Dear Sirs

TIME SENSITIVE: Application for development of a new underground metallurgical coal mine and associated development at Former Marchon Site, Pow Beck Valley and area from Marchon Site to St Bees Coast, Whitehaven, Cumbria, by West Cumbria Mining Ltd

As you know, we are instructed by South Lakes Action on Climate Change -Towards Transition ("SLACC") in relation to the above proposed development of a new underground metallurgical coal mine at Whitehaven. We write further to our emails to the Planning Casework Unit of 14, 18 and 21 January 2021 and your letter of 29 January 2021.

Your letter states that our “email/letter . . . has been carefully considered” and “the decision of 6 January to not call-in is not being reconsidered.”

First, there is no indication whether the Secretary of State (1) considered the information submitted in conjunction with our client’s reconsideration request of 14 January 2021 and the following supplemental emails and determined after consideration against the indicators set out in the call-in policy that the planning issues involved are only of local importance; or alternatively (2) decided not to reconsider his decision as a matter of principle or for another/other reasons. The language used raises the strong implication that the Secretary has declined to reconsider his decision of 6 January 2021, rather than considering the new information provided by our client and determining that the call-in policy is not met.

Second, it is not even clear from the language whether the Planning Casework Unit considered all three of the emails we have sent on behalf of SLACC (as referenced above) and their attachments, or only considered one single email.

1 As set out in the Written Ministerial Statement by Nick Boles on 26 October 2012.
Climate Change Committee Letter

Further, we note that on Friday, 29 January 2021, shortly before receiving your letter, the Government’s own independent statutory advisors, the Climate Change Committee (“CCC”), wrote to the Secretary of State expressing their view that:

- “The opening of a new deep coking coalmine in Cumbria will increase global emissions and have an appreciable impact on the UK’s legally binding carbon budgets.” (emphasis added)
- “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.”
- “…this decision gives a negative impression of the UK’s climate priorities in the year of COP26.”

Even assuming full consideration was given to the information we previously submitted, the opinions of the Government’s own statutory advisors clearly constitute new information on which basis the call-in decision should be reconsidered.

Of course it is highly unusual for the CCC to raise with the government matters relating to a specific planning application. That alone demonstrates that the application involves planning issues of more than local importance. However, in addition, in relation to the indicators set out in the call-in policy, the CCC letter demonstrates that the application:

- may conflict with national policies on important matters;
- is likely to give rise to substantial cross-boundary or national controversy;
- could have significant effects beyond their immediate locality; and
- may involve the interests of … foreign governments.

Further, the CCC letter noted that the increase in UK emissions due to the operational emissions of the mine is greater than the level of annual emissions we have projected from all open UK coal mines to 2050.” This demonstrates that the application:

- may have significant long-term impact on economic growth . . . across a wider area than a single local authority.

This is because the projections associated with the Sixth Carbon Budget on which the CCC relies represent what the CCC considers is the most cost-effective path to meet the legislated GHG emissions limits for the relevant period (in this case, 2033-2037). Where any subsector exceeds the subsectoral budget, this imposes costs on other sectors, which will be forced to take action to reduce emissions beyond the cost-effective pathway. It is therefore clear that where a single project will exceed the subsectoral budget, this imposes costs on other sectors of the economy across the UK, which must be considered.

What the Secretary of State is asked to do:

1) Reconsider his decision whether to call in the Whitehaven mine application (Cumbria County Council ref. 4/17/9007; PCU ref. PCU/RTI/H0900/3255949) based on the

---

2 That the application is likely to give rise to substantial cross-boundary or national controversy and may involve the interests of foreign governments is also demonstrated, for example, by the fact that the Fijian ambassador to the UN was recently quoted by the BBC as indicating that the decision “sends the wrong signal”. https://www.bbc.co.uk/news/science-environment-55766306.

3 This is quite apart from the end-use emissions from the use of the coal. Our clients have submitted detailed expert evidence to the County Council demonstrating that the mine would also increase emissions due to (1) increased use of coal because of the significant additional supply this mine would represent, and (2) such a significant ‘locked-in’ supply discouraging switching to alternative cleaner steelmaking technologies. We are happy to provide more information on any of these points, and anticipate providing detailed evidence in relation to these points were the application called in, but these points are not the focus of this letter.
information herein.

2) Confirm that all three emails referenced above and the attachments thereto were considered before making the decision of 29 January 2021.

3) Confirm that the information previously submitted per (2) will be considered together with the new information in this letter when making a decision on the reconsideration request herein.

4) Provide reasons for any decision.

   a. To the extent that the Secretary has considered the information and considers that the call-in policy is not met and that the planning issues involved are of no more than local importance, say why.

   b. To the extent that the Secretary of State declines to reconsider his decision on any other basis, indicate for what reason he declines to reconsider his decision of 6 January 2021. As above, we note that the language used in the 29 January 2021 letter raises the strong implication that the Secretary has declined to reconsider his decision of 6 January 2021, rather than considering the new information provided by our client and determining that the call-in policy is not met. If this is the case, please set out on what legal basis the Secretary of State considers that he may refuse to reconsider his 29 January 2021 letter without careful consideration of the new information provided, as against the call-in policy.

Given the time-sensitive nature of this matter, please can we have your response within 14 days, i.e. by no later than 16 February 2021? Please note that if we do not receive a substantive response to this letter, our clients consider that the only avenue available to them is likely to be to send a further letter in accordance with the pre-action protocol for judicial review.

Yours faithfully

Richard Buxton Solicitors
Environmental, Planning & Public Law