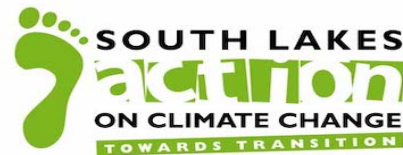


Mr Paul Haggin  
Planning Manager  
Cumbria County Council  
County Offices  
Busher Walk,  
Kendal  
LA9 4RQ



South Lakes Action on Climate Change –*towards transition*  
7 Grizedale Avenue  
Kendal  
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LA9 6BQ

21 June 2020

Dear Mr Haggin

Planning Application: 4/17/9007 West Cumbria Mining

I am writing on behalf of Lakes Action on Climate Change –*towards transition*, known usually as SLACC, to maintain SLACC’s objection to the above amended planning application. We consider that the revised application and supporting documents from West Cumbria Mining (“WCM”) do nothing to address the issues we have raised, and indeed create additional significant reasons for our objection to the proposal.

In short, the amended planning application does not comply with the development plan, in particular policy DC13, because the proposal will have unacceptable environmental impacts (in particular greenhouse gas impacts and the loss of ancient woodland) and enviro-social impacts (in particular, climate change, the resultant negative impacts on people and communities from that change, and embedding a “stranded asset” in the community). It cannot be made acceptable by planning condition or obligation. It should be noted that WCM accepts that it does not comply with this “First Stage” of policy DC13, although it underestimates the extent of the negative impact.

Turning to the Second Stage of the assessment in policy DC13, the proposal does not provide national, local or community benefits which clearly outweigh the likely impacts of granting planning permission, in particular because there is no need for coking coal to be mined for a period of 50 years. Therefore, planning permission should be refused, unless material considerations indicate otherwise. They do not. The proposal does not comply with paragraphs 148 and 211 of the NPPF, which are key material considerations.

This objection has been compiled with input from a number of experts<sup>1</sup> and is accompanied by the following appendices: Appendix 1: Letter from Richard Buxton Solicitors (6 December 2019) and Letter from Professor Paul Ekins OBE (5 December 2019); Appendix 2: Expert Report from the Material Processing Institute (11 June 2020); Appendix 3: “Statement on the future need for coal in the steel industry” (June 2020), Appendix 4: Written Ministerial Statement on the Clean Steel Fund and the Low Carbon Hydrogen Production Fund (3 September 2019).

The objection covers the following topics:

1. The previous Officer’s Reports and Committee decision
2. The “Reasons for the 2020 Update” and WCM’s revised position
3. The need for coking coal in steel making
4. Result of errors in the need case – offshoring GHG; building a stranded asset and carbon lock-in
5. The “perfect substitution” error
6. Serious flaws in the revised Environmental Statement and AECOM’s GHG assessment
7. The section 106 agreement
8. Other environmental harms, including to ancient woodland
9. The planning balance
10. Conclusion

## **1. The Previous Reports and Decision - SLACC’s urgent legal letter of 6 December 2019**

We draw attention to the letter sent to Cumbria County Council by Richard Buxton Solicitors (“Richard Buxtons”) on SLACC’s behalf on the 6 December 2019,<sup>2</sup> and the accompanying letter from Professor Paul Ekins.<sup>3</sup> Richard Buxtons set out why the County Council, in its Officer’s Reports of 19 March 2019 and 13 October 2019 to the Development Control and Regulation Committee, had proceeded on an “erroneous assumption”, and erred in advising Members in regards to the likely impacts of the proposed mine on low-carbon alternatives to blast furnace steel production.

Professor Ekins’ expert opinion was, in summary that: the perfect substitution assumption – i.e. that UK and EU steel producers would replace coal produced in the USA with the coal

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1 Maggie Mason, BA (Arch), Diploma in Town and Regional Planning, who was a senior Minerals planner in Kendal for 10 years and who was involved in drafting the Cumbria Minerals and Waste Local Plan 2015-2030, including policy DC13; Dr Henry Adams: BSc PhD: is an Ecological Consultant; Mike Berners-Lee :Professor and at Lancaster University is a leading expert in supply carbon management and respected author on climate change; Dr Rebecca Willis: BA MA PhD, is also a Professor at Lancaster University and has held a number of senior advisory positions; including Vice-Chair of the Sustainable Development Commission. Becky currently holds a £1.2m UK Research and Innovation Fellowship, investigating energy and climate governance

<sup>2</sup> Appendix 1 to this representation

<sup>3</sup> Letter from Professor Paul Ekins-Appendix 1 to this representation.

produced by the proposed development on a perfect one-to-one tonne basis, resulting in saving in transport carbon emissions – runs contrary to “basic economic theory”; he is not aware of any evidence to support the assumption; an increase in supply of coking coal from the proposed mine will lead to an increase in the use of coking coal, and granting permission is “highly likely to result in additional carbon emissions”.

Richard Buxtons set out actions that the Council should take: require assessment of the GHG emissions of the mining operations and of the GHG emissions from the end use of the coal produced by the mine; refer the application back to Councillors for reconsideration; and advise members properly once this assessment has been undertaken.

## **2. A Fresh Decision - The “Reasons for the 2020 Update” and WCM’s revised position**

The Revised Planning Statement (2020) begins with a section headed “Reasons for the 2020 Update”. This explains the amendment to the application and that the amended application is accompanied by an additional chapter to the Environmental Statement (“ES”) with an Appendix headed “Expert evidence of metallurgical coal and steel markets”, written by Dr Neil Bristow, and a Greenhouse Gas (“GHG”) assessment by AECOM that purports to quantify and assess GHGs from the mining operations themselves but not the end use (Tier 3) emissions of the coking coal produced by the mine. There is also a “Rebuttal of the Green Alliance Report “Appendix. Together, we will refer to all these documents as the “Revised EIA”.

The Revised EIA maintains the “perfect substitution” claim and urges the County Council to continue to accept it, but it fails to address the expert opinion of Prof Paul Ekins, which SLACC provided to the Council and WCM in December 2019.

Instead, the Revised EIA includes a purported worst case assessment of the GHG emissions that would arise if the offsets and transportation savings did not happen. As set out in detail below, this underestimates the level and impact of GHG emissions from the operation of the mine. It also fails to assess the emissions from the burning of the coal and also does not address the expert opinion of Prof Ekins. Nor do the Revised EIA materials even claim that the metallurgical coal or steel markets exhibit the traits Prof Ekins says would be necessary to refute the presumption that normal economic principles apply.<sup>4</sup>

Finally, WCM relies on amendments to a S106 legal agreement concerning GHG emissions. These amendments implicitly recognise that the UK’s Carbon Budgets will reduce and that net zero emissions are required by 2050. AECOM concedes that the emissions from the proposed development “may therefore increase in significance after 2050 without an

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<sup>4</sup> Prof Ekins’ letter indicated that “to refute the assumption that greater supply of a product will lead to increased demand would require a very strong argument (and evidence) that the coal market has one or more rare features (such as a cartel which sets prices independently) which override normal economic forces.” No such evidence has been provided, nor even any reasoned explanation why any feature of the coal or steel market would ‘override normal economic forces.’

emissions reduction strategy”.<sup>5</sup> The s106 agreement proposes a periodic review of the operational GHG emissions of the development. We set out below detailed reasons why the Council should not rely on the s106 Agreement to address the GHG impact of the proposal, but note here that: (1) the s106 agreement does not address the points made by Prof Ekins but continues to rely on the perfect substitution assumption to ignore emissions from the end use of the coal; (2) in any event it provides no enforceable mechanism to limit operational emissions and would only kick in after 2030 and (3) WCM accepts in the Planning Statement that the s106 agreement does not make the GHG impact of the proposal acceptable.<sup>6</sup>

Both prior to the amendment of the application and in response to it, the Council has been provided with additional information from objectors. SLACC has commissioned two expert witness reports, one of which the Council saw in December 2019,<sup>7</sup> and one which is entirely new.<sup>8</sup> Neither of them has yet been considered by the Development Control and Regulation (DC&R) Committee, so we will present them in some detail.

Furthermore, there has been confirmation by the Government’s own experts that there is no “spare capacity” in the UK carbon budgets because UK action to curb greenhouse gas emissions is lagging behind what is needed to meet legally-binding emissions targets.<sup>9</sup>

It is incumbent on the Council to ensure that the new information is taken into account by the Council in this (third) DC&R Committee hearing and that all members enter into the hearing with an open mind. The County Council stated, when it compromised the judicial review proceedings which challenged the 31 October 2019 Committee resolution to grant planning permission, that it no longer relies on the previous (October 2019) decision. This is the correct approach. It should be emphasised that the new information before the County Council means that its officers and the Development Control and Regulation Committee are entitled to reach a different conclusion from the previous decision and are entitled to refuse planning permission.

### **SLACC’S RESPONSE**

This representation is SLACC’s response to WCM’s revised submissions, which we do not find satisfactory. SLACC believes that unless Cumbria County Council takes a very different approach to their consideration of WCM’s submissions, and uses independent expertise to test the assertions and assumptions within them, there is a grave risk that the County

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<sup>5</sup> Revised Planning Statement (2020) paragraph 4.2.24.

<sup>6</sup> Revised Planning Statement (2020) paragraphs S17-S22 and paragraphs 5.3.8-5.3.10 ; 5.3.23-5.3.25. If the s106 agreement made the impacts acceptable, then WCM would not address GHG impact in the second stage of the tests under DC13 and NPPF paragraph 211.

<sup>7</sup> Appendix 1 to this objection.

<sup>8</sup> Appendix 2 to this objection.

<sup>9</sup> Committee on Climate Change <https://www.theccc.org.uk/publication/reducing-uk-emissions-2019-progress-report-to-parliament/>

Council will again err in their advice to the Development Control and Regulation Committee on a range of serious issues.

As set out above, the relevant planning policies (DC13 and NPPF para 211) require a two-stage approach. WCM accepts that the proposed development fails the First Stage of these policies, as it acknowledges that it will cause unacceptable environmental impacts and that these cannot be made acceptable by the s106 Agreement.<sup>10</sup> WCM's application therefore stands or falls on the Second Stage of these policies: does the proposal provide national, local or community benefits which clearly outweigh the likely impact.

SLACC's response is that it does not. The benefits relied on by WCM are either illusory (because misconceived) or the weight given to those benefits is unjustifiably high. In balancing the benefits against the impacts, WCM underestimates the severity of the impacts, in part because of errors in the Revised EIA and failures in the assessment process.

