

**Former Marchon Site, Kells, Whitehaven, Cumbria**

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

**LPA Ref: 4/17/9007**

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**APPLICANT'S STATEMENT OF CASE**

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**INTRODUCTION**

1. This Statement of Case is submitted on behalf of the applicant, West Cumbria Mining Ltd (“WCM”).
2. This statement of case is submitted in accordance with rule 6(3) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. It describes the case that WCM will put forward at the inquiry to address the areas identified by the Secretary of State in his letter of 11 March 2021.

3. WCM reserves the right to amend or add to this statement in response to comments or issues raised by any other party.

### **Summary of the proposal**

4. WCM submitted an application for detailed planning permission (the "Application") to Cumbria County Council on 31 May 2017 for the development of the land at the former Marchon Works, Kells, Whitehaven (such land hereinafter referred to as the "Application Site"). The proposal to which the Application relates comprises the following: –
  - a) 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;
  - b) 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 from Mirehouse Road, Pow Beck Valley, south of Whitehaven; and
  - c) a new underground coal conveyor to connect the coal processing buildings with the coal loading facility.

### **West Cumbria Mining Ltd**

5. WCM is a privately-owned business that holds three coal exploration licences granted by the UK Coal Authority, which collectively cover

an area of approximately 200 km<sup>2</sup> of land and seabed off the coast at Whitehaven in West Cumbria (the “**Licensed Area**”). WCM was established to secure investment to explore the Licensed Area to assess its potential for future development as a metallurgical coal mine.

6. Since October 2014, WCM has undertaken extensive exploratory drilling within the Licensed Area, with a large number of core samples from target coal seams recovered and submitted for laboratory testing. Based on this exploratory work, it is estimated that there are over 750 million tonnes of excellent quality metallurgical coal across the Licensed Area. Proposed Condition 76 limits production to no more than 2.78m tonnes of metallurgical coal per year.
7. In order to extract the metallurgical coal, WCM must construct and operate an underground metallurgical coal mine, which will be known as Woodhouse Colliery (the “**Colliery**”). The full description of the Development proposal is given at paragraph 4 hereof, but to a large extent the Application relates to the construction and bringing in to use of the Colliery on the Application Site.

### **What is metallurgical coal?**

8. Metallurgical coal, also known as “coking coal”, is a particularly rare type of coal that is defined by its specific physical and chemical characteristics. Metallurgical coal is not suitable for use as “thermal coal” in power plants to generate electricity because it burns too hot for such uses. Instead, approximately 99% of all metallurgical coal is used in the manufacture of steel.
9. Steelmakers use metallurgical coal as a ‘reducing agent’ to purify iron ore and convert it into iron as a primary ingredient for steel making. Usually, a number of grades of coking coal are blended together

according to their distinct chemical and physical properties, and baked in a coking oven, where the blend undergoes a melting and re-solidifying process, to produce coke. Coke is almost pure carbon, and it is the carbon content that is required to promote the chemical reaction to reduce iron ore into iron. Carbon reacts with the unwanted chemical elements of iron ore, removing them from the ore, leaving iron that does not contain the impurities and which is therefore suitable for steelmaking.

10. There are currently very few sources of metallurgical coal in the world. The European Union has listed metallurgical coal as one of 27 critical raw materials, the supply of which is of strategic importance<sup>1</sup>. China produces the most metallurgical coal of any single country (approximately 54% of global supply between 2010-2014). Other major producers include Australia (15%), the USA (7%) and Russia (7%). The main sources of metallurgical coal used in the European Union between 2010 and 2014 were: United States (38%), Australia (34%), Russia (9%), Canada (7%), Poland (1%), Germany (1%), Czech Republic (1%), United Kingdom (1%)<sup>2</sup>.
11. In 2017, the UK produced 39,000 tonnes of metallurgical coal and imported around 2.69 million tonnes<sup>3</sup>.

### **The Development**

12. The Colliery will use modern mining technology and has been designed in a way that minimises waste and mitigates the impact of the Development on the local area. For example:

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<sup>1</sup> Document 1.10 - 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 – Com/2017/0490 final at page 3

<sup>2</sup> Document 1.10 - 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 – Com/2017/0490 final at page 5

<sup>3</sup> Document 1.1 - OR dated 19 March 2019 at paragraph 6.407

- a) WCM plans to mine the metallurgical coal using a “Run-Out and Pocket” partial extraction method. In summary, this involves a large machine cutting a succession of parallel tunnels, called “runouts”, at intervals along a main “roadway” tunnel, before a second machine cuts smaller enclaves, called “pockets”, at intervals along each runout to extract the coal. The coal is only partially extracted from the area, which reduces any surface subsidence, and the runout and roadway tunnels are supported using rockbolts and mesh technology for safety and ground control.
- b) Reject material (namely, waste rock) would be returned back underground into worked out areas of the mine. The return of this material underground would mean it could be disposed of without requiring transport off-site and would also assist in the overall strategy to manage and reduce surface subsidence, by part-filling voids.
- c) Access to the mine was originally proposed along existing tunnels built for access to a disused and flooded anhydrite mine on site. However, this proposal has been amended to take account of responses received to a consultation during the planning permission process (as described below at paragraph 32). As a result, the proposed access tunnels to the mine have been realigned so that they pass over, rather than through, the former anhydrite mine tunnels.
- d) WCM originally proposed to process the extracted metallurgical coal in a way that also produced, as a by-product, lower quality coal known as “middlings coal”. WCM proposed to sell this middlings coal for non-energy generating uses such as cement manufacture. However, as described below at paragraph 49, WCM has subsequently refined its proposed processes with a minor adjustment to the original internal design of the processing facility. This adjustment means that

100% of the coal extracted at the Colliery would be premium metallurgical coal.

- e) A number of steps have also been taken specifically to address the Green House Gas emissions of the Development, and the consideration of these steps by the County Council's Development Control & Regulation Committee, as explained at 55 below.
- f) The Development has also been designed so that all stages of processing and on-site movements of the extracted coal take place within fully enclosed buildings or underground to minimise disruption to the local area.
- g) All the metallurgical coal would be brought to the surface and processed (essentially, washed to remove impurities) in fully enclosed buildings within the new CHPP facility located on the site of a former chemical works (called “Marchon”) on the edge of the town of Whitehaven. The building would consist of a central dome, with two arms extending northwest and southwest. The south western arm would store the run of mine material comprising raw coal and rock overburden and the north western arm would store clean processed coal prior to onward transportation.
- h) The clean processed metallurgical coal would then be transferred from the CHPP facility via a 2.3 kilometre long buried conveyor and loaded onto trains using a new Rail Loading Facility in the Pow Beck Valley, which would be located adjacent to the existing Cumbrian Coast Railway line and accessible via the site of the former Main Band Colliery, a disused coal mine. The existing train line would then be used to transport the coal to UK customers and to Redcar Bulk Terminal, an operational deep-sea port on the north east coast, for onward shipment to European steel producers. The use of

rail transport saves many millions of road miles and associated emissions and disturbance throughout the lifetime of the development had the coal been proposed to be transported by lorry.

- i) As a precursor to the development, WCM is required to undertake site investigation and remediation of the contaminated site at Marchon, the primary location for the mine buildings. Without WCM's development, it is uncertain whether the contamination present would ever be remediated.
13. The metallurgical coal produced at the Colliery will be sold to steelworks. WCM plans principally to target steelworks in the UK, North Sea and Baltic markets, which, currently predominantly use imported metallurgical coal from North America, Australia and Russia. In 2018, the EU consumed approximately 55 million tonnes of metallurgical coal and produced 15.5 million tonnes<sup>4</sup>.
  14. At present, there are three ways of manufacturing steel within a commercial context, not all of which require metallurgical coal.
    - a) The first method manufactures “virgin” steel from iron ore using a blast furnace. This method involves the use of coke, which is a purified form of carbon made from metallurgical coal. It is important that metallurgical coal, rather than lower quality industrial or thermal coal, is used to produce coke, as only metallurgical coal produces coke that is:
      - i) strong enough not to be crushed by the weight of the material above it in the furnace in which the steel manufacturing process takes place;
      - ii) porous enough for gases to travel through the furnace; and
      - iii) low in sulphur, phosphorus and ash.

