

TO: The Chair and Members of the Development Control & Regulation Committee

FROM: The Acting Executive Director - Economy and Infrastructure

AGENDA ITEM 6a – Planning Application Ref. 4/17/9007 – West Cumbria Mining

COMMITTEE REPORT – ERRATA AND CLARIFICATIONS:

- **Para 1.0 - Updated Recommendation:**

As Natural England's representation on the shadow Habitats Regulations Assessment has now been received, the Committee recommendation is updated as follows.

1.1 Having first taken into consideration the environmental information as defined in the Town & Country Planning (Environmental Impact Assessment) Regulations 2011 submitted in connection with the application and the shadow Habitats Regulations Assessment which concludes that there is no adverse effect from the project on the integrity of any European site, alone or in combination with any other plan or project and having taken into account all other material considerations that:

Planning permission be **GRANTED** subject to:

- i. the Development Control and Regulatory Committee first considering any representation received before the Committee meeting from Natural England;
 - ii. the Committee determining the planning application on the basis of the reasons set out in the Committee Report as updated by this Update Report for the Committee meeting;
 - iii. the Acting Executive Director of Economy and Infrastructure after the Committee meeting adopting the shadow Habitats Regulations Assessment (HRA) as the Council's HRA under Regulation 63 of the Conservation of the Habitats and Species Regulations 2017;
 - iv. the conditions set out in Appendix 1 to the Committee Report as updated by this Update Report for the Committee Meeting;
 - v. the applicant (West Cumbria Mining) and other relevant interest holders first entering into a Section 106 legal agreement with the County Council to cover:
 - HGV Routeing;
 - Public Rights of Way Contribution;
 - Highways Contribution;
 - Travel Plan Monitoring Fee;
 - Council S106 Administration Costs;
 - Extension to the Aftercare Period;
 - Heritage Asset Enhancements;
 - Pedestrian and Cycle Path;
 - Restoration of Main Band Colliery
 - Restoration Bond / Securities;
 - Drain Surveys & Maintenance; and
 - Residential Land Restriction (Lake View and Stanley House properties).
- **Para 5.10** – applicant has reported that the analysis of availability of train paths (since submitting the application) within the existing train timetabling has shown

that upgrades are not required to run 6 trains per day. The applicant states that sufficient train paths currently exist and that their rail freight operator has applied for all 6 paths. Subsequently, Officers have contacted Network Rail and they remain of the opinion that capacity improvements to the line would be likely to be required to accommodate 6 train paths;

- **Para 6.1** – Policy SP1 added to list of polices for completeness;
- **Paras 6.9 & 6.519** – refer to the clarification in the “Basis for determining the planning application” section below;
- **Para 6.23** – reference is made to the MMO Licence being required ‘prior to development commencing’ whereas this has been amended to ‘prior to construction commencing’ within the proposed planning conditions set out in Appendix 1 of the Committee Report;
- **Para 6.30** – clarification from applicant that it is possible for exploration licences to be converted to exploitation licences;
- **Para 6.258** – clarification from applicant regarding terminology that, in terms of railway timetabling, 1 path = 1 train arrival & departure;
- **Paras 6.260 – 6.262 (inc)** – applicant has reported that the capacity on the Wigton to Maryport section has been extensively reviewed with Network Rail, and timetables re-examined. The applicant also reports that their preferred rail freight operator has revealed that six train paths are available in the existing timetable, and these train paths have been applied for from Network Rail. Network Rail has since confirmed to Officers that these train paths have been applied for but have been rejected;
- **Appendix 1 – Definitions:** Metallurgical Coal – applicant requests that parameters in relation to maximum ash and sulphur content are removed. Officers note that the applicant’s website refers to West Cumbrian coals being hard coking coal and having less than 3% ash; less than 0.01% phosphorous; and moderate sulphur (around 1%) content. Therefore, officers consider that the parameters as currently set out within Appendix 1 of the Committee Report in relation to the definition are appropriate and no change is required;
- **References to Approved Plans in condition 1 of Appendix 1 of Committee Report:**

869/AO/001 Rev C	-	amend to 869/AO/001 Rev D
869/AO/002 Rev C	-	amend to 869/AO/002 Rev D
869/AO/003 Rev C	-	amend to 869/AO/003 Rev D
869/AO/004 Rev C	-	amend to 869/AO/004 Rev D
869/AM/050	-	delete (details now required via condition 11)
- **References to Additional Information / Documents in condition 1 of Appendix 1 of Committee Report:**

Insert after “ES Chapter 17 – marine environment” the following two further items:
“All references to ES Chapters in this condition 1 include all Appendices related to those chapters Cumbrian Metallurgical Coal Project: Shadow Habitats Regulations Assessment dated 21 February 2019”.
- **Additional wording for conditions 5, 10, 16, 17, 18, 19, 20, 23, 31, 41, 42, 48, 58, 61, 62, 63, 92, 93, 94, 95 of Appendix 1 of the Committee report:**

