simply cease entirely to extract and market coal but would sell it elsewhere. That would lead to a greater amount of total emissions both in terms of transport and the use of the additional coal.
- 12.44 Several features of the coking coal market were claimed to circumvent economic orthodoxy on the basis that the supply-demand dynamic is “extremely more complicated” for coking coal.<sup>323</sup> Whilst that the market “may be complex”, that doesn’t mean it runs against the fundamental laws of supply and demand.
- 12.45 As already stated, the benchmarking of the global metallurgical coal price against the price of low-volatile coal from Australia was not a feature which Professor Ekins considered to be capable of ousting such laws. Professor Ekins equally recognised that the market was volatile with factors such as the Chinese ban on Australian coal or large cyclones causing significant price swings, but explained that this was precisely where proper economic analysis facilitated a full understanding of the market over time.
- 12.46 Professor Ekins undermined Mr Kirkbride’s argument that the inelastic demand for coking coal justified its departure from normal economic principles. For Mr Kirkbride’s argument to be correct (that WCM’s increase in production and the ensuing fall in price would lead to zero increase in demand) the price elasticity of coking coal would have to be zero.<sup>324</sup> However, that is not the position in practice. Professor Ekins presented peer-reviewed research showing the price elasticity of coking coal in fact appears to be in the range of -0.3 to -0.5<sup>325</sup> meaning that if WCM coal enters the market, it would be expected to increase demand.

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<sup>321</sup> SLACC/MG/3 §2.19

<sup>322</sup> SLACC/MG/3 §2.20.

<sup>323</sup> WCM/JT/3, §3.7

<sup>324</sup> See SLACC/PE/4, §3.3

<sup>325</sup> SLACC/PE/4/R1

- 12.47 Mr Truman relied on an assessment of the United States as a “swing supplier” to the seaborne market to attempt to rebut the suggestion the US coal displaced by the WCM mine coming onstream would cause coal to be sold elsewhere.<sup>326</sup> That theory was supported by a diagram<sup>327</sup> that Professor Ekins showed “doesn’t seem to illustrate ‘perfect substitution’ at all.” It plots Australian against US met coal exports, but on “very different scales” such that an increase in Australian met coal exports of roughly 60Mt between 2011 (130Mt) and 2016 (190Mt) was accompanied by a decline in US met exports of roughly 30Mt (from 65Mt in 2011 to 35Mt in 2016) for the same period. As such, even if it were the case that US exports were responding directly to Australian exports there would only be, at maximum, a 50% substitution. The diagram plainly does not support the view that the entrance of the proposed WCM coal into the market would lead to a perfectly equivalent contraction from US coal suppliers.
- 12.48 In any event, the production of the proposed mine (2.78Mt per annum) would at most meet 5-6% of the level of European need predicted within the Wood Mackenzie Base Case of 55Mt per annum.<sup>328</sup> Accordingly Mr Truman agreed that to the extent that steel production in Europe does use BF-BOF in the coming years, those steelworks will remain heavily reliant on imports from US and Australia, and this will not change. Even at the height of WCM’s case therefore, its claim to be opening a supply line that will provide meaningful substitution for US and Australian supply is illusory.
- 12.49 Opening a domestic coal mine will simply add another source of coal to the world market, leaving the current US suppliers to sell their product elsewhere (there is an ample Chinese market, as Mr Nicholas explained) at increased transport emissions cost and to regions with less stringent environmental regulation. It follows that there will be no GHG emissions saving to which the UK can point as a result of this development opening, there will simply be more coal, and more GHG emissions.

### ***International impact***

- 12.50 Article 4(4) of the Paris Agreement places a particular obligation on developed country parties like the UK to “continue taking the lead by undertaking economy wide absolute emission reduction targets”.<sup>329</sup>
- 12.51 The commitment of the UK as a global leader in the international efforts to meet the temperature goals set out in the Paris Agreement is clear. “Taking the lead” means that the decisions taken by the UK relating to climate change will meaningfully influence those taken by other countries. The existence of such influence forms the basis for international climate diplomacy efforts.
- 12.52 The applicant has repeatedly characterised the demonstrable, evidenced international impacts of granting planning permission as a matter of “virtue signalling” and mere “perception”. The use of such language by the applicant betrays a failure to understand that international climate diplomacy, and the

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<sup>326</sup> See WCM/JT/3, §2.10-2.12

<sup>327</sup> WCM/JT/3, §2.12-§2.13

<sup>328</sup> JT/2, §1.35, §1.71, Table 2.2 (p.22)

<sup>329</sup> CD8.1, Paris Agreement, p. 6

position of the UK in global efforts to limit climate change, are both matters of fact upon which evidence has been provided to this Inquiry. Attempting to dismiss the entire field of international relations as concerned with mere "perception" as opposed to one grounded in factual determinations is misconceived.

- 12.53 Sir Robert concisely explains the implications for international climate diplomacy in his proof.<sup>330</sup> He states that "In my judgment, were the UK to permit a large coal mine such as the proposed Woodhouse Colliery, this would have a negative effect on the UK's climate diplomacy image and efforts. A signal would be sent that the UK is not serious about its climate ambition or its promises of world leadership on this issue. This would have material consequences in the form of reduced ambition from other countries, and therefore increased GHG emissions. Remarks by the US climate envoy John Kerry, that the UK should no longer be using coal, are an indication of this. Further, if the mine was permitted on the basis that it was "carbon neutral" or even "carbon negative" i.e. if the rationale for permitting the mine was supposedly that to do so would not increase (or would decrease) global GHG emissions, many other countries would be likely to follow suit in arguing that they too needed to allow new fossil fuel extraction projects within their borders for similar reasons. This decision could thus have serious knock on effects, leading many countries to justify new coal mines, or oil extraction projects, etc, on the basis that this was actually good for the global climate."
- 12.54 The far-reaching international impacts of the decision to grant planning permission on the likelihood of the world meeting the temperature targets in the Paris Agreement is plainly a material consideration to be weighed against the grant of planning permission.

#### ***Climate Impact of a "True" Net Zero Mine***

- 12.55 Sir Robert addressed the position if the mine were "truly net zero" and whether that would take the UK close to or further away from achieving its climate goals. His evidence was that, if it was "truly" net zero, with all emissions either captured or compensated by credible offsetting, then it would simply be neutral in terms of the UK's climate goals. However, it would still give other countries in the world an excuse to open additional mines which would be claimed to be net zero, and so it would overall have a negative effect on climate change. He emphasised that the CCC's advice in the Sixth Carbon Budget Report is that the UK should try to meet its climate obligations by decreasing actual emissions and not offsetting.
- 12.56 Two points arise. First, contrary to WCM's contentions, a net zero mine would not be positive for climate change; it would at best be neutral and at worst be negative if it caused other new net zero mines to open, given the extent to which they would be relying on offsetting. Offsets are a finite resource. Offsetting would not prevent the release into the atmosphere of the GHG sought to be offset. Such emissions and have an immediate negative effect. Ms Leatherdale failed to appreciate either point when she asserted that a net zero mine would set a positive example.

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<sup>330</sup> SLACC/BW/1 Sir Robert Watson Proof of Evidence, p. 22, paragraphs 5.3.4 and 5.2.5



- 12.57 This leads to the second point. On Sir Robert's analysis, the WCM mine would not be truly net zero, because not all the emissions will be captured. Even on WCM's case at its highest, the mine will cause 25 years of methane emissions to the atmosphere, initially entirely unmitigated and then residual emissions as the methane capture system cannot capture 100% of the methane. As set out above, taking WCM's case more realistically, there will be much more significant emissions than assumed by Ecolyse.

***The Future Need for Coking Coal and NPPF Chapter 17***

- 12.58 The need for the coking coal that WCM propose to extract from the mine is a principal consideration in the context of this application. The applicant has persistently referred to the coal as a 'critical raw material', the extraction of which is essential for the operation of the UK steel industry, and the provision of this resource was taken to be a material consideration in previous decisions by the Council concerning this application.<sup>331</sup> The extent to which coking coal remains a central material in UK/EU industry is therefore key to determining the benefit (if any) obtained by extracting the WCM coal.
- 12.59 The applicant also relies on the fact that coal, including deep-mined coal, is defined in the NPPF as a mineral resource of local and national importance. This is addressed further below, but two things should be highlighted at this stage:
- a. The applicant accepts that there is no suggestion that there would be any shortage of coking coal for UK steel mills if the development did not go ahead; only that there would continue not to be a source mined in the UK; and
  - b. The NPPF has, since its amendment in 2019, treated coal differently, by presuming in paragraph 217 of the NPPF that planning permission should not be granted for its extraction unless that presumption can be outweighed and requires compliance with the two-part test.
- 12.60 The question of the need for the coal is a central plank of the applicant's case that, in the second part of the paragraph 217 test, the proposal provides a national, local or community benefit which outweighs the adverse climate and other environmental impacts.<sup>332</sup> It is also central to the question of whether there are wholly exceptional reasons<sup>333</sup> to justify the loss of irreplaceable ancient woodland at Roskapark and Bellhouse Gill Wood arising from the construction of the conveyor.
- 12.61 SLACC's position is that there is no need for this new coal mine to produce coking coal. The IEA's report firmly shows that the remaining need for coking coal can be supplied by mines already in operation. All the evidence before the Inquiry which takes into account the UK and EU's climate targets shows a rapidly diminishing need for coking coal. This is against the background of how technology in steel production is changing rapidly, showing a clear move away from primary steel production using coking coal.

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<sup>331</sup> CD4.5, §8.2

<sup>332</sup> WCM/ST/1, §5.121, §5.154, §5.191-5.194

<sup>333</sup> WCM/ST/1, §5.127



- 12.62 To the extent that there remains a need for coking coal, the second aspect of SLACC's case is that, unless the coal produced is subject to a condition setting a 1.25% sulphur limit, it will not be of sufficient quality to be sold as HVA coking coal in the UK and the EU. If a higher sulphur limit is used in the definition in the conditions, then the coal would probably be sold to Turkey or in Asia, removing any benefit claimed of sale of the coal in the UK and Europe. If no limit is imposed on the coal specification, or if the 2% sulphur content from the May 2020 Environmental Statement is used, then the coal might be HVA or HVB coal, sitting well outside the applicant's own case on the need for the coal.

***UK and EU policy commitments to GHG reductions***

- 12.63 Numerous developments in the UK and the EU illustrate that industrial decarbonisation is high on the political agenda, strengthened by legally binding GHG reduction targets. All of these developments have arisen since the Council resolved to grant planning permission for the mine meaning that very little weight can now be placed on that resolution or the conclusions on the planning balance which underpinned it.
- 12.64 Starting with the EU, the EU Green Deal includes a suite of policies to reduce net GHG emissions by at least 55% by 2030 compared to 1990 levels<sup>334</sup> reflecting the EU Climate Target Plan<sup>335</sup> and in accordance with the goal to achieve climate neutrality by 2050.<sup>336</sup> The EU Industrial Strategy confirms the Green Deal as "Europe's new growth strategy" and states "all industrial value chains, including energy-intensive sectors ...will all have to work on reducing their own carbon footprints ... those who move first and move fastest will hold the greater competitive advantage."<sup>337</sup>
- 12.65 The EU Circular Economy Action Plan refers to the need to "accelerate the transition towards a regenerative growth model that gives back to the planet more than it takes" to achieve climate neutrality by 2050.<sup>338</sup>
- 12.66 In May 2021, the EU Industrial Strategy was updated alongside a working document on steel use which states "the European steel industry is expected to ... deliver substantial emission reductions in order to stay competitive and contribute to climate neutrality by 2050."<sup>339</sup> It includes a section on "Going Green"<sup>340</sup> which refers to the need for "radical changes to the way steel is produced" (including the use of EAF and H-DRI technologies) if climate neutrality by 2050 is to be reached.
- 12.67 The position is very much the same in the UK. In fact, the legal and policy landscape in the UK has changed dramatically in the five years since WCM's original application in 2017, not least of which are:

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<sup>334</sup> CD8.18, p. 2019

<sup>335</sup> CD8.29, p.24, CD8.30, p.1

<sup>336</sup> CD8.17, p.1

<sup>337</sup> CD9.19, p. 1045

<sup>338</sup> SLACC/LN/2 – Appendix 2, p.7

<sup>339</sup> CD8.15, p. 1754

<sup>340</sup> CD8.15, pp. 1759-1760

- a. the significant step up by the Climate Change Act 2008 from the requirement to reduce emissions by 80% by 2050 to the net zero obligation;
- b. the setting of the 6<sup>th</sup> Carbon Budget and the adoption of the UK's Nationally Determined Contribution under the Paris Agreement;
- c. the change in the NPPF, introducing a presumption against the grant of planning permission for coal extraction unless the two-part test is met.

12.68 The UK Government has made clear that it is committed to limiting temperature rise to 1.5 degrees. Through the Climate Change Act 2008 it has legislated for "at least" a 100% carbon reduction as against the 1990 baseline by 2050<sup>341</sup> and recently set the Sixth Carbon Budget, which enshrines in law the ambitious target of reducing emissions by 78% as against that baseline by 2035 in the Carbon Budget Order 2021. The Climate Change Committee's 'Balanced Net Zero Pathway' includes greenhouse gas reductions of 77% from 2020 levels by 2035 and 93% by 2040 from the Iron and Steel industry,<sup>342</sup> and a policy recommendation for the Government to set targets for steelmaking in the UK to reach net-zero emissions by 2035.<sup>343</sup> The Industrial Decarbonisation Strategy similarly confirms that "in our modelled pathways, the iron and steel sector is largely decarbonised by 2035."<sup>344</sup>

12.69 It is striking that an application which was fairly anachronistic even in 2017 has, with the change in industrial and climate policy and obligations over the past five years, become almost antediluvian. That is no doubt what has prompted the reinvention of the application, from August this year, as comprising a "net zero mine"; a descriptor that first emerged in the applicant's evidence submitted in August 2021 but not ever applied to the development in the application documents or even in the applicant's Statement of Case in May 2021.

***The decline of BF-BOF steelmaking: modelling the impact of policy commitments on the steel industry***

12.70 The next decade will see a rapid decline in BF-BOF technology, and its eradication as early as the mid-2030s if the 1.5°C warming target is to be realistically pursued. Mr Truman's Proof of Evidence confirms that between the present day and 2049 "carbon emission reduction targets, set publicly by a growing number of countries, will mean that the steel industry will be required to decarbonise."<sup>345</sup> He also agreed that there would be a need for rapid action, confirming Governments would have to make "year on year reductions" in emissions to meet their emissions targets.

12.71 Nevertheless, Mr. Truman conceded that the Wood Mackenzie Base Case Scenario "does not specifically include country by country commitments" to reach targeted temperature restrictions and emissions goals and that doing so was "outside the concept of our modelling". This is despite the fact that Wood

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<sup>341</sup> CD8.2

<sup>342</sup> CD8.11, Figure A3.3.f, p.32

<sup>343</sup> CD8.11, Table P4.1

<sup>344</sup> CD8.14, Action 4.3

<sup>345</sup> WCM/JT/1, §4.4

Mackenzie's own description of the assumptions that should feed into its "Steel Supply Modelling" i.e. its base case forecast, is "environmental legislation".<sup>346</sup> So legislation such as the Climate Change Act 2008 should have been taken into account, but was not.

- 12.72 In light of these omissions, the WM Base Case includes BF-BOF steelmaking at a similar level to the present day up until 2035, resulting in a failure to meet the 2°C global temperature increase target as against 1990 levels in keeping with the Paris Agreement, and achieving emissions reductions of only half that required by the Sixth Carbon Budget.<sup>347</sup> Professor Ekins explained the result of this "strange" approach was that "the assumption in the WM Base Case is that neither the EU or UK meet the targets they have put into law and which they say they are determined to meet."
- 12.73 Indeed, Mr. Truman agreed that the WM Base Case would leave the UK "a long way adrift" of its international obligations to address climate change. Plainly such a forecast, and the level use of BF-BOF within it, is of no use for present purposes. Adopting the course within the WM Base Case would lead to a level of global warming which as a matter of scientific consensus would comprise a catastrophic existential threat and would cause the UK to miss its legally-binding targets.
- 12.74 It is striking that this is the foundation of the applicant's need case. The Wood Mackenzie base case forecast, which underpins all of Mr Truman's assessment in his main proof of evidence, and hence all of Mr Thistlethwaite's planning evidence in his main proof, methodologically predetermines a primary question the Secretary of State is considering via this Inquiry, namely whether the development is consistent with Government policies for meeting climate change. The Wood Mackenzie base case assumes the answer is "no", because it assumes the UK's binding obligations in the carbon budgets will not be met. On the applicant's own need case, supply of WCM coal will contribute to the UK inevitably failing to meet its climate obligations.
- 12.75 The applicant sought to justify that assumption by repeatedly differentiating between a "forecast of what will happen", which is how the base case was described, and "scenarios", which is how the applicant characterised all other assessments. What that misses is that forecasts and scenarios are both based on assumptions. A "forecast of what will happen" is based on a set of assumptions about future behaviour and so is only as robust as its underlying assumptions. The Wood Mackenzie forecast assumes that behaviour will not change in light of the UK and EU's climate targets and it assumes that behaviour will not be changed by government policies or regulations or by market forces aligned with the climate obligations. That is not a robust assumption.
- 12.76 The applicant's contention is that the development will not materially impact the UK's climate obligations, but their need case assumes the steel industry will not meet those obligations, by a long way. The applicant assumes that other sectors will pick up the slack. Additional emissions created by the steel industry being compensated for by greater reductions in another industry (for

<sup>346</sup> WCM/JT/2 §1.8 pg 6

<sup>347</sup> See SLACC/LN/3, §2.2 and WCM/JT/2, §1.62

example, within aviation). That approach is contrary to the Sixth Carbon Budget, which requires every sector to reduce emissions rapidly.

- 12.77 All the pathways in the Sixth Carbon Budget require all sectors of the economy to contribute to emissions reductions to achieve Net Zero by 2050, and the Balanced Net Zero Pathway, which is the basis for the legislated carbon budget, particularly requires this.<sup>348</sup> The CCC's Methodology Report makes clear that "A key part of the Committee's approach has been the construction of a set of self-consistent pathways, or scenarios, for emissions in each sector of the UK's emissions from now through to 2050." The CCC has considered what emissions reductions will be realistic from each industry,<sup>349</sup> and that was key to informing the level at which the Sixth Carbon Budget was set. Indeed, Professor Ekins noted that whilst there were challenges to decarbonising the steel industry, the CCC recognised considerably greater abatement potential for that industry as against other sectors particularly from the mid-2030 onwards within their 'Balanced Net Zero Pathway'.<sup>350</sup>
- 12.78 If the applicant wishes to sustain the argument that the steel industry should be afforded additional 'slack' in relation to emission reductions then the onus is on it to explain why that is the case. The applicant did not do so before the Inspector. Moreover, the 'slack' the applicant argues should be afforded to the steel industry is enormous. Mr Truman acknowledged that the Wood Mackenzie Base Case would only involve the UK steel industry achieving roughly half of the emissions reductions that the CCC expects in a balanced pathway. No evidence was put before the inquiry that the UK could achieve its legislated targets under any pathway in which the steel industry is such a 'laggard'.
- 12.79 The Accelerated Energy Transition 2.0 ('AET2') scenario alternatively provided by Wood Mackenzie within its original Report followed a two-degree warming pathway.<sup>351</sup> Mr Truman acknowledged, however, that the commitment under the Paris Agreement is to limit global warming to "well below 2°C," and Professor Ekin's rebuttal shows by reference to the White Paper released by Wood Mackenzie in February 2021 that the AET2.0 scenario does not involve the UK or the EU meeting its legally-binding GHG emissions targets.
- 12.80 In any event, both the UK and EU are now committed to limiting warming to 1.5°C meaning AET2.0 scenario is contrary to confirmed emissions reductions targets in both jurisdictions.
- 12.81 The Accelerated Energy Transition 1.5 scenario ('AET1.5') set out in the Addendum Wood Mackenzie Report<sup>352</sup> is plainly the most relevant modelling exercise provided by WCM, as it is the only one of the three models provided by WCM that involves the UK and EU meeting their legislated targets and illustrates a path to "hold the global temperature rise to less than 1.5°C" in keeping with the UK's present climate goals.

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<sup>348</sup> CD8.10, p.95

<sup>349</sup> See, in relation to the steel industry, CD8.10, pp.125-133

<sup>350</sup> CD8.11, Fig. A3.3.d, (bottom line diagram), p. 30

<sup>351</sup> JT/2, §1.72

<sup>352</sup> ID1

- 12.82 It is therefore telling that the AET1.5 scenario necessitates carbon emissions from the steel sector falling by a “staggering” 93% from the WM Base Case, and 75% under the AET2.0 Scenario and results in global metallurgical coal trade “declining sharply” involving BF-BOF production being “abolished” in the EU in the early 2040s. This was fairly characterised as “a massive decline” and a “great reduction” by Mr Truman in his evidence, who also accepted that the period leading up to 2040 would “see blast furnace closures throughout that period.”
- 12.83 There is consensus between models which involve compliance with the UK and EU’s legislated GHG targets in that the use of BF-BOF in the UK and Europe will decline sharply in the 2030s and be eliminated in the early 2040s. Professor Ekins presented modelling undertaken by E3 Modelling Athens<sup>353</sup> which included a ‘Policy Scenario’ which incorporates current emissions reductions targets and “focussed on a scenario which assumed that the UK and EU would take its own laws seriously.” Thus, a scenario which includes only current targets is, on the applicant’s own evidence, conservative, in that further policies are in fact likely.
- 12.84 Professor Ekins gave clear evidence with reference to the graphs from his Proof of Evidence,<sup>354</sup> explaining that in the PRIMES Policy Scenario (and in AET1.5), demand for coking coal in the UK and EU27 fell to “tiny amounts, effectively zero by 2040, well within the proposed lifetime of the mine” due to the likely widespread commercial availability of H-DRI and EAF production. He highlighted that this also informed the CCC’s projection for a similarly sharp decline in emissions leading up to 2035 in the Balanced Net Zero Pathway for Manufacturing and Construction,<sup>355</sup> commenting that “on the basis of a different modelling exercise, we have got a very similar sign” leading to “an extra sign of robustness” in the PRIMES Policy Scenario.
- 12.85 The PRIMES Model is a transparent, published model which can be scrutinised and which is routinely used by the European Commission to project energy system developments,<sup>356</sup> whereas the Wood Mackenzie forecast and scenarios are all based on a proprietary model which therefore cannot be scrutinised.
- 12.86 Neither the Wood Mackenzie Base Case forecast nor the AET2.0 scenario can possibly be used to justify the proposed ‘net zero’ mine. Both courses would require an assumption that the UK/EU will fail in pursuit of their stated and legislated for emissions reductions targets. In contrast, modelling exercises which do consider legislative restrictions on emissions and Government behaviour in light of the same (e.g. the PRIMES ‘Policy Scenario’, AET1.5 and the CCC’s Balanced Net Zero Pathway) all indicate the rapid decline of BF-BOF steel production.
- 12.87 It follows that (even operating on the assumption that the steel industry continues to operate at a similar size to the present day) coking coal use in the UK and EU will decline from 2025 and essentially disappear from 2040.

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<sup>353</sup> SLACC/PE/2 – Appendix 3

<sup>354</sup> SLACC/PE/1, §7.4, figs. 6 and 7

<sup>355</sup> CD8.11, Fig. A3.3.d, (bottom line diagram), p. 30

<sup>356</sup> SLACC/PE/1 §2.3

- 12.88 This is incompatible with the suggestion that the coal from the WCM mine will fulfil a domestic and European need for the coal during the lifetime of the mine because the need for coal will cease entirely a decade before the mine is set to close. It is also at odds with the suggestion that there will be a need for the coal between 2025 and 2040. Mr Truman acknowledged that were coal use to cease in the early 2040s, as in the AET1.5 scenario, there would be a gradual phasing out of coking coal in the preceding period (as shown by the shrinking European metallurgical coal demand, which then essentially disappears in the early 2040s in Figure 1.2 of Wood Mackenzie's Addendum on the AET1.5 Scenario)<sup>357</sup> This means that existing suppliers will be able to satisfy market demand. Indeed, as the International Energy Agency put in their Net Zero pathway: "beyond projects already committed as of 2021 ... no new coal mines or mine extensions are required" if the Net Zero target is to be met.<sup>358</sup>

***Green steelmaking technology to reach 1.5°C as modelled***

- 12.89 The applicant has sought to reconcile the need for striking emissions reductions in the next decade, and the almost total eradication of BF-BOF emissions by the early 2040s in the above modelling scenarios by suggesting that the technology to move away from BF-BOF production is not yet commercially viable. They say the most effective way to achieve required emissions reductions up to 2050 is to persist with BF-BOF but to use Carbon Capture and Storage (CCS) to mitigate emissions. That approach is unduly pessimistic about the commercial application of H-DRI and EAF technologies, hopelessly optimistic about what CCS can achieve, and contrary to the evidence about what will be required for the UK/EU to actually achieve the emissions targets they pursue.
- 12.90 Secondary steelmaking, or production of steel from recycled scrap, reduces the need for new steel to be produced from iron ore (referred to as "primary" steelmaking). Professor Nilsson presented evidence that "wide consensus exists among experts that the share of secondary steelmaking will increase in the EU up to 2050." Indeed, in Wood Mackenzie's AET1.5 scenario, scrap use in steelmaking would "nearly double" by 2050. This is one of the key drivers of the precipitous fall in demand for metallurgical coal in that scenario.<sup>359</sup> Professor Nilsson presented peer-reviewed evidence showing that the minimum likely EAF share in Europe by 2050 is 66%.<sup>360</sup> This significant growth in the use of scrap will mean that less new steel is needed, thus shrinking the demand for coking coal in Europe.
- 12.91 In relation to primary steelmaking (i.e. making "new" steel rather than recycling) it is not in dispute that Hydrogen-based production will be the steel industry's lasting response to the problem of emissions reductions and eventually replace BF-BOF. This method reduces GHG emissions by over 90% compared to the BF-BOF route.<sup>361</sup> Mr Truman's proof of evidence confirms

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<sup>357</sup> ID1 page 4, Figure 1.2

<sup>358</sup> CD8.16

<sup>359</sup> ID 1 pg. 4

<sup>360</sup> SLACC/LN/3 § 4.4.

<sup>361</sup> SLACC/LN/2 – Appendix 8(c)



"hydrogen-based steel offers the most attractive long-term solution that might eventually lead to widespread replacement of coal and coke in steelmaking."<sup>362</sup>

- 12.92 It is the timeframe within which H-DRI will succeed BF-BOF that is in issue. The Council's Officer Report of 2 October 2020 shortened the lifetime of the permission on the basis that H-DRI would likely be commercially viable around 2050, with commercially viable demonstration plants being operational by 2035. In practice, however, the steelmaking industry has now begun its shift away from BF-BOF even more rapidly than had been predicted, and that there is every indication that this movement will continue at speed.
- 12.93 Professor Nilsson highlighted 19 current or forthcoming projects operated by major EU steelmakers that were not dependent on the use of metallurgical coal for steelmaking,<sup>363</sup> identifying that "it tells me that there has been a very rapid shift in the steel industry" towards Hydrogen-based steelmaking technology. Results from the Green Steel Tracker ('GST'), a webpage supported by the UN designed to track low carbon investments in the steel industry provided a strong evidential basis for that assessment. The GST revealed 47-48 new green steel projects<sup>364</sup> with Professor Nilsson confirming this showed "a lot of momentum in the steel industry towards Hydrogen steelmaking."
- 12.94 There is significant empirical support for finding that, in the ambitious climate targets made by steelmaking, market leaders set out in his evidence, such as Arcelor Mittal's commitment to a 30% reduction in emissions by 2030 and carbon neutrality by 2050,<sup>365</sup> a large number of European steel mills have announced they will begin H-DR steel production in the coming years.<sup>366</sup>
- 12.95 Professor Nilsson's evidence provides valuable further detail on the HYBRIT Partnership including the announcement of a demonstration plant to be commissioned in 2025 with sales of 1.3 Mtpa (2026) rising to 2.7Mtpa (2030) as well as identifying a recent announcement from Volvo that it will be using low-Carbon steel in its cars throughout the 2020s.<sup>367</sup> Contrary to the Council's conclusion that commercially viable demonstration plants would not exist until 2035, it appears one will be producing 1.3 million tonnes per year by 2026.
- 12.96 The conclusions leading experts reached on the present and future uptake of H-DRI are not academic exercises. They track the commitments which are actually taking place in the steel industry. HYBRIT technology is technically attractive and economically interesting, resulting in a decision to make pilot scale investments in 2018. Those pilot installations are presently being installed and an industrial scale demonstration plant is being constructed for 2025 alongside the conversion of two blast furnaces to be ready for H-DRI production in 2025.

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<sup>362</sup> WCM/JT/1, §4.6

<sup>363</sup> SLACC/LN/1, §3.27, SLACC/LN/2, Appendix 12

<sup>364</sup> SLACC/LN/2 – Appendix 11

<sup>365</sup> SLACC/LN/2 – Appendix 12, and see columns '2030 Target' and '2050 target' generally in Table 2

<sup>366</sup> SLACC/LN/1 3.27

<sup>367</sup> SLACC/PE/1 – Appendix 11



- 12.97 Evidence from the steel market underscores the commercial viability of green steelmaking technology, and the pace of the adoption of that technology indicates that the next decade is likely to see even further advance, particularly in the use of H-DRI. Indeed, in October ArcelorMittal announced its adoption of Green Hydrogen technology that will “deliver substantial CO<sub>2</sub> emissions savings even within the next five years”.<sup>368</sup> During the course of the inquiry itself Tata Steel announced that it was adopting H-DRI technology at its large steelworks in the Netherlands.<sup>369</sup>
- 12.98 The contemporary commercial viability of H-DRI technology has been repeatedly endorsed by leading steelmakers. It follows that on any realistic analysis the ambitious emissions reductions targets for the steel industry can be actioned by the adoption of H-DRI steelmaking, and that journey has begun. The argument that this is the technology of the distant future is simply wrong.
- 12.99 In contrast to the speedy and ongoing uptake of Hydrogen based steelmaking technologies, the evidence before the inquiry confirmed the steelmaking market to be significantly more resistant to the adoption of CCS on which the applicant’s need case is heavily reliant. Mr Truman acknowledged there are no BF-BOF plants utilising CCUS technology (indeed that “its use in steelmaking is negligible at present”<sup>370</sup>). Emissions reductions from Hydrogen steelmaking projects are completely outpacing what we see coming for CCS, meaning the steel industry is moving away from CCS.
- 12.100 The reluctance to adopt CCS is partially due to cost constraints and partly due to the realisation that emissions do actually have to go to zero in a short space of time. This has led to industry recognition that reductions of 20-30% were unlikely to assist within that window.
- 12.101 CCS in coal-based steelmaking is not an effective way to meet the levels of emissions reductions required by the UK/EU by 2035 because, as the Wood Mackenzie report itself acknowledges, “such a high level of capture efficiency is not considered to be practically possible”<sup>371</sup> at present and given that CCS has not yet been successfully used in steelmaking to date, the window in which it could be realistically deployed is closing rapidly. It is therefore uncertain what contribution CCS in coal-based steelmaking may make to emissions reductions up to 2035, up to 2050 or at all. Indeed, in the penultimate week of the Inquiry, one of the two CCS projects listed in the Green Steel Tracker (and the only one intended to be more than a “pilot” scale) was scrapped in favour of H-DRI technology.<sup>372</sup>
- 12.102 The scope for CCS to assist in abating emissions over the coming decades of transition was also explained to be limited. Doing so results in a commitment or ‘lock in’ carbon emissions, albeit at a somewhat lower level. Whilst CCS could be utilised in future for the production of Blue Hydrogen for H-DRI,<sup>373</sup>

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<sup>368</sup> SLACC/LN/3, Appendix R2

<sup>369</sup> ID30

<sup>370</sup> WCM/JT/1, §4.7

<sup>371</sup> WCM/JT/2, §1.56

<sup>372</sup> ID63

<sup>373</sup> SLACC/PE/1, §6.10, Appendix 8

Professor Nilsson confirmed “the shift to Hydrogen steelmaking is more critical” than adding CCS to BF-BOF production given the UK/EU emissions reductions targets and the speed with which they are to be met.

12.103 In light of the above assessment, it is difficult to see the justification behind WCM’s optimism concerning CCUS, a longstanding technology which remains expensive and unpopular, and also in their pessimism for Hydrogen which, as discussed, is already being implemented in industry. The clear expert opinions of Professor Nilsson, Professor Ekins and Professor Haszeldine were that Hydrogen steelmaking would become commercially viable even more speedily than previously thought, and that although there was a role for CCS in the emissions abatement picture, it would be secondary to H-DRI technology. That conclusion is wholly supported by analysis of the steel industry in practice. In short, there is likely to be no need for coking coal in the steel industry as early as the 2030s as HDRI technology becomes the primary method of steel production. The result is that there can be no need for the product of the proposed mine, at least in Europe, and accordingly the benefits of the coal’s extraction to that region appear vanishingly small.

12.104 The above arguments clearly undermine the claimed longevity of BF-BOF steel production in the UK/EU and of any possible “transition” savings by opening the proposed mine on the basis that the WCM’s coal will provide a local substitute for coal presently imported from the US. So too does the “perfect substitution error” addressed in the climate change section.

***Beyond Europe: exporting indigenous supply***

12.105 It follows from the decline of BF-BOF production in the UK/Europe set out above that a principle touted benefit of the scheme that the WCM coal would provide an indigenous supply for those regions falls away. The applicant’s case has been that around 85% of the WCM coal product would be exported to the EU, and in evidence Mr Kirkbride asserted that WCM coal would not be exported beyond the UK and Europe. Yet the export of the WCM product beyond European borders (in light of the quality of the product and the decline of BF-BOF production) has always been a component of this development. As Mr Kirkbride recognised, Javelin (who are contracted to market the WCM coal) are a global commodities trader whose largest geographical market is in fact Asia.

12.106 The more WCM’s evidence developed, the clearer it became that it includes the sale of the coal outside of Europe. Mr Truman’s evidence referred to Japan, India and China,<sup>374</sup> and the Wood Mackenzie addendum states that if the UK and EU market is not available then WCM will sell the coal in Asia.<sup>375</sup>

12.107 Mr Truman, the sole WCM witness on the need for coking coal readily agreed that on the only WCM modelling scenario that reflects present UK/EU policy shows that there will be no need for coking coal in the UK/Europe by early 2040s and before which there would be a period of rapid decline. Mr Truman’s view was that despite this, the need for WCM coal would not be extinguished

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<sup>374</sup> WCM/JT/3 § 3.4; WCM/JT/1 section 4

<sup>375</sup> ID/1 §1.15

because it could still be marketed in non-EU countries such as Serbia, Bosnia, Turkey, Japan, India and China.

- 12.108 Whilst it may well be true that WCM could mitigate the position of a diminishing UK/EU market, this is flatly inconsistent with the applicant's case that the supply of coal from the proposed development would fulfil a domestic and European need which is of "national importance",<sup>376</sup> and that it would "support the transition to a low carbon future. The fact that there is no such need is the reason WCM have been forced to admit it may well look beyond Europe. The sale of the coal also underlines the obvious commercial driver for this scheme which is profit for WCM rather than benefit for the EU/UK or emissions reductions.
- 12.109 The fact that WCM will likely market their coal outside European borders plainly also eliminates any argument for claimed transport emissions benefits created by the WCM mine.<sup>377</sup> Mr. Truman's attempt to salvage the 'transport savings' argument by undertaking a token calculation of proposed net emissions saving on the basis of export to Japan<sup>378</sup> was unsuccessful. Professor Ekins pointed out, that analysis uses the lower Ecolyse 1 figures, compares the mitigated WCM emissions against unmitigated figures for other mines, and cherry-picks the lowest figure of any year in which the mine is in full operation.<sup>379</sup> The calculation remains unreliable but reveals that the WCM product will be sold to whatever market is most profitable to WCM, whatever the transport emissions. There can accordingly be no confidence in any transport savings offered by the WCM coal supply.

***Undesirable coal qualities for the UK and EU market***

- 12.110 Even were the above arguments unsuccessful, and if, counter to all current industry indicators BF-BOF production persisted through 2040 and beyond, and if the WCM product could be said to perfectly substitute for currently imported coal, then there would nevertheless be no need for the proposed WCM product in the UK/EU. The product is not of sufficient quality for use in the steel mills in those regions due to its extremely high Sulphur content.
- 12.111 Mr Kirkbride agreed that Sulphur was a constraining factor which currently limits the use of coal and that, as concluded within the Wardell Armstrong Report,<sup>380</sup> Sulphur content is an "important parameter" for identifying high quality marketable metallurgical coal.
- 12.112 Such classification is central to the saleability of the coal because higher Sulphur content can impact the quality of the steel product derived from it and can attract price penalties designed to minimise adverse environmental effects of high Sulphur use. Clarity on the quality of the product to be produced at the mine is paramount for determining its specific market and therefore the extent, if any, of the claimed substitution or emissions savings. Professor Haszeldine was clear in his conclusion that classically, the international

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<sup>376</sup> CD15.1, §114-115

<sup>377</sup> CD1.59, §4.2.12-4.2.15

<sup>378</sup> WCM/JT/3, §3.4

<sup>379</sup> SLACC/PE/4 §2.4.3-2.4.10

<sup>380</sup> CD9.12, §5.1.9-5.1.10.

standard for premium HVA coal was a Sulphur content of 0.5%-1.1%”,<sup>381</sup> and that a Sulphur value over 1.3% would very unlikely attract such specification. Mr Truman similarly confirmed that 1% Sulphur was the desirable level for HVA coking coal that those in the industry typically desire. The Wardell Armstrong Report referred to all coals over 1% Sulphur as “higher sulphur”<sup>382</sup> and, indeed, seaborne coals with Sulphur levels exceeding 0.7% attract price penalties in practice.

- 12.113 The summary of industry data collected within the Edinburgh Report, co-authored by Professor Haszeldine,<sup>383</sup> endorsed that approach, with Professor Haszeldine repeating “premium coals may be down at 0.5%” but “poor and marginal coals are above 1.1%.” All seaborne hard coking coals in the recent S&P Global Platts Specification Guide for Global metallurgical coal had quoted Sulphur levels of under 1% in support of his assessment.<sup>384</sup> Even the Wood Mackenzie Report indicated that HVA coal has a maximum Sulphur content of 1.3% and that HVB coal has a maximum Sulphur content of 1.4%.<sup>385</sup>
- 12.114 The marketability of the coal extracted from the two coal seams targeted by WCM was called into question therefore when anecdotal evidence about the high Sulphur level in the region was proved correct.<sup>386</sup> The ‘Main Band’ has an average Sulphur content of 1.9% and the ‘Bannock Band’ an average of 2.6%. As a starting point therefore, the targeted coal “is between 90% and 260% greater than competing metallurgical coals currently traded internationally”.<sup>387</sup> Professor Haszeldine explained that the situation cannot be entirely overcome by ‘processing’ the Run-of-Mine coal. Javelin confirm that after processing, the proposed WCM product still exceeds the 1.1% Sulphur content produced by West Virginia coal mines at 1.4% Sulphur,<sup>388</sup> and in fact whether this Sulphur reduction is achievable remains dubious, with Mr Dean, the Technical Director of Wardell Armstrong noting “I cannot see how a yearly average of 1.4% is achievable.”<sup>389</sup>
- 12.115 It is therefore extremely difficult to see how the WCM coal could possibly be designated as being of ‘premium quality.’ Mr Truman fairly concluded that if WCM produced coal with higher Sulphur content than the specification he had been provided, this would require significant blending with lower volatility coals, although it “would not necessarily be totally restrictive.”
- 12.116 The reliance on blending with foreign lower Sulphur coals further undermines the ‘transport emissions savings’ and ‘perfect substitution’ arguments, as well as calling into question the real purpose of opening an ‘indigenous supply.’ Such preliminary responses as have been made available to the Inquiry would suggest indeed that the high Sulphur WCM coal would not be attractive to UK steelmakers, with British Steel noting that the Sulphur content of the coal is an

<sup>381</sup> See also SLACC/SH/1, §6.5, SLACC/SH/2, Figs.4-6 and 11-14

<sup>382</sup> CD9.12, §4.1.5

<sup>383</sup> SLACC/SH/1, §5.3

<sup>384</sup> SLACC/SH/3, - Appendix R2, pp.21-22

<sup>385</sup> WCM/JT/2, Table 2.2, p.22.

<sup>386</sup> SLACC/SH/2 – Appendix 1

<sup>387</sup> SLACC/SH/2 – Appendix 1, p. 31

<sup>388</sup> CD2.73, p.262.

<sup>389</sup> SLACC/SH/2 – Appendix 5, p.1

issue for British Steel currently due to our operational and blend sulphur limit.”<sup>390</sup>

- 12.117 Although Mr Truman and Mr Kirkbride referred to the other aspects of the WCM coal as being attractive to steelmakers, Professor Haszeldine clarified that “Sulphur in particular is an adverse value” and because “premium value implies top price”. He was “doubtful that the premium designation of WCM coal is correct.” His conclusion is supported by Javelin’s<sup>391</sup> concession that if the WCM coal product’s value exceeded 1.7% it would no longer attract HVA status irrespective of its other qualities. Professor Haszeldine identified that a “basket” of properties are relevant to the performance of coking coal, but “for a premium quality coal, you need to hit all of those values” and in this case the “Sulphur is very far away from a premium coal.”
- 12.118 The MPI also clearly concluded the Sulphur content of the WCM product was “high, undesirable for good quality coal”<sup>392</sup> concluding that the product of the mine would not exhibit all the key parameters for ‘HVA’ quality coal, and as a result conceded that there would likely be a discount on our coal selling price against the benchmark for Sulphur.
- 12.119 The true position concerning the WCM coal remains opaque. It is typified by Mr Kirkbride’s response when it was pointed out that the Condensed Annual Cashflow on which he relied included both HVA and HVB coal under yield and revenue.<sup>393</sup> That response simply asserted that the references to HVA and HVB coal were an error and should be substituted with “Primary Stream” and “Secondary Stream”. This is another example of where the applicant seeks to pivot when SLACC exposes an inconvenient truth about its application.
- 12.120 In the initial financial model, 80% of the product (54.2 Mt out of a total of 67.7 Mt) was labelled as HVA Coal, whilst the remaining 20% was labelled HVB Coal. This appears to relate back to the indication by Mr Kirkbride that the coal washing plant would produce 80% of the product at a sulphur content below 1.4% but that the rest of the coal might range up to 1.6% sulphur. The person within WCM who developed the financial model appears to have considered that the coal which exceeded the 1.4% figure would not constitute HVA coal and could only be classed as HVB. The model suggests that 20% of the product will not be HVA coal.
- 12.121 In any event, it is clear that the increased sulphur content of the coal results in a product of lesser value and that WCM’s case that “100% of the coal extracted at the Colliery would be premium metallurgical coal” and that the coal “is a premium High Volatile ‘A’ product” cannot be sustained.<sup>394</sup> It also further diminishes the confidence that the product of the mine will be saleable in the UK and Europe.
- 12.122 Despite the need for the coal clearly being a key issue to be debated at the Inquiry, no information was submitted in evidence by WCM in relation to the

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<sup>390</sup> CD2.75, p. 266

<sup>391</sup> CD2.73

<sup>392</sup> SLACC/SH/3 – Appendix 1, p. 3

<sup>393</sup> WCM/MAK/2 Appendix 5 pg 77

<sup>394</sup> WCM Statement of Case CD 15.1 para 12(d)

basic question, namely whether any prospective buyers had expressed interest in the coal. WCM could not identify a single steel manufacturer that had confirmed they could or would use the WCM product. WCM submitted a short collection of documents titled 'letters of support but these do not contain a single commitment from any EU/UK steelmaker to use the WCM product.'<sup>395</sup>

- 12.123 Indeed, the little information that has been provided is repetitious of documents already before the Inquiry or is outdated. The letter from Javelin (dated 10 August 2021) is already before the Inquiry. The letter from Tata Steel (dated 7 March 2017) is from four and a half years ago, is apparently not based on any particular coal specification. In particular, it is not based on the present Sulphur specification and is in any event expressly stated to contain "no firm commitment" to purchase WCM coal.
- 12.124 Similarly, the letter from British Steel (dated 27 February 2017) is from over four and a half years ago, is not based on an identified coal specification and is superseded by later British Steel comment that the WCM coal is unsuitable due to its high Sulphur content (discussed above).<sup>396</sup>
- 12.125 It is noted that both 2017 letters were drafted at a time when WCM were proposing to produce 'middlings coal' as a by-product in order to achieve a higher quality of coking coal (with a lower Sulphur content of 1.25%) than presently proposed), and that this process has now been abandoned by WCM. Any interest in the coal proposed for production at that time therefore cannot be assumed to persist.
- 12.126 The letter from 'Hargreaves Raw Materials Services' is undated but refers to an apparent Memorandum of Understanding dated 15 October 2019. It is unclear what, if any, coal specification this agreement is based upon or whether Hargreaves are aware of the present coal specification WCM aims to produce at the mine. In any event, the Memorandum of Understanding simply sets out "principal terms and conditions on which the Parties are seeking to enter into a formal coking coal sales and purchase agreement." In other words, there is an agreement to consider a future contract for sales, but no commitment has been made. Of course, in October 2019, when the MOU was signed, the proposal from WCM had yet to have been amended and so was still to produce metallurgical coal with a maximum sulphur content of 1.25%, as set out in the Council Officer's Report of March 2019. Little weight should therefore be given to this speculative agreement to consider a future contract, which is likely based on a different coal specification.
- 12.127 In any event, Hargreaves are not a steelmaker, but a global commodities trader and so the letter cannot amount to a confirmation that a steelmaker has agreed to use the WCM coal. Indeed, nothing is said about where the coal might be sold, so the letter clearly does not constitute evidence that the coal would be used in the UK or Europe.
- 12.128 If the WCM case is to be believed that the coal is a "critical raw material" and fulfils a nationally important need, one might have assumed that WCM would be able to produce statements of support from actual steelmakers keen to use

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<sup>395</sup> ID60

<sup>396</sup> CD2.75, p. 266



the coal. WCM have provided no evidence as to who needs the coal. Far more is revealed by what is not contained in the recently submitted 'support' documents as they do not contain a statement by a single UK or EU steelmaker that they are likely to use WCM coal, let alone a firm commitment to do so.

- 12.129 The only firm evidence to which Mr Kirkbride could point concerning the purportedly secure European sale for the WCM coal was a letter from Javelin<sup>397</sup> concerning a proposed agreement between the same and WCM. It was touted as evidence of a firm commitment by Javelin to selling the WCM coal to the European market. Yet, on any analysis, it only comprises a proposed agreement by Javelin to market the coal in the UK and Europe, and of course Javelin's credentials as a global commodities trader with a focus in Asia were plain to see.
- 12.130 There are, therefore, very significant question marks over whether the product of the WCM mine could be used within the UK/EU due to its high Sulphur content. These concerns could have been allayed by WCM via the release of details about the Run Of Mine (ROM) coal. Yet no such information has been provided despite repeated request and Professor Haszeldine explained that even Wardell Armstrong were "provided with a selective and incomplete set of information" about the ROM coal, despite it being clear that "WCM have access to a swathe of information from the exploration borehole."<sup>398</sup>
- 12.131 This data has not even been shared with the experts upon whom WCM seek to rely. Mr Truman confirmed that the conclusions reached by Wood Mackenzie as to the marketability of the WCM coal were based solely on an indicative specification provided by WCM which Mr Truman could not confirm to be achievable in practice. Moreover, Mr Truman agreed he had not seen the application specification document which contained different Sulphur values<sup>399</sup> and confirmed that he had no knowledge of how to address the accuracy of one specification over the other.
- 12.132 This is a critical point given WCM or its agents have variously stated the Sulphur content (or Sulphur content limit) of the WCM coal to be 1.25% Sulphur, a maximum 1.7% Sulphur, maximum 2% Sulphur, less than 1.4% Sulphur, less than 1.5% Sulphur and a range of between 1.3% and 1.4% Sulphur, and maximum 1.6% Sulphur with 80% output at 1.4% Sulphur. On this basis, Professor Haszeldine fairly understated that he had a "moving target" of asserted values for the WCM product.
- 12.133 Mr Kirkbride's answer to concerns over the high Sulphur level in West Cumbria relied heavily on the 'washing' of the coal to be undertaken at the Coal Handling and Processing Plant (CHPP). There are two problems with this position. Firstly, the Inquiry has not been provided with sufficient detail regarding the ROM coal and we do not know, with any accuracy, the extent of the 'work' that the CHPP will be required to do. Second, insufficient details of the 'updated' CHPP have been released such that no one knows how what

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<sup>397</sup> WCM/MAK/2 – Appendix 6, p.30 (paragraph 9)

<sup>398</sup> See CD15.1, §6 and §46

<sup>399</sup> See Appendix 4 to ID51



'work' can be undertaken, whether the extent of the proposed sulphur removal is possible, or the environmental consequences of the same.

- 12.134 The original design for the CHPP was provided by the Daniels Company,<sup>400</sup> however a Briefing Note which preceded the determination of the application in October 2020 explained WCM had engaged the services of Parnaby Cyclones to complete the CHPP and that as a result of a "revision" and "redesign"<sup>401</sup> the original plant (with a cut off at 1.4% Sulphur) was being amended to limit the Sulphur at 1.8%.
- 12.135 Despite Parnaby Cyclones providing updated drawings and designs to WCM, no further diagrams or technical explanation was provided by WCM to the Council within the Briefing Note. WCM simply sought to inform the Council that the description of the operation of the CHPP was as it had been in the original application and EIA, stating the "description of the internal processes of the CHPP is not material in terms of determining a planning application".<sup>402</sup> Beyond a blunt assurance from Parnaby Cyclones, Mr Kirkbride provided no further detail as to how the proposed post-washing Sulphur level was achievable, placing significant reliance on "a change to the internal process within the CHPP building".
- 12.136 Mr Kirkbride's further answer to the point was "It's not a redesign, it's an update" he said, before stating that "it's exactly the same basis of the plant," denying any "significant change." That answer is inconsistent with Mr Kirkbride's written evidence, however, which plainly states that the "update work has been undertaken to introduce new technological advancements in the design of specific aspects of the plant since the previous studies completed more than four years ago".<sup>403</sup> This included the relocation of the main crusher underground to reduce noise, the installation of sizing screens, modification of the primary cyclone size, update of a large diameter high rate thickener, the installation of a vacuum filtration belt, and the introduction of plate presses.
- 12.137 The absent information also means that EIA cannot be conducted in respect of any elements of the revised CHPP, especially the potential impact of any waste product. Professor Haszeldine set out in his written and oral evidence why the waste leaving the coal washing plant, which would contain concentrated levels of sulphur washed off the coal, could lead to Acid Mine Drainage (AMD). The risk of such acid mine drainage is sensitive to the amount of sulphur in the ROM coal, because high levels in the ROM coal will mean that larger amounts of sulphur are washed off and sent back into the mine during the "backfill" process.
- 12.138 Following the Briefing Note, WCM now claim to seek to produce a lower level of Sulphur of less than 1.5%<sup>404</sup> and again how this will be accommodated within the CHPP has not been explained, nor is there any evidence that consideration has been given to the risk of AMD.

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<sup>400</sup> WCM/MAK/3, §4.37

<sup>401</sup> CD2.68, p.203

<sup>402</sup> CD2.68, p.202.

<sup>403</sup> WCM/MAK/1, §7.9

<sup>404</sup> WCM/MAK/2 – Appendix 3

- 12.139 The position in respect of whether a condition limiting the definition of “metallurgical coal” and the Sulphur content also remains opaque. Mr Kirkbride told the Inquiry that he would be happy to accept a condition in the same terms imposed by the DC&R Committee on 2 October 2020, but Mr Jones QC reminded the Inspector that the WCM case remains that such a condition is unnecessary.
- 12.140 As such, the Inquiry still does not know what the specification of the ROM coal is, what the content of the CHPP is, or how the CHPP will process the ROM coal into the ‘processed’ specification provided by the applicant. Indeed, there is considerable doubt given the high Sulphur content of the targeted coal seams whether it is possible to extract a coal product at the mine which could reasonably be used in UK/EU industry. The applicant has failed to provide clear specifications as to what Sulphur level the processed coal will actually contain. Given the high likelihood that the coal in the region is incompatible with the UK/EU classification of ‘premium’ or HVA coals, and absence of any evidence from the applicant as to how the WCM coal will actually be usable in UK/EU steelmaking.

### ***Environmental Impacts***

#### ***Effects on Character and Appearance***

- 12.141 SLACC adopt the oral and written evidence provided by Mr Peter Radmall on behalf of Friends of the Earth in terms of character and appearance, and his conclusions on that topic concerning both the development’s impact on the RLF and on the Marchon Site.<sup>405</sup> The application proposals conflict with Policy ENV5 of the Copeland Local plan and Policy SP15 of the Cumbria Minerals and Waste Local Plan. Substantial weight should be attributed to the landscape harm arising from the impact of the RLF, and less than substantial harm attributed to the landscape harm arising from the impact to the “significantly less sensitive” Marchon site.<sup>406</sup>

#### ***Effects on local amenity and Public Rights of Way***

- 12.142 The Copeland Local Plan has identified that the Council will seek to maximise the potential of tourism in the area, particularly outside the Lake District National Park Boundaries via Policy ER10: Renaissance Through Tourism. The Wainright Coast-to-Coast Walk and the public footpaths that connect the site with St. Bees have obvious appeal to tourists, fitting with the Local Plan’s vision to provide improved links from the Coast-to-Coast walk to the English Coast Path to attract walking tourists. The St. Bees Local Parish has also published a series of guided walks in the area which includes a journey through the Pow Peck Valley.<sup>407</sup>
- 12.143 The proposed development will have an obvious adverse effect on local amenity and public rights of way, particularly in terms of the above stated policy objectives. The installation of the RLF and associated development threatens to undermine views of the Pow Beck Valley for those travelling on

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<sup>405</sup> see SLACC/PB/1, §7.38-41

<sup>406</sup> FoE/PR/1, §7.8

<sup>407</sup> SLACC/PB/2 – Appendix 5

the Wainwright Coast to Coast walk, undermining the topology and predominantly open and undeveloped, tranquil character of the valley. This will have clear adverse impacts on local amenity and on the local tourism industry which have previously been recognised by the Council and would result in conflict with Policy ER10 especially during the construction phase of development.

### ***Effects on Biodiversity***

#### ***The Extent of Ancient Woodland***

- 12.144 The protection given to ancient woodlands in planning policy is of the highest order. The NPPF indicates that ancient woodlands are irreplaceable habitats and paragraph 180(c) provides for their protection against any loss or deterioration, except where wholly exceptional reasons exist and where a suitable compensation strategy is provided.
- 12.145 It is undisputed that Bellhouse Gill Wood is ancient woodland. Whether Roskapark Wood and Benhow Wood are also ancient woodlands is not clear but these must be afforded protection under paragraph 180(c) and local policy. The applicant agreed in the statement of common ground in respect of ecology that both Roskapark and Benhow Wood, whilst not listed in the ancient woodland inventory for England, “are mostly ancient semi-natural woodland”.<sup>408</sup>
- 12.146 During the roundtable session on ecology, both Dr Shepherd and Dr Martin agreed that a woodland need not be listed on the ancient woodland inventory for England to qualify for protection as ancient woodland under national planning policy, and this is clearly reflected in government guidance. Dr Shepherd for the applicant indicated that whilst he considered much of Roskapark Wood was ancient woodland, he considered that the area immediately to the west of the St Bees Road, which has clearly been subject to quarrying activity in the past.
- 12.147 Dr Martin’s rebuttal proof of evidence, provided much clearer evidence, overlaying the areas of former quarrying on a satellite image of the woodland with the application boundary overlain.<sup>409</sup> This undisputed evidence shows that almost the entirety of the application boundary overlies an area of ancient woodland for which there is no evidence of previous disturbance, with only a very small overlap with the area mapped as having been formerly quarried.
- 12.148 In the light of this evidence, clearly the only conclusion that can be drawn is that most or all of the area of Roskapark Wood within the application boundary is ancient woodland and must be treated as such.

#### ***Cut and Cover***

- 12.149 It is common ground that the “cut and cover” conveyor line construction methods proposed in the Application on the date of the call-in by the Secretary of State would result in some loss of irreplaceable ancient semi natural

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<sup>408</sup> ID55 §3.1.4

<sup>409</sup> SLACC/TM/1 Fig 1, p. 14.

woodland.<sup>410</sup> It was therefore accepted by the applicant prior to the proposed pipe-jacking amendment that there had to be wholly exceptional reasons for the grant of permission and a suitable compensation strategy for the application to be in accordance with national policy.

12.150 The applicant has sought to downplay the area of ancient woodland to be affected in two ways. First, WCM has argued that the area of Roskapark Wood to be crossed should not be treated as ancient woodland. For the reasons given above, that argument is wrong, and certainly does not represent a precautionary approach. The evidence is that the limited previous activity in the wood overlaps only to a very small extent with the area to be crossed by the conveyor.

12.151 Second, the applicant has sought to focus only on the narrow area of direct ground disturbance associated only with the excavation and has sought to downplay other impacts. However, these other impacts are significant and must be considered. These include:

*a. Direct disturbance:*

- i. Government guidance provides that a buffer zone of at least 15 metres should be instituted around ancient woodlands to avoid root damage, and notes that “where assessment shows other impacts are likely to extend beyond this distance, you’re likely to need a larger buffer zone.”<sup>411</sup> Dr Shepherd accepted in the roundtable that a minimum of 15m should be imposed in the pipe-jacking scheme to protect the woodland. Buffer zones around ancient and veteran trees may be larger depending on tree diameter (they should be at least 15 times larger than the tree diameter but no tree survey exists to determine if the trees in areas of the ancient woodlands to be crossed may be ancient/veteran and thus require these larger buffer zones.
- ii. Given that statutory guidance indicates that that works within 15m or more of ancient woodland may cause direct effects, the true area of ancient woodland likely to be affected involves not the “narrow” corridor that actually passes through the woodland but the much wider area comprising a 15m zone around each of the areas in which excavation or other activity is to take place.

*b. Noise, disturbance, etc:*

- i. Under current plans, there will be significant noise and disturbance over a significant period of time to the woodlands and in particular to Bellhouse Gill Wood. In particular, the construction phasing plan for the conveyor indicates that Phase 1 of the conveyor construction will be undertaken using an access route to the RLF site and will proceed south to north. It is stated that surplus excavated fill of Phase 1 (which extends from the RLF northeast to St Bees Road) will be temporarily stored at the temporary laydown area at the RLF prior to export, raising the likelihood that

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<sup>410</sup> ID 55 § 3.2.1.

<sup>411</sup> CD11.2, page 65

construction vehicles will transport the surplus fill back along the route, through Bellhouse Gill Wood.

- ii. The access through the woodland and return transport of fill material is likely to involve significant disturbance to the woodland over a significant period. Dr Shepherd did not appear to have considered this. Whilst Mr Kirkbride indicated that there would not be traffic through the woodland, this seems in direct contradiction to what is set out in the current plans.

12.152 In any event, no wholly exceptional circumstance exists nor does the applicant propose a suitable compensation scheme to make up for the loss of irreplaceable ancient woodland.

12.153 The Council concluded, during its consideration of the application, that "Whilst the ancient semi natural woodland habitat is an irreplaceable habitat, the area of loss is relatively small in area (284m<sup>2</sup>), there is a lack of alternative routes for the conveyor to the RLF and there are considerable local and national benefits of the wider scheme."<sup>412</sup> On this basis, the Council concluded there were wholly exceptional circumstances to justify the loss of the woodland.

12.154 Whether these benefits arise is disputed. However, in any event, this was before the new evidence that Roskapark/Benhow Wood are ancient woodlands, and in any event failed to take into account the wider issues of direct impacts from ground disturbance and noise, vehicle movements, etc. In reality the area affected is much larger and there was no serious consideration of the lengthy construction operations that will result in vehicles crossing the woodland for a significant period.

12.155 In relation to whether a suitable compensation strategy exists, the Council concluded that the proposed compensation was "more than suitable" because "the applicant is proposing to plant at least twice the area of loss. The woodland species seedbank likely to be present in the soil is also proposed to be retained for spreading following installation of the conveyor".<sup>413</sup>

12.156 This approach fails to deal with the fact that ancient woodland is considered irreplaceable for a reason. A mere calculation that twice the area will be planted now does not suffice to show that the quality of that irreplaceable habitat will be delivered. The area proposed for planting is already a part of an acknowledged ancient woodland. Whilst the habitat may be improved to some degree, there is little evidence before the Inquiry to show the baseline conditions in that area. Therefore, there is nothing to indicate that a commitment to plant more there would represent a significant improvement, let alone suitable compensation for the loss of a significant area of other ancient woodland. Finally, Dr Martin provided new evidence that the area of compensation planting appears to be currently subject to an environmental stewardship agreement, and so there are questions whether the "compensation" is actually something that would not otherwise occur. Dr Shepherd indicated that he would want to consider the scope of that agreement and its purpose, but no further information has been provided.

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<sup>412</sup> CD4.1 § 6.127 (p. 35)

<sup>413</sup> CD4.1 § 6.129 (p. 35)

- 12.157 In these circumstances, it is submitted that there is no evidence before this Inquiry on which to base a conclusion that wholly exceptional circumstances and a suitable compensation strategy exist.

***Pipe-jacking***

- 12.158 As set out in more detail in the legal submissions, it is SLACC's position that there is not sufficient information before the Inquiry to adequately consider the pipe-jacking proposal nor to satisfy the requirements of the Environmental Impact Assessment regulations. The Inspector is asked to have regard to the points in those submissions in terms of the inability to assess the current scheme based on current information.
- 12.159 SLACC's position is that the current details of the pipe-jacking scheme as proposed, whilst they would likely reduce harm to the ancient woodland, would not eliminate it. It must of course be recalled that even the deterioration of ancient woodland requires wholly exceptional circumstances and a suitable compensation strategy under national planning policy.
- 12.160 During the roundtable session Dr Shepherd described the limited overhead views of the scheme that have been provided to date as "schematic" but implicitly recognised that they were not even detailed enough for instance to determine whether the shafts to access the pipejacking area were within 15m of the woodlands.
- 12.161 A plan showing a long section of the tunnel has now been provided by the applicant for the areas passing under the two woodlands, but there remain questions about whether the design therein is achievable and it does not show the full extent of the transition between the cut and cover and pipe-jacking technique. In any event, the works, even if appropriately buffered, will involve the risk of potential hydrological/hydrogeological impacts to the woodlands. These are proposed to be dealt with via condition, but there remain significant outstanding questions about whether there may be impacts that are not capable of mitigation.
- 12.162 Dr Shepherd accepted during the roundtable that if the streams in the woodlands run dry, for example because of dewatering caused by the pipe-jacking, that would affect the woodlands, even though both streams do sometimes naturally run dry.
- 12.163 Dr Buss for SLACC indicated that there were risks from the proposed scheme and that proposed mitigation by the applicant could "lead to exacerbation of water loss from the gill and the wet ground adjacent to it" and considered that "lack of geological data at the pipe-jacking sites means that the merits of either of the proposed sets of hydrogeological layering scenarios cannot reliably be judged."<sup>414</sup> He concluded that "Appropriate mitigation of impacts on the woodlands and gills cannot be designed without understanding the hydraulic properties of these formations or the range of groundwater levels."<sup>415</sup>
- 12.164 Dr Buss also noted that there were risks that if the shafts at either end of the pipe-jacking sections required dewatering, that this could have an effect on the

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<sup>414</sup> ID40 page 3

<sup>415</sup> Ibid



woodlands and gills which has not been considered. It was also noted that leakage from the wet ground above the tunnel will also be exacerbated if the tunnelling leads to fracturing of the rock between the tunnel roof and the wet ground.

- 12.165 In response, a letter from the applicant's hydrogeologist indicated that he considered there was no concern of impact to the ancient woodland because if dewatering were to occur, this "would only be in the order of a few weeks (3-4 weeks would be typical)" and therefore considered that any effect would be of short duration. Based on this he was of the view that the effects would not have a significant effect on the ancient woodland, but that appears to be an opinion given without any considered expertise from an ecologist as to whether a change of conditions for that length of time would impact the woodlands.
- 12.166 Importantly, the assumption that the dewatering might only last 3-4 weeks does not appear to accord with the Pipe-jacking Work Package which states that the duration of works in each pipejacking zone could last up to 4 months.
- 12.167 It is submitted that there is simply not sufficient evidence before this Inquiry to rule out the risk of any of these areas of potential significant effects, yet any one of them should prevent this application being granted. This is an application for full planning permission, and so the detail in the plans will not be able to be altered later if it is found that impacts would arise as the result of a ground or hydrological investigation.
- 12.168 Likewise, the duration of up to 4 months for the pipe-jacking works is relevant to the level of disturbance to woodlands that could occur during the construction of the shafts and tunnelling works. There is no evidence to indicate what levels of noise and vibration are actually likely to be caused in the woodland due to the shaft construction and tunnelling works.
- 12.169 Significant questions therefore remain about the impacts of the pipe-jacking scheme and SLACC respectfully submits that (to the extent that the pipe-jacking scheme is considered), the only conclusion to reach is that it will cause loss or deterioration to ancient woodland. For the reasons given in the previous section, there are no exceptional circumstances nor a suitable compensation strategy to justify this loss or deterioration.