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<sup>4</sup> Document 1.2 - Euracoal (2020) *Coal Industry Across Europe* European Association for Coal and Lignite at page 4  
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- b) The second method to manufacture steel is by recycling scrap steel in an electric arc furnace. In this process a small amount of Metallurgical Coal is also added to improve the quality of the steel produced.
  - c) The third method known as Directly Reduced Iron (DRI) produces a product known as Sponge Iron, which is subsequently converted into steel in an electric arc furnace, where again an amount of Metallurgical Coal is still required. DRI is a production method which relies upon the removal of oxygen from iron ore in the solid state. The reducing agents used in DRI are carbon monoxide and hydrogen, being produced using reformed natural gas, syngas or (thermal) coal.
15. The first of these processes requires much more metallurgical coal than the second, and so the vast majority of the metallurgical coal from the Colliery will be used in this way. There is currently no economically viable commercial production method to produce steel that does not require metallurgical coal. Technological advances may make it possible in the future to manufacture steel on an industrial scale using hydrogen, without the need for metallurgical coal. However, this is not the case currently; the industry is in a transitional period that is not expected to impact the demand in metallurgical coal during the planned operational lifetime of the Colliery. This is confirmed by the conclusions of Wardell Armstrong who were commissioned by the Council to produce a report entitled “*Review of the Use of Coking Coal in the UK*”<sup>5</sup>.
16. Steel is integral to many industries, such as construction, transportation and manufacturing, as well as being a key building material used for the generation of renewable energy, including in the construction of wind turbines, hydro-electric dams and power plants

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<sup>5</sup> Document 1.3 - 'Review of the use of coking coal in the UK', Report by Wardell Armstrong, dated September 2020, pages 26-28



generating energy from solar power, geothermal and biomass. Until a viable and commercial scale alternative means of steel production is found, the global supply of steel will continue to depend upon the availability and use of metallurgical coal, such as that which WCM is proposing to extract at the Colliery.

### **Benefits of the Development, once operational**

17. According to WCM's proposed construction timeline, the Colliery would become operational approximately two years after planning permission is granted. If permitted to proceed with the Development, WCM plans to operate the Colliery until the end of 2049.
18. Once operational, the Development will create more than 500 permanent staff positions, which will be necessary to operate the Colliery. WCM has pledged to fill 80% of these, where possible, with people from the local community (within 20 miles of the Colliery). This will involve WCM offering 50 apprenticeships and working with local educational providers, such as The Lakes College in Whitehaven, to develop training course curricula based on WCM's future needs.
19. As part of the Development, WCM also plans to make further future investments in the local area. These include local road, rail, cycle and footpath improvements, the refurbishment and future operation of a former local mining heritage museum, and improvements to local wildlife habitats. It will also invest £5 million into a Community Fund in the first 10 years of operation to support local social initiatives and schemes. The Development will also require WCM to remediate legacy contamination from the former chemical works on the Marchon site, making it safer for the surrounding environment.

20. WCM is also committed to adopting a policy of carbon offsetting in respect of the Colliery. WCM will fund and develop an accredited ‘carbon sink’ forest scheme, planting more than 250,000 trees in every year of the operation of the Colliery. WCM also plans to power the mine using renewable electricity. These measures will aim to offset all of the carbon emissions released by the construction and operation of the Colliery for the entirety of its operational lifespan and will form part of a modified planning condition and/or obligation as appropriate (for the further details of which see paragraph 110).
21. The Colliery is projected to have annual revenue of £302 million, making a £1.6 billion contribution to UK GDP and £2.6 billion worth of exports in the first 10 years of operation.

## **THE HISTORY OF THE PLANNING APPLICATION**

### ***Preparing and submitting the Application***

22. WCM first approached the Council concerning proposals for the Development in 2015. At this stage, WCM had engaged with key statutory consultees and the public to get their input on the design of the Development. WCM worked hard to introduce and establish both the company and the Development within the local community and businesses within West Cumbria. Between July 2014 and May 2017, WCM ran 11 public events and 10 public drop-ins which were attended by over 2,700 people, of which 97% of those surveyed indicated their support for the Development. The feedback received from key statutory and non-statutory consultees and the public directly helped to shape the design of the Development and the Application.

23. On 7 January 2016, WCM and the Council entered into a Planning Performance Agreement (the “PPA”). The purpose of the PPA was to establish a framework for joint working to facilitate the preparation and processing of the Application. In line with the PPA, WCM and the Council have had regular meetings to discuss the Application for over five years.
24. Following this, WCM continued the development work that entailed:
  - a) Recruiting a specialist team of industry experts to advise on the Development;
  - b) Conducting exploratory drilling and tests on coal samples to determine quality and its suitability for use in steelmaking;
  - c) Developing a geological model and a detailed understanding of the geology of the region, including formal production of coal resource and reserve statements;
  - d) Conducting a range of ecological, environmental and feasibility studies;
  - e) Assessing the financial viability of the Development;
  - f) Engaging with key stakeholders, including arranging numerous public events and drafting brochures, newsletters and setting up a website; and
  - g) Preparing and submitting the Application.
25. WCM issued a scoping request to the Council on 4 February 2016.
26. The Council adopted its scoping opinion on 1 June 2016.
27. The Application was validated on 6 June 2017, alongside an Environmental Statement and various supporting information and the application fee.

## **Refining the Application**

28. Following the submission of the Application, the Council conducted a consultation. The consultation period ran from 7 June 2017 to 10 July 2017. The Council received a wide range of responses from a variety of stakeholders including the Fire Protection Service, Historic England, the Coal Authority, Network Rail, Friends of the Earth, Friends of the Lake District, St Bees Parish Council, Allerdale Borough Council, Copeland Borough Council, Whitehaven Town Council, Natural England, the National Trust and the Environment Agency.
29. On 22 August 2017 the Council requested further additional information in accordance with Regulation 22 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (a “**Regulation 22 Request**”). WCM provided this information on 1 September 2017<sup>6</sup> along with a Planning Statement<sup>7</sup> and a Non-Technical Summary of the Development.
30. The provision of additional information resulted in a further period of public consultation that ran from 7 September 2017 to 11 October 2017. Shortly following this consultation period WCM's legal team circulated to the Council's lawyers an initial draft of the proposed section 106 (“**s.106**”) agreement in support of the Application.
31. As a result of the review of the additional information provided, a number of the statutory and non-statutory consultees requested further information. On 12 January 2018, the Council issued a second Regulation 22 Request<sup>8</sup>. WCM responded providing the requested further information. This triggered a third period of

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<sup>6</sup> Document 3.1 - Letter from WCM to Cumbria County Council dated 1 September 2017

<sup>7</sup> Document 1.4 - WCM Planning Statement Woodhouse Colliery, 2020

<sup>8</sup> Document 3.2 - Letter from Cumbria County Council to WCM dated 12 January 2018

public consultation that ran from 17 January 2018 to 19 February 2018.

32. Throughout 2018, WCM continued to conduct development work to address the viability of the Development and address the views of stakeholders that had been raised during the three public consultations that had occurred to date. In particular, WCM amended the design of the Development to avoid using a large underground former anhydrite mine, which in the initial scheme was proposed as a means of access to the coal seams and as an underground storage area. The reason for this amendment was that, despite the financial and operational efficiencies in using the existing void space of the anhydrite mine, the mine would have had to be drained of water accumulated in the mine over the years since its closure, and this water discharged into the sea. This would likely have required a number of detailed and time-consuming studies to be conducted to ensure that the water discharged did not result in negative impacts upon the marine habitats. The existing mine portals would however still be utilised to gain access underground.
33. In light of this change of design, on 2 May 2018 WCM requested that the Council defer consideration of the Application until WCM had updated the Environmental Statement and ancillary documents and drawings to reflect the change of approach. In the intervening period, while WCM updated its proposals, WCM provided the Council with a number of updates unrelated to the change of approach. For example, WCM provided additional details on:
  - a) methods that would be used to protect against contamination during the restoration of the former Marchon site;
  - b) how the mining will be carried out;
  - c) results of further ecology and marine surveys; and

- d) drainage proposals.
34. On 10 December 2018, WCM provided the Council with a consolidated and updated set of documents (including information submitted by WCM in the original Application, as well as the further sets of information provided by WCM in September 2017 and January 2018 in response to the two Regulation 22 Requests)<sup>9</sup> and an updated Environmental Statement.
35. The submission of an updated Application to reflect the removal of use of former anhydrite mine and new underground access tunnels triggered a fourth period of public consultation that ran from 19 December 2018 to 28 January 2019. Once again, WCM considered and incorporated the feedback from this consultation.
36. On 15 March 2019, a shadow Habitat Regulations Assessment was submitted to the Council dealing with potential impacts of the development on European-level protected marine and terrestrial sites within a 25km radius of the development. No significant effects were found.