### **3. An Illusory Benefit: The need for coking coal in steel making**

SLACC has always accepted that steel is essential and has never argued that steel manufacture should be reduced or limited. What is not accepted is the justification given for the coal that this development will produce.

The key statement that councillors and public figures in West Cumbria repeat in defence of the proposal is "You can't make steel without coal", and it is very important that DC&R members are informed that this is unfounded.

Two paragraphs in WCM submissions express the statement in a more subtle way:

*"Emerging technologies are capable of producing steel without metallurgical coal. However these technologies are in their infancy and, as Dr Bristow explains, will not replace blast furnace steel production as the primary process for steel production for the foreseeable future, and indeed for the proposed life of the planning permission. WCM Planning Statement p21, paragraph 4.2.11*

*"in this case the use of the WCM coal produced by the Proposed Development would not, as assessed by AECOM, give rise to any additional environmental impacts above the existing baseline (of "Do Nothing"), because as explained in the AECOM Report, it would simply be replacing coal that is already being used in existing steel works or else would otherwise be supplied from existing sources elsewhere for any future steel works. Based upon the evidence before it and upon the professional judgement of AECOM, the Proposed Development would not give rise to any additional effects as a result of its coal being burnt at steel plants. Any such effects would not be significant or materially different from the existing baseline should the proposed development not be granted planning permission (the "Do Something" scenario in the AECOM Report)". WCM Environmental Statement p5, paragraph 10 ii*

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<sup>10</sup> Revised Planning Statement (2020) paragraphs 5.3.8-5.3.9

WCM's case therefore appears to be:

- a) That although there are methods to make high quality steel without coal they will remain unviable or small scale throughout the life-time of the planning permission (i.e. probably to 2074), and that coking coal use will be maintained at the current levels throughout this period, and
- b) If planning permission were NOT granted (the Do Nothing baseline) both existing and new steel plants in the areas WCM aims to supply (Europe including the UK) would use the same quantities of coking coal but from the current suppliers (in the US).

The need case is central to WCM's assertion that the proposal complies with policy DC13 and paragraph 211 of the NPPF, because it is one of the key benefits relied on as "clearly outweighing" the admitted unacceptable environmental impacts of the proposed development.

SLACC commissioned an independent report from the Materials Processing Institute (MPI) to consider these claims.<sup>11</sup> MPI was established 75 years ago as the British Iron and Steel Research Association and has a team of internationally recognised steel industry experts, and we recommend that the report is studied in detail including by all Members of the DC&R Committee. The MPI Report addresses the key points within WCM's claims and Dr Bristow's evidence, by providing detail on the current UK and EU steel market, alternative technologies not using metallurgical coal, future market demand and societal need for steel in the UK.

The MPI agrees with one statement in Dr Bristow's report: that the proposal to supply 360,000tpa of coking coal to the UK Steel industry is reasonable as at 2020. However, In summary, the MPI Report directly refutes a number of the key claims made by Dr Bristow, concluding that:

- a) The reasons cited by Dr Bristow as limiting the capacity for Electric Arc Furnace (EAF) technology to replace primary steel production using metallurgical coal are not, in fact, significant constraints.
- b) It is incorrect to assert that emerging low-carbon technologies to replace blast furnace steelmaking using coal are "in their infancy". In fact numerous companies and steelworks intend to produce steel with EAF or hydrogen by the mid-2020s or early 2030s. While some of the companies the report highlights "*aim to achieve zero carbon steelmaking and some aim to be carbon neutral, ... none foresee the continuation of the existing blast furnace technology in its current form.*"
- c) Metallurgical coal in the UK and Europe is expected to decline considerably from 2030 onwards, as a result of actions being taken by producers to invest in new technologies. Therefore the "*production of steel in the quality and quantity that is*

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<sup>11</sup> Expert opinion on matters in relation to planning application:-4/17/9007:MPI June 2020: Appendix 2 to this representation.

*likely to be required by society will not require significant use of metallurgical coal in the coming decades”.*

- d) It is incorrect to state that the infrastructure required to facilitate the UK’s transition to a low carbon economy will be dependent on steel using metallurgical coal; in fact steel used in transport and infrastructure can be produced using other technologies and a number of these products are already produced in the UK using EAF or are expected to be due to planned conversion of steelworks to EAF technology.

Some of the key points are highlighted below:

1. Feasibility for displacement of blast furnace steel with scrap steel

The MPI Report makes clear that the vast majority of UK and European steel production could be replaced by use of electric arc furnace (EAF) technology to recycle scrap steel. It also shows why the claims of WCM that this is prevented by (i) limited availability of scrap steel and (ii) the need for certain high-grade products to be made from primary (as opposed to recycled) steel do not withstand scrutiny.

In relation to the availability of scrap steel, the MPI Report demonstrates that there is currently sufficient scrap steel to replace all UK steel production and 76% of total European production. It would appear, therefore, that the availability of scrap steel would not represent a constraint until EAF (alone) had replaced approximately three quarters of European steel production and all of the UK market.

In relation to WCM ‘s second claim, the MPI Report notes that apart from “a small range of high quality strip grades for exposed autobody” which constitute a “small subset” of the 15% of global steel production that is devoted to automotive grades, EAF is capable of producing steel of sufficient quality for other uses. The report concludes:

*“ It is therefore not possible to assert that a general switch from blast furnace to electric arc furnace processing is not possible for quality reasons, though it is true that a small percentage of high value grades can only be made from primary steel making (non EAF) route. It is also worth noting that even for any blast furnace steelmaking that were to remain, the use of metallurgical coal in these furnaces will decline, due to initiatives such as biomass. “*

2. Alternative technologies for steel production and future market demand

The MPI Report directly contradicts the WCM claim that “Other alternative mechanisms of steel production, such as Direct Reduced Iron (DRI), are unlikely to be commercially viable for large-scale steel production for several decades” citing multiple examples of large commercial steel companies that intend to utilise hydrogen furnaces before the end of the decade.

The report elsewhere states that *“It is incorrect to assert that emerging technologies are in their infancy. As has been shown a combination of electric arc steelmaking and alternative primary production, such as hydrogen based DRI, are technologically capable of producing all but a very limited range of steels.”*

On this basis, the report concludes that *“It is to be expected that the number of operational blast furnaces in Europe will decline considerably and that those that continue to operate will do so with a greater use of alternative fuels, such as hydrogen and biomass. The evidence presented clearly shows that production of steel in the quality and quantity that is likely to be required by society will not require significant use of metallurgical coal in the coming decades.”*

### 3. Societal need for steel in the UK

The MPI Report states *“The steel most used in infrastructure (including both transport and low carbon energy as highlighted above), are: coated sheet, hot rolled coil, rebar and heavy sections. It is therefore correct to state that the UK has a societal need for more steel in these areas and that strong growth is forecast in the need for steel. However, the claims from West Cumbria Mining assert that these particular steels are dependent on the availability of metallurgical coal. This is not the case.”*

The MPI Report goes on to provide an overview of UK steel manufacturers of these key products, which already use steel from Electric Arc Furnaces (EAF) not using metallurgical coal, and ones which are shortly to be switched from blast-furnace steel routes to EAF (including Jingye at Scunthorpe). Other products such as hot rolled coils and coated coils, for future transport and infrastructure, do (in the UK) currently use steels from the blast furnace route. MPI does note that the one rail steel mill in the UK currently uses the blast furnace method but goes on to say: *“However, there is no technical or metallurgical barrier to this production being switched to electric arc furnace (EAF) production, as is the case in other countries.”*

The conclusions of the MPI Report therefore directly contradict multiple assumptions which underlie the WCM planning statement and EIA. In particular, the Report directly refutes claims that:

- *“There is currently no viable and scaleable alternative to metallurgical coal in the steel making process.”*
- *“Alternatives to blast furnace production of steel “are not yet commercially tested or viable, and are certainly several decades away from being a meaningful competitor to the blast furnace method”*
- *“The needs of this generation could be compromised in the event that metallurgical coal production, and by extension steel production, is significantly curtailed. Indeed, much of the infrastructure required to facilitate the UK’s transition to low carbon energy production and transport which will be crucial for*



*future generations, will be dependent upon steel made using metallurgical coal.”*  
(the MPI report clearly shows that the steel used in these applications can be produced using other methods and therefore the implication that failing to allow further metallurgical coal production would hinder construction of low-carbon energy and transport infrastructure is incorrect).

#### Statement on the future need for coal in the steel industry

Following discussions between SLACC and academics with specialist knowledge in the steel industry, 11 academics have developed and signed an agreed “Statement on the future need for coal in the steel industry”<sup>12</sup>. It has also been submitted to the County Council with a separate representation from the authors of the 2019 Green Alliance Report.

The fifth and final point in the agreed Statement is as follows:

*“Given these developments, and the EU and UK’s climate change commitments, we consider that the need for metallurgical coal in the European market will reduce very significantly in the next few decades, and will need to do so if the temperature targets in the Paris Agreement are to be met”.*

#### Inconsistencies in Dr Bristow’s Work

It may be noted, separately, that Dr Bristow’s evidence to WCM, and other statements of his published online are somewhat contradictory. For instance in a presentation in 2016 to the EuroCoke Summit Conference in Barcelona, Spain,<sup>13</sup> a portion of his presentation entitled “Long term future, where will we be in 50 years?” predicted, among other things that:

- Under the heading “The ‘known’”:
  - “The recycling pool will grow, size and efficiency –more scrap available”
  - “There is sufficient met[allurgical] coal for the next 50 years”
- Under the heading “The ‘unknown’”:
  - “Technology, will we see the end of the BF [blast furnace] –finally cokeless ironmaking”
  - “Substitute’s penetration into premium high value steel markets –autos”
  - “DR could become a rising threat to coke/BF”

In other words, it appears that only a few years ago, Dr Bristow was of the opinion that there would be increasing recycling as an alternative to blast furnace production and that we might well “see the end” of the blast furnace in the coming 50 years.

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<sup>12</sup> “Statement on the future need for coal in the steel industry” attached as Appendix 3 to this representation.

<sup>13</sup> Available at [https://thecoalhub.com/wp-content/uploads/attach\\_250.pdf](https://thecoalhub.com/wp-content/uploads/attach_250.pdf)

It is also noteworthy that he apparently acknowledged that substitutes to primary steel production might penetrate even the market for high-grade steel which the MPI report notes is a “small subset” of the 15% of global steel production devoted to automotive steel. In other words, at least as of 2016, Dr Bristow seemed to think that alternative technologies would potentially compete to produce even the highest-grade steel products within 50 years.