The submitted details shall secure the measures relevant to this condition:

- (a) as described in the column “Assessment of effects / likelihood of occurrence taking into account mitigation (avoidance or reduction) measures” in Tables 1-19 of the Cumbrian Metallurgical Coal Project shadow Habitat Regulations Assessment dated 21 February 2019” (as subsequently adopted by the Mineral Planning Authority);
- (b) as described in the column “Assessment and Mitigation” in Tables 1-3 of the Cumbrian Metallurgical Coal Project Assessment of Impacts on St Bees Head SSSI dated 22 November 2018; and
- (c) as described in the column “Mitigation” in Tables 2 and 3 of the Cumbrian Metallurgical Coal Project Assessment of Impacts on Cumbria Coast MCZ dated 26 November 2018.

- **Additional wording to be included within conditions 16 and 42 of Appendix 1 of the Committee report:**

No surface water, land drainage or highway drainage shall connect with the existing public sewerage system.

- **Changes to condition 59 of Appendix 1 of the Committee report – minor phraseology change:**

Foothpath through Main Mine Site

59. No mineral working shall take place until details of the footpath within the Main Mine Site from High Road to the north western boundary of the site ~~shall be~~ **have been** submitted to and approved **in writing** by the Mineral Planning Authority...

- **Changes to condition 74 of Appendix 1 of the Committee report to prohibit parking or storage of trains outside RLF operational hours:**

Departure and Arrival of Trains ~~during Daytime Only~~

74. No trains **or railway wagons** shall be permitted to arrive at or depart the Rail Loading Facility or manoeuvre, **park or be stored** in the associated sidings other than between the following hours:

Monday to Friday	0700 hours to 2200 hours
Saturday	0700 hours to 2200 hours 0800 hours to 1400 hours
Sunday & Bank Holiday	None None departure or arrival or movement of trains permitted

Reason: In the interests of residential amenity and in accordance with policy DC3 of the Cumbria Minerals and Waste Local Plan.

- **Minor wording amendment to proposed condition 62 (Dust Management Plan) of Appendix 1 of the Committee report to make clear that the details of the scheme include the RLF coal loading building. Word ‘loading’ added to condition to read as follows:**

Dust Management Plan

62. No mineral working shall take place 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, **loading** or storage buildings at the site;
- b) The location and type of monitoring gauges;
- 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.

When approved the DMP shall be implemented in accordance with the approved details and the development shall be undertaken in accordance with the approved DMP.

Reason: In the interests of amenity and to ensure that the objectives of policy DC5 of the Cumbria Minerals and Waste Local Plan are met.

- **Minor wording amendment to proposed condition 97 (RLF Design & Implementation Details) to make clear condition relates to RLF and associated infrastructure. Wording ‘development hereby approved’ substituted for ‘RLF and associated infrastructure’ as follows:**

RLF Design & Implementation Details

97. Throughout all phases of the construction, operation, and decommissioning of the RLF and associated infrastructure ~~development hereby approved~~ all design and implementation proposals shall, in advance, be submitted to and approved in writing by the Mineral Planning Authority. Once approved all such proposals shall be carried out in accordance with the approval.

Reason: to ensure the ongoing safety of the operational railway.

CONSULTATION RESPONSES:

Natural England – advise that, having considered the Council’s Habitats Regulations Assessment (HRA), and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, they concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission. Officers have verified that the proposed mitigation measures are appropriately secured within the proposed planning conditions set out within Appendix 1 of the Committee Report with the additional wording as set out above in this Update Report. It is therefore recommended that planning permission is granted in accordance with the Updated Recommendation as set out above.

United Utilities (U/U) – confirm that as the revised proposals do not incorporate de-watering of the former anhydrite mine U/U no longer have concerns in this regard. U/U request clarification as to whether the sealing of the intersection between the new drifts and Byerstead Fault would prevent use of the Byerstead Fault as a groundwater supply and, if so, water sources for the scheme would need to be reconsidered. The applicants have responded to this query stating *“In relation to the question about sealing the Byerstead Fault at the point of drift intersection with the fault, this will not affect our ability to use water from the Byerstead Fault as a source for water in the coal preparation plant (as per our table 5.6 in Chapter 5 Project Description). The sealing of the Fault at the point of drift intersection simply prevents uncontrolled entry of water into the drift. Water from the Fault can still be accessed either by including piping in the seal itself, or from just behind the point of the seal.”*