### ***The first consideration of the Application by the DC&R Committee***

37. The Application first came before the DC&R Committee on 19 March 2019. In advance of this meeting, Mrs Angela Jones, then the Acting Executive Director for Economy and Infrastructure for the Council, submitted a report (the “**First OR**”) to the DC&R Committee<sup>10</sup> recommending that planning permission be granted for the Development<sup>11</sup>.

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<sup>9</sup> Document 3.3 - Letter from WCM to Cumbria County Council dated 10 December 2018

<sup>10</sup> Document 1.1 - OR dated 19 March 2019

<sup>11</sup> Document 1.1 - OR dated 19 March 2019 at paragraph 1.2

38. On 19 March 2019, the DC&R Committee considered the Application<sup>12</sup> in detail. The DC&R Committee first received a presentation from the Council's Project Team which described in detail the conclusions of the First OR. The DC&R Committee then heard objections to the Development, including on the basis that the Council needed to consider the impact of the Development on climate change in light of the UK's commitments under the Climate Change Act 2008<sup>13</sup>. The DC&R Committee also heard many people speak in favour of the Development. After hearing this debate, the DC&R Committee considered the Application and then unanimously resolved to grant planning permission. This resolution was noted to be on the basis of consideration of representations from Natural England, the First OR and a number of specific conditions that would subsequently attach to the Development once planning permission had been granted. The DC&R Committee's resolution noted two things that needed to occur before planning permission could formally be granted by the Council:

- a) The Acting Executive Director of Economy and Infrastructure had to adopt the shadow Habitats Regulations Assessment as the Council's Habitats Regulations Assessment under Regulation 63 of the Conservation of the Habitats and Species Regulations 2017; and
- b) WCM, the Council and other relevant interest holders had to enter into a s.106 agreement<sup>14</sup>.

### **Between DC&R Committee Meetings**

39. Following the DC&R Committee's first resolution on 19 March 2019, the Council adopted the Habitats Regulation Assessment and

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<sup>12</sup> Document 2.1 - Minutes of DCRC held on 19 March 2019

<sup>13</sup> Document 2.1 - Minutes of DCRC held on 19 March 2019 at page 8

<sup>14</sup> Document 2.1 - Minutes of DCRC held on 19 March 2019

WCM's lawyers sought to finalise the content of the s.106 agreement with the Council and the other relevant interest holders.

40. At that time, Mr Tim Farron MP made representations to the Secretary of State for Housing, Communities and Local Government (the “**Secretary of State**”) to issue a Direction under Article 31 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (an “**Article 31 Direction**”)<sup>15</sup>.
41. On 12 June 2019, The Climate Change Act 2008 (2050 Target Amendment) Order 2019 (the “**Net Zero Order**”) was laid before Parliament and on 21 June 2019, the Council received a letter from Leigh Day Solicitors, acting on behalf of Keep Cumbrian Coal in the Hole (“**KCCH**”)<sup>16</sup>. This letter alleged that there had been a number of flaws and omissions in the First OR and that the laying of the Net Zero Order represented a material change in the circumstances of the Application<sup>17</sup>.
42. On 1 July 2019, the Secretary of State issued an Article 31 Direction. Given the time that the Article 31 Direction afforded, the Council decided that its DC&R Committee should reconsider the Application in light of the points raised by KCCH and a proposal for WCM to make an additional financial contribution of £68,327 for certain road improvements<sup>18</sup> that had mistakenly been omitted from the earlier OR.

***The second consideration of the Application by the DC&R Committee and revocation of the Article 31 Direction***

43. The Application came before the DC&R Committee for a second time on 31 October 2019. In advance of this meeting, the Acting

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<sup>15</sup> Document 3.4 - Exchange of emails between T Farron and P Haggin dated 2 April 2019

<sup>16</sup> Document 3.5 - Letter from Leigh Day to Cumbria County Council dated 21 June 2019

<sup>17</sup> Document 3.5 - Letter from Leigh Day to Cumbria County Council dated 21 June 2019 at page 2

<sup>18</sup> Document 1.5 - OR dated 31 October 2019 at point 1 'Recommendations', paragraph (iii)



Executive Director for Economy and Infrastructure submitted an Addendum to the First OR, which considered the implications of the arguments put forward by KCCH (the “**Addendum**”)<sup>19</sup>. This Addendum concluded that the coming into force of the Net Zero Order could not be considered as a material change in the circumstances. In light of this conclusion, the Addendum recommended that the DC&R Committee once again resolve to grant planning permission in respect of the Application.

44. On 31 October 2019, the DC&R Committee considered the Addendum and a number of public representations at the meeting itself<sup>20</sup>. The DC&R Committee unanimously resolved to ratify its original decision that planning permission be granted in respect of the Application. As before, the resolution noted two things that needed to occur before planning permission could formally be granted by the Council:
- a) The Secretary of State would have to withdraw its Article 31 Direction; and
  - b) WCM, the Council and other relevant interest holders had to enter into a s.106 agreement<sup>21</sup>.
45. The next day, the Secretary of State wrote to the Council and withdrew his Article 31 Direction<sup>22</sup>. This letter stated that the Secretary of State had considered his policy on calling in planning applications and decided not to call in the Application<sup>23</sup>.

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<sup>19</sup> Document 1.5 - OR dated 31 October 2019

<sup>20</sup> Document 2.2 - Minutes of DCRC held on 31 October 2019 at 9am

<sup>21</sup> Document 2.2 - Minutes of DCRC held on 31 October 2019 at 9am at page 19

<sup>22</sup> Document 3.6 - Letter from Secretary of State to Cumbria County Council dated 1 November 2019 at page 2

<sup>23</sup> Document 3.6 - Letter from Secretary of State to Cumbria County Council dated 1 November 2019 at page 1

**The Leigh Day litigation and further adjustments to the Development**

46. Following the ratification by the DC&R Committee and the lifting of the Article 31 Direction, WCM and the Council once again worked to finalise the s.106 agreement. At this stage, there were a limited number of issues concerning specific landowners who would be parties to the agreement. WCM also set about undertaking a refined feasibility study in relation to the quality of the coal that WCM proposed to mine.
47. On 20 November 2019, Leigh Day (acting for Marianne Bennett from KCCH) filed an application for judicial review challenging the DC&R Committee's decision to ratify its previous resolution to grant planning permission in respect of the Development on the grounds that Council had failed to:
- a) consider GHG emissions of the mining operations;
  - b) comply with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011;
  - c) consider the need for, and GHG impacts of middlings coal;
  - d) give adequate reasons for the imposition of a 15% restriction on the production of middlings coal; and
  - e) consider appropriately the Net Zero Order.
48. Following an exchange of pleadings, permission to hear the judicial review was granted on 4 February 2020.
49. During this period, WCM had been undertaking a refined feasibility study in relation to the quality of the coal that WCM proposed to mine. Following further chemical assessments of the quality of coal and refinements to the treatment process, on 10 March 2020, WCM wrote to the Council to amend the Development such that all the coal that WCM proposed to mine would be metallurgical coal and

that the initial intention was to produce 2,430,000tpa of metallurgical coal and 350,000tpa of middlings coal)<sup>24</sup>.