It may perhaps be noted that Dr Bristow’s language in his report for WCM does not actually assert explicitly that alternatives to metallurgical coal will not be widely commercially used during the period in which the mine is envisaged to operate. He, instead, states that “There is likely to continue to be a demand for metallurgical coal for steel-making in Europe throughout the lifespan of the Proposed Development.” But it is noteworthy, for instance, that he does not assert that this there will be a demand for the full production of 2.78mt per year, nor for the full 360,000tpa WCM says will go to UK steel producers.

#### Conclusions on the need for coking coal in steel making

It is clear, from both SLACC’s evidence and other representations already submitted to Cumbria CC that alternative methods for steel making are more advanced than Dr Bristow has advised (he does not mention the Hybrit Process using hydrogen at all), and UK society’s needs for new infrastructure for 2050 and beyond will increasingly be met without metallurgical coal.

To date, Cumbria County Council appears to have relied solely on Dr Bristow<sup>14</sup> in spite of efforts by SLACC and others to point out credible and current sources of information that contradicted WCM’s submissions.

Highly relevant data on the cost of low carbon hydrogen and ammonia and the speed with which metallurgical coal will become uneconomic as a reducing agent has been also submitted directly to the County Council by Mike Mason as separate objection, dated 9 June 2020.

Dr Bristow himself does not even provide evidence that there is a need for all the coal that will be generated by the proposed development. His conclusions are merely that there will “continue to be a demand for metallurgical coal for steel-making in Europe throughout the lifespan of the Proposed Development.” He does not anywhere assert that there will be European demand for 2.78t of metallurgical coal by the 2070s, nor that there will be UK demand for the proportion that WCM asserts will stay in the UK. This latter point is crucial for the Council to carefully consider when evaluating WCM’s case that there are national benefits that clearly outweigh the likely impacts of the proposal, in evaluating compliance with DC13 and NPPF 211.

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<sup>14</sup> The graph of future global steel demand the first planning Officers Report in February 2019 was from H&W Worldwide Consulting, which is the Hong Kong based consultancy provider of which Dr Bristow is an associate

Further, the proposal runs against the current of Government policy. In August 2019, the Secretary of State for Business, Energy and Industrial Strategy announced a £250 million Clean Steel Fund to “to provide dedicated support to our steel industry, to help put it on a pathway to decarbonisation in line with our net zero commitments.”<sup>15</sup> In September 2019 the Secretary of State announced a Low Carbon Hydrogen Production Fund and, in a Written Ministerial Statement, which set out that the Government was putting the steel industry “on a pathway to decarbonisation in line with our net zero commitments” (HLWS1769).<sup>16</sup> The SOS noted that the UK steel sector is a significant source of greenhouse gas emissions, contributing 15% of the total emissions from industry, and that the integrated steel works at the British Steel site in Scunthorpe and the Tata Steel UK site Port Talbot are the two largest industrial sources of emissions in the UK.

As has been shown above, the proposed development would hamper the transition to lower-carbon alternatives to blast furnace steel production. It would also therefore work at cross-purposes to the Government’s investment of hundreds of millions of pounds to accelerate this transition.

Based on all of the above, it is clear that there is no local or national need for metallurgical coal because there are viable alternatives which are currently available and are likely to become increasingly widespread and cost-competitive over the coming decades. The transition to these alternative technologies will only be hindered by investing heavily in the creation of a mine and associated infrastructure which is designed to produce a huge amount of coking coal (approximately 40% more than the current size of the entire UK market<sup>17</sup>) for five decades.

Finally, in planning terms, the Local Planning Authority is obliged to consider the societal need for mineral resources. This is different from market demand for coal. That is why the minerals section of the NPPF treats some minerals differently. While development of some minerals is encouraged, paragraph 211 of the NPPF has a presumption against the grant of planning permission for extraction of coal. SLACC’s evidence shows that there is no societal need for a new metallurgical coal mine in the UK.

#### **4. Result of errors in the need case – offshoring GHG; building a stranded asset and carbon lock-in**

The logical implications of the evidence before the Council that there is no need in the UK and the EU for the coal proposed to be produced by WCM are threefold:

- (1) WCM cannot rely on one of the “significant benefits” it claims weighs in favour of the proposal, because of the GHG impact of having to selling the coal further afield;

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<sup>15</sup> Hansard, 3 September 2019, DBEIS Written Ministerial Statement ref HLWS1769, attached as Appendix 4.

<sup>16</sup> Ibid.

<sup>17</sup> See MPI Report page 5, final paragraph.

- (2) The mine may become a stranded asset, diminishing the promised economic benefits; and
- (3) It is not safe to assume production will simply stop if demand is lower than anticipated, because WCM will have an incentive to produce every last tonne of coal that they can, as long as doing so exceeds the operational costs of extraction.

1. Negative impact rather than significant benefit – the greater GHG impact from selling coal further afield

WCM states that a “*significant benefit that weighs in favour of the Proposed Development*” is the “*potential*” for “*significant reductions in GHG emissions from international shipping*” because transportation of the coal within or from the UK is less impactful than transportation from the USA.<sup>18</sup> This relies on the “Perfect Substitution error”, which we address below. It also assumes that UK and EU steel producers need, and will continue to need, WCM’s coal for the duration of the lifetime of the mine. Given the evidence of MPI and others, that assumption is baseless. Instead, it is much more likely that WCM will need to sell the coal to other steel producers, such as China, India, Japan or Brazil.<sup>19</sup>

We address below why the GHG emissions exported beyond the UK need to be assessed as indirect impacts of the proposed development.

2. Stranded asset

The term “stranded asset” is used to describe situations where infrastructure or other development (termed “man-made assets”) has to be retired prematurely or is underutilised or devalued, because reduction in the use of fossil fuels makes it unprofitable or it can simply no longer compete against the falling costs of alternative technologies.<sup>20</sup> The evidence from MPI and others shows that there is a significant risk that the proposed development could become a stranded asset. This could happen as early as 2030, given that the commercialisation of hydrogen steelmaking technology is feasible by that time and in light of the number of steel-making companies announcing conversion or decommissioning of their blast furnaces. The cost of a large coal-mining operation and its associated infrastructure becoming a stranded asset because it is underutilised or devalued, or has to close prematurely, is considerable. Not only will millions of pound of investment be lost and numerous promised jobs disappear, but there is the potential for negative impacts on investment in low-carbon development.

WCM do not address this risk. Nor do Dr Bristow or AECOM. The Council needs to consider the potential negative impact of the proposed mine becoming a stranded asset and the benefit of avoiding this outcome.

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<sup>18</sup> Revised Planning Statement (2020) paragraph 4.2.26.

<sup>19</sup> See Dr Bristow’s 2016 presentation, slide 9, available at [https://thecoalhub.com/wp-content/uploads/attach\\_250.pdf](https://thecoalhub.com/wp-content/uploads/attach_250.pdf)

<sup>20</sup> See the UN Environment Programme’s report “The Emissions Gap Report 2017” pg 41, available at <https://www.unenvironment.org/resources/emissions-gap-report-2017>.

### 3. Carbon lock-in

Once the large costs of the initial infrastructure have been invested, WCM will have an incentive to produce every last tonne of coal that they can, as long as doing so exceeds the operational costs of extraction. In other words, it is not safe to assume that production will simply stop if it turns out that the demand for metallurgical coal was lower than expected. Because the large upfront costs of the mine are already ‘sunk’, WCM will be driven to recoup as much of its investment as possible, even if it would never have opened the mine in the first place had it known the true position.

This is a critical part of what is sometimes referred to as “carbon lock-in” and was described by the Stockholm Environment Institute (in 2015) in the following terms:

*The essence of carbon lock-in is that, once certain carbon-intensive investments are made, and development pathways are chosen, fossil fuel dependence and associated carbon emissions can become “locked in”, making it more difficult to move to lower-carbon pathways and thus reduce climate risks.*

*For example, near-term investments in coal-fired power plants, with their low operating costs, long technical life-spans, and strong institutional and political support, increase the future costs of achieving a given emissions target. So, too, might natural gas power plants, fossil-fuelled vehicles, and inefficient buildings and heating technologies. Overall, the International Energy Agency (IEA) has found, if energy investments favour high-carbon technologies through 2020 instead of low-carbon alternatives, the medium-term investment (through 2035) needed to reach low-carbon objectives would increase fourfold.<sup>21</sup>*

Furthermore, even if it is assumed that there is a current need, the duration of that “need” impacts on the assessment of economic benefits, whether benefits outweigh the harms from the proposed development, and also the risk of the site not being restored.

Without the “plank” of coking coal demand in Europe enduring for the lifetime of the development, the case for the mine is fatally damaged.

### 5. **An Underestimated Impact: The “Perfect Substitution” Error**

Another key “plank” in WCM’s case is that emissions resulting from the proposed mine would not increase GHG because the coal produced from the Whitehaven mine would simply “substitute” for coal produced elsewhere. As WCM acknowledges, this argument

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<sup>21</sup> Stockholm Environment Institute, “Carbon lock-in from fossil fuel supply infrastructure” (citations in quotation omitted), available at <https://mediamanager.sei.org/documents/Publications/Climate/SEI-DB-2015-Carbon-lock-in-supply-side.pdf>.

hinges on the supposition that one or more pre-existing metallurgical coal mines would close down. WCM apply the concept to operational<sup>22</sup> as well as end-use GHG emissions.

Many objectors, including Friends of the Earth West Cumbria, have challenged this assumption from the start, a position that was supported by the expert evidence from Professor Paul Ekins that was submitted to the County Council in December 2019.

Professor Paul Ekins,<sup>23</sup> Director of the UCL Institute for Sustainable Resources writes, *“it is clear that the coal produced by the Cumbria mine is likely both to increase emissions and to hamper the development and deployment of low-carbon technologies in this industry, thereby supporting the continuance of high carbon steel production and contributing to dangerous climate change”*.

Professor John Barrett, another recognised expert on UK energy and climate policy has submitted a representation directly to Cumbria CC that also categorically states that 100% substitution will not be achieved. Even if the WCM coal only added a very small amount of coal to the market, this would be likely to outweigh any possible GHG savings from transportation of the coal. With any less than 100% substitution the percentage of coal, and GHG that is NOT substituted are additional, and are direct or indirect impacts of approving this application which must be assessed.