U/U state that the applicant must ensure that the Sandwith Service Reservoir, which lies within the proposed mining area, is adequately protected during the operation of the mining activity, and access is maintained at all times for United Utilities' service vehicles. U/U also request confirmation that the proposed land re-modelling around the Marchon site is situated sufficient distance from the existing water mains along the eastern boundary of the Marchon site in parallel with High Road. U/U also remark that during and post construction, there should be no additional load bearing capacity on our water mains without prior agreement from United Utilities. This would include earth movement and the transport and position of construction equipment and vehicles and details of specific protection measures for U/U's assets will be required if the development progresses. The applicants have responded to this query stating: *"In relation to the point about the protection of water and wastewater assets (UU specifically mention the Sandwith Service Reservoir and a water main running along the eastern boundary of the Marchon site parallel with High Road), we have studied our plans and compared them with the location of the main. In addition, we have studied the Standard Conditions document from UU and the specific requirements for asset protection. We can confirm that the proposed land re-modelling at the Marchon site will be in accordance with the requirements of the Standard Conditions and that unrestricted access will be retained at all times. We will continue to work with UU on all points as the development progresses once a positive planning decision is received."*

If the applicant intends to offer wastewater assets forward for adoption by U/U and the applicant wishes to progress a Section 104 agreement, U/U strongly recommend that no construction commences until the detailed drainage design, submitted as part of the Section 104 agreement, has been assessed and accepted in writing by United Utilities.

U/U's Egremont Boreholes are located approximately 6.5 km south-south-west of the Marchon site. U/U are in agreement that considering the hydraulic separation, the presence of a pathway between the mining site and boreholes is not likely to be feasible.

U/U have requested that specific conditions are imposed on any grant of permission. U/U state that it is critical that the condition related to the foul and surface water drainage condition is imposed as it explicitly precludes connection of surface water, land drainage, highway drainage or any mine dewatering to the public sewer.

Details of Foul Water Drainage

1. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution.

2. Prior to the commencement of development, the details of a foul and surface water drainage scheme (during construction and during the operation of the proposed mine) shall be submitted to the Local Planning Authority for approval in writing. No surface water, land drainage, highway drainage or mine dewatering shall connect with the existing public sewerage system either directly or indirectly. The following foul water drainage details shall be agreed with the local planning authority in liaison with the public sewerage undertaker:

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.

There shall be no connection of foul water to the public sewer other than in accordance with the agreement reached with the local planning authority in liaison with United

Utilities. The development shall be constructed and implemented in accordance with the approved details.

Reason: To secure proper drainage and in order to manage the risk of flooding and pollution from the public sewerage system, it is necessary to agree the specific details of the approach to foul water drainage. This shall include agreeing the location of the point of connection to the public sewer and the approach to foul water pumping.

Piling

3. Prior to the commencement of the development hereby approved, the details of any piling including a site-wide methodology for piling shall be submitted to and approved in writing by the Local Planning Authority. The details and methodology should detail any required measures, including any monitoring, to protect utilities from the impact of vibration generated by the piling. The works shall be carried out in accordance with the approved details and methodology.

Reason: To ensure that the vibrations from pile driving operations do not result in damage to utilities.

Water and Wastewater Infrastructure

4. No construction shall commence until details of the means of ensuring existing water and wastewater infrastructure is protected from damage as a result of the development have been submitted to and approved by the Local Planning Authority in writing. The details shall outline the potential impacts on water and wastewater infrastructure from construction activities and the impacts during the operational life of the development on the infrastructure and identify mitigation measures to protect and prevent any damage to the water and wastewater infrastructure during construction and during the operational life of the development. The details shall also include a programme for the implementation of the proposed measures. Any mitigation measures shall be implemented in full in accordance with the approved details.

Reason: In the interest of public health and to ensure protection of the public water supply and wastewater services.

A further condition in relation to the management and maintenance of sustainable drainage systems is also suggested but U/U refer to the County Council consulting with the LLFA to establish the appropriate wording.

Officers consider that conditions 1 to 3 above inclusive are already effectively incorporated within the proposed schedule of conditions (numbers 16, 17, 18, 19, 42, 43, 46 and 91). However, officers consider that condition 4 as proposed by U/U should be added to the schedule in Appendix 1 as a new condition number 99 and also consider it appropriate for this condition to include a requirement for the details to include a programme for the implementation of such measures.

Officers have consulted U/U on the proposed conditions and above responses from the applicants. U/U have confirmed that the conditions are satisfactory subject to the inclusion of additional text within conditions 16 and 42 which is referred to above in this report. U/U have also confirmed that they are satisfied with a decision being issued on the scheme subject to the suggested conditions and stress the importance of continued contact between the applicants and U/U regarding clean water requirements and how these will be met; foul water discharge requirements – preferred point of connection, timing arrangements, storage requirements and the rate of discharge; and assurance

that proximity to U/U's assets has been carefully considered (in accordance with U/U's standard conditions and legal easements) during both construction and operation of the development.