WCM reviewed the documentation that had been submitted as part of the Application and identified a number of documents that needed to be updated in light of the change to the output of the Development. On 6 May 2020, WCM submitted these updated documents which included:

- a) An updated non-technical summary of the Environmental Statement;
  - b) An additional chapter to the Environmental Statement entitled “GHG Assessment”, which appended a report prepared by AECOM<sup>25</sup>;
  - c) A revised Planning Statement<sup>26</sup>;
  - d) A summary response to a report produced by the Green Alliance Report<sup>27</sup>; and
  - e) Other ancillary updates, such as to drawings, the Design and Access Statement and the Phase 1 Habitat Survey Report.
50. On 18 May 2020, Marianne Bennett agreed to withdraw her claim for judicial review on the basis that the DC&R Committee was reconsidering the Application.

### **Further consultation**

51. The submission of this new documentation triggered a fifth public consultation, which ran from 13 May 2020 to 15 June 2020. Once again, as part of this consultation, many recurring objections were raised concerning, for instance, the need for steel and metallurgical

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<sup>24</sup> Document 3.7 - Letter from WCM to Cumbria County Council dated 10 March 2020

<sup>25</sup> Document 1.6 - Woodhouse Colliery, Planning Application 4/17/9007 Environmental Statement, Chapter 19, Greenhouse Gas Emissions dated April 2020 (updated to include the GHG Report by AECOM dated 6 May 2020)

<sup>26</sup> Document 1.4 - WCM Planning Statement Woodhouse Colliery, 2020

<sup>27</sup> Document 1.7 - WCM Response to Green Alliance Report, April 2020

coal, whether there were methods of steel production that could reduce or eliminate the use of metallurgical coal and the extent of the GHG emissions of the Development.

52. In response to the consultation:

- a) WCM;
  - (i) Proposed an amendment to the s.106 agreement to introduce a periodic (five yearly) review and reassessment of anticipated GHG emissions from the mining operations after the end of 2032. The assessments would be done in light of up-to-date legislation, government policy and accepted national guidance and standards in force at the time. Following these assessments, WCM would implement any additional greenhouse gas mitigation measures that were required and if they did not then the Council could require mining to cease;
  - (ii) Agreed to a condition limiting the lifetime of the mine to 2049 (previously the mine was intended to be operational until 2064) and requiring all underground mining equipment to be electric; and
  - (iii) Commissioned a number of reports responding to objections to the Application and to assist the Council in its assessments.
- b) The Council;
  - (i) Corresponded with key individuals in the steel industry; and
  - (ii) Independently commissioned Wardell Armstrong to conduct a review of the future use of metallurgical coal in the UK<sup>28</sup>.

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<sup>28</sup> Document 1.3 - 'Review of the use of coking coal in the UK', Report by Wardell Armstrong, dated September 2020

### *The third consideration by the DC&R Committee of the Application*

53. On 21 September Leading Counsel's opinion was provided by WCM to the Council summarising coal processing, need for steel and coking coal, substitution, and the GHG assessment
54. On 28 September 2020, the Secretary of State issued a second Article 31 Direction<sup>29</sup>. However, as noted in the Article 31 Direction itself, this did not prevent the Council from considering the Application. As such, on 2 October 2020, the DC&R Committee considered the Application for a third time, though this time remotely.
55. In advance of this meeting, the Executive Director for Economy and Infrastructure for the Council submitted a report (the “**Third OR**”) to the DC&R Committee<sup>30</sup> recommending once again that planning permission be granted for the Development<sup>31</sup>. The Third OR forms the basis of the extant resolution of the DC&R Committee to grant planning permission in respect of the Application and sets out the following key conclusions:
- a) **Conditions to be satisfied:** The Third OR recommended that the only condition that needed to be satisfied in advance of permission being formally granted by the Council was the entering into of a s.106 agreement between WCM, the Council and other relevant interest holders<sup>32</sup>;
  - b) **Demand for metallurgical coal:** The third OR concluded that demand for steel and metallurgical coal would continue to exist within the UK for the foreseeable future<sup>33</sup>. In forming this conclusion, the Third OR specifically considered alternative methods for producing steel which did not involve

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<sup>29</sup> Document 3.8 - Letter from Secretary of State to Cumbria County Council dated 28 September 2020

<sup>30</sup> Document 1.8 - OR dated 2 October 2020

<sup>31</sup> Document 1.8 - OR dated 2 October 2020 at point 1.0 "Recommendation"

<sup>32</sup> Document 1.8 - OR dated 2 October 2020 at point 1.0 "Recommendation"

<sup>33</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.29

the use of metallurgical coal, such as the Hybrit system<sup>34</sup>, but concluded that these were not currently commercially viable;

- c) **Substitution:** The Third OR concluded that the metallurgical coal extracted from the Development would be used as a substitute for (as opposed to in addition to) coal used for steelmaking that is currently extracted outside the UK<sup>35</sup>;
- d) **Tighter restrictions on GHG emissions:** The Third OR considered that certain global circumstances could lead to a new global agreement to speed up carbon emission reductions<sup>36</sup>;
- e) **Life of Development:** Whilst there are no current commercially viable alternatives to the blast furnace for the manufacture of new steel in the UK (or Europe), the Third OR considered that this may not remain the case beyond 2050. As such the Third OR concluded that it was necessary to impose a condition limiting the life of the mine until the end of 2049. The Third OR stated that should new technologies not advance significantly before 2049 to reduce the need for High Volatile A coal mined at Whitehaven, a further planning application could be submitted prior to this end date to extend the life of the mine for a further period, based on the environmental, social and economic constraints, and local need for the metallurgical coal at that time<sup>37</sup>;
- f) **GHG Emissions:** The Third OR concluded that the development and its wider impacts when considered as a whole would reduce global GHG emissions. This was as a result of GHG savings made from reduced transportation distances of coal to the steelworks and other emissions being neutral<sup>38</sup>;

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<sup>34</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.62

<sup>35</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.86

<sup>36</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.38

<sup>37</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.68

<sup>38</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.163

- g) **Adjusting to future changes in policy:** The Third OR considered that the periodic (five yearly) review and reassessment of anticipated GHG emissions from the mining operations after the end of 2032 was an innovative mechanism<sup>39</sup>; and
- h) **Overall conclusion:** The Third OR concluded that: *“I am convinced that there are considerable benefits resulting from the development, not least the potential number of highly skilled jobs on offer and benefit to the UK economy. The project also contributes to the supply of coking coal for the UK steel industry which is a critical raw material (as well as having moderate benefits from the remediation of the contaminated Marchon site, and some saving in global GHG emissions).”*<sup>40</sup>
56. On 2 October 2020, the DC&R Committee received a detailed presentation considering the substance of the Third OR and, after considering representations and hearing the debate, the DC&R Committee resolved to grant planning permission subject to the completion of the s.106 agreement<sup>41</sup>.
57. On 9 December 2020, the Climate Change Committee published *“The Sixth Carbon Budget - The UK’s path to Net Zero”* (the **“CCC Report”**)<sup>42</sup>.
58. On 6 January 2021, a month after the publication of the CCC Report, the Secretary of State informed the Council that he was withdrawing his Article 31 Direction<sup>43</sup>.
59. The following day, Richard Buxton Solicitors (acting on behalf of South Lakes Action on Climate Change - Towards Transition) wrote to the Council, arguing that the Council should refer the Application back once again to the DC&R Committee on the basis, amongst

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<sup>39</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 7.154

<sup>40</sup> Document 1.8 - OR dated 2 October 2020 at paragraph 8.2

<sup>41</sup> Document 2.3 - Minutes of DCRC held on 2 October 2020 at 9am at page 49

<sup>42</sup> Document 1.9 - *“The Sixth Carbon Budget - The UK’s path to Net Zero”*, Climate Change Committee, dated 9 December 2020

<sup>43</sup> Document 3.9 - Letter from Secretary of State to Council dated 6 January 2021

other things, that the CCC Report represented a material consideration.

