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Attn: Paul Haggin, Development Control Case Officer

By email only: paul.haggin@cumbria.gov.uk
Your ref: 4/17/9007

Our ref: SLACC/MM
Email: mmcfeeley@richardbuxton.co.uk

7 January 2021

URGENT LEGAL LETTER

Re: Decision to grant planning permission for development of a new underground metallurgical coal mine & associated development at Whitehaven; Council Ref: 4/17/9007

Dear Sirs

Proposed Whitehaven Coal Mine: Council Ref: 4/17/9007

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. SLACC has yesterday received the decision of the Secretary of State declining to call in the application for decision.

We are writing to you urgently to bring to your attention certain new information that is material to the consideration of this application and which was not available at the time when the Development Control and Regulation Committee ("**the Committee**") vote to approve the application was taken in October 2020.

Sixth Carbon Budget

Since the Committee considered this application, the Government's Climate Change Committee has released the Sixth Carbon Budget, covering the period 2033-2037, and associated analysis.

The Sixth Carbon Budget, required under the Climate Change Act, represents legally binding advice on the volume of greenhouse gases that the UK can emit during this period. The data released alongside it also provides the most comprehensive view available of the required reductions on a sub-sector by sub-sector basis.

The Whitehaven mine alone would exceed the available 'space' in the budget for the coal mining subsector

As set out in the Officer's Report for the October 2020 Committee meeting (the "OR") emissions from five years of operation of the mine would be 1.83 MtCO₂e, or .367 MtCO₂e per annum.¹

The data accompanying the Sixth Carbon Budget provides projections for how emissions from each sector and subsector will be reduced over time to meet the legally-mandated budget. For the first time, these sub-sector breakdowns provide a specific category relating to coal mines, as part of the "Fuel Supply" sector, which includes oil refining, oil and gas platforms, gas distribution, and coal mining.

These show that the total projected emissions from coal mines (both open and closed²) is 0.7 MtCO₂e per annum for the year 2020, decreasing to 0.6 MtCO₂e per annum for the years 2021-2025, 0.5 MtCO₂e per annum for the years 2026-2039, and 0.4 MtCO₂e per annum for the years 2040-2050.³ Crucially, the report on the Fuel Supply sector notes that 0.4 MtCO₂e per annum are generated by closed coal mines.⁴ This means that the projections allow for total emissions from open coal mining operations of 0.2 MtCO₂e per annum for the years 2021-2025, 0.1 MtCO₂e per annum for the years 2026-2039, and 0 MtCO₂e per annum for the years 2040-2050. This means that **the annual operational emissions of the mine will exceed the Climate Change Committee estimates of what the total emissions from the coal mining subsector should be upon commencement of operations.** In other words (even ignoring the emissions from the end use of the coal) just the annual operational emissions from the Whitehaven mine would be multiple times greater than the Government's expert advisors suggest would be necessary to adhere to a path that would put the UK on track to adhere to the Sixth Carbon Budget. **By 2026, the annual operational carbon emissions from the mine would be approximately 3.7 times greater than the space available for all open coal mines.**

Coal use by UK Steel Industry

The projections of the Climate Change Committee in relation to the UK steel industry also run contrary to conclusions in the OR. For instance, the OR places reliance on statements (including of Wardell Armstrong) that "it could be 2050 at least before any significant inroads are made to the volumes of coking coal being used."⁵

However, the Climate Change Committee projections indicate that emissions from the UK iron and steel industry will have dropped to 53% of their 2020 levels by 2033 and **a mere 7% of their 2020 levels by 2037.**⁶

Notably, only 30.3% of the total carbon emission reductions in the sector by 2050 are projected

¹ See the table below para 7.114. Of course, this estimate excludes emissions from the end use of the coal, based on the Council's conclusion of 'perfect substitution' and represents only those emissions that the Council (and the Applicant) acknowledge will be created by the mine.

² Due to methane leakage from closed mines.

³ <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-Charts-and-data-in-the-report.xlsb>, (hereinafter "6th Budget Data" attached as Appendix 1) see "Fuel Supply" tab, data accompanying figure 6.3.

⁴ <https://www.theccc.org.uk/wp-content/uploads/2020/12/Sector-summary-Fuel-supply.pdf> at page 38.

⁵ OR para 7.64.

⁶ See 6th Budget Data, footnote 3, at tab "M&C" (Manufacturing and Construction), data accompanying Figure 3.3d. It may also be noted that the report recommending policies to the Government to achieve the budgets which accompanies the Sixth Carbon Budget recommends that "Government should target near-zero emissions from ore-based steelmaking in the UK by 2035." See <https://www.theccc.org.uk/wp-content/uploads/2020/12/Policies-for-the-Sixth-Carbon-Budget-and-Net-Zero.pdf>.

to arise from carbon capture and sequestration (CCS).⁷ The vast majority of the reductions are due to:

- Switching away from the use of coal to electrification (EAF), which accounts for 34% of the reduction in emissions,⁸
- Switching to the use of hydrogen, which accounts for 5% of the reduction in emissions⁹, and
- Energy efficiency and resource efficiency, which combine to make up 26.7% of the total reduction in emissions¹⁰.