It is notable that WCM and Dr Bristow repeatedly state that the coal from the proposed mine will outcompete other coal because it will be cheaper. For instance, Dr Bristow states that the Cumbrian coal will outcompete US coal because it will be “significantly cheaper, much more readily available, [and have] better retained quality due to shorter shipping distances.”<sup>24</sup> However, Dr Bristow concludes that:

“WCM coal would be competitive on cost, which would encourage its substitution for imported coal. However, its production will not affect global metallurgical coal prices. Furthermore, any cost savings that do arise in relation to WCM coal would be unlikely to affect the cost of steel production, or the demand for steel. This is because there are many variable components in steel production, and because steel consumption is driven by demand for it from the market (rather than its availability or price).”

However, this conclusion is constructed on a series of assumptions which are unjustified:

- First, global metallurgical coal prices need not be affected for there to be an effect on coal consumption. If the coal is ‘significantly cheaper’ than alternatives, economic theory indicates that the lower price will lead to greater consumption.

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<sup>22</sup> On the basis that another mine elsewhere with similar emissions is no longer operating, if no longer producing.

<sup>23</sup> Appendix 2 to this representation

<sup>24</sup> EIA Chapter 19: Greenhouse Gas Emissions, page 25.

- It is completely unexplained how the costs savings to steel producers would be “unlikely to affect the cost of steel production.” This statement is clearly false – if the cost of an input of steel production is cheaper, it must obviously affect the cost of steel production.
- What Dr Bristow presumably is attempting to say is that the effect on the cost of steel production would be minor in the context of “many variable components in steel production”. But even if the price effect is not large, cheaper coking coal must mean that, compared to the situation without the mine, use of the blast furnace method is cheaper than it otherwise would be when compared to lower-GHG alternatives.
- Further, Dr Bristow’s assertion that “steel consumption is driven by demand for it from the market (rather than its availability or price)” provides no explanation why the demand for steel would not be driven by the price of steel (or what factors he says do affect the demand, which he seems to take as fixed, no matter the availability or price!). As Prof Ekins explained: “to refute the assumption that greater supply of a product will lead to increased demand would require a very strong argument (and evidence) that the coal market has one or more rare features (such as a cartel which sets prices independently) which override normal economic forces.” The same must hold for the steel market. It simply cannot be the case that steel consumption would remain constant no matter the price of steel. This conclusion of Dr Bristow’s is also clearly wrong.

To adopt the most charitable possible interpretation of Dr Bristow’s claims, it could be assumed that he essentially is trying to say that despite the Cumbrian coal being “significantly cheaper” this will have only a small effect on the use of coal and the production of steel via the blast furnace method.

However, as Professor Barrett notes, the effect need not be a large one to completely overwhelm the claimed GHG ‘savings’ from lesser transportation emissions.

As a hypothetical, even if 95% of the coal produced from the Whitehaven mine was a substitute for coal that would have been produced elsewhere (i.e. this resulted in other mines elsewhere reducing their production by 2.64 Mt per year and only 5% of the 2.78 Mt per year was new production), this would result in an additional 140,000 tonnes of coal being burned each year – or approximately 6.7 million tonnes of additional coal burned over the life of the mine.<sup>25</sup> Using the latest government conversion factors<sup>26</sup>, this would equate to approximately 21.6 million tonnes CO<sub>2</sub>e, or an average of approximately 429,000 tCO<sub>2</sub>e

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<sup>25</sup> Taking into account that the mine will only reach full production at year 5, and taking only 5% of the lower figures for years 1-4, the figure is 6,661,000 tonnes of additional coal (ie 5% of the total 50-year tonnage of metallurgical coal of 133,220,000).

<sup>26</sup> <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2020>

per year over the 50-year life of the mine.<sup>27</sup> It will be noted that these emissions would be more than 10 times the “average annual emissions” WCM projects during the 2-year construction phase and that the total emissions from burning this 5% of coal would more than double WCM’s “worst case” estimate of 18.4 million tCO<sub>2</sub>e. If the substitution figure was “only” 90%, this figure would be approximately 43.2 million tCO<sub>2</sub>e, which would quadruple the ‘worst case’ estimate.

It may also be noted that these figures are orders of magnitude greater than WCM’s claimed ‘savings’ due to reduced transport distances of 5.4 million tCO<sub>2</sub>e over the life of the mine.<sup>28</sup> This gives the lie to the claim that they have adopted a “precautionary and robust approach to GHG emissions” for the purposes of EIA<sup>29</sup>.

To help decision makers visualise this: any mining operations at the “current source” of the coal that continue after WCM’s mine commences; any metallurgical coal from there exported to another part of the world, or used as thermal coal instead (because the marginal cost of continuing to extract from an already-built almost depleted mine may be low enough to make this economic); or any coal used in a European blast furnace that stays in operation for a few (or more) years longer because WCM coal, with its lower cost base (according to Dr Bristow) is cheaper, is additional.

The impacts on GHG may not be easy to quantify or predict, but WCM (and the County Council) cannot claim that they are zero and must adopt a precautionary approach based on evidence and currently available information about what additional GHGs the project would likely lead to. WCM’s repeated statements throughout the submissions that there would no additional GHG emissions from the development are not evidenced or credible.

It should be clear therefore that this “plank” of WCM’s case is not valid. Without either a 50 year “need” for the coal, or any evidence of any “*special and rare circumstances where the demand for a product is considered entirely “inelastic”*”<sup>30</sup> substitution is not perfect, and the development would increase global GHG, both from the mine itself, and from the use of the coal.

## **6. Serious Flaws in the Revised Environmental Statement and AECOM’s GHG Assessment**

There are at least five serious flaws in the Revised ES and AECOM’s assessment of greenhouse gases:

- (1) It is built on a wholly erroneous baseline;
- (2) It underestimates of the extent of operational GHG Emissions;

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<sup>27</sup> 6,661,000 tonnes of coking coal x 3,222.04 [government conversion factor for tonnes of coking coal to kg CO<sub>2</sub>e] = 21,462,008,440 kg CO<sub>2</sub>e = 21.4 million tonnes CO<sub>2</sub>e.

<sup>28</sup> Revised Planning Statement (2020) para 4.2.14.

<sup>29</sup> EIA Chapter 19: Greenhouse Gas Emissions, para 13.

<sup>30</sup> Letter of Paul Ekins OBE – Appendix 2 of this representation



- (3) It wrongly and unlawfully omits from the assessment the impact of GHG emissions from the use of the coal;
- (4) It underestimates the significance of the GHG impact; and
- (5) The magnitude criterion for GHG emissions' significance is laughable.

We address each in turn below. We have done so in detail because of the importance of the ES in the Council's decision-making process. As a result of the EIA Regulations, the Council's decision on planning permission will be flawed and open to challenge if it does not have a proper and lawful ES that it can take into account when it makes its decision on the impacts and benefits of the proposed development.

#### 1. Wholly erroneous baseline

The Revised EIA is built on a flawed foundation. It is structured around comparing a "Do Nothing" scenario, without the development, compared with a "Do Something" scenario where the development is built. It states as follows:

*"Do Nothing' scenario where the Proposed Development does not go ahead. Although not part of the assessment under the EIA Directive, it is nonetheless material to note that, metallurgical coal which would otherwise be replaced by coal produced by the Proposed Development will continue to be shipped from sources outside of Europe and transported to UK and EU-based steel works, as illustrated in Figure 4.1, with consequential effects (H&W Worldwide Consulting Ltd, 2020)".<sup>31</sup>*

*"If this Proposed Development is not permitted, these shipments will continue to meet the demand from the UK as well as elsewhere in the EU steel industry (H&W Worldwide Consulting Ltd, 2020). Any GHG emissions at the steel works from the combustion of coal mined from the Proposed Development would therefore not be additional as these will occur whether or not the Proposed Development is permitted to operate."<sup>32</sup>*

The "Do Nothing" scenario is based on both Dr Bristow's evidence and "perfect substitution". As has been set out in detail above, the supposition that "any GHG emissions at the steel works from the combustion of coal mined from the Proposed Development would ... not be additional" is clearly untenable. Yet this is the fundamental error on which the entire analysis of the effects of the project on GHG emissions is built.

#### 2. Underestimation of operational emissions – fugitive methane emissions

Even apart from the points made above about why the WCM analysis ignores certain impacts altogether, the assessment of operational emissions also dramatically underestimates the likely true emissions. In particular, the assessment uses a fugitive

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<sup>31</sup> [WCMs Environmental Statement Chapter 19 Appendix 2 GHG Assessment \(AECOM\)](#) paragraph 4.1

<sup>32</sup> Ibid paragraph 4.5

methane emissions factor that is unjustified and out of line with international guidance and scientific evidence.

Chapter 19 of the EIA on GHG Emissions adopts a figure of 6 m<sup>3</sup> of methane released per tonne of coal mined.<sup>33</sup> This is on the basis that “Proponent sampling and analysis of the coal seam deposits have shown a methane release range of between 2 and 6 m<sup>3</sup> per tonne of coal mined.”<sup>34</sup> However, as the scientific literature makes clear, “[t]here is a predictable correlation between the volume of gas contained in coal and the internal pressure of the coal seam from which it is extracted. Generally, pressure on a coal seam increases with depth, as does the volume of methane contained by the coal.”<sup>35</sup> For this reason, IPCC guidance for National Greenhouse Gas Inventories is to use emissions factors for underground coal mines of: 10 m<sup>3</sup> per tonne for depths less than 200 m, 18 m<sup>3</sup> per tonne for depths from 200 to 400 m, and 25 m<sup>3</sup> per tonne for mines deeper than 400 m.<sup>36</sup>

As the March 2019 Committee Report noted at para 4.3

*“Onshore, the coal outcrops in the north near the former Main Band Colliery and dips to the southwest to reach depths of 200m – 400m beneath the surface. There is also a significant area of extraction proposed under the sea, which will be the subject of a separate application to the Marine Management Organisation (MMO). Offshore, the target seams are 400m – 700m below sea level.”*

WCM provide no information on the depth at which the “proponent sampling and analysis of the seam deposits” occurred, but it is very likely to have been at the shallower depths at which the onshore seams exist. If this is the case, it is likely that the offshore seams will contain more methane due to the greater depth, as described above. As the March 2019 Committee Report acknowledges, “The company has 3 licences granted by the Coal Authority, including 2 large offshore licence areas and a smaller onshore licence area.”