### ***Biodiversity Net Gain***

- 12.170 It is common ground between the applicant and SLACC that a biodiversity metric is an appropriate method for assessing the ability of the scheme to deliver a biodiversity gain in habitat terms<sup>416</sup> and that the biodiversity metric 3.0 calculation shows there to be a net loss to biodiversity for the duration of the operation of the works.
- 12.171 It is also agreed that policy SP15 of the Cumbria Minerals and Waste Local Plan applies to the development. This provides that developments should "Help secure movement from net loss of biodiversity towards achievement of net gains". Likewise, it is agreed that policy DM25 of the Copeland Local Plan applies which states that "development proposals should protect biodiversity value and minimise fragmentation of habitats as well as maximising

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<sup>416</sup> ID 55 § 3.1.7



opportunities for conservation, restoration, enhancement and connection of habitats.”

- 12.172 The NPPF sets out that when determining planning applications, “if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.” Dr Martin’s unchallenged view during the roundtable session was that the general benchmark applied now is that a development should seek to deliver 10% net gain.
- 12.173 The applicant’s case is that net gain achieved only after restoration of the site is sufficient to be considered an overall net gain. This would mean a significant and acknowledged loss over a period of at least 25 years and that there was no assurance that the net gain that was intended to be delivered by restoration of the site would actually persist. It is entirely possible that the site might be developed as it could be potentially attractive as a development site after the closure of the mine.
- 12.174 The Council when considering the proposal found that “A possible net gain over a very long period cannot be afforded anything but negligible weight” and that “given the lack of a demonstrable net gain in biodiversity” it was considered that “this counts against the proposal and should be afforded some weight.”<sup>417</sup>
- 12.175 The Council’s position is sensible given the applicant’s admissions that firstly, there is uncertainty whether biodiversity would be achieved for more than a very short period, decades hence. Secondly, that in the intervening period for at least 25 years, there will be a net loss. Therefore, it cannot be said that a net gain is delivered by the application. Instead, it is clear that there will be a net loss throughout the period of operation through the last day of 2049.
- 12.176 If the targets for net gain in planning policy can be considered to be met by this approach, one could envisage developments around the country purporting to deliver “net gain” whilst actual biodiversity steadily erodes. This cannot be what is reasonably meant by the substance of the requirements for achievement of biodiversity net gains in local and national planning policy set out above.

### ***Effects on Heritage***

- 12.177 The adverse impact of the proposed development on the historic environment has been a longstanding concern in the course of this application. The October 2019 Officer’s Report to the Council’s DC&R Committee identified adverse impacts on the historic environment including a moderate adverse effect upon the listed building of Scalegill Hall and the adjourning barn, attracting considerable importance and weight to this less than substantial harm.
- 12.178 Mr Bedwell recognised mistakes in the applicant’s heritage assessment, which erroneously stated that the RLF and main site would not intrude into views of Scalegill Hall and incorrectly stated the distance between the two sites was 3.1km, when it is in fact 1.375km. He gave considered evidence on the impact that the development would have on both the immediate and wider setting of

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<sup>417</sup> CD 4.5 §7.307

Scalegill Hall, confirming the significance of the asset was appreciable from both the eastern and western sides of the A595 (Egremont Road) and from wider public vantage points along the Coast-to-Coast Walk as it descends into the Pow Beck Valley.

- 12.179 Mr Bedwell's conclusions in respect of the harm to the heritage asset were sound, chiming with the concerns raised in the October 2019 Officer's Report in identifying that the significant change of views of Scalegill Hall from the Coast-to-Coast path caused by the RLF would diminish appreciation of the heritage asset, especially in light of its elevated location within the Pow Beck Valley.
- 12.180 The application proposals are therefore in conflict with Policy ENV4 (Heritage Assets) of the Copeland Local Plan. There is also conflict with paragraph 202 of the NPPF in that the very significant adverse impacts set out above are not counterbalanced by the public benefits of the scheme. As set out above, there is no need for the development or its product, and as set out below, the economic benefits for the local area are far less extensive than claimed by WCM.

### ***Economic Impacts***

- 12.181 SLACC's case has always acknowledged that there would be some economic benefit from this scheme, but this should be given a moderate weight. There are continuities with Mr Bedwell's assessment and with the approach taken by the Council in their three Officers Reports of March and October 2019 and October 2020, which acknowledged harms to the local economy that needed to be balanced against the potential benefits.
- 12.182 SLACC called Ms Diski of the New Economics Foundation to show why moderate weight, rather than significant weight, should be attached to those benefits. Ms Diski offered a reasoned and moderate challenge to the WCM case, saying it has been overstated. SLACC acknowledge that there would be some investment and new jobs, but these jobs have not been estimated robustly, and the benefits to existing local residents would be lower than is claimed by the applicant. SLACC also had the benefit of evidence from Professor Ekins, eminently qualified in economics, that the NERA report relied upon by WCM "should not be taken at face value".
- 12.183 Ms Diski also drew on recent reports by respected Cumbria organisations, the Cumbria Local Enterprise Partnership (LEP)<sup>418</sup> and Cumbria Action for Sustainability (CafS)<sup>419</sup>, to confirm the current labour market difficulties referred to in the Council's March 2019 Officer Report, and the positive prospects jobs for West Cumbria in an emerging sustainable economy.
- 12.184 CafS is currently working with local authorities and community organisations including SLACC, in the Zero Carbon Cumbria Partnership, to reduce Cumbria's carbon emissions to net zero by 2037 and develop a prosperous and sustainable county. It is SLACC's case that the proposed mine would make only a limited contribution to the future prosperity of West Cumbria and

<sup>418</sup> CD 9.9 Local Skills Report (2021)

<sup>419</sup> CD 9.10 The Potential for Green Jobs in Cumbria (2021)

Cumbria as a whole, and indeed is likely to hinder and misdirect the contributions of local educational establishments, and local young people, away from the common goal of a forward looking and sustainable economy.

***Effects on Employment and the Local and National Economy***

- 12.185 Ms Diski gave open and frank evidence, which benefitted from her experience as a senior researcher at a leading independent economic think tank. She fairly commented that there was no clear methodology regarding how the figure of up to 532 proposed employees had been reached. WCM could not take the Inspector to any document that justified the figure given. The 'factsheets' and associated documents<sup>420</sup> relied upon did not provide any methodology, and the report by Nera Consulting<sup>421</sup> was agreed not to justify any speculation about employment figures. The 'organogram'<sup>422</sup> gave an organisational structure for how a mine with 532 employees might operate, but this doesn't show how the numbers were arrived at.
- 12.186 When pressed, Mr Kirkbride responded that he "didn't believe why there was any reason why [he] should have to disclose" the methodology or evidence behind WCM's calculation of employment figures, despite agreeing that that "it is a core part of any development project to ensure there are accurate estimates of the number of staff positions required."<sup>423</sup> He did not accept Ms Diski's suggestion that a Full-Time-Job Equivalent analysis (which she explained was the standard relevant analysis) could be deployed, but nor did he offer any alternative methodology.
- 12.187 The explanation was that the number of people was "driven" by the equipment on site and acknowledged a need to undertake analysis as to the amount of machinery required. However, he could not elaborate, but rather referred to WCM as a "sophisticated developer" with an experienced mining team with a good sense of how many employees would be needed. Other than a vague comparison to other mines elsewhere, WCM provided no substantive evidence on the methodology for calculating employment numbers.
- 12.188 The proposed apprenticeship scheme also remains somewhat vague, and there are questions regarding the wisdom of training the local youth in an industry which is to be rapidly phased out. That is particularly so given the limited transferrable skills provided by the work likely to be undertaken by apprentices involving specific competencies, and largely comprising shift deployment for clearly defined and dedicated roles only.<sup>424</sup>
- 12.189 WCM put forward a variety of arguments forward to support the case that best endeavours would be used to ensure that 80% of the jobs would be taken by local residents. However, Ms Diski pointed out that the local pool of sufficiently experienced workers is necessarily small, given there were only 10 people involved in coal mining in Cumbria in 2018- 19 and there were only 8

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<sup>420</sup> WCM/MAK/3, §2.2, ID9.1-5, and ID10.1-3

<sup>421</sup> WCM/MAK/2 – Appendix 2

<sup>422</sup> WCM/MAK/2 – Appendix 4

<sup>423</sup> WCM/MAK/3, §2.17

<sup>424</sup> WCM/MAK/3, §2.8

people employed in deep coal mining in the whole of the UK in December 2019.

- 12.190 Relevant experience was stated to be required for at least 429 roles at the mine, and (unsurprisingly given the above statistics provided by Ms Diski) of the first respondents to the labour survey within the ES, there were only 47 people with such experience.<sup>425</sup> That number apparently rose to 147 of the 2,200 now surveyed<sup>426</sup> however this included respondents from all over the UK and even Australia. Given that WCMs case is that the new jobs will bear on local unemployment, even if some of the miners moving to the areas take up jobs at the mine were to live nearby, this could still predominantly bypass, and not benefit current residents.
- 12.191 Mr Kirkbride attempted to sidestep this problem by claiming that 'relevant experience' did not equate to prior 'mining experience'. That was especially so given WCM is apparently in dialogue to obtain skilled workers leaving Sellafield and based on the obviously specialised nature of work at the mine. Further, based on the paucity of local mining experience in the region as highlighted by Ms Diski, it is impossible that there would be sufficiently experienced personnel to even form a 'core' group of experienced employees in management roles. It follows that it is difficult to see how the majority of the workforce at the mine could be sourced locally, and which supports SLACCs view that the level of benefit to the local community in employment terms has been exaggerated.
- 12.192 The wider local benefits offered by the proposed scheme are also limited. The claimed indirect and induced employment and economic benefits of the mine contained in the 'Nera Report' were confirmed to be based on information supplied by WCM contained within a financial model which has not been disclosed in redacted form or otherwise. How the model has been verified, and by who, is not available to the Inquiry. Therefore, little weight can be attached to this evidence.
- 12.193 It would be unsound for the Inquiry to take at face value the results of this model and so no faith can be put in the results. That is especially so given the authors of the Nera Report apparently state the WCM financial model has not been verified at all. Mr Kirkbride also conceded that the claimed 'UK Economic Impacts'<sup>427</sup> were entirely reliant on the unseen WCM financial model. Those benefits too can be considered as merely assertions.
- 12.194 A number of local initiatives were referenced in attempt to justify the claim that the proposed jobs at the mine would go to those in need of employment in the area. However, Mr Kirkbride accepted that none of the initiatives mentioned specifically related to preparation for jobs at the mine. This did little to assuage Ms Diski's concern that WCM had provided no clear route for the long term unemployed into work for WCM. Only 16%<sup>428</sup> of those originally surveyed by WCM as desiring a job at the mine were unemployed, and no clear plan has been provided by the applicant as to how such groups would be targeted beyond being referred to general Local Authority programmes.

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<sup>425</sup> CD1.86, p.23

<sup>426</sup> WCM/MAK/3, §2.18

<sup>427</sup> WCM/MAK/, §§9.1-9.19

<sup>428</sup> CD1.86, §7.5.25

- 12.195 SLACC also takes account of the Council's own internal advice, that jobs at the mine are likely to have some disruptive impact on the local employment market. 'Net' employment benefit claimed in the local area can, SLACC suggests, be afforded only some weight. Mr Kirkbride accepted some workers would leave their existing local jobs to work at the mine, and that there were a limited number of skilled workers in the local area.
- 12.196 Finally, Mr Kirkbride identified potential Green Jobs in the area as uncertain yet accepted there was an "aspiration and a requirement to see those Green Jobs come forward" as a result of the UK's pursuit of emissions reductions targets and based on Cumbria's own plans for a Net Zero Future.<sup>429</sup>
- 12.197 He was critical of the suggestion that employment at the mine would prevent people from taking up Green Jobs on the basis that such jobs are yet to be fully confirmed. However, that response overlooked the fact that workforce and skills shortages have been identified as a "key barrier" to reducing carbon emissions and reducing carbon emissions in Cumbria, and the fact that the Cumbria Local Enterprise Partnership had specifically engaged with the Government's green jobs agenda emphasising the need to identify and support the skills needed for transition.

### ***The Planning Analysis***

- 12.198 The starting point when considering an application for the extraction of coal is paragraph 217 of the NPPF which makes clear that "Planning permission should not be granted for the extraction of coal" unless the Inquiry can be satisfied about the matters contained in sub-paragraph a), or failing that, subparagraph b). There is accordingly an important presumption against the grant of planning permission for the extraction of coal which occupies a distinctive position relative to other minerals more generally in the NPPF
- 12.199 Paragraph 211 of the NPPF, which sets out the benefits of mineral extraction generally and specifies that "great weight" should be given to those benefits, is specifically excluded when considering applications relating to the extraction of coal by virtue of Footnote 71, which provides that: "Except in relation to the extraction of coal, where the policy at paragraph 217 of this Framework applies". The entirety of paragraph 211, including the considerations listed at subparagraphs a) to g) which apply to mineral extraction generally, is displaced in favour of paragraph 217 in relation to coal.
- 12.200 The applicant appears to re-introduce the "great weight" in paragraph 211 or seek to negate the presumption against the grant of planning permission in 217 through reference to the definition of "mineral resources of local and national importance" on page 69 of the NPPF, which has been in the policy since 2012. This is not the correct approach. The changes in the NPPF in 2019 cannot be sidestepped by reference to the definition. The NPPF does not require the decision-maker, separately, to attribute significant weight to coal as a resource of local and national importance, and that was not the approach taken by the Secretary of State in the Highthorn decision.

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<sup>429</sup> SLACC/RD/1, §5.1-5.4

- 12.201 Policy DC13 (Criteria for energy minerals) of the CMWLP states that “Planning applications for coal extraction will only be granted where: the proposal would not have any unacceptable social or environmental impacts; or, if not it can be made so by planning conditions or obligations; or, if not it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.”
- 12.202 Policy DC13 echoes NPPF paragraph 217 but goes beyond it, requiring consideration of both the social and the environmental impacts of climate change. This policy is fully consistent with the Framework, is up to date and should be given full weight. In addition to the environmental impacts, those social impacts, such as the risk of the development becoming a stranded asset, the impact on the community of the intensified effects of climate change, the loss of amenity and potential loss of tourism, must be taken into account when deciding whether or not the proposal would have any unacceptable social or environmental impacts.
- 12.203 It is important to emphasise that the profound environmental impacts of climate change undoubtedly have implications amounting to social impacts. For example, the increased rainfall and flooding associated with the worsening of climate change impact the financial and mental wellbeing of communities as well as changing the physical environment.
- 12.204 Mr Bedwell set out his assessment under the first part of the test under policy DC13 and paragraph 217 of the NPPF, which is the confirmed impacts and resultant harm arising from the following matters cannot be resolved through the imposition of conditional controls:
- a. The environmental and social harm that would be caused by the Scheme in undermining the Net-Zero obligation in the Climate Change Act 2008, including at international, national and local level;
  - b. The environmental harm arising from the loss of deterioration of irreplaceable habitat within ancient woodland at Bellhouse Gill Wood and Roskapark Wood.
  - c. The environmental harm to the setting of Scalegill Hall and its outbuildings (Grade II listed).
  - d. The environmental landscape harm to the Pow Beck Valley that would arise from the proposed RLF.
  - e. The environmental and social harm to the St Bees Heritage Coast that would arise from the proposed mine on the Marchon Site.
  - f. The social harm that would arise from harm to amenity and to users of the Coast-to-Coast Walk, the Coastal Path and other public rights of way and promoted walks, including those mentioned in the St Bees Parish Circular Walk 7 – Wood Lane & Stanley Pond.
- 12.205 In these circumstances, the Application Proposals are not environmentally or socially acceptable, and that the first stage test of Policy DC13 and the NPPF paragraph 217 are not met.



- 12.206 Turning to the second stage test, ie whether the proposed development provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts), Mr Bedwell sets out the impacts of the harms and the benefits, including giving moderate weight to the benefit of restoration of the former Mainband Colliery site and to the delivery of jobs.
- 12.207 Mr Bedwell concludes that the proposed development fails to comply with Development Plan policies DC13 and SP15 of the CMWLP and ENV1, ENV2, ENV3, ENV4 ENV5 and ER10 of the Copeland Local Plan. He sets out why material considerations do not indicate that planning permission should be given despite this lack of compliance with the development plan, rather there are a number of material considerations weighing against the grant of planning permission.

### ***Conclusion***

- 12.208 The applicant's case is based on three central fallacies:
- a. The 'net zero mine' fallacy, in which a mine that will, in its construction and operation, emit methane into the atmosphere for years is claimed to be "net zero" because of a methane capture system shoe-horned into the scheme in the past few months and an offsetting scheme rejected as improper by the offsetters that applicant alighted on using, again in the past few months; and
  - b. The perfect substitution fallacy, in which the 220 million tonnes of CO<sub>2</sub>e that the use of WCM's coal over the course of the lifetime of the scheme will cause a positive climate change impact, because it will substitute the equivalent metallurgical coal currently being used in steel manufacturing, initially in the UK and Europe, and since 10 August on WCM's extended case, even if used in Japan or India or China, an analysis which does not hold if even 1% of the WCM coal is additional; and
  - c. The continuing need fallacy, where technologies that are surging are ignored in favour of a world-view where steel production remains largely dependent on fossil fuels until beyond 2050 and new coal mines are therefore justified, despite the IEA's very recent Net Zero report.
- 12.209 All this against the well evidenced urgent need to address climate change, with the action taken in the next decade being determinative as to whether the world remains on track to keep global warming below 1.5°C. Accordingly, and for the reasons set out above, SLACC ask that the Inspector recommend to the Secretary of State that he refuse permission for the proposed development.

## **13. SUBMISSIONS BY SLACC IN RESPECT OF THE AMENDMENT TO THE CONSTRUCTION TECHNIQUE FOR PARTS OF THE UNDERGROUND CONVEYOR**

- 13.1 This section is based largely on the Legal Submissions for SLACC in respect of the amendment to the construction techniques for parts of the underground conveyor.<sup>430</sup>

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<sup>430</sup> ID66



- 13.2 SLACC submit that the amendment to part of the construction technique to form the underground conveyor by the use of pipe-jacking, as now proposed by the applicant, constitutes a substantial amendment to the application, well after it was submitted to the Council and called in by the Secretary of State. As such, SLACC consider that the Secretary of State does not have the power to consider the development as amended.
- 13.3 Furthermore, SLACC submit that the WCM Statement of Case<sup>431</sup> refers to the use of “trenchless construction techniques” which could encompass not just pipe-jacking but a number of other unspecified construction methods. SLACC further argue that the description of the development provided in the Project Description within the 2018 ES confirmed that the conveyor installation would take place “using a ‘cut and cover’ technique”.<sup>432</sup> However, the application now proposed provides for a technique for which there has been no environmental impact assessment and the application is not supported by any diagrammatic information or plans, as all of the relevant plans refer to cut and cover, and is not supported by a Design and Access Statement or any methodology of the construction technique.
- 13.4 SLACC acknowledge that on 3 September 2021, the applicant provided a number of documents that were purportedly pursuant to the Regulation 22 request which included documents titled ‘Work Package: Conveyor Route Pipe jack Installation; Buried Conveyor Route: Pipejacking Option Design Assessment Summary; a letter dated 31 August 2021 from Harding Hydro addressing hydrology; and a letter from Joseph Gallagher contractors dated 23 August 2021.<sup>433</sup> However, it did not include an amended Design and Access Statement or amended Project Description or any amended plans.
- 13.5 By way of legal background, SLACC identify that planning applications for “major development” are required to be accompanied by a “design and access statement” as per Article 9(1)(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 Order (2015 Order). Article 9(3) of the 2015 Order sets out that a design and access statement must, amongst other things, explain the design principles and concepts that have been applied to the development.
- 13.6 Parliament attaches significant importance to compliance with these requirements, as enshrined in s.327A TCPA 1990, which states that: “(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—(a) the form or manner in which the application must be made; (b) the form or content of any document or other matter which accompanies the application. (2) The local planning authority must not entertain such an application if it fails to comply with the requirement.”
- 13.7 The power to grant planning permission is subject to s.65 and s.327A of the Town and Country Planning Act 1990. The ramifications of this were analysed by John Howell QC sitting as a deputy High Court Judge in *R(Holborn Studios Ltd) v Hackney LBC* [2018] PTSR 997. At sections 9-12 the Court emphasised

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<sup>431</sup> CD15.1

<sup>432</sup> CD1.80

<sup>433</sup> CD16.12 - 16.15

the importance of a planning application being properly described by plans, drawings and in a design and access statement and that Parliament attaches importance to compliance with those requirements. SLACC consider that the decision sets out that a local planning authority (and by extension the Secretary of State when a decision is called in) does not have the power, under the Town and Country Planning Act 1990, to grant permission for a proposal that fails to comply with those requirements; nor does it have the power to consider an application which is subject to a substantial amendment.

13.8 In considering s.65 and s.327A of the 1990 Act the Judge held:

"20. [...]require the local planning authority not to entertain any application which does not comply with the specified requirements relating to the content of the application and to the notification and publicity to which the application must be subject. A local authority has no power to deal with any application which does not comply with them.

21. There is no provision in the statutory scheme for making amendments to any application for planning permission".

13.9 Later in the decision he made it clear that those are "substantive limitations" on the power of the local authority, and by extension the Secretary of State, to consider an amended application and an application which does not properly describe the proposed development.

13.10 Although there is no statutory power to amend a planning permission, courts have recognised that such amendments may be made, for example where the approval of reserved matters does not require consultation, or whether it would not be in the public interest to deter developers from being receptive to sensible proposals for change (see *Holborn Studios* at [65] and the cases cited therein). Nevertheless "the substantive limitation on the nature of the changes that may be made by an amendment appears to be whether the change proposed is substantial or whether the development proposed is not in substance with what was originally applied for as per John Howell QC in *Holborn* at [65].

13.11 Accordingly, as the limitation on the power to amend is a substantive limitation, it does not rest on whether the amendment would cause prejudice; the central question is whether the change proposed is substantial.

13.12 Whilst it is possible for a local authority to grant planning permission subject to conditions, and those conditions may have the effect of modifying the development, the 'Wheatcroft Principle' stresses that the effect of imposing such a condition must not be a development which is in substance not that which was applied for: *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [1990] P & CR [233] and [240-24116] as applied in *Holborn Studios* at [67]. This too is a "substantive limitation on the extent to which planning permission may be granted other than for the development for which the application for planning permission was initially made."

13.13 It is noted that the Called-in Application Guidance provides at E.1.2 that whilst "amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people."

- 13.14 The circumstances in which the application can be amended are extremely limited:
- a. There is no statutory power for a planning authority to allow such amendment (per s.327A TCPA 1990 and *Holborn Studios* at [20]-[21] and [109]);
  - b. There are “substantive limitation[s]” (*Holborn Studios* at [68]) on the exercise of any common law ability to accept amendments.
  - c. The limit of that ability is whether the amendment is substantial or would in substance comprise something different to that for which the application was originally made (per *Holborn Studios* at [64], and *Wheatcroft* at [241]).
- 13.15 There can be no argument that the original application relied on a wholly different construction method in respect of this crucial aspect of the development. The dispute is whether that amendment was substantial.
- 13.16 Mr Thistlethwaite’s clear evidence, is that the conveyor itself is a substantial aspect of the proposed development because it is critical to the operation of the mine, and the construction method used to install the conveyor is vital as to whether it can come forward in a manner consistent with the national policies contained within the Framework.
- 13.17 The applicant accepts that, on the cut and cover case, there is loss of ancient woodland, meaning that the presumption against the grant of planning permission in paragraph 180(c) of the Framework applies and the applicant is required to show “wholly exceptional circumstances” to rebut that presumption. The amendment to the application goes centrally to whether the presumption against the grant of planning permission in paragraph 180(c) of the Framework remains in issue because of deterioration of the ancient woodlands.
- 13.18 The pipe-jacking amendment is therefore patently a “substantial amendment” as understood by *Holborn Studios* at [64] and it follows that the substantive limitation on the common law power to amend the planning permission is engaged. There is therefore no statutory power for the Secretary of State, as decision-maker, to permit the amendment the application. Accordingly, SLACC asks that the Inspector recommend that the Secretary of State does not have the power to consider the development as amended.
- 13.19 SLACC also consider the approach to the Environmental Impact Assessment to be unlawful. The requirement to carry out an EIA during the planning process derives from EU Directive 2011 (Directive 2011/92/EU) (“the Directive”). The Directive, in respect of this appeal, is in England by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (“the Regulations”).
- 13.20 Both the Directive and the Regulations emphasise the need to undertake an EIA before planning permission is granted and stress the importance of an EIA early in the planning process:
- a. Recital 2 of the preamble to the Directive refers to the ‘precautionary principle’ and records that “effects on the environment should be taken into

account at the earliest possible stage in all technical planning and decision-making processes.”

- b. Article 2(1) of the Directive emphasises that “Member states shall adopt all measures necessary to ensure that before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.”
- c. Regulation 3 of the Regulations provides that “The relevant planning authority [...] must not grant planning permission or subsequent consent for EIA development unless an EIA has been carried out in respect of that development.”

13.21 The highest authority of long standing makes this clear: the House of Lords in *Barker v London Borough of Bromley* [2007]1 AC 47019 at [22]: “The first recital in the Directive indicates that the competent authority must take account of the effects on the environment of the project in question at the earliest possible stage in all the technical planning and decision-making processes.”

13.22 The case of *R(Buglife: The Invertebrate Conservation Trust) v Medway Council* [2011] EWHC 746 (Admin) dealt specifically with the question of whether environmental matters in relation to a development (such as survey work in relation to the impact on indigenous invertebrates) could be dealt with following the grant of outline planning permission, secured by Grampian-style conditions.

13.23 At [79] the court clearly found that environmental matters of this kind must be taken into account prior to the grant of outline permission and may not be addressed subsequently, even if such consideration is secured by a Grampian condition:

“79 Conditions. Medway granted outline permission subject, in relation to the invertebrate and habitat features of the site, to a number of so-called Grampian-type conditions. These are negative conditions which prohibit the start of each phase of the development until specified steps associated with the development, in this case survey work and the revision of the masterplan, have been undertaken and approved by Medway. It is not permissible, however, for a local authority to leave for subsequent determination or working out pursuant to a negative condition any matter sufficiently significant that it might have a significant impact on the environment or on any mitigation measures. On the other hand, matters of detail and implementation which do not or are not likely to have such a significant effect may be left for subsequent determination in that way. In other words, nothing may be left for subsequent finalisation subject to a negative condition which falls within the ambit of matters that the directive intends to be the subject of public consultation in the EIA process.”

13.24 As a result, while a Grampian condition may be possible in planning terms, that is not the legal test.

13.25 In *Smith v Secretary of State for the Environment* [2003] Env LR 32, the Court of Appeal made it clear that environmental impact consideration could not be delayed until later in the planning process, with Waller L J noting at [27] that:

"... the planning authority or the Inspector will have failed to comply with article 4(2) [of the Directive] if they attempt to leave over questions which relate to the significance of the impact on the environment, and the effectiveness of any mitigation. This is so because the scheme of the regulations giving effect to the Directive is to allow the public to have an opportunity to debate the environmental issues, and because it is for those considering whether consent to the development should be given to consider the impact and mitigation after that opportunity has been given."

13.26 In *Smith*, the Court of Appeal also emphasised the need for all planning decisions in relation to the environment to be taken with the appropriate information in mind (quoting from the judgment of *Harrison J in R v Cornwall County Council ex parte Hardy* [2001] Env. L.R. 26) at [27]:

"It is clear [...] that it is intended that in accordance with the objectives of the directive, the information contained in the environmental statement should be both comprehensive and systematic so that a decision to grant planning permission is taken in 'full knowledge of the projects' likely significant effects on the environment."

13.27 SLACC take the view that the environmental information before the inquiry is that provided by the applicant in the Regulation 22 submissions; the letter from Stephen Buss and response from Harding Hydro; the long section plan 869/SK/5001 and the information provided to the Inspector in the proofs of evidence of Dr Shepherd and Dr Martin in their oral contributions at the ecology roundtable and Mr Kirkbride's contribution on the plans.

13.28 Dr Shepherd accepted during the RTS that:

- a. The launch shaft and reception shaft for each section of pipe-jacking should be at least 15m away from the edge of the ancient woodlands. The plans he had seen for where the shafts would be positioned were not detailed engineering plans, but the position of the shafts could be the subject of a condition;
- b. If the streams in the woodlands run dry, for example because of dewatering caused by the pipe-jacking, that would affect the woodlands, even though both streams do naturally run dry. He was confident on the basis of the letters from Harding Hydro that would not happen;
- c. He was not certain if a tree survey had been undertaken but he would check.

13.29 It is notable that the Harding Hydro response of 27 September 2021:<sup>434</sup>

- a. Accepted that the geological conditions illustrated by Stephen Buss beneath Bellhouse Gill could exist (but equally other conditions could exist as the position was unknown), but that it was "most unlikely" the

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<sup>434</sup> ID48

geological conditions illustrated by Stephen Buss below Roskapark Wood exist;

- b. Stated that it is “by no means certain that significant amounts of groundwater will be encountered and dewatering required” but if it were required then it would only be of short duration, given his understanding was that the construction “would only be in the order of a few weeks (3-4 weeks would be typical)”. Therefore, any effect would be of short duration and its effects localised, so it would not have any material effect on receptors. He therefore recommended the imposition of a condition requiring “a suitably designed ground investigation to determine ground and groundwater conditions along with a hydrogeological risk assessment”, in order to inform a full drainage design scheme for the pipe-jacking works.

13.30 Therefore, there are still matters that are unclear despite the discussions in the RTS.

13.31 Mr Kirkbride in the RTS stated that he did not consider the topography unusually steep and that the long section was produced by WCM’s engineering advisors and consultants based on “a detailed topography schedule across the area”. He clarified that WCM had not undertaken surveys but had used publicly available OS data. He stated that the plan Conveyor Culvert Construction Phasing Plan<sup>435</sup> showed that there would not be a need to access the works on Zone 1 (i.e. Roska Park wood) via a route through Zone 2 (Bellhouse Gill wood) because there would be an access from St Bees Road.

13.32 Dr Martin’s evidence during the RTS was:

- a. The existing borehole data was from a position 220m away which was only at best indicative as to the soil variability and whether it was drainable.
- b. There was no detailed ecological mapping, so it was not clear where the sensitive habitats were and what the interaction of the scheme with them would be.
- c. The topography, in particular, of Bellhouse Gill, was concerning and it was unclear whether the long sections were from contour plans or what was surveyed along the alignment of the conveyor. If survey data was available there would be a better handle on the topography.
- d. There was not sufficient information before the Inquiry to be able to say that there would not be effects from the pipe-jacking scheme or that any effects could be designed out. The Inquiry was aware that there was a very important habitat which would be impacted less by pipe-jacking than by cut and cover, but that there remains a degree of uncertainty.

13.33 Accordingly, Dr Shepherd acknowledged the potential for impacts but was satisfied on the basis of the letter from Harding Hydro. That letter itself acknowledged the potential for impacts but considered them immaterial on the basis of an understanding of the duration of works not entirely consistent with

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<sup>435</sup> RLF Conveyor Culvert Construction Phasing Plan (CD 1.37 p 36)



that in the Work Package. Dr Martin's position was that there was insufficient information to be satisfied that there would not be likely significant effects.

13.34 In those circumstances, taking together all of the environmental information before the Inquiry, there is insufficient information for the Inspector and the Secretary of State to understand, before consent is given, whether the pipe-jacking scheme is a project likely to have significant effects on the environment by virtue of its nature, size and location. The information which should have been provided in order for these impacts to be understood, such as the geological information from the digging of boreholes, groundwater information from groundwater monitoring and ecological mapping is now sought to be provided via condition. For the reasons set out above, that is not lawful. Furthermore:

- a. There are still no detailed engineering plans showing the pipe-jacking scheme and the applicant's own ecologist has not had the benefit of seeing such plans;
- b. There are no application plans showing the pipe-jacking scheme or how it will connect with the cut and cover scheme and the access to the pipe-jacking scheme is unclear given that Notes on the current RLF Conveyor Culvert Construction Phasing Plan and the red route for construction traffic;
- c. Topographical information about Roska Park Wood is yet to be provided, although it may be forthcoming.

13.35 It would be unlawful to grant planning permission for the proposed development as amended as it has not been subject to EIA. For the reasons set out above, SLACC consider that this application cannot be determined on the basis of the amended application submitted by the applicant and can only be lawfully determined in terms of the original application, i.e. where the conveyor is to be constructed by 'cut and cover' method.

#### **14. SUBMISSIONS BY SLACC IN RESPECT OF THE COURT OF APPEAL JUDGEMENT IN *FINCH***

14.1 In short, SLACC submits that the Court of Appeal's decision means that a number of submissions in WCM's Closing Submissions are wholly incorrect:

- 14.1.1 WCM is incorrect at §§88-89 in relying on the "unequivocal" position, set out by Holgate J, that scope 3 emissions are legally incapable of being indirect effects of the project. This has been overturned unanimously by the Court of Appeal (Lindblom LJ §57; Lewison LJ §141(ii); Moylan LJ §95).
- 14.1.2 The "true legal test" relied on by WCM in §89 of its Closing Submissions has similarly been overturned unanimously by the Court of Appeal (Lindblom LJ §43; Lewison LJ §141(ii); Moylan LJ §95).
- 14.1.3 The assertion at §98 of WCM's Closing, that the downstream emissions were "impossible to effectively quantify" (§98), is wholly incorrect, both on the facts of this case, and in light of Court of Appeal's explicit acceptance that scope 3 emissions can be calculated, using recognised methodology, contrary to the Defendant's argument in that case



(including an argument about substitution) (Lindblom LJ §§71 & 79; Lewison LJ §§147-149; Moylan LJ §95).

- 14.1.4 The assertion at §100 of WCM's Closing, that the downstream greenhouse gas ("GHG") emissions are not considered significant environmental effects of the development and thus "cannot be capable of being a material consideration and certainly not one to which any weight could be given" is wholly incorrect. All three Court of Appeal judges accepted that downstream emissions could be significant environmental effects; Lindblom LJ and Lewison LJ held that, even in the case of the downstream emissions from the oil development (which involved "several other distinct processes" including refining to create useable fuels, and further onward distribution and sale of the refined products), they were capable of being a material consideration (Lindblom LJ §§22, 91 and 148; Lewison LJ §§148-149; Moylan LJ §§95 & 129).
- 14.2 Rather, SLACC's position on downstream GHG emissions as a material consideration, set out in §§45-46 of its Closing Submissions, has been shown to be correct.
- 14.3 Finally, the Finch decision reinforces the importance of the environmental impact assessment of the proposed development dealing properly with downstream GHG emissions. Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the "EIA Regulations"), the Inspector cannot grant planning permission for the proposed development "unless [he has] first taken the environmental information into consideration" (regulation 3). In light of the *Finch* decision, the Inspector is required, as the decision-maker, to consider whether he has sufficient information on the downstream GHG effects of the proposed development in order to comply with that obligation.

### ***The Court of Appeal's Decision in Finch***

- 14.4 The case concerned Surrey County Council's decision to grant planning permission for the commercial extraction of oil at Horse Hill in Surrey and the main issue in the appeal concerned the requirement to include within the EIA an assessment of the significant indirect effects of the development on the climate. The Appellant argued that, as a matter of law, the downstream GHG emissions were required to be assessed in an EIA, and that Surrey County Council's reasons for deciding they did not have to be assessed were legally flawed.
- 14.5 The majority of the Court of Appeal dismissed the appeal, but on a different basis from the High Court's decision, which was partly overturned. All three Court of Appeal judges held that the downstream emissions could be required to be assessed and that the question of whether downstream emissions must be assessed is a question of fact and judgment for the planning decision-maker (Lindblom LJ §42; Moylan LJ §129 and Lewison LJ §141(v)). Two of the judges held that the decision-makers reasons were adequate (Lindblom LJ §88; Lewison LJ §149); Moylan LJ found that they were not and would have allowed the appeal on that basis.
- 14.6 The key points to note from the judgment in the context of this inquiry are:

- 14.6.1 All three judges overturned Holgate J's articulation of the "true legal test" for determining if an effect was an indirect effect of the proposed development (Lindblom LJ §43; Lewison LJ §141(ii); Moylan LJ §95). All of the Judges accept that the downstream greenhouse gas emissions of a fossil fuel development could be an environmental effect requiring assessment.
- 14.6.2 All three judges overturned Holgate J's decision that downstream emissions are 'legally incapable' of being indirect effects of the project, (Lindblom LJ §57; Lewison LJ §144(iv); Moylan LJ §95).
- 14.6.3 Lindblom LJ explicitly accepted that it is scientifically possible to calculate scope 3 emissions, using recognised methodology (§71). Lindblom explicitly rejected as relevant to whether the scope 3 emissions can be calculated, the argument made by the Council based on 'substitution', and that it was uncertain that there would in fact be an increase in scope 3 emissions (§79). Lewison and Moylan LJ agreed (Lewison LJ §§147-149; Moylan LJ §95).
- 14.6.4 Lindblom LJ at §§49-50 accepted and reinforced the correctness of the judgments in *Squire* (off-site impact of the development can be a significant indirect effect) and *Catt* (off-site activities carried out by third parties can be cumulative indirect effects). Moylan LJ explicitly rejected the fact that the combustion of the oil would be "outside the site boundary means that use is not an effect of the extraction of the oil" (§136).
- 14.6.5 All three Court of Appeal judges accepted that downstream emissions could be significant environmental effects; Lindblom LJ and Lewison LJ held that, even in the case of the downstream emissions from the oil development which did not amount of significant emissions from an EIA perspective, they were capable of being a material consideration (Lindblom LJ §§22, 91 and 148; Lewison LJ §§148-149; Moylan LJ §§95 & 129).

### ***Implications for WCM's case***

- 14.7 As set out in §2 above, two key tenets of WCM's case have been overturned by the Court of Appeal's decision: first, WCM's reliance on the finding by Holgate J that scope 3 emissions are legally incapable of being indirect effects of the project (Closing §§88-89); second, WCM's reliance on the "true legal test" for indirect effects (Closing §89). Those paragraphs are now incorrect as a matter of law. This is important because it wholly undermines WCM's justification for failing to assess the downstream GHG impacts of the proposed development.
- 14.8 The Court of Appeal's decision has also removed two of the other arguments used by WCM to justify its failure to assess the downstream emissions: that they are "impossible to effectively quantify" (Closing §98), in particular because of "substitution" (Closing §101).
- 14.9 Finally, WCM's assertion in §100 of its Closing, that downstream GHG emissions which are not considered significant environmental effects of the development thus "cannot be capable of being a material consideration and certainly not one to which any weight could be given" is legally incorrect in

light of the approach taken by all three Court of Appeal judges. It is notable that, in fact, WCM's witness, Mr Thistlethwaite, articulated the correct position: that downstream emissions which are not significant indirect effects for the purposes of EIA may nevertheless be capable of being a material consideration in the determination of the planning application (see the citations given at §49 of SLACC's Closing Submissions).

- 14.10 Accordingly, the position in light of *Finch* is that WCM has incorrectly failed to assess the downstream GHG emissions of the proposed development; has given no cogent reason for this failure and has failed properly to weigh the downstream GHG emissions in the planning balance.

### ***Environmental Impact Assessment***

- 14.11 As set out at §5 above, the *Finch* decision means that the Inspector is required, as the decision-maker, to consider whether he has sufficient information on the downstream GHG effects of the proposed development in order to comply with his obligations under the EIA Regulations. As all three Court of Appeal Judges held in *Finch*, if the decision-maker's view is that EIA of the downstream emissions is not required, then cogent reasons must be given for such a determination; and in any event the downstream emissions may be a material planning consideration. It is notable that the Council's original Scoping Opinion stated that the "ES should include detailed information about the nature of the coking coal, the carbon implications of its extraction and utilisation." [CD1.80 §3.67 pg 360].
- 14.12 PINS made it clear to WCM and the parties in the Regulation 22 letter of 30 June 2021 that, were the position in the *Finch* judgment to change, there may be a need to request further information on the environmental effects from the use of the coal. WCM's position in Closing at §103 was that no alternative GHG emissions assessment had been provided by the Rule 6 Parties. If that remains its position, then it must follow that WCM is now required to provide further information assessing the downstream GHG emissions, or to give cogent reasons why such an assessment is not required, in light of the correct legal position expressed in *Finch*.
- 14.13 SLACC's position, articulated in §§47-48 of its Closing, is that the EIA is not deficient for failing to assess the downstream emissions because the Inspector has evidence, provided by both Prof Grubb and Prof Barrett, of the extent of those emissions and of their significance. Prof Grubb's evidence was that those emissions amounted to 8.80 million tonnes of CO<sub>2</sub>e per annum, meaning if the mine were to produce for a period of 25 years, the total downstream emissions would be in the range of 220 million tonnes of CO<sub>2</sub>e over the life of the mine (SLACC/MG/1 §6.7). That is, on any analysis, a very serious climate change impact.
- 14.14 It is plainly open to the Inspector to consider that evidence is sufficient for the purposes of regulation 3 of the EIA Regulations 2017, and so to treat that information as the required assessment and to utilise that information to reach a conclusion on the significant effects of the proposed development on the environment, and integrate that into his conclusion on whether to grant planning permission.

- 14.15 If the Inspector does not agree that the Rule 6 Parties' evidence is sufficient, then, as flagged in the Regulation 22 letter, WCM should provide full assessment of the downstream emissions and all other parties should be afforded the opportunity to comment on that information.

## **15. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY SUPPORTING THE SCHEME**

- 15.1 A number of other oral and written representations were made during the Inquiry. The names of those who spoke at the event are listed in Annex A of this Report. Many speakers provided written copies of their speaking notes to the Inquiry which are included in Annex B of this report. Whilst the main points of the speakers are summarised below, many speaking notes provide references which are not included in the summary:

### ***Lee Anderson MP***<sup>436</sup>

- 15.2 I am speaking in support of this mine as I think it can demonstrate to the world that, whilst there is still an obvious need to mine coal, that it can be done in such a way that will help countries that do mine coal in vast quantities to learn new ways to mine in a much more carbon friendly way. This mine does that. This mine will be the first net carbon zero mine in the world which is something, we should be incredibly proud of.
- 15.3 Historically the UK exported coal to all corners of the world and now we have the chance to export a greener mining technology that will help reduce carbon emissions. If we really are serious about protecting the planet then we should support this venture. It is important to remember that this coal is metallurgical coal that is needed by the British steel industry who currently import two million tonnes of this coal every year and will continue to do so if this mine does not open. This is not a sensible approach that puts the environment first.
- 15.4 If this mine does not go ahead then the UK will be responsible for contributing to unnecessary carbon emissions as we continue to ship coal in from over the world. The simple fact is this type of coal will be used to make British steel and we have a simple choice to make. Do we mine it here on our own doorstep at the world's first net carbon zero coal mine or do we continue to import from countries that have a much poorer record on tackling climate change than the UK, from countries that have terrible safety records and from countries that use cheap labour to mine coal?
- 15.5 We have a real chance here to make a real difference and we must seize it. The coal will be railed to Port Talbot, Scunthorpe and Redcar in trains using HVO Diesel which slashes Nitrous Oxide emissions by up to 30%, particulate emissions by 85% and CO<sub>2</sub>e emissions by 90% when compared with standard fossil diesel. It is important that this coal mine is a short-term measure that helps provide a long-term solution. We need this coal to make steel and until we have the technology and means to make steel in a much more carbon friendly way then whilst we are transitioning, we should use the coal that is right under our feet rather than import it from half-way across the world.

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- 15.6 It is also worth remembering that the construction of the mine will take place on an existing brownfield site which is a former chemical works – consequently the project will remediate this abandoned site. There will be no tips or slag heaps of traditional coal mine waste like ones in Ashfield that have costs thousands to maintain over the past 30 years and we must not forget that the mine fully accords with UK green industrial commitments, included legal conditions for no production beyond 2049 and highest levels of project GHG emission mitigation.
- 15.7 By 2049 we could have a steel industry that does not require coal and that should be the target. However, to help us get there we have the chance to use British coal in the short term rather than foreign coal. The Climate Change Committee has said it is minded supporting new North Sea oil production so to maximise UK supplies rather than rely on imports – that was in The Times on the 25<sup>th</sup> June and the Sunday Times last Sunday ran an article that stated this should apply to metallurgical coal as well.
- 15.8 Besides the obvious benefits to the environment arising from the mining of this coal in the UK there are also economic benefits. These are:
- The wider economic contribution to the region and the nation.
  - The provision of significant new economic diversity and investment in a region which has endured a decline in skilled jobs and industrial activity over a generation.
  - The WCM project will reduce the regional over dependence on other industries as they downsize (particularly nuclear).
  - The project will provide £1.8bn contribution to UK GDP in first 10 years; £2.5bn worth of exports in first 10 years; deliver a 1.8% reduction in the UK balance of trade deficit; provide £130 million annual project spend in region each year when in full production and provide £500m tax contribution to Government in first 10 years.

**Mark Jenkinson MP<sup>437</sup>**

- 15.9 I speak as the Member of Parliament for Workington, the neighbouring constituency to Copeland, the border of which is less than 5 miles from the proposed development. Also, as a member of the Business, Energy and Industrial Strategy Parliamentary Select Committee and as a former British Steel apprentice.
- 15.10 West Cumbria Mining's plans would bring huge economic benefits not only to the Copeland constituency but to the wider region – particularly my constituency. West Cumbria has been reliant, to a large extent, on the jobs and opportunities created through the nuclear industry and its supply chain. Diversification within the industrial and energy sectors are vital to the Government's 'levelling' up agenda.
- 15.11 The project itself, which enjoys huge, widespread support from the Cumbrian public, will also be net carbon zero from day one – and the coking coal mined

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<sup>437</sup> ID104

here will be used to make steel that the renewable energy industry requires. The requirement for coking coal will reduce as we decarbonise the steel-making process. However, there is no alternative to coking coal in some parts of the steel making process, and current large-scale trials for substitution relate only to one part of the process.

- 15.12 You will hear a lot throughout this Inquiry about 'alternatives', but reference to the necessary ongoing use of coking coal in those alternative processes will be hidden from some of the presentations. Electric arc furnace technology does not remove the requirement for coking coal, either in new steel or in wholly recycled steel, and expert reports commissioned by all sides in the planning application attest to that.
- 15.13 In my role on the select committee, we have held an Inquiry into the future of UK steel production – and what a positive story it is to tell. We have seen in the recent decisions on steel safeguards, the importance that the Government attaches to UK steel production. Every single one of the renewable technologies on which we'll rely on, in getting to Net Zero by 2050, relies on steel – there is no alternative to coking coal in producing that steel. By virtue of the time that decarbonisation technologies and large investment decisions take, the earlier we want to get to Net Zero, the more coking coal we will rely on.
- 15.14 I have met and spoken with, many of the leaders of the steel industry in the UK. They are clear that without a UK source of raw materials, including coking coal, their reliance on imports would continue. Should those imports stop or become unviable as we bring international aviation and shipping emissions into our net zero calculations, that would be detrimental to the UK steel industry which would be unable to continue producing some of the steel the UK will rely on for defence and energy production.
- 15.15 The covid pandemic brought into sharp focus issues of supply chain resilience in the UK. This could become a matter of national security. While the coking coal from Whitehaven is destined for steelmaking, it is also worth pointing out that UK usage of coking coal is much wider, from cement production to electric vehicle car batteries and even the electrodes for the electric arc furnaces on which low carbon steel will rely in the future. UK-mined coking coal will play an important role in reaching Net Zero.
- 15.16 Whilst the Government has rightly committed to eliminating thermal coal from our electricity production, coking (or metallurgical) coal is an entirely different matter. The UK and Europe import over 16Mt of coking, or metallurgical coal every year, with the CO<sub>2</sub> emissions from its transport five to seven times higher than if it was produced closer to the point of use. To suggest that shipping it around the world, often from countries with dubious environmental records, is somehow better in any way is ridiculous and takes the dangerously incorrect position that what we don't see doesn't harm us, that emissions at the other side of the world aren't our problem.
- 15.17 While not directly related to the discussions on coking coal which should not be confused with fossil fuels, the Climate Change Committee has also said that Britain would need fossil fuels for at least two decades. It therefore remains a better option to use UK-source oil and gas than to import it, making it easier to control emissions. The same argument must be applied in this case.



Economic growth and demand in growth for steel are undeniably linked. Our plan for growth will necessarily bring a demand for steel, and we should place much heavier weight on the use of UK produced steel. The low-carbon energy technologies that we will rely on in the future, without exception, are underpinned by steel.

*Jobs, regeneration, investment and skills*

- 15.18 This ambitious project represents the largest and most significant direct investment and job creation project in this region in a generation. Realistically there are no other plans or ambitions in any other sector in West Cumbria which come even close to matching the project spend, either wholly private inward investment in this case with job creation, skills development or supply chain support potential which can come from the WCM project.
- 15.19 I cannot overstate the importance of this project not only for Copeland but also for my own constituency of Workington. There will be the direct creation of 532 well paid and skilled jobs on site with this project. Recruitment would start quickly after a planning approval which would mean the local economy would be given an immediate boost. This investment addresses a need for local and regional job creation in an area facing deep, longstanding and widespread economic challenges, including pockets of deprivation. Significantly, West Cumbria Mining will be offering opportunities for those who are semi-skilled. They will be trained by WCM via accredited and approved training and competency schemes providing significant upskilling opportunities for the local area.
- 15.20 The mine will support growth through significant investment in infrastructure, skills and innovation, and to pursue growth. Private investment of this magnitude, which dovetails neatly with our climate change targets and aligns with the 'Build Back Better' plan for growth, does not come along every day or even every decade. The economic and environmental arguments indicate that this is an opportunity that must be grasped with both hands.
- 15.21 The project will also create over 1,600 indirect new jobs in the region, created across many supply chain sectors. For example, the Port of Workington will see extra work created from this project, whether it be the import of mining equipment or construction materials, so to avoid heavy road movements. The project will have an offsite support centre which again is likely to be located in my constituency.

*Key environment issues – net zero carbon, imports and offshoring*

- 15.22 One of the biggest failures of our national discourse on Net Zero is that we consider everything in absolute terms. We have to remember in all of our discussions that Net Zero means just that – NET – and that there will continue to be emissions, and they will be captured and stored or they will be offset. The Climate Change Committee is clear about this in its Carbon Budgets, and less so in its Public Relations.
- 15.23 As outlined previously, the mine will be net carbon zero from the very beginning, making it the first of its type in the world. As part of its development there will be an additional capital investment of £15m in methane capture equipment and associated plant and equipment. The project will also



have annual operational costs of at least £3m per annum in terms of renewable electricity tariffs, methane plant operation, biofuel alternatives and other emission-reduction initiatives.

- 15.24 Carbon offset commitments are anticipated to grow over time and end up at around £5m per annum. The mine will therefore use an accredited gold standard as part of its work to offset residual emissions. The total carbon offset until 2050 could be as high as £86million, with additional operating costs of £75m over 25 years. This is a very significant commitment to carbon offset of more than £150 million over the lifetime of the mine.
- 15.25 The coking coal mined from the site will allow the UK to reduce the amount of metallurgical coal it needs to import from around the world by ship. This will not only support the British steel industry but offset the carbon emissions that come with importing materials from countries such as America, Australia and Russia. The UK currently imports more than two million tonnes of metallurgical coal each year to supply Port Talbot and Scunthorpe. This means the UK will not be offshoring its import transportation emissions and will instead be using its own local natural resources.
- 15.26 The construction of the mine will take place on an existing brownfield site which is a former chemical works. Therefore, this project will remediate this abandoned site and bring it back into use for the benefit of the economy, the environment, and the community. There will be no tips or heaps of traditional coal mine waste. The mine also accords fully with UK green industrial commitments and includes legal conditions for no production beyond 2049 and the highest levels of project greenhouse gas (GHG) emission mitigation. The Climate Change Committee has said it is minded to support new North Sea oil production so to maximise UK supplies rather than rely on imports – a sentiment that must also apply, by logical extension, to imports of metallurgical coal to make steel.

*Wider economic contribution to region and nation*

- 15.27 West Cumbria Mining's plans will provide significant new economic diversity and investment in a region which has endured a decline in skilled jobs and industrial activity over a generation. The WCM project will reduce the regional over-dependence on other industries as they downsize. For example, the region is particularly dependent on the nuclear industry via Sellafield and the wider supply chain. This raises a question mark about short to medium term employment prospects for the region, and how the jobs market will be sustained.
- 15.28 The mine itself will make £1.8bn contribution to UK Gross domestic product (GDP) in the first 10 years, £2.5bn worth of exports and would deliver a 1.8 per cent reduction in the UK balance of trade deficit over the same period. It will see £130 million annual project spend in the region each year when in full production, and a £500m tax contribution to Government in first 10 years. That levels up every part of the UK, enables the transition to net zero, and supports the Government's vision for Global Britain.

### *Conclusion*

- 15.29 The low-carbon energy technologies that we will rely on in the future, without exception, are underpinned by steel. That steel production requires coking coal, otherwise known as metallurgical coal, for the foreseeable future. Any increase in UK steel consumption without domestic production of that steel and its process components will result in increases in both our domestic and off-shored carbon footprints.
- 15.30 While I wholly welcome the phasing out of coal in power generation in the UK, we must not let 'coal' become a catch-all dirty word. We must differentiate between the burning of coal when other widespread technologies exist for the same purpose, and the industrial use of coal as a chemical element, such as in steelmaking. There is no technology currently that can replace our reliance on coking coal, and no prospect of any technology yet to emerge, being commercialised in the life of this mine.
- 15.31 Electric Arc Furnaces are often portrayed as the green saviour of steel production, but the first and most obvious question would be 'where will the electricity come from?' The primary feedstock for Electric Arc Furnaces is recycled steel, and while crude figures suggest that the UK on paper is almost self-sufficient in scrap steel, the EU and World markets are not. This fails to take account of the fact that the scrap steel has to be of exactly the right composition to make the requisite end product, so most Electric Arc Furnace produced steels are a mixture of scrap steel and sponge iron and remains reliant on the addition of coke. The sponge iron process is currently reliant on natural gas or thermal coal.
- 15.32 Policy should focus on helping heavy industry in the UK to develop innovative clean technologies to solve all of these issues. However, this cannot be achieved overnight. Trials, such as those in Sweden to use hydrogen, continue. Direct Reduced Iron or DRI, uses hydrogen as a reductant such is used in the HYBRIT (Hydrogen Breakthrough Ironmaking Technology, a joint venture between SSAB, LKAB and Vattenfall). Some trials point to the intention of HYBRIT to have a commercial plant running by 2026 as the way forward. However, without even touching on feasibility in the short to near term of replacing plants with such expensive, energy intensive replacements, they fail to realise that the HYBRIT process is for production of sponge iron, the problems in the Electric Arc Furnace process that follows remain. Coking coal is still necessary to make steels of the requisite carbon content, and to encourage and enhance slag foaming which protects the furnace, makes the process more energy efficient and reduces nitrogen, the presence of which makes for brittle steel.
- 15.33 We must seize the narrative around net-zero from the people that would jeopardise progress and our future quality of life. We need to be honest about what that means for the people in constituencies like Workington. Part of the route to net-zero is to bring back some of our carbon footprint that we've offshored by importing from countries that often have dubious environmental protections.
- 15.34 We have a significant opportunity to level up across our constituencies if we can rejuvenate our UK manufacturing base. Growing our economy and revitalising our UK manufacturing base will necessarily bring carbon emissions

that the Climate Change Committee are clear are necessary and will be offset or captured and stored. We must work harder and smarter here in the UK to reduce our reliance and to reduce the impact. We cannot pat ourselves on the back for a job well done in 2050 if we have got there on the back of steel, or its component parts like coal, imported from halfway around the world. We must recognise that coal has an important role to play in the future of the UK. We must ensure that that this is UK coal used to make UK steel, and to help Britain Build Back Better.

**Jake Berry MP<sup>438</sup>**

- 15.35 I have a unique perspective, having served for 3 years as Northern Powerhouse (NPH) and Local Growth Minister. I think this project is important to local growth and to the wider north economy. It is important to the Government's strategy to deliver a growing north economy and play to the prime skills in the north of high value manufacturing and engineering.
- 15.36 Back in 2015, or some while ago, I worked with George Osborne in the Treasury when we drafted the NPH. At the time it was absolutely clear to me and other Government Ministers that delivering a growing north economy was hugely important to delivering a growing UK PLC, that's the first point at which I became heavily involved with the Government's Local Growth Strategy. In 2017, Theresa May asked me to serve in her Government as NPH Minister, a job that I did for approaching three years, I think latterly representing the brief at Cabinet level, attending cabinet in Boris Johnson's first government. I think that really shows the history I think I have in this local growth space.
- 15.37 The NPH strategy, launched in 2015, and the latter versions of levelling up to the present day, in terms of Government priorities, set out the things that we identified as the greatest driver of jobs and economic growth across the north of England. These were infrastructure and foreign direct investment and also driving the prime capabilities of the north's economy. I think this WCM Project fits quite well into that wider UK Government strategy as a major piece of infrastructure here in the north of England if consented.
- 15.38 There is clearly going to be some very innovative and novel engineering solutions to try and tackle some of the climate change concerns that have been raised about this project, and also seeing significant investment in the north's economy. I have followed this project with interest in terms of the NPH and what this can do for the north's economy for a number of years. Looking very directly at the job implications, I think it is massively important for Cumbria's wider economy. In total, indirect and direct employment is around 2000 jobs, I don't think that is in dispute, with just over 500 directly employed in the mine and about 1500 plus in the supply chain.
- 15.39 The impact the scheme will have on Cumbria's economy has to be seen in the widest possible context of how Cumbria, or more widely the north of England, is dealing with and recovering from deindustrialisation. Cumbria has done relatively well because it has been supported for a long period of time by the nuclear industry, both civil and defence. However, it is clear that the civil nuclear industry is one that is now downscaling its operations across the

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nation, but particularly in Cumbria. It is also clear that the WCM Project will provide those high skilled high paid secure jobs that we want to see created across the north of England.

- 15.40 The area in which the mine is proposed to be situated does have huge issues in terms of job creation because of the natural challenges it has with infrastructure. It's quite a long way away from everywhere, it's quite a long way away from Carlisle let alone London or Manchester. I'm sure many of you who have been there will understand that. To have the opportunity of a brand-new business coming to the area, not bound or captured or prisoner of the geography of the area, and to create these jobs is a hugely attractive prospect, and something I would support.
- 15.41 I note that WCM has set out in detail some of the significant training programmes that they will ensure the local community can benefit from with accredited and approved training competency schemes to provide significant upskilling of the local area. I think the future for Cumbria and the north's economy is a shift away from a low wage low skill economy to a high wage high skill economy. Even though there are a significant number of skilled people in West Cumbria, particularly those who have worked in the nuclear industry, I think it's hugely important that we diversify and enable both those skilled people to have long term job security and highly paid jobs, but also create those new jobs and new opportunities for young people.
- 15.42 That briefly sets out why I support this in thinking that it's both regionally, locally, and nationally a strategically important application that I firmly believe should proceed.
- 15.43 Turning to some of the net zero and carbon concerns that have been raised, I have written about it in the Daily Telegraph, a lot of people simply think that coal is bad. Whilst I don't think we should be encouraging the burning of fossil fuels in power stations to generate electricity, I think that sort of pretext that coal is a technology itself, can only be bad is incorrect. WCM propose that this is coal is used as a metallurgical coal to help manufacture steel in the UK. If we have learnt anything over the last 18 months I think one of the valuable lessons we should take away from it is the fragility of global supply chains. Even though we live in a global economy, having UK home grown production to support supplies is important. I also believe that it's hugely significant that this mine, if it were consented, would see us move away from a reliance on imported metallurgical coal and move to a UK supply.
- 15.44 We do still produce significant amounts of steel here in the UK, not least in Port Talbot and in Scunthorpe. Those steel production plants are currently reliant on imported metallurgical coal, some of which comes from the USA and some of which comes from other regions of the world. It is important for the future of the UK's economy that we become more self-sufficient. That is why I think this application should be approved.
- 15.45 If we think about where Britain is in terms of COP26 approaching, and the huge commitments we have made around climate change, clearly putting the north of England in the vanguard of what is known by politicians as the 'green industrial revolution', is a good thing. I believe that this coal mine would deliver that. First of all there would be significant innovation in terms of ensuring that this mine is net carbon zero from day one. There would be £150

million spent in total over the lifetime of the mine, as confirmed by WCM, to look at significant carbon offset and significant new technology in terms of methane capture and electricity generation on site. It is exactly the sort of industry that we should be encouraging in the north of England. It is exactly the sort of innovation that plays to the UK's prime capability for high value manufacturing and is exactly the sort of innovation and technology we want to foster in the north of England.

- 15.46 The north is already at the forefront of the 'green industrial revolution'. It is my belief that this mine proceeding would cement and solidify that position. Secondly, in terms of concerns around net zero, the north of England is already a significant producer of the infrastructure for the green industrial revolution and net zero, and not least over towards Hull with the production of wind turbines.
- 15.47 Achieving net zero needs an understanding that we do not live in a completely segmented economy. There is one economic system. If you want to build a wind turbine then that involves the use of significant amounts of steel. Having UK metallurgical coal making British steel to support our existing green energy industry, like Siemens wind turbine blade manufacturing sites also in the north of England, creates a virtuous circle of environmental good across the north of England, putting us at the forefront of that industrial revolution in the environment.
- 15.48 Of the coal used currently for metal production and British steel, 45% of that is imported equating to more than 2million tonnes of metallurgical coal each year being supplied to Port Talbot and Scunthorpe. Most of this I understand is delivered using shipping, which itself is a significant producer of carbon and environmentally damaging gases. Producing metallurgical coal in the north of England would enable the UK to stop off-shoring all of that environmental degradation. It would ensure that coal could be transported in a responsible way by rail between the WCM project and our significant steel producers in Port Talbot, Scunthorpe and to Redcar port. I understand from WCM that rail transport will be undertaken using HVO green diesel, which will slash particulate emissions by 30%, CO<sub>2</sub> emissions by 85%, and by emissions in general by 90% when compared to a non-green diesel fuel train.
- 15.49 This is not only a jobs and growth argument about why this should go ahead. Whilst I believe the arguments for jobs and growth are compelling, I also think that having this sort of innovation in the north of England is an exemplar for good practice when it comes to responsible use of natural resources. It will significantly support the Government's ambition around net zero and will be a much wider driver of both jobs and growth across the north of England. It will ensure that that technological advantage we already benefit from in the north, in terms of the green industrial revolution, is maintained.
- 15.50 Finally, the wider economic benefits I think this can have, goes slightly beyond Cumbria, slightly beyond our region of the North West and is a nationally significant project. The WCM scheme, if consented, would be a project of national significance. It would drive job growth and to some extent would fill the decline of jobs in skilled industrial activity, that we are not just seeing in Cumbria, but more widely across the north of England.

- 15.51 It is vitally important that more skilled secure jobs are created, and we can only do that by supporting industries and consenting industries that keep that skills and training base up. If the WCM scheme were to proceed it would end the over reliance of Cumbria, and more widely the North West on declining industries, and in particular the nuclear industry. It would give a significant new string to our bow in terms of that global race to make sure that we can continue to deliver that growing northern economy.
- 15.52 Finally, if consented, it is reported that the scheme would provide £1.8 billion to UK GDP in the first ten years, create £2.5 billion worth of exports in the first ten years, and once fully operational reduce the UK balance of trade deficit by 1.8%. Those figures will be talked about a lot in this Inquiry and they have been widely reported. As someone who has spent the last three years working at the heart of Government to try and achieve exactly those sorts of numbers, it seems to me that it would be an absolute tragedy if we let an opportunity like this pass us by.
- 15.53 We all want to ensure that we leave a better environment to our children and the next generation. We all want Britain to be a global leader when it comes to the 'green industrial revolution' and achieving net zero. I do not believe that this application proceeding in any way negates any of those laudable aims that we all have. I think for both Cumbria, the north of England and our nation it's a hugely significant application that will see the creation of secure jobs, and see Britain maintain its place in the world as a leader both in industry and in the environment.
- Trudy Harrison MP**<sup>439</sup>
- 15.54 I would also like to thank my Copeland constituents, many of whom have contacted me about Woodhouse Colliery over recent months. The overwhelming majority of constituents whom I have spoken with are incredibly supportive of this project. Engineering and pioneering are what we do best in Copeland; it is in our DNA, and I couldn't think of a more practical or enthusiastic community for this project to be sited.
- 15.55 At the heart of the debate regarding WCM is the second most widely used commodity in the world, steel.
- 15.56 The UK is embarking on a Green Industrial Revolution, with the Prime Minister's Ten Point Plan setting the pathway to net-zero. This plan will require lots of steel, 180,000 metric tonnes (Mt) of steel are needed to build a 440MW Small Modular Reactor, 220 tonnes of steel are needed to build a wind turbine. Not only this, but the International Energy Agency forecast that global demand for steel will increase by more than a third through to 2050 (International Energy Agency, 2020).
- 15.57 Indeed, it is the steel industry which is key to delivering the low carbon economy of the future through the delivery of high-grade steel for wind turbines, tidal barrages, new low carbon nuclear power plants and other key infrastructure such as HS2. During 2020 the UK imported 5.3 million tonnes of

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steel, 74% of all imports were from the EU (House of Commons, 2021, p.13/4).