Hazardous Substances Consents – Copeland Borough Council have provided a copy of the confirmed Order from the Secretary of State revoking a hazardous substance consent on the Marchon site. However, it is understood that there were two such consents and the second Hazardous Substance Consent revocation has yet to be confirmed. Therefore, officers are of the view that planning condition 71, which would require no workplace buildings to be occupied prior the revocation of the hazardous substance consent, should remain as proposed.

REPRESENTATIONS RECEIVED:

Since finalising the committee report a further 13 representations have been received relating to this planning application, of which 1 is supportive, 3 raise comments and 9 object.

Support:

A further representation has been received in support of the proposal. The supporter believes the development would bring much needed jobs and opportunities to the area.

Comments:

A further representation has been made highlighting technical errors in the Committee Report regarding steel making processes, which, they consider has led to the wrong conclusions being drawn about the demand for metallurgical coal which may mislead the Committee. The representee explains in outline the steel making process, as follows:

Coke Ovens – This is where the metallurgical coal is heated in the absence of air to produce coke.

Blast Furnaces – Coke, iron ore and limestone are heated together. Iron and slag are drawn off at the bottom. Blast furnaces produce iron (pig iron), NOT steel. The pig iron either molten or solid then goes to steel works where steel is made by a variety of processes.

Bessemer Converter - This uses molten pig iron. Air is blown through it to raise its temperature and burn off impurities. Additives such as carbon are added to make it into carbon steel. Scrap steel may also be added in controlled quantities. This process does not use coke.

Electric Arc Furnace - This can make new steel using a mixture of pig iron and scrap steel in varying proportions. This process does not use coke.

Coke is therefore only used in the production of pig iron. The amount of pig iron used in the steel industry is therefore dependent upon the steel processes used and the amount of scrap steel that is recycled.

The representee states that Para 6.404 of the Committee Report, which is technically incorrect and Para 6.411 showing a graph of projected world steel demand, together with the adjacent paragraphs, convey the impression that the demand for metallurgical coal/coke is proportional to the demand for steel. The representee states that this is not

the case; may mislead the Committee, and a better graph would have been the demand for coke or pig iron. Raises questions about the demand for steel: China has recently closed many polluting steel works; has reduced production by many millions of tonnes per year; has produced steel by using many millions of tonnes of imported scrap steel (Europe has exported a lot of scrap steel to China), and from 2019 will ban imports of scrap steel in order to make recycling a domestically driven industry. Further, the price of scrap steel on the world markets is likely to fall and encourage more steel companies to use scrap steel, and two British steel makers have announced that they will massively increase their use of scrap steel so reducing the requirements for pig iron and their carbon footprint.

Keep Cumbrian Coal in the Hole Campaign has written to the Lord-Lieutenant for Cumbria seeking advice on how to raise the concerns on the issue of 'the Crown's dignity versus coal mining under the Irish Sea'. The Campaign understands that HM holds the sub-sea mineral rights as far as the limit of UK territorial waters and that HM has made an exploration agreement with West Cumbria Mining (WCM), dated 21 July 2017. The results of the exploration have not been shared (as far as is known) with the elective representatives of HM's subjects who are resident in Cumbria and who are being invited by County Council officers to grant planning permission. Keep Cumbrian Coal in the Hole considers that the dignity of the Crown in Cumbria is under threat as a result of the arrangements between HM, WCM and their funders and is seeking advice as regards the correct way to raise these concerns.

Keep Cumbrian Coal in the Hole also comments that the committee report makes no reference to water consumption and there is no detailed scrutiny of where fresh water would come from.

Objections:

The further objections include further representations from SLACC (see below); representees who have written in support of the objection letter summarised first below, and additional comments made by individuals, summarised below.

Objection letter (1 March 2019) supported by two further representations: The author of the letter considers that the application should be refused for the following reasons:

- a. Non-compliance with policies in the Cumbria Minerals and Waste Local Plan (CMWLP) - The application should be refused as it does not comply with SP1 (presumption in favour of sustainable development), SP13 (climate Change mitigation and adaptation), SP14 (Economic benefit), SP15 (Environmental assets), SP17(Section 106 planning obligations), DC 2 (General Criteria), DC6 (Cumulative environmental impacts), DC13 (Criteria for energy minerals), DC22 (Restoration and aftercare).
- b. Consultation responses – Note that the Environment Agency, the Coal Authority and the RSPB continue to maintain that insufficient evidence has been provided to approve the planning application. It is hoped that the officer's report will recommend refusal.