All of the above would be expected to lead to a concomitant reduction in the use of coal. As a rough estimate based on these figures, even if it is assumed that all CCS is fully deployed by 2037, the UK steel sector's use of coal is expected to drop by approximately two thirds by 2037.¹¹

The OR's conclusion that the mine must cease operations by 2049 is based on its conclusion that the officer cannot be "confident" that there would not be any "commercially viable alternatives to the blast furnace for the manufacture of new steel in the UK (or Europe)" beyond 2050.¹² Clearly, the Government's expert Committee on Climate Change believes that there will be commercially viable alternatives, and that coal use will be a small fraction of its current level by the mid-2030s.

These conclusions and the data set out above, by the Government's own statutory expert Committee on such issues, require the Council to reconsider its findings on these issues.

Wardell Armstrong

It has come to our attention since the October 2020 Committee meeting that Wardell Armstrong has taken positions for other commercial clients that call into question their independence on the matters on which the Council asked them to advise.

The OR acknowledged that it directly relied on the "independent technical advice" of Wardell Armstrong ("**WA**") in relation to issues including "substitution, the markets for coal, and alternative steel making technologies."¹³

However, we have recently become aware that WA prepared a report on behalf of HJ Banks and Company Ltd in October 2019 in support of an application for a coal mine proposed at Dewley Hill, outside of Newcastle. This report, whose scope was to estimate the GHG emissions of the mine, took the position that it was "entirely reasonable to assume" that the emissions from the end use of the coal (and fireclay, in that case) "would be similar or the

⁷ 3.3 MtCO_{2e} per annum are expected to be met with CCS. Total reductions in the sector are projected to be from 11.5 MtCO_{2e} per annum in 2020 to 0.6 MtCO_{2e} per annum in 2050 (i.e. 10.9 MtCO_{2e} per annum in total reductions).

⁸ See 6th Budget Data, footnote 3, at tab "M&C" (Manufacturing and Construction), data accompanying Figure 3.3d. (3.7/10.9 = 34%).

⁹ Id. (0.6/10.9 = 5%)

¹⁰ Id. Energy efficiency accounts for 0.7 MtCO_{2e} per annum whilst resource efficiency accounts for 2.2 MtCO_{2e} per annum. [(2.2+0.7)/10.9 = 26.7%]

¹¹ Coal use is the major driver of UK steel industry emissions. At 7% of the current level of 11.5 MtCO_{2e} per annum, the emissions from the iron and steel sector would be expected to be 0.8 MtCO_{2e} per annum in 2037. If one assumes (generously) that all CCS of 3.3 MtCO_{2e} per annum is deployed by that time, the annual emissions from the sector, before reduction due to CCS equate to 4.1 MtCO_{2e}. This represents a 65% reduction from the 2020 figure of 11.5 MtCO_{2e}.

¹² OR para 7.67.

¹³ OR para 5.21.

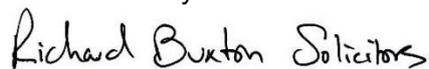
same as those from coal and fireclay from alternative sources (imported)".¹⁴ The report cited no evidence in relation to this point, but excluded the assessment of such emissions on this basis.

The Newcastle City Council Planning Committee resolved to refuse the application for the Dewley Hill mine on 18 December 2020. However, at the time that the Council instructed Wardell Armstrong to provide independent technical advice in relation to the question of whether substitution would arise (and related questions relating to the operation of the coal and steel markets) any statement by WA which called the assumption adopted in their October 2019 report on behalf of their client HJ Banks and Co into question would have seriously undermined the case that their client was making in relation to that application (which took a similar stance as WCM, namely that perfect substitution would arise). The independence of WA to make conclusions on the issues on which the Council instructed them is therefore in serious doubt. At minimum, the Committee needs to be informed of the potential conflict of interest and the Council needs to consider whether it can rely on advice from WA as independent in the circumstances.

Conclusion

The information above clearly might lead the Committee to reach a different decision and therefore requires referral back to them to consider. *Wakil & Ors v London Borough of Hammersmith and Fulham* [2013] EWHC 2833 (Admin). We therefore trust that, in light of this letter, the Council will refer this matter back to the Committee to reconsider the application.

Yours faithfully



Richard Buxton Solicitors

Environmental, Planning & Public Law

Encl: Appendix 1: Climate Change Committee: Sixth Carbon Budget - Charts and data in the report (Excel file)

¹⁴ Wardell Armstrong, Greenhouse Gas Emissions, October 2019 at 1.1.2. See also, 2.1.2, which stated “*The emissions from the end use of the coal and fireclay have not been included in the assessment as it is assumed that in the 'do-nothing scenario' i.e. no mineral extracted from the Dewley Hill site) the mineral would still be required in the UK, but would have to come from a different source (for coal this most likely will be met through imported coal).*” The WA Report is available from the Newcastle City Council planning portal at <https://portal.newcastle.gov.uk/planning/index.html?fa=getApplication&id=121057> (application reference 2019/0300/01/DET, labeled “GREENHOUSE GAS EMISSIONS REPORT”) The October 2019 report appears to be an update of a February 2019 report, which was an appendix to the Environmental Statement submitted in support of the application and made similar statements.