- 15.58 The reality is that the steel industry will continue to use the blast furnace mechanism for the foreseeable future, this method is currently responsible for 72% of the 1.87 billion tonnes of steel produced globally every year. While emerging technologies may assist the future transition of the industry, there is no commercially scaled-up process for delivering on our steel requirements here and now.
- 15.59 If we look around the world at countries who have tried alternative strategies, we can see the problems that comes with it. In Sweden, where hydrogen has been used to make low carbon steel, but not yet at a large commercial scale, steel will be 30% more expensive. That would mean every wind turbine, every electric car, and projects such as HS2 would cost 30% more for the steel they use. In Japan, where they have used waste plastic in blast furnaces, it took between 10 and 15 years to create the infrastructure for the scale of the project.
- 15.60 On that basis, we are going to continue to need coking coal in the steel making process. This is evidenced by the fact that the EU have labelled coking coal as one of their critical 27 raw materials. We are currently importing 2.177 million tonnes of coking coal a year, with the biggest sources being the USA, Russia and Australia (BEIS, 2020). Not only does this mean we import the coal from countries that don't necessarily meet our high environmental and working standards, it also means we are producing emissions from transportation. A UK source of 3.0 Mt of coke would save approximately 150,000 tonnes pa of CO<sub>2</sub>. While there is a demand for steel and therefore coking coal, it is only environmentally sensible to have a domestic source.
- 15.61 It is important to restate that coking coal is different to thermal coal. Coking coal is used to make high-quality coke, while thermal coal is important in producing electricity. Coking coal must have a low sulphur and ash content, and forms coke which can support the charge of limestone and iron ore in a blast furnace. Thermal coal has a lower calorific value and carbon content, but a higher moisture value than coking coal. It is primarily used to generate heat.
- 15.62 Not all coking coal is the same, it is measured by volatility – grade A being the best. That matters because the gradation is based on ash content plus moisture content, which forms its Useful Heat Value (UHV). For Grade A, ash content must not exceed 15%.
- 15.63 In September 2013, WCM undertook a substantial analytical review of the historical data regarding the presence of coal from seams present around the St Bees coast and which form part of the wider Cumberland Coal Field. The requisite chemical composition and potential volumes were considered to determine the appropriate location of the proposed development.
- 15.64 From the subsequent exploratory drilling undertaken the core samples that were extracted confirmed that the coal is a premium-grade High Volatile 'A' Hard Coking Coal. This led to the plan to develop and operate an underground metallurgical coal mine, which will be known as Woodhouse Colliery.



- 15.65 The project brings considerable economic benefits. It would create 500 jobs in West Cumbria and a further 1500 indirectly, private investment and jobs in an area where poverty rates are higher than the national average and goes hand in hand with levelling up. It would bring a £1.8bn contribution to UK GDP in its first 10 years, which in turn could be invested into research and development for new steel making processes. Low carbon steel can be achieved using coking coal from Woodhouse Colliery with the use of high-quality coking coal, as well as mitigating factors to offset carbon emissions.
- 15.66 West Cumbria Mining's Woodhouse Colliery will harness the most modern of technologies too and will be the world's first net carbon zero operational underground metallurgical coal mine, from day one for the lifetime of operation. The mine will use renewable electricity, methane capture and elimination, on-site mine gas power generation and bio-fuel sustainable solutions. This would once again place the UK in a world leading position during the crucial transition period for the steel industry.
- 15.67 That is what this project can achieve. Celebrating the opposition to this mine is simply gesture politics as we'll then continue our dependence on imported coal including coking coal from other countries for steel making and will also continue our dependence on imported steel for manufacturing. I therefore wholeheartedly support this project which would give us a domestic source of coking coal, necessary to feed our steel requirements that are building the technologies powering us to net-zero.

***Mike Starkie, Elected Mayor of Copeland***<sup>440</sup>

- 15.68 The West Cumbria Mining project is an important new export-led industrial project. It is a significant employment and new skills opportunity for Copeland and West Cumbria at this extremely challenging and difficult time. It will supply the domestic and European steel industry with high quality metallurgical coal. As well as enjoying my strong support over a long period, the project has the support of the four Conservative MPs in Cumbria and many councillors. It has also enjoyed the support of various Government departments including the Ministry for the Northern Powerhouse.
- 15.69 The WCM project will deliver a vital economic boost at local and regional levels and utilise a valuable local industrial resource which enjoys strong demand in the national and European steel industry. As Mayor, I have consistently supported the project and have written to the Prime Minister and others detailing my support over a prolonged period.
- 15.70 The support from Copeland Council, who have a range of experts with extensive knowledge of the local area and sites which WCM are seeking to develop, clearly suggests that they believe that the benefits of the mine outweigh any perceived negative impacts and accordingly the development of the mine is written into the Economic Vision and Strategy of this Borough.
- 15.71 Other local businesses, from small independent shops to larger employers such as Sellafield, are also in support of this project and can see the long-term benefits that the WCM project would bring to the wider supply chain. We know

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that for everyone job on the Sellafield site, three more are supported in our economy. It would not be unreasonable to see a similar ratio with the mine. This is on top of the upskilling and training offered directly to employees and future employees.

- 15.72 WCM continue to act professionally, despite some who would try and stop development of any sort happening in Cumbria, regardless of the benefits. WCM continue to openly engage with stakeholders and are always willing to support local initiatives where possible.
- 15.73 Copeland has extreme deprivation alongside wealth. The wards around the mine are some of the most deprived in England, many are indeed ex-mining communities. We have severely high levels of child poverty and deprivation, health issues and worklessness. These areas, like many in the country, have been hit hard by the impacts of COVID. The mine has already supported initiatives like 'Well Whitehaven' in working with our communities. This support would increase adding additional value aside from employment directly generated through the mine, lifting the wider community. Our communities need change, they need investment, they want more for their children that they have had, the mine is not a panacea, but it brings hope, as well as short, medium, and long-term opportunities, nobody has the right to deny them that.
- 15.74 Since the closure of the pits, this area has been almost completely reliant on the nuclear industry. This has brought prosperity for some, and limited life chances to others. Our ambition is to broaden our economic base, be more diverse, drive and deliver not only the sites and technology for green energy plants, but also the steel to build them. Our vision sets out a broader, modern economic base, including a modern specialist mine, something to be proud of, something that resets the bar for modern industrial development. Moreover, this will ensure a continuum of economic opportunities for the foreseeable future.
- 15.75 It is imperative for the economic prosperity of so-called left behind Cumbrian Coastal communities that new opportunities are sought and delivered. This will help us level up rather than fall further behind. Work, health and well-being are all connected. This is a hugely significant economic proposition, but also has the potential for a healthier, happier community.
- 15.76 The project represents a major new investment for Copeland and West Cumbria and will create hundreds of new skilled jobs in a coastal community. It also represents a new large export industry for the UK and Copeland and Cumbria will become a key part of the international steel industry supply chain. This is reflected through the support WCM has received from BEIS and DIT Ministers. During the construction phase, the project will initially generate around 200 highly paid jobs within the next 18 months, with the right support in place.
- 15.77 It has been proven three times that that there are no material planning reasons not to approve this mine. The future of my community is not only at stake here, but also the credibility of our planning system. I have faith however in both and look forward to a third robust assessment of this proposition to prove, again, and finally that this is acceptable, desirable, setting a new chapter of hope and prosperity for our community, and facilitating a new era of green jobs through new green infrastructure.

- 15.78 You will hear many people in the course of this Inquiry telling you what is best for our community. You will hear much technical evidence worked through over a number of years to create the optimum outcome when considering all material considerations and from those that challenge it. As Directly Elected Mayor for Copeland, I believe I am uniquely and indeed legitimately placed to speak on behalf of our people and place and the message is clear, give us our mine, give us our future.
- 15.79 Finally, I would like to point out I am extremely proud that the UK is among the Worlds' largest economies that are leading the way on climate change. We produce only 1.1% of the total world-wide emissions and this mine would be no more the 0.1% of that 1.1%. It barely registers. The 5 countries comprising China, USA, India, Russia and Japan, who between them produce more than 60% of all global emissions, are where the real challenge lies.

***David Douglas***

- 15.80 Coking Coal is essential to make steel. Very few renewable energy products cannot be made without the use of steel. This is coking coal that is not to be used for generating purposes and its use would displace coking coal that is imported into the UK.
- 15.81 By not using this coal our emissions are effectively displaced abroad. For example, the extraction of Appalachian coal is one of the most environmental damaging forms of mining in the world with few environmental controls and a complete absence of restoration leaving the land as a lunar landscape. That is very different to this mine.
- 15.82 The Council at District and County level has made a commitment to support this mine. It is needed for Whitehaven which is one of the most deprived areas in the UK with increasingly fewer businesses, more people who are not in employment or training and young people disillusioned.
- 15.83 There is currently no practical alternative to a Basic Oxygen Furnace to produce high quality steel. About one third of world steel is produced by electric arc furnaces but there isn't enough scrap steel to feed these furnaces to meet demand.
- 15.84 Opponents of the mine refer to emissions from steel works. However, those emissions are occurring now without the mine and will continue to do so. Much scorn has been made of WCMs claim that this to be a carbon neutral mine. However, there is a comparison with Drax Power Station which burns millions of tonnes of trees shipped from around the world.
- 15.85 The demand for coking coal is increasing, particularly in China. The UK cannot go out on a speculative limb that hydrogen will perhaps offer a solution in the next 20 years. If we were to stop making steel we would be one of the few major economies without steel making and would just move the issues elsewhere. Carbon capture in our steelworks would solve the argument.
- 15.86 If we don't accept a carbon neutral mine here we are just displacing the issue. There are no green jobs in this area on the horizon. Allowing this application brings much needed jobs and skills to young people.

***Councillor Chris Whiteside MBE<sup>441</sup>***

- 15.87 I represent the Egremont North & St Bees division on the County Council, an area which includes the locations of the proposed Rail Loading Facility and much of the underground works. I am speaking as an individual and not on behalf of the Council.
- 15.88 This is a huge and enormously complex application and the issues are not at all straightforward which is why the resolutions of the County Council's Development Control and Regulation Committee (DC&R) in favour of the application were qualified by a wish to impose a Section 106 agreement and in total a hundred conditions. If the application is ultimately approved I would strongly support conditions and a planning agreement along very much the lines approved by the council committee.
- 15.89 When I was speaking to the DC&R I asked that the implementation and any variations on the conditions should come back to committee so that there could be transparency and some degree of democratic consultation in making sure they are applied as effectively as possible. I am particularly keen to ensure that conditions are imposed and enforced to ensure the height levels of the Rail Loading Facility (RLF) buildings would be kept to a minimum, hours of operation/noise impacts are appropriate and highway improvements implemented.
- 15.90 However, I believe that the benefits, including those in environmental terms, from this application greatly outweigh the disadvantages. The environmental impacts of the proposal can, and should be, greatly mitigated by appropriate conditions and in the words of the Council's relevant policy in the Minerals and Waste Local Plan, provide national, local and community benefits which clearly outweigh the likely impacts so as to justify the grant of planning permission.
- 15.91 If this application is finally approved, the proposed Woodhouse Colliery is expected to provide 518 jobs and fifty apprenticeships in a community which includes some of the worst pockets of deprivation in Britain. Spending will also boost the local economy and supply chains. Using Office for National Statistics (ONS) multipliers suggest that the scheme would provide a further estimated 380 jobs. This would enormously help the local economy at a very difficult time for people in West Cumbria following the economic devastation of the Coronavirus pandemic in an area with enormous transport and demographic challenges and where the private sector economy other than the nuclear industry is traditionally quite weak and poorly paid.
- 15.92 The main impact in my division would be from the RLF on the countryside south of Whitehaven. There is a potential impact on the amenity of local residents, but that this should be seen in the context of the existing impacts of the A595, the main strategic road in the area. Investment in improved railway capacity is preferable to using the A595 and the local highways network. The RLF is located in the lowest part of the valley and the conditions included in the DC&R resolution and those I have described could greatly reduce the impact.

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- 15.93 There is a potential impact on local health services but I would see this as a net positive by bringing jobs and people to the area. The application would make the local NHS, which has sometimes struggled to cover a vast and sparsely-populated area in a safe, effective and efficient way, more sustainable as money and resources followed patients.
- 15.94 Listening to the vast majority of discussion of this proposal in the press and social media, and even some of the objectors to the proposal today, you could be forgiven for assuming that the purpose of this proposal was to mine coal to be burned in power stations for energy. That would indeed go against the Government's policy to phase out burning coal for energy, a policy I absolutely support. The application is, of course, actually for metallurgical coal to make steel. The planning conditions which the County Council would have imposed, if allowed to determine the application, and which I hope will also be imposed if the Secretary of State allows the application to proceed, can and should be used to ensure that the output of the mine is not used in power stations and is specifically restricted to mining coking coal to make steel, mainly for the British and European steel industries.
- 15.95 If you want more renewable energy, you need steel. It takes lots of steel to make a wind turbine. Britain needs steel for many other purposes too and there is, as yet, no proven and established economic way to make new steel without coking coal. More than 85 per cent of scrap steel in Europe is already recycled so there's limited scope to increase the 39 per cent of steel currently coming from recycling.
- 15.96 Most coal used by British and European steelmakers today comes from the USA or Russia and some from Poland. The environmental standards in some of the mines concerned are much lower than is proposed for Woodhouse Colliery. This project is for a deep mine, while much of the coal currently in used is open cast or strip mined. Then it has to be transported a significant fraction of the way around the world. So when objectors refer to steel currently being made in Britain without coal from West Cumbria, it should be remembered that this steel was not made without using coal, it was made using coal much of which was mined in a far less environmentally sensitive manner than is proposed at Woodhouse Colliery.
- 15.97 My academic degrees are in Economics and I would like to say a couple of words about the economics of the mine. Evidence has been presented from objectors suggesting that opening this mine would increase the total global supply of coal and might drive down the price. It would be extremely difficult for either side to prove what the net impact will be, but I would urge that both sides of the market equation, both supply and demand curves, should be considered. There seems to be a lot of people speaking today who are so very certain about everything. To paraphrase Lord Melville, "I wish I was as certain of anything as many of them seem to be about everything".
- 15.98 I suggest that none of us on either side of the debate can be as certain as everyone seems to think they are about some of these issues. One objector was right to say that we cannot assume that every ton of coal will be offset by coal no longer mined anywhere else. While I agree with that, I respectfully suggest that it would be equally rash to assume there will be no reduction at all anywhere else, or even that we can be certain of the direction of the net

change. If, as opponents of the mine have suggested, opening this mine might drive the world price of coal down, then the strong possibility exists that this might make other more marginal sources of coal supply less viable. As opponents of the mine themselves have pointed out, other coal mines are closing. If there is any net increase in supply of coal it is likely to be less than the output of WCM. Albeit there is no certainty on either side, this could involve the closure of other mines more harmful to the environment.

- 15.99 It was also suggested that this mine might tend to push down the price of coal, which is true, and that this might have a downward effect on the price of steel. It was then inferred that that might have a negative effect on opportunities for investment in new types of steel making. That is not a safe inference and could well be the opposite of the actual effect. Where the price of a major input to an industrial process falls, the producers in that industry will, other things being equal, be able to drop their prices, or take a higher profit margin, or most probably a mixture of both. If the latter, that would give them more opportunity, not less, to invest in new and possibly cleaner technology.
- 15.100 Technology will change over time. There may be improvements which remove need for coal or in carbon capture technology to use coal without damaging the environment. It would be a mistake to base UK steel policy on the assumption that greener alternatives to coal will become available while ruling out the possibility that one of the greener ways to produce steel, which becomes possible through technological advance, may be better carbon capture. This will still use coal but without polluting the atmosphere. Whatever happens in the longer term, the steel which this country needs in the immediate future will be made with metallurgical coal.
- 15.101 It is better to make that steel in Britain and Europe with coal mined in an environmentally sensitive way, than to use steel made with coal from Russia and America, often strip-mined in the Appalachians and shipped over the Atlantic.
- 15.102 We have heard from North Cumbria CND and one of two other speakers about an unspecified possible impact of the West Cumbria Mining proposal on the Plutonium containment facility at the Sellafield nuclear reprocessing plant, six kilometres away at the nearest point. The Plutonium containment facility at Sellafield is one of the most, if not the most, strongly constructed and resilient buildings on earth. Within that facility the plutonium is stored in containers called "kettles". The design and testing process for these included crashing a train into one at full speed and it was barely scratched. The plutonium facility took no damage whatsoever when within recent memory four huge cooling towers actually on the site were demolished by literally blowing them up with explosives. There are already plenty of historic mine workings in the area which are nearer to Sellafield than the proposed Woodhouse Colliery. The idea that one more set of mine workings six kilometres away could possibly be a threat to the plutonium facility is, notwithstanding my earlier comments about certainty, not remotely reasonable.
- 15.103 Finally I want to say something, as an individual councillor and not on behalf of the County Council, about the decisions of the DC&R committee. I want to make one thing crystal clear before I make these final remarks, that however



much I may disagree with the decisions taken by an officer in 2021 about the planning application, nothing I am about to say is intended to suggest in any way that any of the actions taken by anyone at the County Council in relation to this planning application were in any way illegal, improper, or ultra vires under the law or the existing constitution, standing orders and scheme of delegation.

- 15.104 As Counsel for the Council told you yesterday, the decision to take a neutral position was taken by an officer of the Council at Assistant Director level. During the original consideration of the WCM applications, the Council's officers investigated every aspect of them, including environmental and climate change issues, in the most painstaking detail, and then put the application to DC&R Committee three times. On each of those three occasions the members of the committee listened to hours of presentations and representations and read literally hundreds of pages of reports.
- 15.105 After each round of this exhaustive process, the committee voted on the application. They took a view, three times, in favour of the proposal. The first two votes were unanimously. The third time the mine was supported by a four-to-one margin. Although there is not, and should not be, any party whip on a planning application it is perhaps worth pointing out that this was a cross-party vote with Councillors of each political persuasion both for and against and a majority of Councillors of each political persuasion supporting the proposed mine.
- 15.106 A duly appointed, representative and trained committee of elected members of the County Council, acting within its powers, after due process and extremely exhaustive discussion and also acting in full accordance with the professional advice at the time, voted three times in support of the mine. There has not been any subsequent opportunity since the third of those votes nearly a year ago, for elected members to take a view.
- 12.107 I recommend to the Secretary of State to support the application with a S106 or appropriate planning agreement and strong conditions.

***Councillor Mike Johnson (Leader of Allerdale District Council)***

- 15.108 The UK imports 2 million tonnes of steel each year. This mine would be carbon zero from the start and offers the opportunity to address this import of coal. Intuitively, it is understandable that it may feel like the wrong thing to do. However, given the timescales for alternative methods of steel production and the investment that it brings, it may be the right thing to do.
- 15.109 Investors do not queue up to invest in West Cumbria. Nothing comes close to the potential that this project brings in terms of jobs and is a lifeline. The local economy suffers from entrenched worklessness. Jobs are gone and will not return. Community investment is needed now and this is one of the reasons why there is political and public support for the project. There would not be any visual impacts of tips or heaps and contaminated land would be remediated. There are no material planning reasons to refuse this.

***Councillor Emma Williamson***

- 15.110 As a resident of the area I find that I am giving my support to this proposal for the third time. West Cumbria is fighting for much needed investment. The



WCM scheme offers a generational opportunity to deliver 500 jobs which would be a major boost for the local economy of Whitehaven and the local area.

- 15.111 Jobs are rare in the deprived communities in this area. The proposed mine provides long term sustainable investment. WCM have worked with the local community. Few people in my community oppose it.
- 15.112 Local levels of poverty are far too high. The community is in desperate need of life changing chances such as this that don't come round too often. The mine will not solve an environmental crisis, but it can contribute to a solution. We urgently need this investment in Copeland.

**Councillor Bert Jones**<sup>442</sup>

- 15.113 Councillor in the London Borough of Redbridge and speaking on behalf of his father, Herbert Jones, an expert in iron and steel making worldwide.
- 15.114 It is important to use British coking coal to replace imported coal because it is greener, saves on transport greenhouse gasses, as well as saving foreign exchange and providing good well-paid jobs for British people. We should have a policy of import substitution.

## **16. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY OPPOSING THE SCHEME**

**Tim Farron MP**<sup>443</sup>

- 16.1 The reason why this planning application has gone to an Inquiry is a consequence of the Government's Climate Change Committee (CCC) releasing its report on its recommendations for the Sixth Carbon Budget, a requirement under the Climate Change Act. The Sixth Carbon Budget says that coking coal use in steelmaking could be displaced completely by 2035, using a combination of hydrogen direct reduction and electric arc furnace technology. Meanwhile the Chair of the Government's Climate Change Committee personally intervened to write to the Secretary of State to say that the mine will "increase global emissions and have an appreciable impact on the UK's legally binding carbon budgets". Therefore, it is abundantly clear that this mine is not compatible with the UK's climate change targets.

*Who is this coal for?*

- 16.2 The environmental case put forward by supporters of the mine is that it would cut transport emissions. However, in reality, WCM have admitted that around 87% of the coal produced from this mine will be sent abroad, with the remaining 13% sold to British Steel in Scunthorpe and Tata Steel in Port Talbot. However, British Steel have said the sulphur content of WCM coal may be too high for them to use.
- 16.3 Cumbria County Council's D&CR Committee Report from 2 October 2020 states "I acknowledge the level of sulphur content would need to be managed to supply a product currently suitable for British Steel, and it is not clear whether this can be achieved". Meanwhile WCM have now identified Turkey as a

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potential major customer for this high sulphur coal. Turkey, unlike every other member of the G20 group of major economies, has yet to ratify the Paris Agreement on climate change and has an emissions target that is deemed "critically insufficient" by scientists at Climate Action Tracker, a group that monitors progress by each country.

*Now is the wrong time to do this*

- 16.4 The steel industry produces 7-9% of total global carbon emissions so it's a vital sector to decarbonize. Steel producers there are looking to move away from using coal to produce steel. Most of them favour hydrogen as an alternative and several pilot projects are already up-and-running. Indeed, Swedish company Hybrit has made its first delivery of 'green steel' made without coal to carmaker Volvo. AcelorMittal, one of the world's largest steel producers, has said that by 2025 its Sestao plant in Spain will operate completely using hydrogen generated from renewable energy to produce 1.6 million tonnes of steel. If Sweden and Spain are making these great strides to decarbonize steel making then the rest of mainland Europe and also the UK will not be far behind, leaving only Turkey as our major customer for this mine.
- 16.5 If the Government's Climate Change Committee in their sixth carbon budget are stating that coking coal in steelmaking could be displaced by 2035, then this new coal mine with a 50 year life-span could soon be defunct within 10 years, and so too would be the jobs that are promised with it, destroying any economic case as well as the environmental one.
- 16.6 At COP 26 in November how do we convince countries like China to play their part in tackling the climate emergency when we're giving the green light to a new coal mine in our own backyard? The major report published last month from the UN's Intergovernmental Panel on Climate Change warned that current failures of Governments to slash greenhouse gas emissions means it is now "code red" for humanity, and drastic action must be taken. The report states that fossil fuel production must be cut by 6 per cent per year to avoid the worst of global warming. This is the starkest warning yet about the climate crisis and so to react to that by opening a new coal mine would be madness.

**Martin Kendall**<sup>444</sup>

- 16.7 I don't want my home in Pow Beck Valley blighted with ugly coal wagons shunted into railway sidings. No amount of tree planting and timber clad buildings are going to reduce the impact on this beautiful and peaceful place in the countryside near St. Bees. Many people think carbon neutral means the coal mine will not be polluting, that the modern geodome structures will eliminate fugitive gases, noise, dust and smell. However, in planning documents those pollutants are mitigated or minimised or will be within 'environmentally acceptable' limits and monitored.
- 16.8 The coal mine will be polluting the environment with gas emissions vented into the atmosphere. There will be emissions from the diesel engines that transport materials in and coal away; there will be noise, lights and smell the

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coal mine at the RLF and a vast amount of fresh water is needed for the manufacturing process (and the burning of their coal product).

- 16.9 Local politicians suggest that this coal mine would slash coking coal imports and it would make economic and environmental sense to mine our own coking coal. It is suggested that this coking coal is needed so that the UK can reach its green targets, make more wind turbines and nuclear power plants. There are currently over 10,000 wind turbines in the UK. The UK has built a nuclear power station, is building the HS2 rail link and manufactured the electric cars, all made without Cumbrian coking coal.
- 16.10 WCM have said their coal product would be blended with other coals at a coking plant. Therefore, it is not the premium coal we are led to believe. Also, the UK will still need to import coking coal to blend with our indigenous coal. Therefore, the proposals will not result in a slashing of imports either.
- 16.11 The import of iron ore (7 Million Tonnes), the other essential ingredient for steel, is not mentioned. Those imports don't make environmental or economic sense from countries such as Brazil and Canada. No mention is made of the 6 million tonnes of steel products the UK imports (Hot Rolled Steel & Rebar for example) as part of our trade agreement with other countries. These are facts that demonstrate that this coal mine is not needed.
- 16.12 The UK annually exports, 9 million tonnes of scrap metal which is shipped overseas to be sorted. The UK should be sorting and recycling it ourselves and why not here in West Cumbria? The Government suggests that the UK is a climate leader. Our small nation showing bigger nations how we reduce our reliance on fossil fuels and keep a thriving economy. In my opinion, a Government giving the green light to develop this new coal mine and exploit those fossil fuel assets that contribute to GDP, are not the actions of a climate leader. The Cumbrian coal is no longer an asset and needs to stay in the ground.

***Professor Terry Sloan (Sustainable Keswick)***<sup>445</sup>

- 16.13 Sustainable Keswick is a group of about 50 people divided into 5 subgroups (waste, transport, agriculture and forestry, energy and lobbying). Four of the subgroups aim to make Keswick into a greener town while the lobbying subgroup's aim is to combat climate change and loss of biodiversity on a wider scale. Since the Whitehaven mine produces coal, the dirtiest of fossil fuels, we oppose the granting of planning permission for the mine.
- 16.14 Working Group 1 of the IPCC has just published its Summary for Policymakers, identifying the seriousness with which the climate crisis is growing. Hence there is a paramount need to produce steel by other methods than burning coal, the most polluting of the fossil fuels.
- 16.15 Opening a new coal mine simply encourages the continuation of steel making by coal since it will keep the price of coal low i.e. it encourages "business as usual" rather than encouraging the growing revolution in making steel in a carbon free manner using hydrogen. This revolution is well under way since the car makers Volvo have just placed an order for steel produced by the

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electrolysis of water to hydrogen from Hybrit in Sweden. Various other manufacturers are planning to make steel in this way in the near future. The introduction of this technology will shorten the lifetime of the mine.

- 16.16 There is no shortage of coking coal in the world so there is no reason to believe that mining coal in Whitehaven will lead to a reduction in the world-wide production for coal. Rather it will do the opposite i.e. prolong the manufacture of steel by coal rather than encouraging steel making in a carbon free manner.
- 16.17 The seriousness of the climate crisis we face is not grasped by local politicians. 'Lip service' is paid to tackling climate change and support for projects like the new coal mine is allowing the continuation of "business as usual". With regard to the financing of WCM, their parent company is not based in the UK and its venture capital can ultimately be traced to the Cayman Islands, a well-known tax haven.
- 16.18 The mine is not really carbon neutral as claimed by WCM. This claim ignores that approximately 3 tons of CO<sub>2</sub> is produced for every ton of coal burnt. It is disingenuous to ignore this since the CO<sub>2</sub> goes into the world carbon budget and does not respect national frontiers. In WCM's environmental statement various sources of greenhouse gases are described. Significant quantities of methane are produced during the mining of coal and Appendix 3 of the statement calls these fugitive emissions. However, methane continues to leach out of the mine workings after mining has finished. Methane is a much more powerful greenhouse gas than CO<sub>2</sub>. There is a question whether the leakage of methane in the future has been included in the calculation of the net carbon emissions from the mine after operations cease, thereby allowing WCM to leave a dirty legacy for the future.

**Steve Balogh**<sup>446</sup>

- 16.19 Any proposal to mine the Main Band Coal Measure must take account of the fact that the levels that remain to be won run very close to the seabed and will have to be mined under equivalent atmospheric pressures.
- 16.20 The experience at Dartford informed the arrangements for the workforce under the channel which are well-known with injuries sustained at work having to be addressed in a separate Accident and Emergency decompression suite. Where have WCM made any reference to any such facility which would require a full-time medical staff trained for major industrial accidents?
- 16.21 The history of coal mining in West Cumbria came to an end before these methods had been developed. In the final years, as documented in Humphrey Jennings movie 'The Cumberland Story' (1947), it was found that a fault some distance out to sea had buried part of the Main Band at considerable depth. This made it safe to extract coal without the threat of flooding which has so bedevilled undersea mining off West Cumbria. If there is anything like as much residual coal as WCM claim can be won, it is perilously close under the sea floor which is why it has not already been exploited.

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- 16.22 These are issues that should be dealt with in a Coalmining Risk Assessment. Although such a document is referred to in the Officer Report that set conditions to be met by the applicant. Such report does not seem to be available on Cumbria County Council's web archive or on the WCM site. There is a mention of a medical centre in a factsheet called working underground but it doesn't amount to a separate, dedicated unit.
- 16.23 There is no evidence in this plan for the scale of facilities required for shifts to decompress on a daily basis and for the constant medical presence needed to treat accidental injury underground under pressure. A small building for offices and welfare seems entirely inadequate. On these grounds, this doesn't seem a plausible proposal.
- Irene Sanderson, (North Cumbria CND)***<sup>447</sup>
- 16.24 North Cumbria CND is a member of the UK National Campaign for Nuclear Disarmament. Our aim is for the UK Government to honour its statement of July 2017 that declares "the UK commitment to the long term goal of a world without nuclear weapons, and to the Nuclear Non-Proliferation Treaty".
- 16.25 At the CND National Council on 10 April 2021 the following motion was adopted by all CND groups countrywide: "To continue to support the ongoing campaign to stop West Cumbria Mining Ltd opening a coal mine near Whitehaven." There are several grounds for this.
- 16.26 Firstly, the site proposed for the mine and its workings and processing is very close to Sellafield. CND has monitored the plant here since CND's foundation in 1957 because of its essential role in the UK programme of nuclear deterrence, firstly supplying the elements essential for the nuclear warheads and then dealing with the waste engendered. According to the information on the Government's website, 11,000 nuclear experts are "faced with the challenge of clearing-up the legacy of the site's early operations, including the most hazardous nuclear facilities in Europe". In addition, according to the Nuclear Decommissioning Authority, 2014, Sellafield holds a stockpile of separated plutonium, the element important for nuclear armaments, "which is projected to exceed 140 tonnes at the end of planned nuclear fuel reprocessing operations in 2020".
- 16.27 This is the largest stockpile of plutonium under civil safeguards worldwide. Plutonium is an extremely poisonous substance and a few millionth's of a gram can cause cancer in the lungs, liver and bones. Inhalation of plutonium dust is the most lethal form of this toxin with an estimate suggesting that 500 grams of dust released into the air would be sufficient to kill an aggregate of 2 million people. It is also a volatile substance and has to be kept in very stable conditions away from hazards such as heat and vibration.
- 16.28 The consequences of mining operations occurring so near to Sellafield represents a real danger to the stockpiled plutonium and other highly radioactive substances. A jolt to the containers and their containing walls would entail inspection, investigation and remedial actions not easily

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undertaken. A fire involving a large amount of piled coal/coke is another real hazard.

- 16.29 There is mention of the water involved in the mine operations and a risk that some water may have to be extracted from the workings. The application has mentioned that this will be of great utility in the processing of the coal but most likely not adequate to fully meet what will actually be required. According to the Environment Agency, Sellafield used 97 million litres of fresh water (25.5 million gallons) a day in 1993 and since then more nuclear waste has been accumulated.
- 16.30 From spring this year there have been vociferous complaints of the water quality in West Cumbria as in order to ensure supply, drinking water has recently had to be switched to artesian sources. It is essential that the supply of water to Sellafield is not interrupted. It cools the waste sitting in the ponds.
- 16.31 On 18 March 2021 the Nuclear Decommissioning Authority (NDA) issued a report on Ponds and Silos at Sellafield which states, "The Legacy Ponds and Silos (LP&S) at Sellafield represent some of the most complex and difficult decommissioning challenges in the world, and they remain the highest risk in the NDA estate. They date back to the very start of the nuclear industry and were constructed at a time when priorities were very different to those of today. As a result, decommissioning the LP&S at Sellafield is a complex task which remains a top priority for the NDA." The diversion of any water would pose a threat not to be contemplated and we are already aware that climate change is already forecast to stress such resources.
- 16.32 Over the years the Sellafield site has processed a great deal of radioactive waste in its efforts to get rid of such toxins. As a consequence, the Irish Sea is one of the most radioactive in the world according to Greenpeace. The currents in its narrow channels have whirled the waste around the particles of the sediments that lie offshore right above the planned route of the drifts. Again, any disturbance would result in a release of radioactivity that would be harmful to the littoral (including the Irish) population of creatures, fish, fowl, beast and man, woman and child.
- 16.33 Even if the risks described above may be judged to be slight, the results of the release of any of the plutonium at Sellafield would be so horrendous, that risk should be considered very rigorously, particularly when such risk is posed by a mine for which there is no plausible argument.

***Councillor Giles Archibald (South Lakeland District Council)***<sup>448</sup>

- 16.34 It is the lesser developed countries who stand to suffer the most pain as the climate warms. Indeed, we are seeing significant evidence of that already in terms of water shortages, flooding, disease and crop failures. Recent scientific evidence suggests that we are potentially entering a period of the sixth mass extinction. The last one occurred 65 million years ago. Climate change is one of the contributing factors.
- 16.35 If mass extinction is too difficult concept to grasp, or the loss of countries like the Maldives to sea level rises, this can be brought closer to home. The

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Cumbrian coastline is threatened by rising sea levels. Many places face the prospect of rising sea levels inundating local residences. Our infrastructure is threatened by more violent weather systems. We can expect even more localised flooding throughout the area. Whitehaven is itself potentially at risk from rising sea levels.

- 16.36 There is no evidence of widespread support for this proposal in the District of South Lakeland. Suggestions that those opposing the mine are motivated by 'gesture politics' is disappointing. Climate change will affect future generations. We are running out of time to fix the climate crisis.
- 16.37 Three questions need to be raised. Firstly, methane capture. The applicants' own environmental statement (revised April 2020, page 55) indicates that the emissions from just the operation of the mine would average 366,564 tonnes of CO<sub>2</sub>e each year; some 74% of these from fugitive methane. If we deduct the savings from shipping estimated at 107,430 per annum we arrive at a net figure of around 250,000 tonnes of CO<sub>2</sub>e per annum.
- 16.38 Using the German environmental agency estimate (of euro 180) for the value of environmental damage caused by each tonne of CO<sub>2</sub>e, we arrive at an annual social cost of the mine, just from operations, £38 million per annum.
- 16.39 Documents submitted previously and as late as 10<sup>th</sup> August, indicate that fugitive methane will potentially be captured, perhaps after year 4 but the documents are not clear. Paragraph 7.120 of October 2020 County Council report states that "The applicant stated that methane capture measures are not widely used in mining". Therefore, the first questions is that there does not appear to be promise of a timetable for capture of methane arising from the mine and no firm commitment to a level of capture.
- 16.40 Secondly, in constructing the mine, CO<sub>2</sub>e will be emitted. The April 2020 Environmental Statement, page 51, calculates this as 85,105 tonnes. This equates to a social cost of £13 million. How this amount of damage is to be mitigated in the first two years?
- 16.41 Thirdly, the operation of the mine will involve the construction of a large underground conveyor. The construction of this conveyor will displace a great deal of earth thus releasing CO<sub>2</sub>. I could find no estimate of the amount of CO<sub>2</sub>. Furthermore, much of this coal will be exported. Again, there is no estimate of the CO<sub>2</sub> of onward transport and therefore where are the estimates for these amounts of GHG emissions?
- 16.42 Cumbria has many natural assets and we can provide national leadership in combating climate change. But we, and the UK, will be severely handicapped and our reputation will be tarnished, if planning permission for this coal mine is granted.

***Hayden Thorpe***

- 16.43 The mine is projected to close in 2049 but new alternative technology to steel making without the need for coking coal will mean that most people employed at the mine would lose their jobs much earlier than this date. Only 3% of the turnover from the mine would go into salaries and the rest would be profit channelled into the Cayman Islands.



- 16.44 In 1986, the closure of the Cumbrian Haig Colliery was catastrophic for local employment, not least because there was no alternative and more sustainable industry on hand to employ the redundant miners. This proposal will be no different and by 2049 when the mine would close, coal-mining skills will be redundant.
- 16.45 There is the potential that the coal would be exported to countries with poor environmental and human rights records. As such, the paradigm of the proposed benefits is outdated. Opening of the mine runs counter to the climate change evidence. The mine would be a disincentive to genuine investment in green renewable technology, which could generate 5,000 to 7,000 jobs, and would not secure a diversion from a past industrial era to the detriment of future generations.

**John Aston CBE**<sup>449</sup>

- 16.46 Climate change is at the crux of this Inquiry. For six years from 2006, I was Special Representative for Climate Change for three successive Foreign Secretaries in the Labour and Coalition governments. I was the face of UK climate diplomacy, and had a role also in domestic policy including the Climate Change Act. Coal has been a focus of my work throughout. I set up and led the first diplomatic campaign anywhere to end dependency on coal.
- 16.47 I was also among the first people in the UK Government to argue for the deployment of carbon capture and storage, which we then thought might have provided some space for the continuing use, at least transitionally, of coal in the carbon intensive industries including steel. Later I took part in the debate about the proposed coalmine at Druridge Bay and spoke at the Inquiry.
- 16.48 There are differences between the two cases. That was an opencast for thermal coal; this is a deep mine for metallurgical coal. There the company, Banks, was local. WCM is anything but local. But there are also similarities, not least in relation to climate change, and the eventual outcome there is at least a reference point for this process.
- 16.49 The level of climate ambition will only keep going up, as it has for 20 years. Assets that now look marginal, even attractive, will be stranded, and wound up before their promised time, especially coal assets. When that happens those left jobless suffer what they must. By seeking permission for a new coalmine, WCM is actually inviting those whose hopes they have raised to roll the dice.
- 16.50 There is one simple reason why the UK must urgently say “no” to WCM. Our interest in relation to climate change is not only to increase the effect of actions but to bring the rest of the world with us. The threat is existential. Unless we secure it we shall lose the ability to secure other interests that are themselves essential for our security and prosperity.
- 16.51 In the runup to a climate summit we are hosting, the eyes of the world are, suddenly, on this project. Whether we like it or not our decision about it will be taken as a signal of our intent and seriousness. If the mine now goes ahead, we would be saying to the world: “judge us by what we say and ignore what we do”. We will be doing serious damage to our ability through

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diplomacy to push up ambition anywhere else, not just on coal but on climate generally. We will be acting against our national interest.

- 16.52 The single most important goal in our climate diplomacy today has to be to bring the coal age to a very rapid end. If we now give a green light to a coalmine of our own, nobody is going to turn a blind eye. There is no get out clause for steel. The issue on which we shall be judged is coal full stop.
- 16.53 WCM claims that this project will not do direct harm to the climate itself. No direct climate defence of the mine is credible either. To assert otherwise can only reflect a lack either of understanding or integrity. The emissions from the mine itself are a red herring, whether or not it turns out to be the world's first net zero coalmine. Possible savings in shipping emissions are another red herring, given that most of the coal is going to be shipped abroad anyway. In both cases the actual emissions from using the coal to make steel will far eclipse any emissions saved.
- 16.54 We will need a great deal of steel to make wind turbines and much else and it is desirable that much of this steel is made in the UK. But there is no need at all to open a new coalmine for that purpose. What we should be doing is making sure that a reinvigorated domestic industry becomes a leader not a follower in the transition to the new steel technologies, and that its need for coke as a feedstock falls rapidly.
- 16.55 The principal way forward for the industry is to make steel with hydrogen. The key questions about the direct climate impacts of this mine are not about emissions at all. They are: first, how long will that transition take, and second, what effect would the mine have on this timetable?
- 16.56 WCM appears to accept the hydrogen transition will happen but argues that it will be so slow as not to jeopardize their business case. Speakers here have asserted that the traditional Bessemer method will be in widespread use at least for another 30-40 years. However, WCM are making the mistake that those with a vested interest in the status quo often make, assuming as a basis for their forecast the very outcome that suits them best.
- 16.57 In recent years the industries vested in thermal coal, oil and gas, and car-making have all made this mistake and found themselves startled when the future started to arrive while they weren't looking. Metallurgical coal is now one of the last refuges for this kind of thinking.
- 16.58 The steel industry knows this transition has to happen and the pioneers in the industry are starting to make it happen. Well inside the promised lifetime of this mine, coal will have been squeezed out of the industry, and mines like this will have no market. WCM cannot pretend on one hand that their coal will have no impact on the transition but that it will be available at a price that will attract customers.
- 16.59 It is basic economics to note that if a new supply of metallurgical coal comes into the market on attractive terms, it will tend to push down the price, and thus the price of any steel that is made with it. At the margin that can only slow the transition, not only in customer countries like Turkey and the UK but, because this is a global industry, worldwide.

- 16.60 WCM is in no position to keep its promise of jobs for a generation. The jobs will go when the market goes, long before 2049. The mine will have more far-reaching economic and social consequences. The question today in West Cumbria is indeed about jobs. The answer is not a new coal mine.
- 16.61 Along the North Sea coast this young industry, in which Britain truly leads the world, is already building a whole new economy: manufacturing, servicing, skills, and supply chains spinning off tomorrow's businesses. Some estimates forecast as many as 50,000 new jobs over the next 5 years. That must happen in West Cumbria too. To embrace this project with all its false promise would be to announce to the world that West Cumbria has no interest in that better direction.
- 16.62 Our planning system was not designed to cope with a challenge like climate change. The national interest cannot be separated neatly from the local one. They are intertwined. The direct impacts of any project cannot be kept apart from the wider structural consequences that change lives.
- 16.63 There is no conceivable "national, local or community benefit" that can outweigh the harm the mine would do to the national interest on climate change, even before considering all the damage it would inflict. It is time to bring this distraction to an end and get on with building a far better future for West Cumbria.

***Samagita Moisha (Radiation Free Lakeland)***<sup>450</sup>

- 16.64 Opposes this proposal in terms of planning considerations and processes. In particular, regarding ecological harms and that it is simply not possible to make this proposal environmentally acceptable.
- 16.65 Immense quantities of evidence have been submitted already regarding the environmental harms relating to climate change, to flooding, to ancient woodland, to biodiversity and also details regarding noise, dust and vibration etc. However, there is nothing in the consultation documents regarding the environmental risks of deep-sea mining within 5 miles of Sellafield, which are arguably the largest collection of nuclear materials in the world.
- 16.66 The formal planning process relies on 'material considerations'. In planning terms the mass of radioactive nuclear materials adjacent to the proposed mine is a 'material consideration' that carries considerable weight due to the radioactive plutonium stockpile.
- 16.67 On the question of consultation on the planning application the Office of Nuclear Regulation (ONR) advises that consultation should be undertaken on developments within the off-site emergency planning area around the Sellafield site, which extends approximately 6.1 – 7.4 km from the site centre-point. The ONR advise that it would not expect Cumbria County Council to consult on developments outside this zone. As such, the ONR advise that it has not been consulted.
- 16.68 Therefore, for the distance of 2.1km outside an emergency zone drawn on a map, the Council did not consult ONR regarding a deep sea mine next to a

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major nuclear site. The proposal has the potential to cause dangerous environmental harm due to the recognised connection between mining and induced seismic disturbance. The potential exists for tremors to trigger a nuclear incident and the unimaginable suffering of millions upon millions of people.

- 16.69 Earth tremors do not read maps about exclusion zones and they do not travel in predictable ways. The recent fracking experiment in the Fylde was stopped when induced earth tremors caused damage to local buildings. There is the potential for earth tremors to damage the already aged and cracked legacy nuclear storage facilities at Sellafield.
- 16.70 The local geology of the mined seabed is utterly connected to the geology under Sellafield. Radioactive contamination from Chernobyl reached the Lakeland fells. A major nuclear incident at Sellafield would have international consequences.
- 16.71 The planning process has so far behaved exactly like an Ostrich with its head firmly in the sand regarding the very existence of Sellafield. The ONR have further advised that 'ONR and the experts consulted have thoroughly examined the concerns brought to our attention by 'Radiation Free Lakeland' and we are satisfied that the level of seismic risk arising from the proposed coal mine is extremely low.'
- 16.72 An 'extremely low' level of seismic risk to Sellafield is completely unacceptable. While the planning process has thus far totally ignored this issue, the harm to life could well outweigh even the climate impacts of the mine. The planning process has steadfastly refused to consider that a deep coal mine adjacent to Sellafield might constitute an ecological harm. Furthermore, where does the responsibility lie if the 'extremely low risk' of resulting seismic events does affect Sellafield causing a nuclear incident.
- 16.73 The Secretary of State must refuse this application because he cannot possibly answer for the public safety of the millions of people potentially affected by the harm of an international radioactive incident. These harms outweigh any possible 'benefit'.

**Gillian Kelly**<sup>451</sup>

- 16.74 Climate change means a trapped layer of CO<sub>2</sub> is warming the earth more and more rapidly now and if unchecked will bring about our extinction as a species. Even if we suspended all fossil fuel use today the CO<sub>2</sub> will not disperse for several hundreds of years and it's already having catastrophic effects. Society no longer really registers what these things mean.
- 16.75 We cannot afford to use even the fossil fuels we have so far extracted let alone those still in the earth without imperilling our future as a species. We can recover from a financial collapse but we cannot recover from the actions that normalise destroying our own home. Nobody could possibly be happily part of the fossil fuel industry at this point in time unless they were split off and acting in a bubble.

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16.76 West Cumbria Mining may present verbal rational arguments that are convincing but they are normalising something that, given the current endgame of the world that we are in, is anything but normal. If we don't stop voluntarily then we will be stopped, by fires, by floods, by the breakdown of infrastructure, by sea rise, by food shortages and ultimately by societal collapse. I recommend that permission for this mine be refused.

***Councillor Ali Ross (Eden District Council)***<sup>452</sup>

16.77 In January 2005, Cumbria experienced heavy and prolonged rainfall. Carlisle suffered the most extreme flooding recorded since 1822, over 1,800 properties flooded, power and telephone lines were disrupted, and road and rail networks were closed. Appleby, Cockermouth and Keswick also flooded. Three people were killed. The cost of these floods was estimated at £272 million. The Met Office reported that the extreme rainfall recorded in Cumbria was likely to occur less than once in 200 years.

16.78 Just 4 years later in November 2009, these rainfall records were broken. There was major flooding in Cockermouth, Carlisle and other communities in Cumbria – ruining homes and destroying property. It also resulted in the death of Police Constable Bill Barker who was tragically killed when Northside Road Bridge at Workington was swept away, the first of at least six bridges to be destroyed in that flood. The cost of this event was assessed as at least £276 million.

16.79 In December 2015 Cumbria was hit by Storm Desmond bringing yet further record-breaking rainfall that lasted for days. Glenridding was devastated as the beck became a torrent, surging down from the fells carrying boulders, gravel and mud, destroying buildings in its path and flooding homes and businesses. The Glenridding Hotel was flooded three times over the course of a fortnight. The whole village was cut off as the roads were submerged, phone lines and water supplies failed as the bridge at Pooley Bridge was washed away. There were similar scenarios throughout Cumbria, thousands of homes and businesses were flooded in Carlisle, Appleby, Kendal, Keswick, Cockermouth and myriad small communities and farms in between. The damage to property was immense, including roads, bridges, hospitals and schools. The estimated cost of this storm event was £500 million.

16.80 A scientific study by the University of Liverpool looking at lake sediments, showed that the floods suffered in Cumbria in 2009 and 2015 were the worst for more than 550 years and yet we suffered three such events in just over a decade. And they cost collectively over a billion pounds.

16.81 While we cannot attribute any one of these events directly to climate change, the scientific evidence is very clear that the changing climate is directly increasing the severity and frequency of such extreme events. Advocates of West Cumbria Mining may argue that the £165 million of private investment in this proposed venture will benefit the economy of Cumbria. Such benefit will be far outweighed by the cost, both financial and in terms of livelihoods and lives of the effects on our climate of the 9 million tonnes of CO<sub>2</sub> that will be

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emitted annually from the resulting coal. I respectfully urge rejection of this application.

**Lindy Powell**<sup>453</sup>

- 16.82 In October 2020, The Copeland Local Planning Policy "Renaissance Through Tourism" stated that the Council would maximise the potential of tourism, particularly outside the Lake District National Park boundaries. It is important to note that Arthur Wainwright's various guides to Fell walking and in particular the Coast-to-Coast Path (which is the most popular trail in Britain and starts at St. Bees) brings thousands of tourists to our shores every year. The Coast-to-Coast path is in the process of being designated a National Trail.
- 16.83 In order to accommodate the proposed new siding needed for the coal mine, it is proposed to route the section of the Coast-to-Coast Path running through the Rail Loading Facility into a tunnelled section underneath the lines. The report by the Executive Director for Planning and Infrastructure stated in his report in section 7.260 that the introduction of a tunnelled section would inevitably detract from the experience of footpath users following this footpath. The Coast-to-Coast path has brought in significant revenue for local business and in tourism and hospitality.
- 16.84 The Pow Beck Valley connecting Whitehaven to St. Bees will undergo significant development, industrialising the landscape and disturbing the woodland and many protected wildlife species in the area. It is important that we protect this.
- 16.85 In the same report, DR&C Committee acknowledged that construction work would affect the Coast-to-Coast path, particularly if it involves temporary closure or significant diversion. The views of the mining site would become a significant feature disrupting the tranquillity of the view and general peace in nature that walkers from all over the world come to connect with. It also acknowledged in this report that the proposed mining site would have an impact on tourism. Local business would suffer as a direct result and therefore one of the four quality standards for National Trail status would not be met, and the Coast-to-Coast path runs the risk of not being granted this status. In addition, the Zero Carbon Cumbria Partnership which is co-chaired by the County Council, is working towards making Cumbria the first carbon neutral county by 2037. All seven Councils in Cumbria have agreed to this pledge.
- 16.86 The proposal would devastate tourism in the area which will not be offset by creating new jobs for the future because there is not future job security in coal mining. In May 2021 the International Energy Agency declared that if climate goals are to be reached, no new coal mine should be built. It also said that there is enough coal in existing mines to cover the steel sector's transition from coal to new methods of production.
- 16.87 The Government has allocated 171 million pounds to an industrial decarbonisation fund to be split among projects including hydrogen gas (used in steel manufacture to replace coking coal) and carbon capture storage. Importantly, the need for coking coal to produce steel is out of step with what

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the steel industry is saying. It is likely that coal will not be needed for that long as steel companies are expected to move beyond coal-based steel production in the next 15 to 20 years. What would become of the 500 jobs created by the mine and is the long-term devastation to tourism, the climate and our local environment worth it?

**John Hall**<sup>454</sup>

- 16.88 The opening of this metallurgical coal mine would contradict the International Panel on Climate Change and the Climate Change Committee's pathway for achieving net zero carbon emissions by 2050. It will disincentivise the transition to low carbon steel manufacture, compromise the UK as hosts of COP26, provide only a small amount of unsustainable employment to the community, limit opportunities for job creation in "green" industry in West Cumbria, adversely affect biodiversity, and threaten tourism by spoiling beautiful countryside. The UK must support the International efforts to limit Climate Change, and not permit this mine which will further the decimation of our planet.

**Anna Hall**<sup>455</sup>

- 16.89 If we use coal in steel making CO<sub>2</sub> will be released into the atmosphere. The Government has £250 million set aside in a Green Steel Fund set up in 2019, and, according to the industry journal, Energy Monitor, in August 2021, the industry is pressing for a clear direction away from coal. The IPCC has, this summer of 2021, made it clear that there must be no going back. Even the IEA, in 2021, has said we must stop digging up new coal now.
- 16.90 The applicant's local employee targets may be difficult to fill as the Haig Mine closed a generation ago. Rebekah Diski in her report to the Inquiry describes the difficulties and how questionable some of the claims on employment and training are. Local people may be interested but are they suitable? Meanwhile Cumbria needs a workforce with Green Skills to meet the County's climate target. The mine would be taking from a workforce that must be skilled up for a long viable future.
- 16.91 The mine does not appear to be part of a coherent plan by which a community and the County and can prosper in the future. The National Planning Policy Framework of 2021 recognizes the need for coherent ecological networks that are more resilient to current and future pressures from climate change. We need flexibility and resilience in the natural world to have any chance in a changing climate and yet ancient woodlands, may be harmed for this mine. Dr Tony Martin's report is concerned for one registered ancient woodland, Belhouse Gill Wood, and also Roskapark Wood, as yet unregistered but which is likely to be ancient woodland, in addition to the effect on other natural habitats. Now the Inquiry has been just presented with new plans for the conveyor line.
- 16.92 It is not clear whether pipe-jacking is a suitable technique to go under ancient woodland. Matters of soil stability, water and nutrient flow are important in

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this regard and deserve proper scrutiny. WCM say that new landscapes and woodland will be developed on the closure of the mine in 2048 but it is not clear what happens in the meantime. The Woodland Trust report of the summer of 2021 states that new planting needs ancient woodland as a reservoir to seed it. WCM will be destroying the natural source for this future landscape. Ecological links are needed for national species in this time of climate change and there is a need to improve and extend the existing valuable habitats that we have. The net gain biodiversity principle is not being applied. The proposal must not take from future generations. The future needs to be built on what can truly be sustained and that is not coal.

***Anne Harris (Coal Action Network)***<sup>456</sup>

- 16.93 Coal Action Network has worked alongside communities across the UK standing against opencast coal mines since 2008. These community groups have often been successful in stopping these developments. Where this has sadly not been the case, the situation for the people living close to the opencast mines has been worse than they expected.

*Impact on local residents*

- 16.94 The impacts of the proposed rail loading facility have strong similarities with some of the issues experienced by communities living near active opencast coal mine sites. A recent example of this was the Bradley opencast mine site in Pont Valley, County Durham, which was started in 2018 after being rejected at a local level, and then following a public inquiry but approved at a subsequent inquiry following a high court challenge. The negative effects of the mine operation were a significant reason why the later extension application to this opencast was rejected by Durham County Council in 2020. The application was rejected because it went against National Planning Policy Framework, paragraph 211 which is the same reason this application should be rejected.
- 16.95 The impacts for local people in the Pont Valley are likely to be analogous with those living near the proposed rail loading facility were it to go ahead. Although the projects utilise different mining methods and coal type, both sorts of coal have the same negative health impacts created by the dust released, whether it is when coal is dynamited and transported around opencast sites, or if it is being unloaded from conveyor belts into train carriages. The typography of the area and the rural locations are similarities between the proposed Woodhouse Colliery site and the Bradley opencast site.
- 16.96 Air quality, water, dust, and light pollution standards are created at a national level and do adequately take into account the local context. In tranquil rural areas where there is significantly less noise, water, air and light pollution, such as the Pow Beck Valley, the levels deemed acceptable in law are an enormous increase on the background levels. This causes greater disturbance and discomfort within people's homes, on the local environment, and the impacts are felt over a much larger area.

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- 16.97 Additionally, constructions in valleys can be seen from a longer distance than those on flat land. The Section 106 agreements are frequently cited as places where mitigation of these issues will be covered, but the agreements are frequently broken and there is little in place to hold companies to these mitigations which are often changed without public consultation during the course of the development.
- 16.98 This proposal is for a very extended time period. There were 22 formal complaints between October 2018 to July 2020 made people living close to the Bradley opencast coal mine which include, alleged breach of conditions relating to the blast vibration monitoring scheme, the dust action plan and noise levels. Responses to the formal complaints often went no further than Durham County Council reminding the operator of their regulatory responsibilities.
- 16.99 At the Woodhouse Colliery's proposed rail loading facility, a strip of trees is proposed to be planted to screen the facility. However, this will not be able to grow sufficiently to hide the construction of the facility from view. The screen is only proposed to have an impact from the south east. The local harm that would be created by the rail loading facility would be significant, even if it were kept within national limits of noise and dust because the background levels are so low.

*Government plans to decarbonise the steel sector 2035*

- 16.100 The Climate Change Committee recommended that the government "set targets for ore-based steelmaking to reach near-zero emissions by 2035" in the suggested policies of the Sixth Carbon Budget for the years 2033–2037. In order to reach 'near-zero emissions' from the steel sector, the process of reducing iron into steel cannot use coal as the production of one tonne of steel using coking coal releases two tonnes of CO<sub>2</sub>. Alternative methods of producing steel without the use of coking coal are under development and HYBRIT based in Sweden has sold green steel to Volvo in August of this year.
- 16.101 The Climate Change Committee's December 2020 Advice Report: The Path to a Net Zero Wales, said that a key target to reach is: "By 2030: All ore-based steel-making [to be] near-zero emissions. Tata Steel's Port Talbot steelworks therefore must decarbonise rapidly.
- 16.102 West Cumbria Mining intends on exporting over 85% of the coal it would extract to Europe and beyond. Therefore, the Government's Sixth Carbon Budget will not have an impact on at least 85% of the potential emissions. The Government's decarbonisation strategy will not be unique within Europe. To meet the carbon limits in the Paris Agreement, European Governments are likely to release zero carbon pathways soon which will significantly limit the places where this coal could be consumed meaning it travels further than WCM suggest.

*Tapered coal demand reduction*

- 16.103 The approval of this application up to 2049 fails to fully comprehend the nature of carbon targets. The demand for coking coal will not remain consistent to now, nor slowly decrease up until the year of a major carbon reduction commitment, in either the UK or in the rest of Europe. If the Government mandates steel decarbonisation by 2035, the demand for coking coal will drop

off significantly several years before 2035. Steel companies are already planning to reduce the emissions from their industry and can speed up their own internal timetables. Steel plant conversions are likely to follow a similar trajectory to the phase-out of coal power stations.

- 16.104 It is expected that only one coal power station, Ratcliffe-on-Soar, will remain open after September 2023. The UK has legislated to close coal plants by 2024 the latest point at which Ratcliffe-on-Soar will have to close. This is a clear example of how demand for a product decreases in advance of the deadline as companies find alternative ways to produce products, electricity in the case of the power stations and steel in the case of coking coal consumers.
- 16.105 Earlier departure from coal use in power stations has followed this trajectory on a national scale as well. A number of countries have already brought forward their coal phase-out dates. Even if it looks like coking coal demand is believed to remain high until 2035, the departure may be much more sudden. As such it would be inappropriate to approve a new coking coal mine at all. Once the Government announces a necessity to convert steel works to lower carbon methods of production, steel works will consider this when upgrading the steel processes before 2035 which will likely result in little to no use of coal by the steel sector several years before the deadline.
- 16.106 Converting steel plants to lower carbon production methods will take time and investment, but if coal prices are not deflated by additional coal, there are strong incentives for companies to upgrade to steel decarbonisation. If there is an assumption that coal demand will continue until 2035 or 2050, but demand collapses as lower carbon steel manufacturing proliferates, that could mean that the Woodhouse Colliery becomes economically non-viable and the facilities close. This would mean unemployment, the abandonment of the site, and stranded assets.

*Opening a new mine increases emissions from coal*

- 16.107 If the Woodhouse Colliery were to be approved and to start supplying coking coal to the market this would increase the amount of coking coal consumed globally, and associated CO<sub>2</sub> release. It is wrong to assume that if a new mine were to open in the UK, the equivalent amount of coal would be left in the ground at another mine or coal basin elsewhere in the world.
- 16.108 Instead, coal from Woodhouse Colliery would be largely additional to the coal in mines which are already operating or have already got permission to extract coal. There would be no emissions savings from reduced transportation of coal, the continued extraction of coal abroad combined with coal extracted from the Woodhouse Mine means that there would be additional carbon emissions and no saving of released CO<sub>2</sub>.

*Methane emissions*

- 16.109 Under the application approved by Cumbria County Council in October 2020, methane emissions from the seams would not be captured until five years after the project commenced. This is a major cause for concern because methane is a potent greenhouse gas. Although we believe that planning permission should be refused, if it were approved then methane emissions must be captured as soon as the seams are tapped.

### *European steel demand*

- 16.110 The UK is not the only country where the carbon intensity of the steel sector is being debated and acted upon. Last year's findings by Ember, an independent climate and energy think tank, shows that the tenth worst single site emitter of carbon dioxide in Europe in 2020 was Stahl Linz steel works owned by Voestalpine, in Austria which uses coking coal to make steel. This is the first time a steel works has been in the top ten worst European emitters, a grouping which is vastly dominated by coal (including lignite) power stations.
- 16.111 It shows how important it is this industry must be decarbonised to meet the Paris Agreement goals. Steel companies are continually adding new carbon reduction targets and committing to research and development to enable these to be reached. Four of the five biggest steel producers are making big efforts to reduce their production of carbon emissions. The reduction in carbon emissions from these companies means that other producers of steel will follow suit, as they will have to stay competitive, especially as consumers of steel are becoming more conscious of the options for green steel, like Volvo. This will lead to a widespread uptake in alternative steel production methods to coking coal use, as long as the price of coking coal is not depressed by more mines.
- 16.112 The global push to reduce the emissions from the steel industry through new technologies which do not rely on coking coal offers real possibility to meet climate targets. To approve a new coal mine flies in the face of reason and could hold back the developments to clean up the steel industry internationally.

### *Do nothing approach*

- 16.113 When considering planning applications, it is usual to compare the impact of an application going ahead compared with a 'do nothing approach'. WCM envisage a do-nothing approach equates to continuing to import coking coal from other countries. Due to the continued development of alternative ways to produce steel without coking coal, the 'do nothing approach' needs to consider not the continuation of importing coking coal, but the decrease in use of coking coal which will result from the decline in its use if mines like this one are not started. The comparison for this application should be between using coking coal in European steel making and using alternative reduction methods, recycling, and greater use of the circular economy.

### *Decreased use of steel*

- 16.114 Steel making companies are hoping to swap the technology that they use to reduce emissions from steel making, without fundamentally changing the way in which we use steel as a resource. It is possible to also significantly reduce the amount of steel that we use. The decision to reject this mine does not need to entirely rely on alternative ways to produce steel. The potential for reduced demand for steel should also be considered. The decarbonisation of the steel sector is going to involve a mixture of different solutions to reduce carbon emissions.

*The Company behind the application*

- 16.115 WCM is 80% owned by EMR Capital Investment, a private equity manager based in Singapore. EMR Capital have owned or have had the majority share in 10 mining projects since 2014. There is a risk that EMR Capital will develop the proposed Woodhouse Colliery and then, once it is operational, sell on the asset. The major mining companies are questioning their continued involvement in coal mining, with Rio Tinto selling its last coal asset to EMR Capital and Glencore slowly exiting the coal industry by "a managed decline approach" to reduce its coal and fossil fuel exposure.
- 16.116 The potential failure to comply with planning conditions and S106 obligations are important considerations for local people and the integrity of the planning process. EMR Capital does not have a long history of successfully running coal or other mineral projects. If permission were granted to this company, then it is likely that agreements such as putting the site back, environmental mitigation etc. fall onto another company who may not uphold them, and section 106 agreements are easily changed and have little consequence for being ignored.

*Summary*

- 16.117 This application to extract coking coal contravenes the NPPF and endangers the UK's reputation on an international level because it would result in greater carbon emissions and local damage, which are not outweighed by the perceived benefits. The world is realising that continuing to use coking coal in steel making and retaining the high emissions currently seen in the steel industry is unviable and so strong moves away from the traditional ways of making steel with coking coal are being planned by all of the big steel companies which will likely bring the smaller producers with them as demand for cleaner steel intensifies. As such, there are no compelling reasons to allow a new underground coking coal mine. It is clear that this application is not in the local, community nor national interest, and so must be rejected for being counter to the NPPF paragraph 211.

***Dr Stuart Parkinson (Scientist for Global Responsibility)<sup>457</sup>***

- 16.118 The application states that a total of nearly 2.8 million tonnes of coal will be extracted per year during the main production phase, all for use in steel making. It is aimed that the lifetime of the mine will be over 25 years. Based on the latest official figures for emission factors, we estimate that the combustion of the coal from this mine will lead to emissions of approximately 8.8 million tonnes of carbon dioxide equivalent each year during the main production phase.
- 16.119 To be clear about the scale of these emissions, they are currently similar to the annual carbon emissions of about 1.3 million British citizens. The application argues that carbon emissions from the use of the Cumbrian coal in steel making can be disregarded because this coal will perfectly substitute for coal imported to the UK and mainland Europe from the USA. In other words, the application argues that extraction and use of an equivalent amount of US coal

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would completely cease for over 25 years solely due to this project. This argument is not credible – it is an example of what is called ‘substitution error’.