**The decision to return the matter to members on a fourth occasion**

60. On the morning of 9 February 2021, the Council approved a press release announcing that the Council had decided to return the Application to the DC&R Committee for a fourth time in order to take into account the recommendations of the CCC Report
61. Following the Decision, WCM instructed Hogan Lovells International LLP (“**Hogan Lovells**”) to bring a claim challenging the basis on which the Council had decided to refer the matter back to members on a fourth occasion. This claim was issued on 5 March 2021.
62. On 25 February 2021, Richard Buxton Solicitors (on behalf of SLACC) sent a pre-action protocol letter to the Secretary of State challenging the Secretary of State’s ongoing refusal to reconsider whether to call in for his determination the application<sup>44</sup>.
63. By way of letter 11 March 2021 the Secretary of State directed under his powers in section 77 of the 1990 Act, that the Application shall be referred to him instead of being dealt with by the Council. Following this decision, the claim for judicial review against the Council was withdrawn by consent on 18 March 2021.

**LEGAL FRAMEWORK**

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<sup>44</sup> Document 3.10 - Pre-action protocol Letter to the Secretary of State by Richard Buxton Solicitors (on behalf of SLACC) dated 25 February 2021



64. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that decisions should be made in accordance with the development plan unless material considerations indicate otherwise.

### **Environmental Impact Assessment**

65. The project is an EIA Development<sup>45</sup> and, as such, an Environmental Statement has been prepared to assess the likely significant effects of the project on the environment.
66. The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (“the EIA Regulations”) continue to apply to this application in accordance with the transitional provisions in regulation 76 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
67. The EIA Regulations require an assessment of the environmental effects, both direct and indirect, of the development for which planning permission is sought. However, there is no requirement to assess matters which are not environmental effects of the development or project. The scope of indirect effects which must be assessed does not include the environmental effects from the use of an end product originating from the development (*R (Finch) v Surrey Country Council* [2020] EWHC 3559 (QB), per Holgate J. at [126]). Accordingly, there is no requirement for the ES to assess the greenhouse gas emissions resulting from the use of coking coal originating from the Proposed Development.<sup>46</sup>

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<sup>45</sup> Falling within Schedule 2, para 2(b) of the 2011 Regulations.

<sup>46</sup> WCM notes that the decision in *Finch* is currently subject to an appeal to the Court of Appeal. However, the outcome of that appeal will not affect the adequacy of the ES because it is also WCM’s case that the Proposed Development will not result in an increase in end use emissions since coking coal extracted by the Proposed Development will replace other coking coal that is currently extracted elsewhere.

**Relevance of international and domestic climate change commitments**

68. The UK has ratified, and is signatory to, a number of international agreements relating to climate change, including the following which are of particular relevance.
69. In 1992 the United Nations adopted the United Nations Framework Convention on Climate Change (“the UNFCCC”). The objective of the Convention is to stabilise the concentration of Greenhouse gases in the atmosphere “at a level that would prevent dangerous anthropogenic interference with the climate system” (article 2). Signatory states were required to establish national GHG inventory, used to create 1990 benchmark levels.
70. The Kyoto Protocol was adopted on 11 December 1997 and came into force on 16 February 2005. Under the Kyoto Protocol, the UK committed to reducing emissions of six identified Green House Gas (GHG) emissions from the 1990 benchmark in the initial reduction period of 2008-12 by 12.5%. These reductions were supported by a number of emissions trading schemes (ETSs), including the European Union ETS.
71. The Paris Agreement was concluded as an agreement within the UNFCCC on 12 December 2015. It includes a commitment to restricting the increase in the global average temperature to "well below 2°C above pre-industrial levels and [to pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels" (article 2(1)(a)), as well as an aspiration to achieve net zero greenhouse gas emissions during the second half of the 21st century – a "balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century" (article 4(1)). It requires each state to determine its own contribution to this target

(article 4(2) and (3)). The UK ratified the Paris Agreement on 17 November 2016.

72. In order to give effect to its international commitments, the UK introduced the Climate Change Act 2008 (“the CCA”), which imposes mandatory carbon reduction targets.
73. Section 1 of the CCA, as amended from 27 June 2019, imposes a duty on the Secretary of State to ensure that the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline. This duty is generally referred as the “net zero target”.
74. Section 4(1) imposes a duty on the Secretary of State to set carbon budgets to cap carbon emissions in a series of five-year periods, and to ensure that the net United Kingdom carbon account for a budgetary period does not exceed the carbon budget, thus ensuring progress towards the 2050 target in the period before that year. Carbon budgets must be set with a view to meeting the target for 2050 (per section 8(2)). Before he sets a carbon budget, the Secretary of State for Business, Energy and Industrial Strategy must take into account the advice of the Committee on Climate Change (see section 9(1)(a)). However, he is not required to follow that advice.
75. In setting a carbon budget, section 10(2) provides that the Secretary of State must take into account the following matters:
  - “ (a) scientific knowledge about climate change;
  - (b) technology relevant to climate change;
  - (c) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;
  - (d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;

- (e) social circumstances, and in particular the likely impact of the decision on fuel poverty;
- (f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;
- (g) differences in circumstances between England, Wales, Scotland and Northern Ireland;
- (h) circumstances at European and international level;
- (i) the estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question.”

Section 13 of the CCA then requires the Secretary of State to prepare proposals and policies that will enable the carbon budgets to be met. The prime minister announced on 20th April 2021 that the "UK enshrines new target in law to slash emissions by 78% by 2035" but also included in that statement the following: "The government will look to meet this reduction target through investing and capitalising on new green technologies and innovation, whilst maintaining people's freedom of choice, including on their diet. That is why the government's sixth Carbon Budget of 78% is based on its own analysis and does not follow each of the Climate Change Committee's specific policy recommendations."<sup>47</sup>

The draft Carbon Budget Order 2021 states that "the carbon budget for the 2033-2037 budgetary period is 965,000,000 tonnes of carbon dioxide equivalent"<sup>48</sup>

76. As is clear from the above, the overall responsibility for the economy-wide transition to a low carbon society and the policies that are required to support that transition is the responsibility of the UK

<sup>47</sup> 4.2 <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>

<sup>48</sup> 4.1 - <https://www.legislation.gov.uk/ukdsi/2021/9780348222616/article/2#f00004>

Government (see *Finch* at [105] and *R (Packham) v Secretary of State for Transport* [2020] EWCA Civ 1004 at [87]). These matters must be considered holistically, rather than on a case-by-case basis, through the determination of planning applications. Accordingly, whilst policies produced by the Government will represent material considerations in the determination of planning applications, the decision-maker must focus on the application of those policies rather than attempting to judge compliance with national and international climate change commitments, which cannot be given any material weight when considered in isolation from the statutory and policy framework through which they are intended to be met.

### **Coal Industry Act 1994**

77. Section 53 of the Coal Industry Act 1994 provides that regard must be had to the desirability of the preservation of natural beauty, of the conservation of flora and fauna and geological or physiographical features of special interest and of the protection of sites, buildings, structures and objects of architectural, historic or archaeological interest, and the adoption of reasonably practicable measures to avoid any adverse effects, when formulating and determining applications for coal mining proposals.

### **POLICY FRAMEWORK**

78. The following documents comprise the statutory development plan for the area within which the Proposal is located:
- a) Cumbria Minerals and Waste Local Plan 2015-2030 (adopted September 2017);

- b) Copeland Local Plan 2013-2028 – Core Strategy and Development Management Policies (adopted December 2013); and
- c) Copeland Local Plan 2013-2028 Proposals Map and Copeland Local Plan 2001-2016 ‘Saved’ Policies.

### **Cumbria Minerals and Waste Local Plan 2015-2030**

- 79. The Cumbria Minerals and Waste Local Plan (CMWLP) was formally adopted by Cumbria County Council on 6<sup>th</sup> September 2017. The CMWLP provides the policies applicable to proposals for minerals and waste for the area of Cumbria outside the two national parks (Lake District, and Yorkshire Dales).
- 80. The CMWLP is divided into three sections:
  - a) Part 1 Strategic Policies;
  - b) Part 2 Development Control Policies; and
  - c) Part 3 Site Allocation Policies.
- 81. The following paragraphs identify the policies which are of relevance to the Proposal. There are no policies or provisions within the Site Allocations part of the plan which are of relevance to the proposal.