As the above makes clear, sampling undertaken at the shallow depths (which are more likely currently accessible to WCM) cannot be used as a reasonable proxy figure for the fugitive emissions that are likely to arise from the deeper undersea deposits, which represent the vast majority of the coal to be mined. Adoption of the 6 m<sup>3</sup> of methane per tonne figure as an estimate of the average methane emissions throughout the 50-year life of the mine is therefore completely unjustified. In fact, guidance from the IPCC indicates that the figure used for the deep coal seams should be more than 4 times higher than the figure the ES

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<sup>33</sup> ES Chap. 19, page 54, para 7.6.

<sup>34</sup> ES Chap. 19, page 59, para 9.4.

<sup>35</sup> Kholoh et al, *Global methane emissions from coal mining to continue growing even with declining coal production*, 256 J of Cleaner Production (May 2020) available at: <https://www.sciencedirect.com/science/article/pii/S0959652620305369#fn1>.

<sup>36</sup> IPCC Guidelines for National Greenhouse Gas Inventories, vol. 2 (2006) Energy. (Chapter 4): Fugitive Emissions. Intergovernmental Panel on Climate Change, available at [http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2\\_Volume2/V2\\_4\\_Ch4\\_Fugitive\\_Emissions.pdf](http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_4_Ch4_Fugitive_Emissions.pdf).

adopts. As 74% of the total operational emissions of the mine are due to fugitive methane emissions, a more plausible figure could easily double or triple the overall assessment of the GHGs which are likely to arise from the proposed development.

It would therefore be contrary to international guidance and scientific principles to adopt the WCM proposed figure for fugitive methane emissions of only 6 m<sup>3</sup> of methane per tonne without further evidence. It should also be noted that condition 64,<sup>37</sup> to require a “Mine Gas Capture Management Scheme” at the mine, does not specify what % of fugitive methane must be captured, or when it should commence. The Council must, at minimum, require information on the depths at which the proponent sampling was done and further evidence as necessary to determine whether this figure is a reasonable (and precautionary) estimate of likely fugitive methane emissions from the deep undersea coal seams. In the absence of this information, it would be contrary to the EIA Directive and the EIA Regulations 2011 to accept the estimate in Chapter 19 of the ES as a reasonable estimate of the GHG emissions of the mine.

### 3. Error concerning indirect emissions – failure to assess usage emissions

WCM has strongly resisted all legitimate obligations to assess the GHG from the use of their coal in steel making (downstream or Tier 3 emissions) and although the ES assesses the operational GHG, WCM claims that it is not required to provide more information about downstream emissions.

This is based primarily on a misunderstanding of the EIA Directive and the EIA Regulations. WCM, relying on AECOM’s methodology, asserts that the emissions from combustion of the coal in steelworks are not “indirect emissions” under the EIA Regulations.<sup>38</sup> This is incorrect. The term “*indirect effects*”, which is what EIA requires to be measured, is to be “*construed broadly*” and includes the environmental impacts “*liable to result from the use and exploitation of the end product of works*”<sup>39</sup>. So use and exploitation of the coal are included.

WCM states that “*subsequent use of coal produced by the Proposed Development is completely outside of the control of the Applicant and the local planning authority.*” This is not relevant and is not the test under the EIA Regulations. In the same way that the impact on the roads of increased traffic caused by a housing development have to be taken into account (although this is outside of the control of the developer and the LPA), so too does the GHG impact of the proposed development.

SLACC hopes that the Council will stand by their 2016 Scoping Report which correctly said “*3.67 The ES should include detailed information about the nature of the coking coal, the carbon implications of its extraction and utilisation, including any assessment that may be*

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<sup>37</sup> As drafted in the Officers Report to DC&R Committee October 2019

<sup>38</sup> ES Ch 19 pg 5 paragraphs 8-9. Referring to AECOM’s methodology Ch 19 Appendix 2 pg 44 paragraph 3.12.

<sup>39</sup> Decision of the Court of Justice of the European Union in *Abraham v Wallonia* [2008] Env LR 32 at paragraph 43.

*required with regards to climate change, and the current and anticipated future outlook in respect of demands/markets” (emphasis added).*<sup>40</sup>

The failure of the Revised EIA to assess the GHG emission resulting from the combustion of the coal means that the ES is deficient, because it fails to assess an indirect effect that it was required to assess. The Council should, before making any decision on the Revised Application, require WCM to provide an assessment of the impact of the GHG emissions from the combustion of all the coal expected to be mined over the 50 year lifespan of the proposed mine.

Equally incorrect is WCM and AECOM’s fallback position, if they are wrong about whether the GHG impact of burning the coal is an indirect effect of the proposed development. In that case, AECOM states *“it is not considered that [the burning of the coal] would result in any additional GHG emissions due to the likely reduction in shipping distances.”*<sup>41</sup> This is based on the substitution argument, which is untenable, for the reasons set out above.

In fact, WCM goes so far as to claim<sup>42</sup> that they met the requirement in the Scoping Opinion to assess the *“carbon implications of [the coal’s] extraction and utilisation”* by referring back to Chapters 3 and 5 of the original ES, which says *“The assessment explained that the coal produced by WCM would replace an equivalent volume of coal that is used in the UK and Europe which is currently being imported primarily from the east coast of the USA”*. In other words, the claims are based on the discredited 100% substitution argument.

SLACC is therefore clear that WCM is required to include detailed information about the carbon implications of the utilisation of the coal extracted in the ES and that it would be wrong to make a decision without having this information.

#### 4. Underestimation of the significance of the GHG impact

An important aspect of EIA is that it provides the Council with information on the significance of any impact that is identified. This allows the Council to weigh the impact properly in the planning balance. The Revised EIA makes two serious errors in assessing the significance of the GHG emissions that will be caused by the proposed development.

The first relates to how AECOM uses the UK Carbon Budget in its assessment. AECOM correctly states that: *“The identified receptor for GHG emissions is the global climate. As the effects of GHGs are not geographically constrained, all GHG emissions have the potential to result in a cumulative effect in the atmosphere”*.<sup>43</sup> However, AECOM then state: *“In order to assess the impact of GHG emissions from Proposed Development, UK Carbon Budgets have been used as a reasonable proxy for the climate”*.<sup>44</sup>

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<sup>40</sup> ES Ch 19 Page 4 paragraph 5

<sup>41</sup> Ibid page 53 paragraph 7.4

<sup>42</sup> Ibid paragraph 6

<sup>43</sup> Ibid paragraph 3.6

<sup>44</sup> Ibid paragraph 3.6

SLACC does not agree that UK Carbon Budgets are a reasonable proxy for the climate. While the UK Carbon Budgets are relevant, they are not the global climate. WCM and AECOM consistently use a phrase such as “would not compromise the ability of the UK Government to meet its carbon emissions reduction obligations”, however, (1) the EIA Directive requires an assessment of all direct and indirect effects of the project, regardless of where these occur, and (2) UK Government carbon emissions reductions obligations do not consist solely of those under the Climate Change Act. Since the February 2020 Court of Appeal Judgement on Heathrow Expansion<sup>45</sup>, the UK’s legal obligation, as a signatory to the Paris Agreement beyond and irrespective of the Climate Change Act has been clarified.

Under the Paris Agreement, it would not be legally sufficient for the UK to achieve net-zero by 2050 (which is the minimum requirement under the Climate Change Act) if it were supporting other countries in producing higher levels of emissions than are incompatible with limiting global average temperature rise to 1.5°C. The Court of Appeal explicitly recognised the Paris Agreement as Government policy and quoted evidence from Government in the form of statements from ministers that led the Court to conclude that: *“the Government’s expressly stated policy [is] that it is committed to adhering to the Paris Agreement to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C.”*<sup>46</sup> The Court of Appeal also decided that, in any event, the Paris Agreement is an obviously material consideration<sup>47</sup>. When assessing the GHG impact of development, it is therefore necessary to look not just at the UK’s Carbon Budgets, but also to consider the UK’s further legal commitment under the Paris Agreement.

This is important in the context of the present application, because WCM is explicitly justifying the proposed development on the basis that it will export an average of 2,319,000 tonnes of coal to the EU each year for 50<sup>48</sup> years. The portion of the coal extracted from the WCM mine that is exported to other countries for steelmaking will not figure in the UK’s carbon accounts. In light of the Government’s policy, reflected in the Paris Agreement commitments, it is incorrect for WCM and AECOM to ignore these exported emissions. The UK Government must adhere to its “carbon reduction obligations”, not just the UK Carbon Budgets, and this should have been reflected in the Revised EIA.

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<sup>45</sup> The Court of Appeal’s recent judgement regarding the proposed expansion of Heathrow Airport – paragraph 228 [https://www.judiciary.uk/wp-content/uploads/2020/02/Heathrow-judgment-on-planning-issues-27-February-2020.pdf?fbclid=IwAR3OQKZqQ\\_Wd41jVtcxrBimnVuqWMogMaPXgi1JYWrAA6XCF3lqhZL1uowQ](https://www.judiciary.uk/wp-content/uploads/2020/02/Heathrow-judgment-on-planning-issues-27-February-2020.pdf?fbclid=IwAR3OQKZqQ_Wd41jVtcxrBimnVuqWMogMaPXgi1JYWrAA6XCF3lqhZL1uowQ)

<sup>46</sup> CA judgment paragraph 216. The full analysis on the Paris Agreement as Government policy is from paragraph 196-233. Although the CA’s decision about the Paris Agreement being Government policy was made in the context of the Planning Act 2008, it is equally applicable to the planning regime under the Town and Country Planning Act 1990.

<sup>47</sup> CA judgment paragraphs 234-238.

<sup>48</sup> Planning Statement Paragraph 2.6.1, Table 1: European exports are 2,420,000tpa by year 5; as 87% of coal is exported in years 5-50, this figure is applied to the figures for years 1-4 as a reasonable estimate of the proportion going to the EU in years 1-4.

The second error is that WCM uses the 100% substitution to argue that GHG from the use of WCM coal “*attract very limited or low weight*”<sup>49</sup>, even though they accept that downstream emissions “*are capable of being material considerations*”<sup>50</sup>. If the Council do decide to reject the “100% substitution” case, the balance of harms and benefits for Policy DC13 and NPPF paragraph 211 must be made consistent and the level of harm from additional end use GHG emissions increased.