- c. Climate change - This is a proposal for additional fossil fuel extraction at a time when the world faces an unprecedented environmental/human catastrophe unless urgent action is taken to leave fossil fuel in the ground.
- Although the development is for coking coal for use in the steel industry, a significant volume of high emissions 'middlings' coal would be produced and there would be no watertight enforceable way of guaranteeing it will only be used in processes which capture the worst emissions from that coal (as assured by WCM).
 - The proposal to use coking coal in the steel industry would itself contribute hugely to climate change. The carbon assessment assuming that extracting this coal would not be in addition to current US sources, and that the difference in transportation miles constitutes carbon reduction is oversimplistic and unrealistic; it ignored price reductions due to additional supplies enabling more to be burnt and sold. A significant proportion of the carbon emissions arising from coal extraction should therefore be included in the carbon assessment.
 - The applicant considers this development would support the steel industry, whose future is secured; however this is not the case. Port Talbot is supported only until 2022; the European Steel Industry is under threat from China and the UK. The likely outcome is either the demand for coal will drop sharply or that it will be transported longer distances.
- d. Risk of off-shore subsidence - Potential implications given then are known to be layers of chemicals and radioactive pollution on the sea bed.
- Toxic substances disturbed by subsidence would move freely through the marine environment and there could be no way of preventing adverse impacts on protected areas, fish and other organisms. Concern for potential impacts upon Cumbria river salmon populations.
 - No credible evidence appears to have been offered to the claim that pumping waste back into the mine would reduce subsidence. Pumping water back into shale gas wells is the main cause of earthquakes in the shale gas producing parts of the world. Concern that the Coal Authority has referred to inadequate seismicity testing, and that this would only relate to on-shore, not off-shore extraction. Must be more concerning off-shore.
- e. The harms would outweigh the benefits of developing a contaminated site and the economic benefits of bringing jobs and prosperity to Whitehaven.
- Jobs would be created short term during the development phase, however, the application emphasises a long term future with well paid jobs. These are related to off-shore extraction and should not be weighed in the balance unless the potential and unknown impacts of off-shore extraction is known.
 - Concern that an earlier application proposed by 'the same backers' proposed coal extraction followed by Underground Coal Gasification (UCG); that UCG is included in the Coal Authority Licence; that UCG has never been carried out successfully in the UK, and that the dangers of the UCG in terms of emissions, earthquakes and subsidence would be controlled by the MMO with no input from Cumbria County Council (as it could potentially be achieved with a minimal onshore planning permission).

- More likely that UCG would be refused by the MMO, and concern that the mine would close and leave fugitive methane gas emissions and restoration problems like Keekle Head; that given the Australian/international finance/ownership of the mine, S106 agreements/deposit bonds would be very difficult to pursue, and even if funds are allocated both Scottish and Cumbrian experience shows that it is never sufficient to cover restoration.

Comments made by other objectors:

- f. The proposals do not comply with the CMWLP specifically in relation to the need to take account of the issues of climate change and to minimise overall carbon footprint. Consider that the proposal is contrary to Para 2.25 of the Plan (role of the planning system 'moving to a low carbon economy'); Objective 1 (Box 2.3 – Strategic Objectives – that 'developments will take due account of issues of climate change); SP13 (that 'energy management, carbon reduction and resource efficiency have been determining design factors); DC2 (proposals must demonstrate that 'overall carbon footprint of the development has been minimised'). This requires overall carbon footprint to have been assessed and to minimise carbon footprint requires carbon offset measures that exceed the carbon removed. Without such measures the proposal cannot comply with DC2 and so should be refused. Carbon emissions from using coal will far exceed the carbon emissions for sea transport; the more coal mined, the more will be used; coal is a fuel and its purpose is to be burned thereby releasing CO₂; there is almost no use of carbon capture technologies so coal mined would contribute to CO₂ emissions. The demand for coal in the UK is declining; there is no evidence that coal mined at this site will replace coal mined elsewhere so the claimed 'significant reduction in carbon emissions' is unsupported; the extraction of more coal at cheaper price than coal can be imported will encourage the use of coal. This would be contrary to CMWLP and government policy.
- g. The climate change impacts of the proposed development need to form a crucial part of the decision making process and as such indicates that this application should be refused permission. The steel industry needs to and is in the process of decarbonising itself in response to the impacts of climate change.
- h. This development should not be approved because of its potential impacts on climate change in the midst of a 'climate emergency'. The extremes in Cumbria's climate from increased flood risks to opposite dry spells will make it unattractive to tourists; wild fires are becoming common place on moors which should be some of the wettest places in the UK, and Cumbria could be next.
- i. The quantity of greenhouse gases that would be released over the projected years of operation would be totally incompatible with the urgent and steep reduction in carbon emissions that climate scientists state will be required to meet the temperature goals of the Paris Climate Agreement that the UK and almost all other nations have signed. There is also an obligation under the Climate Change Act 2008 to reduce the net UK carbon account by at least 80% of the 1990 baseline by 2050.