### **Principal policy**

- 82. Development Control (DC) Policy 13 ‘Criteria for energy minerals’ provides the principal policy test for the Proposal. The policy has a specific section on coal. In line with NPPF paragraph 211 Policy DC13 makes no distinction between different types of coal.
- 83. Policy DC13 include section on ‘*Exploration and appraisal of hydrocarbons*’, ‘*Commercial exploitation of hydrocarbons*’, and ‘*Underground*

*Coal Gasification*' but it is the section of coal which is of particular relevance to the Proposal. This section of the policy states:

*"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.*

*For underground coal mining, potential impacts to be considered and mitigated for will include the effects of subsidence including: the potential hazard of old mine workings; the treatment and pumping of underground water; monitoring and preventative measures for potential gas emissions; and the disposal of colliery spoil. Provision of sustainable transport will be encouraged, as will Coal Mine Methane capture and utilisation."*

84. The other policies of relevance to the Proposal are identified below.

### **Strategic Policies**

- a) Strategic Policy SP1 Presumption in favour of sustainable development;
- b) Strategic Policy SP13 Climate change mitigation and adaptation;
- c) Strategic Policy SP14 Economic benefit;
- d) Strategic Policy SP15 Environmental assets; and
- e) Strategic Policy SP16 Restoration and aftercare.

### **Development Control Policies**

85. The development control policies generally provide the finer grained policy tests that are applied to specific applications for planning

permission albeit they reflect the strategic objectives and policies of the first part of the plan.

- a) DC1 - Traffic and transport;
- b) DC2 - General criteria;
- c) DC3 – Noise;
- d) DC5 - Dust;
- e) DC6 - Cumulative environmental impacts;
- f) DC13 - Criteria for energy minerals;
- g) DC16 - Biodiversity and geodiversity;
- h) DC17 - Historic environment;
- i) DC18 - Landscape and visual;
- j) DC19 - Flood risk;
- k) DC20 - The water environment;
- l) DC21 - Protection of soil resources; and
- m)DC22 - Restoration and aftercare.

**Copeland Local Plan 2013-2028 – Core Strategy and Development Management Policies (adopted December 2013)**

86. Core Strategy Policies

- a) Policy ST1 - Strategic Development Principles;
- b) Policy ST2 - Spatial Development Strategy
- c) Policy ST3 - Strategic Development Priorities;
- d) Policy ST4 - Providing Infrastructure;
- e) Policy ER10 – Renaissance through Tourism
- f) Policy ER11 - Developing Enterprise and Skills;
- g) Policy ENV1 - Flood Risk and Risk Management;



- h) Policy ENV 2 - Coastal Management
- i) Policy ENV3 - Biodiversity and Geodiversity;
- j) Policy ENV4 - Heritage Assets;
- k) Policy ENV5 - Protecting and Enhancing the Borough's Landscapes;
- l) Policy ENV6 - Access to the Countryside; and
- m) Policy DM3 - Safeguarding Employment Areas.

87. Development Management Policies

- a) Policy DM8 - Tourism Development in Rural Areas;
- b) Policy DM9 - Visitor Accommodation;
- c) Policy DM10 - Achieving Quality of Space;
- d) Policy DM11 - Sustainable Development Standards;
- e) Policy DM22 - Accessible Developments;
- f) Policy DM24 - Development Proposals and Flood Risk;
- g) Policy DM25 - Protecting Nature Conservation Sites, Habitats and Species;
- h) Policy DM26 - Landscaping;
- i) Policy DM 27 - Built Heritage and Archaeology; and
- j) Policy DM28 – Protection of Trees.

**Proposals map and saved policies**

88. In addition to Copeland's Core Strategy and Development Control Policies, are the Copeland Local Plan 2013-2028 Proposals Map, and Copeland Local Plan 2001-2016 'Saved' Policies.

89. The Proposals Map identifies the former Marchon site, the area of the Main Mine Site, as being an Employment Opportunity Site, to

which “Saved” policy EMP3 applies. This policy indicates that the employment opportunities sites are in the process of "*being investigated as to their future development potential and contribution to the regeneration strategies within the Borough.*" It also indicates that these sites would be the subject of future planning documents. The supporting text indicates that "*...the site of the former Marchon chemical works and a smaller pit yard at Townhead provide an opportunity for brownfield employment and leisure use. ... The Environment Agency is responsible for inspection and remediation of contamination and investigations are underway into the most appropriate remediation works and possible end uses.*"

### **National Planning Policy Framework**

90. The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied (paragraph 1).
91. Paragraph 11 sets out the presumption in favour of sustainable development. At 11(c) it clarifies what this means for decision taking, which is:  
*"approving development proposals that accord with an up-to-date development plan without delay."*
92. Paragraph 177 of the NPPF, disengages the presumption in favour of sustainable development for development likely to have a significant effect on a habitats site unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.
93. The NPPF includes a series of sections which provide guidance in respect of specific topics, including:
  - a) Section 2 Achieving sustainable development;
  - b) Section 6 Building a strong competitive economy;

- c) Section 9 Promoting sustainable transport;
  - d) Section 11 Making effective use of land;
  - e) Section 12 Achieving well-designed places;
  - f) Section 14 Meeting the challenge of climate change, flooding and coastal change;
  - g) Section 15 Conserving and enhancing the natural environment;
  - h) Section 16 Conserving and enhancing the historic environment; and
  - i) Section 17 Facilitating the sustainable use of minerals.
94. Section 17 at paragraph 205 indicates that when determining planning applications for mineral extraction great weight should be given to the benefits of mineral extraction, including to the economy. However, the footnote 65 indicates that this does not apply to proposals for the extraction of coal for which the policy at paragraph 211 of the Framework applies
95. Paragraph 209 advises that mineral planning authorities should, inter alia, "(d) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;\*" and "(e) encourage the capture and use of methane from coal mines in active and abandoned coalfield areas."

\*(The CMWLP at paragraph 5.104 the plan states that "*...rather than making a strategic allocation policy defining "acceptable areas" for either coal extraction, or the storage or disposal The County Council considers both types of development would be more positively addressed through appropriate Development Control policies: see policy DC13 Criteria for energy minerals, and DC15 Mineral safeguarding.*")

## **Principal policy**

96. Paragraph 211 states:

*"Planning permission should not be granted for the extraction of coal unless:*

- a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or*
- b) 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 any residual environmental impacts)."*

97. At Annex 2: Glossary the NPPF defines mineral resources of local and national importance and includes deep mined coal within the category of *'Minerals which are necessary to meet society's needs.'*

## **National Planning Policy Guidance**

98. The NPPF is complemented by a series of Planning Practice Guidance (PPG) which provide topic specific online guidance. The PPG categories include:

- a) Air quality;
- b) Appropriate Assessment;
- c) Climate change;
- d) Flood risk and coastal change;
- e) Historic environment;
- f) Land affected by contamination;
- g) Light pollution
- h) Minerals;
- i) Natural environment;

- j) Noise; and
- k) Travel plans, Transport Assessments and Statements.

### **Emerging policy**

- 99. Copeland Local Plan 2017-2035 Preferred Options Draft.
- 100. Copeland Borough Council is in the process of producing a new Local Plan. The Council ran a 10 week public consultation on the Preferred Options Draft of the Local Plan between Monday 21st September and Monday 30th November 2020. The Publication Draft of the new local plan is anticipated in late Summer 2021.
- 101. The former Marchon site is designated as a 'Key regeneration site'. Within such areas policy Policy DS4PO: Strategic Development Priority Projects would apply.
- 102. The other preferred option policies of relevance to the proposals are:
  - a) Policy DS1PO: Presumption in Favour of Sustainable Development;
  - b) Policy DS4PO: Strategic Development Priority Projects;
  - c) Policy DS5PO: Development Principles;
  - d) Policy DS8PO: Reducing Flood Risk;
  - e) Policy DS9PO: Sustainable Drainage;
  - f) Policy DS10PO: Landscaping;
  - g) Policy DS11PO: Soils and Contamination;
  - h) Policy E1PO: Economic Growth;
  - i) Policy E2PO: Location of Employment;
  - j) Policy E5PO: Opportunity Sites and Areas;
  - k) Policy CC1PO: Reducing the impacts of development on climate change;

- l) Policy T1PO: Strengthening the Tourism Offer;
- m) Policy H5PO: Housing Allocations (only by reference to north Marchon);
- n) Policy N1PO Conserving and Enhancing Biodiversity and Geodiversity;
- o) Policy N2PO: Biodiversity Net Gain;
- p) Policy N4PO: Marine Planning;
- q) Policy N5PO: Landscape Protection;
- r) Policy N6PO: The Undeveloped Coast;
- s) Policy N10PO: Woodlands and Trees;
- t) Policy BE1PO: Heritage Assets;
- u) Policy BE2PO: Designated Heritage Assets;
- v) Policy BE3PO – Archaeology;
- w) Policy BE4PO: Non-Designated Heritage Assets;
- x) Policy CO4PO: Sustainable Travel;
- y) Policy CO5PO: Transport Hierarchy;
- z) Policy CO6PO: Countryside Access; and
- aa) Policy CO7PO: Parking Standards.