It is not for SLACC to provide such calculations or assessments, but as the “back of an envelope” calculation of the GHG that would arise if 5% or 10% of the coal was additional has shown above, the proposal will have major adverse impacts, because emissions from coal’s use are (at least) 10 times those of extraction. If European steel making was to refurbish rather than replace the current blast furnaces around 2035 (when MPI suggests that choice will arise) because of the availability of a ‘locked-in’ source of cheap coal, then this could lead to essentially all of the coal from the mine leading to additional (rather than ‘substituted’) emissions for decades, which could easily result in hundreds of millions of tonnes of additional CO<sub>2</sub>e being generated.

Irrespective of the inclusion or not of emissions from the use of the coal in the ES as indirect effects, the Council must in any case consider carefully the likely adverse impact of the use of the coal when weighing up the harms and benefits of the proposed mine under Policy DC13 and NPPF paragraph 211.

It is incumbent on the Council to assess the proposal as it stands, so the Council cannot assume that the mine would close, and discount the emissions accordingly, unless there is an accurate and enforceable mechanism to ensure that this happened early enough to prevent harmful GHG emissions and severe harm from the consequent rising global temperature. Please also note that export to other regions of the world is not precluded by any conditions.

##### 5. The magnitude criterion for GHG emissions’ significance is laughable

Quite apart from the other flaws that have been identified above, and the inescapable fact that the GHG assessment fails entirely to measure the vast majority of the emissions that the project will cause, the magnitude criteria adopted in the EIA and AECOM report is also indefensible.

The WCM Revised Planning Statement, EIA Chapter on GHG emissions and the AECOM Report all adopt a criterion that GHG emissions which comprise less than 1% of the UK Carbon Budget should be considered to be of “low” magnitude and that this should lead to

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<sup>49</sup> Planning Statement Page 50 Paragraph 5.3.24

<sup>50</sup> Ibid Page 23 Paragraph 4.2.25

these emissions having “minor adverse significance”, while emissions greater than 1% are of “high” magnitude and have “major adverse” significance”.<sup>51</sup>

Frankly, whilst we would normally hesitate to use a word such as ‘laughable’ in a document of this nature, there is no better word to describe this. The necessary implication is that facilities which contribute less than 1% of the total UK budget have GHG emissions of low magnitude. We would be surprised if WCM or CCC could identify **any** single UK facility which meets this threshold. For instance, Drax Power Station, the largest-capacity power station in the UK, does not come close to meeting this threshold.<sup>52</sup>

The justification given for adopting this threshold is also completely spurious. WCM/AECOM state that “Institute of Environmental Management and Assessment (IEMA) guidance of 2017, [] acknowledges that there is no agreed method to evaluate levels of GHG significance and that professional judgement is required to contextualise the emissions impacts of a project or activity by reference to the carbon budgets”.<sup>53</sup> This is uncontroversial enough, so far as it goes. However, first, it should be noted that IEMA Guidance indicates that it is good practice to contextualise a project’s carbon footprint budget against local, sectoral and national carbon budgets,<sup>54</sup> and that nowhere does it set out any significance threshold. Further, the IEMA Guidance specifically notes at the outset of the chapter on evaluating GHG significance that:

*“GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit, as such any GHG emissions or reductions from a project might be considered to be significant.*

*The thread through these principles is that 1) all projects create GHG emissions that contribute to climate change; 2) climate change has the potential to lead to significant environmental effects; and 3) there is a cumulative GHG emission budget that defines a level of dangerous climate change whereby any GHG emission within that budget can be considered as significant.”<sup>55</sup>*

However, it is clear that IEMA does not adopt any clear thresholds for significance. WCM/AECOM therefore state that a criterion of 1% of the UK Carbon Budget is in line with

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<sup>51</sup> See AECOM Report at tables 3.1 and 3.2 and accompanying text; Planning Statement at para 4.2.21, ES Chapter 19, paras 74-75,

<sup>52</sup> In 2019, carbon emissions from Drax Power Station were below 1 million tCO<sub>2</sub>, <https://www.drax.com/sustainability/carbon-emissions/> Total net UK emissions in 2019 were provisionally estimated to be 351.5 million tonnes. DBEIS, 2019 UK greenhouse gas emissions, provisional figures (26 March 2020), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875485/2019\\_UK\\_greenhouse\\_gas\\_emissions\\_provisional\\_figures\\_statistical\\_release.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875485/2019_UK_greenhouse_gas_emissions_provisional_figures_statistical_release.pdf). As UK emissions are currently near, but within legislated carbon budgets, total emissions figures (including for sectors and local authorities) are a reasonable proxy for the portion of the carbon budget that might reasonably be allocated to these industries/local authorities.

<sup>53</sup> ES Ch 19 Page 16, Paragraph 73.

<sup>54</sup> IEMA, Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance (2017), page 16, Para 6.2 and Figure 4, available at <https://www.iema.net/assets/newbuild/documents/IEMA%20GHG%20in%20EIA%20Guidance%20Document%20V4.pdf>.

<sup>55</sup> Id. at page 14. Internal citations omitted.

two publications, namely Department of Energy and Climate Change (2013) and the PAS 2050 Specification (British Standards Institution, 2011), which “allow emissions sources of <1% contribution to be excluded from emission inventories.” On this basis, they conclude that “Therefore, emissions considered to give rise to a ‘high’ magnitude of significance are considered as those that equate to equal or more than 1% of total emissions across the relevant 5 year UK carbon budget.”<sup>56</sup>

This is a clear misapplication of the guidance in the cited documents. The PAS 2050 specification relates to the assessment of lifecycle GHG emissions from goods and services and seeks to provide a “consistent method” for assessing “the emissions that are released as part of the processes of creating, modifying, transporting, storing, using, providing, recycling or disposing of” *a particular good or service*.<sup>57</sup> It notes that its “primary objective” is to “provide a common basis for GHG emission quantification that will inform and enable meaningful GHG emission reduction programmes.”<sup>58</sup> At para 3.31 the document states that “A materiality threshold of 1% has been established to ensure that very minor sources of life cycle GHG emissions do not require the same treatment as more significant sources.”<sup>59</sup> In other words, this threshold has been set to simplify the process of assessing the overall lifecycle emissions of a particular good or service – it does not follow that the emissions generated are not significant. Furthermore, it is obviously a misuse to transpose this materiality threshold which was created to simplify *measurement* of the overall GHGs generated by a particular supply chain.

The reference to guidance from the former Department of Energy and Climate Change is similarly misplaced. This guidance<sup>60</sup> related to individual entities reporting for the purposes of the former UK emissions registry. It set ‘de minimis’ and ‘minor’ thresholds for emissions sources. However, it was not even the case that such sources could be excluded altogether from reporting – the guidance states that the plan should specify how emissions will be calculated from these sources “and the verifier should simply check that the appropriate activity data and factors have been used in the calculations”.<sup>61</sup> Thus, the guidance allows *reasonable estimates* of certain emissions from small sources for the purposes of reporting, but does not indicate that these sources can be ignored altogether. Moreover, the guidance set an absolute limit of 20kt CO<sub>2</sub> pa for ‘de-minimis’ sources and 100kt for ‘minor’ sources. Even ignoring the flaws outlined above, the proposed mine’s operational emissions will exceed the “minor emissions” threshold by many times.

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<sup>56</sup> ES Ch 19 Page 16, Paragraphs 74- 75.

<sup>57</sup> PAS 2050:2011, Specification for the assessment of the life cycle greenhouse gas emissions of goods and services (2011) at iv.

<sup>58</sup> Id.

<sup>59</sup> Id. at page 5.

<sup>60</sup> Department of Energy & Climate Change, *Guidance on Annual Verification for emissions from stationary installations emitted before 1 January 2013*, available at <https://bit.ly/2YRI5RI>.

<sup>61</sup> Id. at para 219.



In any event, the leap to the supposition, based on the documents cited, that an entire industrial operation can discount their entire GHG emissions as of low significance because they are less than 1% of the UK Carbon Budget is simply untenable.

More generally, there is no rationale for applying this threshold to the proposed mine, particularly as a criterion in EIA to assess significance of impact. There is no justification for the figure in relation to the national carbon budget, and comparisons to sectoral and local emissions make clear that it is untenable.

### Sectoral emissions

According to the most recent Report to Parliament by the Government's own Committee on Climate Change, all industry accounted for 21% of total UK emissions in 2018. Of this amount, 61% of total industry emissions were due to manufacturing, while 39% represented emissions from "petroleum refining, fossil fuel production and fugitive emissions." Therefore, all petroleum refining, fossil fuel production and fugitive emissions in the UK currently result in 8.2% of total UK emissions.

This means that any fossil fuel production project which reached the 1% threshold advocated by AECOM would be generating emissions of over 12% (or just less than 1/8th) of this entire UK sector which, according to a recent House of Commons Committee report contains:

- 207 offshore oil fields
- 115 offshore gas fields
- 8 surface coal mines, and
- 6 oil refineries
- (no information was listed on the number of onshore oil and gas wells)

Thus, adopting this approach is essentially equivalent to saying that no existing UK industrial facility generates GHG emissions that should be assessed as being of high significance and that a new fossil fuel production facility that would generate emissions equivalent to 12% of the production emissions of the sector is not significant.

### Local Carbon Emissions

It can also help to contextualise the 1% significance threshold to compare to the emissions generated in Cumbria. The government produces local and regional CO<sub>2</sub> emissions statistics estimates,<sup>62</sup> which show that in 2017 (the most recent year for which data are available):

- All industry and commercial (including agricultural) CO<sub>2</sub> emissions in all of Cumbria were 0.48% of UK CO<sub>2</sub> emissions<sup>63</sup>, and
- Cumbria's total CO<sub>2</sub> emissions (including all industry, commercial, agricultural, domestic gas and electricity use, road and rail transport and other emissions) were 1.08% of UK CO<sub>2</sub> emissions<sup>64</sup>

<sup>62</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/812142/2005-17\\_UK\\_local\\_and\\_regional\\_CO2\\_emissions\\_tables.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812142/2005-17_UK_local_and_regional_CO2_emissions_tables.xlsx)

<sup>63</sup> [Cumbria](#) industry and commercial total (2017): 1699.9 kt CO<sub>2</sub> versus total UK emissions of 351,501.3 kt CO<sub>2</sub>.

In other words, all industry, commerce and agriculture in Cumbria doesn't even surpass one half of the threshold advocated by WCM/AECOM. However, aggregating all emissions from every single home, factory, farm, car and train in Cumbria **just** meets the threshold for 'high' significance set out by WCM/AECOM.