- 16.120 In short, this means ignoring the well-established evidence on the economics of resource use. In this particular case, it ignores the very high likelihood that any displaced US coal will be used in other steel-making markets in the USA, Asia or elsewhere internationally.
- 16.121 I have experience of critiquing carbon emission assessment methodologies such as those used in this application, especially the use of baseline or ‘do nothing’ projections. Baseline-setting is inherently uncertain and vulnerable to misapplication by project developers and any consultants they engaged. One indicator of poor practice is the use of a baseline whose length was greater than 10 years.
- 16.122 Since WCMs case uses a baseline of over 25 years to help justify this project, this demonstrates major flaws in the methodology used. These flawed assumptions include: sufficient demand for coking coal with the significant levels of sulphur found in the West Cumbrian coal seams; slow uptake of alternative low and zero-carbon methods for producing steel, such as electric arc furnaces and hydrogen direct reduction; and a lack of commitment by UK and EU Governments to reducing carbon emissions from steel and other industrial sectors in line with the targets laid out in the Paris Agreement.
- 16.123 Since submitting my written evidence, a new study has been published in the leading academic journal, Nature, by a researcher from Columbia University in the USA. It attempts to estimate the number of climate change-related deaths worldwide which would result from each additional tonne of carbon dioxide emitted to the atmosphere. Using figures from this study, I estimate that the combustion of a single year’s worth of coal from this mine would lead to about 2,000 additional deaths. So, 25 years’ worth of coal would lead to an additional 50,000 deaths. This is about 100 extra deaths for each mining job that the developer is claiming to create. This is a conservative estimate of the number of extra deaths. It only includes deaths due to increases in heat stress, which are the easiest to measure and predict. It does not include additional deaths due to, for example, increases in storms, floods or wildfires. It does not include additional deaths due to increases in crop failures or famine, due to increases in the spread of infectious diseases or due to increases in political instability or conflict.
- 16.124 All these impacts are predicted to increase markedly with climate change but they are not included in my estimate of extra deaths due to this coal mine. I also have not included the operational carbon emissions of the mine in my calculations nor additional deaths that would arise from local air pollution which would arise from burning this coal.
- 16.125 A key element for consideration in this Inquiry is how much weight to put on the climate change arguments. Here we have clear guidance from policymakers and scientific bodies. The International Energy Agency has pointed out that no new coal mines, of any sort, should be opened if we are to keep within the Paris targets. The G7 Heads of Government, as well as UK and EU Governments, have identified decarbonisation of the iron and steel sector as critical. The Chair of the Climate Change Committee, an official advisory



body to the UK Government, has highlighted the “critical importance” of the climate issue for all planning authorities and specifically in relation to this coal mine.

- 16.126 According to the latest figures from the Office for National Statistics, UK employment in the low carbon and renewable energy economy stands at about 202,000 direct full-time equivalent jobs. In contrast, official figures for current jobs in coal mining in the whole of Britain stand at just 700, 1/300<sup>th</sup> of the low carbon sectors.
- 16.127 Last autumn, the Government announced an extra £12 billion for its ‘Ten Point Plan for a Green Industrial Revolution’. It is clear where the future of the UK jobs market lies, so I struggle to understand why local decision-makers in West Cumbria are not focusing on trying to increase the share of this jobs market rather than supporting the opening a new coal mine.
- 16.128 Global climate change is arguably the largest threat that the world currently faces. This is recognised by the UK Government, EU Governments and United Nations bodies. We need rapid transition to a net zero carbon society. A huge new coal mine in West Cumbria will seriously undermine this. Claims that the coal mine would be net-zero are not backed by robust evidence. Scientists for Global Responsibility therefore strongly urges the rejection of this coal mine application.

**Andy Curle**<sup>458</sup>

- 16.129 We are on the brink of reaching dangerous climatic tipping points, after which we will no longer be able to keep the temperature down and stop a runaway climate from happening. There have been a number of extreme weather events last month leading up to this Public Inquiry.
- 16.130 The point has been reached where we can no longer get away with more carbon emissions without dire weather consequences. Scientists have recently discovered the melting of Greenland is disrupting the circulation of the Gulf Stream. The new report identifies warning signs that it is already becoming very unstable, and there is a chance it could de-stabilise and collapse. If this happens it would disrupt all of the weather patterns. This is serious as a quarter of the heat on earth is re-distributed through that one current in the Atlantic Ocean.
- 16.131 There are also concerns about parts of the Amazon shifting from carbon sink to carbon emitter, a finding reported in the journal Nature, in June this year. This has yielded the strongest evidence yet to date, of a region where the tide has turned and the landscape is constantly giving up more carbon than it can absorb. If additional land areas become sources instead of sinks, over time it could thwart our ability to slow and eventually reverse the non-stop build-up of CO<sub>2</sub> in our atmosphere.
- 16.132 The changes in carbon uptake capacity of tropical forests will require larger reductions in fossil fuel emissions to achieve the main goals of the Paris Agreement. One of the stark messages of the new IPCC climate change report is that the world is now on code red for humanity and that we are running out

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of time to achieve the lower target of the Paris Agreement, “unless there are immediate, rapid and large-scale reduction in greenhouse gas emissions. Limiting warming to 1.5 degrees centigrade will be beyond reach”.

- 16.133 The science is clear, we are destroying the life support systems of the planet. We need rapid cuts in carbon emissions worldwide. We are indeed in a climate emergency. The last thing we need is a new climate wrecking coal mine.

***Ian Hackett***<sup>459</sup>

- 16.134 Fully endorses the Opening Statement of the Advocate on behalf of Friends of the Earth. The Inquiry should not lose sight of the balance between the really big issue, the potential emission of GHG and the promise of short-term effects locally.
- 16.135 In terms of Global Warming and the emission of GHG, we at the point in history where we are running out of time to make the necessary changes to limit Global Warming to 1.5 to 2%. Indeed, we may already have passed this point and as the IPCC recently stated we are at Code Red in terms of implementing change. We must balance an enormous existential threat of increasing Greenhouse Gas emissions against promises of small and probably undeliverable short term local gains.
- 16.136 Prime amongst these promises is that concerning the carbon neutrality of the mining operations. Without knowing where the 90% or more of the mines coal will be exported, it is impossible to quantify operational and logistical GHG emissions. Moreover, we don't have any guarantees as to the future destination of coal from the mine. I had believed exports would be limited to EU, but I now read that Turkey and other areas further afield are being considered.
- 16.137 If future sales of coal are “insufficient”, WCM have a responsibility to its shareholders to generate profit by selling as much of the available coal as possible, which means there is a very real threat that the transport costs in terms of GHG emissions will increase. So, I do not believe that there is any credible evidence that the mine will be Carbon Neutral and this argument should be treated as having very little, if any, weight in balancing the pros and cons of the mine.
- 16.138 I have looked at the Wood McKenzie report dated 6 September. The projections for the demand for coking coal show a dramatic decline starting from around now. The world already has a plentiful supply of coking coal so this reduced demand will only increase competitive pressure, decrease price, and stimulate use of coal in steel making, or at the very least make the price gradient to switch to newer “green” technologies more onerous.
- 16.139 In terms of jobs, we have to balance the small numbers (500) of the relatively short term jobs, by any definition temporary jobs, against massive global potential for job losses, estimated to be around 80million by 2030, in a recent report by International Labour Office, Geneva, should Global Warming not be controlled.

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- 16.140 In a few weeks we host COP26, and as the one of the worlds' largest economies we have a key Leadership role in terms of influencing what the world does next. We either take the initiative and demonstrate by our actions that business cannot carry on as normal having taken action ourselves by rejecting the mine. Should we allow a new coal mine in the UK, we will effectively be giving carte blanche for other nations to follow our example and invest in further Green House Gas emissions. So, the potential GHG emissions this mine may generate will not be limited to this mine alone, but will also have a halo effect on other emissive projects.
- 16.141 We are at a tipping point in terms of climate change, both in terms of reversibility and in terms of the scale of its affects. We already see the effects of Global Warming with many hundreds of deaths reported this year around the world due to flooding in Europe and the US and in fires sweeping Australia and America. Climate change is already wreaking havoc. Should we approve this mine we will have opened a Pandora's Box from which we will not be able to control future emissions from the mine despite promises made.

***Marianne Birkby (Radiation Free Lakeland)***

- 16.142 Opposed the mine since 2017 and the proposed geo-dome structures are insensitive to the location. However, a number of aspects have not been properly considered. Coal mining can create induced seismicity which is a material consideration. There is a serious accident potential as a consequence of this and the presence of geological faulting. Mining would occur beneath radioactive waste that has been deposited on the seabed over many years.
- 16.143 WCM have not provided any evidence of a licence application to the Marine Management Organisation (MMO). The Inquiry cannot be valid without sight of that application.
- 16.144 The County Council has not considered the subsidence risk and induced seismicity risk or identified where the responsibility lies for actions that may occur and who would be responsible for cleaning up the Irish Sea. It is said that that the Sellafield infrastructure can withstand earthquakes. However, leaks already occur from the Magnox Silos which have underground cracks.
- 16.145 Whilst climate change is important, the issues of the risks associated with the disturbance of radioactive waste on the seabed and risk to the integrity of nuclear silos is bigger.

***Melanie Greggain***<sup>460</sup>

- 16.146 Climate change is a global issue and we don't want to add to it. I am a wildlife film maker which has allowed me to see first hand what devastating effects climate change and global warming is having on the planet, the environment and on our wildlife.
- 16.147 The Pow Beck Valley, where WCM plan to build their RLF, is an area of outstanding beauty and it is also home to an abundance of wildlife which are essential for pollinating our land and crops so that we can survive. Copeland Borough Council received £60,000 to help protect and reintroduce pollinators

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in West Cumbria as part of the Get Cumbria Buzzing project. What will happen to that initiative in Copeland if we are to open a coal mine and put a huge RLF in the middle of our beautiful countryside and have numerous diesel trains running in and out of it on a daily basis?

- 16.148 This would cause light pollution and noise pollution, both through the construction phase and the working phase of this facility thereby disturbing, if not destroying, this wildlife and their habitat. The Coast-to-Coast footpath also runs through the valley which attracts lots of tourists to Cumbria each year. Tourists come to Cumbria for the views, the wildlife, the countryside that provides birdsong and peace, not noise pollution from a coal mine and diesel trains. This proposal would have a huge detrimental effect on tourism within West Cumbria, which so many current businesses rely on.
- 16.149 Coming back from a pandemic as huge as Covid-19, we need to embrace, healthy and green recovery and kickstart a model that values nature and the environment at its core for a healthier planet and for an area of outstanding beauty like Cumbria to thrive. The DC&R Committee report sent out by Cumbria County Council in consideration of the planning application, states that "Copeland Borough Council considered the significant benefits...and job creation would outweigh the adverse impacts of the scheme." In today's climate, I struggle to understand why the council would put the adverse effects on the environment ahead of a few jobs that will contribute to the causes of irreversible damage to the planet.
- 16.150 These "500 proposed local jobs" from West Cumbria Mining come with their own shadow of doubt. In particular, WCM state on their website that they "Aim for 80% of these jobs to go to locals." This immediately brings that total down to 400 jobs, not 500 as claimed. WCM also state that priority for these jobs will be given to those with mining experience. However, the last mine closed down over 30 years ago, so not many locals of working age will have any experience of mine working. This would bring the total number of local jobs even lower. Therefore, many of these jobs would likely go to people from outside of the local community.
- 16.151 As the mine will have to close in 2050 anyway, people will again lose their jobs and won't be qualified to do anything else, bringing West Cumbria back to square one again with no jobs and no prospects once again. This is not sustainable.
- 16.152 The main mine site is to be built on the old Marchon works which was classed as one of the most contaminated sites in Europe not too long ago. Marchon, were a company who knew exactly the detrimental impact they were having on the environment and also to the health of their own employees. They said 'we provide you with hundreds of jobs, what more could you want'. We cannot let another company come into West Cumbria and do even more damage to our environment.
- 16.153 There are reasons that there has not been a deep coal mine in the last 30 years. This is because mining coal is archaic, it is hugely damaging and it will cause carbon emissions to raise dramatically, adding to global warming massively. In the present day we should not be taking coal out of the ground. Fossil fuels are not renewable. Would we not rather be the pioneers of moving the steel industry forward with the study and development of coal-free steel

rather than an economy stuck in its old ways, destroying the planet one piece at a time. This mine would have catastrophic effects on the global climate. We need to move forwards, not backwards. There is already enough coal in existing mines around the world. Why would we want to add an extra 9 million tons of emissions every year to an already huge environmental problem?

**Emily Graham**<sup>461</sup>

- 16.154 I am 9 years old and I live in Cumbria. I spoke at the last meeting about this coal mine and I also spoke about climate change in my local council meeting and at my local youth strike. I'm here today because I'm begging you not to build a new coal mine. Climate change is already terrible. There needs to be no more climate change on this planet. I can't explain to you how bad this is for me.
- 16.155 Climate change will end up wrecking my world. It is mostly children that understand how bad climate change actually is. I am really worried about it and lots of other children are too. When I hear that adults are thinking of building a new coal mine, it really scares me. I am really sad that animals are losing their homes and people get flooded and that ice is melting and some people even die.
- 16.156 I would like grown-ups to stop making excuses for why they do things that they know cause the problem. I heard someone say that the emissions from the mine don't count because the coal gets burnt somewhere else in the world. But that just doesn't make sense. It will get burnt if we dig it up. That is really obvious and that would definitely be our fault for digging it up! So, we need to say no to this coal mine.
- 16.157 All of the scientists are telling us that we really have to act very fast in the next few years, not wait around, if we want a chance of stopping the worst and scariest climate change. I am 9 years old and if you don't act now, in 9 more years, when I turn 18, when I am old enough to be in charge and make decisions, it will be too late. If you at least do your share now, and stop making bad decisions that cause more pollution, then in a few years when the kids are in charge, we at least have a chance to sort things out. But if you do things like build coal mines then you really give us no chance and you will be giving us a polluted planet to live on. Children's futures depend on how you act and there should be no coal mine.

**Hazel Graham**<sup>462</sup>

- 16.158 I am opposed to the mine for several reasons. Firstly, because the significant climate impact of the mine is inexcusable in a time of climate crisis. Secondly, because in Cumbria, we need and deserve decent, long-term, future-proofed climate jobs in their thousands, not short term, highly polluting jobs in a dying industry. Thirdly, because the steel industry is decarbonising, and must and will continue to, decarbonise at pace, and this mine is completely out of sync with those plans. Finally, because we must listen to the younger voices of the future.

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### *Climate Impact*

- 16.159 There is a huge surge in awareness about the climate crisis just as we enter the final decade where we have a chance to do something about it. We are not just facing a climate emergency but are actually starting to feel and suffer from the effects. Opening a coal mine would be part of this problem at a time when we need solutions.
- 16.160 Human activity has emitted vast quantities of GH gases which build up in the atmosphere, absorb and radiate heat from the sun, and warm the planet. Throughout the stable Holocene Period (the last 11,700 years) there have been 260 – 280 ppm of carbon dioxide in the atmosphere. In the Pleistocene Period, through the ice ages, the range was 180-300 ppm. That means, that this was the range for whole time humans on earth until very recently. The safe level of CO<sub>2</sub> we can have in the atmosphere is 350 ppm. Above that level, there are climate impacts and a risk of irreversible change.
- 16.161 We actually hit 419ppm in May this year. So, if we are already past the safe upper limit, why are we even talking about this? Why was there a global debate around whether a 'safe' level of temperature rise is 1.5 or 2 degrees. What they mean here is not a 'safe for everyone' and not a 'safe for everything'. By 1.5 and 2 degrees of warming climate change will have already caused migration, death and extinction of countless species.
- 16.162 These limits are still very important. This is because the climate system is not linear, temperature doesn't simply go up steadily in line with increases in GH gasses. Instead, there are feedback loops in our climate system that, if triggered could make things very bad, very quickly. For example, within the Siberian permafrost there are huge quantities of frozen organic matter. As the permafrost melts, microbes have a feast, releasing large quantities of methane, a very potent GH gas, which in turn heats the planet further, melting more permafrost.
- 16.163 Once those mutually re-enforcing feedback loops activate, climate change occurs at a pace and at a scale that is not recoverable for over 20,000 years. The international negotiations focus on keeping temperature rise below 1.5 degrees to give us a decent chance of avoiding those tipping points. Past activity means we are already committed to warming of at least 1.4 degrees
- 16.164 We are right on the brink. But the balance of science says we can still avoid hitting those tipping points but we have to act fast. Storm Desmond flooded over 5,500 homes, 1,000 businesses, affected 44 schools and damaged or destroyed nearly 800 bridges. In Fairbourne, Wales people will need to leave their homes within the next decade because of sea level rise. Millom and Haverigg, and many other parts of West Cumbria, near the proposed site of this mine, may be under water within a few decades if we do not deal with the climate emergency.
- 16.165 The IPCC advise that further heating would mean a dramatic increase in extreme weather. This coal mine, if it goes ahead, would play a significant part in causing that to happen. It could be one of the developments that tip us over that threshold. What happens in the next 5 years means everything to whether we avoid that spiralling out of control of earth systems. The science

is absolutely clear and it is now inexcusable to build a new coal mine in the face of a climate emergency.

- 16.166 The proposed Woodhouse Colliery has the annual emissions of a million citizens. The previous decisions to approve the mine have failed to correctly account for these emissions. The “end use” emissions from the coal would be 9 million tonnes of CO<sub>2</sub>e per year and this was missed from the calculations. End use emissions have to be considered when extracting fossil fuels and therefore when calculating the impact of this mine. Coal mined will be burnt.
- 16.167 The UK’s legally binding 6<sup>th</sup> Carbon Budget was published in December and shortly after that, Lord Deben, Chair of the UK Climate Change Committee wrote a letter on behalf of the Committee. This stated “the opening of a new deep coking coal mine in Cumbria will increase global emissions and have an appreciable impact on the UK’s legally binding carbon budgets”.
- 16.168 The community deserves long-term, well-paid, future-proofed climate jobs in their thousands, not short term, inadequately paid, highly polluting jobs in a dying industry. Cumbria County Council has expressed doubts about the WCM projected 500 jobs from the mine and questioned how many of the jobs would be suitable for local people, and whether there would be a negative impact for other local employers who would lose staff.
- 16.169 The proposal would have a negative impact on tourism and therefore jobs in the tourism sector, because the mine would negatively affect the Coastal footpaths, which were central to Copeland’s plans for “Renaissance through Tourism”. Cumbria Action for Sustainability (CafS) published a report on the potential for green jobs in Cumbria. The report shows that, with proper investment, at least 4,500 new green jobs could be provided in West Cumbria, and 9000 in Cumbria overall, in renewable energy, energy efficiency in buildings, waste management and industry. This mine is not needed but investment in the UK is and there is opportunity to do this at significant scale, creating thousands of new green jobs.
- 16.170 The third reason for objecting is that the steel industry is, and will continue to, decarbonise at pace. This mine is completely out of sync with those plans. Lord Deben’s letter in January 2021 on behalf of the Climate Change Committee also stated that 85% of the coal would be exported, in line with WCMs own statement that only a small proportion would be used in UK steel production. British Steel has stated that it cannot use the Cumbrian coal because its sulphur content is too high. Only one company has expressed interest in using this coal, and they only want 7% of the annual production. So that would mean that 93% of the coal would actually be exported to Europe or most likely, much further.
- 16.171 Green steel capacity is a huge growth area and coking coal use in steelmaking could be displaced completely by 2035. This mine is not needed for the future of the UK steel industry. Local young people are deeply concerned about the mine. Hundreds of young people held a youth climate question time event in Cumbria to quiz elected representatives about what they would do to stop the mine.
- 16.172 Young people are concerned at this development and their views need to be taken into account when weighing up the significant, irreversible negative



impacts against the smaller and questionable benefits of the mine. The decision affects future generations, who are very much underrepresented in this Inquiry even though the decision affects them more than any of us. We need intelligence, forethought and leadership from our decision makers and this application should be refused.

***Amy Wright (Allerdale and Copeland Green Party)***<sup>463</sup>

- 16.173 We believe that the proposal absolutely cannot align with local, national or global commitments and actions to reduce the already worsening impacts of climate change. Cumbria suffered catastrophic floods in 2005, 2009 and 2015. The latter, Storm Desmond, resulted in loss of life and 7,000 Cumbrian houses being flooded, roughly as many as in 2005 and 2009 put together. Economic damages from these floods totalled £276 million in 2009 and £1.6 billion in 2015 (Environment Agency, 2018). Additionally, research into lake sediments at Bassenthwaite has shown that the cluster of devastating floods from 1990-present is without precedent in the 550 year paleo record.
- 16.174 The 2009 floods, the largest in over 550 years had a recurrence interval (1:2,200years) larger than conventional flood estimation. Therefore, the most extreme events should happen rarely and in isolation. As the research states: 'the extreme floods (top 1%), whilst infrequent, occur in groups and that the most extreme floods in our series clustered between 1990 and 2018'.
- 16.175 The Lake District National Park Authority research says if we do not act more urgently, Storm Desmond-like events will become normal by 2040. There will be significant damage to grasslands and soil, which will be devastating for the agriculture industry that has already had to endure so much (e.g. flooding, foot and mouth) in recent decades. The legacy and historical importance of farming underpins Cumbrian culture and identity. Approval of the proposed coalmine prevents Cumbria and the UK from safeguarding the future of this legacy.
- 16.176 We were heartened to read in the Guardian on 19<sup>th</sup> August that Swedish company, Hybrit, is sending its first batch of green steel to Volvo AB and is on track to be in full commercial production by 2026. We fear that, in absence of appropriate Government support, British steel production companies may be left behind as the rest of the world pushes ahead with development of greener steel.
- 16.177 We were already aware that the plan was to export the vast majority of coal, but a recent article in The Times (28<sup>th</sup> August) states that WCM has identified Turkey as a customer which raised significant concerns. Turkey is the largest market for coking coal and was the sixth largest steel producing country in 2020. It is not subject to EU regulations on sulphur emissions and acid rain controls, it has not ratified the Paris Agreement on climate change. According to the same article, climate scientists in Istanbul are worried that exporting to Turkey will jeopardise its efforts to move away from coal.
- 16.178 On 9<sup>th</sup> August this year Our Prime Minister said on Twitter that he wanted the developed world to "kick the coal habit entirely by 2030 and the developing

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world by 2040". According to the UN, Turkey is a developed world country. Exporting coal there is clearly incompatible with this goal.

- 16.179 There will be an impact on the Pow Beck Valley, with further industrialisation taking away green space. Marchon, the former chemical works, left behind a site of industrial dereliction, despite having promised local people it would be restored for recreation, wellness and wildlife. However, some natural regeneration is now taking place. Instead of returning this site to industrial use, its regeneration should be further supported. This will improve residents' access to green space, something which has clear physical and mental health benefits. It will also reduce pressure on the national park, which is facing ever increasing visitor numbers.
- 16.180 With regard to the benefit of the proposed jobs to the local area. Our evidence refers to a number of studies that show there is significant potential locally for green job creation. For example, Local Government Association research shows 3800 jobs could be created across Allerdale, Copeland and Barrow by focussing on low carbon development. This far outweighs the 500 jobs proposed by WCM, 80% of which we understand to be specialist roles and unsuitable for residents. The County Council and the Government have an obligation to ensure that our workforce is trained in industries and roles that align with long-term plans for Cumbria.
- 16.181 Given that Governments, regional to national, have committed to reducing the effects of climate change, and that, in line with this, there is significant potential for green jobs in Cumbria, it is logical that creation of such jobs be supported and that residents are trained to fill these roles. We have an excellent opportunity to offer Cumbria's young people training in industries that are to become the future, not in ones that will become moot in 30-50 years.
- 16.182 We believe that the evidence we have submitted clearly demonstrates that it is simply not possible to argue that the proposed coal mine can provide national, local or community benefits which clearly outweigh the likely impacts that we have stated. The development would be contrary to Policy SP15 and DC13 of the Cumbria Minerals and Waste Local Plan.

***Dr Ruth Balogh (West Cumbria and North Lakes Friends of the Earth)***<sup>464</sup>

- 16.183 Objects to this proposal in several capacities: as Co-ordinator of the local branch of Friends of the Earth; as a professional social researcher who has co-authored a number of published studies on the health and social impacts of flooding among people in Carlisle, and in schools in Hull; as a West Cumbrian resident who has suffered from flooding and its attendant disruption to my home and the surrounding area.
- 16.184 This mine is not needed, there are better ways to make steel rapidly coming into production, the perfect substitution argument is invalid, the jobs that are promised are only promises and may not go to local people after all, and finally that the carbon emissions from its construction and end use will contribute to climate change. Not only does it contradict the National Planning Policy

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Framework, it breaches our obligations under the Paris Agreement and other legal instruments, but it will also contribute to the wrecking of the delicate climate balance we all depend on for the normal pursuit of our lives.

- 16.185 In addition to written representations, I focus instead on two aspects of this proposal's impact on the well-being of West Cumbrian residents. Firstly, the amenity and opportunity for economic development it will deprive us of. Secondly, the potential further disruption to our lives from flooding, drawing on our own published research.

*Loss of amenity & opportunity for economic development*

- 16.186 The proposed mine is in an area I visit and enjoy for its tranquillity. The 2013-2028 Copeland Plan Policy ER10 Renaissance Through Tourism identifies the Whitehaven Coastal Fringe as one of four Tourism Opportunity Sites. It says that tourism providers at these sites should ensure, wherever possible, connections to other tourism destinations and amenities. This proposal will completely compromise this part of the Plan, which relies on its local network of long-distance cycle and walking paths, including the Coast-to-Coast Path, the Wainwright Gateway to the Lake District, which will have to be temporarily closed.
- 16.187 This is not just damage to an opportunity for local tourist industry development, it's damage to the prospect of jobs for local people in that industry and wider economic benefit. Yet further, it damages the access and amenity for local people, most especially in the housing estates of South Whitehaven, to enjoy their beautiful surroundings.
- 16.188 It's said that local people in Whitehaven support this mine. When I talk to people in Whitehaven, I find that this generally represents support for jobs in general, not coal mining in particular. Different jobs, with perhaps better prospects, as in the case of tourism development, of matching the skill set of local unemployed people, would be equally welcome to West Cumbrian residents.
- 16.189 The loss of such jobs should be set against the purported gain from the mine's jobs. The loss of local, national and international amenity, which will support transition to a low-carbon future should be assigned greater weight. The Whitehaven Coastal Fringe cannot become a Tourism Opportunity Site if this mine goes ahead. Greater weight should be assigned to these harms.

*Local harm: flooding*

- 16.190 Flooding is a well-established consequence of climate change. Richard Chiverrell's research on sediments in Bassenthwaite Lake demonstrate how the flood events that Cumbria has experienced across the county in most of its major towns and outlying rural areas during the past two decades are a consequence of climate change.
- 16.191 We know the financial costs, but the disruption, often over periods of years of uncertainty before flooded people can return to the homes. Examples of how people experienced the floods in Carlisle demonstrate the spend at which the event occurred. After the flood subsided, there was an acute shortage of temporary accommodation with families having to live in one room in a hotel for a year. Those who chose to remain in their homes, due to the lack of

alternative accommodation or security concerns, endured inadequate, unhealthy and unsafe living conditions.

- 16.192 The immense harm from these and other climate change effects must be avoided, and any proposal that threatens our community in such ways cannot be tolerated.

**Ciara Shannon**<sup>465</sup>

- 16.193 WCM, has not considered an increase in carbon prices into their cash flow projections and needs to think about how the UK's and European carbon prices will impact its business model. As WCM will likely export 85% or so of its coking coal to the EU, the price of carbon in Europe (EU ETS) and the EU's Carbon Border-Adjustment Mechanism, which will put an additional carbon price on WCM's EU exports, must be factored into their cash flow analysis. Carbon prices will have a significant impact on WCM's economics of coal extraction and will undoubtedly weaken its profit margin.
- 16.194 A carbon price will also be a major factor in the future economics of the global metallurgical coal market versus green hydrogen etc. These are important economic material considerations as any economic benefits in terms of regional revitalisation and jobs that WCM may bring to Copeland could be fragile and short-lived. With lower profits, Woodhouse Colliery will not be able to support a strong and vibrant economy for long, nor pay the salaries it promised.
- 16.195 Today, the carbon price stands at about US\$60 per tonne. The Government has very recently announced a large hike to its carbon price that it will use to appraise and evaluate emissions connected to public policies and projects. The 2022 price has been lifted from £27 (traded) and £72 (non-traded) to £248 per tonne. Whilst this isn't a price that will be charged, it is a price that will be used by decision-makers when they weigh up the pros and cons of a project and decide whether to give it government approval. This 'high carbon appraisal price' is likely to have major implications for accelerating climate action and approving new projects in the UK. Such a high carbon appraisal price must surely be an important material consideration in this application.
- 16.196 Climate change is central to planning policy. Reading through the NPPF and the PPG, climate change is one of the core land-use planning principles that should underpin both plan-making and decision-making. This point was emphasised in June 2021, by Lord Deben, chair of the Climate Change Committee (CCC) and others when they raised concerns that the Planning Bill must ensure that every development is assessed against efforts to cut greenhouse gas (GHG) emissions to net-zero by 2050.
- 16.197 As we come out of the pandemic, sustainable development is more relevant than ever with the growing expectation to build a better, fairer future for all. A greater focus on sustainability and climate change in Copeland will transform people's quality of life for the better, with clear net benefits to health, air and water quality, employment, energy affordability, community cohesion and biodiversity. This becomes even more urgent when you read the IPCC's latest report alarmingly dubbed the 'Code Red for Humanity' which warns us that

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extreme weather and rising seas are hitting faster than expected. If global temperatures continue to rise, we are likely to cross 1.5°C thresholds around 2030, if not before.

- 16.198 'Copeland's Vision 40' looks at the 'Six Pictures of the Future' in key areas of Copeland's economy, encompassing innovation, research and development, the natural and built environment, connectivity, the visitor economy, the Energy Coast and the nuclear industry and supply chain. I fail to understand how the coal mine fits into Copeland 40 Vision. I believe the Woodhouse Colliery undermines Copeland's Council's own efforts for a Net Zero Cumbria. True innovation instead should be defined by the industries of the future, rather than those of the past and integrate the strength of Copeland's natural resources and its vast renewable energy potential.
- 16.199 There is a basic question whether Woodhouse Colliery will support a strong, vibrant and healthy economy for current and future generations. I can understand why a £160 million investment with the promise of 510 jobs and thousands more down the supply chain would be an attractive offer. Following the loss of coal and steel on which the area thrived in the 1980s, Copeland has faced unemployment and deprivation.
- 16.200 It is understandable that many people locally are supportive of the mine for the significant employment and new skills opportunities, as well as for the coffer of the corporate tax payments to the Government and it being a sizeable new export-led industrial project. Alternatives to the coal mine and green technologies were not properly discussed by the Cumbria Council's DC&R Committee. Meanwhile, the mine risks locking in the region to a high-carbon future at a time when the need for a green recovery from COVID-19 is imperative.
- 16.201 In the context of Section 14 of the NPPF, the planning system should support the transition to a low carbon future and it should take a proactive approach to mitigate and adapt to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes. Against this background, why should approval be given to go ahead with Woodhouse Colliery and its 9 million tonnes of CO<sub>2</sub>e every year until 2049? This is 2% of the UK GHG emissions – a percentage that will increase in future as the total of UK GHG emissions reduces.
- 16.202 WCM emissions far exceed Copeland's own carbon budget. Yet, according to a recent carbon budget report done by the Tyndall Centre and the University of Manchester, Copeland will need to reduce its emissions by 218pprox. 12.4% every year. Surely, now is the time for Copeland to honour its historical contribution to climate change and not agree to a new deep coal mine that isn't needed. West Cumbria has significant potential to develop green technology and renewable energy and harnessing its unique green assets to build a resilient, net-zero economy is the way forward.

**Dr David Heller**<sup>466</sup>

- 16.203 Putting the infrastructure of the rail loading facility in the Pow Beck Valley will wreck the local environment and ancient woodland in that particular valley. It also jeopardises the popularity of the Coast-to-Coast route as a whole, and the economic livelihoods of countless rural communities that have managed to diversify into tourism over the past few years.
- 16.204 I was struck by the paper published in Nature this week on “Unextractable fossil fuels in a 1.5 °C world”. It updates research first published a few years ago, to assess the amount of fossil fuels that would need to be left in the ground, regionally and globally, to allow for a 50 per cent probability of limiting warming to 1.5°C. The researchers estimate that 58% of oil reserves, 59% of fossil methane gas reserves and 89% of coal reserves must remain in the ground.
- 16.205 If we want to stay within the target of 1.5 degrees of warming there is no plausible world in which we can dig up and use the coal from the mine. With the climate case against the mine so crystal clear, and a shaky case for the need for coal, it’s worth considering who stands to gain, and who will pay the price for the operation of the mine.
- 16.206 There is no guarantee that the 500 jobs promised in the mine will ever materialise, or that they will be long-term or full-time jobs. Wages from the mine would be 3% of revenue, with most of the profits going to unknown shareholders. We’ve seen the news recently that WCM has laid off most of their staff due to their precarious financial position. This doesn’t bode well for how they would treat workers in the face of a downturn in the demand for coal.
- 16.207 The latest report from Wood Mackenzie for West Cumbria Mining is clear. In their 1.5 degree scenario “Europe moves away from Blast Furnace-Basic Oxygen Furnace production, and, therefore, metallurgical coal demand is minimal from around 2044”. That’s around 20 years maximum, even by the company’s own estimates.
- 16.208 It is clear that the mine has never been about demand for British steel. Even the original estimates put the percentage of coal that could be used in Scunthorpe or Port Talbot at 13%. Add to that the fact that the sulphur content is too high, and it looks like the percentage used in the UK could be even lower. It has always been the plan to ship the coal to Europe via Redcar, but the latest report from Wood Mackenzie seems to suggest that the market could be even further afield. “In the AET 1.5 Scenario which shows all UK and EU27 blast furnace closures, we are of the view that the West Cumbria Mining product would still have a market in Asia” (para 1.15).
- 16.209 This is even more noteworthy given the fact that WCM have said in the past that one of the advantages of their coal is that it’s better to produce it nearer to the target market than to ship it around the world. In effect, it’s great that their coal will replace imports from other continents. In fact, to find a market, it would need to be shipped to Asia.

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- 16.210 The fact that WCM is owned by EMR Capital, based in Singapore and the Cayman Islands, means that profits from the mine will flow out of the UK. The financial constructions have already started to reduce the tax revenue owed in the UK. EMR Capital has lent money to WCM, and WCM repaying is that loan with a relatively high rate of interest. While WCM is not producing any coal, it's obviously making a loss due to having to repay that loan. That's a loss that can be written off against any future profits, reducing the amount of tax revenue paid to the UK government. This clearly shows that the benefits will not come to the local area, or even to the national exchequer.

***Hannah Smith***

- 16.211 Is shocked to see how this proposal has reached this stage of the planning process. There is proven scientific knowledge that the continued burning of coal will have local, national and international consequences. Planting trees as a carbon offsetting tool is wholly inappropriate. There is a need for a transition to green steel production and not fossil fuel extraction and profit maximisation.

***Professor Michael Hambrey***<sup>467</sup>

- 16.212 When proposals such as that for the coal mine come forward, efforts to move away from fossil fuels are undermined. Nevertheless, I do understand the need for increasing prosperity and employment in West Cumbria. However, new jobs in the fossil fuel industry are the wrong jobs. The Government has talked of 'levelling up' the North of England and 'building back better'. This means investment in sustainable development initiatives, such as enhanced wind farm development offshore, solar energy, tidal power, wave energy and perhaps most interesting of all, the potential for ground-sourced heat from flooded coal mines to develop regional heating schemes, described by the British Geological Survey. In this context, a new coal mine is totally out of place.
- 16.213 The main point is the moral responsibility the UK has in showing a lead to the rest of the world in achieving Zero Carbon emissions by 2050. The recent Intergovernmental Panel on Climate Change report pulls no punches, as has already been said at this inquiry. Yet, in spite of this, the fossil fuel industry continues to peddle misinformation about global heating, while the economic model for perpetual growth based on fossil fuels is still being followed.
- 16.214 I have seen and talked and written about the consequences of climate change, notably the gradual demise of glaciers and sea ice. Now the evidence is all around us. More extreme weather events, such as flooding, more intense hurricanes and typhoons, drought and extreme heat resulting in wildfires; also rising sea levels from melting land ice and oceanic thermal expansion; methane release from permafrost; and ocean acidification. The key point from all of this is that it is the developing countries that are suffering the most, yet they have done least to create the problem.
- 16.215 Those who lived through Storm Desmond in December 2015, will never forget the devastating impact this had on many of our communities in Cumbria. Therefore, when we have all this knowledge about the impact of climate

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change, how can we justify inflicting more damage and distress on communities world-wide by extracting ever-more fossil fuels, when current projections are leading the world to a 3°C temperature rise by 2100?

- 16.216 I believe the UK has a moral obligation to lead by example. One estimate of per capita greenhouse gas emission in CO<sub>2</sub>-equivalent I have seen gives a figure of 5.5 tonnes for the UK, although this ignores out-sourcing the problem to other countries, from whom we now buy goods. This compares favourably with the USA (14.8 tonnes), Germany (8.6 tonnes) or even China (6.7 tonnes), but far exceeds that of India (1.7 tonnes) or Ethiopia (0.3 tonnes).
- 16.217 Compared with other G7 nations, the UK isn't doing too badly. However, if we look at total per capita emissions since industrialisation, the UK is rated the world's top carbon polluter, followed closely by the USA, Canada, Russia and Germany. China, currently the world's leading emitter, actually lies in 19<sup>th</sup> position. (Hickel, J. 2020, *The Lancet Planetary Health*).
- 16.218 Currently the UK is sending out very mixed messages internationally. If we do not set an example, as host for COP26 in Glasgow, then how can we expect the rest of the world to follow? The Government needs to send out a clear message that we are no longer seeking to develop new fossil fuel reserves. The climate emergency is real and now with us. There is no scope left for developing new fossil fuels, let alone coal.

**Amy Bray**

- 16.219 The WCM proposals undermines all of the efforts of individuals who have sought to live in a more sustainable way. In addition, the Lake District National Park has a net-zero target. The proposal will also undermine this.
- 16.220 Cumbria can be seen as a world leading visionary or as a villain that opened up a mine. This proposal is creating 'eco-anxiety' in young people who are frightened. Every gramme of CO<sub>2</sub> counts and the effects are felt around the world. The proposal will cause a delay in our green transition and for the sake of everyone this proposal should not go ahead.

**Gailie Stevens**

- 16.221 WCM have spent the last 4 years trying to convince Whitehaven to accept this proposal. Modern mining techniques are different to those used in the past. It is likely that a trained workforce will have to be brought into the area. In canvassing views, very few people think that this mine is a good idea, irrespective of the promise of jobs. Whitehaven is no longer a polluted town. It has a world class harbour and is surrounded by countryside. It has the potential to provide a greater offer than a coal mine.
- 16.222 New housing development in the vicinity will have views of the black blobs of buildings, particularly as the proposed landscaping will take at least 15 years to mature. WCM has already laid off a number of staff in advance of this Inquiry. The investment company, EMR, may have concluded that there is no market for coal and their actions in laying staff off suggests that they may be withdrawing their support for the project. Whitehaven does not need this coal mine and deserves better.



***Dr Henry Adams (Retired Ecologist)***<sup>468</sup>

- 16.223 Since the County Council considered this proposal in October 2020, the climate crisis has become more urgent, UK and EU Climate policy has become stronger, and committed capacity for making steel in Europe, without using coking coal, has significantly increased. This coal mine should not be given planning permission.
- 16.224 Most of the UK's emissions reductions need to be this decade to have any chance of even delaying a 1.5C degree temperature rise. The IPCC's Sixth Assessment Report this August impressed on us that unless we urgently and rapidly reduce emissions now, we are heading to cross the 1.5C target of the Paris Agreement between 2030 and 2035. Developed countries such as the UK, that need to set an example, most of our emissions reduction must be now, this decade, to have any chance of even delaying crossing 1.5C.
- 16.225 A 2020 paper by climate scientists Professor Kevin Anderson et al. showed that the UK would need to reduce its emissions by over 10% per year by 2030 for the UK to be on track for meeting its fair contribution, and this is for only a 50% chance of the UK keeping below 1.7C.
- 16.226 The coal mine heads in the opposite direction. The 2.78 million tonnes per year of coking coal that WCM wish to extract, would result in 8.8 million tonnes per year of end-use emissions at blast furnace sites. 8.8 million tonnes CO<sub>2</sub>e per year is huge, around 2% of the size of UK's territorial emissions and more than the net emissions of a million UK citizens, which is twice the residential population of Cumbria. Even though those emissions would be mostly outside the UK, this is obviously incompatible with keeping global temperature rises below 1.5C, or even a 2C limit.
- 16.227 This week a new paper called 'Unextractable fossil fuels in a 1.5 °C world' by Welby et al. reinforces this point, by concluding that more than 90 per cent of coal reserves must remain unextracted to keep within a 1.5 °C carbon budget. Cumbria's coal must be part of that 90 percent unextracted. The use of coking coal must be rapidly diminished to fit this paper's finding.
- 16.228 Commitments for "Green Steel" capacity in Europe by 2030 are increasing even fast. The steel industry, especially in Europe, is well aware that making iron and steel from iron ore using coal is what makes the sector contribute around 8 to 10% of global energy based emissions. Steel-making companies in Europe are committed to reduce emissions by at least 25% to 33% by 2030.
- 16.229 The EU have now reached approximately 13 to 14 million tonnes per year of H-DRI, and in addition to that, 8.5 million tonnes per year of green steel, both by 2030. These big increases in capacity coincide with the period when WCM plan to begin and then increase their coal output. The EU steel industry commitment of least 25% to 33% emissions reduction by 2030 would be mainly by reducing the use of coal as carbon capture applied to coal-fed integrated steelworks is not just an unpopular choice in the EU (except in the Netherlands), but also cannot reduce the total life-cycle emissions anything

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like as much as with switching from coal to hydrogen together with more and better recycling of steel from scrap and other alternatives.

- 16.230 H-DRI is not the only method for reducing the use of metallurgical coal by 2030. Other methods include the increased and better recycling of scrap steel instead of exporting it; material efficiency; and material substitution such as Cross-Laminated Timber in construction. In the UK coking coal use is likely to drop by at least about a quarter anyhow by 2030. This is because one of TATA Port Talbot's two blast furnaces reaches the end of its life roundabout 2025, or at least by 2030, and the other before 2040, and also because I understand that just 4 or 5 of UK's 6 blast furnaces are producing iron right now.
- 16.231 This implies that WCM's allocation of its coal output to the UK could be halved yet again, not just from 13% to 6.6% because of too high sulphur content for British Steel at Scunthorpe, but also due to natural closure of this blast furnace.
- 16.232 The proposed coal mine is not compatible with the UK 6<sup>th</sup> Carbon Budget, nor efforts to tackle climate change. WCM claim that the proposed mine would be compatible with the Balanced Net Zero Pathway (BNZP) and as a result be helping the UK meet the challenge of climate change. The CCC's Sixth Carbon Budget report shows that for CO<sub>2</sub>e emissions from 'iron and steel' only drops by around 20% between 2019 and 2030. This is hardly "ambitious", and hardly compatible in timing with UK's share to prevent the world crossing 1.5C between 2030 and 2035.
- 16.233 The Balanced Pathway only allows half (about 2) of UK's present blast furnaces to continue past 2035 with CCS or CCUS and then only if the capture rate is at the very high rate they modelled. A close inspection of the Balanced Pathway emissions reduction gradient for the steel sector also reveals that most of the emissions reduction is between around 2030 to 2035, the same period during which the IPCC has forecast that we are likely to cross 1.5C if we don't rapidly reduce emissions this decade.
- 16.234 On 25 May this year the SoS of BEIS, Kwasi Kwarteng spoke the following exact words at a Parliamentary BEIS Committee meeting on The Future of the UK Steel Industry: "The target we've set ourselves that I recall very clearly, is an 80% reduction in carbon emissions within the industry by 2035. And you'll appreciate that the 2035 is in 14 years' time. So over those 14 years I would expect the basic oxygen process, the blast furnace process to be phased out."
- 16.235 Carbon Capture and Storage (CCS) is not the answer WCM claim it to be. WCM claims that on the Climate Change Committee's Sixth Carbon Budget, specifically its Balanced Net Zero Pathway, promotes CCS. This fails to mention that the CCS or CCUS is also for making a lot of blue hydrogen at the clusters, and that both blue and green hydrogen could be used in the direct reduction nemesis to coal-fed blast furnaces. It seems as if WCM has been hoping that carbon capture equipment, if attached to blast furnace steel mills, will enable the industry to continue using coking coal beyond 2035. Closer study of this option reveals it leaves numerous major harms that cannot be overcome.
- 16.236 The number one failure of carbon capture added to the blast furnace site is that it will fail to capture 100% of emissions. WCM's reports from Wood

Mackenzie only claim a 30% capture rate for BF/BOF steel plants due to technical difficulties and high cost. It is also very wrong to assume that other countries will choose to add CCS to Blast furnace sites. Agora-Energiewende say almost half of EU's blast furnaces will reach the end of their campaigns this decade and that companies are more likely to choose a switch to DR and EAF than opt for the costly re-lining of their blast furnaces and also to add the big cost of CCS to produce steel that won't be the green steel that buyers such as the auto industry are increasingly wanting. Andrew Pimm and colleagues at Leeds University in a detailed study first published this May, concluded that, and I'll quote: "Fossil-free steelmaking in the UK based on hydrogen direct reduction and electric arc furnaces is expected to be cost-competitive with blast furnace basic oxygen steelmaking within 5-10 years, while having near-zero CO2 emissions."

- 16.237 In contrast, if CCS is added to say two UK blast furnaces (as allowed in Climate Change Committee's Balanced compromise Pathway if at a high capture rate of 90% or more), residual uncaptured emissions at the furnaces, when added to upstream emissions from the full blend of coking coal used, will amount to around 24% of the size of the unabated end-use emissions, and that's if industry pays the extra to get the 90% capture rate that CCCuk had modelled for that pathway
- 16.238 WCM have tried to absolve any responsibility for the emissions from use of their coal in blast furnaces by saying that the "steel industry is heavily regulated", yet most of WCM's coal is likely to be exported to countries which would likely to be the climate laggards for delaying switching from coal and fossil fuels, such as Turkey or even countries much further away. We do not have time to let global free markets decide our climate fate.

**Neil Wilson**<sup>469</sup>

- 16.239 WCM need to confirm that the exploration, construction, mining and eventual abandonment are not to become a Geological Disposal Site (GDS). This is important as the Chief Executive Officer of WCM has two roles. One heading up this Woodhouse Mine and the other as the chair of a subgroup, the Committee on Radiation Waste Management on behalf of the Government. This brings into question whether Mr Kirkbride has given the Government a figure of the costs for Deep Disposal of Nuclear waste.
- 16.240 There are two issues that concern here. One is the close proximity of WCM/GDS to Sellafield and the other is that parts of the Irish Sea (West Coast Cumbria, Millom to Workington) close to Sellafield is contaminated with 70 years of Nuclear waste and dumped World War 1 and 2 munitions. Any induced seismicity as a consequence of mining could result in a detrimental impact on this contamination.

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<sup>469</sup> ID136

## **17. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY**

### ***Paul Palley***<sup>470</sup>

- 17.1 Provided evidence on climate change. This included variants of atmospheric warming; the cooling rate per km of atmospheric altitude; changes in atmospheric insulation; nocturnal cooling rate per hour; UK Warming 1853-2018 based on monthly averages; UK Coastal Data 1853-2018; Approximate Calendar of UK Temperatures; the pulse theory of CO<sub>2</sub> warming; Limitations of Planetary Equilibrium Temperature theory and global warming theory; and historical temperature data.
- 17.2 Given the complexity of the evidence, Mr Palley sought to rely on documents already provided in written submissions to the Inquiry.

## **18. WRITTEN REPRESENTATIONS**

- 18.1 As set out in the Officer's report when the application was last considered by the Council's DC&R Committee on 2 October 2020, there was considerable public interest in this planning application. Some 2378 public representations were received from 2312 different people which provided objections to the scheme and 294 responses were received expressing support for the scheme from 289 different people.
- 18.2 The overwhelming theme of those expressing opposition to the proposed development at the planning application stage related to the impact on climate change. To a lesser extent, other objections related to the following themes: seismicity and subsidence and the effect of these on the integrity and safety of the Sellafield Nuclear Site; visual and landscape impact; impact on tourism; the jobs identified by WCM would not be realised; impact on ancient woodland; air quality; noise; dust; and light pollution.
- 18.3 Those in support of the proposal at planning application stage cited the following themes: benefits to local employment and the local economy: opportunity to clean up a derelict site; reduce reliance on imported metallurgical coal; continued future need for metallurgical coal; and a lack of proven alternative technology to produce steel on a commercial basis.
- 18.4 Following the call-in of the application 323 written representations were submitted by interested parties. Of these, 271 were in objection and 52 in support. All of these responses are generally reflective of the themes identified above. These themes are also reflective of the oral representations made by interested parties during the Inquiry as also set out above.

## **19. CONDITIONS**

- 19.1 I have considered the planning conditions, including a number of pre-commencement conditions, that were provided and discussed between the Council, the applicant, the Rule 6 Parties and Radiation Free Lakeland at the Inquiry.<sup>471</sup> I have carefully considered the comments made and taken into account the advice given in paragraph 56 of the Framework and the guidance

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<sup>470</sup> ID137

<sup>471</sup> ID90, ID91 and ID97-102

contained in the section on 'Use of Planning Conditions' in the PPG. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability and deleted and merged some for the reasons set out below. If the Secretary of State is minded to grant planning permission, I recommend that the conditions set out in Annex F be imposed.

- 19.2 As the proposed development has a number of components and development phases a condition (1) is necessary to provide for the definitions for each of these. This is necessary in the interests of certainty to ensure that a consistent interpretation of the relevant phase and component is provided so that there is no ambiguity in references made to these in other conditions. Condition No 1 also provides for the definition of High Vol A Coking Coal. This is necessary to ensure that the coal produced is suitable only for use as metallurgical, which is the basis of the application. In this regard, I consider that an average sulphur content of no more than 1.4% is reasonable.
- 19.3 To provide certainty, it is necessary to identify the plans to which the decision relates (2). I have identified in the condition four additional plans to be inserted should the Secretary of State be minded to accept my recommendation and grant planning permission on the basis of the pipe-jacking construction method for parts of the underground conveyor.
- 19.4 Conditions (3 and 5) are necessary relating to the commencement of the development and limiting the life of the permission. For certainty, a condition is necessary (4) that clearly defines the development granted.
- 19.5 A Construction and Environment Management Plan, Operational Environmental Management Plan and Dust Management Plan are necessary in order to minimise the impacts of construction and operations on local residents and to protect the environment (6, 58 and 59).
- 19.6 Conditions requiring the submission of a Construction Traffic Management Plan, works to improve the accesses to the site, the provision of construction traffic parking, cycle storage, a Construction Travel Plan, an Operational Travel Plan, ensuring that no products leave the development by road, stipulation of the access points to be used and ensuring that infill material to be used to construct the RFL site and sidings is only delivered by rail are necessary. These are required in the interests of highway safety, the free flow of traffic and to promote sustainable transport options (7, 16, 23, 35, 57, 74, 75, 76 and 78).
- 19.7 In order to ensure the protection of ecological interests and to provide opportunities for biodiversity net gain, a Habitat Creation, Maintenance, Monitoring and Management Scheme is necessary (8). To avoid duplication, I have incorporated the requirements of suggested condition 46 into this condition and deleted suggested condition 46.
- 19.8 In order to protect archaeological interests, a condition is necessary requiring an Archaeological Scheme of Investigation and recording is necessary (10). In order to avoid duplication and to provide conciseness, I have merged the requirements of suggested condition 57 into condition 10 and deleted suggested condition 57.

- 19.9 In order to minimise the visual effects of the development and ensure that the site is satisfactorily restored, conditions are necessary requiring the submission and implementation of a Landscaping Scheme, Landscape Management Plan, planting and seeding programme, Restoration Scheme and ensuring that materials are stored within the confines of the buildings (9, 13, 25, 26, 27, 45, 49 and 84). Also, in the interests of visual amenity, conditions are necessary requiring the submission and approval of the floor levels, design details, materials, finishes and security of buildings and structures (31, 32, 33 and 46).
- 19.10 Also in the interests of visual amenity and to mitigate the effect of lighting on biodiversity interests, a condition is necessary requiring the submission and approval of a lighting scheme (34). I have incorporated suggested condition 87 into condition 34 to avoid lighting on the Rail Loading Facility causing dazzle to drivers on the operational railway. I have therefore deleted suggested condition 87. In addition, suggested condition 91 provides some duplication with condition 34. I have therefore incorporated elements of suggested condition 91 into condition 34 and deleted 91.
- 19.11 Conditions are necessary to ensure that any site contamination, or the potential for such is detected and remediated accordingly and that any risks from contamination are properly dealt with to protect the health of the future workforce and the environment (11, 12 and 37). For the same reasons, details of any works on or directly adjacent to the existing landfill sites are necessary (38).
- 19.12 In order to ensure that the legacy of previous coal mining in the vicinity of the development does not cause harm to the environment or pose a health and safety risk, the submission of a coal mining risk assessment is necessary (14). Given the nature of the development and its proximity to residential properties, a condition requiring the establishment of a community liaison group is necessary (15).
- 19.13 Conditions requiring the provision of adequate drainage, sustainable drainage, surface water management of the Main Mine Site, Rail Loading Facility and Conveyor Route and to ensure appropriate means of fuel storage are necessary to ensure that the proposed development does not pose an unacceptable risk to controlled waters, groundwater and manages the risk of flooding (17, 18, 19, 20, 41, 42, 44 and 81). I have amended suggested condition 19 to ensure that the drainage scheme is informed by a ground investigation and hydrogeological assessment, irrespective of whether the construction method of the conveyor as it passes beneath woodlands is by 'cut and fill' or by 'pipe-jacking'.
- 19.14 A condition is necessary requiring details of the construction methodology of the conveyor and again this is irrespective of whether 'cut and fill' or 'pipe-jacking' is to be used (24). I have amalgamated the requirements of suggested condition 32 into this condition and therefore I have deleted suggested condition 32 in its entirety. A condition is also necessary to ensure that surface water discharged to sea from the site does not cause harm to the marine environment (21).
- 19.15 I have carefully considered the applicant's views that proposed condition No 22 is unnecessary. This condition seeks to prevent the commencement of



construction works until such time as a Licence from the Marine Management Organisation has been granted or confirmation that a Licence is not required. The terrestrial elements of the proposal will result in environmental impacts. The development as a whole comprises coal extraction beneath the land and beneath the sea. It has been proposed and assessed as such in the consideration of the environmental impacts, benefits and economics of the scheme. In the event that a licence is not secured some of these impacts are not readily reversible and the effect on the viability of the project is unknown. Therefore, I consider that the proposed condition is relevant to planning and to the development permitted and is enforceable, precise and reasonable.

- 19.16 In order to minimise the impact on ancient woodland at Bellhouse Gill Wood and at Roska Park and Benhow Woods, conditions are necessary to identify the trees to be removed, removal of and replacement of soils, replanting of the affected area, provision of compensatory planting and the maintenance of the planting (28, 29 and 30). These conditions are only applicable to the construction of the conveyor by 'cut and fill' methodology.
- 19.17 Should the Secretary of State be minded to accept my recommendation and to grant planning permission on the basis of the 'pipe-jacking' construction methodology then conditions Nos 28, 29 and 30 would require replacement by conditions 28(A), 29(A) and 30(A) as set out in Annex F.
- 19.18 A condition is necessary to protect the integrity of the high-pressure gas pipeline that would be located in proximity to the proposed construction works (36). In order to ensure the appropriate and efficient management of waste arising during construction operations and to promote the recycling of waste, a 'Site Waste Management Plan is necessary (39). A condition is also necessary to ensure that the paste replacement of the underground voids does not cause unacceptable risks of pollution to controlled waters (40).
- 19.19 In the interests of preserving and promoting the former industrial heritage interest of the Main Mine Site, a condition is necessary requiring the provision of heritage trails and interpretation boards (43).
- 19.20 In order to ensure that the works associated with the construction of the site road leading to the RLF and its subsequent use do not result in the incursion of vehicles or works on the operational railway line, a condition is necessary requiring details of the proposed measures to prevent incursion on to the railway (47). Also, in order to ensure the ongoing safety of the operational railway, a condition is necessary requiring details of the methodology to be employed to relocate the electricity pylons (48).
- 19.21 In order to protect the living conditions of the occupants of nearby residential properties, conditions specifying the construction hours of working, hours of working of the Rail Loading Facility, departure and arrival times of trains, limiting the number of vehicles entering the Main Mine Site per day and limiting the number of trains entering and leaving the Rail Loading Facility are necessary (50, 51, 68 and 70). For the same reason, conditions are necessary that set noise levels at noise sensitive properties during the construction and operation of the proposed development and provide for the monitoring of noise levels (52, 60, 69, 73, and 77).



- 19.22 A piling methodology scheme is necessary to ensure that piling operations do not result in damage to utilities or cause unacceptable noise and vibration that would cause harm to the living conditions of the occupants of nearby residential properties and ecology (53).
- 19.23 A condition is required to provide for the surveying of the Main Mine Site for reptiles and the provision of a Reptile Mitigation Plan to enable adequate protection of these if present (54). In order to manage any waste/spoil arising from the mining operations and to ensure that the phasing of working is provided to ensure any necessary monitoring, a phasing, operation and spoil management scheme is necessary (55).
- 19.24 In the interests of providing opportunity for public access through parts of the Main Mine Site to connect with surrounding public rights of way, a condition requiring the provision and maintenance of a path from High Road to the north western boundary of the site is necessary (56).
- 19.25 In order to minimise the emission of mine gases, including methane, to the atmosphere a Mine Gas Capture Management Scheme is necessary (61). Conditions are also necessary to ensure the monitoring, investigation and mitigation of any seismic activity events and subsidence associated with the working of the development (62, 63, 64, 65, 66 and 67). I have carefully considered the comments made by Radiation Free Lakeland regarding these conditions. In doing so, I have also taken into account the advice in the PPG and my findings regarding the issues of seismic activity and subsidence in relation to the Sellafield Nuclear Reprocessing Facility, as set out later in this Report. I consider that these proposed conditions, which are agreed between the applicant and the Council, are adequate and reasonable and would meet the tests required for planning conditions as set out in the Framework and PPG.
- 19.26 In order to ensure that processing levels of High Volatile A Coking Coal are no greater than those levels that are correspondingly assessed in the Environmental Statement, a condition is necessary that limits the exportation of the product from the site to no more than 2,780,000 tonnes per annum (71). In addition, a condition is necessary to ensure that the sulphur content of the coal accords with the levels set out in condition 1 and is therefore suitable for use for steel-making purposes (72).
- 19.27 A condition is necessary to ensure that no clearance of vegetation takes place within the bird nesting season unless surveys indicate no nests are present or that mitigation measures are identified (82). A condition is also necessary to ensure that soils are appropriately stripped, managed and retained for use in restoration (83).
- 19.28 In order to ensure the restoration of the site following the cessation of mineral extraction, conditions are necessary requiring the submission of a Restoration Scheme, Decommissioning and Restoration Environment Management Plan, removal and reinstatement of the sidings and underbridge and an aftercare scheme (86, 87, 88 and 89). However, in recognising the provisions of the Section 106 Agreement that provide for an extension of the aftercare period from 5 years to 10 years, as is discussed later in this Report, I have correspondingly amended the aftercare period to 10 years in condition No 89.

I consider that suggested condition 98 duplicates the provisions of other conditions. As such, I have deleted this condition.

- 19.29 Paragraph 54 of the Framework states that planning conditions should not be used to restrict national Permitted Development (PD) rights unless there is clear justification to do so. The PPG also advises that conditions restricting the future exercise of such PD rights may not pass the test of reasonableness or necessity.<sup>472</sup> I do not consider that the restriction of PD rights in relation to the Main Mine Site is justified. However, given the ecological and landscape sensitivity of the conveyor route and RLF, I consider that these are justifiable reasons to restrict PD rights as any additional buildings, structures or plant erected on these parts of the site would be prejudicial to those interests. I have therefore made amendments to the suggested condition such that its provisions are restricted to the conveyor route and RLF only which are distinguishable elements of the proposed development (85).
- 19.30 In the interests of minimising greenhouse gas emissions, conditions are necessary to ensure that underground mining equipment is powered only by electricity and that electricity required during the operational phase of the mine is provided via the renewable electricity tariff (79 and 80).

## **20. PLANNING OBLIGATIONS**

- 20.1 The Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development.
- 20.2 A draft deed of agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) (Section 106 Agreement) was submitted by the applicant at the outset of the Inquiry in support of the application. It was supported by a CIL Compliance Statement prepared by the Council which sets out its reasons for concluding that the various obligations would accord with Regulation 122 of the CIL Regulations and includes appendices containing cost schedules.
- 20.3 Both documents were the subject of discussion in the Inquiry and further refined. I allowed a period after the close of the oral sessions for the submission of an executed Section 106 Agreement<sup>473</sup> (dated 28 October 2021) and a revised CIL Compliance Statement and associated appendices.<sup>474</sup>
- 20.4 The main provisions of the Section 106 Agreement can be summarised as follows:
- Financial contributions towards:
    - i) maintenance and improvement of local public rights of way;
    - ii) traffic calming measures within 1.5km of the MMS;

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<sup>472</sup> PPG paragraph 21a-017-20190723

<sup>473</sup> ID89

<sup>474</sup> ID92-95

- iii) junction improvements at Mirehouse Road/St Bees Road and RLF Access Road/Mirehouse Road;
  - iv) traffic calming measures to be utilised within locations to be identified within a 1.5 mile buffer of the main mine site boundary including potential for works on High Road Woodhouse Road, Ennerdale Terrace, Rydal Ave and Lakeland Ave.
  - v) cycling and access improvements along Cycle Path 1 to form part of the St Bees – Mirehouse Road Cycle Route;
  - vi) heritage enhancement of industrial heritage assets known as Barrowmouth Gypsum and Alabaster Mine, Saltom Coal Pit and Haig Colliery;
  - vii) Travel Plan monitoring.
  - viii) administration costs related to the implementation of the provisions of the Agreement.
- Financial provision, in the form of a Restoration Security, to provide for the restoration of the site should the applicant, or successors, be unable to deliver this.
  - Provision of an HGV routeing scheme.
  - Extension of the aftercare period from 5 years to 10 years.
  - Restoration and aftercare of those parts of the Main Band Colliery site that lie outside of the planning application area.
  - Survey and maintenance surveys of the Western Outfall Drain and Eastern Drain to verify that they are in good repair, suitable and have sufficient capacity to carry the anticipated effluents arising from the development.
  - Restriction on the residential use of Lake View and Stanley House until the cessation of coal production.
  - Provision of a Training and Employment Management Plan setting out actions to achieve targets for the recruitment of 80% of the workforce from within 20 miles of the site, providing training initiatives and support for retraining when the mine ceases production.
  - Provision of an Emissions Monitoring Report which annually reports on the GHG Emissions, the GHG Mitigation provided and the extent to which the development has achieved the Net Zero Emissions Limit over the preceding 12 months along with any further action proposed to be taken in the following 12 month period.
  - a 5 yearly Greenhouse Gas Monitoring and Mitigation Report assessing greenhouse gas emissions and the impacts on climate change and environment of the construction operation and decommissioning of the development and setting out any necessary mitigation measures.

20.5 Whilst there was some dispute of the detailed wording and provisions of the Section 106 Agreement there was no material dispute that the obligations meet the relevant tests. I have no reason to come to a different view.

- 20.6 Paragraph 211 (e) of the Framework suggests that financial guarantees should only be sought in exceptional circumstances. Planning Practice Guidance notes that long term projects where progressive restoration is not practicable is one such example where an exceptional circumstance is justified.<sup>475</sup> In this case, I consider that the nature and size of the development proposed and the fact that progressive restoration is not possible are factors which justify the provision of a financial security to provide for the restoration of the site should the applicant, or successors, be unable to deliver this.
- 20.7 Stanley House and Lake View House are relatively isolated detached dwellings located in close proximity of the Rail Loading Facility. The occupants of both these properties would experience unacceptable levels of noise and disturbance during the construction and operation of the proposed development. The Section 106 Agreement provides that these properties shall not be occupied for residential purposes from the commencement of the construction of the development to the cessation of coal production.
- 20.8 The applicant has an Option Agreement to acquire the freehold interest in the properties comprising Stanley House and Lake View House. The current freehold owners of these properties are signatories to the Section 106 Agreement. I consider that the cessation of occupation of these properties for residential purposes is necessary to make the development acceptable in planning terms and the Section 106 Agreement provides an acceptable means to achieve this.
- 20.9 Overall, I am satisfied that all of the provisions set out in the Section 106 Agreement are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale to the development. Therefore, they all meet the tests as set out within paragraph 57 of the Framework and CIL Regulation 122. I am also satisfied with the form, drafting and content of the agreement and therefore I have taken the obligations secured therein into account.
- 20.10 In addition, a Supplemental Undertaking under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended), dated 28 October 2021, was provided relating to the provision and implementation of a Biodiversity Net Gain Scheme.<sup>476</sup> The Council also submitted a supplementary CIL Compliance Statement which sets out its reasons for concluding that the obligations contained therein would accord with Regulation 122 of the CIL Regulations.<sup>477</sup>
- 20.11 The Supplemental Undertaking provides for the provision of a Biodiversity Net Gain Scheme with the overall objective of securing a 10% biodiversity net gain prior to the commencement of production. The matter of biodiversity net gain was the subject of discussion in the Ecology RTS. I am satisfied that the Supplemental Undertaking also meets the same tests in the CIL Regulations and the Framework as set out above. I have also taken the obligations secured therein into account.