**West Whitehaven Supplementary Planning Document (SPD) Issues and Options Consultation Report November 2012**

103. In 2012 Copeland Borough Council consulted on the West Whitehaven SPD Issues and Options report. The area covered by the SPD includes the former Marchon site which comprises the Main Mine Site of the proposal.

104. The purpose of the SPD was stated as being to

*"provide guiding principles for the planning and development of the area over the next 15-20 years. The SPD will become one of the material considerations to be taken into account when determining planning applications..."*

105. The SPD Issues and Options put forward a number of alternative options for uses and development of the Marchon site including:
- a) As part of a visitor attraction based upon the areas industrial heritage, or alternatively based upon the areas Wildlife and natural environment;
  - b) Tourism and leisure uses;
  - c) Mixed use development, including a small scale high end business park on the Marchon site; and
  - d) Temporary worker accommodation associated with new nuclear development.

Since consultation, however, the SPD has not been progressed further.

## **THE APPLICANT'S CASE**

106. The letter from the Ministry of Housing, Communities and Local Government dated 11 March 2021 identified that the Secretary of State particularly wishes to be informed about the following matters:
- 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.

### **Meeting the Challenge of Climate Change (Chapter 14)**

107. The Applicant will explain what GHG emissions are relevant for the purposes of assessing the impact of the Proposed Development, and its compliance with climate change policies and Chapter 14 of the NPPF, and why it is not appropriate to have regard to GHG emissions caused by the end use of coal extracted from the Proposed Development at other facilities.
108. When the correct approach is taken, the Applicant will illustrate how the Proposed Development will help support the transition to a low carbon future, in accordance with paragraph 148 of the NPPF, by removing reliance upon imported coking coal with a higher carbon foot-print. In particular, it will be shown that the Proposed Development will:



- a) Provide a European source of HV HCC, and therefore reduce transportation emissions;
- b) Provide the opportunity to create a state-of-the-art mining facility with lower GHG emissions than other existing mining operations; and
- c) Securing clear commitments to future reductions in operational GHG emissions wherever possible.

109. As the Government's Industrial Decarbonisation Strategy recognises,<sup>49</sup> coking coal is currently essential for primary steel manufacturing via blast furnace production, which is needed to support much of the UK's critical national infrastructure. As is set out below under the section dealing with future demand, the Applicant will demonstrate that coking coal is likely to continue to form part of a net zero compliant option for steel production going forwards.

110. WCM will show how the Proposed Development has been designed to help reduce GHG emissions in accordance with paras. 150(b) and 153(b) of the NPPF. Furthermore, where it is not possible to remove operational GHG emissions entirely, WCM will commit to ensuring that these residual emissions are offset. This will be secured through a binding planning obligation and or planning condition as appropriate. Accordingly, it will be shown that the operational emissions of the Proposed Development are net-zero compliant and therefore comply with the recommendation for future coking coal mines in the Government's Industrial Decarbonisation Strategy.

111. Since the Applicant proposes to ensure that the operational emissions of the Proposed Development will be net-zero compliant, the acceptability of the scheme is not reliant upon demonstrating that coal extracted from the Proposed Development will be

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<sup>49</sup> Document 1.11 - Industrial Decarbonisation Strategy (March 2021), page 53

substituted for coal that has been extracted elsewhere in the world. However, the Applicant will argue that there is a strong economic case for substitution, which should be regarded as a material consideration that weighs in favour of the proposal.

**Sustainable use of minerals (Chapter 17 of the NPPF)**

112. The core samples WCM have obtained confirm that the coal that will be extracted by the Proposed Development is premium-grade High Volatile Hard Coking Coal (“**HV HCC**”) with ultra-low traces of ash (less than 4%), extremely- low traces of phosphorous (less than 0.001%) and excellent ‘caking’ characteristics (fluidity and dilation) that are at the highest end of the known comparable range. This means the coal is a premium High Volatile ‘A’ product, a high grade of metallurgical coal, with very desirable performance characteristics. It is also very rare; metallurgical coal of this quality is only found in certain regions of the UK and Central and Eastern USA.

**Need**

113. Paragraph 203 of the NPPF states that “it is essential that there is sufficient supply of minerals to provide for the infrastructure, buildings, energy and goods that the country needs”.

114. Evidence will be provided regarding the need for the extraction of coking coal from the Proposed Development. This will include evidence regarding:

- a) Domestic need;
- b) European need; and
- c) Global statistics.

115. The Applicant will also demonstrate the national importance of coking coal, and the importance of supply being secured from the Proposed Development.

**Future demand and alternative technology**

116. In addition to current need, the Applicant will provide evidence on the likely future demand for coking coal to make coke for use in blast furnace steel production. In doing so, evidence will also be provided on the availability and development of alternative technologies that might replace blast furnace steel production, and the likely timescale for these technologies to be phased in.

**No unacceptable adverse impacts on the natural and historic environment, or human health, or aviation safety**

117. Landscape impacts :

- a) Chapter 10 of the ES assesses the landscape and visual impacts of the proposal. The assessment recognises that all elements of the proposed development have been designed in a manner which avoids and minimises as far as possible the potential for adverse landscape or visual effects.
- b) The development of the former Marchon site as the Main Mine site would have a beneficial effect in terms of impact on landscape fabric resulting from its extensive landscaping proposals. Large-scale built development is an expected landscape change within the Urban Fringe Landscape Character Type (5d) and is not in its own right considered to be an adverse change. The rail loading facility would result in moderate adverse effects within Landscape Character Type 4 - Coastal Sandstone which would not be significant. No long-term landscape or visual effects would arise as a result of the underground conveyor.

- c) Significant visual impacts would be limited to the trench the closest dwellings along High Road, to the north of Sandwith and the few isolated dwellings near the Rail Loading Facility in the Pow Beck valley. Significant effects from the Coast-to-Coast path would be limited to the short section either side of the RLF. From some local footpaths, limited significant effects could occur, but in the main these would be very limited.

118. Ecological impacts, including loss of ancient woodland:

- a) Chapter 11 of the ES reports the assessment of the proposal on ecology. That assessment concludes that there are no negative ecological impacts on international or nationally protected sites. There would be an impact on the Bellhouse Wood from the installation of the conveyor. That effect would be adverse and only significant at a Local level due to the relatively small proportion of the habitat affected and the fact that the woodland soils (and their associated seedbanks) will be replaced. Trenchless construction techniques for the buried conveyor under the woodland areas will significantly reduce the disturbance to woodland areas.
- b) The installation of the RLF would result in the loss of intensively grazed species-poor grassland, which is commonly occurring in the local area. As this is a habitat of low conservation significance, there will be a residual effect that is adverse and significant at the Site level only.
- c) The creation of new areas of scrub, species-rich grassland and installation of new roosting features would lead to beneficial impacts albeit significant at a local level. The impacts on all other ecological assets were assessed as neutral.

119. Heritage impacts:

- a) Chapter 16 of the ES describes the significance of the impacts of the development on heritage assets. The chapter concludes

that there will be moderate adverse effects on Scalegill Hall and Adjoining Barn, and a moderate adverse effect to the heritage sensitivity of the St Bees Heritage Coast. There would be minor impacts to the setting of Scalegill Hall, the impact on Sandwith Anhydrite mine portals and the effects on the site of a well 200m NNE of Cabbage Hall. There will be a Minor adverse effect on historic landscape character when taken cumulatively with the approved residential development to the east of High Road. There are some beneficial impacts associated with the furthering knowledge of the historic industrial mining heritage and enhancements to the setting of a number of High sensitivity heritage assets. The impacts on all other assets are assessed as neutral.