Based on all of the above it is clear that there is no justification whatsoever for adopting the 1% threshold advocated by WCM/AECOM once this is properly considered in the context of national, sectoral and local emissions and carbon budgets.

## 7. The Section 106 Agreement

According to the WCM Planning Statement, as *"the AECOM report recognises that operations and decommissioning activities will intersect reducing future Carbon Budgets and the net zero emissions target of 2050"* the Applicant has indicated that it will enter into a "Section 106" legal agreement *"the provisions of which would require the periodic (5 yearly) review and re-assessment of anticipated GHG emissions" in order "[t]o secure the implementation of GHG emissions mitigation measures."*<sup>65</sup>

The Planning Statement further indicates that *"[e]ach assessment of GHG emissions would need to confirm that the continued operation of the mine, taking account of any carbon reduction mitigation including that provided offsite, would not compromise the ability of the UK Government to meet its carbon emissions reduction obligations."*<sup>66</sup>

However, the Section 106 in fact fails entirely to do this, and is so vague that it may well be unenforceable. It therefore cannot be relied upon as a valid planning obligation that the Council should take into account for these reasons:

### 1) Fails to address actual emissions due to the proposed project

This objection has set out above, at length, the reasons why the methods adopted in the ES and the AECOM Report do not accurately capture the actual GHG emissions of the proposed mine, including (1) the failure to assess any emissions from the end use of the coal produced in reliance on the faulty "perfect substitution" assumption and (2) the reasons why the methods dramatically underestimate the operational emissions (including the fact that the fugitive methane emissions factor adopted appears to be contrary to scientific evidence and international guidance).

The Section 106 indicates that the GHG Reports produced by WCM will include an assessment of the GHG emissions that is:

*"to be carried out in compliance with up to date legislation government policy and accepted national guidance and standards as shall be in force and/or*

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<sup>64</sup> Cumbria total (2017): 3788.3 kt CO<sub>2</sub> versus total UK emissions of 351,501.3 kt CO<sub>2</sub>.

<sup>65</sup> Planning Statement at 4.2.24.

<sup>66</sup> Id.

published from time to time in the absence of which such assessment shall be in accordance with the methodology followed for the purposes of the AECOM Report ...<sup>67</sup>

In other words, it would appear that in the absence of national legislation, government policy or “accepted national guidance and standards” which clearly state that (1) the end-use emissions of coal must be included for purposes of an assessment of this nature, and that (2) fugitive methane emissions from underground coal mines are to be calculated differently, the methodology of the AECOM report is to be used. This means that without such new policy or guidance, the County Council would presumably have legal difficulty arguing that mitigation is required, even if it is clear that the *actual* emissions from the proposed project would “compromise the ability of the UK Government to meet its carbon emissions reduction obligations”.

2) The S106 GHG mechanism does not kick in before 2033

The Section 106 sets the first “GHG Review Date” as being 1 January 2033. Therefore the Council would have no power to do anything about the GHG emissions from the proposed development prior to that date. This means that even if the operations of the coal mine were to jeopardise compliance with the 4<sup>th</sup> or 5<sup>th</sup> UK Carbon Budgets, the Council would be powerless to address this.

3) No workable standard in S106 for CCC to exercise its discretion

More generally, the language of the Section 106 agreement does not set any clear standard for the evaluation of the GHGs and mitigation associated with the project and when the Council will issue a “GHG Rejection Notice”. Whilst the planning statement sets out the standard quoted above (i.e. “compromise the ability...”), this is not clearly incorporated anywhere in the agreement.

This language does appear once in the AECOM report – as one of three bullets in a list setting out the rationale for the statement that the “sensitivity of the climate to GHG emissions is considered to be ‘high’” (at para 3.17) – but the concluding chapter of the AECOM report which sets out a “Summary of GHG Emissions and Impacts” simply parrots the argument that the “impact of the Proposed Development is therefore considered ‘low’ against the current UK Carbon Budgets. As per Table 3.2, the significance of effects is considered as ‘minor adverse’” on the basis that the emissions do not rise to the threshold of being 1% or more of the UK-wide carbon budget. There is therefore no clear standard on which the Council should exercise its discretion.

To the extent that the standard set by the AECOM report is the 1% threshold, it has already been shown in detail in this objection why that standard is indefensible. Similarly, if the standard is the one which the Planning Statement indicates, it would be almost impossible

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<sup>67</sup> Freeths, Draft S106 Agreement (17 June 2020), Definitions and Interpretation, Proposed GHG Report, subpara (b).

for the Council to show that this mine, by itself (and ignoring end-use emissions, actual fugitive emissions, etc) would “compromise the ability of the UK Government to meet its carbon emissions reduction obligations”. It may almost always be said that *something else* could be done to allow the UK to meet its obligations. That is inherent in the nature of any type of airborne pollution which comes from myriad dispersed sources, none of which individually can be said to be “the cause” of the problem.

In fact, the only thing that appears fairly clear from the Section 106 is that the Council will have full discretion at any point to issue a “GHG Approval Notice”. (See para 12.5.2.3)

On the basis of the above, it appears to SLACC that the Section 106 does not provide any assurance that emissions will be limited or mitigated in any way, and therefore we do not consider that it can reasonably be taken into account by the Council when evaluating the planning merits of the proposed development. As set out above, it may even be that the agreement is so vague as to be legally unenforceable. For these reasons we urge the Council to disregard the Section 106 Agreement when considering the proposed development.

We note that WCM does not in fact argue in the Revised Planning Statement that the environmental impacts of the proposed development arising from GHG are mitigated by the section 106 such that the unacceptable impacts are made acceptable.<sup>68</sup>

## **8. Other environmental harms, including to ancient woodland**

As a community-based charity focused on climate change, the understandable focus of SLACC’s comments are climate-related issues. However, it should be noted that there are many other significant environmental harms associated with the proposed development, including harm to landscape and the heritage coast, potential risks from undersea mining, loss of ancient woodland, and many more. We do not seek to address each of these in these comments.

However, we note that it is acknowledged by WCM (and CCC) that the proposed development would lead to the loss of ancient woodland. NPPF para 175(c) requires that “development resulting in the loss or deterioration of *irreplaceable* habitats such as ancient woodland should be refused, unless there are *wholly exceptional reasons* and a suitable compensation strategy exists.” (emphasis added) Wholly exceptional reasons is a very high standard – it may be noted that the only other place that the NPPF uses a “wholly exceptional” standard is where there would be “substantial harm to or a loss” of a heritage asset “of the highest significance” which includes registered battlefields, grade I listed buildings and World Heritage Sites, among others.

Neither WCM nor CCC has identified anything which truly qualifies as “wholly exceptional reasons.” The reasoning in the March 2019 Committee report stated that only a “relatively

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<sup>68</sup> Revised Planning Statement (2020) paragraphs 5.3.8-5.3.9.

small” amount of irreplaceable ancient woodland would be lost, despite the fact that this standard applies even to individual ancient or veteran trees on a site. There is no evidence that the Council has even considered how many such trees are present in the 284 square metres of irreplaceable habitat that would be lost. Further, the basis on which the Council concluded that the ‘compensation strategy’ was suitable was that it involved planting of ‘at least twice the area of loss.’ However, ancient woodland is considered irreplaceable precisely because of its age and the fact that the habitat it provides is not capable of easy replication. No consideration appears to have been given as to whether new planting (even if it is many times the area of the ancient woodland that will be lost) will in fact compensate for the loss of habitat.

Finally, in planning terms, the loss of ancient woodland means that there is a strong presumption against the grant of planning permission. That presumption can only be displaced by wholly exceptional reasons justifying the loss. Previously the Council failed to take this approach in determining the application. Applying the correct approach now, SLACC urges the Council to find that the presumption has not been displaced and planning permission should be refused.

## **9. The Planning Balance**

### The Development Plan

The Development Plan Policy specifically related to coal is MWLP Policy DC13 (Energy Minerals). The first part is on hydrocarbons, the second on Underground Coal Gasification; and the third is based on NPPF Paragraph 211 with three tests as it was in the 2012 NPPF, but including social impacts in test 1. It states:

*DC13 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.*

DC13 is the relevant Development Plan Policy and the inclusion of unacceptable social impacts was found sound in its approval and Adoption process. The 2019 NPPF essentially combines the first 2 tests of the 2012 NPPF and changes the words “*have no unacceptable environmental impacts*” to “*environmentally acceptable*”, so we do not consider that the amendments to the NPPF in 2019 supersede DC13 or its inclusion of social impacts.

WCM asserts in the Revised Planning Statement that “*it is uncontroversial that the development does not give rise to any unacceptable social impacts*” (paragraph 5.3.2). This shows the extent to which WCM has underestimated or misunderstood the impacts of the

proposed development. In fact, the amended planning application has a number of unacceptable social impacts. First, there are the impacts related to climate change, sea level rise<sup>69</sup> and coastal flooding, which will affect Whitehaven itself. By 2050 Whitehaven Harbour and the Pow Beck valley up to Mirehouse Community Centre could be<sup>70</sup> below the Annual Flood Level. Increased rainfall intensity and flooding are already having financial effects and mental health impacts on the least advantaged communities across Cumbria including from the River Derwent which affects Keswick, Cockermouth and Workington. This development would add to those impacts.

Second, there are social impacts from the evident conflict with Copeland Local Plan Strategic Policies ST3 and ST4, which seeks Renaissance through Tourism with Tourism Opportunity Sites both on the proposed site of the mine, and also Policy ER10 and ENV2 and ENV3. This development, including the rail loading facility adjacent to, and the conveyor travelling over, the Coast to Coast Walk would harm the coastal fringe strip and links to the Heritage Coast and. ST4 states *“The importance of linkages between the different areas via footpaths and cycleways cannot be overstated.”* The impacts of the conflicts with CLP policies noted in the Revised Submissions are not minor, and will impact directly on the social and mental wellbeing of local residents.

It is informative to compare the table of impacts on page 47 of the Revised Planning Statement 2020 with that on page 42 of the now superseded Planning Statement of November 2018 which contained a row on Economic Benefits. So although the Revised Planning Statement refers to adverse impacts on listed buildings and the Heritage Coast<sup>71</sup> it omits adverse impacts related to the Economy and in particular those associated with tourism, Copeland Local Plan Policy ER10 -Renaissance through Tourism<sup>72</sup>. The policy states that *“the council will maximise the potential of tourism in the borough, particularly outside the Lake District National Park Boundaries”*. Anyone who knows Whitehaven, and the desire to attract the very large number of people enjoying Wainwright’s Coast to Coast Path into Whitehaven in order to boost its tourist economy, will appreciate how important conflict with this policy is. It was also a major aim of the County Council’s support for the extension of the Heritage Coast designation northwards to Whitehaven.