- j. The Agreement commits the UK to limit global average temperature rise to well below 2 degrees C and to try to limit temperature rise to 1.5 degree C. Meeting the commitments of the Agreement and the Act will require huge reductions in the burning of fossil fuels over the next 30 years and cuts on the scale required need to be taking pace in the next few years; loading emissions reductions to the latter part of the period will not work as atmospheric greenhouse gases are cumulative. Any additional coal burned, even for a short term will still contribute to increasing temperatures decades after it is burnt.
- k. The mine would not merely substitute one source of coal for another. Current suppliers would look for new markets. Additional supply, through keeping prices down, creates more demand.
- l. There can be no guarantee that the anticipated users (essentially the UK steel industry) will be there in a few years' time. As with any other producer, the mine-owners/shareholders would seek to maintain a return on investment through other markets and the mine would continue to undermine efforts to limit climate change. The world urgently needs to be closing coal mines down, not opening new ones.

Additional comment from SLACC (that is, in addition to the representation from SLACC set out below):

- m. 'Cumbria County Council will share responsibility for causing the many thousands of climate deaths that will very likely result from their decision, should this coal mine be approved. The close proximity (five miles) to Sellafield's 140 tonnes of plutonium ratchets up the stakes with the possibility of a damaging seismic event as a result of deep mining.'

South Lakes Action on Climate Change (SLACC)

SLACC has submitted an email and further letter (12 March 2019) in addition to the letter of objection previously submitted (18 February 2018). Two of the further objections received endorse these objection letters. The letter and email both dated 12 March 2019 from the South Lakes Action on Climate Change (SLACC) have raised a recent High Court judgement March 2019 in the case of Stephenson v Secretary of State for Housing, Communities and Local Government (CO/3511/2018), which ruled that paragraph 209a of the NPPF (July 2018) is unlawful. The 2018 version has been replaced by the NPPF, February 2019, but paragraph 209a is worded the same.

The Court in the Stephenson case found that the Secretary of State had in adopting paragraph 209(a) of the NPPF on 24 July 2018 unlawfully failed to take into account material considerations, namely scientific and technical evidence that had been produced and that the public consultation on paragraph 209a in the NPPF (2018) was so flawed in its design and processes as to be unlawful.

The SLACC representation letter says: that the High Court ruled that the Government was acting illegally to ignore recent scientific papers on climate science and fossil fuel extraction, when it copied across a 2015 Written Ministerial Statement (WMS) into

Paragraph 209a of the 2018 Revised NPPF, despite having received a report showing that the 2015 WMS was not scientifically valid; that although Paragraph 209a concerns onshore oil and gas extraction, the High Court ruling has wider implications as regards all 'Oil, gas and coal exploration and extraction' in chapter 17 on minerals, including Paragraph 211 on coal, and also on government planning policies in general where fossil fuels and climate change are involved; that the ruling implies more widely that other paragraphs in the NPPF, and the wider planning structure put in place by central government where it concerns fossil fuels, need to be re-examined and updated with regard to recent additions to climate science; that the judge appeared to accept that it is valid for campaigners and local government to treat climate impacts as a planning consideration at a local level (instead of leaving this consideration to central government policy).

The representation letter goes on to consider what SLACC say will be the carbon emissions from WCM's proposal. SLACC in effect disagree with the Committee Report by saying that an overused loophole allows fossil fuel advocates (including the UK government) to frequently claim "climate benefits", or "climate savings", for fossil fuel projects by confining attention to just UK territorial emissions (as shown by Paragraph 209a), and ignoring additions to global emissions; claims of "displacing" possibly higher carbon imports actually mean adding to global emissions if the displaced fuel is burnt abroad; such claims if they are to comply with climate science, should be considered invalid if they fail also to apply to global emissions. SLACC say that the 8 million tonnes of CO₂ per year that WCM coal would emit if combusted, can in no way fit with a rapid and immediate emissions reduction requirement, and that's before adding the significant within-UK upstream emissions from the project, and other GHGs such as methane; such emissions would be very high in relation to Cumbria's carbon budget; the emissions would undermine the possibility of Cumbria meeting a 1.5 degrees emissions reduction path. SLACC say that it hopes the Council is fully convinced that Paragraph 211 should be regarded as incompatible with UK's climate commitments, and that WCM's application can be rejected on climate grounds alone (as well as on other important issues summarised by FoE and other groups).

As noted in the Committee Report, the Council must under s38(6) of the Planning and Compulsory Purchase Act 2004 determine the planning application in accordance with the development plan unless material considerations indicate otherwise.

The Council's main development plan policy on coal extraction in this instance is policy DC13, Cumbria Minerals and Waste Local Plan. It is similar to paragraph 211 of the NPPF except that DC13 refers to the acceptability of the "social or environmental impacts" in contrast to "environmental acceptability" in paragraph 211 in the first stage test of the policy. Policy DC13 stands as an unchallenged development plan policy and the period for any legal challenge against it has long passed.