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<sup>475</sup> ID: 27-048-20140306

<sup>476</sup> ID87

<sup>477</sup> ID88

- 20.12 If the Secretary of State is minded to grant planning permission for the development, I recommend that the provisions of the Section 106 Agreement and the Supplemental Agreement be taken into account in assessing the application.

## **21. INSPECTORS CONCLUSIONS**

### ***Procedural consideration – The Amended Scheme***

- 21.1 In order to assess the effect of the proposed development on ecology and biodiversity interests it is necessary to consider at the outset whether the amended scheme for the construction of the underground conveyor by part pipe-jacking technique is capable of consideration in the determination of this application.
- 21.2 The planning applications considered by the Council provided for the 2.3km long underground conveyor linking the MMS to the RLF to be installed using a “cut and cover” technique involving the excavation of a flat-bottomed trench. Concrete box sections approximately 5m wide by 2.8m high would then be installed and joined to create a continuous culvert.
- 21.3 As mentioned earlier, as part of the submission of additional information required in response to the Planning Inspectorate’s request for additional environmental information pursuant to Regulation 22 of the 2011 EIA Regulations, the applicant also submitted information in respect of an alternative proposed technique to install the underground coal conveyor beneath Bellhouse Gill and Roska Park Woods by ‘pipe-jacking’.<sup>478</sup>
- 21.4 Utilisation of the pipe-jacking technique is proposed for only the parts of the buried conveyor route that pass beneath St Bees Road (designated as Zone 1) in the vicinity of Roska Park Wood and under a section of Bellhouse Wood and Bellhouse Gill (designated as Zone 2). Cut and cover would remain as the construction methodology for the remainder of the route.
- 21.5 The ‘Zone 1’ tunnel length is anticipated to be a maximum of 80m and the ‘Zone 2’ tunnel length is anticipated to be a maximum of 50m. Over these pipe-jacking zones the structure housing the conveyor would be formed of circular concrete sections with an internal diameter of approximately 2.5m.
- 21.6 In all other respects, the alignment, construction technique and purpose of the underground conveyor remain unchanged. The only difference between the scheme proposed by the applicant in the Inquiry and that considered by the Council is that there would be a change in the construction technique for two small sections of the route. The applicant identifies that the reason for utilising the pipe-jacking technique is to avoid the need to dig up the existing woodland habitats within Roska Park Wood and Bellhouse Gill Wood as the conveyor route will be tunnelled beneath the affected parts of these woods.<sup>479</sup>
- 21.7 The proposed amendment to the construction methodology has significant implications in the consideration of the effect of the proposed development on the above woods, of which Bellhouse Wood is an ancient woodland. The

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<sup>478</sup> CD16.14 and CD16.15

<sup>479</sup> CD16.16

extent to which this amendment can be considered by the Secretary of State has a material bearing on the ecological impacts of the development. The submissions of SLACC and the applicant, as set out earlier in this Report, explain why each party consider that this amended construction method cannot be, and can be, taken into account in the consideration of this application.

- 21.8 Perhaps unsurprisingly, the applicant has a contrary view to that adopted by SLACC regarding the ability of the Secretary of State to take the amended scheme into account in the decision on this application. I consider that there are three matters to consider in respect of the proposed pipe-jacking amendment. Firstly, whether the amendment constitutes a 'substantial change'. Secondly, the approach to the EIA of the amendment. Finally, in applying the Wheatcroft principles<sup>480</sup> whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
- 21.9 With regard to the first matter, the introduction of the pipe-jacking construction technique would not cause any change to the development that has been proposed or the description of development. Limb 3 of the agreed description of the proposed development states "a new underground coal conveyor to connect the coal processing buildings with the coal loading facility." The amendment does not propose the introduction of a conveyor system into the scheme where none had been proposed in the first place. Furthermore, it does not change its purpose or alignment. It is a change to the construction method of delivery of a small part of the conveyor in two distinct zones. In this regard, pipe-jacking is not a novel technique and is commonly used on many construction projects.
- 21.10 I recognise that the question of whether the change is substantial is a matter of planning judgement to be reached having regard to the scale and nature of the proposed changes in the context of the overall development and having regard to how it compares with what was originally proposed. Even with the proposed amendment to the construction methodology for a small part of the route, the development proposed remains as what was originally applied for.
- 21.11 I accept that in practice, much more significant amendments than those proposed in the present case are frequently proposed and made to applications during the course of their determination. In my view, it would be unreasonable for an application to detail every single aspect of the construction technique to be applied to every single element of the project. Having carefully considered the submissions of SLACC and the applicant, I do not consider that the proposed change to the use of pipe-jacking for the construction of a relatively small section of the underground conveyor route constitutes a substantial amendment to the scheme. This now leads on to the second aspect and whether consideration proposed of the amendment would compromise relevant EIA procedures.
- 21.12 The ES considered the environmental impact of the underground conveyor using the 'cut and fill' methodology for the whole route. As part of the Regulation 22 submission the applicant provided an assessment of the effects

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<sup>480</sup> Bernard Wheatcroft v SSE [JPL 1982 P37]



on ecological receptors resulting from the use of pipe-jacking beneath Bellhouse Gill and Roska Park Woods, cross referenced to the relevant paragraphs of the 2018 ES.<sup>481</sup> The assessment was supported by a Pipe-Jacking Design Assessment and Method Statement.<sup>482</sup> The applicant explains that the use of pipe-jacking would avoid the loss of woodland and associated adverse impacts described in Chapter 11 of the ES.

- 21.13 The further information relating to hydrogeological scenarios<sup>483</sup> concludes that the potential impacts on hydrology and hydrogeology as a result of pipe-jacking are not likely to result in any adverse effects on the Bellhouse Gill and Roska Park Woods Local Wildlife Sites (LWSs). This concludes that the impacts from pipe-jacking on water flows and water quality within the gill stream in the two woodlands are not likely to result in significant effects. Impacts identified are described as being likely to be "localised and insignificant".
- 21.14 Regulation 22 Attachment G part 3 (3.1 and 3.2)<sup>484</sup> replaces Sections 2 and 5 of Appendix A of ES Chapter 5 (Project Description). The updated assessments of ecology and hydrology (Attachment G parts 1 and 4)<sup>485</sup> are made in the light of the Pipe-Jacking Design Assessment and Method Statement (Attachment G (parts 3.1 and 3.2)).
- 21.15 An EIA Part 3 Environmental Statement Adequacy Check of the 2018 ES and the information submitted in response to the Regulation 22 Notice against the requirements of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 has been undertaken by the Planning Inspectorate Environmental Services Team on behalf of the Secretary of State. This concludes that the relevant submitted information is generally satisfactory and no requirement for additional environmental information has been identified.
- 21.16 In addition to the information submitted on pipe-jacking pursuant to the Regulation 22 submission, further information was also submitted during the Inquiry comprising Pipe-jacking Cross-sections<sup>486</sup> and a letter from Harding Hydro<sup>487</sup> in response to the letter received from Stephen Buss Environmental Consulting (SBEC) to SLACC, dated 23<sup>rd</sup> September 2021.<sup>488</sup> The issue of pipe-jacking and its effect on the Bellhouse Gill and Roska Park Woods LWSs was also considered during the Ecology RTS and the relevant evidence presented which is discussed later in this Report.
- 21.17 Taking the above factors into account, I consider that the submitted environmental information relating to a change to the construction methodology to introduce pipe-jacking under the woodlands is adequate and can be taken into account in the consideration of the development proposed. The environmental effects of this change have been adequately addressed by

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<sup>481</sup> CD16.16

<sup>482</sup> CD16.14 and CD16.15

<sup>483</sup> CD16.12

<sup>484</sup> CD16.14 and CD16.15

<sup>485</sup> CD16.12 and CD16.16

<sup>486</sup> ID68

<sup>487</sup> ID48

<sup>488</sup> ID40



the Regulation 22 submission and the additional environmental information provided during the course of the Inquiry.

- 21.18 In addition, a number of planning conditions, as discussed earlier in this Report are proposed in relation to the pipe-jacking technique. In this regard, I do not consider that the EIA process prevents any reliance being placed on conditions, and the imposition of conditions requiring further survey work to be undertaken and additional details to be submitted.
- 21.19 My final issue in the consideration of this matter relates to the 'Wheatcroft Principles' and whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
- 21.20 Notice of the submission of the additional environmental information requested pursuant to Regulation 22 and the 'voluntary' information was placed in the local press (Whitehaven News) on Tuesday 7<sup>th</sup> September 2021 with comments requested to be submitted to the Planning Inspectorate by 29 September 2021. Amongst other things, the notice specifically referred to the methodology for the construction of the conveyor. Notwithstanding the fact that the presence of the additional information and the consultation exercise was also made known in the Inquiry, no response to the notification was received.
- 21.21 I therefore consider that there was adequate public notification and awareness of the additional environmental information available during the Inquiry. There was a formal publicised opportunity for comments to be made. In addition, the Inquiry itself also offered an opportunity for any party to comment on the proposed changes. As such, I do not consider that there was any deprivation of opportunity of consultation on the changes proposed so as to materially compromise the principles set out in the Wheatcroft judgement.
- 21.22 Taking the above into account, I consider that the amended scheme is capable of consideration in the determination of this application. However, I recognise that the Secretary of State may wish to take further legal advice on this matter and may come to a different view. Therefore, in the consideration of the impacts of the construction of the underground conveyor on the Bellhouse Gill and Roska Park Woods LWSs, I have considered the proposals on the basis of a 'cut and cover' only option and 'cut and cover with pipe-jacking'.

### ***Main considerations***

- 21.23 The following considerations and conclusions are based on the oral and written evidence provided to the Inquiry and on my inspection of the site and its surroundings.
- 21.24 Taking into account the matters upon which the Secretary of State particularly wishes to be informed for the purposes of considering this application, along with other matters that I consider relevant, the main considerations in this case are:

#### ***Need for the Coal***

1. The need for the coal having regard to likely future demand for use in the steel industry and the supply of the mineral.

### *Climate Change*

2. The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change, flooding and coastal change in the Framework (Chapter 14).

### *Environmental Impacts*

3. The effect of the proposed development on ecology.
4. The effect of the proposed development on the character and appearance of the area.
5. The effect of the proposed development on heritage assets.
6. The effect of the proposed development on the integrity on the Sellafield Nuclear Reprocessing Facility with particular regard to seismicity and subsidence.

### *Economic Benefits and Impacts*

7. The effect of the proposed development on employment and the local and national economy.
8. The effect of the proposed development on tourism and recreation.
9. Other matters

### *Planning balance and overall conclusions*

- Whether the proposed development would be environmentally acceptable or could be made so by planning conditions/obligations, and if not, whether national, local or community benefits would clearly outweigh the likely impacts.
- The extent to which the proposed development is consistent with Government policies for facilitating the sustainable use of minerals in the Framework (Chapter 17).
- The extent to which the proposed development is consistent with the development plan for the area.

## **(1) Need for the Coal**

21.25 The Glossary in Annex 2 of the Framework defines coal as a mineral resource of local and national importance which is necessary to meet society's needs. Paragraph 209 of the Framework states that it is essential that there is an adequate supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs.

21.26 The European Union reviews the list of critical raw materials for the EU every three years with the latest list published in 2020. The list classifies coking coal as a 'critical raw material' and states that economic importance and supply risk

are the two main parameters used to determine criticality for the EU.<sup>489</sup> Furthermore, in response to a Parliamentary question it was stated “the Commission recognises the indispensable role of coking coal during the steel industry’s transition to climate neutrality”. The response further identified the EU’s high dependence on imports and encourages member states to identify mining and processing projects.<sup>490</sup>

- 21.27 The Government’s Industrialisation Strategy (March 2021) identifies that “coking coal is currently essential for primary steel manufacturing using the basic oxygen furnace route, which produces the highest quality steel and is the dominant technology in Europe”. The strategy further identifies that it takes a technology-neutral approach and therefore does not rule out the use of coking coal in an integrated steel making process together with Carbon Capture Utilisation and Storage (CCUS) as a net zero compliant option going forward but any mining of the coal needs to be net zero compliant in the future.<sup>491</sup>
- 21.28 The UK is almost wholly dependent upon imports of coking coal to meet its steel manufacturing demand. In 2017, 98.8% of the 3,180,000 tonnes of coking coal used within the UK steel plants was imported.<sup>492</sup> The main exporters of coking coal imported to the UK and EU are Australia, USA and Russia. In 2018, European steel makers consumed approximately 70 million tonnes of coking coal of which around 62 million tonnes were imported.
- 21.29 At a global level there are various forecasts of coking coal demand which are considered in more detail later in this Report. However, the applicant indicates that global demand for coking coal is likely to remain broadly stable during the life of the mine. European metallurgical coal demand is forecast to remain between 50-55 Million tonnes per annum (Mtpa) in the 2021-2049 period. In the UK, demand is forecast to hold at 1.5 Mtpa over the same period.<sup>493</sup>
- 21.30 Coking coal is usually a blended product of soft and hard high-volatile coals and low volatile coals. The coal from the proposed mine would have a low ash content of below 5% (compared with 7-8% for US coal and 10% for Australian Coal), a low phosphorus content of <0.005 (compared with 0.05 for Australian coal), high fluidity of 30,000ddpm (fluidity at 30,000dpm is one of the defining characteristics of High Volatile Grade A coal (HVA)) and a reflectance of 1.02% (reflectance over 1.0% is a feature of HVA coal).<sup>494</sup>
- 21.31 Although the sulphur content is relatively high, the evidence suggests that the Coal Handling and Processing Plant (CHPP) can produce an average sulphur content of 1.4%.<sup>495</sup> The applicant has stated their acceptance to the imposition of a planning condition to ensure that product leaving the mine meets this level.

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<sup>489</sup> ID26

<sup>490</sup> WCM/MAK/4 page 136

<sup>491</sup> CD 8.14 page 1632

<sup>492</sup> CD4.1 para 6.407 and WCM/ST/1 para 5.7

<sup>493</sup> WCM/JT/2 para 1.35

<sup>494</sup> WCMJT/1 and WCM/JT/2

<sup>495</sup> WCM/MAK/2

- 21.32 Due to the need to blend the coal to produce a product suitable for steel making, the proposal will not displace all of the imported coal. The proposed scheme envisages that around 180,000 tonnes would be supplied annually to each of the UK steel plants at Scunthorpe and Port Talbot. The remaining tonnage being transported to Redcar for export.
- 21.33 On the basis of the evidence provided, I am satisfied that the coal can be classed as a HVA coal that is suitable to substitute for US HVA coal that is currently imported into the UK and Europe. I am also satisfied that there is currently a UK and European market for the coal. The main concern of those opposing the scheme is how long this market may prevail and the extent to which coal may ultimately be exported to other markets in China and Asia or result in early closure of the mine.
- 21.34 However, for the purpose of my planning considerations the proposed development does gain some support from paragraph 209 of the Framework. This is a material consideration in determining this application in relation to the supply of the home market. Whilst the provisions of this paragraph do not apply to exports, there is nothing in any planning policy or guidance that prevents the minerals industry from exporting its product, irrespective of where in the world that may be.
- 21.35 A number of forecasts and scenarios were presented in the Inquiry regarding the future need and supply of coking coal. The 'PRIMES' scenario produced by Professor Ekins shows that there will continue to be a need for coking coal in the UK and Europe until 2040 with a decrease occurring from 2025.<sup>496</sup> The AET 1.5 Scenario produced by Wood MacKenzie shows a continued need in Europe until 2043, with global need, particularly in Southeast Asia continuing beyond 2050.<sup>497</sup>
- 21.36 The International Energy Agency (IEA) Roadmap to Net Zero indicates that the global share of coal used in steel making by 2050 will be 22% albeit mostly in conjunction with CCUS.<sup>498</sup> The '*Climate Change Committee's Sixth Carbon Budget – The path to Net Zero*' does not provide a figure for the continued use of coking coal as part of the pathway to 2050 but it does identify that Carbon Capture and Storage (CCS) will make up a considerable proportion of the abatement of remaining emissions in the iron and steel sector by 2050 which also applies to blast furnace production and hence the continued need for coking coal.<sup>499</sup>
- 21.37 Therefore, it is clear that all the scenarios/forecasts above demonstrate a continued demand for coking coal for a number of decades. However, it is not possible to determine with any certainty how the demand for coking coal will vary over the lifetime of the development. There is clearly a current market demand for the product in the UK and the EU and the evidence suggest that the WCM mine would be competitively priced to be considerably attractive to this market.

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<sup>496</sup> SLACC/PE/2/3 Figure A3.5 and A3.6

<sup>497</sup> ID1 para 1.14 and 1.15

<sup>498</sup> CD8.16 page 1906

<sup>499</sup> CD8.10 page 1125 figure 3.3d

21.38 The length of time that this may remain is dependent on the commercial introduction of a number of alternative manufacturing technologies. These include hydrogen direct reduction (H-DRI), increased use of CCS and CSUS, increased secondary steel production from Electric Arc Furnaces (EAF) and materials efficiency. In my view, there is no certainty in the pace that commercial and viable alternatives to Blast Furnace-Basic Oxygen Furnace (BF-BOF) may come on stream and therefore the longer-term demand for coal coking coal cannot be predicted with any degree of certainty.

#### *H-DRI*

21.39 Emerging hydrogen technologies are proposed by companies such as SSAB/LKAB (HYBRIT) and ArcelorMittal. Although a number of demonstration plants are in use it is yet to be scaled up on a commercial basis. The HYBRIT Partnership has announced a demonstration plant to be commissioned in 2025 with sales of 1.3Mtpa (2026) rising to 2.7Mtpa (2030). The applicant considers that even if all the announcements made by industry come to fruition this only amounts to 10Mtpa of hydrogen based steel production in Europe by 2030 which is less than 7% of overall current production of around 160Mtpa.

21.40 The UK Government has noted a that a lack of available hydrogen may hinder developments<sup>500</sup> and there will likely be competing demand from other sectors. Consequently, having carefully considered the submitted evidence I do not consider that there is a compelling case that H-DRI will result in a significant reduction in the demand for coking coal over the next decade. Whilst this technology may have the potential to be scaled up there is no certainty on the pace or extent of this.

#### *EAF*

21.41 EAF is an established technology and it was agreed that its share of steel production is likely to increase over time. However, it is dependent on the availability of scrap steel. Estimates suggest that 15% of steel cannot be recovered. In addition, the method is not suitable for the production of all types of steel due to the presence of 'tramp elements', particularly copper, in the scrap. Consequently, it is not readily suited to the manufacture of sheet steel.

21.42 Whilst it may be possible to reduce some of the presence of tramp elements by improved scrap collection, shredding and sorting of this is not well developed in the UK and a fundamental change to the operation of the scrap industry would be necessary. Unlike the USA a shift towards steel making using EAF has not occurred in the UK. Of the 7,635 Mt of steel produced in the UK in 2018, 20% of this was via EAF in contrast to 72% in the USA.

21.43 Furthermore, EAF utilises considerable amounts of energy and energy costs in the UK is a major barrier.<sup>501</sup> Again, whilst this technology may have the potential to be scaled up there is no certainty on the pace or extent of this in the UK over the lifetime of the proposed development. There was no evidence

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<sup>500</sup> ID26

<sup>501</sup> ID26

before the Inquiry to suggest that there is currently a likelihood of significant changes to the UK scrap metal industry in the foreseeable future that may increase the level of scrap steel availability in the UK or retain amounts that are currently exported. Therefore, there is no certainty that EAF will make a significant contribution to UK steel production in the short (5 - 10 years) to medium term (10 - 15 years). However, there is a likelihood that its use will increase across Europe but the extent to which this may be the case cannot be predicted with any degree of certainty.

#### *Material efficiency*

- 21.44 Whilst this is a simplistic tool to reduce primary steel demand its application would need to rapidly increase to reverse the recent trends which show a steady growth in materials consumption and use. The economics of developed countries such as the UK where materials costs are often lower than labour costs usually mean that there is no incentive to repair products as it is often cheaper to purchase new.<sup>502</sup>
- 21.45 The AET scenarios prepared by Wood MacKenzie suggest that any savings made by material efficiency would be offset by the demand for increased steel to support the infrastructure investment necessary to achieve the transition to net zero. I consider that this is a reasonable view. Consequently, I do not consider that increased materials efficiency is likely to result in a significant reduction in the demand for steel in the short to medium term.

#### *CCS*

- 21.46 CCS is recognised as being suited to industries which have a large amount of greenhouse gas emissions concentrated in one location such as a steel plant. The Climate Change Committee has identified CCS as a large source of abatement for emissions in the iron and steel sector by 2050. Whilst technology appears to be available the high cost of this has prevented its roll out. However, Government funding is now being channelled into this technology.
- 21.47 The Climate Change Committee's Sixth Carbon Budget – The path to Net Zero identify CCS as the principal source of emissions abatement in the iron and steel industry by 2050. On the basis of the evidence provided, it appears that there is recognition that CCS needs to be integrated into steel making capacity but this does not necessarily imply a reduction in blast furnace production.

#### *Substitution*

- 21.48 The demand for coking coal is led by the demand for steel. It was suggested that WCM coal may reduce the cost of coking coal, which in turn would reduce the cost of steel and therefore increase the demand for steel and coking coal consumption. However, I do not share that view.
- 21.49 The global price for HVA coking coal is set by a benchmark price for premium low volatile Australian coking coal and the price of other coals is set by reference to this benchmark. If the price of benchmark coal goes up or down the prices of other coals that are benchmarked against it will follow suit.

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<sup>502</sup> FOE/JC/1 Appendix 7 page 11



Increased supply of HVA coal will unlikely make any difference to the price of HVA coal or the benchmark, particularly as the supply of WCM coal is insignificant to affect the global price.

- 21.50 Many mines in the USA operate towards the top of the cost curve and are regarded as 'swing suppliers' due to their role in switching production on or off to respond to demand.<sup>503</sup> Target customers in the UK and Europe currently source the majority of HVA coal from the USA as there are no other more cost-effective sources.
- 21.51 It is reasonable to assume that WCM only needs to be marginally cheaper to encourage some degree of substitution. The proposed development would contribute a very small fraction of global supply and is unlikely to materially impact on the price of coking coal. I do not consider that the opening of the mine would materially impact on the demand for steel. In my view, the WCM coal intended for the European and UK market would have the benefit of reduced transportation costs, reduced transit time from the mine to user, reduced product degradation and lower risk to supply.
- 21.52 Overall, I consider that the WCM coal would be at a competitive advantage over US coal and therefore it is highly likely that there is the potential for a significant degree of substitution to occur.

*Need for a New Mine*

- 21.53 Many of those in opposition to the development expressed a view that there is no need for a new coal mine as existing global reserves can satisfy the demand for HVA coal. This view to some extent is supported by the 'IEA Net Zero – A Roadmap for the Energy Sector'<sup>504</sup> which sets out various scenarios of actions that 'could' be followed by countries to achieve net zero emissions (NZE) by 2050. In particular, Section 3 identifies that "No new coal mines or extensions of existing ones are needed in the NZE as coal demand declines precipitously. Demand for coking coal falls at a slightly slower rate than for steam coal, but existing sources of production are sufficient to cover demand through to 2050".
- 21.54 Whilst this has been interpreted by some objectors to suggest that there is no need for a new coal mine, I do not consider this to be the case. The Roadmap is an informed view of the actions that 'could' be taken to achieve a NZE scenario. It further identifies that the "steel industry remains one of the last sectors using significant amounts of coal in 2050, primarily due to its importance as a chemical reduction agent, albeit mostly in conjunction with CCUS".
- 21.55 The scenario applied therein does not suggest that there would be no need for coking coal by 2050. In recognising that this is one 'scenario' that could be taken, there is some conflict with other evidence provided in the Inquiry. In particular, there is currently no planning policy or guidance in England to suggest that proposals for coal extraction should not come forward. This particularly contrasts with proposals for peat extraction where paragraph

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<sup>503</sup> WCM/JT/3 paras 2.10 – 2.13

<sup>504</sup> CD8.16



211(d) of the Framework makes it clear that planning permission for peat extraction should not be granted.

21.56 Therefore, whilst recognising that the Roadmap is one scenario to achieve NZE, in planning terms I have attached little weight to the suggestion that there is no need for new mines. Moreover, whilst there may be sufficient reserves, this does not necessarily mean that the other resources should remain unused, particular if such exploitation would be by mining methods that take into account the need to be net zero compliant.

21.57 There is some merit in the arguments presented in the Inquiry on behalf of the applicant that it is better, as a general principle, for coking coal to be sourced nearer to its point of production to avoid offshoring emissions and securing the benefits identified above of an indigenous supply. The importance of coal as a mineral resource is recognised in the Framework and in EU Policy as set out above.

21.58 The evidence submitted in the Inquiry demonstrate that in the event that the demand for coking coal falls more quickly than the forecasts that Wood MacKenzie predict, WCM's position on the seaborne cost curve means that its coal will continue to be in demand as other swing suppliers drop out of the picture.<sup>505</sup> If there ceases to be a market for seaborne coking coal in the UK and Europe by 2040, there would still continue to be a demand which could be partially satisfied by WCM coal. The implications of this in relation to GHG emissions are considered later in this Report.

#### *Conclusion on need for the coal*

21.59 Ultimately, the need for coking coal and the extent to which this can be met from this indigenous source or imported supplies in the period that the mine would be operational is a matter for the market. The evidence before the Inquiry points to the fact that BF-BOF steel production is likely to continue in the UK and Europe to around at least 2040 and possibly to 2050 but with the increased use of CCS or CCUS.

21.60 There is no consensus on what future demand in the UK and Europe may be for coking coal although it is highly likely that a global demand would remain. This depends on the pace and extent to which alternative commercial steel making technology may be introduced. This would depend on many factors, which makes predictions difficult and open to question.

21.61 Whilst there are no current commercially viable alternatives to the blast furnace for the manufacture of new steel in the UK (or Europe) I cannot be confident that this would remain the case during the lifetime of the proposed development. Similarly, I cannot be confident that blast furnace technology will remain operational in the UK for the lifetime of the proposed mine as the current infrastructure will at some point require replacement. At that point wider commercial and environmental considerations would come into play in determining the most appropriate technology.

21.62 No other sources of indigenous produced metallurgical coal were identified in the Inquiry. Having carefully considered the evidence by all parties regarding

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<sup>505</sup> WCM/JT/2 pages 25-26

this matter, I consider that it would be unsafe to conclude that there would be no demand/need for the coal over the lifetime of the development. The development does gain some support from paragraph 209 of the Framework. However, as the majority of coal would be likely exported I consider that this support should only be afforded moderate weight.

- 21.63 There are benefits to the local and national economy related to the production of the coal irrespective of whether this supplies the indigenous or export market. These matters are considered later in this Report and are weighed in the planning balance. In addition, there are also potential impacts on climate change which are considered in the next section of this Report.

## **(2) Climate Change**

### *National Policy Background*

- 21.64 Chapter 14 of the Framework – Meeting the challenge of climate change, flooding and coastal change, sets out a series of policy measures relevant to both the determination of planning applications and the formulation of local plan policies.
- 21.65 Paragraph 152 is of most relevance to the proposal which requires, amongst other things, that the planning system should support the transition to a low carbon future in a changing climate. A key part of the policy wording in paragraph 152 is the reference to supporting the “transition” to a low carbon future. This approach does not expect a total removal of all carbon emissions, but rather the policy states that, where possible, developments that have the potential to lower carbon emissions from below their current levels should be supported.
- 21.66 Most of the objectors to the proposed development state that the coal extraction would not be compatible with the UK Government’s commitment to cut carbon dioxide emissions in line with the *Paris Agreement*,<sup>506</sup> the *Climate Change Act 2008* (as amended) (2008 Act) and the *Sixth Carbon Budget and the Carbon Budget Order 2021*.
- 21.67 The central aim of the Paris Agreement is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit temperature increase even further to 1.5 degrees Celsius. Section 1 of the 2008 Act confers a duty on the Secretary of State to ensure that carbon reduction targets are met. To ensure compliance with the carbon emissions target, Section 4 of the 2008 Act requires the Secretary of State to set an amount for the net UK carbon account (“the carbon budget”, an emissions cap for successive five-year periods) and ensure that the net UK carbon account for any period does not exceed that budget.
- 21.68 When setting carbon budgets Section 9 of the 2008 Act requires that the Secretary of State must also take into account the advice of the Committee on Climate Change (CCC). The CCC advises the Government on the quantum of each 5-year carbon budget, and the CCC’s advice on the sixth carbon budget (which covers the years 2033 – 2037) was published in December 2020.

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<sup>506</sup> CD8.1

- 21.69 The quantum of the sixth carbon budget that was recommended by the CCC for the UK Government to adopt represented a 78% reduction on 1990 levels. The budget recommendations were accompanied by a series of sector-specific reports and analysis which proposed a series of alternative pathways for the reductions to be achieved. The CCC's Sixth Carbon Budget report sets out a balanced net zero pathway to meeting the UK's net zero target by 2050. It takes a sector-by-sector approach to project emissions and identifies abatement options to achieve the net zero target.
- 21.70 The Department for Business, Energy and Industrial Strategy (BEIS) has a leading role in the Government's plans for achieving emissions reductions so as to meet the carbon budgets set out in the 2008 Act. In March 2021, BEIS published the Industrial Decarbonisation Strategy<sup>507</sup> which sets out a series of actions to accelerate the green transformation in industry, expecting that emissions will need to fall by around two thirds by 2035 whilst protecting broader competitiveness.
- 21.71 As previously mentioned, the Strategy describes the aspiration over the coming decade to deploying key technologies such as carbon capture, usage and storage (CCUS), and switching away from fossil fuel combustion to low carbon alternatives such as hydrogen and electrification. The Strategy (page 53) makes specific mention of coking coal use in steel manufacturing, as follows: "Coking coal is currently essential for primary steel manufacturing using the basic oxygen furnace route, which produces the highest quality steel and is the dominant technology in Europe. This strategy takes a technology-neutral approach and so does not rule out the use of coking coal in an integrated steel making process together with CCUS as a net zero compliant option going forward. Any mining of the coal itself need to be net zero compliant in the future. The mining sector needs to plan for this in partnership with government, in line with the principles set out in this strategy."
- 21.72 It is therefore implicit within the Strategy that there is a future for the steel industry in the UK, albeit with the deployment of CCUS and increased use of EAF with hydrogen replacing some conventional coke feedstock.
- 21.73 In the Inquiry there was some uncertainty regarding the Government's approach to the use of coal in the future. On 30 June 2021, BEIS announced that the UK government had brought forward its date to remove unabated coal from the UK's energy mix to 2024, a year ahead of the previous 2025 target. As part of the announcement, BEIS stated, "This policy only applies to coal used to generate electricity. It does not apply to other coal consumers such as the steel industry, nor to domestic coal mines".<sup>508</sup>

#### *GHG Assessment*

- 21.74 Chapter 19 of the EIA provided the Greenhouse Gas Assessment (GHG Assessment) that was considered by the Council.<sup>509</sup> Appendix 2 provided a technical assessment produced by AECOM which predated the publication of the 6<sup>th</sup> Carbon Budget. As part of the Regulation 22 submission a further GHG

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<sup>507</sup> CD8.14

<sup>508</sup> WCM/CL/2 page 44

<sup>509</sup> CD1.145

assessment was completed by Ecolyse on behalf of the applicant and version 2 of this assessment (Ecolyse 2) was considered in the Inquiry.<sup>510</sup>

- 21.75 Ecolyse 2 reviewed and updated the GHG assessment produced by AECOM in 2020. The analysis also took into account the latest available information on the operation of the mine, mitigation committed to by WCM, and likely decarbonisation of the economy consistent with UK net zero targets and advice from the CCC on the 6<sup>th</sup> Carbon Budget. Although the content of Ecolyse 2 was challenged in the Inquiry, no other alternative GHG Assessment was provided by the Rule 6 Parties.
- 21.76 Ecolyse 2 presents three scenarios on the effects of assumptions adopted. The first scenario, the worst-case scenario, reflects no future mitigation is introduced. It assumes no future decarbonisation of the national power grid, no improvements in road and rail efficiencies and fuel switching and no mitigation of emissions by WCM. This scenario is not considered likely. It represents a baseline from which a likely unmitigated scenario has been developed.
- 21.77 The second scenario, the likely unmitigated scenario adopts conservative assumptions on a precautionary basis, reflecting sectoral decarbonisation strategies produced by Government and the CCC. The third scenario, the likely mitigated scenario, includes the effects of mitigation proposed in the application and S106 Agreement by WCM as set out in Table 5.1 of Ecolyse 2. This includes the use of biodiesel in the trains carrying the coal, utilisation of green energy tariffs, methane capture and utilisation and the use of electric vehicles and machinery. As such this scenario represents the likely emissions from the proposed development prior to any carbon offsetting.
- 21.78 Ecolyse 2 shows that with WCM mitigation the likely whole life change in GHG emissions resulting from the proposed development will be an increase of circa 1.85Mt CO<sub>2</sub>e. The applicant proposes that the development would be net zero for the whole life of the project until its decommissioning in 2050 with GHG emissions from all the sources considered being minimised in the first instance through avoidance and reduction measures as far as is practicable and in line with the mitigation strategy presented in Table 5-1 of Ecolyse 2. Any residual emissions remaining would be offset through the purchasing of recognised Gold Standard offsets which are considered later in this report. The applicant considers that the residual effect of the proposed development after mitigation (avoidance, reduction and compensation through offsetting) will therefore be neutral, and not significant.
- 21.79 In addition, the Section 106 Agreement would require WCM to produce an annual GHG performance report ("the Emissions Monitoring Report") quantifying the GHG emissions (as defined in Table 2.1 of Ecolyse 2) over the previous 12 months and to describe actions it has taken to mitigate them. The annual report would set out the GHG mitigation to include evidence of the purchase of Gold Standard offsets to show the development was net zero over the past 12 months. Additionally, WCM would be required to produce a GHG update report for approval by the Council every 5 years that provides an

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<sup>510</sup> Reg 22 Attachment C Appendix 2 GHG Assessment

updated long-term forecast of future GHG emissions based on latest information and guidance.

- 21.80 The assessment shows that the whole life GHG emissions (covering the enabling and construction phase, 25-year operational life of the mine, and decommissioning phase) for the likely mitigated scenario are circa 1.9MT CO<sub>2</sub>e. Taking into account all the mitigation (avoidance, reduction and compensation through offsetting), the assessment concludes that the residual likely effects of the proposed development on GHG emissions to be relatively neutral, and not significant.
- 21.81 The assessment has also examined the consistency of the GHG emissions from the proposed development with UK climate change policies, specifically the 5<sup>th</sup> and 6<sup>th</sup> carbon budgets. The UK's Industrial Decarbonisation Strategy and the CCC net zero pathway to meeting the 2050 net zero target. It concludes that the GHG emissions are forecast to be 0.018% of the 5<sup>th</sup> carbon budget and 0.037% of the 6<sup>th</sup> carbon budget with mitigation.
- 21.82 The CCC's balanced net zero pathway analysis forecasts 400,000 tonnes of direct CO<sub>2</sub>e emissions from open and closed mines by 2050. This compares to 52,000 tonnes of direct CO<sub>2</sub>e emissions in the final year of production from the proposed mine, which will fall to zero in 2050 when the site is decommissioned. Taking into account WCM's net zero commitment and that the emissions before any offsetting will be zero by 2050, the assessment considers that there is broad consistency between assumptions underlying the CCC's net zero pathway for the mining sector and the projected emissions from the mine by 2050.
- 21.83 There was criticism of the conclusions reached in the assessment, particularly with regard to matters that were excluded from the Ecoyse 2 Assessment, the effectiveness of the proposed methane capture system, the metric used for the calculation of methane emissions, the use of offsetting and whether downstream emissions of the use of the coal should be included in the GHG emission assessment. I have considered these matters below.

#### *Exclusions*

- 21.84 Some potential emission sources, such as those arising from land disturbance associated with the construction work, emissions from the mining passing through non-target seams and some materials required by the mine, were not considered in detail in the assessment. In my view, this is understandable as they constitute only a small component of potential emission sources and are difficult to estimate.
- 21.85 The GHG Assessment has been compiled to broadly accord with the Institute of Environmental Management and Assessment (IEMA) guide 'Environmental Impact Assessment Guide to Assessing Greenhouse Gas Emissions and Evaluating their Significance'.<sup>511</sup> Section 5.5.2 of this guidance relates to '*Cut off rules (exclusions)*' and advises that elements of up to 5% of total energy and mass (i.e. inputs) can be excluded but all inputs and outputs for which data is available should be included in the assessment.

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<sup>511</sup> CD8.22

- 21.86 In this case, I have no other compelling evidence to question the applicant's view that it is generally accepted that cut off rules are applied in the context of a GHG footprint prior to the application of mitigation and that a logical approach of gathering input data, compiling the GHG footprint, applying mitigation and then quantifying the GHG emissions follows thereafter.
- 21.87 Table C-3 of Ecolyse 2 identifies that the total 'likely mitigated' GHG emissions would be 1,850,767 tonnes CO<sub>2</sub>e for the lifecycle of the project. Applying the 5% cut off is approximately 92,500 tonnes. This exceeds the whole of the mitigated construction phase emissions.
- 21.88 I recognise that there may be some other emissions that are not readily quantifiable. However, I have no other compelling evidence to suggest that the applicant's view that these would unlikely amount to an emission level that would exceed the mitigated levels associated with the proposed construction phase of the mine may be incorrect. Consequently, I consider that the exclusions are likely to be well below the 5% cut off adopted in the IEMA guidance.

#### *Methane Capture System*

- 21.89 The evidence regarding the proposed methane capture systems provided by the applicant was the subject of some degree of scrutiny. In this regard, it was clear that the applicant's witness, Mr Tonks, had significant national and international knowledge and expertise in the modelling, design and commissioning of such systems. Whilst concerns were raised regarding the implications of any failures in the proposed methane capture system, no other alternative compelling technical evidence was provided to suggest that the proposed system may be demonstrably incapable of managing the methane emissions associated with the mining of the coal. I am therefore satisfied that the modelling and technical evidence provided is well-informed and remains robust.
- 21.90 This demonstrates that approximately 95% of the methane generated by the mining operations and underground crushing processes would be captured by the methane drainage system. This methane would be drawn out of the mine in a system of integrated pipes into methane pumps and into the methane plant located on the surface. The methane would be passed through Regenerative Thermal Oxidizers (RTO's) which can mitigate 100% of the methane passing through them. However, in the first 3 years of production the amount of methane in the air extracted from the mine is likely to be insufficient to inject into the RTO's. In addition, a 1MWe power generating set is proposed to be fuelled by the captured methane. This can also mitigate 100% of the methane passed through it and provide a power source for the mine.
- 21.91 On cessation of production and closure of the mine the workings would be sealed at depth with concrete dams and the drifts backfilled to the surface before being walled off with no vents installed. The evidence suggests that the risk of any methane escaping to atmosphere after the installation of such measures is highly unlikely and would be subject to on-going monitoring by the Coal Authority.



- 21.92 Underground crushing operations would release a significant part of the methane inherently captured in the composition of coal. This would be captured by the methane capture system. However, there is a possibility of a small amount of methane being retained in the coal brought to the surface but the evidence suggests that the likelihood is that no methane will be left in coal pieces that are less than 5mm in size. In any event, a methane capture shroud is proposed over the surface crusher with gases passed into the methane mitigation infrastructure.
- 21.93 I have considered the concerns that the methane capture system appears to have been 'shoe-horned' into the application site. However, I have no contrary evidence to suggest the methane capture system is incapable of being accommodated on the MMS.
- 21.94 I have taken into account the concerns that any error in the applicant's calculations, particularly with regard to any methane remaining in the crushed coal could result in an increase in methane gas emissions to the atmosphere. However, on the basis of the evidence provided, I am satisfied that the proposed measures to capture methane represent best available practice. In addition, a planning condition is proposed that would enable the methane capture measures to be reviewed every 5 years that the mine remains operational, in addition to the requirements of the Section 106 Agreement described above.

*Methane metric*

- 21.95 There are suggestions that it may be more appropriate to calculate the methane emissions from the mine by reference to the Global Warming Potential (GWP) GWP20 metric as opposed to the internationally accepted GWP100 metric. The GWP20 being a higher shorter-term metric.
- 21.96 Although no compelling evidence was provided to determine the likely effect of the use of the GWP20 metric, the Paris Agreement, the Climate Change Act 2008 and the 6<sup>th</sup> Carbon Budget are all based upon GWP100. Consequently, I am not persuaded that there is any justifiable basis to depart from the GWP100 metric as the basis for the GHG Assessment. In any event, if there were to be any future changes to the GWP metric then this would be taken into account in the submissions of the GHG emissions monitoring reports and assessment as required to be submitted by the obligations contained within the S106 Agreement.

*Offsetting*

- 21.97 The use of offsetting (including by afforestation) is acknowledged as a valid approach by the CCC to achieving net zero in the sixth carbon budget.<sup>512</sup> It is further acknowledged that net zero emissions in 2050 will require any residual emissions to be offset by the UK land use sink and greenhouse gas removals.
- 21.98 The proposal provides for any residual emissions remaining after mitigation to be offset through the purchasing of recognised Gold Standard or equivalent offsets. The Gold Standard was formed by the World Wildlife Fund and a number of other Non-Government Organisations (NGO's) in 2003 and is

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<sup>512</sup> CD8.10 page 38



administered by a non-profit organisation called The Gold Standard Foundation.

- 21.99 The carbon offsetting and sustainability funds it offers are all robustly audited to ensure that carbon savings from these schemes are not double counted (e.g. used as offsets via another scheme or national policy) and are not achieved via 'business as usual' activities (i.e. ensuring the carbon reductions would not happen naturally without Gold Standard investment). The Gold Standard is a globally recognised framework that defines practices for effective and credible sustainability systems and also has a broad global NGO support network.
- 21.100 The use of offsetting, as is the case with many other developments, does not prevent the release of some GHG into the atmosphere. Nonetheless, its use to compensate for emissions that cannot be mitigated is recognised by the IEMA as a complimentary strategy to offset and/or sequester GHG emissions to compensate for GHG emissions arising from a project.<sup>513</sup> It is an accepted part of the transition to net-zero.
- 21.101 Whilst there may have been criticism regarding the use of offsetting as an integral part of the applicant's strategy to manage GHG emissions, I do not consider its use to be either unusual or inappropriate in the proposed development. Its use has an essential role to play in all relevant projects in decarbonising unavoidable emissions as part of a mitigation hierarchy. The mitigation strategy adopted by the proposal to secure net-zero compliance does so on the basis of an established mitigation hierarchy that seeks to avoid and reduce GHG emissions as far as possible, and only relies upon offsetting as a last resort to compensate for the residual emissions which cannot be avoided through any alternative means.

*Consideration of 'Downstream Emissions'*

- 21.102 The Ecolyse 2 GHG Assessment focuses on the enabling and construction, operation and decommissioning of the mine. It does not assess the GHG emissions of the end use of the coking coal that will be mined at the development. During the Inquiry the applicant submitted that this cannot properly be regarded as an effect of the development for which planning permission is sought.
- 21.103 A considerable number of objectors argue that the downstream emissions arising from the use of the coal in the manufacture of steel should be taken into account in the consideration of the overall effect of the proposed development on climate change. In addition, it is argued that downstream emissions should have been considered in the EIA.
- 21.104 In this regard, considerable evidence was presented in the Inquiry regarding the approach that was taken by the High Court in *R (Finch) v Surrey County Council*.<sup>514</sup> In that case, the Court explained at paragraph 101 of the judgment that despite the fact that the environmental effects of consuming an end product will flow inevitably from the use of a raw material in making that

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<sup>513</sup> CD8.22, section 6.3, bullet point 5

<sup>514</sup> [2020] EWHC 3566 (Admin)

product, it does not mean that those effects can properly be treated as effects of the development on the site where the raw material will be extracted.<sup>515</sup>

- 21.105 The applicant and the Rule 6 parties were aware during the Inquiry that *Finch* had been granted permission to appeal to the Court of Appeal. However, by the time the Inquiry closed, there was no knowledge of any date when the outcome of an appeal may be known.
- 21.106 On 17 February 2022, the majority of the Court of Appeal dismissed the challenge.<sup>516</sup> All three Court of Appeal judges held that downstream emissions could be required to be assessed. The question of whether downstream emissions 'must' be assessed is a question of fact and judgement for the planning decision-maker. Due to the chronology of events the initial environmental information provided by the applicant did not take into account the position introduced by the Court of Appeal judgement. The ES, as supplemented by the information submitted pursuant to the Regulation 22 request, was therefore considered to be adequate at the time of its original review by the Planning Inspectorate Environmental Services Team and for the purposes of the Inquiry.
- 21.107 In response to the Court of Appeal judgement, the applicant and the Rule 6 parties were requested to comment on its implications in relation to the proposed development. SLACC and FoE suggest that the ES may be inadequate due to an absence of full consideration of Scope 3 (downstream) emissions associated with the downstream use of coking coal.
- 21.108 I have carefully considered the submissions provided by the applicant, SLACC and FoE regarding the implications of the Court of Appeal judgment in *Finch* on the proposed development before me.<sup>517</sup> In this regard, I have considered whether there is sufficient information available in the evidence provided in the Inquiry on the downstream GHG emission effects associated with the use of the coal from the mine in the context of the obligations provided by the EIA Regulations.
- 21.109 I have also considered below, as a matter of evaluative judgement, whether there is a sufficient causal connection between the proposal and the impact on the environment associated with downstream GHG emissions as a consequence of the use of the coal in a blast furnace, and whether this constitutes a significant indirect effect of the proposed development.

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<sup>515</sup> "101. In my judgment, the fact that the environmental effects of consuming an end product will flow "inevitably" from the use of a raw material in making that product does not provide a legal test for deciding whether they can properly be treated as effects "of the development" on the site where the raw material will be produced for the purposes of exercising planning or land use control over that development. The extraction of a mineral from a site may have environmental consequences remote from that development but which are nevertheless inevitable. Instead, the true legal test is whether an effect on the environment is an effect of the development for which planning permission is sought. An inevitable consequence may occur after a raw material extracted on the relevant site has passed through one or more developments elsewhere which are not the subject of the application for planning permission and which do not form part of the same "project".

<sup>516</sup> [2022] EWCA Civ187

<sup>517</sup> PCID1, PCID2 and PCID3

- 21.110 The evidence of Professor Grubb<sup>518</sup> and Professor Barrett<sup>519</sup> provides an estimate of the GHG emissions from the end use of the coal based on the Department for Business, Energy & Industrial Strategy (BEIS) conversion factor for the purposes of annual GHG reporting by UK and international organisations. The most recent conversion factors were published on 2 June 2021.<sup>520</sup> The 2021 conversion factor for coking coal is 3,165.24 KgCO<sub>2</sub>e per tonne of coking coal.
- 21.111 The evidence indicates that the proposed mine is projected to produce 2.78 Mtpa coking coal, with 360,000 tonnes per annum intended for supply of the UK steel industry. Using the standard conversion factor this would suggest a total of 1.14 Million tonnes CO<sub>2</sub> equivalent per annum (MtCO<sub>2</sub>e/pa) from the combustion of coking coal supplied to the UK steel sector, and a total 7.7 MtCO<sub>2</sub>e/pa as a result of the supply to the international market assuming all coal is used. This equates to 8.80 MtCO<sub>2</sub>/pa. If the mine were to produce for a period of 25 years, that would result in total GHG emissions from the end use of the coal in the range of 220 million tonnes of CO<sub>2</sub>e over the life of the mine.
- 21.112 I note SLACC's position, articulated in paragraphs 47-48 of its Closing Submissions that the EIA is not deficient for failing to assess the relevant end use emissions as the Inquiry has been provided with that information and should take it into account. Instead, SLACC's case is that WCM's approach in failing to calculate the end-use emissions of the development at all (relying on an erroneously broad application of *Finch*) has obstructed the proper determination of this application because such emissions are plainly material considerations.
- 21.113 The Court of Appeal held that the EIA Directive and Regulations do not compel the assessment of the environmental effects resulting from the consumption or use of an end product where those environmental effects are not actually effects of the proposed development. In the case of this proposal, the coal will be used as part of a blend of coke used in steel manufacturing. As such, there are a number of distinct and intervening processes from the extraction of the coal as part of the proposed development and its use in a blast furnace to make steel.
- 21.114 In light of the judgement and the further submissions made by the parties, the Planning Inspectorate Environmental Services Team undertook a further adequacy check of the environmental information provided in the Inquiry including that which relates to the scale of potential emissions in the proofs of evidence provided by Professor Grubb (up to 220 mtCO<sub>2</sub>e over the project lifecycle and up to 4.56% of the 6th Carbon budget) and Professor Barrett (emissions intensity of 3,165.2kgCO<sub>2</sub>e per tonne) proofs of evidence. The applicant's response regarding the technical difficulties and uncertainty associated with assumptions relating to the calculation of downstream emissions were also taken into account. This information, taken together,

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<sup>518</sup> SLACC/MG/1 Section 6

<sup>519</sup> FOE/JB1 Section 7

<sup>520</sup> CD8.33

provides a reasonable evidential basis to support the necessary consideration of impacts and effects resulting from downstream carbon emissions.

- 21.115 The information demonstrates that substantial carbon emissions will arise from the end use of the extracted coal. Having regard to this information and relevant IEMA guidance (IEMA Assessing Greenhouse Gas Emissions and Evaluating their Significance. 2nd Edition) it is my opinion that the release of these emissions at this scale and intensity are likely to be significant.
- 21.116 It is clear from the evidence provided in the Inquiry that the coal would be subject to a number of distinct intervening processes from its extraction to its subsequent use in a blast furnace to make steel. First, the coal would be transported to a coke plant which may or may not be at the blast furnace site. At the coke plant the coal would be blended with up to 20 other coking coals in different proportions depending on the desired characteristics of the final blend. This coke may be blended with other coke and would then be placed into a blast furnace, which could be on the same site or a different site, along with other materials required in the operation of a particular blast furnace. The blast furnace operation then produces GHG emissions, the quantity of which will depend on the nature and efficiency of the particular blast furnace and any GHG emission mitigation measures that may be installed.
- 21.117 The applicant would have no knowledge or control over the above processes and the avoidance or mitigation measures employed by any particular blast furnace when using coke made from WCM coal, or indeed a coke maker. The precise nature and use of the coal, including the location of the coke ovens, the blast furnaces in which it may be used and the point of use are subject to decisions yet to be made “downstream”, including decisions regarding the demand for WCM coal compared to other coals. As such there is a degree of correlation in the consideration of this application and the Court of Appeal decision in *Finch* at paragraphs 65 and 70.
- 21.118 The “essential character” of the proposed development in the application is a new underground metallurgical coal mine and associated development. In my view, this does not extend to the subsequent use of metallurgical coal by the facilities and processes beyond the planning application boundary and outwith the control of the applicant. The emissions from the use of the coal, which involve it being subject to one or more processes, are not the subject of the application, nor in the control of the applicant.
- 21.119 I have also taken into account the views of SLACC that end-use GHG emissions have been considered material by the Secretary of State in the recent Highborn Appeal. However, in that case the coal proposed to be extracted was thermal coal for power generation which does not need to be blended and made into coke before being used. Furthermore, that decision predates the original *Finch* judgement and that of the Court of Appeal. Given the nature of the coal that was proposed to be extracted in the Highborn Appeal and its intended use, I do not consider that this sets any precedent to suggest that end-use emissions should be considered for new coal mining development proposals. I have placed more reliance on the Court of Appeal judgement in that regard.

- 21.120 Taking into account my findings above regarding the potential for the coal from the proposed development to substitute to some extent for other coal, rather than acting as an additional source, I am of the view that the GHG emissions arising from the use of the coal in the steel making process would likely be the same whether it is partly supplied by WCM coal or from elsewhere. The downstream emissions at issue in this case relate to the BF-BOF steel manufacturing plants using coking coal and not to the proposed mine itself.
- 21.121 I have identified that emissions associated with the end use of the coking coal are likely to be significant. However, having regard to the nature of the product and relevant demand, set out earlier in this report, I consider that in absence of the proposed development, equivalent emissions would also likely occur from extraction and use of substitute coking coal sources from other origins. Uncertainty will remain as to the likely origin of any replacement products, however there could well be benefits from providing a coking coal source closer to the most likely European market consumers. Taking this into account, I consider that whilst the effects of the downstream emissions are significant, they may well be considered neutral or at worst slightly beneficial when compared with other extractive sources.
- 21.122 Therefore, the emissions from the use of coking coal are significant and to some extent are inevitable whether coal from the proposed development or other sources is used. However, I have taken into account the essential character of the proposed development in this application, the fact that an indeterminate amount of the coal would be blended with other coals, the lack of any precision regarding the use of the coal, including the location of the coke ovens, the blast furnaces in which it may be used, the point of use and the extent to which decisions are yet to be made "downstream" and my view that equivalent emissions would also likely occur from extraction and use of substitute coking coal sources from other origins.
- 21.123 The above factors lead me to conclude that the impacts of GHG emissions from the subsequent use of the coal, as part of a blended coke product, at indeterminate proportion and in an indeterminate quantity, with no knowledge at this stage of the nature and efficiency of the particular blast furnace and any GHG emission mitigation measures that may be installed, cannot reasonably be regarded as indirect significant effects of the proposed development. Accordingly, I have attached little weight to this matter.
- 21.124 This position may well inform the Secretary of State's considerations as to whether the proposed development would impact on the UK's future ability to meet its climate change obligations. However, I recognise that the Secretary of State may wish to take further legal advice on this matter and may come to a different view.

#### *Conclusion on Climate Change*

- 21.125 No evidence was provided to suggest that there any other metallurgical coal mines in the world that aspire to be net-zero. In that context, the proposed mine is likely to be much better placed to mitigate GHG emissions than from comparative mining operations around the world.
- 21.125 Although some small amount of GHG release from the proposed development itself is inevitable, the attainment of a net-zero goal will need the use of

offsetting measures. Whilst, I recognise the views of many objectors to the scheme that the use of offsetting is contrary to the attainment of a net zero model, it is acknowledged as a valid approach by the CCC to achieving net zero in the sixth carbon budget.

- 21.127 The extent to which the proposed development would result in a material reduction in GHG emissions from international shipping is not possible to quantify. Nonetheless, my findings above suggest that the coal from the mine would likely substitute for some coal imported into the UK and mainland Europe. Consequently, there would likely be some, but unquantifiable, likely reductions in GHG emissions from transportation. However, this would be offset in the event that the coal is transported to wider markets beyond the UK and Europe and is therefore a matter to which I have attached little weight.
- 21.128 The proposed development would make a comparatively insignificant contribution, in tonnage terms, to the global supply of coking coal and would constitute a small part of a blended product. For these reasons and those set out above, I consider that the amount of steel produced in the UK or mainland Europe by BF-BOF would unlikely increase as a consequence of a more local supply of High Vol A coking coal. Furthermore, I do not consider that in the period up to 2049 the development of the mine would encourage the continued use of blast furnace production methods that would otherwise have been closed or converted to lower carbon technologies.
- 21.129 I have considered the contribution to GHG emissions from the use of this coal in steel manufacture in respect of its planning merits. In my view, the likely amount of coal used in steel making would be broadly the same with or without the development of the proposed mine. Consequently, I consider that the proposed development would have a broadly neutral effect on the global release of GHG from coal used in steel making whether or not end use emissions are taken into account. However, the proposed development would enable some of the coal used to be sourced from a mine that seeks to be net zero.
- 21.130 The Industrial Decarbonisation Strategy confirms that it is the Government's intention that any mining of metallurgical coal itself needs to be net zero compliant in the future, and that the mining sector needs to plan for this in partnership with Government. I consider that the commitment in the proposed development to be net zero over the whole life-time is entirely consistent with the approach proposed by the Industrial Decarbonisation Strategy.
- 21.131 I also consider that the proposed development is consistent with paragraph 152 of the Framework on the basis of the comprehensive mitigation that will be adopted and whole life net zero commitment that will be secured by way of the Section 106 Agreement. As such, I consider that the proposed development would to some extent support the transition to a low carbon future as a consequence of the provision of a currently needed resource from a mine that aspires to be net zero. This approach does not expect a total removal of all carbon emissions, but rather the policy states that, where possible, developments that have the potential to lower carbon emissions from below their current levels should be supported.
- 21.132 The proposal would also be consistent with paragraph 215 (d) of the Framework which encourages coal extraction development to capture and use



methane from active coal mines. It would also be consistent with Policy SP13 of the CMWLP which requires that proposals for mineral development should demonstrate that energy management and carbon reduction measures have been included in their design. The proposals would further comply with paragraph 15 of the Framework, which requires local planning authorities to expect development to comply with local plan policies on decentralised supply. By capturing and storing methane, as Mr Tonks has detailed, it will be possible to use that methane as a decentralised supply of energy from year 4 of the mine's planned operational period.

- 21.133 In conclusion, I have considered whether the modelled GHG emissions of the proposed development are acceptable in the context of national and local guidance. There may be some unquantifiable reduction in GHG emissions as a result of transportation savings and the potential substitution of some coal to be sourced from a net-zero mine. However, such benefits are likely to be of relatively small scale and potentially offset by the exportation of the coal to wider markets. The GHG Assessment concludes that the residual likely effects of the proposed development on GHG emissions to be relatively neutral. Having considered all of the evidence, I am content that Ecolyse 2 provides an appropriate GHG Assessment that supports my conclusions and I therefore attach significant weight to its findings.
- 21.134 Taking the above factors into account, in planning terms I consider that the proposed development would have an overall neutral effect on climate change and is thus consistent with Government policies for meeting the challenge of climate change (Framework Chapter 14). It would also be consistent with Policy SP13 of the CMWLP. However, this consistency does not suggest that the proposal provides an overall benefit to the reduction in GHG emissions and as such should be afforded neutral weight in the overall planning balance.

## **Environmental Impacts**

### **(3) Ecology**

- 21.135 Chapter 11 of the ES,<sup>521</sup> supplemented by the additional ecological information submitted as a consequence of the Regulation 22 Notice<sup>522</sup> provide an assessment of the impact of the proposed development on ecology and biodiversity. In addition, the application was accompanied by a shadow Habitats Regulations Assessment (sHRA).
- 21.136 The ES scoped in a number of designated sites and habitats and assessed the potential impacts of the proposed scheme upon these valued ecological receptors. Designated sites (in addition to the internationally designated sites assessed by the sHRA process) included in the Environmental Statement (ES) were Clint Quarry SSSI, St Bees Head SSSI, Roska Park Wood and Bellhouse Wood Local Wildlife Site (LWS), and Stanley Pond LWS. Owing to the intervening distance from parts of the proposed development to these designated habitats and sites and the nature of the nearest part of the development proposed, I agree with the conclusions of the ES that there will

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<sup>521</sup> CD1.109

<sup>522</sup> CD16.8 – CD16.10 and CD16.16



be no adverse impacts on St Bees Head SSSI, Clint Quarry SSSI and Stanley Pond LWS arising from the development.

21.137 In relation to Roska Park Wood and Bellhouse Wood LWS, permanent, adverse impacts on these were identified arising from the construction of the conveyor by the cut and fill method. Despite proposed mitigation aimed at minimising the extent of habitat loss, the impact was assessed in the ES as being permanent and adverse significant at the local level.

21.138 I consider that the ecological issues associated with the MMS and the Main Band Colliery Site are limited, as these comprise previously developed land with significant areas covered with concrete hardstanding. The development will enable a degree of habitat creation and ecological enhancement associated with the landscaping of the MMS, and its subsequent restoration, and the restoration of the Main Band Colliery Site. In addition, proposed planning condition No. 8 provides for the submission and approval, prior to the commencement of the development, of a habitat creation, maintenance, monitoring and management plan. Overall, subject to the imposition of appropriate planning conditions, I do not consider that the proposed development on the MMS and the restoration of the Main Band Colliery site would result in a materially detrimental impact to ecology or biodiversity interests.

21.139 In the Inquiry, three main matters of dispute were evident as follows:

- The impact of the construction of the underground conveyor on the woodland that the route crosses;
- The adequacy of some survey work on protected species; and
- The approach to the biodiversity net gain calculation for the MMS.

*Construction of underground conveyor using 'cut and fill'*

21.140 There is agreement that Bellhouse Gill Wood is an ancient woodland. In addition, there is also agreement that Roska Park Wood and Benhow Wood are not listed on the ancient woodland inventory for England but are mostly ancient semi-natural woodland.<sup>523</sup>

21.141 The installation of the underground conveyor linking the MMS to the RLF will require the excavation of a trench extended to approximately 15.6m in width and to a depth of approximately 4.5m, along a length of approximately 2.3km. As previously mentioned, the route of the trench will pass directly through two non-statutory Local Wildlife Sites (Roska Park LWS and Bellhouse Gill LWS). To facilitate this, an area of approximately 0.04 Ha of deciduous woodland would be felled within Roska Park LWS (0.7% of the LWS, which extends to approximately 4.9 Ha) and 0.02 Ha of ancient woodland will need to be felled within Bellhouse Gill Wood LWS (0.6% of the LWS, which extends to approximately 2.3 Ha).

21.142 The creation of the trench will also lead to disruption of ground flora communities within the woodlands, which currently supports a range of ancient

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<sup>523</sup> ID55

woodland indicator species. Excavation activity may also lead to a localised loss of soil structure, such as compaction and changes in groundwater movement.

- 21.143 Both woodlands provide linear habitat features that connect habitats found in the valley bottom with those located on the valley sides. Where it passes through the two LWS sites, the width of the conveyor trench would be significantly reduced from 15.6m to 7m in this area. Once installed, the box-culvert sections which would house the conveyor would be covered with an engineered geo-textile membrane to ensure that the roots of trees planted on top of the conveyor will not present a risk to the buried structure.
- 21.144 Top soil excavated from the conveyor route would be stockpiled separately to ensure that once the conveyor is installed, the top soils can be replaced to their point of origin, thereby preserving the seed bank. As previously noted, the installation of the conveyor will impact on 0.7% of Roska Park LWS and will result in the loss of trees along a 7m wide route. The LWS is currently divided into two sections by the B5345 road. Roska Park Wood forming the western section and Benhow Wood the eastern section. The conveyor will also impact on 0.6% of Bellhouse Gill Wood LWS, also resulting in the loss of trees along a 7m wide route.
- 21.145 Whilst trees and ground flora would be lost as a result of the construction work, the soils and their associated seedbank would be replaced. Compensation for the ancient woodland lost is also proposed by additional tree planting on an area of land (approximately 0.37Ha) nearby Benhow Wood, to the north-east of the existing woodland.<sup>524</sup> Notwithstanding these proposed mitigation measures, the effects of the conveyor trench are likely to be adverse, permanent and significant at a local level. In summary, the construction of the underground conveyor by 'cut and fill' method would result in a small loss of irreplaceable ancient semi natural woodland.
- 21.146 Irrespective of whether Roska Park and Benhow Wood should be considered as ancient woodlands, the construction of the underground conveyor as the route passes through the ancient woodland at Bellhouse Gill would be contrary to paragraph 180(c) of the Framework which states that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland unless there are wholly exceptional reasons and a suitable compensation strategy exists. In addition, this aspect of the proposed development would be contrary to Policies ENV3 and DM25 of the CLP.
- 21.147 However, footnote 63 of the Framework identifies that exceptional reasons could include for example, infrastructure projects where the public benefit clearly outweighs the loss or deterioration of the habitat. Should the Secretary of State take the view that the proposed construction of the underground conveyor should be considered on the basis of the cut and fill methodology only, the loss of a small part of the ancient woodland is a factor that should be given considerable weight in the planning balance.

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<sup>524</sup> CD1.50

*Construction of underground conveyor using 'pipe-jacking'*

- 21.148 The proposed revised approach to the construction of the underground conveyor as the route passes beneath St Bees Road (designated as Zone 1) in the vicinity of Roska Park Wood and under a section of Bellhouse Wood and Bellhouse Gill (designated as Zone 2) would avoid direct loss of woodland and associated fauna and flora.
- 21.149 Concerns were expressed in the Inquiry that the pipe-jacking techniques may affect the water supply and water quality in the gill woodlands. These matters were considered by the applicant on the basis of worse case scenarios, such as if the pipe-jacking were to interact with a local perched water table or a conduit flow route through geological strata, and the possible ways water flow may be affected.<sup>525</sup> The report by Harding Hydro considers that proposed mitigation measures can be put in place to ensure continued flow of water should either of these two worse case scenarios be encountered. It further concludes that the construction process would not result in a major change in hydrology over a large area.
- 21.150 Further concerns were expressed by Stephen Buss Environmental Consulting on behalf of SLACC that raised two further potential issues – increased drainage from surface and the impact of dewatering the launch and receiving shafts at either end of the pipe-jacking tunnel.<sup>526</sup> The applicant responded to these matters by a letter from Hydro Harding which set out the technical basis for concluding that these concerns may unlikely materialise but nonetheless can be appropriately mitigated by engineering design informed by ground investigation.<sup>527</sup> Both consultants agree that prior to the approval of the pipe-jacking methodology, detailed ground investigations will be required and can be secured by means of appropriate planning conditions.
- 21.151 The proposed pipe-jacking would avoid the need for woodland loss and its associated effects on flora and fauna. I have carefully considered the concerns raised by SLACC that detailed construction methodology and site investigations should have been provided. However, taking into account the above and my conclusions on the 'Amended Scheme', I am satisfied that there is sufficient evidence before me to conclude that there are no substantive reasons to suggest that proposed pipe-jacking would cause a material detrimental effect on the ecology of the woodland. Further detailed design and mitigation measures, informed by further ground investigation, can be secured by means of appropriate planning conditions.
- 21.152 Consequently, the use of pipe-jacking as a construction technique for the conveyor beneath the identified woodlands would not result in any conflict with paragraph 180(c) of the Framework or Policies ENV3 and DM25 of the CLP. Should the Secretary of State be minded to grant planning permission, I consider that the proposed pipe-jacking technique should be the preferred approach for the construction of the underground conveyor.