*Ensure that any unavoidable noise, dust and particle emissions are controlled, mitigated and removed at source (para.205(c)).*

120. Chapter 14 of the ES demonstrates that any unavoidable noise impacts can be adequately mitigated. In particular, mitigation is proposed to reduce any noise impacts caused by the back-up generators, and temporary noise barriers will be used to limit the impact on Cabbage Hall, a nearby small residential property, during construction. A condition will also be imposed to require noise monitoring at sensitive residential properties and ensure that noise limits are not exceeded.
121. Chapter 15 of the ES describes the potential effects on air quality. It demonstrates that impacts on the majority of human health and ecological receptors will be negligible and any marginal exceedances relating to the nearest residential properties on High Road and Wilson Pit Road, and the nearest point on St Bees Head SSSI, will not have any significant effect on local area bearing in mind the conservation assumptions that have been applied and the very limited intermittent need for the emergency backup generators.

122. Accordingly, both the Copeland BC's environmental health officer and Cumbria County Council consider that any unavoidable noise and dust impacts can be mitigated through the imposition of the proposed conditions.

**Capture and use of methane (para.209(e))**

123. The Proposed Development will include a mine-gas capture system that will capture methane gas and other fugitive emissions from the mine so that they can be re-used or neutralised, as is encouraged by para.209(e) of the NPPF.

**High quality restoration and aftercare**

124. In accordance with para.205(e) of the NPPF, the Applicant will demonstrate that a high-quality restoration and aftercare scheme will be secured that can be carried out to high environmental standards. Moreover, it will be shown that the opportunity to restore the existing Marchon site represents an additional benefit of the scheme.

**Paragraph 211 of the NPPF**

125. The Applicant will demonstrate that the Proposed Development can be made environmentally acceptable through the imposition of planning conditions or obligations so that it complies with para.211(a) of the NPPF.

In the alternative, it will also be shown that even if the proposal is not found to be environmentally acceptable, the considerable national, local and community benefits of the Proposed Development clearly outweigh its likely impacts and therefore satisfy para.211(b) of the NPPF. These benefits will include:

- a) Significant employment benefits, including construction jobs, more than 500 direct jobs once the mine is fully operational, and over 1000 indirect jobs in the wider supply chain;
- b) Substantial investment into the local area, which suffers from high levels of deprivation and unemployment;
- c) Positive impact on the UK's balance of trade deficit and considerable additional tax revenues;
- d) The opportunity to reduce European reliance upon imported coking coal through product substitution, with all the associated environmental benefits;
- e) Securing the re-use, and ultimate restoration, of the former Marchon site and the completion of the restoration of Mainband colliery;
- f) The creation of additional footpath and cycleway improvements;
- g) The refurbishment and future operation of a former local mining heritage museum; and
- h) Improvements to local habitats via the planting of trees within several areas of the red line boundary and the creation of new habitats on the main mine site.

**Any other matters**

126. The ES dealt comprehensively with environmental impacts of the proposed development and there are no outstanding objections from statutory consultees.
127. On the basis of the representations that have been submitted and the matters raised by the Council in the committee report, WCM will also present evidence on the following matters to assist the Inspector's consideration of these issues:

- a) Concerns that have been raised regarding any potential impact on tourism;
- b) The concerns that have been raised by local residents regarding the possible impacts on the nuclear site at Sellafield; and
- c) The concern, identified by some objectors, that the Proposed Development will become a “stranded asset”.

### **Consistency with the development plan**

128. In light of the conclusions on all of the issues set out above, it will be demonstrated that the Proposed Development complies with all of the relevant policies of the adopted development plan as set out in the policy framework section hereof.
129. In particular, it will be shown that the Proposed Development complies with Policy DC13, which specifically deals with planning applications for the extraction of coal.
130. It will therefore be demonstrated that the proposal accords with the development plan as a whole. This analysis is consistent with the finding of the minerals planning authority, which has concluded on three separate occasions that the proposal complies with the development plan.

### **Planning conditions and section 106 obligations**

131. A List of planning conditions is included within the committee report dated 2 October 2020. WCM agrees with those conditions but will enter into further discussions with the Council to ensure that the wording of those conditions remains relevant and up-to-date.
132. A final draft of the s.106 agreement has been agreed with the Council and all relevant landowners. It secures the following planning obligations:



- a) HGV Routeing;
- b) Public Rights of Way Contribution;
- c) Highways Contribution;
- d) Travel Plan Monitoring Fee;
- e) Council S106 Administration Costs;
- f) Extension to the Aftercare Period; Heritage Asset Enhancements;
- g) Pedestrian and Cycle Path obligation securing part of the pedestrian route and contribution;
- h) Restoration of Main Band Colliery
- i) Restoration Bond / Securities;
- j) Drain Surveys & Maintenance;
- k) Residential Land Restriction (Lake View and Stanley House properties); and
- l) a GHG review mechanism.

133. WCM will enter into further discussions with the Council to ensure that the wording of those obligations remains relevant and up-to-date.

## List of documents

<b>1</b>	<b><u>Reports</u></b>
1.1	'A report by the Acting Executive Director for Economy and Infrastructure', by Development Control and Regulation Committee ("OR") dated 19 March 2019
1.2	Euracoal (2020) <i>Coal Industry Across Europe</i> European Association for Coal and Lignite
1.3	'Review of the use of coking coal in the UK', Report by Wardell Armstrong, dated September 2020
1.4	WCM Planning Statement Woodhouse Colliery, 2020
1.5	'A report by the Acting Executive Director for Economy and Infrastructure', by Development Control and Regulation Committee ("OR") dated 31 October 2019
1.6	Woodhouse Colliery, Planning Application 4/17/9007 Environmental Statement, Chapter 19, Greenhouse Gas Emissions dated April 2020 (updated to include the GHG Report by AECOM dated 6 May 2020)
1.7	WCM Response to Green Alliance Report, April 2020
1.8	'A Report by the Executive Director – Economy and Infrastructure', by Development Control and Regulation Committee, ("OR") dated 2 October 2020
1.9	" <i>The Sixth Carbon Budget - The UK's path to Net Zero</i> ", Climate Change Committee, dated 9 December 2020
1.10	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 – Com/2017/0490 final
1.11	Industrial Decarbonisation Strategy (March 2021)
<b>2</b>	<b><u>Minutes and Agendas</u></b>
2.1	Minutes of Development Control and Regulation Committee ("Minutes of DCRC") held on 19 March 2019

2.2	Minutes of Development Control and Regulation Committee ("Minutes of DCRC") held on 31 October 2019 at 9am
2.3	Minutes of Development Control and Regulation Committee ("Minutes of DCRC") held on 2 October 2020 at 9am
<b>3.</b>	<b><u>Correspondence</u></b>
3.1	Letter from WCM to Cumbria County Council dated 1 September 2017
3.2	Letter from Cumbria County Council to WCM dated 12 January 2018
3.3	Letter from WCM to Cumbria County Council dated 10 December 2018
3.4	Exchange of emails between T Farron and P Haggin dated 2 April 2019
3.5	Letter from Leigh Day to Cumbria County Council dated 21 June 2019
3.6	Letter from Secretary of State to Cumbria County Council dated 1 November 2019
3.7	Letter from WCM to Cumbria County Council dated 10 March 2020
3.8	Letter from Secretary of State to Cumbria County Council dated 28 September 2020
3.9	Letter from Secretary of State to Council dated 6 January 2021
3.10	Pre-action protocol Letter to the Secretary of State by Richard Buxton Solicitors (on behalf of SLACC) dated 25 February 2021
<b>4</b>	<b><u>Websites</u></b>
4.1	<a href="https://www.legislation.gov.uk/ukdsi/2021/9780348222616/article/2#f00004">https://www.legislation.gov.uk/ukdsi/2021/9780348222616/article/2#f00004</a>
4.2	<a href="https://www.legislation.gov.uk/ukdsi/2021/9780348222616/article/2#f00004">https://www.legislation.gov.uk/ukdsi/2021/9780348222616/article/2#f00004</a>

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