The NPPF is an "other material consideration", albeit an important one. Nonetheless it should be noted that paragraph 209(a) was adopted as part of the NPPF on 24 July 2018 some 10 months subsequent to the adoption of Cumbria Minerals and Waste Local Plan and subsequently again in February 2019.

The recent Court decision in Stephenson found paragraph 209a relating to onshore oil and gas (eg fracking) unlawful. Although a challenge to the NPPF (2018 version), it is

reasonable to assume that a Court would reach a similar conclusion on the current 2019 version.

WCM's application is not for the extraction of onshore oil or gas and the national planning policy for the extraction of coal is dealt with in paragraph 211 of the NPPF, which was not the subject of the challenge or Court decision in the Stephenson case.

It is not considered that the Court's decision in the Stephenson case has a wider impact on the NPPF mineral policy, for example, in relation to paragraph 211. Paragraph 211 of the NPPF can continue to be considered in respect of WCM's planning application as the applicable national planning policy for the application and the Committee should attach the weight to that national planning policy paragraph as it considers appropriate.

It is accepted that the environmental acceptability, along with social impacts under policy DC13, including issues relating to carbon emissions and climate change, have to be considered by the Council on this application and, as the Committee Report concludes the proposal is not entirely environmental acceptable, the Council has to consider whether the national, local and community benefits clearly outweigh the likely impacts. That has been considered in the Committee Report and having considered the latest representations received from SLACC and others, officers still consider that planning permission should be granted and the development is in accordance with the development plan as a whole.

In any event, in the alternative, officers have considered the approach and recommendation if SLACC's representations on the Stephenson case were to be accepted that the Court decision has wider implications as regards all 'Oil, gas and coal exploration and extraction' in chapter 17 on minerals, including Paragraph 211 on coal. If that were correct, it is considered that moderately reduced weight would be given to paragraph 211 under the present circumstances. It is not considered that this means that significantly or any reduced weight should be given to policy DC13, given that statutory priority afforded to the development plan under S38(6). Throughout, including in the Committee Report, the application has been assessed pursuant to the test in S38(6) as further detailed in the "Basis for determining the application" below.

Therefore, even if it were accepted and assumed for the purpose of considering the alternative approach that the Court decision has wider implications as regards all 'Oil, gas and coal exploration and extraction' in chapter 17 on minerals, including Paragraph 211 on coal, it is considered on balance as a matter of planning judgement that the planning permission should still be granted because it is considered the proposal would still be in accordance with the development plan as a whole and the overall benefits clearly outweigh the likely adverse impacts.

On both approaches set out above, it is considered that planning permission should be granted. The Committee is recommended to consider the planning application on this basis.

Basis for determining the application

The Council must, under s38(6) of the Planning and Compulsory Purchase Act 2004, determine the planning application in accordance with the development plan unless material considerations indicate otherwise.

The Committee should determine the application pursuant to the terms of the following test:

- First, the section 38(6) duty is a duty to make a decision by giving the development plan priority, but weighing all other material considerations in the balance to establish whether the decision should be made, as the statute presumes, in accordance with the plan.
- Secondly, therefore, the decision-maker must understand the relevant provisions of the plan, recognising that they may sometimes pull in different directions.
- Thirdly, section 38(6) does not prescribe the way in which the decision-maker is to go about discharging the duty. It does not specify, for all cases, a two-stage exercise, in which, first, the decision-maker decides “whether the development plan should or should not be accorded its statutory priority”, and secondly, “if he decides that it should not be given that priority it should be put aside and attention concentrated upon the material factors which remain for consideration”.
- Fourthly, however, the duty can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole.
- Fifthly, the duty under section 38(6) is not displaced or modified by government policy in the NPPF. Such policy does not have the force of statute. Nor does it have the same status in the statutory scheme as the development plan. Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, its relevance to a planning decision is as one of the other material considerations to be weighed in the balance.

In regard to the development plan policies including DC13, the Committee should consider those first and consider whether the application accords with the development plan as a whole. Policy DC13 should be considered on the basis set out in this report above giving priority and substantial weight to this development plan policy, as any reduction in weight is considered to be minimal. On this basis and as set out at paragraphs 6.520 – 6.526 in relation to policy DC13, it is considered that the proposal accords with policy DC13 and the development plan as a whole. The Committee should then consider whether there are other material considerations that indicate the application should be determined otherwise. The NPPF is an other material consideration, albeit an important one. Paragraph 211 of the NPPF should be considered in this manner. Having considered the application in this manner, officers recommend that planning permission is granted on the basis set out above in accordance with policy DC13 and the development plan as a whole as the statute presumes.