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<sup>525</sup> WCM/PS/4- Appendix 3

<sup>526</sup> ID40

<sup>527</sup> ID48

*Protected and Rare Species*

- 21.153 Concerns were raised by SLACC that the value of the woodlands for bats was not properly assessed. As part of the Regulation 22 submission an Ecology Update Report was provided.<sup>528</sup> A review of the bat survey data gathered in the ES identified that the levels of bat foraging and commuting activity within the site were generally very low. The generally poorly connected, open and exposed nature of the habitats present were cited as being likely significant factors in the low numbers recorded, due to these habitats being of low suitability to bats. The habitats present in 2021 were found to be consistent with those recorded in 2018. Therefore, it was assessed that the likely level of bat activity would remain very similar to those previously recorded in 2018.
- 21.154 The key potential impact of the construction of the underground conveyor using the cut and cover option would be the potential loss of tree roosts. However, no roosts were identified.<sup>529</sup> With regard to the value of the woodlands for foraging and as a flightpath the extent of habitat loss using the cut and fill method is comparatively small in relation to the overall woodland size. This would be a negligible loss in terms of the foraging habitat. I have no conclusive evidence to suggest that the small gap that would be created would sever flightpaths.
- 21.155 The ES identified that the loss of woodland from the two areas of LWS is not likely to result in an adverse effect on bats. It further identified that the proposed mitigation and compensation measures would result in habitat gain, with replanted trees likely to mature over the operational life of the project. This is likely to benefit roosting bats in the long-term, resulting in a small residual effect that may be beneficial, permanent and significant at the site level.
- 21.156 On the basis of the evidence before me, I do not consider that the relative value of the woodlands for bats or the scale of the impact associated with the cut and cover operations has been underestimated in the ES.
- 21.157 With regard to the impact on birds, Dr Martin on behalf of SLACC suggested that the bird survey of the woodlands may be inadequate as there was an expectation that more species would have been recorded. However, no conclusive evidence was provided to suggest the number of the bird surveys undertaken was inadequate or that the methodology employed was fundamentally flawed. Furthermore, a planning condition is proposed to ensure that vegetation clearance only occurs outside of the nesting season unless surveys have been undertaken that demonstrates that there would be no disturbance to breeding species. Against this background, I do not consider that the surveys undertaken are demonstrably inadequate with regard to nesting birds.
- 21.158 Further concerns were expressed that the MMS may support the dingy skipper butterfly. However, the update survey undertaken in 2021 which included the surveys in the optimal flight period did not record the presence of this species. Consequently, I have no conclusive evidence to suggest that the development

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<sup>528</sup> CD16.16

<sup>529</sup> WCM/PS/3 para 2.12

would materially result in habitat loss for this species, particularly as the main food plant of bird's-foot trefoil will remain on the adjacent areas of landfill.<sup>530</sup>

21.159 Finally, with regard to reptiles, surveys in 2019 highlighted that a small population of common reptile species is present within the MMS. This comprises low numbers of both common lizard and slow worm. No reptile species were confirmed on the Main Band Colliery area of the development during the survey completed in 2018. However, a reptile survey of Main Band Colliery in 2021 recorded a single adult common lizard.

21.160 The information submitted pursuant to Regulation 22 includes a 'Reptile Translocation and Habitat Creation Method Statement'. This provides a robust mitigation strategy that sets out how reptiles will be protected from harm and provided with a suitable alternative habitat during the site investigation and construction phase of the mine development. This will prevent, reduce and offset significant adverse effects on reptiles, taking into account up to date survey data. This document also considers monitoring and management of the alternative habitats in the operational phase of the development. A planning condition is proposed that would secure the implementation of this strategy. Overall, I consider that appropriate measures can be secured to mitigate the effect of the proposed development on reptiles.

#### *Biodiversity Net Gain*

21.161 The Biodiversity Net Gain Assessment<sup>531</sup> identifies that there would be an overall net gain of 29.3% on completion of mining and restoration. The model used to calculate this uses the latest version of the DEFRA Biodiversity Metric (V3.0). There is some dispute whether the model is correct and whether net gain should be provided in advance of the restoration phase. SLACC consider that the development could result in a net loss of biodiversity until restoration and, even then, the MMS could be developed for alternative uses following closure of the mine. Therefore, the restoration objectives used in the model may not be achieved.

21.162 The Supplemental Undertaking provides for the provision of a Biodiversity Net Gain Scheme, to be submitted to and approved prior to the commencement of development, with the overall objective of securing a 10% biodiversity net gain prior to the commencement of production. It also requires that the production period of the mine should not commence until the Biodiversity Net Gain Works have been completed in accordance with the approved Biodiversity Net Gain Scheme. The plan accompanying the undertaking identifies the land which biodiversity enhancements are proposed.

21.163 I am satisfied that the Supplemental Undertaking would ensure that the proposed development would provide for a minimum net gain of 10% prior to the commencement of production and further net gain to be achieved on restoration. Consequently, there would be no conflict with Policy SP15 of the CWMLP, Policy DM25 of the CLP or paragraph 179 of the Framework.

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<sup>530</sup> WCM/PS/3 para2.17

<sup>531</sup> WCM/PS/2 – Appendix 2

### *Habitats Regulations Assessment*

- 21.164 The proposed development and its potential impacts on internationally designated sites has been the subject of a detailed assessment in a shadow Habitats Regulations Assessment process (sHRA)<sup>532</sup> which was supplemented by a SHRA Addendum.<sup>533</sup> Collectively, these have considered potential likely significant effects of the project on the following existing and proposed internationally designated sites: River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC), Lake District High Fells SAC, Wast Water SAC, Morecombe Bay and Duddon Estuary Special Protection Area (SPA), River Ehern SAC, Drigg Coast SAC and proposed Solway Firth SPA.
- 21.165 There has also been extensive consultation with Natural England during the preparation of the sHRA which concludes that the proposed development would not have an adverse effect on the integrity of the existing and proposed international designated sites. A competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of the project on the integrity of any such sites. Annex G to this report provides relevant information to assist the Secretary of State in this regard.

### *Ecology – Conclusion*

- 21.166 Subject to the imposition of the mitigation proposed by the suggested planning conditions and the provisions of the Supplemental Undertaking, I am satisfied that the proposed development, utilising pipe-jacking as a construction methodology, would not cause any unacceptable impacts on ecology nor result in a net loss in biodiversity. Consequently, there would be no conflict with Policies SP15 and DC16 of the CMWLP or Policies ENV3 and DM25 of the CLP.
- 21.167 Whilst the use of 'cut and fill' would result in a loss of a small area of ancient woodland, in all other respects I am satisfied that the ecological impacts associated with this construction method can be acceptably mitigated. The loss of the ancient woodland is considered further below in the 'Planning Balance' section of this Report.

### **(4) Character and appearance**

- 21.168 Chapter 10 of the ES that accompanied the planning application contained a Landscape and Visual Impact Appraisal (LVIA).<sup>534</sup> FoE and the applicant submitted further Landscape and Visual Impact evidence to the Inquiry.<sup>535</sup> The LVIA study area is defined as 10km from the main Marchon site as being the site of the largest and most prominent development. In addition, a detailed study area of 5km from the Marchon site has been used in order to focus the assessment on those landscape and visual receptors deemed most likely to experience significant effects as a result of the proposed development.

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<sup>532</sup> CD1.146

<sup>533</sup> PCID4

<sup>534</sup> CD1.100

<sup>535</sup> WCM/JF/1, FOE/PR1, FOE/MC3



- 21.169 I concur with the views of FoE and the applicant, as set out in the Landscape and Visual SoCG,<sup>536</sup> that the LVIA has been undertaken broadly in line with best practice guidance as set out in the Guidelines for Landscape and Visual Impact Assessment (Third Edition) 2013 (GLVIA3). Whilst there is general agreement on the approach adopted in the LVIA there is disagreement regarding aspects of some of the baseline views and the magnitude of the landscape and visual effects.
- 21.170 Landscape character is assessed at a national level by Natural England through the use of National Character Area (NCA) profiles. The assessment provides an understanding and the general characteristics of these substantial landscape areas. The study area lies within National Character Area (NCA) 7: West Cumbrian Coastal Plain, with the easterly edge falling within NCA 8 Cumbrian High Fell.
- 21.171 The landscape character of the study area is further refined and described within the Cumbria Landscape Character Guidance and Toolkit (2011) ('CLCGT').<sup>537</sup> In addition, landscape characterisation has been undertaken at a district level by the Copeland Settlement Landscape Character Assessment (CSLCA).<sup>538</sup> The CSLCA is more appropriate for the assessment of landscape effects due to its finer grain.
- Landscape Impact – Main Mine Site*
- 21.172 The MMS is not covered by any landscape quality designation at either a national or local level. Approximately 5km to the east is the nationally designated landscape of the Lake District National Park (LDNP). The Landscape and Visual SoCG confirms that the proposed development would not have any effect on the landscape of the LDNP, primarily as a consequence of the intervening distance between the site and the boundary of the LDNP.
- 21.173 The CSLCA identifies that the MMS is located within 'ALC4i: Coastal Urban Fridge Cliffs' and extending into 'ALC5Dviii: Marchon'. The key characteristics of ALC4i include an "area of decay and neglect from remaining un-reclaimed derelict land", of which the former Marchon site is strongly representative, coupled with "open panoramic seaward views, an exposed character of cliff tops and a strong urban influence to the east". ALC5viii shares some of the characteristics of ALC4i, including the "detracting influence of derelict land (the Marchon Site).
- 21.174 My own observations support the view of FoE's landscape witness, Mr Radmall, that the Marchon site has a low level of landscape sensitivity, primarily due to the prevailing influence of derelict land, together with the extent to which the original terrain has been modified to create the platform for the former chemical works and to accommodate subsequent landfilling.
- 21.175 Whilst the open nature of the local topography provides panoramic views over the former Marchon site, the extent and unattractiveness of the site have a significant blighting effect on local character and views.

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<sup>536</sup> ID33

<sup>537</sup> CD1.101

<sup>538</sup> FOE-PR1 Appendix 3



- 21.176 The principal sources of impact relating to the MMS would be associated with the proposed built structures and in particular the geodesic domes enclosing the CHPP which will reach a height of approximately 34m above ground level. The impact of these structures would be significantly reduced by the proposed screen mounding to the north west, north east, east and south west of the MMS.
- 21.177 The proposed screen mounding, which would be subject to landscaping, would have a naturalistic profile and create a series of landforms that are comparable in height to the restored landfill to the south east and the natural ridgeline through Woodhouse, to the north east. As a consequence of their height, they would be sufficient to screen most of the proposed structures.
- 21.178 Both FoE and the applicant accept that moving beyond the MMS itself the landscape and visual sensitivity increases. However, both these parties also accept that the further away from the MMS, the more integrated the development would appear in the landscape setting. This has the effect of reducing the visual impact from further afield.
- 21.179 The proposals will be visible in views from parts of the St Bees Heritage Coast towards Whitehaven. However, views will be predominantly long distance (a kilometre or more) set against the urban development of Whitehaven. As a consequence, the magnitude of visual change from the St Bees Heritage Coast would not be significant. The development on the MMS will effectively be screened from the heritage coast itself by the ridgeline to the west of the site and would be only visible from viewpoints on the top of the ridge.
- 21.180 As a consequence of the foregoing, I concur with the views set out in Chapter 14 of the ES<sup>539</sup> that the impact on the heritage sensitivity of the St Bees Heritage Coast would be no more than medium adverse.
- 21.181 Although there will likely be some views of the development from the coastal path, I consider this to be a minor visual impact as walkers will likely be observing the coast itself as opposed to the MMS.
- 21.182 The susceptibility of a landscape to change is described in GLVIA3 as the capacity of a landscape receptor to absorb development without undue consequences for the maintenance of the baseline situation. Although the magnitude of change to the existing site would be substantial, owing to the current nature of the site the overall sensitivity to that change is low.
- 21.183 The partial removal of some of the blighting effect of the current Marchon site as a consequence of the proposed development would be beneficial. Furthermore, the proposed screen mounding and landscaping would provide an opportunity to provide a degree of localised landscape enhancement. In addition, restoration of the site at the end of the operational life of the mine would also be beneficial. All above-ground structures on the MMS would be removed. The landscaped bunds would be retained and the site would be restored to an area for biodiversity and public access.<sup>540</sup>

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<sup>539</sup> CD1.138

<sup>540</sup> CDI - drawing 869/AM/042 Main Mine Site Restoration Plan

- 21.184 Although the proposal would introduce significant structures into the landscape, for the reasons set out above, I consider that the impact of the development on the MMS on landscape character would be offset by the landscape benefits. Overall, I consider that the proposed development on the MMS would have a neutral effect on landscape character.

*Landscape Impact – Conveyor route*

- 21.185 The construction of the underground conveyor would cause a short term temporary visual impact. On completion of construction work along the affected route, the land would be restored to its former condition. Although two “Intermediate Station” buildings are proposed along the route of the conveyor to provide access to the conveyor, these are relatively small and would not be readily discernible in views of the surrounding landscape.
- 21.186 As a consequence of the above, I do not consider that the installation of the underground conveyor would have any material effect on the character or appearance of the area.

*Landscape Impact – Rail Loading Facility*

- 21.187 The proposed RLF would be located within an area identified within CLCGT as LCT 4: Coastal Sandstone.<sup>541</sup> The CSLCA further refines this landscape type into a number of local character areas and identifies that the RLF would be located within ALC4iii: Pow Beck Valley that is designated as landscape of County Importance.
- 21.188 Key characteristics of the designation in the CSLCA are that the landform comprises a broad-based valley of pasture, small area of forestry with a railway in the valley bottom. It provides long channelled views along the valley from the edge of Whitehaven to St Bees. The CSLCA concludes that the valley is of high to high/medium value and sensitivity.
- 21.189 The Pow Beck Valley is overwhelmingly rural in character and provides an area of locally high scenic quality. Its value is reinforced by the relative density of public rights of way through the valley, including a section of the Coast-to-Coast path.
- 21.190 Although the applicant has sought to design the RLF building to be reflective of large agricultural buildings in the locality, it would nonetheless appear as a large-scale building and clearly larger in scale than agricultural buildings in the surrounding area. Its prominence would be emphasised by its position in the valley bottom where, other than the adjacent railway line, there is little built development. It would likely appear as an isolated, uncharacteristic and visually dominant structure within the northern section of the valley.
- 21.191 In longer distance views, the proposed rail sidings would not be indistinguishable from the existing railway. However, in localised views along the valley bottom the sidings would appear as a significant structure in the local landscape as a consequence of their length and raised nature in order to be commensurate with the level of the existing railway line.

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<sup>541</sup> CD1.102

21.192 A belt of tree planting is proposed to the east of the railway line by way of mitigation. Whilst this could, in time, reduce the visual impact of the RLF on the nearest PRoW to the east, it would have no material effect on views from the west or on longer distance views generally.

21.193 I consider that the magnitude of landscape change as a consequence of the construction of the RLF would be substantial in the immediate vicinity of the site, to slight at the periphery of the Landscape Character Area, averaging moderate overall. Taking into account the high to high/medium value and sensitivity of the Pow Beck Valley as identified in the CSLCA, I consider that the proposed RLF would have a major effect on the landscape of the surrounding area. This effect would be adverse and significant.

*Character and appearance – visual impacts*

21.194 A focussed list of viewpoints was presented by the applicant and FoE including panoramic photographs. In addition to the panoramic viewpoints contained within the LVIA, further verified viewpoints were also produced. There was some disagreement whether the position and scale of the superimposed visualisations of the RLF shown in the photomontages provided by the applicant were correct.

21.195 I do not consider that the discrepancies identified by FoE are significant in the consideration of the visual impact of the RLF. Nonetheless, it was clear from my assessment of the visualisations on the site visit that the montages provided by FoE are a more realistic and accurate reflection of the position and scale of the RLF in the Pow Beck Valley. I have taken these into account as well as basing my reasoning on my own observations from my visit to the site and the wider area.

*Main Mine Site – Residential Properties*

21.196 The MMS has the potential to affect the visual amenity of two sensitive groups of receptors: the occupants of nearby residential properties and walkers. Residents along High Road opposite the MMS are the closest to the development. During construction, operations would be clearly visible and prominent. The landscape mounds proposed at the east of the site would not be formed during the first phase of construction. Consequently, the scale of the change would be large, and given the close proximity to the site, the extent would also be large. The effects of this phase would be short term however, resulting in a moderate magnitude of change and major/moderate significant adverse effects.

21.197 The LVIA notes the existing visual detractors on the Marchon site that contributes to its derelict character and their removal would be a beneficial aspect of the change. To mitigate visual effects, a newly designed and public landscape would be introduced, comprising managed grassland and shrub planting on landscape mounds, paths and trees along the frontage of the site with High Road. This would introduce a positive managed character to the site and would be a beneficial aspect of the change. The LVIA recognises the adverse aspects of the change that would arise due to the introduction of the large scale, built form, and the consequential reduction in the long distance views towards Sandwith and St Bees Head which are currently possible.

- 21.198 Assessing the worst-case scenario, the LVIA concludes that, on balance, the adverse aspects of change (introduction of large scale built form and blocking of pleasant long distance views) would result in a major/moderate significant adverse effect. Longer term, by year 15, as tree planting and vegetation slowly matures, the LVIA concludes that views of the main site would be largely screened and the resulting designed landscape would result in enhancements to the visual quality of the local area. However, adverse change resulting from the removal of long distance views to the south west would remain.
- 21.199 Residents further north along High Road have existing views of the northern parts of the Marchon site, a small new housing development on the west side of High Road and views to the sea to the west. During construction, operations within the MMS would be visible although seen at oblique angles. The landscape mounds along the northern site boundary would provide some visual screening for residents at these dwellings. The scale of change would be medium. Considering the distance to the site and the oblique nature of views, the extent of change during construction would be small resulting in a short-term slight magnitude of change. This would represent a moderate effect.
- 21.200 The planted landscape mound along the northern site boundary would be visible with the potential for views of the very tops of the CHPP and coal storage buildings beyond. With regard to the nature of the effect, there would be both beneficial and adverse aspects. The LVIA considers the removal of some distant visual detractors from view and their replacement with a newly designed landscape to be beneficial. Overall, I concur with this view and consider that the magnitude of change would be slight when considered in the context of the existing Marchon site opposite the dwellings and considering that the existing valued views to the sea would be retained.
- 21.201 Some properties on the new housing facing the site to the east of High Road have partial views across parts of the Marchon site. During construction, visibility from ground floor windows towards the site would be largely restricted by higher ground in the immediate foreground. From first floor windows, open views across the whole Marchon site would be possible and the construction stage operations would be visible beyond existing disused brownfield land in the foreground.
- 21.202 The landscape mounds would provide visual screening for residents at these dwellings and would limit the adverse effects of the latter stages of the construction phase. I concur with the conclusions of the LVIA regarding the impact on the new housing during construction that the scale of change would be medium and, considering the distance to the site, the extent of change would be medium/small resulting in a short-term slight magnitude of change. This would represent a moderate effect.
- 21.203 The proposed planted landscape mounds along the site boundary would be visible with the potential for views of the very tops of the CHPP and coal storage buildings beyond. The LVIA identifies that the scale of change for the residents of the new housing would be medium/small. Considering the distance to the site, the extent of change would be medium/small and long term. With regard to the nature of the effect, there would be both beneficial and adverse aspects. The removal of some distant visual detractors in the

view and their replacement with a new designed landscape would be beneficial. Obscuring of the longer distance views to the south west is considered to be adverse. Overall, I agree that the magnitude of change would be slight. This would represent a moderate adverse effect which would not be considered significant in the context of the existing Marchon site.

- 21.204 Oblique views towards the MMS would be possible from dwellings on Wilson Pit Road and direct views towards the construction works associated with the installation of the underground conveyor would be possible. Construction, operations on the MMS would be visible although seen at oblique angles.
- 21.205 Construction stage operations would be clearly visible and prominent, including vehicle movements, the building of access roads, large-scale earthworks and the construction of the buildings and other structures. The scale of the change would be large, and given the close proximity to the site, the extent would also be large. The effects of this phase would be short term however, resulting in a moderate magnitude of change and major/moderate significant adverse effects.
- 21.206 Longer term, as the proposed planting on the screen mounding matures, the proposed development would better integrate with its surroundings. On balance the beneficial aspects of change (removal of foreground detractors and introduction of a well-designed mature landscape setting) would, by year 15, outweigh the adverse aspects (introduction of large scale built form), resulting in a slight magnitude of change and a moderate beneficial effect.
- 21.207 A small number of scattered dwellings to the north of Sandwith have open northerly views which look across local fields towards the site. During construction, views into the site would be partially unscreened. The scale of construction activities would be moderate, however the duration would be short term. The magnitude of change would be moderate/slight, leading to a moderate adverse level of effect on residential receptors.
- 21.208 During the later stages of the construction period, the southern landscaped mound would be formed which would reduce the views into the site. Whilst the development of a brownfield site and the newly created landscape setting of the proposals would be beneficial, the introduction of large scale built form into the landscape in open views is the most notable change which would be adverse. Overall, the magnitude of change would be moderate resulting in a moderate adverse visual effect upon residents. As the proposed planting establishes, the development would integrate better with the landscape with the consequence that there would be a slight adverse effect in the longer term.

*Main Mine Site – Public Rights of Way*

- 21.209 With regard to the effect on PRoW, the Coast-to-Coast long distance path at its closest points is located approximately 280m from the southern section of the MMS boundary. Views of construction activities at the site would be predominantly screened due to intervening local landform. Given the limited availability of views, and the limited degree of construction activities visible, the magnitude of change along this section of the route would be slight/negligible, leading to a moderate/minor level of effect.

- 21.210 From the local footpath which runs along the top of the Hutbank landfill to the west of the main mine site, clear views down into and across the site would be possible. Views of the proposed development and its unique built form would be visible, albeit seen in the context of the wider Whitehaven urban area. Views towards the Lakeland Fells would be unaffected. The magnitude of change would be moderate and the effect major/moderate adverse and significant.
- 21.211 From other footpaths in the vicinity of the MMS, visibility towards the proposed development would be predominantly curtailed by intervening landform or existing vegetation. The potential for significant visual effects to occur would therefore be limited.
- 21.212 Views towards the MMS from the Coastal Path are limited due to screening provided by the local landform. Whilst the tops of the CHPP dome may be visible, as a result of the local topography I consider that the magnitude of change would be no greater than negligible. Consequently, there would be no significant effects on views from this route during any stage of the proposed development.

*Rail Loading Facility – Residential Properties*

- 21.213 Properties at Lake View and Stanley House located to the west of the proposed RLF would have direct and relatively close views of the rail sidings, welfare/office building and RLF loading building. These features would add new development into an existing rural view which comprises limited existing development (the railway line).
- 21.214 The impact of the RLF would be significantly detrimental to the visual amenity of the occupants of these properties. In recognising the extent of adverse visual impact from these properties, the Section 106 Agreement provides that these dwellings would not be occupied for residential purposes from the commencement of the development until the end of production.
- 21.215 Woodend and Woodend Gardens are located to the north of the RLF and to the west of the existing train line. The very northernmost tip of the proposed new sidings as they gradually split from the existing line would be located to the east of these dwellings. South easterly views from these dwellings are heavily filtered by existing mature vegetation and tree cover within the gardens and along field boundaries to the south east of the dwellings. Views of the existing train line are very limited. The scale of change would be negligible, and the extent of view affected negligible. The duration would be long term. Overall, the magnitude of change would be negligible and the effect would be negligible and non-significant.
- 21.216 From the cluster of dwellings at Linethwaite the RLF building would be perceived as a minor component in long distance views across the valley and to higher ground beyond to the west and north west. Tree cover around the dwellings would filter or limit views. The location of the RLF loading building adjacent to the much larger steep hillside and woodland would reduce the perception of its vertical scale. The scale and extent of change would be small. The overall magnitude of change would be slight, resulting in a slight adverse non-significant effect.



21.217 Other properties, such as those on High House Road and at Mirehouses have oblique and/or distant views of the RLF. Whilst the RLF is a large scale feature, its material palette reflects the local agricultural vernacular. It would be seen against the large scale steeply rising land immediately to its west and would not conflict with the scale of the landform. Whilst located within the rural Pow Beck Valley, it would also be seen in the context of the Whitehaven urban area which spreads across the horizon. Although the RLF would represent a new feature, the character and composition of the long distance wide views up the valley would remain similar to the baseline existing view. The scale of change would be small, but for long duration, resulting overall in a slight magnitude of change and moderate effects.

*Rail Loading Facility – Public Rights of Way*

21.218 The route of the Coast-to-Coast path crosses the existing railway line in an underpass in the vicinity of the proposed RLF. The underpass would need to be extended to accommodate the proposed sidings. For users of the path from the west, the RLF would likely come into view quite suddenly as they descend the valley slope from Bell House (to the west). From those walking the route from the east, the RLF would come into view more gradually, seen between scattered trees as they cross the valley floor.

21.219 The proposed RLF would be a significant structure in the otherwise rural valley. It would detract from the amenity of this section of the route. As a consequence of the open rural nature of its location, the magnitude of visual change associated with its construction in close views would be high. Users of the part of the path that passes in relatively close proximity of the RLF would be sensitive to this change. Overall, I consider that the adverse effect on users of this part of the path would be major.

21.220 From sections of the route further east, as it passes through the Pow Beck Valley and up its eastern slopes, the RLF building would be perceived as a minor component in long distance views across the valley and to higher ground beyond to the west and north west. No significant effects would result on these parts of the route.

21.221 There would be intermittent views of the proposed RLF from National Cycle Route 72 which occupies a disused railway line to the east, between Low Hall and Moor Row. As a consequence of a part of this route being in cutting and having extensive tree cover on both sides of the former railway, views are limited. As a result, I do not consider that there would be any significant effects on views from this route.

*Visual impacts – road and rail users*

21.222 As road users travel along High Road in both directions of travel they would approach and then pass directly past the Marchon site. Construction operations on the MMS would be visible from the road. However, once the site was operational, as the road user approaches and passes the site, the views would transition between being screened by the landscape mounds to occasional framed views of the CHPP and edge of the coal storage buildings where dips in the mounds have been included within the design.



- 21.223 The views would be experienced from a short length of road and therefore the extent would be small. The overall magnitude of change would therefore be moderate resulting in a moderate effect. There would be both beneficial and adverse aspects. The removal of the existing visual detractors in the view and their replacement with a new designed landscape would be beneficial.
- 21.224 Users of other local roads in the vicinity of the site would experience some views of parts of the proposed development, albeit at a distance. However, in the context of my assessment of the visual impact, I do not consider that there would be any significant effects for users of the surrounding road network.
- 21.225 The Cumbria Coast Line runs through the Pow Beck Valley directly past the RLF. Passengers on this train line would be considered high sensitivity as this train line is a promoted tourist route, passing through scenic countryside including the Pow Beck Valley.
- 21.226 The presence of the RLF would be noticeable in the view as the rail line passes directly past it. This would represent a medium scale change, over a short section of the route. However, it would not obscure easterly views through the valley. The rail sidings themselves would not appear out of character with the existing rail line and would quickly be assimilated into the landscape resulting in very little notable change. I consider that medium scale change would occur over a small extent of the view from the train for a short duration. The magnitude of change would therefore be slight resulting in a moderate effect.

*Character and appearance – Conclusion*

- 21.227 There are undoubtedly significant adverse effects that will result from the proposed development, particularly in relation to visual effects upon some of the closest dwellings to the MMS along High Road. Moreover, the RLF will have a significant impact on the local landscape and cause an adverse impact on visual amenity for users of a short section of the Coast-to-Coast path, particularly where it passes either side of the RLF, even with the landscape planting proposed.
- 21.228 On the basis of the submitted evidence and from my site visit, I have found that the proposal would have an overall adverse effect of substantial significance for landscape character and a moderate significant visual effect primarily associated with the construction of the RLF.
- 21.229 There would be some landscape benefits associated with the reclamation and reuse of the derelict Marchon site and the restoration of the Main Band Colliery site. However, overall, I find that the RLF component of the proposed development would have an adverse effect on the character and appearance of the area of moderate/substantial significance. Consequently, there would be unacceptable environmental impacts and I am of the view that the first stage of the Policy DC13 test is not met. The proposal would also conflict with DC18 of the CMWLP and Policy ENV5 of the CLP. The resultant harm is a factor that should be given significant weight in the planning balance.

## **(5) Heritage assets**

- 21.230 Although Chapter 16 of the ES<sup>542</sup> identifies that there are numerous designated heritage assets within 5km of the site, it considers that there would be one impact assessed as of more than minor significance that will affect a heritage asset. This is in respect of the construction of the RLF on the setting of Scalegill Hall and adjoining barn (a Grade II listed building). The asset is located adjacent to the relatively busy A595 road and sited in an elevated position to the east of the RLF.
- 21.231 Chapter 16 of the ES identifies that any views from Scalegill Hall to the MMS site would only be from the upper floor due to screening along the A595 provided by high hedgerows. The distance from the MMS to Scalegill Hall, is such that any views of the proposal that would occur are identified to have a moderate negative impact to its setting. It further identifies that the RLF will be visible in long distance views from Scalegill Hall and that the RLF will have a minor negative adverse impact on its setting.
- 21.232 As part of the additional information submitted in respect of Regulation 22 of the 2011 EIA Regulations, the applicant provided a review of the assessment of the impacts of the proposed development on Scalegill Hall.<sup>543</sup> This identified that the setting of Scalegill Hall is composed of several distinct zones. Most immediately the farm complex itself forms a setting in which the farmhouse, outbuildings, walled enclosures and adjacent barns constitute a single entity. The principal façade of the farmhouse faces to the east, away from the A595. This façade cannot be observed from Scalegill Road or publicly accessible areas on the A595.
- 21.233 The next level of setting is the landscape immediately surrounding the Hall. This consists of the A595, Scalegill Road, adjacent farmland and footpaths. Beyond the hall there is an extensive undulating agricultural landscape punctuated by farms and small settlements, with Whitehaven to the north west. The proposed development site is separated from Scalegill Hall by the A595, rolling landscape and railway line.
- 21.234 The assessment identifies that the setting makes a minor contribution towards the heritage significance and that Scalegill Hall itself is primarily experienced by drivers using the A595 as a derelict farmhouse briefly glimpsed to the east whilst using the road. It concludes that the proposed development will not inhibit the public's capacity to experience or enjoy Scalegill Hall either close-up or from long range. Consequently, there would be no impact on the components or values which constitute the heritage significance of Scalegill Hall during construction or use of the proposed development.
- 21.235 The application does not propose any mitigation to minimise the effect of the proposed development on the setting of Scalegill Hall. However, as part of the mitigation for impacts upon historic assets overall, enhancements to local heritage assets of high value are proposed at Barrowmouth Gypsum and Alabaster Mine, Saltom Coal Pit (which is on the Historic England at risk register) and Haig Colliery.

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<sup>542</sup> CD1.138

<sup>543</sup> CD16.17

- 21.236 These enhancements are provided by means of a financial contribution set out in the Section 106 Agreement. These include restoration and enhancement of the condition of those assets and their setting, the erection of interpretation boards, the laying out of heritage trails, activities that enhance public understanding of the heritage assets (through survey, other fieldwork and research) and activities that promote public appreciation of the assets through outreach projects. The ES identifies that the delivery of these benefits would assist in balancing against the adverse impacts on some other aspects of the heritage.
- 21.237 During consultations on the planning application Historic England considered that there will be no direct physical impacts on designated heritage assets but recognised the contents of Chapter 16 of the ES in that only the Grade II Scalegill Hall would be affected. Historic England considered the potential harm caused by the proposed development to the historic environment is relatively low, and that the heritage enhancement measures proposed within the ES would mitigate this harm to a considerable extent.
- 21.238 In my view, the presence of the A595 provides a dominating effect on the setting of Scalegill Hall and severs the heritage asset from the landscape to the west. Whilst distant views of the RLF will be possible, these will be at a considerable distance. Consequently, I consider that the harm to the setting of the heritage asset would be less than substantial.
- 21.239 Paragraph 202 of the Framework identifies that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm must be weighed against the public benefits of the proposal. In this case, I consider that there will be benefits which include those resulting from enhanced knowledge of historic industrial mining heritage and enhancements to the setting of a number of high sensitivity assets including Saltom Coal Pit, Haig Colliery and Barrowmouth Gypsum and Alabaster Mine.
- 21.240 I conclude that the benefits identified above and those identified later in this Report outweigh the less than substantial harm that would be caused to the setting of the heritage asset at Scalegill Hall. Consequently, the proposed development would not be in conflict with the relevant provisions of Policy DC17 (Historic environment) of the CMWLP, Policy ENV4 of the CLP nor with the relevant provisions of the Framework.

#### ***(6) Integrity on the Sellafield Nuclear Reprocessing Facility***

- 21.241 A number of concerns were raised by interested parties in the Inquiry regarding the effect of the proposed development on the integrity of the Sellafield Nuclear Reprocessing Facility as a consequence of potentially induced seismicity, subsidence and fault movement reactivation.
- 21.242 No objections were received from the Office for Nuclear Regulation, the Coal Authority, the Health and Safety Executive and the MMO in respect of this matter. Whilst it is recognised that mines can be a source of seismic events, in this case there is no evidence from any technical consultee that this matter should be given considerable weight in the decision making process. In addition, such matters would be considered further by the Coal Authority and the MMO as part of their licensing process.

- 21.243 The proposal is to use a mining method using panels rather than the more historically traditional “longwall” mining. The applicant states this produces smaller voids and should reduce potential seismicity significantly or potentially eliminate it all together. In addition, waste mineral and rock would be mixed with concrete to form a paste which would be pumped back underground and used to fill the voids created by the coal extraction. This would minimise the risk of collapse of the void which was often an occurrence in longwall mining activity. The application suggests that any minor seismic events which may occur, would also be expected to be much smaller in scale than those recorded historically, and generally be below the scale of those occurring naturally.
- 21.244 Throughout the mining operation WCM propose to monitor ground movements as part of day-to-day safety management of the mine. A detailed scheme setting out how this would operate is proposed to be submitted and approved under a planning condition.
- 21.245 Whilst the risk of a seismic event cannot be ruled out, in the absence of any concerns raised regarding this matter from technical consultees and on the basis that impacts will be monitored and managed whilst the mine is operational, I consider the potential impacts in respect of future seismic events should be afforded limited weight. Appropriate conditions are recommended in respect of this matter should the Secretary of State be minded to grant planning permission.

## **Economic Benefits and Impacts**

### ***(7) Employment and the local and national economy***

- 21.246 The submitted ‘WCM Operational Organogram’<sup>544</sup> identifies that the proposed development would create 532 jobs. Although this figure was the subject of considerable discussion in the Inquiry, each job is clearly set out in the organogram. Whilst there was criticism that there is no supporting methodology to demonstrate a need for each job, no evidence was provided to suggest that the content of the organogram may be incorrect. On the basis of the evidence provided there are no justifiable reasons to suggest that the job numbers identified may be incorrect.
- 21.247 Although the majority of the jobs would be available up to the end of production in 2049, this provides a relatively medium term and significant employment opportunity in the local area. Many of these would be skilled and well-paid jobs. In addition, many of the skills acquired would likely be inter-transferable to other industries, particular those associated with the mechanical and electrical engineering trades. The jobs provided by the proposed development would make a significant contribution to the local economy, both directly and due to a multiplier effect.
- 21.248 The Section 106 Agreement provides that the applicant will submit a plan setting out the actions to endeavour to achieve targets for the recruitment of 80% of the workforce from within 20 miles of the site and provide training initiatives and support for retraining when the mine ceases production. In addition, the proposal would intend to also offer 50 apprenticeships with ‘The

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<sup>544</sup> WCM/MAK/2 – Appendix 4

Lakes College' at Lillyhall being identified as a training provider to develop training curricula based on WCM's needs.<sup>545</sup>

- 21.249 It is accepted that the intention to achieve the target for 80% of the workforce to be recruited from within 20 miles of the site cannot be guaranteed. Even if endeavours to achieve this were partially unsuccessful, the migration of persons to work at the mine and reside in the local area would nonetheless add to the spending and use of local facilities and services.
- 21.250 Concerns were expressed that the proposal could 'poach' people from existing jobs in the local area. However, I consider that this is part of the normal operation of the labour market and no different to the circumstances that would apply should any new major employer relocate to the area. Consequently, I attach little weight to this concern.
- 21.251 It was clear from some of the evidence presented at the Inquiry that the local area has a compelling need for additional investment and employment opportunity. The English Indices of Deprivation 2019 for Places in Cumbria<sup>546</sup> identifies a range of indices that are relevant to Copeland based on Lower Super Output Areas (LSOAs) which are fixed geographies designed to be as consistent in population size as possible.
- 21.252 This identifies that 3 of its 49 LSOAs (6.1%) are ranked in the worst 10% nationally for the overall Index of Multiple Deprivation. These LSOAs fall within the Harbour, Mirehouse and Sandwith wards located close to the MMS. Unemployment and crime rates are high, while household incomes and educational attainment are low and health outcomes poor.<sup>547</sup> Against the above background, the proposed development would provide significant opportunity for employment and investment in local products and services, particularly during the construction period.
- 21.253 The submitted 'Economic Impact of Cumbria Metallurgical Coal Project' prepared by NERA Economic Consulting<sup>548</sup> (NERA Report) provides a detailed economic analysis of the local, regional and national benefits of the proposed development. Although there was some criticism that its compilation relies on data provided by the applicant, its contents and conclusions were not challenged in the Inquiry.
- 21.254 In addition to the employment that would be provided in the mine itself, the NERA Report identifies that the proposed development would sustain 1127 indirect and induced jobs nationally with 146 of these at a regional level. In terms of financial outputs, the report considers the total impacts from capital spending during construction, on-going capital expenditure associated with operation of the mine expenditure and operating expenditure.
- 21.255 With an average annual revenue of £264 million, the analysis suggests that the project would increase national output by £495 million (£299 million regionally). The direct Gross Added Value (GVA) of the development would

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<sup>545</sup> WCM/MAK/1

<sup>546</sup> ID16

<sup>547</sup> WCM/MAK/1

<sup>548</sup> WCM/MAK/2 – Appendix 2

have an average value of £172 million per year and its national average impact on GVA overall would be £380 million (£185 million regionally).

- 21.256 In light of the above, it is clear that the proposed development would make a substantial contribution to the national and regional economy and provide significant employment benefits. It would therefore be compliant with Policy SP14 (Economic benefit) of the CMWLP. In the overall planning balance, I consider that these benefits should be afforded substantial weight.

### **(8) Tourism and recreation**

- 21.257 Representations have referred to the adverse impacts of the development on the local tourism industry. In particular, concerns are expressed that the industrialisation of the Pow Beck Valley as a consequence of the construction of the RLF will spoil its rural nature which is valued by tourists. In addition, there are concerns that the development would detract from the enjoyment of local and nationally important PRoWs and in particular the Coast-to-Coast path.
- 21.258 The impacts on the Coast-to-Coast route are considered to be particularly significant because the walkers are amongst many visitors to the area and to deter these national and international visitors is viewed to have a detrimental effect on local businesses. Accommodation providers, shops, pubs, cafes etc along the route are perceived to potentially see a fall in income whilst the works take place and conceivably for a good while afterwards if and until visitor numbers return to normal.
- 21.259 The introduction of a longer underpass beneath the railway line and the presence of the RLF would inevitably detract from the experience of footpath users following this part of the Coast-to-Coast. The development also requires the importation of approximately 3m depth of fill (and other works) to construct the railway siding, immediately adjacent to, and over the top of, the route of the path. There is a risk that the construction works associated with the RLF may also involve the temporary closure or a significant diversion of this part of the Coast-to-Coast path. There would also be views of the MMS from local footpaths and the Coast-to-Coast path, where the upper part of the CPP building would appear as a noticeable feature in the landscape.
- 21.260 There was no conclusive evidence provided in the Inquiry to make any reasonable judgement of the effect of the proposed development on the local tourist economy. The construction works associated with the RLF may discourage some visitors in the short term. However, the development would affect only a very small part of the route. Taking into account the iconic nature and length of the Coast-to-Coast route overall, I do not consider that the development would deter users to any significant extent.
- 21.261 In the absence of any conclusive evidence, I consider that the impacts of the proposal upon the local tourism industry would not be of an extent to justify the refusal of the planning application on those grounds alone and on the basis of a demonstrable conflict with Policy ER10 of the CLP. In the overall planning balance, I consider that the impact on tourism should be afforded little weight.



## **(9) Other matters**

21.262 I have carefully considered the concerns of interested parties regarding the impacts of air quality, dust, noise, water pollution and light pollution arising from the proposed development. There was very little discussion of these impacts during the Inquiry. However, based on the evidence before me and subject to the imposition of the relevant planning conditions set out in Annex F of this Report, I am satisfied that these impacts can be adequately controlled and mitigated so as not to cause any unacceptable harm. Consequently, I do not consider that these impacts would be of an extent to warrant the refusal of planning permission.

## **22. PLANNING BALANCE AND OVERALL CONCLUSIONS**

- 22.1 Paragraph 217 of the Framework and Policy DC13 of the CMWLP, which largely reflects this paragraph, are considered to be key considerations in the planning balance that applies in this case. Paragraph 217 provides a two-stage approach to the consideration of development for the extraction of coal. This states that planning permission should not be granted for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions and obligations; or if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including residual environmental impacts).
- 22.2 There is no guidance within the Framework or the PPG to assist in the interpretation of “environmentally acceptable”. In this regard, I endorse the approach taken by the Inspector in the report following the Highthorn Inquiry.<sup>549</sup> At C125, the Inspector concluded that the focus of the first limb of the paragraph is on environmental, rather than social or economic dimensions of the balancing exercise.
- 22.3 At C126 the Inspector identified that “an environmentally acceptable proposal need not necessarily result in no harm, or even net harm. An unfavourable outcome (for the proposal) to the balancing of its environmental benefits against its environmental disadvantages, need not inevitably rule out finding that the proposal was, nonetheless, environmentally acceptable.” It is on this basis that I turn to consider the planning balance exercise in this application, having regard to matters previously set out in this Report and to the judgements that I have made regarding appropriate planning weight.
- 22.4 There is both considerable opposition and support for the proposed scheme. However, opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons. The application is therefore required to be determined on its planning merits.
- 22.5 The proposed development would give rise to elements of environmental harm. In particular, substantial harm would occur to the character and appearance of the Pow Beck Valley, contrary to Policy DC18 of the CMWLP and Policy ENV5 of the CLP. I have attached significant weight to this harm.

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<sup>549</sup> CD 6.2



- 22.6 I have found that the proposed development, utilising pipe-jacking as a construction methodology, would not cause any unacceptable impacts on ecology nor result in a net loss in biodiversity. However, the construction of the underground conveyor by 'cut and fill' method would result in loss of a comparatively small, but irreplaceable, part of ancient semi natural woodland that would be contrary to paragraph 180 (c) of the Framework which should also be afforded significant weight. However, such harm should also be considered in the context of footnote 63 of the Framework and whether there are any public benefits that clearly outweighs the loss or deterioration of the habitat and whether a suitable compensation strategy exists.
- 22.7 Compensation for the ancient woodland lost is proposed by additional tree planting on an area of land (approximately 0.37Ha) nearby Benhow Wood, to the north-east of the existing woodland. In my view, this would constitute a suitable compensation strategy for consideration in the context of paragraph 180 (c).
- 22.8 There would also be some unavoidable harm to local amenity and the users of the Coast-to-Coast Path which may have a limited effect on tourism. However, as set out above, I consider that these effects should be afforded little weight. There would also be harm to the setting of the heritage asset at Scalegill Hall which would be less than substantial to the significance of the designated heritage asset. This harm must be weighed against the public benefits of the proposal.
- 22.9 I have found that the proposed development itself would have an overall neutral effect on climate change and, as such, there would be no material conflict with Government policies for meeting the challenge of climate change. I recognise that most of the concerns raised in the Inquiry regarding the effect on climate change relate to the subsequent downstream use of the coal in steelworks. In my view, the likely amount of coal used in steel making would be broadly the same with or without the development of the proposed mine. Consequently, I consider that the proposed development would have a broadly neutral effect on the global release of GHG from coal used in steel making whether or not end use emissions are taken into account. As such, I do not consider that the proposal is contrary to the provisions of Chapter 14 of the Framework.
- 22.10 Whilst the risk of a seismic event cannot be ruled out, I consider the potential impacts in respect of future seismic events should be afforded limited weight. Appropriate conditions are recommended in respect of this matter should the Secretary of State be minded to grant planning permission.
- 22.11 Overall, I consider that the proposed development would not be environmentally acceptable and nor could it be made so by the imposition of planning conditions and obligations. Therefore, it fails to meet the requirements of Paragraph 217 (a) of the Framework and the first limb of Policy DC13 of the CMWLP.
- 22.12 Against the above harms the benefits of the proposal must be weighed in accordance with the second limb of Policy DC13 and part 'b' of Paragraph 217 of the Framework.

- 22.13 Coking coal is classed as a critical raw material by the EU and the Framework also defines coal as a mineral resource of local and national importance, necessary to meet society's needs. It is clear that the European and UK steel industry is currently reliant on a supply of suitable metallurgical coal. Whilst there is a prospect that this reliance may decrease in the UK and Europe over the lifetime of the development, the evidence suggests that there would still remain a market for the coal. Whilst the supply of an indigenous source of coal to the UK steel industry would be a national benefit that should be afforded significant weight, over time with the likely emergence of technologies that are not as much reliant on coal, this benefit would also reduce over time accordingly to be afforded moderate weight.
- 22.14 The proposed 532 jobs would make a substantial contribution to local employment opportunities by providing a significant level of skilled and well-paid jobs. This employment and the indirect employment that would be created would result in a significant contribution to the local and regional economy. There would likely be increased spend in local shops, facilities and services. In addition, the exportation of the coal would make a significant contribution to the UK balance of payments. It would therefore be compliant with Policy SP14 (Economic benefit) of the CMWLP and I consider that these social and economic benefits should be afforded substantial weight.
- 22.15 In addition, there would be local benefits associated with the restoration of the Main Band Colliery Site and the eventual restoration of part of the former Marchon site. These benefits should be afforded moderate weight.
- 22.16 There was considerable discussion during the Inquiry regarding the "virtue signalling" of granting planning permission for a new coal mine against the background of climate change and the UK's position as a world leader in that regard. However, planning policy does not provide any restrictive approach to coal extraction. It provides a rigorous test for the consideration of coal mining proposals as prescribed by paragraph 217 of the Framework.
- 22.17 There is no justifiable basis for finding that the benefit of maintaining a sufficient supply of minerals, which does not exclude coal, as set out in paragraph 209 of the Framework should necessarily be reduced as a consequence of climate change policy provided that proposed development addresses such policy. In this regard, the granting of planning permission for the proposed development would only signal that the planning balance here, given current policy, fell in favour of the proposal. As such I do not consider that the granting of planning permission would set an undesirable planning precedent.
- 22.18 Notwithstanding the views expressed during the Inquiry, the clear intent of the applicant is to seek to ensure that the proposed development is net zero and is consistent with Chapter 14 of the Framework and the BEIS Industrial Decarbonisation Strategy. No other evidence was forthcoming regarding any other mine in the world that is, or intending to seek, net zero attainment. Against this background, there is the likelihood that the proposed development would set a benchmark to which other mineral extraction developments should aspire. Whilst I do not attach anything more than negligible weight to this benefit, it nonetheless provides an example of how mineral development can

be designed to meet the requirements of Chapter 14 of the Framework and facilitate the sustainable use of minerals in accordance with Chapter 17.

- 22.19 In conclusion, I find that, on balance, the national, regional, local and community benefits of the proposed development would clearly outweigh the likely adverse impacts. In this balance, I also consider that the public benefits of the proposal outweigh the less than substantial harm to the designated heritage asset and the loss of a comparatively small part of ancient woodland, particularly in the context of the overall size of the woodland and with the provision of the compensatory strategy identified above, should the pipe-jacking option not be considered appropriate.
- 22.20 The proposal accords with paragraph 217(b) of the Framework and the second limb of Policy CS13 of the CMWLP. It also accords with national and local policy regarding the sustainable use of minerals (Chapter 17 of the Framework) and meeting the challenge of climate change (Chapter 14).
- 22.21 Overall, I conclude that the proposal accords with the Framework and development plan when taken as a whole. Therefore, in accordance with paragraph 11 of the Framework the development should be approved without delay.

### **23. RECOMMENDATION**

- 23.1 For the reasons set out above and having had regard to all other matters raised, I recommend that planning permission should be granted subject to the imposition of the conditions set out in Annex F to this Report and subject to the provisions in the Section 106 Agreement and Supplemental Undertaking.
- 23.2 I consider that the permission is capable of being granted on the basis of utilising pipe-jacking or wholly cut and fill methodology for the construction of the underground conveyor. In my view, the use of pipe-jacking is the preferred option as this minimises the impact on ecology and the loss of ancient woodland. However, the Secretary of State may wish to take further legal advice on this matter and may come to a different view.

*Stephen Normington*

INSPECTOR

## **ANNEX A**

### **APPEARANCES**

#### **FOR THE APPLICANT**

Gregory Jones QC  
Alex Greaves of Counsel

They called:

Mark Kirkbride CEng MPhil  
BEng (Hons) FIMMM

Chief Executive Officer,  
West Cumbria Mining Ltd

Jim Truman BSc MSc

Director, Wood Mackenzie

John Flannery BA DipLA FLI

Sole Practitioner

William Tonks FIMMM

Director, Bill Tonks Ventilation Services Ltd

Caroline Leatherdale BSc (Hons)  
MSc CEEQUAL BSI

Consultant Planning and Environmental  
Advisor

Peter Shepherd PhD, MCIEEM

Director BSG Ecology

Samuel Thistlethwaite BA MA  
MRTPI

Planning Associate, Barton Willmore LLP

Kamran Hyder  
(conditions and S106 RTS only)

Partner, Ward Hadaway LLP

#### **FOR CUMBRIA COUNTY COUNCIL**

Christopher Katkowski QC  
(Opening statement only)

Alan Evans of Counsel  
(conditions and S106 RTS only)

Adrian Lynham  
(conditions and S106 RTS only)

Tetra Tech (External Advisor for  
Cumbria County Council

Paul Haggin  
(conditions and S106 RTS only)

Manager of Developmental Control and  
Sustainable Development, Cumbria County  
Council

Guy Kenyon  
(conditions and S106 RTS only)

Programme Lead for Infrastructure Planning  
Cumbria County Council

Robert Bruce  
(conditions and S106 RTS only)

Solicitor Partner and Legal Planning Expert  
Freeths LLP (External Solicitor for Cumbria  
County Council)

## FOR FRIENDS OF THE EARTH

Paul Brown QC

Alex Shattock of Counsel

They called:

Simon Nicholas FCA

Energy Finance Analyst, Institute for Energy  
Economics and Financial Analysis

Peter Radmall MA BPhil CMLI

Peter Radmall Associates Ltd

Michael Spence BA (Hons)  
MLD CMLI REIA FRGS

MS Environmental

Professor John Barrett

Chair of the School of Earth and Environment,  
University of Leeds

Dr Jonathan Cullen

Associate Professor in Energy, Transport and  
Urban Infrastructure, Department for  
Engineering, University of Cambridge

Derik Broekhoff

Senior Scientist, Stockholm Environment  
Institute

Niall Toru  
(conditions and S106 RTS only)

Senior Lawyer for Friends of the Earth

Rebecca Ming  
(conditions and S106 RTS only)

Friends of the Earth

## FOR SOUTH LAKES ACTION ON CLIMATE CHANGE

Estelle Dehon of Counsel

Rowan Clapp of Counsel

They called:

Rebekah Diski MA, MSc

Senior Researcher on Just Transition

Professor Lars Nilsson

Professor of Environmental and Energy  
Systems Studies, Lund University

Professor Paul Ekins

Professor of Resources and Environmental  
Policy, UCL Institute for Sustainable  
Resources, University College London

Professor Stuart Haszeldine	Professor of Carbon Capture and Storage, School of GeoSciences, University of Edinburgh
Sir Robert Watson	Professor Emeritus, University of East Anglia
Professor Michael Grubb	Professor of Energy & Climate Change, Deputy Director, UCL Institute for Sustainable Resources, University College London
Dr Tony Martin PhD, MLI, MCIEEM	e3ecology
Paul Bedwell DipTRP MRTPI	Pegasus Group
Matthew McFeeley (conditions and S106 RTS only)	Senior Solicitor, Richard Buxton Solicitors
Maggie Mason BA(Arch) Dip TP (conditions and S106 RTS only)	South Lakes Action on Climate Change

## INTERESTED PERSONS

Lee Anderson MP	Member of Parliament for Ashfield and Eastwood
Mark Jenkinson MP	Member of Parliament for Workington
Jake Berry MP	Member of Parliament for Rosendale and Darwen
Tim Farron MP	Member of Parliament for Westmorland and Lonsdale
Trudy Harrison MP	Member of Parliament for Copeland
Martin Kendall	Interested person
Professor Terry Sloan	Sustainable Keswick
Steve Balogh	Interested person
Irene Sanderson	North Cumbria CND
Councillor Giles Archibald	South Lakeland District Council
Hayden Thorpe	Interested person
John Ashton CBE	Retired Diplomat
Paul Palley	Interested person
Samagita Moisha	Radiation Free Lakeland
Gillian Kelly	Interested person
Councillor Ali Ross	Eden District Council
Lindy Powell	Interested person
John Hall	Interested person
Anna Hall	Interested person
Anne Harris	Coal Action Network
Dr Stuart Parkinson	Scientist for Global Responsibility
Andy Curle	Interested person
Ian Hackett	Interested person
Marianne Birkby	Radiation Free Lakeland
Melenie Greggain	Interested person
Mike Starkie	Directly Elected Mayor of Copeland
Emily Graham	Interested person
Hazel Graham	Interested person
Amy Wright	Allerdale and Copeland Green Party
Dr Ruth Balogh	West Cumbria and North Lakes Friends of the Earth



Ciara Shannon	Interested person
David Douglas	Interested person
Councillor Chris Whiteside MBE	Speaking as an interested person
Councillor Mike Johnson	Leader Allerdale Borough Council
Councillor Emma Williamson	Speaking as an interested person
Dr David Heller	Interested person
Hannah Smith	Interested person
Professor Michael Hambrey	Interested person
Amy Bray	Interested person
Gailie Stevens	Interested person
Dr Henry Adams	Retired Ecologist
Neil Wilson	Interested person
Councillor Bert Jones	Speaking as an interested person on behalf of his father

**ANNEX B****PROOFS OF EVIDENCE**

<b>West Cumbria Mining Limited</b>		<b>Inquiry Programme Topic Theme</b>
WCM/MAK/1	Proof of Evidence of Mark Kirkbride	Economic/ Employment Benefits  Need for the coal
WCM/MAK/2 Appendices 1-6	Appendices of Mark Kirkbride	
WCM/MAK/3	Rebuttal proof of Mark Kirkbride	
Appendix – WCM/MAK/4	Appendices to rebuttal proof WCM/MAK/3 of Mark Kirkbride	
WCM/ST/1S	Summary proof of Evidence of Samuel Thistlethwaite	Planning Issues
WCM/ST/1	Proof of Evidence of Samuel Thistlethwaite	
Appendix - WCM/ST/2	Appendices of Samuel Thistlethwaite	
WCM/ST/3	Rebuttal proof of Evidence of Samuel Thistlethwaite	
Appendix – WCM/ST/4	Appendices to rebuttal proof WCM/ST/3 of Samuel Thistlethwaite	
WCM/ST/5	Additional rebuttal proof of Samuel Thistlethwaite	
WCM/CL/1	Proof of Caroline Leatherdale	Climate Change
Appendix – WCM/CL/2	Appendices of Caroline Leatherdale	
WCM/CL/3	Rebuttal proof of Caroline Leatherdale	
WCM/WLT/1	Proof of Evidence of William Tonks	Climate Change (methane emissions)
Appendix – WCM/WLT/2	Appendices of William Tonks	
WCM/WLT/3	Rebuttal proof of William Tonks	
Appendix - WCM/WLT/4	Appendices to rebuttal proof WCM/WLT/3 of William Tonks	
WCM/JT/1	Proof of Evidence of Jim Truman	Need for the coal
Appendix - WCM/JT/2	Appendices of Jim Truman	
WCM/JT/3	Rebuttal proof of Jim Truman	

Appendix – WCM/JT/4	Appendix to rebuttal proof WCM/JT/3 of Jim Truman	
WCM/JF/1	Proof of Evidence of John Flannery	Character and Appearance
WCM/JF/2	Appendices of John Flannery	
WCM/JF/3	Rebuttal proof of John Flannery	
WCM/PS/1	Proof of Evidence of Dr Peter Shepherd	Ecology
WCM/PS/2	Appendices of Dr Peter Shepherd	
WCM/PS/3	Rebuttal proof of Dr Peter Shepherd	
Appendix - WCM/PS/4	Appendices to rebuttal proof WCM/PS/3 of Dr Peter Shepherd	

<b>Friends of the Earth</b>		<b>Inquiry Programme Topic Theme</b>
FOE/JB1	Proof of Evidence of Professor John Barrett	Climate Change
FOE/JB1/1 to FOE/JB1/11	Appendices of Professor John Barrett	
FOE/JB3	Rebuttal proof of Professor John Barrett	
FOE/JB3/1-7	Appendices to rebuttal proof FOE/JB3 of Professor John Barrett	
FOE/JC1	Proof of Evidence Dr Jonathan Cullen	Need for the coal and Climate Change
FOE/JC1/1 to FOE/JC1/17	Appendices of Dr Jonathan Cullen	
FOE/JC3	Rebuttal proof of Dr Jonathan Cullen	
FOE/JC3/APP	Appendix to rebuttal proof FOE/JC3 of Dr Jonathan Cullen	
FOE/PR1	Proof of Evidence of Peter Radmall	Character and Appearance
FOE/PR1-1 to FOE/PR1-3	Appendices of Peter Radmall	
FOE/SN1	Proof of Evidence of Simon Nicholas	Need for the coal
FOE/SN1 Appendix 1 to Appendix 9	Appendices of Simon Nicholas	
FOE/MC3	Rebuttal proof of Michael Spence	

FOE/MC3 APP1 -4	Appendices to rebuttal proof FOE/MC3 of Michael Spence	Character and Appearance
FOE/DB/3	Supplementary/Rebuttal proof of Derik Broekoff	Climate Change (Carbon offsets)
FOE/DB/3/01-07	Appendices to rebuttal proof FOE/DB/3 of Derik Broekoff	

<b>South Lakes Action on Climate Change</b>		<b>Inquiry Programme Topic Theme</b>
SLACC/RD/1	Proof of Evidence of Rebekah Diski	Economic/ Employment Benefits
SLACC/RD/2	Appendices of Rebekah Diski	
SLACC/RD/3	Rebuttal proof and appendix of Rebekah Diski	
SLACC/LN/1	Proof of Evidence of Professor Lars Nilsson	Need for the Coal (alternative steel making technology)
SLACC/LN/2	Appendices 1 -16 of Professor Lars Nilsson	
SLACC/LN/3	Rebuttal proof of Professor Lars Nilsson	
SLACC/PE/1	Proof of Evidence of Professor Paul Ekins	Need for the coal and Climate Change
SLACC/PE/2	Appendices 1 -11 of Professor Paul Ekins	
SLACC/PE/3	Rebuttal proof and appendices (Need Issue) of Professor Paul Ekins	
SLACC/PE/4	Rebuttal proof and appendix (Climate Change) of Professor Paul Ekins	
SLACC/SH/1	Proof of Evidence of Professor Stuart Haszeldine	Need for the coal (coal quality)
SLACC/SH/2	Appendices 1 - 5 of Professor Stuart Haszeldine	
SLACC/SH/3	Rebuttal proof of Professor Stuart Haszeldine	
SLACC/BW/1	Proof of Evidence of Sir Robert Watson	Climate Change
SLACC/BW/2	Appendices 1 – 11 of Sir Robert Watson	
SLACC/BW/3	Rebuttal proof and appendices (Climate Change) of Sir Robert Watson	
SLACC/MG/1	Proof of Evidence of Professor Michael Grubb	Climate Change (emissions from construction)
SLACC/MG/2	Appendices 1 - 5 of Professor Michael Grubb	
SLACC/MG/3	Rebuttal proof and appendices of Professor Michael Grubb	

		and operation of the mine)
SLACC/TM/1	Proof of Evidence and Appendix of Dr Tony Martin	Ecology
SLACC/PB/1	Proof of Evidence of Paul Bedwell	Planning Issues
SLACC/PB/2	Appendices 1 -5 of Paul Bedwell	
SLACC/PB/3	Rebuttal proof and appendices of Paul Bedwell	

## **ANNEX C**

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

Inquiry Document (ID)	Description of Document	Date Submitted
ID1	Addendum to the Steel and Metallurgical Coal Expert Report by Wood Mackenzie	07.09.2021
ID2	West Cumbria Mining Limited (WCM) Opening Statement	07.09.2021
ID3	Cumbria County Council (CCC) Opening Statement	07.09.2021
ID4	Friends of the Earth (FoE) Opening Statement	07.09.2021
ID5	South Lakes Action on Climate Change (SLACC) Opening Statement	07.09.2021
ID6	FOE-DB-3 Derik Broekhoff Supplemental/ Rebuttal Proof of Evidence	07.09.2021
ID7	FOE-DB3-01 to 07 Appendix 1-7 of Derik Broekhoff Supplemental/ Rebuttal Proof of Evidence	07.09.2021
ID8	SLACC-RD-1S Rebeka Diski Summary Proof	08.09.2021
ID9.1	WCM Factsheet – Apprenticeships	09.09.2021
ID9.2	WCM Factsheet – Education	09.09.2021
ID9.3	WCM Factsheet – Employment	09.09.2021
ID9.4	WCM Factsheet – Underground Teams	09.09.2021
ID9.5	WCM Factsheet – Working Underground	09.09.2021
ID10.1	WCM Project Facts Part 1	09.09.2021
ID10.2	WCM Project Facts Part 2	09.09.2021
ID10.3	WCM Project Facts Part 3	09.09.2021
ID11	WCM (Holdings) Limited Annual Report for the Year ended 2020	09.09.2021
ID12	FOE-BD3-01 Appendix 1 (abstract of article)(for publication)	09.09.2021
ID13	FOE-DB3-01 Appendix 1 (full article)(for the parties ONLY)	09.09.2021
ID14	Article – Open Democracy UK, Rebeka Diski dated 12.02.2021	09.09.2021
ID15	NOMIS Official Labour Market Statistics for Copeland	09.09.2021
ID16	English Indices of Deprivation 2019	09.09.2021
ID17	Index of Deprivation for Cumbria – January 2020	10.09.2021

ID18	WCM Project Update – January 2020	09.09.2021
ID19	FOE-JB3 – Rebuttal Proof of Evidence of John Barrett (climate change)	10.09.2021
ID20	FOE-JB3-1 to FOE-JB3-7 (Appendices 1 to 7)	10.09.2021
ID21	SLACC-BW-3 Watson Rebuttal and Appendix 10.09.2021	10.09.2021
ID22	SLACC-MG-3 Grubb Rebuttal and Appendix 10.09.2021	10.09.2021
ID23	SLACC-PE-4 Ekins Rebuttal and Appendix 10.09.2021	10.09.2021
ID24	Email from West Cumbria Mining re WCM Coal Specification (dated 21 September 2020 13:25)	13.09.2021
ID25	WCM Target Coal Specification Email (dated 30 July 2020 8:11) and attached 2020 Specification	14.09.2021
ID26	EC Critical Raw Materials 2020	14.09.2021
ID27	Article - Conflating Queensland's Coking and Thermal Coal Industries, Simon Nicholas dated June 2019	15.09.2021
ID28	Supplement – Base Sc. Results – Coal Cumbria mine evidence E3M Final 24.8.21	24.08.2021
ID29	SLACC-PB-3 Rebuttal Proof of Evidence Paul Bedwell and appendices	16.09.2021
ID30	Tata Steel Hydrogen Announcement 15.09.2021	16.09.2021
ID31	Article "What went wrong? Learning from three decades of carbon capture, utilization and sequestration (CCUS) pilot and demonstration projects" Wang, 2021	16.09.2021
ID32	Character and Appearance RTS Agenda	16.09.2021
ID33	Whitehaven Landscape SoCG - final, signed (16.09.2021)	16.09.2021
ID34	Whitehaven Schedule of Landscape and Visual Effects (16.09.21)	16.09.2021
ID35	Site Visit Itinerary V.4	16.09.2021
ID36	WCM Public Inquiry Site Visit Risk Assessment	16.09.2021
ID37A	Extracts of Landscape Evidence for Roundtable - Friends of the Earth 16.09.21	16.09.2021
ID37	Minutes of a Meeting of the Development Control and Regulation Committee 02.10.20 at 9am	17.09.2021
ID38	Article "Efficiency stagnation in global steel production urges joint supply- and demand-side mitigation efforts", Wang 2021	21.09.2021
ID39	The Sixth Carbon Budget Methodology Report, December 2020	23.09.2021
ID40	Letter from SBEC (on behalf of SLACC) regarding pipe-jacking dated 23 September 2021	23.09.2021
ID41	IEA - Coal Information: Database Documentation (page 81), "Coal Classification"	23.09.2021
ID42	WCM/ST/5 – Additional Rebuttal Proof of Evidence of Samuel Thistlethwaite	23.09.2021
ID43	Prime Minister's speech at the UN General Assembly dated 22 September 2021	24.09.2021



ID44	Article – "How carbon capture, usage and storage could help 'level up' across the UK", LSE dated 23 September 2021	24.09.2021
ID45	Article Summary – "Policy brief: Seizing sustainable growth opportunities from CCUS in the United Kingdom", LSE, September 2021	24.09.2021
ID46	S106 Agreement – 23.09.2021	27.09.2021
ID47	S106 Comparison Document - 24.09.2021	27.09.2021
ID48	Harding Hydro letter dated 27 September 2021 in response to SBEC letter dated 23 September 2021	27.09.2021
ID49	MAGIC information re Environmental Stewardship Agreement	27.09.2021
ID50	Biodiversity RTS Agenda	27.09.2021
ID51	Conditions Schedule – All Parties – Comments – 27.09.2021	27.09.2021
ID52	WCM Proposed New Conditions	27.09.2021
ID53	Appendix A – List of Conditions 2 <sup>nd</sup> October 2020	27.09.2021
ID54	Culvert Tunnel Sections 27.09.2021	27.09.2021
ID55	Ecology Statement of Common Ground 27.09.2021	27.09.2021
ID56	Article – Collaboration – UN Climate Change Conference (COP26) at the SEC – Glasgow 2021	28.09.2021
ID57	Article – UKRI – UK Invests over £30m in large-scale greenhouse gas removal dated 25.04.2021	28.09.2021
ID58	Article – Climeworks begins operations of Orca, the world's largest direct air capture and CO2 storage plant dated 08.09.2021	28.09.2021
ID59	Article – Financial Times – Carney task force confronts concerns over carbon credits market dated 27.01.2021	28.09.2021
ID60	Letters of Support from the Steel Industry	28.09.2021
ID61	Note from Methane Emissions from Construction of Drifts	28.09.2021
ID62	PPG Climate Change	29.09.2021
ID63	Article – Dutch CCS project scrapped after Tata Steel opts for hydrogen DRI production route, James Burgess dated 21.09.2021	29.09.2021
ID64	Inquiry Conditions List	29.09.2021
ID65	SLACC comments on Draft s106 agreement	29.09.2021
ID66	SLACC Legal Submissions on Amendment of the Application	30.09.2021
ID67	Note on factual points by Caroline Leatherdale and Mr Caird	30.09.2021
ID68	Pipejacking Cross-sections	30.09.2021
ID69	CIL Compliance Statement v5	30.09.2021
ID70	SLACC Schedule of Correspondence 10 June- 3 Sep 2021	30.09.2021
ID71	SLACC Partial Costs Application 30.09.2021	30.09.2021
ID72	Additional points on Cashflow from Mr Kirkbride	30.09.2021
ID73	Friends of the Earth (FoE) Closing Statement	01.10.2021
ID74	Friends of the Earth (FoE) Closing Additional Authority Bundle	01.10.2021

ID75	SLACC Closing Submissions	01.10.2021
ID76	West Cumbria Mining Limited (WCM) Closing Statement	01.10.2021
ID77	WCM - Applicant's response to legal submissions on Pipe Jacking	11.10.2021
ID78	Applicant response to SLACC Partial Cost Application	11.10.2021
ID79	British Telecommunications Plc v Gloucester City Council [2001] EWHC Admin 1001	11.10.2021
ID80	Gillespie v First Secretary of State, [2003] EWCA Civ 400	11.10.2021
ID81	R (on the application of An Taisce (National Trust for Ireland) v Secretary of State for Energy and Climate Change, [2014] EWCA Civ 1111	11.10.2021
ID82	R. (on the application of Catt) v Brighton and Hove City Council, [2007] Env. L.R. 32 (2007)	11.10.2021
ID83	R. v Rochdale MBC Ex p. Milne (No.1), [2000] Env. L.R. 1 (1999)	11.10.2021
ID84	R. v Rochdale MBC Ex p. Milne (No.2), [2001] Env. L.R. 22 (2000)	11.10.2021
ID85	R (Champion) v North Norfolk District Council (SC(E)), [2015] 1WLR	11.10.2021
ID86	SLACC Reply to Applicant's Cost Response	20.10.2021
ID87	Certified Copy Supplemental Undertaking dated 28.10.2021 signed by WCM and Barwise (parties only)	28.10.2021
ID88	WCM/Applicant's comments on Biodiversity Net Gain (Document amended and submitted by Cumbria County Council)	29.10.2021
ID89	S.106 Agreement (parties and webpage)	28.10.2021
ID90	Conditions List v50	04.11.2021
ID91	Conditions Schedule v50	04.11.2021
ID92	CIL Compliance Statement v50	04.11.2021
ID93	CIL Appendices 1, 2 & 3	04.11.2021
ID94	CIL Appendix 2 - PROW improvement costs schedule	04.11.2021
ID95	CIL Appendix 2 - PROW routes map	04.11.2021
ID96	Coal Authority response	29.10.2021
ID97	WCM response on planning conditions (parties only)	20.10.2021
ID98	WCM response to Radiation Free Lakeland matters (parties only)	20.10.2021
ID99	Radiation Free Lakeland Response to WCM Conditions Agreement (email and attachments) (parties only)	25.10.2021
ID100	Updated plans received from WCM, 25 <sup>th</sup> October 2021	25.10.2021
ID101	Conditions List v.50 (amended by WCM/Applicant, amendments not agreed by parties) (parties only)	15.11.2021
ID102	Conditions Schedule v.31_FOE Comments (parties only)	15.11.2021

**ANNEX D****SPEAKING NOTES SUBMITTED AT THE INQUIRY**

ID103	Lee Anderson MP	08.09.2020
ID104	Mark Jenkinson MP	08.09.2021
ID105	Jake Berry MP	08.09.2021
ID106	Trudy Harrison MP	10.09.2021
ID107	Mike Starkie, Elected Mayor of Copeland	08.09.2021
ID108	Councillor Chris Whiteside MBE	08.09.2021
ID109	Councillor Bert Jones	13.09.2021
ID110	Tim Farron MP	08.09.2021
ID111	Martin Kendall	13.09.2021
ID112	Professor Terry Sloan (Sustainable Keswick)	10.09.2021
ID113	Steve Balogh	13.09.2021
ID114	Irene Anderson (North Cumbria CND)	10.09.2021
ID115	Councillor Giles Archibald (South Lakeland District Council)	10.09.2021
ID116	John Ashton CBE	13.09.2021
ID117	Samagita Moisha (Radiation Free Lakeland	10.09.2021
ID118	Gillian Kelly	13.09.2021
ID119	Councillor Ali Ross	13.09.2021
ID120	Lindy Powell	10.09.2021
ID121	John Hall	10.09.2021
ID122	Anna Hall	10.09.2021
ID123	Anne Harris (Coal Action Network)	21.09.2021
ID124	Dr Stuart Parkinson (Scientist for Global Responsibility)	10.09.2021
ID125	Andy Curle	13.09.2021
ID126	Ian Hackett	10.09.2021
ID127	Melanie Greggain	13.09.2021
ID128	Emily Graham	13.09.2021

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ID129	Hazel Graham	13.09.2021
ID130	Amy Wright (Allerdale and Copeland Green Party)	13.09.2021
ID131	Dr Ruth Balogh (West Cumbria and North Lakes Friends of the Earth)	13.09.2021
ID132	Ciara Shannon	13.09.2021
ID133	Dr David Heller	13.09.2021
ID134	Professor Michael Hambrey	13.09.2021
ID135	Dr Henry Adams (Retired Ecologist)	21.09.2021
ID136	Neil Wilson	13.09.2021
ID137	Paul Palley	10.09.2021

**ANNEX E****CORE DOCUMENTS**

<b>CD1 Application Drawings</b>	
CD1.1	869AP001 Rev F - Location Plan & Planning Application Boundary
CD1.2	869AP002 Rev D - Sandwith Anhydrite Mine Abandonment Plan showing proposed WCM main mine site
CD1.3	869AM001 Rev C - Main Mine site - Existing Plan
CD1.4	869AM002 Rev E - Main Mine site - Proposed Plan
CD1.5	869AM003 Rev C - Main Mine site - Construction Phase Drawing 1
CD1.6	869AM004 Rev C - Main Mine site - Construction Phase Drawing 2
CD1.7	869AM005 Rev C - Main Mine site - Construction Phase Drawing 3
CD1.8	869AM006 Rev C - Main Mine site - Site cross sections
CD1.9	869AM007 Rev C - Main Mine Site - Existing Site Topography
CD1.10	869AM008 Rev B - Main Mine Site - Finished Level Cut and Fill Representation
CD1.11	869AM010 Rev A - Main Mine site - Site Entrance
CD1.12	869AM011 Rev A - Main mine site - Office and change building, Proposed Elevations
CD1.13	869AM012 Rev A - Main mine site - Office and change building, Proposed Plans
CD1.14	869AM013 Rev A - Main mine site - Gatehouse, Proposed Plan & elevations
CD1.15	869AM015 Rev A - Main mine site- Workshop, Proposed Plan & elevations
CD1.16	869AM017 Rev A - Main mine site - East (S) drift canopy, Proposed plan and Elevations
CD1.17	869AM019 Rev A - Main mine site - Fan House, Proposed plan and elevations
CD1.18	869AM021 Rev A - Main Mine site - Auxiliary power plant - Gas, Proposed plan & elevations
CD1.19	869AM023 Rev A - Main Mine site - Auxiliary power plant - Diesel, Proposed plan & elevations
CD1.20	869AM025 Rev A - Main Mine site - Substation, 20 - 20 Proposed plan & elevations
CD1.21	869AM027 Rev D - Main Mine site - Clean raw coal & CHPP building, Proposed Plan
CD1.22	869AM028 Rev B - Main Mine site - Clean raw coal & CHPP building, Proposed elevations 1 of 2
CD1.23	869AM029 Rev C - Main Mine site - Clean raw coal & CHPP building, Proposed elevations sheet 2 of 2

CD1.24	869AM030 Rev B - Main Mine site - CHPP Access & Welfare building, Proposed Plan & elevations
CD1.25	869AM031 Rev B - Main Mine site - Clean Coal and Reject Store, Proposed plan
CD1.26	869AM032 Rev B - Main Mine site - Clean Coal and Reject Store, Proposed Elevations
CD1.27	869AM033 Rev A - Main Mine Site - Water Storage Tank- Proposed Plan & Elevation
CD1.28	869AM034 Rev A - Main Mine site - RLF Conveyor drive building, Proposed plan & elevations
CD1.29	869AM038 Rev A - Main Mine site - (East) N Drift Access, Proposed Plan & Elevations
CD1.30	869AM040 Rev B - Main Mine site - External Lighting Layout
CD1.31	869AM041 Rev I - Main Mine Site - Proposed Landscaping Plan
CD1.32	869AM042 Rev E - Main Mine site - Restoration Plan
CD1.34	869AM201 Rev A - Main Mine Site - South Landscape Mound Cross Sections
CD1.35	869AC001 Rev E - RLF Conveyor Culvert - Existing Plan
CD1.36	869AC002 Rev F - RLF Conveyor Culvert - Proposed plan
CD1.37	869AC003 Rev B - RLF Conveyor Culvert - Construction Phase drawing
CD1.38	869AC006 Rev A - RLF Conveyor Culvert - Typical Construction Phase Cross Sections
CD1.39	869AC008 Rev A - RLF Conveyor Culvert - Intermediate station
CD1.40	869AC009 Rev A - RLF Conveyor Culvert - Conveyor Access Station at Rail Loading Facility
CD1.41	869AR001 Rev C - Rail loading facility - Existing Plan and Topography
CD1.42	869AR002 Rev C - Rail loading facility - Proposed Plan
CD1.43	869AR003 Rev B - Rail loading facility - Construction Phasing Plan
CD1.44	869AR006 Rev B - Rail loading facility - Site Cross Sections
CD1.45	869AR007 Rev C - Rail loading facility - Lighting
CD1.46	869AR008 Rev A - Rail loading facility - Site Entrance
CD1.47	869AR009 Rev A - Rail loading facility - Rail loading building, Plan and Elevations
CD1.48	869AR011 Rev A - Rail loading facility - Office & Welfare Facilities, Plan and Elevations
CD1.49	869AR012 Rev C - Rail loading facility - Proposed Screen Tree Planting
CD1.50	869AR013 Rev F - Rail Loading Facility - Post Construction Restoration

CD1.51	869AR014 Rev H - Rail Loading Facility - Post Decommissioning Restoration
CD1.52	869AO001 Rev D - Underground Mining - Onshore and Offshore Mining Areas
CD1.53	869AO002 Rev D - Underground Mining - Access to Onshore and Offshore Mining Areas
CD1.54	869AO003 Rev D - Underground Mining - Inseam Access Routes Onshore to Offshore
CD1.55	869AO004 Rev D - Underground Mining - Onshore cross measure drift zone
CD1.56	Figure 14.1 Rev 01 - Noise Monitoring and Receptor Locations
CD1.57	Planning Application - Application Form - Signed (as revised 6 June 2017)
CD1.58	MAY 2020 - Planning Application WCM Covering Letter to Cumbria County Council
CD1.59	MAY 2020 REVISED Planning Statement
CD1.60	SUPERSEDED IN MAY 2020 - MAIN MINE SITEFINISHED LEVEL CUT AND FILL REPRESENTATION-869_AM_008_A
CD1.61	SUPERSEDED IN MAY 2020 - MAIN MINE SITEPROPOSED PLAN-869_AM_002_D
CD1.62	SUPERSEDED IN MAY 2020 - MAIN MINE SITESITE CROSS SECTIONS-869_AM_006_B
CD1.63	SUPERSEDED IN MAY 2020 - MAIN MINE SITECLEANRAW COAL & CHPP BUILDING, PROPOSED PLAN-869_AM_027_C
CD1.64	SUPERSEDED IN MAY 2020 - MAIN MINE SITECLEANRAW COAL & CHPP BUILDING, PROPOSED ELEVATIONS SHEET 1 OF 2-869_AM_028_A
CD1.65	Letter from Secretary of state to MHC & LG
CD1.66	Design and Access Statement
CD1.67	May 2020 - Updates to Design and Access Statement
CD1.68	WCM DRAWING REGISTER April 2020
CD1.69	September 2020 - West Cumbria Mining Response to Objections
CD1.70	September 2020 - Appendix 1 AECOM's Response to specific points raised by SLACC
CD1.71	September 2020 - Appendix 2 Dr Bristow's Response to specific points raised by SLACC and others
CD1.72	September 2020 - Appendix 3 A Note on the Coke Making Process and Sources of High Vol A Coal into Europe (with specialist input from Hugh Babbage)
CD1.73	September 2020 - Appendix 4 Coking Coal Demand Forecast, prepared by Wood Mackenzie
CD1.74	Planning Application - Additional Notice (Jan 2018)
CD1.75	Planning Application - Referencing List for planning notices (May 2017)
CD1.76	Planning Application WCM Covering Letter (Dec 2018)



CD1.77	Planning Application WCM Covering Letter (May 2017)
CD1.78	Environmental Statement - Non-Technical Summary
CD1.79	Environmental Statement Chapter 1 – Introduction
CD1.80	Environmental Statement Chapter 2 – EIA Process Etc
CD1.81	Environmental Statement Chapter 3 – Alternatives
CD1.82	Environmental Statement Chapter 4 – Site and Context
CD1.83	Environmental Statement Chapter 5 –Projection Description
CD1.84	Environmental Statement Chapter 5 –Projection Description Appendices
CD1.85	Environmental Statement Chapter 6 –Planning Policy
CD1.86	Environmental Statement Chapter 7 –SocioEconomic Assessment
CD1.87	Environmental Statement Chapter 8 – Road Transport
CD1.88	Environmental Statement Chapter 8 – Road Transport Appendix C(1)
CD1.89	Environmental Statement Chapter 8 – Road Transport Appendix D
CD1.90	Environmental Statement Chapter 9 – Rail Transport
CD1.91	WCM GRIP 2 Feasibility Report
CD1.92	WCM GRIP 2 Feasibility Report Appendix A
CD1.93	WCM GRIP 2 Feasibility Report Appendix B
CD1.94	WCM GRIP 2 Feasibility Report Appendix C
CD1.95	WCM GRIP 2 Feasibility Report Appendix D(2)
CD1.96	WCM GRIP 2 Feasibility Report Appendix E
CD1.97	WCM GRIP 2 Feasibility Report Appendix F
CD1.98	WCM GRIP 2 Feasibility Report Appendix G
CD1.99	WCM GRIP 2 Feasibility Report Appendix H
CD1.100	Environmental Statement Chapter 10 - Landscape and Visual Impact Assessment (LVIA)
CD1.101	App 10a - Figure 1
CD1.101	App 10a - Figure 2
CD1.101	App 10a - Figure 3
CD1.101	App 10a - Figure 4
CD1.101	App 10a - Figure 5

CD1.101	App 10a - Figure 6
CD1.101	App 10a - Figure 7
CD1.101	App 10a - Figure 8
CD1.101	App 10a - Figure 9
CD1.101	App 10a - Visual pt1
CD1.101	App 10a - Visual pt2
CD1.102	App 10b Night Visuals
CD1.102	App 10b PM01
CD1.102	App 10b PM02
CD1.102	App 10b PM03
CD1.102	App 10b PM04
CD1.102	App 10b PM05
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CD1.102	App 10b PM17
CD1.102	App 10b PM18
CD1.102	App 10b PM19
CD1.102	App 10b PM20
CD1.102	App 10b PM21
CD1.102	App 10b Visuals
CD1.103	LVIA App 10c

CD1.104	LVIA App 10d
CD1.105	LVIA App 10e
CD1.106	LVIA App 10f
CD1.107	LVIA App 10g
CD1.109	Environmental Statement Chapter 11 -Ecology
CD1.110	Ecology Appendix 11.1 breeding birds
CD1.111	Ecology Appendix 11.2 Bats and Mammals
CD1.112	Ecology Appendix 11.3 herpetological
CD1.113	Ecology Appendix 11.4 botanical
CD1.114	Ecology Appendix 11.5 Invertebrates
CD1.115	Ecology Appendix 11.6 RLF
CD1.116	Ecology Appendix 11.7 GCN Survey Report(1)
CD1.117	Ecology Appendix 11.8 Solway Firth Evidence Document
CD1.118	Ecology Appendix 11.9 St Bees Head SSSI assessment
CD1.119	Environmental Statement Chapter 12 - Hydrology and Hydrogeology
CD1.120	Hydrology and Hydrogeology Figures pt1
CD1.121	Hydrology and Hydrogeology Figures pt2
CD1.122	Appendix 12-1 Water Features Survey
CD1.122	Appendix 12-2 SW Data
CD1.122	Appendix 12-3 Site Plans
CD1.122	Appendix 12-4 Water Quality Data
CD1.122	Appendix 12-5 Geology Data
CD1.122	Appendix 12-6 Borehole flow logging report
CD1.122	Appendix 12-7 FRA and Surface Water Management Plan
CD1.122	Appendix 12-7 FRA Appendices
CD1.122	Appendix 12-8 Response to FRA and HIA comments
CD1.122	Appendix 12-9 Response to EA comments
CD1.122	Appendix 12-10 RLF testing
CD1.123	Environmental Statement Chapter 13 - Ground Conditions and Contamination (NO PI)
CD1.124	Appendix 13.7 Plot E part 1

CD1.125	Appendix 13.7 Plot E part 2
CD1.126	Appendix 13.7 Plot E part 3
CD1.127	Environmental Statement Chapter 14 - Noise and Vibration - Dec 2018
CD1.128	Figure 14-1 - Development and Surroundings
CD1.129	Figure 14-2 - Proposed Marchon Site and Surroundings Ground Level
CD1.130	Figure 14-3 - Proposed Marchon Site and Surroundings First Floor Level
CD1.131	Environmental Statement Chapter 15 - Air Quality - Dec 2018
CD1.132	Figure 15.1
CD1.133	Figure 15.2
CD1.134	Figure 15.8
CD1.135	Figure 15.9
CD1.136	Figure 15.10
CD1.137	Figure 15.11
CD1.138	Environmental Statement Chapter 16 – Historic Environment – Dec 2018
CD1.139	Environmental Statement Chapter 17 – Marine Environment
CD1.140	Marine Appendix A Surveys Undertaken
CD1.141	Marine Appendix B Draft MEMP_WCM
CD1.142	Marine Appendix C - MCZ Assessment
CD1.143	Marine Appendix D - Numerical Modelling Report (NO PI)
CD1.144	Environmental Statement Chapter 18 Summary and Conclusions
CD1.145	Environmental Statement Chapter 19 Greenhouse Emissions
CD1.146	Shadow Habitats Regulations Assessment
<b>CD2 Additional Amended Reports and or Plans Submitted After Validation (Duplications removed from CD list)</b>	
CD2.1	May 2020 - REVISED - MAIN MINE SITE-SITE CROSS SECTIONS-869_AM_006_D
CD2.2	May 2020 - REVISED - MAIN MINE SITE PROPOSED PLAN-869_AM_002_F
CD2.5	May 2020 - REVISED - MAIN MINE SITE CLEAN RAW COAL & CHPP BUILDING, PROPOSED PLAN-869_AM_027_E
CD2.6	May 2020 - REVISED - MAIN MINE SITE CLEAN RAW COAL & CHPP BUILDING, PROPOSED ELEVATIONS SHEET 1 OF 2-869_AM_028_C

CD2.7	May 2020 - REVISED - MAIN MINE SITE CLEAN RAW COAL & CHPP BUILDING, PROPOSED ELEVATIONS SHEET 2 OF 2-869_AM_029_D
CD2.8	May 2020 - REVISED - MAIN MINE SITE- CHPP ACCESS & WELFARE BUILDING, PROPOSED PLAN & ELEVATIONS-869_AM_030_C
CD2.9	May 2020 - REVISED - MAIN MINE SITE MIDDLEINGS STORE, PROPOSED PLAN-869_AM_031_c
CD2.10	May 2020 - REVISED - MAIN MINE SITE MIDDLEINGS STORE, PROPOSED ELEVATIONS869_AM_032_C
CD2.11	May 2020 - REVISED - MAIN MINE SITE EXTERNAL LIGHTING LAYOUT-869_AM_040_C
CD2.29	SUPERSEDED IN MAY 2020 - MAIN MINE SITE CLEANRAW COAL & CHPP BUILDING, PROPOSED ELEVATIONS SHEET 2 OF 2-869_AM_029_B
CD2.30	SUPERSEDED IN MAY 2020 - MAIN MINE SITE CHPP ACCESS & WELFARE BUILDING, PROPOSED PLAN & ELEVATIONS-869_AM_030_A
CD2.31	SUPERSEDED IN MAY 2020 - MAIN MINE SITE MIDDLEINGS STORE, PROPOSED PLAN-869_AM_031_A
CD2.32	SUPERSEDED IN MAY 2020 - MAIN MINE SITE MIDDLEINGS STORE, PROPOSED ELEVATIONS869_AM_032_A
CD2.55	SUPERSEDED IN MAY 2020 - MAIN MINE SITE EXTERNAL LIGHTING LAYOUT-869_AM_040_A
CD2.56	SUPERSEDED IN MAY 2020 - RAIL LOADING FACILITY - POST DECOMMISSIONING RESTORATION - 869_AR_014_G
CD2.61	SUPERSEDED IN MAY 2020 - Planning Statement
CD2.62	SUPERSEDED IN MAY 2020 - Drawings Index
CD2.63	WCM Feedback
CD2.64	WCM Newsletters
CD2.65	WCM Postcards
CD2.66	WCM Q and A
CD2.67	WCM Report on SCI
CD2.68	BACKGROUND PAPERS - WCM Briefing Note on Coal Handling & Processing Plant
CD2.69	WCM Engagement Log
CD2.70	2 October 2020 Update Sheet - Application Reference 4.17.9007
CD2.71	BACKGROUND PAPERS - WCM email on coal specification dated 30.7.20
CD2.72	BACKGROUND PAPERS - Wardell Armstrong emails dated 22 September 2020
CD2.73	BACKGROUND PAPERS - Javelin consultation response letter dated 13.7.20
CD2.74	BACKGROUND PAPERS - Javelin consultation response email dated 18.8.20
CD2.75	BACKGROUND PAPERS - British Steel consultation response dated 3.8.20

CD2.76	BACKGROUND PAPERS - Arcelor Mittal consultation response dated 18.8.20
CD2.77	BACKGROUND PAPERS - SSAB consultation responses dated 1.7.20 & 2.7.20
CD2.78	BACKGROUND PAPERS - Tata consultation response dated 18.8.20
CD2.79	BACKGROUND PAPERS - UK Steel consultation responses dated 12.6.20 & 10.7.20
<b>CD3 Objections/Support</b>	
CD3.1	SLACC objection to Whitehaven Coal Mine
CD3.2	SLACC objection to Whitehaven Coal Mine 2
CD3.3	SLACC – R Buxton letter to Cumbria CC
CD3.4	Supporting evidence sent to CCC by SLACC
CD3.5	SLACC objection to application 4-17-9007 Final v2
CD3.6	SLACC_Appendix 1_Professor Ekins letter
CD3.7	SLACC_Appendix 2_MPI Report
CD3.8	SLACC_Appendix 3_Statement on the future need for coal in the steel industry
CD3.9	SLACC_Appendix 4_WMS on Clean Steel Fund and Low Carbon Hydrogen Production Fund
CD3.10	SLACC Objection 1.10.2020
CD3.11	SLACC further objection Appendix - Academics letter to ministers
CD3.12	SLACC further objection to 4-17-9007 Appendix_ P Ekins
CD3.13	Submission in support from Cumbria County Councillor and Resident for Kells
CD3.14	Letter in support from Elected Mayor of Copeland
CD3.15	Submission in support from Chris Whitefield Whiteside MBE, Cumbria County Council
CD3.16	Letter of support by Cumbria MP's
CD3.17	Submission in support by GMB Sellafield Branch
CD3.18	Letter of support from Whitehaven Town Council
CD3.19	Friends of the Earth Objection 3.07.2017
CD3.20	Friends of the Earth Objection 15.01.2019
CD3.21	Friends of the Earth Response to Further Information 9.10.2017

<b>CD4 Committee Reports</b>	
CD4.1	Report by the Acting Executive Director for Economy and Infrastructure dated 19 March 2019
CD4.2	Minutes of Development Control and Regulation Committee
CD4.3	Report by the Acting Executive Director for Economy and Infrastructure dated 31 October 2019
CD4.4	Minutes of Development Control and Regulation Committee
CD4.5	Report by the Executive Director - Economy and Infrastructure dated 2 October 2020
CD4.6	Minutes of Development Control and Regulation Committee
CD4.7	Update pack
CD4.8	Update Sheet
CD4.9	March 2019 Committee Report (interactive version with Headers and Bookmarks)
<b>CD5 Planning Policy and Legislation</b>	
CD5.1	Ss 55, 56, 70, 72 106, 106A Town and Country Planning Act 1990 (law in force as at 18.08.2021)
CD5.2	S 38 Planning and Compulsory Purchase Act 2004 (law in force as at 18.08.2021)
CD5.3	Regulation 122 Community Infrastructure Levy Regulations 2010 (law in force as at 18.08.2021)
CD5.4	The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (law in force as at 15.05.2017)
CD5.5	Schedule 4, The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (law in force as at 18.08.2021)
CD5.6	The Carbon Budget Order 2021
CD5.7	Planning Practice Guidance, Ministry of Housing, Communities & Local Government
CD5.8	Copeland Local Plan 2013 -2028 - Core Strategy and Development Management Policies Development Plan Document
CD5.9	Cumbria Minerals and Waste Local Plan
CD5.10	Copeland Local Plan 2017-2035 Preferred Options Draft
CD5.11	The Copeland Local Plan 2013 – Proposals Map and Copeland Local Plan 2001-2016 'Saved Policies'
CD5.12	The Cumbria Minerals and Waste Local Plan 2015 - 2030 (CMWLP)
CD5.13	The West Whitehaven Supplementary Planning Document (SPD) issues and options consultation report, Copeland Borough Council



<b>CD6 Relevant Appeal Decisions and Call Ins</b>	
CD6.1	Secretary of State Decision letter into the Highthorn Surface Coal mine 8 September 2020
CD6.2	Highthorn Inspectors Report
<b>CD7 Relevant Judgments</b>	
CD7.1	R (Finch) v Surrey Country Council [2020] EWHC 3559 (QB)
CD7.2	R (on the application of Friends of the Earth Ltd and others) (Respondents) v Heathrow Airport Ltd (Appellant)
CD7.3	R (Khan) v Sutton LBC [2014] 11 WLUK 151
CD7.4	Preston New Road Action Group v SSCLG [2018] EWCA Civ 9
CD7.5	R (Blewett v Derbyshire CC [2004] Env LR 29
CD7.6	R (Bedford and Clare) v Islington LBC [2003] Env LR 22
CD7.7	(R (Jones) v Mansfield DC [2003] EWCA Civ 1408
CD7.8	Bowen-West v SSCLG [2012] Env LR 22
CD7.9	Abraham v Wallonia [2008] Env LR 32
CD7.10	Case C-227 01 Commission v Spain [2004] ECR
CD7.11	R (Plan B Earth) v SST [2020] EWCA Civ 214
CD7.12	R (Skipton Properties Ltd) v Craven District Council [2017] EWHC 534 (Admin)
CD7.13	Fadeyeva v Russia (2007) 45 EHRR 10
CD7.14	Hardy v United Kingdom (2012) 55 EHRR 28
CD7.15	Application by HM, a minor, by PM, her Father, and Next Friend for Judicial Review
CD7.16	Lough v FSS 2004 EWCA Civ 905
<b>CD 8 Climate Change</b>	
CD8.1	The Paris Agreement
CD8.2	Climate Change Act 2008 (law in force as at 18.08.2021)
CD8.3	Climate Change Act 2008 (2050 Target Amendment) Order 2019
CD8.4	UN Framework Convention on Climate Change (UNFCCC)
CD8.5	IPCC Special Report Global Warming of 1.5 °C (Summary for Policymakers) October 2018
CD8.6	United Nations Environment Programme (2020) Emissions Gap Report 2020.

CD8.7	United Nations Environment Programme (2019) The Production Gap The discrepancy between countries' planned fossil fuel production and global production levels
CD8.8	Climate Change Committee ("CCC") Net Zero – The UK's contribution to stopping global warming
CD8.9	CCC Reducing UK emissions, Progress Report to Parliament
CD8.10	CCC The Sixth Carbon Budget The UK's Path to Net Zero
CD8.11	CCC 6th Carbon Budget Sector-summary Manufacturing-and-construction
CD8.12	Element Energy Deep-Decarbonisation Pathways for UK Industry CCC
CD8.13	Deben, Lord, Chair, Climate Change Committee (2021). An open letter to the Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government
CD8.14	UK Industrial Decarbonisation Strategy
CD8.15	Towards competitive and clean European steel - European Commission
CD8.16	International Energy Agency Net Zero by 2050 A Roadmap for the Global Energy Sector
CD8.17	EC's policy package Fit for 55
CD8.18	European Green Deal
CD8.19	C McGlade and P Ekins, 2015, 'The geographical distribution of fossil fuels unused when limiting global 2031 - 2046 warming to 2°C', Nature
CD8.20	Matthew Winning et al (2019) Nationally Determined Contributions under the Paris Agreement and the costs of delayed action, Climate Policy
CD8.21	<a href="https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-2035">https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-2035</a>
CD8.22	IEMA Impact Assessment Guidance
CD8.23	Stockholm Environment Institute, Carbon lock-in from fossil fuel supply infrastructure
CD8.24	CCC Progress in Reducing Emissions, 2021 Report to Parliament
CD8.25	CCC Progress in Adapting to Climate Change, 2021 Report to Parliament
CD8.26	UN Sustainable Development Goals
CD8.27	Royal Meteorological Society M Kendon et al State of the UK Climate 2020
CD8.28	Department for Business, Energy and Industrial Strategy, 'Updated energy and emissions projections 2019'
CD8.29	EC Communication on EU 2030 Climate Target Plan
CD8.30	Press Release on EU Climate Target Plan
CD8.33	Advice on reducing the UK's emissions - Climate Change Committee

CD8.42	IPCC's Sixth Assessment Report - Summary for Policymakers
<b>CD9 Industrial Change</b>	
CD9.1	Allwood Julian M., Transitions to material efficiency in the UK steel economy Phil Trans R Soc A 371 20110577 (2013)
CD9.2	Vogl, V, Åhman, M & Nilsson, LJ, Assessment of hydrogen direct reduction for fossil-free steelmaking, Journal of Cleaner Production, vol. 203, pp. 736-45 (2018)
CD9.3	Material Economics 2019 Industrial Transformation 2050
CD9.4	Green Alliance The case against new coal mines in the UK 2020
CD9.5	Agora Energiewende and Wuppertal Institute Breakthrough Strategies for Climate-Neutral Industry in Europe Policy and Technology Pathways for Raising EU Climate Ambition 2021
CD9.6	Vogl et al The making of green steel in the EU a policy evaluation for the early commercialization phase
CD9.7	McDonald, Portet and Spatari 'Decarbonisation of the Steel Industry in the UK, Toward a mutualised green solution'
CD9.8	Transition Economics for Friends of the Earth (2021) An emergency plan on green jobs for young people
CD9.9	Cumbria Local Enterprise Partnership, Local Skills Report 2021
CD9.10	Chapman et al, The Potential for Green Jobs in Cumbria
CD9.11	Euracoal (2020) Coal Industry Across Europe European Association for Coal and Lignite
CD9.12	'Review of the use of coking coal in the UK', Report by Wardell Armstrong
CD9.13	WCM Statement of Response to Green Alliance Report
CD9.14	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the 2017 list of Critical Raw Materials for the EU
CD9.15	Copeland Borough Council 'Copeland Vision 2040'
CD9.16	Eurofer Map of EU Production Sites
CD9.17	European-Steel-in-Figures-2020
CD9.18	Eurofer 2019 Low Carbon Roadmap Pathways to a CO2-Neutral EU Steel Industry
CD9.19	European Commission 2020 - A New Industrial Strategy for Europe - Report No. COM(2020) 102 final European Commission
CD9.20	International Energy Agency, 2020. Iron and Steel Roadmap Report
CD9.21	Worldsteel 2020 World Steel in Figures

<b>CD10 Landscape</b>	
CD10.3	Cumbria Landscape Character Guidance and Toolkit [selected sections]
CD10.6	Northumberland Local Plan - Publication Draft (January 2019) - Minerals Policy
CD10.7	Northumberland Local Plan -Main Mods - Minerals Policy
CD10.8	Proposed RLF - Existing Views, 3D model and Composite Views (also FOE-PR1-1 - Appendix 1)
CD10.9	Technical Methodology and Review of WCMSH Photography and...(also FFOE-PR1-2 - Appendix 2)
CD10.11	The Copeland Settlement Landscape Character Assessment Part 2 - Landscape Character and Sensitivity Assessments
<b>CD11 Ecology</b>	
CD11.1	IPBES 2019 Global Assessment. Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
CD11.2	Ancient woodland, ancient trees and veteran trees; protecting them from development (Natural England and Forestry Commission guidance – standing advice)
<b>CD12 Heritage</b>	
CD12.1	Natural England (2015) Corporate report Heritage coasts - protecting undeveloped coast
<b>CD14 Miscellaneous</b>	
CD14.1	SSHCLG (out) - Pre-Action Protocol Letter - 25.2.21
CD14.2A	CCC letter to WCM - Reg 22 Request 18.01.2018
CD14.2B	CCC letter to WCM - Schedule of Further Information 18.01.2018
CD14.3	Covering letter from West Cumbria Mining 10.12.18 - REDACTED
CD14.4	emails CCC to Tim Farron MP 02.04.2019
CD14.5	Leigh Day letter to CCC 21.06,2019
CD14.6	Letter from Secretary of State to Cumbria County Council 1.11.2019
CD14.7	Letter from WCM to Cumbria County Council 10.03.2020
CD14.8	MHCLG Article 31_Cumbria Coal Mine 28.09.2020
CD14.9	MHCLG Letter to CCC - Non-intervention West Cumbria Coal Mine 06.01.2021
CD14.10	Richard Buxton Solicitors to SSHCLG - Pre-Action Protocol Letter - 25.02.2021
CD14.11	CCC Officer Decision Record dated 20 April 2021

CD14.12	CCC Officer Decision Record dated 05 May 2021
CD14.13	CCC Rectification Notice – Officer Decision Record 05.05.2021
CD14.14	WCM - Pre-action letter to Cumbria CC 17.02.2021
CD14.15	Core Bundle Accompanying Application for Judicial Review
CD14.16	MP letter to CCC Cllr S Young 18.02.2021
<b>CD15 Statements of Case and Statement of Common Ground</b>	
CD15.1	Applicant's Statement of Case
CD15.2	Cumbria County Council - Statement of Case
CD15.3	Friends of the Earth Statement of Case
CD15.4	SLACC Statement of Case
CD15.5	Applicant and Cumbria County Council Statement of Common Ground - Matters Agreed
CD15.6	Applicant Statement of Common Ground - Matters Not Agreed
<b>CD16 Regulation 22 Response</b>	
CD16.1	Regulation 22 Request from PINS - 30.06.2021
CD16.2	Reg 22 Attachment A - Addendum Transport Assessment
CD16.3	Reg 22 Attachment B - Operational Vibration Assessment
CD16.4	Reg 22 Attachment C - Revised Chapter 19 of Environmental Statement
CD16.5	Reg 22 Attachment C Appendix 1 - Statement on Met Coal and Steel Markets
CD16.6	Reg 22 Attachment C Appendix 2 - GHG Assessment
CD16.7	Reg 22 Attachment C Appendix 3 - Steel and Met Coal Expert Report by Wood Mackenzie
CD16.8	Reg 22 Attachment D - Reptile method statement
CD16.9	Reg 22 Attachment E part 1 – Ecology Update Report
CD16.10	Reg 22 Attachment E part 2 – Biodiversity Net Gain
CD16.11	Reg 22 Attachment F – Non-Technical Summary
CD16.12	Reg 22 Attachment G part 1 – Hydrogeological Scenarios
CD16.13	Reg 22 Attachment G part 2 – Contractor Capability
CD16.14	Reg 22 Attachment G part 3.2 – WCM Pipejacking Methodology

CD16.15	Reg 22 Attachment G part 3.1 – Pipejacking Design Statement
CD16.16	Reg 22 Attachment G part 4 – Ecology Assessment
CD16.17	Reg 22 Attachment H – Historic Environment Addendum

## **ANNEX F**

### **SCHEDULE OF RECOMMENDED PLANNING CONDITIONS IN THE EVENT THAT PLANNING PERMISSION IS GRANTED**

- 1) For the purposes of conditions of this planning permission, the following definitions shall apply to the permission hereby granted:

#### **DEVELOPMENT PHASES:**

##### **Preliminary Phase**

The works associated with:

At the Main Mine Site - Securing the site, site investigation (contamination and geotechnical), remediation of contaminated land (including the installation of temporary covers), site clearance (removal of remnants of the sites former use as a chemical production factory. This phase precedes the Construction Phase.

At the Rail Loading Facility – Securing the site, archaeological investigation, site investigation (geotechnical), any archaeological excavation (required as a result of the archaeological investigation), any remediation of contamination (if there is any at presently unknown contamination), site clearance/soil strip and formation of soil storage bunds.

Along the route of the conveyor – Archaeological investigation, Site investigation (geotechnical), any archaeological excavation (required as a result of the archaeological investigation), any remediation of contamination (if there is any at presently unknown contamination)

##### **Construction Phase / Construction Works**

The phase / works associated with:

At the Main Mine Site – vehicular access improvements, creation of construction and operational parking areas and construction compounds, site levelling to formation layer and installation of services and drainage connections, the construction of all the built and engineered components of the development, removal / decommissioning of construction compounds.

At the Rail Loading Facility - creation of construction and operational parking areas and construction compounds, site levelling to formation layer and installation of services and drainage connections, the construction of all the built and engineered components of the development, removal and decommissioning of construction compounds and restoration of laydown areas/ construction compounds.

Along the line of the conveyor route – soil stripping and soil storage, haul roads, excavation, installation and burial of the conveyor culvert, installation of the conveyor infrastructure, soil replacement, and restoration. At the underground mining area - driving drifts to the target coal reserves, creation of pit bottom.

For each component of the development the Construction Phase follows the Preliminary Phase and precedes the Operational Phase.



### **Operational Phase**

The stage of the development comprising the Winning and Working of High Vol A Coking Coal from underground mining areas, the processing of coal to separate High Vol A Coking Coal and waste. The dispatch from site of coal products and the return underground and placement of waste/paste.

This Operational Phase follows the Construction Phase and precedes the Restoration Phase.

### **Restoration Phase**

Following the completion of the Operational Phase, the Restoration Phase comprises the removal of all above-ground buildings and structures, and removal of conveyor infrastructure (but retention of the conveyor culvert) and the restoration of the above ground components of the site in accordance with the approved restoration scheme.

## **DEVELOPMENT COMPONENTS:**

### **Main Mine Site (MMS)**

That part of the development site which accommodates the mine portals, coal handling and processing plant, offices and other development associated with the administration and operation of the mine as illustrated on drawing reference 869/AM/002 Rev E and which includes the landscape mounds to the north and south of the buildings, plant and equipment.

### **Rail Loading Facility (RLF)**

The facility to be used for taking coal transported by the conveyor and loading it onto trains, including the rail loading building, the railway sidings, the RLF office and RLF Conveyor access station and ancillary development as illustrated on drawing 869/AR/002 Rev C and including the land formerly occupied by the Main Band colliery.

## **MINE PRODUCTION:**

### **High Vol A Coking Coal**

Coal with particular physical and chemical characteristics that makes it suitable for use in the production of coke for steel-making and separated from reject material during processing at the Coal Handling and Processing Plant. For the avoidance of doubt 'High Vol A Coking Coal' shall be defined as having [a maximum ash content of 8% and a maximum sulphur content of 1.6% and an average (mean) sulphur content of no more than 1.4%.

### **Winning and Working of Minerals / Mineral Extraction**

The Winning of Minerals comprises the driving of drifts and installation of infrastructure to reach and access the mineral targeted for extraction. The Working of Minerals or Mineral Extraction is the extraction of the target mineral.

## **Approved Plans and Documents**

- 2) The development shall be carried out in accordance with the approved documents and plans, hereinafter referred to as the approved scheme. The approved scheme shall comprise the following:

The submitted planning application form

Plans numbered and named:

869/AP/001 Rev F Location Plan & Planning Application Boundary  
869/AP/002 Rev D Sandwith Anhydrite Mine Abandonment Plan  
869/AM/001 Rev C Main Mine Site - Existing Plan  
869/AM/002 Rev F Main Mine Site - Proposed Plan  
869/AM/003 Rev C Main Mine Site - Construction Phase Drawing 1  
869/AM/004 Rev E Main Mine Site - Construction Phase Drawing 2  
869/AM/005 Rev C Main Mine Site - Construction Phase Drawing 3  
869/AM/006 Rev D Main Mine Site - Site cross sections  
869/AM/007 Rev C Main Mine Site - Existing Site Topography  
869/AM/008 Rev D Main Mine Site - Finished Level Cut and Fill Representation  
869/AM/010 Rev A Main Mine Site - Site Entrance  
869/AM/011 Rev A Main Mine Site - Office and change building, Proposed elevations  
869/AM/012 Rev A Main Mine Site - Office and change building, Proposed Plans  
869/AM/013 Rev A Main Mine Site - Gatehouse, Proposed Plan & elevations  
869/AM/015 Rev A Main Mine Site- Workshop, Proposed Plan & elevations  
869/AM/017 Rev A Main Mine Site - East (S) drift canopy, Proposed plan and elevations  
869/AM/019 Rev A Main Mine Site - Fan House, Proposed plan and elevations  
869/AM/021 Rev A Main Mine Site - Auxiliary power plant - Gas, Proposed plan & elevations  
869/AM/023 Rev A Main Mine Site - Auxiliary power plant - Diesel, Proposed plan & elevations  
869/AM/025 Rev A Main Mine Site - Substation, Proposed plan & elevations  
869/AM/027 Rev E Main Mine Site - Clean/raw coal & CHPP building, Proposed Plan  
869/AM/028 Rev C Main Mine Site - Clean/raw coal & CHPP building, Proposed elevations 1 of 2  
869/AM/029 Rev D Main Mine Site - Clean/raw coal & CHPP building, Proposed elevations sheet 2 of 2  
869/AM/030 Rev C Main Mine Site - CHPP Access & Welfare building, Proposed Plan & elevations  
869/AM/031 Rev C Main Mine Site - Methane Management and Reject Store, Proposed plan  
869/AM/032 Rev C Main Mine Site - Methane Management and Reject Store, Proposed elevations  
869/AM/033 Rev A Main Mine Site - Water Storage Tank- Proposed Plan & Elevation  
869/AM/034 Rev A Main Mine Site - RLF Conveyor drive building, Proposed plan & elevations  
869/AM/038 Rev A Main Mine Site - (East) N Drift Access, Proposed Plan & elevations  
869/AM/040 Rev C Main Mine Site - External Lighting Layout  
869/AM/041 Rev H Main Mine Site - Proposed Landscaping Plan  
869/AM/042 Rev E Main Mine Site - Restoration Plan  
869/AM/201 Rev B Main Mine Site - South Landscape Mound Cross Sections

869/AC/001 Rev F RLF Conveyor Culvert - Existing Plan  
869/AC/002 Rev G RLF Conveyor Culvert - Proposed plan  
869/AC/003 Rev C RLF Conveyor Culvert - Construction Phase drawing  
869/AC/006 Rev A RLF Conveyor Culvert - Typical Construction Phase  
Cross Sections  
869/AC/008 Rev A RLF Conveyor Culvert - Intermediate station  
869/AC/009 Rev A RLF Conveyor Culvert - Conveyor Access Station at Rail  
Loading Facility  
869/AR/001 Rev C Rail Loading Facility - Existing Plan and Topography  
869/AR/002 Rev C Rail Loading Facility - Proposed Plan  
869/AR/003 Rev B Rail Loading Facility - Construction Phasing Plan  
869/AR/006 Rev B Rail Loading Facility - Site Cross sections  
869/AR/007 Rev C Rail Loading Facility - Lighting  
869/AR/008 Rev A Rail Loading Facility - Site Entrance  
869/AR/009 Rev A Rail Loading Facility - Rail loading building, Plan and  
elevations  
869/AR/011 Rev A Rail Loading Facility - Office & Welfare Facilities, Plan  
and elevations  
869/AR/012 Rev C Rail Loading Facility - Proposed screen Tree Planting  
869/AR/013 Rev I Rail Loading Facility - Post Construction Restoration  
869/AR/014 Rev L Rail Loading Facility - Post Decommissioning Restoration  
869/AO/001 Rev D Underground Mining - Onshore and Offshore Mining  
Areas  
869/AO/002 Rev D Underground Mining - Access to Onshore and Offshore  
Mining Areas  
869/AO/003 Rev D Underground Mining - Inseam Access Routes Onshore  
to Offshore  
869/AO/004 Rev D Underground Mining - Onshore cross measure drift  
zone

Figure 14.1 Rev 01 Noise Monitoring and Receptor Locations

Additional Information / Documents (as amended): Planning Statement ES  
Chapter 5 – Project Description ES Chapter 8 – Road Transport ES Chapter  
9 – Rail Transport ES Chapter 11 – Ecology ES Chapter 12 – Hydrology and  
Hydrogeology ES Chapter 13 – Land Contamination ES Chapter 14 – Noise  
and Vibration ES Chapter 15 – Air Quality ES Chapter 16 – Historic  
Environment ES Chapter 17 – Marine Environment ES Chapter 19 –  
Greenhouse Gas Emissions Coal Mining Risk Assessment – ref WCM-PA-  
EIA-CMRA Process Change

**Plans to be inserted if pipe-jacking is chosen**

869/AC/010 C Roskapark conveyor cross section  
869/AC/011 C Bellhouse Gill conveyor cross section  
869/AR/015 A Rail Loading Facility - Post Construction Restoration pipe-  
jack option  
869/AR/016 B Rail Loading Facility - Post Decommissioning Restoration  
pipe-jack option

**Timescales**

- 3) The development shall commence within 3 years of the date of this permission. The Mineral Planning Authority shall be notified in writing of the date of commencement of Construction Works at least 7 days, but not more than 21 days, prior to the commencement of such works.

- 4) The permission hereby granted authorises the Winning and Working of High Vol A Coking Coal suitable for use in steel manufacture only.
- 5) The mining operational phase hereby approved shall cease by no later than 31 December 2049. Following the cessation of operations, the site shall be fully restored in accordance with the approved scheme within 24 months of the date of cessation.

**Construction and Environment Management Plan (see Schedule ref duplication)**

- 6) No development shall take place until a Construction and Environment Management Plan (CEMP) has been submitted to and approved in writing by the Mineral Planning Authority. The CEMP shall, for the Preliminary and Construction Phases, include details of all on-site Construction Works, including remediation works, post-construction reinstatement, drainage, mitigation, and other restoration, together with details of their timetabling including details of:
  - a) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures;
  - b) provisions for environmental emergency planning and environmental incident response arrangements;
  - c) Considerate Constructors scheme and compliance arrangements;
  - d) Environmental Permits, Licences and Consents required;
  - e) Code of Construction Practice (relating specifically to local community impacts and management);
  - f) liaison with the public and contact information for community concerns;
  - g) the programme of Construction Works;
  - h) parking areas for the vehicles of construction workers and visitors;
  - i) areas to be used for the loading and unloading of plant and materials;
  - j) details of site offices and welfare facilities;
  - k) areas for the storage of plant and materials used in construction of the development;
  - l) formation of the construction compound(s) and access tracks and any areas of hardstanding;
  - m) a scheme for the management of noise during construction;
  - n) a scheme for the management of air quality and dust during construction;
  - o) site signage;
  - p) how the environmental aspects of historic environment works will be managed;
  - q) the management of waste on site, including provision for waste segregation, compliance with Duty of Care regulations;

- r) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;
- s) management of construction traffic;
- t) ecological management including plans for the monitoring of:
  - i) Pow Beck surface water discharge flows and water quality;
  - ii) surface water quality in attenuation pond(s) on Main Mine Site prior to discharge to the Surface Water Outfall;
  - iii) marine water quality and scouring around the surface water discharge pipe;
- u) seasonal and daytime restrictions on certain activities to mitigate for effects on ecological receptors;
- v) covering or infilling of any trenches overnight to prevent animals being trapped and/or provision of a ramp to allow escape;
- w) contaminated land management
- x) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
- y) the appearance, erection and maintenance of boundary treatments and security fencing & site signage and the timescales for their erection and removal;
- z) the management of vermin;
- aa) working hours;
- bb) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;
- cc) details of wheel washing facilities including any drainage requirements and maintenance;
- dd) cleaning of site entrances and the adjacent public highway;
- ee) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway;
- ff) all fixed lighting and procedures to ensure temporary lighting equipment is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife; and
- gg) post-construction restoration / reinstatement of any temporary working areas.

Once approved, the CEMP shall be implemented and the development shall be undertaken in accordance with the approved CEMP.

### **Construction Traffic Management Plan**

- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Mineral Planning Authority. The CTMP shall include details of:

- a) the construction of the site accesses and the creation, positioning and maintenance of associated visibility splays;
- b) access gates, shall be hung to open away from the public highway no less than 10m from the carriageway edge and shall incorporate appropriate visibility splays;
- c) the pre-construction road condition established by a detailed survey for accommodation works within the highways boundary conducted with a Highway Authority representative and shall include confirmation of the routes used and network to be assessed;
- d) details of road improvement, construction specification, strengthening, maintenance and repair commitments if necessary as a consequence of the development;
- e) details of proposed crossings of the highway verge;
- f) areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the development;
- g) the surfacing of the access roads from the public highway into the site, which shall extend for a minimum of 25m from the edge of the carriageway;
- h) construction vehicle routing;
- i) the management of junctions to and crossings of the public highway and other public rights of way/footway;
- j) the scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs and banksman.
- k) parking areas (including cycle parking) for the vehicles of construction workers and visitors;
- l) details of wheel washing facilities including any drainage requirements and maintenance;
- m) cleaning of site entrances and the adjacent public highway; and
- n) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway.

The approved CTMP shall be implemented and the development shall be carried out in accordance with the approved details.

### **Ecology mitigation - Construction**

- 8) No development shall take place until details of a scheme for habitat creation, maintenance, monitoring and management (HCMMM) has been submitted to and approved in writing by the Mineral Planning Authority. The HCMMM scheme shall include details of:
  - a) Reptile Survey and Mitigation Plan prior to commencement of any remediation, site investigation, site clearance or Construction Works. Such Plan shall include details of the proposed translocation of reptile species to "Translocation Site 1" to the immediate west of the Main Mine Site and "Translocation Site 2" within the grounds of 'Lake View' cottage as identified in the report by BSG Ecology entitled "Reptile Translocation and habitat Creation Method Statement" dated 17 August 2021;



- b) A pre-commencement survey for badgers on the application site and within a 50m buffer of the planning permission boundary;
- c) A detailed pre-commencement otter survey which shall cover all watercourses within the Zone of Influence of the application, and at least 250m up and downstream of the proposed developments and within a 100m terrestrial buffer zone away from each watercourse to search for natal holts;
- d) A pre-felling survey for red squirrel in all woodland affected by the conveyor route to check for dreys and other signs of use by red squirrel. The survey report shall also assess any temporary fragmentation effects that may be caused;
- e) A pre-felling survey for bat roosting and nesting birds. The survey report shall identify mitigation measures and any necessary buffer zone required; and
- f) set out the measures for the maintenance of the areas of habitat creation as illustrated on drawings 869/AM/041 2948 Rev H and 869/AR/013 Rev I and shall demonstrate a net gain for biodiversity. Areas for habitat creation shall be taken to include Species Rich Grassland, Wet Grassland, new hedgerow planting, native woodland planting and ancient woodland mitigation planting and shall also provide for additional hedgerow planting to offset the section of hedgerow that would be removed in the vicinity of the railway sidings.

No development shall occur until those aspects of the HCMMM relating to the Reptile Survey and Mitigation Plan have been carried out and duly completed at the identified translocation sites. In all other respects, the approved HCMMM scheme shall be implemented and the development shall be carried out in accordance with the approved details.

### **Landscape Management Plan**

- 9) No development shall take place until a Landscape Management Plan (LMP) for the development has been submitted to and approved in writing by the Mineral Planning Authority. The LMP shall detail all proposed landscaping measures to minimise the impacts of the development during both the Construction and Operational Phases and shall include:
  - a) temporary and permanent security and other fencing design details, including location, purpose, height and type of fencing and finish;
  - b) the annual maintenance / management regime for all landscaped areas;
  - c) the measures to monitor the health and progress of the planting within landscaped areas and procedure for reporting the outcomes of monitoring to the Mineral Planning Authority including trigger levels for remedial action;
  - d) The remedial measures to be taken in the event that the deterioration of landscaped areas exceeds trigger levels; and
  - e) A timetable for the implementation of the measures identified in a) to d) above.

The development shall thereafter be carried out and the landscaping maintained and replanted in accordance with the approved details.



### **Archaeology**

- 10) No development shall take place within the areas of the site that require archaeological mitigation as outlined in paragraph 16.9 of the ES 'Further Mitigation' (chapter 16), until the applicant has secured the implementation of a programme of archaeological work in accordance with Written Schemes of Investigation (WSI) which have been submitted to and approved in writing by the Mineral Planning Authority. The approved programme shall be carried out in its entirety prior to works to those areas of the site that require archaeological mitigation and the development shall thereafter be carried out in accordance with the approved details.

Where significant archaeological remains are revealed by the programme of archaeological work, the following shall be carried out within one year of the completion of that programme on site, or within such timescale as otherwise agreed in writing by the Mineral Planning Authority:

- a) an archaeological post-excavation assessment and analysis;
- b) the preparation of a site archive ready for deposition at a store;
- c) the completion of an archive report; and
- d) preparation and submission of a report of the results for publication in a suitable specialist journal

### **Contaminated Land and Remediation**

- 11) Remediation strategies shall be prepared for each of the components of the development identified below. The remediation strategies shall be submitted to, and approved in writing by, the Mineral Planning Authority prior to the Preliminary Phase (which for this condition only shall not include site investigation (contamination or geotechnical)) or the commencement of Construction Works (whichever is the sooner) of each of the following components:

- a) Main Mine Site;
- b) Subsurface Conveyor between the Main Mine Site and Rail Loading Facility; and
- c) Rail Loading Facility.

The remediation strategy for each component shall set out the measures to deal with the risks associated with contamination of that part of the site and shall include the following components:

- (i) A preliminary risk assessment which identifies:
  - a) All previous uses;
  - b) Potential contaminants associated with those uses;
  - c) A conceptual model of the site indicating sources pathways and receptors; and
  - d) Potentially unacceptable risks arising from contamination at the site.
- (ii) A site investigation scheme based upon the preliminary risk assessment to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. The site investigation schemes for each component of the development shall be informed by the preliminary risk assessment and include all of the following elements, unless any element(s) is/are deemed unnecessary

by the Mineral Planning Authority in the light of the results of the preliminary risk assessment:

- a) programme, timing and locations of all proposed site investigation works;
- b) sampling and laboratory/field testing methodology employed to ensure that the locations and methods of site investigation (for the main mine site these should be designed so that they can be used to refine the existing 3-dimensional conceptual site model of the site);
- c) surveying/monitoring techniques and sampling methods and equipment for chemical and radiological assessment of ground conditions in, on and under the land;
- d) quality control protocols for sampling and laboratory analysis; and
- e) pollution prevention measures to be employed to minimise the potential for the mobilisation of any pollutants which may be encountered during the site investigation.

The site investigation shall be designed and carried out in accordance with the guidance presented in CLR11 and BS10175, considering both potential risks identified in the desk study and details approved in the scheme. Changes to any of the details of this scheme which may result from initial findings of the scheme or for other reasons shall be agreed in writing in advance with the Mineral Planning Authority. Following completion of the site investigation, an interpretive report will be prepared detailing the findings of the site investigation and including completion of an initial risk assessment to quantify risks associated with contaminants in soil and groundwater. The report will include appendices of factual data e.g. logs, records and sample analysis on which the interpretive report is based. Any quantitative risk assessment will include a sensitivity analysis and justification of input parameters. The findings will need to acknowledge the existing condition of undisturbed land and, dependent on the findings of this initial phase of site investigation, need to identify additional phases of more detailed site investigation that may be required to better assess the volumes and extents of any contamination hotspots identified.

- (iii) An options appraisal and remediation strategy based upon the results of the site investigation and the detailed risk assessment. The options appraisal and remediation strategies for each component of the development shall be informed by the findings in stages (i) and (ii) above. The options appraisal and remediation strategies for each component shall include all of the following elements unless any element(s) is/are deemed unnecessary by the Mineral Planning Authority in the light of the results of stages (i) and (ii) above:

- a) Utilising the historical data available for the site, together with the results from the investigation work undertaken earlier, refine the existing conceptual site model for the site, and complete an initial qualitative risk assessment to identify potential contaminants of concern which may pose a risk to identified receptors (including human health, controlled waters, and ecological receptors) during the construction, operation and decommissioning of the development. The risk assessment shall interpret available data

sources to assess the presence of contamination over the entirety of the site, its locations, depths, and concentrations.

- b) Assessment of options for remediation/mitigation measures to be employed during construction, operation, decommissioning and restoration of the development to minimise the risks identified. The assessment shall include:
  - i) an examination of the options for the removal of concrete slabs to eliminate/minimise the potential mobilisation of contaminants;
  - ii) provide details of the measures, locations, and program for the remediation or disposal of all contaminated material;
  - iii) an assessment of the likelihood of contaminants to become mobilised, the possible pathways along which mobilised contaminants may travel, the concentrations of contaminants and timescales over which receptors might be exposed, the sensitivity of potential receptors to exposure to contaminants of the type which may be mobilised, and the significance of the impacts on receptors; and
  - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy are complete and identifying any requirements for longer term monitoring of pollutant linkage, maintenance and arrangements for contingency action.

Once approved, the remediation works shall be implemented in full and in accordance with the approved details prior to Construction Works commencing of the element of the site to which they relate.

#### **Details of Site Investigation Rain Protection Covers**

- 12) Prior to the commencement of the Preliminary Phase or any site investigation works (whichever is the sooner), a scheme providing details of the temporary rain protection covers shall be submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
  - a) Dimensions, finish, colour, locations and approximate duration of each position; and
  - b) Measures to be implemented to prevent surface water ingress into the area over which the cover is positioned; and
  - c) A timetable for the implementation/provision of the above measures.

The development shall be undertaken in accordance with the approved details.

#### **Restoration Scheme – Preliminary Phase**

- 13) No development shall take place until a scheme for the restoration of the site which shall be implemented in the event that the development does not progress beyond the Preliminary Phase (Preliminary Phase Restoration Scheme) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:

- a) The ground levels / landform to be created;
- b) Measures to ensure that no new pathways have been created to allow legacy contamination to migrate from the site;
- c) The depths of subsoils and topsoils to be placed or replaced over the site area;
- d) The cultivation steps and soil treatments to be carried out following soils placement;
- e) Seed mixes and seeding application rates;
- f) Tree/shrub planting species mix, spacing, size, method of planting, protection measures; and
- g) A programme for carrying out the steps above.

In the event that the development does not progress beyond the Preliminary Phase, the Preliminary Phase Restoration Scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 89.

#### **Coal Mining Risk Assessment**

- 14) No development shall take place until the site investigation proposed in Table 2-2 of the Coal Mining Risk Assessment (with the exception of those relating to mine shaft 297514-001) has been undertaken and a report setting out the findings of the investigation and results of gas monitoring included as part of a scheme of remedial works has been submitted to and approved in writing by the Mineral Planning Authority. The scheme of remedial works shall include timescales for the completion of the works. Once approved, the remedial works shall be implemented in accordance with the approved scheme.

#### **Community Liaison Group**

- 15) No development shall take place until a scheme detailing the establishment and operation of a community liaison group (CLG) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be in the form of terms of reference for the CLG which shall include reference to review monitoring, updating and implementation of a Health Impact Assessment (HIA) and Travel Plans. The terms of reference shall set out:

- a) the aims and purposes of the group;
- b) the membership of the group;
- c) the operation of the group (including regularity of meetings) / standard agenda items and voting;
- d) accountability of the group;
- e) publicity of meetings;
- f) recording of meetings; and
- g) access to the record of meetings.

Once approved the CLG scheme shall be implemented in accordance with the approved terms of reference throughout the construction, operation and restoration of the development.

### **Access and Parking**

- 16) No other development shall take place until the works to improve the accesses have been completed in accordance with approved drawings reference 869/AM/002 Rev F, 869/AM/010 Rev A, 869/AR/002 Rev C, 869/AR/008 Rev A and 869/AC/008 Rev A. The construction parking areas approved under condition 7 (Construction Traffic Management Plan) shall be retained until construction has been completed. Operational parking areas shall be provided in accordance with approved drawings reference 869/AM/002 Rev F and 869/AR/002 Rev C prior to the site entering use. The operational parking areas and access to the site shall be retained and be capable of use throughout the Operational Phase of the development.

### **Drainage and Surface Water Management – Main Mine Site**

- 17) No Construction Works shall take place until a scheme (Main Mine Site (MMS) Surface Water Management Plan) detailing how surface water flows will be managed at the main mine site during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The MMS surface water management plan shall include the following and be implemented before construction starts:
- a) An assessment of potential flows that would need to be managed at the main mine site during operation;
  - b) Details of the measures which would be put in place to capture, manage, and discharge flows identified in part a above;
  - c) Details of all measures which would be put in place to prevent surface water discharging onto or off the highway;
  - d) A programme for the installation, maintenance and removal of the measures set out in part b above;
  - e) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;
  - f) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works; and
  - g) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).

There shall be no surface water discharge to either Sandwith Beck or Rottington Beck. Once approved, this surface water management plan shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.

### **Drainage and Surface Water Management – Rail Loading Facility**

- 18) No Construction Works shall take place until a scheme (RLF Surface Water Management Plan) detailing how surface water flows will be managed at the Rail Loading Facility (RLF) during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The RLF surface water management plan shall include the following and be implemented before construction starts:
- a) An assessment of potential flows that would need to be managed at the main mine site during operation;
  - b) Details of the measures which would be put in place to capture,

- manage, and discharge flows identified in part a above;
- c) Details of all measures which would be put in place to prevent surface water discharging onto or off the highway;
- d) A programme for the installation, maintenance and removal of the measures set out in part b above;
- e) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;
- f) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works;
- g) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).

Once approved, this surface water management plan shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.