Appendix 1 to Update Report (19 March 2019): Proposed Planning Conditions Summary

Conditions highlighted in **bold** below indicate that changes are proposed to the conditions from Appendix 1 in the Committee Report. These changes are set out within the Update Report.

1. **Approved Plans and Documents**
2. Commencement with 3 years
3. Winning and Working of Metallurgical Coal for use in steel manufacture only
4. Cessation within 50 years of production commencing or 31/12/75 (whichever sooner)
5. **Construction and Environment Management Plan**
6. Construction Traffic Management Plan
7. Ecology mitigation - Construction
8. Landscape Management Plan
9. Archaeology – Written Scheme of Investigation
10. **Contaminated Land and Remediation**
11. Details of Site Investigation Covers
12. Restoration Scheme – Preliminary Phase
13. Coal Mining Risk Assessment
14. Community Liaison Group
15. Access and Parking
16. **Drainage and Surface Water Management – Main Mine Site**
17. **Drainage and Surface Water Management – Rail Loading Facility**
18. **Drainage and Surface Water Management – Conveyor**
19. **Management and Maintenance of Sustainable Drainage Systems**
20. **Marine Monitoring Plan**
21. MMO Licence
22. Construction Travel Plan
23. **Mineral Conveyor Construction**
24. Landscape Planting and Seeding Programme – Main Mine Site
25. Landscape Planting and Seeding Programme – Conveyor Route and Rail Loading Facility
26. Main Band Colliery – Restoration Works
27. Ancient Woodland – Management of Conveyor Construction
28. Ancient Woodland – Replacement Planting
29. Ancient Woodland – Management of Trees
30. Construction details of buildings and structures
31. **Conveyor Design**
32. Materials and finishes – all buildings and structures
33. Secure By Design
34. Operational Lighting Scheme
35. Cycle Storage
36. Footpaths during construction
37. Gas pipeline
38. Materials Management Plan
39. Landfill Safeguarding Scheme
40. Construction – Site Waste Management Plan
41. **Phasing and Management for Paste Placement**
42. **Construction – Surface Water Quality Management Plan**
43. Construction – Foul Water Management Plan
44. Heritage Trails & Paths
45. Habitat Management Scheme
46. Foul Water Drainage Scheme
47. Construction Phase – Restoration Scheme
48. **Rail Loading Facility – Design Detail**
49. Rail Loading Facility – Vehicle Incursion
50. Rail Loading Facility – Electric Pylon Relocation
51. Rail Loading Facility (RLF) – Landscaping Scheme
52. Construction – Hours of Working (0800-1800 Mon-Fri & 0800-1300 Sat)
53. Construction – Traffic Numbers – no more than 53 HGVs entering / leaving per day
54. Construction – Noise (Temporary Operations)

55. Piling Methodology
56. Archaeology
57. Main Band Colliery – Reptiles
58. **Mine Phasing, Operations and Spoil Management**
59. **Footpath through Main Mine Site**
60. Operational Travel Plan
61. **Operational Environmental Management Plan**
62. **Dust Management Plan**
63. **Noise Management Plan**
64. Mine Gas Capture
65. Seismic Activity – Monitoring
66. Seismic Activity – Investigation
67. Seismic Activity – Mitigation
68. Subsidence – Monitoring
69. Subsidence – Investigation and reporting
70. Subsidence – Mitigation
71. Hazardous Substances Consent
72. Operation of Rail Loading Facility – Hours of Working
73. Operation of Rail Loading Facility – Noise Assessment
74. **Departure and Arrival of Trains**
75. Mine Production – max of 2,430,000 tonnes / year
76. Mine Production – Middlings Coal to be no more than 15% of total production
77. Noise Limits
78. Transport – no minerals, products or waste from mine transported by road
79. Transport – use of approved accesses only
80. Transport – infill materials for RLF and sidings – delivery via railway only
81. Transport – no more than 6 trains per day to enter and leave RLF
82. Transport – no more than 13 HGVs to leave Main Mine Site per day
83. Transport – Operational Travel Plan
84. Fuel Storage
85. Nesting Birds Protection
86. Soils Handling – Stripping and Storage
87. Soils Handling – Dry & Friable Conditions
88. No External Storage
89. No Blasting
90. Lighting
91. No Surface Water Discharge to Sandwith Beck or Rottington Beck
92. **Decommissioning & Restoration Scheme**
93. **Decommissioning & Restoration Environment Management Plan**
94. **RLF Decommissioning**
95. **Aftercare scheme**
96. RLF Lighting & Restoration Environment Management Plan
97. **RLF Design & Implementation Details**
98. Permitted Development Withdrawn for buildings, structures, erections, plant or machinery
99. **UPDATE – Additional Condition re Water & Wastewater Infrastructure – requested by U/U**