### **Drainage and Surface Water Management – Conveyor**

- 19) No Construction Works shall take place to construct the Conveyor until full drainage design details for the conveyor system and route have been submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
  - a) The results of a suitably designed ground investigation to determine ground and groundwater conditions and the provision of a hydrogeological assessment informed by such investigations;
  - b) Full specification of the design of the drainage of the conveyor culvert including longitudinal and cross sections;
  - c) The identification of existing points where ditches, pipes, watercourses and surface water drains cross the route;
  - d) Details of how any intercepted features noted in (c) are to be cut and sealed within the works boundary and any flows intercepted and subsequently managed;
  - e) Specification of any groundwater management measures along any part of the route to be constructed;
  - f) Potential routes where surface water runoff may enter the works site shall be identified with references to surface water flood risk maps and any local knowledge;
  - g) Measures, including bunding, ditches or construction of temporary French drains, shall be employed to collect such water and convey it to areas where it may be stored, settled or otherwise treated to remove sediment prior to discharge;
  - h) Water pollution control measures to minimise sediment release and discharge during construction; and
  - i) The phasing/programme for the implementation of any measures necessary to be installed/provided prior to the commencement of the construction of the conveyor.



The conveyor system and route shall be constructed in accordance with the approved details.

### **Management and Maintenance of Sustainable Drainage Systems**

- 20) No Construction Works shall take place until a Sustainable Drainage Management and Maintenance Plan (SDMMP) of the Main Mine Site, Rail Loading Facility and conveyor route for the lifetime of the development has been submitted to and approved in writing by the Mineral Planning Authority. The SDMMP shall include as a minimum:
- a) Arrangements for adoption of the sustainable drainage system by an appropriate public body or statutory undertaker, or, management and maintenance by a Management Company;
  - b) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime. The development shall subsequently be completed, maintained and managed in accordance with the approved plan;
  - c) Details of the permeable paving to be used in the parking areas on the main mine site; and
  - d) The programme for the implementation of the requirements of the SDMMP.

Once approved the scheme shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.

### **Marine Monitoring Plan**

- 21) No surface water discharge from the site to the marine environment shall take place until a Marine Monitoring Plan has been submitted to and approved in writing by the Mineral Planning Authority. The Plan shall indicate the type, frequency and duration of monitoring to be undertaken and shall include collation of baseline evidence of the marine environment within the Zone of Influence of the proposed discharge to Saltom Bay, to include water quality, substrate and marine flora and fauna. Monitoring in accordance with the approved scheme shall be undertaken for the duration of the development.

### **MMO Licence.**

- 22) No Construction Works shall take place, until such time as
- i) a Licence from the Marine Management Organisation (MMO) is granted for the proposed extraction of High Vol A Coking Coal from under the seabed, which forms part of this development proposal, but is not permitted under the planning permission hereby approved, or
  - ii) if a Licence is not required, that this information has been submitted to and agreed in writing by the Minerals Planning Authority.

### **Construction Travel Plan**

- 23) No Construction Works shall take place until a Construction Travel Plan (CTP) has been submitted to and approved in writing by the Mineral Planning Authority. The CTP shall cover the Construction Phase of the development and shall include details of:



- a) The measures to be undertaken to promote the use by staff of public transport, cycling, walking and sharing vehicles to the site;
- b) The measures to manage shift patterns to avoid cumulative traffic issues; and
- c) The measures to be employed to monitor the effectiveness of the CTP and reporting to the outcomes of the Mineral Planning Authority.

The development shall be carried out in accordance with the approved CTP.

#### **Mineral Conveyor Construction**

- 24) No construction works in relation to the construction of the mineral conveyor shall take place until details of the final design, route and method of construction have been submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
- a) drawing(s) to illustrate the vertical and horizontal alignment of the conveyor culvert for the entire length of the conveyor at 25m intervals;
  - b) construction techniques;
  - c) soil handling techniques;
  - d) soil storage locations;
  - e) management of excavated material;
  - f) temporary haul roads;
  - g) construction and operational access arrangements;
  - h) highway and services crossings;
  - i) water management; and
  - j) mitigation for impacts to ancient woodland.

The conveyor culvert and approved construction method shall be implemented and the development shall be undertaken in accordance with the approved details.

#### **Landscape Planting and Seeding Programme – Main Mine Site**

- 25) The Landscape Planting and Seeding for the Main Mine Site as identified on drawing 869/AM/41 Rev H shall be fully implemented in accordance with a programme to be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of Construction Works on the Main Mine Site. The programme shall provide for planting and seeding to be undertaken at the earliest available opportunity. Notwithstanding the details shown on drawing 869/AM/41 Rev H, full details of the landscaping and tree planting along the frontage of the site with High Road shall be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of Construction Works on the Main Mine Site. For seeding and planting on the landscape mounds and alongside the frontage of the site with High Road, this shall be taken to mean the first available planting/seeding season following completion of the construction of the mounds and provision of a suitable layer of soil. For all other seeding and planting this shall be taken as meaning the first available season following the completion of any Construction Works which are required in advance of tree planting and seeding taking place. The approved details shall be implemented in full and the development shall be undertaken in accordance with the approved details.

### **Landscape Planting and Seeding Programme – Conveyor Route and Rail Loading Facility**

- 26) The Landscape Planting and Seeding for the Conveyor Route and Rail Loading Facility as identified on drawing 869/AR/013 Rev I shall be fully implemented in accordance with a programme to be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of Construction Works at either the Rail Loading Facility or the conveyor route. The programme shall provide for planting and seeding to be undertaken at the earliest available opportunity. For the replacement planting at Bellhouse Wood and the mitigation planting to the east of the Cumbrian Coast Rail Line (also illustrated on Drawing 869/AR/012 Rev C) this shall be taken to mean the first available planting/seeding season following the completion of the Preliminary Phase. For all other tree and hedgerow planting this shall be taken as the first available planting season following the completion of the relevant construction activity and in the case of the part of the application site which relates to the former Main Band Colliery seeding and planting shall follow in the first available planting season following the completion of the works to break up the existing concreted pads and the importation, placement and preparation of sub and topsoils.

### **Main Band Colliery – Restoration Works**

- 27) Prior to the commencement of Construction Works at the Rail Loading Facility, a scheme and programme of works to restore the Main Band Colliery Site shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme and programme shall comprise:
- a) The method for the breaking up of the existing concrete pads;
  - b) The depth of subsoil to be spread over the site;
  - c) The depth of topsoil to be spread over the site;
  - d) The work to prepare the soils to alleviate soils compaction, remove from soils any potential impediments to cultivation, works to prepare a tilth suitable for seeding; and
  - e) A programme for the works set out above and for the planting and seeding of the site.

The restoration of the part of the former Main Band Colliery site within the application site shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 86.

### **Ancient Woodland (non pipe-jacking)**

- 28) Prior to the commencement of any construction activity which would affect any area of ancient woodland, a scheme and programme detailing the measures to manage the construction of the conveyor within the area of ancient woodland at Bellhouse Gill Wood and at Roska Park Wood shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
- a) A programme of the following works;
  - b) a survey to identify all individual trees which would need to be removed;
  - c) the methods taken to ensure that only those trees identified above a

- removed;
- d) the methods taken to transport the removed trees from the ancient woodland site;
- e) The methods to be employed in stripping, removing and storing soils recognising that the surface layer of the woodland floor is likely to contain a seedbank of woodland ground floor species which shall be retained for recultivation and be spread around replacement planting;
- f) The methods of construction for the conveyor culvert within the ancient woodland;
- g) The methods for replacing soils and preparing soils for replanting, noting e) above; and
- h) A replanting scheme and schedule including species mix, spacing, plant sizes, method of planting, and support and protection measures.

The approved details shall be implemented in full and the development shall be undertaken in accordance with the approved details.

- 29) Prior to the commencement of any works within the ancient woodland, a scheme and programme of replacement planting within the area of Benhow Wood identified as 'Compensation planting area for Woodland and Ancient Woodland' on drawing 869/AR/013 Rev I shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:

- a) A programme for the works;
- b) A survey to establish the location, species, and condition of all existing trees within the replacement planting area; and
- c) A planting design and schedule including species mix, spacing, plant sizes, method of planting, support and protection measures.

All planting shall be carried out in accordance with the approved programme and planting scheme.

- 30) The trees planted in accordance with conditions 28 and 29 above shall be maintained for the duration of the development. Maintenance of the planting shall include an annual check on the condition of all trees planted, weed-killing, and maintenance and/or replacement of protection and support measures and thinning as necessary. Any trees which die or become damaged or diseased during the duration of the development shall be replaced with plants of the same species or any such other species as may be agreed in writing with the Mineral Planning Authority.

### **Ancient Woodland (pipe-jacking)**

- 28(A) Prior to the commencement of any construction activity, a scheme detailing the methods of construction for the conveyor culvert beneath the ancient woodland shall be submitted to and approved in writing by the Mineral Planning Authority. The submitted scheme shall ensure that a 15m standoff is maintained between the edges of the Benhow Wood and Roska Park Wood and pipe jacking related surface level activity.

The approved details shall be implemented in full and the development shall be undertaken in accordance with the approved details.

- 29(A) Prior to the commencement of any works within the ancient woodland, a scheme and programme of replacement planting within the area of Benhow Wood identified as "Biodiversity gain planting" on drawing

869/AR/013 Rev G shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:

- a) A programme for the works;
- b) A survey to establish the location, species, and condition of all existing trees within the replacement planting area; and
- c) A planting design and schedule including species mix, spacing, plant sizes, method of planting, support and protection measures.

All planting shall be carried out in accordance with the approved programme and planting scheme.

- 30(A) The trees planted in accordance with condition 29 above shall be maintained for the duration of the development. Maintenance of the planting shall include an annual check on the condition of all trees planted, weed-killing, and maintenance and/or replacement of protection and support measures and thinning as necessary. Any trees which die or become damaged or diseased during the duration of the development shall be replaced with plants of the same species or any such other species as may be agreed in writing with the Mineral Planning Authority.

#### **Construction details of buildings and structures**

- 31) No construction of buildings and structures shall take place until full details of finished floor levels and ground profile levels have been submitted to and approved in writing by the Mineral Planning Authority. The details shall be provided for all parts of the development and the following levels shall be recorded as metres and centimetres Above Ordnance Datum:
- a) Finished floor levels and maximum height of all buildings and structures;
  - b) Levels and fall for all areas of car parking and hardstanding; and
  - c) Levels and contours for all other areas of the site.

The development shall be carried out in accordance with the approved details.

#### **Materials and finishes**

- 32) No construction of buildings or structures shall take place until a scheme providing full details of the materials to be used on all external surfaces of all buildings and structures (including the roofs), has been submitted to and approved in writing by the Mineral Planning Authority. The details shall include their colour, texture, profile and finish. The scheme shall also include a rationale and justification for the proposed details, including colours of proposed materials. The development shall thereafter be carried out in accordance with the approved details.

#### **Secure By Design**

- 33) No construction of buildings shall take place until a scheme to demonstrate that the development is Secure by Design has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following details:
- a) Perimeter security fences;
  - b) Security lighting;
  - c) Building resistance to burglary;
  - d) Internal access controls;

- e) Consideration of deployment of an intruder alarm system;
- f) Waste bin management;
- g) Secure storage for staff personal belongings;
- h) Consideration for deployment of CCTV, observing exterior and internal communal spaces; and
- i) Consideration of the safety of pedestrians and cyclists.

The development shall thereafter be carried out in accordance with the approved details.

### **Operational Lighting Scheme**

- 34) No external lighting shall be installed for the operational phase of the development until a scheme and programme for external lighting has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be designed in accordance with Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light and shall generally accord with the details shown on drawing 869/AM/040 Rev C – Main Mine Site External Lighting Layout and drawing 869/AR/007 Rec C – Rail Loading Facility External Lighting Plan. The scheme shall also include the following detail:
- a) Location, type, purpose and intensity of lights;
  - b) Control mechanism (i.e. switch, timer, sensor) and anticipated duty cycles;
  - c) Types of masking or baffle at head;
  - d) Type, height and colour of lighting columns / bollards;
  - e) Number and size of lighting units per column / bollard;
  - f) Light spread diagrams showing lux levels at the site boundary and assessment of the impact of these on adjacent land uses, railway line, habitat and nearby residential properties;
  - g) Phasing of the implementation of the lighting scheme;
  - h) procedures to ensure lighting equipment is positioned so as to minimise nuisance or disturbance to surrounding properties, public highways or wildlife; and
  - i) Measures to ensure that lighting installed at the Rail Loading Facility is directed or shielded to prevent dazzle of drivers on the operational railway.

All external lighting shall be designed not to illuminate potential bat habitat (e.g. hedgerows and trees). The lighting shall be installed and operated in accordance with the approved scheme and programme.

### **Cycle Storage**

- 35) Prior to the commencement of Construction Works at the Rail Loading Facility, a scheme for cycle storage at the Rail Loading Facility to cover the construction and operational phases of the development shall be submitted to and approved in writing by the Mineral Planning Authority. The cycle storage shall be provided in accordance with the approved scheme.

### **Gas pipeline**

- 36) No Construction Works shall take place within 25 metres of the high pressure gas pipeline until a Gas Pipeline Protection Scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall set out the measures for the protection of the high pressure

gas pipeline in the vicinity of the main mine site and conveyor route during the construction and operation of the development. The scheme shall also include detailed design proposals in respect of the conveyor design and its relationship to the gas pipeline.

The approved scheme shall be implemented and the development shall thereafter be carried out in accordance with the approved details.

### **Materials Management Plan**

- 37) Prior to the commencement of Construction Works, a Materials Management Plan shall be submitted to, and approved in writing by the Mineral Planning Authority. The Materials Management Plan shall be developed following the site investigations and risk assessments and shall:
- a) Identify all locations (above and below ground) of the main mine site, conveyor and rail loading facility from which material will be excavated;
  - b) Utilising the information contained within the contaminated land investigation, identify those areas of excavation which may be subject to contamination;
  - c) For areas of excavation which are subject to contamination estimate the volume of material arising, the approximate volumes of material to be remediated on site and provisional volume to be disposed of off-site;
  - d) Illustrate where and how the remediation of contaminated material would take place;
  - e) Illustrate where and how remediated material would be re-used, including volumetric calculations to demonstrate that the material can be accommodated within the proposed area of use and any measures for containment for this material;
  - f) Detail the frequency of testing and testing specification for soils generated during the cut and fill operations, including how the materials are to be segregated and stored;
  - g) Identify screening criteria for assessment of whether the materials can be reused without treatment or mitigation;
  - h) For areas of excavation which are not subject to contamination provide the volume of material arising, and illustrate where and how non-contaminated material would be re-used including volumetric calculations to demonstrate that the material can be accommodated within the proposed area; and
  - i) Provide full construction details for the emplacement of materials to form any bunds on site. Such information shall include but not be limited to details of the quality of materials, drainage management, volumes and as-built plans.

The approved Materials Management Plan shall be implemented and the development shall be undertaken in accordance with the approved details.

### **Landfill Safeguarding Scheme**

- 38) Prior to the commencement of Construction Works, full details of any proposed works or development over or directly adjacent to the Marchon / UFlex and Hutbank landfills or any of their associated infrastructure shall be submitted to and approved in writing by the Mineral Planning Authority. The approved scheme shall be implemented and the development shall be undertaken in accordance with the approved details.



### **Construction – Site Waste Management Plan**

- 39) Prior to the commencement of Construction Works, a Site Waste Management Plan (SWMP) shall be submitted to and approved in writing by the Mineral Planning Authority. The SWMP shall include details of:
- a) the anticipated nature and volumes of waste that will be generated by construction work;
  - b) the measures to minimise the generation of waste as a result of demolition, building, engineering and landscape works;
  - c) measures to maximise the re-use on-site of such waste;
  - d) measures to be taken to ensure effective segregation at source of other waste arising during the carrying out of such works, including the provision of waste sorting, storage, recovery and recycling facilities as appropriate; and
  - e) compliance with Duty of Care Regulations.

The approved SWMP shall be implemented throughout the period of Construction Works on site.

### **Phasing and Management for Paste Placement**

- 40) Prior to the commencement of Construction Works, a phasing and management plan for the placement of paste in the mining voids shall be submitted to and approved in writing by the Mineral Planning Authority. The plan shall include details of the phasing of proposed filling activities, the volumes of paste to be transferred to the voids, the location and depth of the voids to be filled, an assessment of any risks associated with the transfer of paste to the identified voids and any mitigation measures necessary to ensure the transfer of paste to the voids to manage the risks identified.

The approved plan shall be implemented and the development shall be undertaken in accordance with the approved details.

### **Construction – Surface Water Quality Management Plan**

- 41) Prior to the commencement of Construction Works a scheme detailing how surface water flows will be minimised and managed during the Construction Phase of the development shall be submitted to and approved in writing by the Mineral Planning Authority. The Construction Phase surface water management plan shall include the following and be implemented before construction starts:
- a) An assessment of potential flows that would need to be managed at the main mine site, conveyor route and rail loading facility site during construction;
  - b) Details of the measures which would be put in place to capture, manage, and discharge flows from the component parts of the site identified in part a above;
  - c) A programme for the installation, maintenance and removal of the measures set out in part b above;
  - d) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;
  - e) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works; and



- f) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).

Once approved, the Construction Phase surface water management plan shall be implemented in full and the development shall be undertaken in accordance with the approved details.

#### **Construction – Foul Water Management Plan**

- 42) Prior to the commencement of Construction Works a scheme detailing how foul water flows will be managed during the Construction Phase of the development (i.e. all flows anticipated prior to the connection to mains sewer) shall be submitted to and approved in writing by the Mineral Planning Authority. The Construction Phase foul water management plan shall include the following:
  - a) An assessment of maximum foul water flows based upon estimates of numbers of construction workers at the main mine site, conveyor route and the rail loading facility;
  - b) Details of the measures which would be put in place to manage and discharge flows from the component parts of the site identified in part a above; and
  - c) A programme for the installation, maintenance and removal of the measures set out in part b above.

Once approved the Construction Phase foul water management plan shall be implemented in its entirety and the development shall be undertaken in accordance with the approved details.

#### **Heritage Trails & Paths**

- 43) Notwithstanding the trails and paths shown on approved plan 869/AM/041 Rev H, no Construction Works shall take place until a scheme and programme for the erection of interpretation boards for heritage assets and for the creation of heritage trails and paths at the Main Mine Site has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
  - a) The location of the interpretation boards;
  - b) The design, contents and construction of the interpretation boards;
  - c) The final alignment of routes for heritage trails and paths;
  - d) The details of the construction of the heritage trails;
  - e) The provisions for ensuring public access and maintenance of the trails;
  - f) A programme for the implementation of the scheme.

The development shall be implemented in accordance with the approved scheme and programme.

#### **Foul Water Drainage Scheme**

- 44) No Construction Works shall take place until a foul water drainage scheme (during the operation and restoration of the proposed mine) has been submitted to and approved in writing by the Mineral Planning Authority. The foul water drainage scheme shall include:
  - a) the location of the point of connection for foul water to the existing public sewer;

- b) the timing arrangements for the pumped foul discharge;
- c) the storage requirements for the pumped foul discharge; and
- d) the rate of discharge for the pumped foul discharge.

No surface water, land drainage or highway drainage shall connect with the existing public sewerage system. There shall be no connection of foul water to the public sewer other than in accordance with the Foul Water Drainage Scheme approved by the Mineral Planning Authority. The development shall be constructed and implemented in accordance with the approved details.

#### **Construction Phase – Restoration Scheme**

- 45) Prior to the commencement of the Construction Phase a scheme for the restoration of the site which would be implemented in the event that the development does not progress beyond the Construction Phase (Construction Phase Restoration Scheme) shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:
- a) The methods for the removal of all buildings, equipment, plant and hardstandings from the site for each stage of construction;
  - b) The ground levels/landform to be created for each stage of construction;
  - c) The depths of subsoils and topsoils to be placed over the site area;
  - d) The cultivation steps and soil treatments to be carried out following soils placement;
  - e) Seed mixes and seeding application rates;
  - f) Tree/shrub planting species mix, spacing, size, method of planting and protection measures; and
  - g) A programme for carrying out the steps above.

In the event that the development does not progress beyond the Construction Phase, the Construction Phase Restoration Scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 86.

#### **Rail Loading Facility – Design Detail**

- 46) Prior to the commencement of construction of the Rail Loading Facility (RLF), detailed designs of the following components of the RLF development shall be submitted to and approved in writing by the Mineral Planning Authority:
- a) The new underbridge required beneath the proposed rail siding immediately adjacent to the Network Rail underbridge; and
  - b) The new rail sidings and the interface with the existing network rail embankment.

These designs shall include a rationale for the chosen design based upon geotechnical site investigation work which will be undertaken, together with all other design considerations including functional and aesthetic. Once approved these components of development shall be carried out in accordance with the approved designs.

### **Rail Loading Facility – Vehicle Incursion**

- 47) Prior to the commencement of the construction of the site road leading to the RLF a scheme to avoid vehicle incursion onto the railway lines shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall detail all the measures which will be put in place during construction of the road, its subsequent use during the Operational Phase of the mine and during decommissioning to prevent vehicle using the site road entering the railway lines and associated area required for the safe passage of trains. Once approved the scheme shall be implemented and adhered to through all phases of the development.

### **Rail Loading Facility – Electric Pylon Relocation**

- 48) Prior to the commencement of the construction of the RLF, a scheme for the relocation of the electricity pylon(s) which would be required to facilitate the development of the RLF shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include:
- a) Location of the existing pylon, its type and height and span of its connection with other pylons;
  - b) The revised location of the new pylon;
  - c) The type and height of new pylon
  - d) The span and height of the connections from the new pylon to unaffected pylons; and
  - e) The programme for the relocation of the pylon and its associated revised connections.

Once approved the pylon relocation and revised connections shall be carried out in accordance with the approved scheme and programme.

### **Rail Loading Facility (RLF) – Landscaping Scheme**

- 49) Prior to the commencement of construction of the RLF, a landscaping scheme for the proposed planting to the east of the railway line shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:
- a) Tree/shrub planting species mix, spacing, size, method of planting, protection measures;
  - b) objective criteria to monitor the health and progress of the planting within landscaped areas and procedure for reporting the outcomes of monitoring to the Mineral Planning Authority including trigger levels for remedial action;
  - c) A programme for carrying out the steps above; and
  - d) Management of the planting for the duration of the development.

Once approved, the landscaping scheme shall be carried out in accordance with the approved scheme and programme.

### **Construction – Hours of Working**

- 50) No works related to the construction of the development shall take place other than between the following hours:

Monday to Friday	0800 hours to 1800 hours
Saturday	0800 hours to 1300 hours
Sunday & Bank Holiday	No working

For the avoidance of doubt this condition shall not prevent the operation of pumps or other essential safety equipment outside of these hours.

#### **Construction – Traffic Numbers**

- 51) During the Construction Phase, no more than 53 Heavy Goods Vehicles (HGVs) shall enter and leave the Main Mine Site per day. A record of the numbers of HGVs visiting the site per day shall be maintained. This shall be submitted to the Mineral Planning Authority in writing on a quarterly basis during the mine Construction Phase of development until that phase has been completed.

#### **Construction – Noise (Temporary Operations)**

- 52) The equivalent continuous noise level attributable to temporary operations relating to the construction of the development in the vicinity of the noise sensitive properties identified in condition 73 shall not exceed 70dB(A) (LAeq 1hour free field) for a total of 56 working days in any 52 week period. During periods of temporary operations, a daily record shall be maintained noting the location and type of operations occurring within 200m of a noise sensitive property. The operator will afford the Mineral Planning Authority access to this record on request.

#### **Piling Methodology**

- 53) No piling shall take place until details of, and a methodology for, any piling have been submitted to, and approved in writing by, the Mineral Planning Authority. The methods proposed shall involve rotary piling only. The details and methodology shall detail any required measures, including any monitoring, to protect utilities, residential properties and ecological receptors from the impact of noise, dust and vibration generated by the piling. The works shall be carried out in accordance with the approved details and methodology.

#### **Main Band Colliery – Reptiles**

- 54) Prior to the commencement of any works at the part of the former Main Band Colliery within the application site, a scheme for surveying for the presence of reptiles shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall set out:

- a) the survey technique;
- b) frequency of survey;
- c) acceptable weather conditions for the survey; and
- d) minimum qualifications and experience of surveyor.

Once approved, the scheme(s) shall be implemented in advance of any site clearance, remediation or Construction Works at the former Main Band Colliery. Should reptile presence be identified, additional population surveys will be required together with submission of a Reptile Mitigation Plan (RMP) which shall be submitted to and approved in writing by the Mineral Planning Authority. All works thereafter shall be undertaken in accordance with the approved Reptile Mitigation Plan.

#### **Mine Phasing, Operations and Spoil Management**

- 55) No working underground or associated engineering operations underground shall take place until a Mine Phasing, Operations and Spoil Management

scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of:

- a) Phases of working as indicated on a plan with locations and dates;
- b) A description of the working methods and techniques, however, no blasting of any description, either above or below ground, shall be permitted;
- c) The measures employed to minimise the potential for environmental impact;
- d) Details of mine spoil management including:
  - (i) Identification of the types and volumes of waste materials that will be generated through the underground mining operations;
  - (ii) The measures by which these materials shall be managed and disposed of underground within the mine workings; and
- e) Provision for review and updating on an annual basis to take account of developments in available technology and changing environmental conditions.

The approved scheme shall be implemented and the development shall be undertaken in accordance with the approved scheme.

#### **Footpath through Main Mine Site**

- 56) The Operational Phase shall not commence until details of the footpath within the Main Mine Site from High Road to the north western boundary of the site has been submitted to and approved in writing by the Mineral Planning Authority. The details shall include:
- a) the precise alignment including to allow for connection to surrounding paths;
  - b) boundary fencing with a gap on the north western boundary to allow for connection to surrounding paths; and
  - c) a management scheme for maintenance, management and public access.

Within 6 months of mineral working commencing, the footpath shall be constructed and completed in accordance with the approved details. Thereafter the public access along the footpath shall be provided and the footpath maintained and managed in accordance with the management scheme.

#### **Operational Travel Plan**

- 57) The Operational Phase shall not commence until an Operational Travel Plan (OTP) has been submitted to and approved in writing by the Mineral Planning Authority. The OTP shall include details of:
- a) The measures to be undertaken to promote the use by staff of public transport, cycling, walking and sharing vehicles to the site;
  - b) The measures to manage shift patterns to avoid cumulative traffic issues; and
  - c) The measures to be employed to monitor the effectiveness of the OTP and reporting to the outcomes of the Mineral Planning Authority.

The development shall be carried out in accordance with the approved OTP.

The OTP shall be assessed in accordance with the details submitted every 5 years from the date of approval and reported to the Mineral Planning Authority in writing. Where the assessment identifies shortcomings with the existing travel plan, a revised travel plan shall be prepared and submitted to and approved in writing by the Mineral Planning Authority within three months of the assessment having been carried out.

### **Operational Environmental Management Plan**

- 58) The Operational Phase shall not commence until an Operational Environmental Management Plan (OEMP) has been submitted to and approved in writing by the Mineral Planning Authority. The OEMP shall include details of:
- a) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures
  - b) provisions for environmental emergency planning and environmental incident response arrangements;
  - c) Environmental Permits, Licences and Consents required;
  - d) liaison with the public and contact information for community concerns;
  - e) parking areas for the vehicles of workers and visitors;
  - f) areas to be used for the loading and unloading of plant and materials;
  - g) areas for the storage of plant and materials;
  - h) noise and vibration mitigation measures to be employed during the Operational Phase, including the provision for noise levels to be updated and reviewed every 5 years following the commencement of Construction Works;
  - i) a scheme for the management of air quality and dust during the Operational Phase;
  - j) site signage;
  - k) how the environmental aspects of historic environment works will be managed;
  - l) the management of waste, including provision for waste segregation, compliance with Duty of Care regulations;
  - m) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;
  - n) management of traffic;
  - o) ecological management including plans for the monitoring of:
    - i) Pow Beck surface water discharge flows and water quality;
    - ii) surface water quality in attenuation pond(s) on Main Mine Site prior to discharge to the Surface Water Outfall;
    - iii) marine water quality and scouring around the surface water discharge pipe;
  - p) seasonal and daytime restrictions on certain activities to mitigate for effects on ecological receptors;
  - q) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
  - r) the management of vermin;
  - s) working hours;
  - t) pollution prevention measures including storage of fuels and oils and

measures to prevent, contain and manage refuelling of plant and vehicles;

- u) all lighting including procedures to ensure lighting equipment is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife.

Once approved, the OEMP the development shall be undertaken in accordance with the approved OEMP.

#### **Dust Management Plan**

- 59) The Operational Phase shall not commence until a Dust Management Plan (DMP) for the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The DMP shall include details of:

- a) Dust suppression equipment attached to vents and other openings to any processing, conveyor or storage buildings at the site;
- b) The location and type of monitoring;
- c) Frequency of monitoring;
- d) Provision for the reporting of results; and
- e) Provisions for review of the DMP at the written request of the Mineral Planning Authority.

Development shall be undertaken in accordance with the approved DMP.

#### **Noise Management Plan**

- 60) The Operational Phase shall not commence until a Noise Management Plan (NMP) has been submitted to and approved in writing by the Mineral Planning Authority. The NMP shall include details of:

- a) A Method Statement for and provision of periodic compliance monitoring during the Operational Phase, in relation to the receptors at the locations listed in condition 73;
- b) the use of the back-up generators and how any unacceptable noise will be mitigated;
- c) the establishment of long-term monitoring locations, including an 8 figure OS grid reference for each monitoring point;
- d) a procedure for investigating and responding to noise complaints whether received directly from a member of the public or via any local authority;
- e) provision for written reports to be submitted to the Mineral Planning Authority following compliance noise monitoring and complaint investigation. If the monitoring reveals that the noise from the operation of the development exceeds those within condition 73 the scheme shall set out the measures to be taken to reduce noise levels to approved limits; and
- f) mitigation actions and timescales for their implementation to be agreed in writing with the Mineral Planning Authority (within the above report) if monitoring shows exceedance of the noise limits set out in condition 73.

Development shall be undertaken in accordance with the approved NMP.



### **Mine Gas Capture**

- 61) The Operational Phase shall not commence until a Mine Gas Capture Management Scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall:
- a) identify the methods for the capture and subsequent management of methane, carbon dioxide, carbon monoxide and hydrogen sulphide or other mine gases which may impact upon the climate or environment during the operational lifetime of the mine;
  - b) identify the potential for beneficial use of the gases;
  - c) identify measures to prevent uncontrolled emissions of mine gases to the atmosphere;
  - d) include the date for installation; and
  - e) include provision for review and updating no less than once every five years, to take account of updates in available technology and changing environmental conditions.

The development shall be carried out and the gases captured, managed and used beneficially in accordance with the approved Mine Gas Capture Management scheme. Once the system is installed, the level of methane extracted shall not be lower than 95% of the total methane produced from the mine during any calendar month.

### **Seismic Activity – Monitoring**

- 62) The Operational Phase shall not commence until a Seismic Activity Monitoring Scheme (SAMS) for onshore mining has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:
- a) the methodology for monitoring all seismic activity. This shall identify the potential receptors which will be the subject of monitoring, and the equipment to be utilised for monitoring;
  - b) the location for the installation of the seismic monitoring array to effectively monitor the seismic activity impacts on the receptors identified at (a); and
  - c) the arrangements including timescales and frequency of reporting the outcome of monitoring to the Mineral Planning Authority.

Once approved, the SAMS shall be fully implemented prior to the commencement of onshore coal mining and shall continue for a period of 6 years after the cessation of onshore coal mining. All monitoring and reporting shall be undertaken in accordance with the approved scheme.

### **Seismic Activity – Investigation**

- 63) In the event that seismic activity which is attributable to onshore mining activity at any of the receptors identified at condition 66 exceeds a Peak Particle Velocity (PPV) of 6mm/sec the operator shall, as soon as reasonably practicable, carry out an investigation into the reasons for that exceedance. This investigation will confirm whether or not the seismic activity was induced by mining activity and, if so, identify the mining activities taking place, immediately prior to, the time the exceedance was detected. The outcome of that investigation shall be set out in a report and submitted to the Mineral Planning Authority within 7 days of the exceedance for approval in writing by the Mineral Planning Authority.

### **Seismic Activity – Mitigation**

- 64) Where a seismic activity investigation has been undertaken and reported to the Mineral Planning Authority under condition 63, and where the conclusion of that investigation is that the seismic activity was attributable to onshore mining operations, within 14 days of the receipt by the Mineral Planning Authority of the investigation report, mineral extraction shall cease and a scheme and programme for seismic activity mitigation shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall:
- a) provide the rationale for the development of the mitigation measures with reference to the outcome of the investigation;
  - b) detail the measures to be taken to reduce seismic activity;
  - c) provide a programme for the implementation of the mitigation measures derived from the investigation report; and
  - d) provide for an increase in the frequency of monitoring reporting to assess the efficacy of the mitigation measures which have been put in place.

Once approved the scheme shall be implemented in accordance with the approved programme.

### **Subsidence – Monitoring**

- 65) No working of minerals shall take place until a subsidence monitoring scheme has been submitted to and approved in writing by the Mineral Planning Authority. The monitoring scheme shall provide for monitoring the potential effects of subsidence on sensitive receptors. The scheme shall include the following:
- a) The methodology for subsidence monitoring including establishing the maximum zone of influence of onshore mining by projecting from the outward edge of extraction a line outwards and upwards from the relevant seam at 35° from a line perpendicular to that seam so as to intersect the surface, the methods for recording existing ground levels, method for monitoring changes in ground levels, equipment to be utilised and duration of monitoring following the cessation of onshore mining;
  - b) The subsidence monitoring locations and the rationale for the number of monitoring points and the locations selected;
  - c) The frequency of subsidence monitoring, and the rationale for the frequency selected;
  - d) The arrangements for reporting the outcome of subsidence monitoring to the Mineral Planning Authority which routinely shall be no less than annually;
  - e) The method for the derivation of trigger subsidence levels at sensitive receptors which would represent a subsidence event; and
  - f) Proposals for increasing the frequency of subsidence monitoring and for the reporting of that increased frequency of monitoring to the Mineral Planning Authority in the event that a subsidence event occurs.

Surface subsidence monitoring and reporting shall be undertaken in accordance with the approved monitoring and reporting scheme.

### **Subsidence – Investigation and Reporting**

- 66) In the event that a subsidence event occurs, the zone of influence of the sensitive receptor shall be established by projecting downward and inward at an angle of 35° to the depth of seam being worked. Coal production within the zone of influence of the sensitive receptor shall be suspended until a subsidence investigation has been completed. The subsidence investigation shall determine the reason(s) for the subsidence event. The investigation shall review the mining activities taking place prior to the subsidence event being detected and determine which of these activities led to the subsidence event occurring. The findings of the investigation shall be set out in a subsidence investigation report which shall also identify the mitigation measures and a programme to be adopted to prevent a reoccurrence of a subsidence event. Where a subsidence investigation report has been concluded it shall be submitted to and approved in writing by the Mineral Planning Authority. Any mitigation measures shall be carried out in accordance with the Mineral Planning Authority's written approval and the approved programme.

### **Subsidence – Mitigation**

- 67) Coal mining shall only recommence within the zone of influence of the sensitive receptor which was the subject of the subsidence event under condition 66 after the Mineral Planning Authority provide written notification to confirm approval of the investigation report and that the proposed mitigation measures are acceptable. Coal mining within the zone of influence of the sensitive receptor which was the subject of the subsidence event shall thereafter only take place in accordance with the mitigation measures approved within the subsidence investigation report.

### **Operation of Rail Loading Facility – Hours of Working**

- 68) No operations at the Rail Loading Facility shall take place other than between the following hours:

Monday to Saturday	0600 hours to 2200 hours
Sunday & Bank Holiday	No working

### **Operation of Rail Loading Facility – Noise Assessment**

- 69) Notwithstanding condition 68 above, no operations shall take place at the Rail Loading Facility (RLF) between 0600 hours and 0700 hours (Monday to Saturday) until a noise assessment demonstrating that the night-time noise limits will not be exceeded for locations R5 to R8 (inclusive) as identified within the table in condition 73, has been submitted to and approved in writing by the Mineral Planning Authority.

### **Departure and Arrival of Trains during Daytime Only**

- 70) No trains shall be permitted to arrive at or depart from the Rail Loading Facility or manoeuvre in the associated sidings other than between the following hours:

Monday to Saturday	0700 hours to 2200 hours
Sunday & Bank Holiday	No departure or arrival or movement of trains permitted

### Mine Production

- 71) No more than 2,780,000 tonnes of processed High Vol A Coking Coal shall be exported from the site in any calendar year. A record of the tonnage and type of the coal exported from the site in each calendar month of the preceding year shall be maintained and submitted to the Mineral Planning Authority before the 31 January annually whilst the mine is operational. Written records shall be filed on a monthly basis and shall be available for inspection on request by the Mineral Planning Authority.
- 72) Upon commencement of operations the operator shall commence recording the sulphur content of each shipment of coal dispatched from the mine. No type of coal other than High Vol A Coking Coal with a sulphur content not exceeding 1.6% shall leave or be transported from the mine at any time. On each and every anniversary of the commencement of that record, or upon request, the operator shall submit to the Mineral Planning Authority copies of the records of those shipments to evidence the sulphur content of each shipment of coal and the average (mean) sulphur content for the coal exported in the preceding year. The submission of records shall also include all records of any communication from a customer concerning the accuracy of the sulphur content of the coal. After the first 12 months of production, or at the maximum anticipated level of coal production for the mine, whichever is the sooner, the average (mean) sulphur content of the coal exported from the mine in any 12-month period shall not exceed 1.4%.

### Noise Limits

- 73) The noise level emitted from the operation of the site shall not exceed the levels detailed in the table below at the locations given insofar as they are shown on Figure 14.1 Rev 01 Noise monitoring and Receptor Locations as set out in condition No 2 above. Any measurement shall be made at a height of 1.2m and at a minimum distance of 3.5m from any façade or acoustically reflective surface.

Location	Period	Noise limit dB LAeq, 1hr
R1 – Proposed housing to north	Daytime	37
	Night-time	34
R2 – 24 Woodville Way	Daytime	41
	Night-time	36
R3 – Cabbage Hall	Daytime	40
	Night-time	38
R4 – 1 Clarendon Drive	Daytime	41
	Night-time	36
R5 – Property known as Lake View	Daytime	43
	Night-time	37
R6 – Stanley House	Daytime	43
	Night-time	37

R7 – Woodend Gardens	Daytime	43
	Night-time	37
R8 – Property known as Linethwaite Bower	Daytime	43
	Night-time	37
M2 – Proposed housing to east of site	Daytime	41
	Night-time	36

For the avoidance of doubt within the above table, 'Daytime' refers to the period between 0700 and 2200 hours and 'Night-time' refers to the period between 2200 and 0700 hours.

### **Transport**

- 74) No minerals, products or wastes extracted from the mine or mine processing site shall be transported from the site by road.
- 75) There shall be no vehicular access to or egress from the site other than via the approved accesses as shown on drawings 869/AM/002 Rev F, 869/AM/010 Rev A, 869/AR/002 Rev C, 869/AR/008 Rev A and 869/AC/008 Rev A.
- 76) No infill materials required for the construction of the RLF site or associated sidings shall be delivered to the RLF site other than via the railway.
- 77) No more than six trains per day shall enter and leave the Rail Loading Facility (RLF). A record of the numbers of trains entering, loading, and leaving the RLF each day shall be maintained and submitted to the Mineral Planning Authority on the 31 January each year for the period 1 January to 31 December of the previous year until the mine is closed and the site is restored. These records shall be made available to the Mineral Planning Authority at any time on request.
- 78) No more than 13 Heavy Goods Vehicles (HGVs) shall enter and leave the Main Mine site per day. A record of the numbers of HGVs visiting the site per day shall be maintained and submitted to the Mineral Planning Authority on the 31 January each year for the period 1 January to 31 December of the previous year until the mine is closed and the site is restored.

### **Mine Production Power**

- 79) All in-seam underground mining equipment shall be powered only by electricity.
- 80) No mineral wining or working shall take place until details of the renewable electricity tariff to be used during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. Further approval shall be obtained in writing for any proposed change to the tariff during the operational life of the mine. During the Operational Phase of the mine, only electricity purchased through the approved renewable electricity tariff may be used to power the mine operations.

### **Fuel Storage**

- 81) All facilities for the storage of oils, fuels and hazardous chemicals shall be placed on impervious bases with impervious bunds placed around them and with all vents, filling points and hoses contained within the bunds. All tanks are to be double-skinned and the bunds shall have a capacity of 110% of the cumulative capacity of the tanks. The bunds shall be kept free of precipitation which, if removed, shall be disposed of at a suitably permitted facility.

### **Nesting Birds**

- 82) No clearance of vegetation shall take place within the bird breeding season (the period from March to September inclusive) unless measures supervised by an ecologist have previously been taken to exclude nesting birds. Any vegetation that must be cleared during the bird breeding season should only proceed after a detailed breeding bird survey has been conducted by an ecologist and submitted to and approved in writing by the Mineral Planning Authority. This shall identify any nest on site and present measures to avoid disturbing the identified breeding species. A further checking site inspection by an ecologist shall be conducted on the site immediately before any work commences. This shall identify any nest on bare earth on site and present measures to avoid disturbing the identified breeding species.

### **Soils Handling**

- 83) All soil handling operations shall be carried out in accordance with the DEFRA Code of Practice for Sustainable Use of Soils on Construction Sites (2011). Prior to the commencement of soil stripping details of the methodology to be used in the stripping, storage and replacement of soils and overburden on that phase shall be submitted to and approved in writing by the Mineral Planning Authority. The development shall be undertaken in accordance with the approved methodology. The stripping, movement and re-spreading of soils shall be restricted to occasions when the soil is in a suitably dry and friable condition and the ground is sufficiently dry to allow passage of heavy vehicles and machinery over it without damage to the soils and the topsoil can be separated from the subsoil without difficulty.

### **No External Storage**

- 84) No minerals, waste or other bulk materials shall be handled or stored at the surface of the main mine site or Rail Loading Facility except within the buildings shown on drawings 869/AM/002 Rev F and 869/AR/002 Rev C.

### **Restrictions on Permitted Development**

- 85) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other order revoking and re-enacting that Order), planning permission shall be sought and obtained from the Mineral Planning Authority, before any buildings, structures, or erections, plant or machinery are erected on those parts of the site comprising the conveyor route and RLF only or on any ancillary mining land in the vicinity of these two parts of the development.



### **Decommissioning & Restoration Scheme**

- 86) A Decommissioning and Restoration Scheme (DARS) shall be submitted to and approved in writing by the Mineral Planning Authority, for approval by the earlier of:

- a) 3 months from the end of a continuous period of twelve months throughout which the Winning and Working of mineral has ceased; or
- b) two years before the expiry of this planning permission.

The decommissioning and restoration scheme shall be in accordance with the Main Mine Site Restoration Plan drawing reference 869/AM/042 Rev E and the Rail Loading Facility Post Decommissioning Restoration Plan drawing reference 869/AR/014 Rev L and shall include, but need not be restricted to:

- a) The removal of buildings, railway sidings and other built infrastructure;
- b) Removal of plant, equipment and above ground structures;
- c) Treatment/capping of mine shafts;
- d) Treatment and capping of the underground conveyor including the removal of all conveying equipment and plant and associated above ground buildings;
- e) The number of vehicle movements at each site during the Restoration Phase;
- f) Ground levels and landform to be created at the Main Mine Site and Rail Loading Facility to be illustrated by drawings with proposed contours and cross and long sections;
- g) The methods and depths of soil replacement;
- h) Cultivation, seeding and planting measures; and
- i) A programme setting out the timescales within which restoration will occur.

The restoration scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition 89.

### **Decommissioning & Restoration Environment Management Plan**

- 87) A Decommissioning and Restoration Environment Management Plan (DREMP) for the restoration operations following decommissioning shall be submitted to and approved in writing by the Mineral Planning Authority by the earlier of:

- a) 3 months from the end of a continuous period of twelve months throughout which the Winning and Working of mineral has ceased; or
- b) two years before the expiry of this planning permission.

The DREMP shall include, but need not be restricted to:

- i) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures;
- ii) provisions for environmental emergency planning and environmental incident response arrangements;
- iii) Considerate Constructors scheme and compliance arrangements;
- iv) Environmental Permits, Licences and Consents required;
- v) Code of Construction Practice (relating specifically to local community impacts and management);



- vi) liaison with the public and contact information for community concerns;
- vii) the programme of works;
- viii) parking areas for the vehicles of workers and visitors;
- ix) areas to be used for the loading and unloading of plant and materials;
- x) details of site offices and welfare facilities;
- xi) areas for the storage of plant and materials;
- xii) formation of the construction compound(s) and access tracks and any areas of hardstanding;
- xiii) a scheme for the management of noise;
- xiv) a scheme for the management of air quality and dust;
- xv) site signage;
- xvi) the management of waste, including provision for waste segregation, compliance with Duty of Care regulations;
- xvii) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;
- xviii) management of traffic;
- xix) ecological management including plans for the monitoring of Pow Beck surface water discharge flows and water quality; surface water quality in attenuation pond(s) on the Main Mine Site prior to discharge to the Surface Water Outfall; and marine water quality and scouring around the surface water discharge pipe;
- xx) seasonal and daytime restrictions on certain activities to mitigate for the effects on ecological receptors;
- xxi) covering or infilling of any trenches overnight to prevent animals being trapped and/or provision of a ramp to allow escape;
- xxii) contaminated land management;
- xxiii) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
- xxiv) the appearance, erection and maintenance of boundary treatments and security fencing & site signage and the timescales for their erection and removal;
- xxv) the management of vermin;
- xxvi) working hours;
- xxvii) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;
- xxviii) details of wheel washing facilities including any drainage requirements and maintenance;
- xxix) cleaning of site entrances and the adjacent public highway;
- xxx) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway;
- xxxi) all lighting including procedures to ensure temporary lighting equipment required is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife; and
- xxxii) post-construction restoration / reinstatement of the working areas.

Once approved, the DREMP shall be implemented and the all works shall be undertaken in accordance with the approved DREMP.

### **Decommissioning of Rail Loading Facility**

88) Prior to the commencement of decommissioning the Rail Loading Facility (RLF), details of the following decommissioning and reinstatement works shall be submitted to and approved in writing by the Mineral Planning Authority:

- a) The removal of the underbridge under the proposed rail siding and appropriate reinstatement of the original underbridge;
- b) The removal of the rail sidings and appropriate reinstatement of the existing Network Rail embankment; and
- c) A review of the drainage systems to determine whether the removal of the underbridge and the sidings necessitates changes to the surface water drainage infrastructure installed under condition 46 above to ensure surface water is effectively drained from the site. Where that review reveals that the installed drainage system is inappropriate a revised surface water drainage system shall be submitted to and approved in writing by the Mineral Planning Authority.

Once approved the reinstatement works shall be carried out in accordance with the approved details within 2 years of the commencement of decommissioning.

### **Aftercare scheme**

89) Within six months of the date of the written approval of each of the restoration schemes required under conditions 13, 27, 45 and 86 above, a scheme and programme for the aftercare of the site for a period of 10 years to promote the agricultural and ecological after-uses of the site, shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme and programme shall contain details of the following:

- a) the management of the site to promote its agricultural use including details of seeding, grazing, cultivation or cropping;
- b) details for soil sampling in each year of the aftercare period to determine requirements for fertilizer and lime application and provision for the submission of annual soil sampling results and proposed fertilizer/lime application to the Mineral Planning Authority for approval in writing;
- c) the management of ecological and recreational areas;
- d) details of any drainage installation including measures for replacement of any field drainage system damaged during the development;
- e) details of any further works to relieve compaction or regrading to alleviate surface ponding;
- f) details of any measures required to control noxious weeds;
- g) details for the maintenance of any grassland, tree or hedge planting including replacement of failures, weed control, maintenance of protection measures, thinning works and cutting or laying regimes to be followed; and
- h) management of any surface water run off including maintenance of surface water ditches and repair of any damage caused by surface water runoff.

Thereafter, aftercare works shall be undertaken in accordance with the approved scheme and programme for a period of five years from the date that the Mineral Planning Authority certifies in writing that the works of restoration are complete. On the first anniversary of the certification of completion of restoration and at annual intervals thereafter an inspection of restored areas of the site involving representatives of the operator and Mineral Planning Authority shall be undertaken. Within one month of each inspection, a schedule of aftercare works to be undertaken in the following year in accordance with the above shall be submitted to and approved in writing by the Mineral Planning Authority. The approved schedule of aftercare works shall be carried out.

END OF CONDITIONS

## **ANNEX G**

### **INFORMATION TO ASSIST THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT IF REQUIRED**

#### **PREAMBLE**

1. The appeal site does not overlap with but lies in close proximity to a number of European designated sites. The Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) (for plans and projects beyond UK territorial waters (12 nautical miles)) require that where a plan or project is likely to have a significant effect on a European site,<sup>550</sup> or European marine site, either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site, in view of the site's conservation objectives.
2. The People over Wind judgement<sup>551</sup> ruled that measures intended to avoid or reduce the harmful effects of a plan or project (ie mitigation) should not be taken into account when determining if significant effects are likely. They can only be considered at the Appropriate Assessment stage.
3. The planning application was accompanied by a Shadow Habitats Regulations Assessment (sHRA).<sup>552</sup> This was supplemented by a sHRA Addendum<sup>553</sup> that specifically considered the effects of the proposed development on the River Derwent and Bassenthwaite Lake SAC with regard to a potential increase in nutrient levels, in particular phosphorus. The sHRA considers in detail the potential impacts on internationally designated sites as a consequence of the proposed development. I have considered the content of the sHRA, as supplemented by the Addendum, in coming to a conclusion on its adequacy and findings below.

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<sup>550</sup> Regulation 8 of the Habitats Regulations 2017, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (the 2019 Regulations) defines European sites and European marine sites. European sites include: Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) already existing at 31 December 2020; any Site of Community Interest (SCI) placed on the EU Commission's list or any site proposed to the EU prior to 31 December 2020; and any SAC or SPA designated in the UK after 31 December 2020. European marine sites are defined as European sites consisting of marine areas. As a matter of policy, the Government also applies the Habitats Regulations procedures to Ramsar sites. European sites in the UK will no longer form part of the EU's 'Natura 2000' ecological network. The 2019 Regulations have however created a 'national site network'. The national site network includes existing SACs and SPAs, and new SACs and SPAs designated under the Habitats Regulations 2017 (as amended), as noted above. Ramsar sites do not form part of the national site network, but all Ramsar sites are treated in the same way as SACs/SPA as a matter of policy.

<sup>551</sup> People Over Wind and Peter Sweetman v Coillte Teoranta [2018] EUCJ C-323/17

<sup>552</sup> CD1.146

<sup>553</sup> PCID4

## DESIGNATED SITES

4. There are a number of European Sites that are located within 25 km of the proposed development site:
  - Solway Firth Proposed Special Protection Area (pSPA) – 1.16 km to the north-west of the Main Mine site;
  - River Ehen Special Area of Conservation (SAC) – 3.00 km east of the Main Mine Site;
  - River Derwent and Bassenthwaite Lake SAC – 10.03 km north-east of the Main Mine Site;
  - Lake District High Fells SAC – 10.18 km east of the Main Mine Site;
  - Drigg Coast SAC – 14.45 km south-east of the Main Mine Site;
  - Morecambe Bay and Duddon Estuary Special Protection Area (SPA) – 17.07 km south-east of the Main Mine Site;
  - Morecambe Bay SAC – 18.7 km south-east of the Main Mine Site; and
  - Wast Water SAC – 18.8 km south-east of the Main Mine Site.
5. With the exception of the Morecambe Bay SAC and the Wast Water SAC (see below), these sites have been scoped into the Shadow Habitats Regulations Assessment for the following reasons:
  - The designated sites support interest features that are mobile and wide-ranging and which may therefore utilise habitats outside the designated site boundary but within the zone of influence of the proposed development (for example migratory fish and SPA birds).
  - The designated sites support interest features that may be affected by pollutants arising from the proposed development (in particular through discharge to the marine environment and through airborne pollutants).
6. No arguments were advanced in the inquiry that the sHRA may be inadequate or that any additional European sites should have been considered.
7. The Morecambe Bay SAC was scoped out of the assessment as there is no mechanism whereby this site could be impacted by the proposed development. As the qualifying features of the SAC are 18.7 km south-east of the main mine site at their closest point, the SAC is sufficiently distant that air quality, noise, vibration and, subsidence are all unlikely to affect the qualifying features. Discharges to sea are also unlikely to affect the qualifying features.<sup>554</sup> No significant effect is likely even in the absence of this mitigation (and so

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<sup>554</sup> CD1.139 ES Chapter 17 – Marine Environment

screening out in this case is consistent with the HRA judgment POW-Sweetman vs Coillte, 12 April 2018) judgment.

8. The Wast Water SAC was also scoped out of the assessment as there is no mechanism whereby this site could be impacted by the proposed development. The SAC is noted for a freshwater habitat but which is not hydrologically linked to the development site. No significant effect is likely even in the absence of this mitigation.
9. No other European sites are considered in the HRA as application of the source-pathway-receptor model has not identified any potential pathway that connects the development to these sites. This is due in part to their distance from the development site, their location with respect to prevailing environmental conditions, the mobility of their qualifying features and the relative sensitivity of the qualifying features.

### ***Solway Firth pSPA***

10. The Solway Firth is a large estuary on the west coast of Great Britain. The proposed extension encompasses the marine waters west of the existing SPA, between Whitehaven (England) and Wigtown Bay (Scotland). These marine waters are shallow and support extensive areas of intertidal mudflats and sandflats, reefs and sub-tidal sandbanks. The existing SPA is noted for the mudflats, saltmarshes and grazing marshes that are present.
11. In winter, the Solway Firth is a stronghold for red-throated diver, common scoter and goosander (qualifying features for the pSPA). An extension to the existing Upper Solway Flats & Marshes SPA is proposed because the proposed extension area supports important wintering populations of these species. In addition, a review in 2001 of the existing SPA showed that the mudflats, saltmarshes and grazing marshes also support important numbers of ringed plover, lapwing, cormorant, black-headed gull, common gull and herring gull (these are proposed additional qualifying features to the existing part of the SPA).
12. The Upper Solway Flats & Marshes SPA (which will become part of the Solway Firth SPA) supports populations of European importance of the following Annex 1 species (qualifying features): red-throated diver, whooper swan, barnacle goose, golden plover and bar-tailed godwit. The pSPA also supports migratory populations of European importance of species including the pink footed goose, shelduck, teal, pintail, shoveler, scaup, common scoter, goldeneye, goosander, oystercatcher, knot, ringed plover, grey plover, lapwing, dunlin, sanderling, redshank, turnstone, curlew, cormorant, black-headed gull, common gull and herring gull.
13. The assessment considers all of the above qualifying features and their supporting habitats. The proposed conservation objectives seek to protect the areas used by these non-breeding species. The qualifying bird species using the site require sufficient food resource to be available. The qualifying species can eat a variety of pelagic and benthic prey and these conservation objectives require that these should be maintained at a level able to support species populations. Some of these prey species have particular habitat requirements

and, where this is the case, the conservation objectives require that the site needs to be managed to ensure the extent and quality of the habitats are sufficient to maintain these prey species.

### ***River Ehen SAC***

14. The River Ehen forms the outfall from Ennerdale Water and flows some 20 km before reaching the Irish Sea at Sellafield (although the River Ehen SAC itself does not extend to the coast). For much of its upper length the River Ehen is nutrient-poor and flows over bryophyte-dominated shingle, pebbles and rock.
15. The River Ehen is designated a SAC because it supports important populations of freshwater pearl mussel Atlantic salmon. Whilst salmon is a qualifying feature for the SAC, it also has an important role to play in supporting freshwater pearl mussel as it has a role to play in the life cycle of this species.

### ***Lake District High Fells SAC***

16. This is a multi-site SAC consisting of 10 separate sites as follows:
  - River Eden & Tributaries SSSI (overlaps the SAC)
  - River Derwent & Tributaries SSSI (overlaps the SAC)
  - Buttermere Fells SSSI
  - Armboth Fells SSSI
  - Skiddaw Group SSSI
  - Helvellyn & Fairfield SSSI
  - Wasdale Screes SSSI (Wast Water is a separate SAC protecting the lake)
  - Scafell Pikes SSSI
  - Pillar & Ennerdale Fells SSSI
  - Honister Crag SSSI
  - Birk Fell SSSI
  - Shap Fells SSSI
17. Much of the land within the SAC is used as pasture, where sheep grazing is considered to have impacted on the condition of significant parts of the SAC. Less than 1% of the SAC is woodland, and this has been attributed in part to grazing pressure. The Lake District High Fells is designated a SAC because it supports internationally important examples of the following Annex I habitats:
  - Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or of the Isoëto-Nanojuncetea
  - Northern Atlantic wet heaths with Erica tetralix
  - European dry heaths
  - Alpine and Boreal heaths
  - Juniperus communis formations on heaths or calcareous grasslands
  - Siliceous alpine and boreal grasslands
  - Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
  - Blanket bogs
  - Siliceous scree of the montane to snow levels
  - Siliceous rocky slopes with chasmophytic vegetation
  - Old sessile oak woods with Ilex and Blechnum



- Species-rich *Nardus* grasslands, on silicious substrates in mountain areas
- Alkaline fens
- Calcareous rocky slopes with chasmophytic vegetation

### ***River Derwent and Bassenthwaite Lake SAC***

18. The Derwent is a large nutrient poor river system with high water quality and a natural channel. There is a natural succession of plant communities from source to mouth reflecting a slight increase in nutrient status downstream. The Derwent flows through two lakes (Derwentwater and Bassenthwaite), as does its major tributary the Cocker (Buttermere and Crummock Water). These lakes have a hydrological buffering effect which helps stabilise the flow regimes. Bassenthwaite is a large lake with an extensive catchment and consequently is subject to rapid through-flow of water and moderate nutrient status.
19. The River Derwent and Bassenthwaite Lake SAC does not itself extend to the coast. The qualifying features comprise the following Annex 1 habitats:
  - Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or of the *Isoëto-Nanojuncetea*.
  - Water courses of plain to montane levels with the *Ranunculon fluitantis* and *CallitrichoBatrachion* vegetation.
20. The SAC also supports populations of Annex II species including, marsh fritillary butterfly, sea lamprey, brook lamprey, river lamprey, Atlantic salmon, Otter, floating water-plantain. The assessment considers all of the above qualifying features and their supporting habitats.
21. The SAC comprises four SSSIs: River Derwent and Tributaries SSSI; Bassenthwaite Lake SSSI; Braithwaite Moss SSSI; and Buttermere SSSI.

### ***Drigg Coast SAC***

22. The Drigg Coast SAC extends for almost 11 km along the West Cumbrian coast from Seascale, south towards Bootle. At Ravenglass there is an example of a small, bar-built estuary fed by three rivers (the Irt, Mite and Esk). There is a substantial freshwater influence in the upper reaches of all three rivers. The SAC supports the most extensive sand dune system in Cumbria. As well as both fixed and mobile dunes, there are dune slacks, vegetated shingle, fixed dune grasslands and large areas of dune heath and saltmarsh.
23. The qualifying features of the SAC include the estuaries, decalcified fixed dunes, dunes with *salix*, mudflats and sandflats not covered by seawater at low tide, Atlantic salt meadows, shifting dunes and fixed coastal dunes with herbaceous vegetation. The SAC comprises a single SSSI (Drigg Coast SSSI) two thirds of which are described as being in favourable condition.
24. The stated conservation objectives for the Drigg Coast SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the favourable conservation status of its qualifying features.

### ***Morecambe Bay and Duddon Estuary SPA***

25. Morecambe Bay is the second largest embayment in Britain and has four estuaries – the Wyre, Lune, Kent and Leven. It contains the largest continuous area of intertidal mudflats and sandflats in the UK which supports a variety of infaunal communities including cockle beds. Morecambe Bay supports a wide range of other habitats including large areas of saltmarsh and transitional habitats as well as sand dune systems and coastal lagoons.
26. The site qualifies as an SPA as it supports important populations of the following birds listed in Annex 1 of Directive 2009/147/EC (qualifying features). Over winter the site regularly supports: whooper swan; little egret; golden plover; bar-tailed godwit; and Mediterranean gull.
27. During the breeding season the site regularly supports common tern, sandwich tern and little tern. The site is also used regularly on passage by pink-footed goose, shelduck, oystercatcher, ringed plover, red knot, sanderling, dunlin, black-tailed godwit, curlew, pintail, turnstone, redshank and lesser black-backed gull. During the breeding season the site regularly supports lesser black-backed gull and herring gull. The site also supports an internationally important assemblage of over 20,000 seabirds (qualifying features) in any season.

### **IDENTIFICATION OF LIKELY SIGNIFICANT EFFECTS**

28. Regulation 63 of the Habitats Regulations requires that the proposed development is assessed to determine whether or not it is likely to have a significant effect on the qualifying features (species and habitats) of any European site, either alone or in combination with other plans or projects. The SHRA has considered the different stages of the development, i.e. construction, operation and decommissioning.
29. A development has the potential to impact on a European site either directly, for example as a result of land-take, or indirectly, for example as a result of air pollution. When assessing impacts it is important to note that impacts need to be considered on 'functionally linked land'. The term 'functional linkage' refers to the role or 'function' that land or sea beyond the boundary of a European site might fulfil in terms of ecologically supporting the populations for which the site was designated or classified. Such land is therefore 'linked' to the European site in question because it provides an important role in maintaining or restoring the population of qualifying species at favourable conservation status.
30. The proposed development is not directly connected with or necessary to the management of any European site (Regulation 63(1)(b) of the Conservation of Habitats and Species Regulations 2017). With reference to Regulation 63(1)(a) of the Conservation of Habitats and Species Regulations 2017, the assessment has concluded that some aspects of the proposed development are likely to have a significant effect on a European site, when considered alone. For this reason an 'appropriate assessment' has been carried out in the SHRA.

31. The sHRA has considered whether there may be an adverse effect on the integrity of each of the six European sites identified and has considered the impacts on each site during the construction, operational and decommissioning phase of the development and evaluates the impact as a standalone project and in combination with any other plans or projects. It considers the following impact mechanisms of each site:
- Distance from the development site.
  - Direct loss of or damage to terrestrial habitat.
  - Disturbance of marine or terrestrial qualifying species (visual / noise / vibration).
  - Direct loss of or damage to marine habitat or disturbance to marine species from scouring and/or sedimentation from any discharges via the Saltom Bay outfall.
  - Direct loss of or damage to marine habitat or disturbance to marine species from scouring and/or sedimentation from any discharges via Pow Beck
  - Deterioration of marine water quality as a result of sediment-laden surface water run-off via the Saltom Bay outfall.
  - Deterioration of marine water quality as a result of sediment-laden surface water run-off via Pow Beck.
  - Deterioration of marine water quality as a result of run-off from main mine site, including pollution related impacts arising from disturbance of contaminated land and mobilisation of pollutants (including changes in pH, temperature, salinity, and dissolved oxygen) via Saltom Bay outfall.
  - Deterioration of marine water quality as a result of run-off from main mine site, including pollution related impacts arising from disturbance of contaminated land and mobilisation of pollutants (including changes in pH, temperature, salinity, and dissolved oxygen) via Pow Beck.
  - Subsidence effects.
32. The sHRA Addendum considered the effects of the proposed development on the River Derwent and Bassenthwaite Lake SAC with regard to a potential increase in nutrient levels, in particular phosphorus. This considered the following potential impact mechanisms:
- Direct discharge of effluent from the proposed development site to a receiving waterbody;
  - Indirect discharge of effluent from the proposed development site to a receiving waterbody;
  - Changes in air quality resulting in nutrient deposition.
33. The sHRA concludes that with regard to all identified impacts, and in view of the site's conservation objectives, the WCM project will not have an adverse effect on the integrity of any European site either alone or in combination with any other plan or project.
34. The sHRA Addendum concludes that the proposed development is not likely to impact on the River Derwent and Bassenthwaite Lake SAC as a result of increased nutrient levels. For this reason, it is not considered necessary to carry out a screening assessment for 'likely significant effects' as required under Regulation 63(1)(a) of the Conservation of Habitats and Species Regulations 2017 (as amended).

35. Natural England have reviewed the sHRA and considers that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that they concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given. In addition, Natural England also confirmed on 6 April 2022 they have assessed the sHRA Addendum and agree with its conclusions.

### **HRA CONCLUSIONS**

36. I have considered all of the potential significant effects that could arise from the proposed development and the assessment provided in the sHRA and the avoidance and mitigation measures which form an integral part of the development and/or which can be secured by conditions and/or the planning obligations. I am content that the development would not result in any likely significant effect alone, or in combination with other plans and projects, on the six European sites identified above.
37. The above does not constitute an Appropriate Assessment for the purposes of the Habitats Regulations. This is a matter for the Secretary of State to undertake as the competent authority.

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**ANNEX H**  
**POST CLOSURE INQUIRY DOCUMENTS REQUESTED BY THE INSPECTOR**

Post Closure Inquiry Document (PCID)	Description of Document	Date Submitted
PCID1	Submission by applicant in relation to the Court of Appeal Judgement in 'Finch'	04.03.2022
PCID2	Submission by SLACC in relation to the Court of Appeal Judgement in 'Finch'	04.03.2022
PCID3	Submission by FoE in relation to the Court of Appeal Judgement in 'Finch'	04.03.2022
PCID4	Shadow Habitats Regulations Assessment (HRA) Addendum	05.04.2022



# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](https://www.gov.uk/dluhc)

## 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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.