The conflict with ecology, landscape/visual and historic environment policies WCM refers to as limited in fact has a cumulative effect on adverse impacts on the West Cumbria economy.

Third, the adverse social impacts of the proposal would continue in the event of the financial failure and early closure mine. A “stranded asset” would be embedded in the

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<sup>69</sup> Copeland Local Plan Policy Page 48 Policy ER10 and pages

<sup>70</sup> [https://coastal.climatecentral.org/map/16/-3.6054/54.539/?theme=sea\\_level\\_rise&map\\_type=coastal\\_dem\\_comparison&contiguous=true&elevation\\_model=best\\_available&forecast\\_year=2050&path\\_way=rcp45&percentile=p50&return\\_level=return\\_level\\_1&slr\\_model=kopp\\_2014](https://coastal.climatecentral.org/map/16/-3.6054/54.539/?theme=sea_level_rise&map_type=coastal_dem_comparison&contiguous=true&elevation_model=best_available&forecast_year=2050&path_way=rcp45&percentile=p50&return_level=return_level_1&slr_model=kopp_2014)

<sup>71</sup> WCM Revised Planning Statement April 2020 page 47

<sup>72</sup> Copeland Local Plan Policy Page 48 Policy ER10 <https://www.copeland.gov.uk/attachments/core-strategy-and-development-management-policies-0>

community. West Cumbria is all too familiar with the adverse social impacts of failing industries, the brake on regeneration, leisure and confidence from chemical contamination and pollution from Marchon, and the unrestored Keekle Head Opencast Coal Mine. SLACC considers that the proposed development would have unacceptable social impacts. These impacts weigh heavily against the proposed development. They are major adverse impacts.

For the reasons given below in relation to paragraph 211 of the NPPF, SLACC also considers that the development has unacceptable environmental impacts. These, too, are major adverse impacts.

The unacceptable social and environmental impacts cannot be made acceptable by condition or via the proposed section 106 agreement, so the development fails to comply with the first two bullet points of Policy DC13. WCM essentially accepts this in the Revised Planning Statement, and makes the planning case for the development under Second Stage of NPPF para 211, which equates to the final bullet point of DC13.

For the reasons given below, SLACC considers that the proposed development does not provide national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission. It is therefore contrary to DC13.

#### National Planning Policy Framework

The NPPF is a material consideration in determining whether to grant planning permission. The section which applies specifically to coal extraction is contained in paragraph 211.

#### Stage 1 NPPF Paragraph 211

This paragraph is, unusually, framed in negative terms rather than positive ones, i.e. Planning permission should NOT be granted for the extraction of coal unless the relevant tests are met. Paragraph 211 states:

*211. 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)*

In its Revised Submissions, WCM has accepted that the proposal fails the first test of 2019 NPPF paragraph 211 by proceeding to the second test<sup>73</sup>. SLACC agrees. It is not environmentally acceptable on the basis of GHG emissions, loss of Ancient Woodlands, and other issues.

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<sup>73</sup> Revised Planning Statement (2020) paragraphs 5.3.6 – 5.3.10.

It is important in considering Stage 1 to appreciate the extent to which the proposal is environmentally unacceptable. This sets the bar which has to be exceeded by the benefits under Stage 2 for those benefits to “*clearly outweigh*” the environmentally unacceptable impacts. WCM underplays the extent of the adverse environmental impacts. This is clear from the table on page 47 of the Revised Planning Statement. Major conflicts with policies and adverse effects are either omitted from the table or minimised. As set out above, the tourism impacts are wholly omitted, despite being directly linked to environmental impact, because it is the quality of the environment which is the tourism draw.

Furthermore, WCM wrongly treats the GHG impact of the proposed development as minor adverse. SLACC has set out in detail above why that is incorrect. The GHG impact is major adverse. This is so in light of:

- a) The net-zero obligation in the Climate Change Act 2008, which is a material planning consideration;
- b) The Paris Agreement, which the Council is obliged to take into account as Government policy (in light of the Heathrow decision) and which is in any event a material planning consideration;
- c) Paragraph 148 of the NPPF, which required “*the planning system*” to “*shape places in ways that contribute to radical reductions in greenhouse gas emissions*” – decision-taking is an important way in which the planning system can achieve this;
- d) The scientific evidence, supported by the UK Government’s own Climate Change Committee, establishes very clearly the catastrophic impact of global heating, the need for a very steep trajectory in carbon reduction and the fact that UK Carbon Budgets are not being met.

There is nothing “spare” in those budgets that could justify the increase in GHG emissions that will be caused by the proposed development, even if only the 18.4MtMTCO<sub>2e</sub> from Tier 1 and 2 emissions were considered. If the full impact of the GHG emissions, including the Tier 3 emissions from the use of the coal, is considered (as it should be under the EIA Directive), the adverse impact is plainly of the highest order.

#### Stage 2 NPPF Paragraph 211 and Stage 3 DC13

SLACC contends that the planning application clearly fails the second test of para 211, and of the almost identical phrase in step 3 of DC13. The environmentally unacceptable elements of the proposal are not outweighed by national, local or community benefits.

WCM assigns a moderate weight<sup>74</sup> to the GHG of the proposal (taking into account the supposed benefit of the S106 Agreement) and, quoting only ecology, landscape/visual and historic environments to which WCM also assigns moderate weight. On the other side of the balance WCM state that the socio-economic impacts of the proposal are the potential for

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<sup>74</sup> Rather than minor adverse in stage 1 consideration



significant socio economic benefits for the local area including those in need in the medium to long-term. WCM also claims benefits from the long distance transportation of coal and support to the British Steel industry.

The first thing to say is that ascribing any benefit from the long distance transportation of coal is based on the flawed Perfect Substitution theory. Such purported benefits should be ignored. Similarly, for the reasons given above, the section 106 Agreement should not be taken into account and should certainly not be weighed in favour of the proposed development as a benefit.

Secondly, little weight can be attached to the supposed benefit of “support to the British steel industry.” The report from MPI makes it clear that most of the products WCM claims are dependent on metallurgical coal, because they cannot be made with steel from the EAF route, are now in fact being made via EAF. Scunthorpe’s steel plant itself will be switched from blast furnace based production to EAF by Jingye, its new owner.

Interestingly WCM is not claiming a major national benefit from the proposal as the NPPF requires, perhaps because SLACC has challenged this in the past by pointing out that 87% of the coal will be exported.

#### Overall local economic and community benefits of the proposal

This is where the impact on tourism and regeneration needs to be balanced with the benefit from wages for the jobs WCM has promised. The weight that Copeland Local Plan 2013 - 2028 placed on Renaissance through Tourism cannot be overestimated. It was expressed in Policy ER10, ST3 and ST4 and in infrastructure Policies ST3 and ST4 and in ENV2 and ENV5 envisaged the Marchon site (site of the above ground development) as part of a regeneration scheme linked to the Heritage Coast and the foot path networks, both the Coast to Coast linking in from the National Park and also the Coastal footpath.

Whilst it is true that the Copeland Local Plan also placed a great deal of hope in the economic benefits from “new nuclear”, which was stopped when the major partner dropped out, SLACC urges the Council to look again how much the jobs created by the WCM proposal compensate for the planned renaissance through tourism and strategic planning benefits, or outweigh the conflicts with Copeland Local Plan policies.

## Jobs

WCM has always promoted their offer of 500 jobs for 50 years, and that most of these would be provided to people already resident in the area. There are good reasons to question both promises, and whether they should be assigned significant weight in the planning balance.

- i. WCM's case continues to rely on previously submitted chapters of the Environmental Statement 2018. Chapter 5 makes it clear that future exploration and operations in the offshore section of the mine will be contingent on what is found as the development proceeds<sup>75</sup>. There is no guarantee that there will be sufficient recoverable reserves to provide 500 jobs for 50 years.
- ii. In light of the expert report provided by MPI, there is a real risk that the proposed development could quickly become an underutilised stranded asset, with resultant decrease in job and lack of stability of any remaining jobs.
- iii. There is no planning condition that can ensure that jobs go to local people. No evidence has been presented that there are sufficient suitable employees in the local area or of the number of jobs available for lesser skilled individuals. Other matters will naturally take precedence, qualifications and experience cannot be totally overcome by the offer of apprenticeships and it is very unclear whether "place of residence, birth or local connections" can legally override them in an appointment policy.
- iv. The "500 jobs for 50 years" promise relates to the whole mining operation, including the offshore element, and should not be weighed against the potential adverse impacts of the onshore element of the mining operation. Some potential impacts have a short assessment in the ES, but no statutory consultee has responded to them or estimated their significance. There is also no quantification of the % of coal that will be extracted from the onshore element, or the years/work that could be attributed. This is a major flaw of the assessment of the WCM application.
- v. There has been no real consideration of the potential for mechanisation to progressively reduce the number of employees. Over 50 years that must be a real possibility given the potential for robotic working and AI. The April 2020 Submissions have narrowed the economic benefit down to the wages for workers (both direct and indirect) and the vast majority of the economic benefit will go to WCM and its investors. The benefit to West Cumbria cannot be relied on as a long term benefit.
- vi. A further aspect, as yet unexplored, is the potential for a switch from extraction of coal to Underground Coal Gasification (UCG). SLACC has reason to believe that coal extraction leading to UCG was proposed before this application was submitted. It is not clear whether it was with the same company under a different name, and SLACC is currently waiting for the County Council's response to a Freedom of Information

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<sup>75</sup> WCM Environmental Statement Chapter 5 paragraph 5.2.18

request that is theoretically to be answered by the 3rd of July. This is relevant because UCG involves slow combustion of the coal underground to produce syngas, which is used to generate electricity. This would provide very few jobs after construction was complete. “Two people to flick the switches”, is how one coal expert described it to us.

Environmental impacts related to the under-sea bed, offshore element of the mining operation.

SLACC understands that Radiation Free Lakeland has submitted a report on Seabed Seismicity and Fault Reactivation. SLACC has always been concerned about the potential for such issues to mobilise radioactive and chemical sea bed sediments and consequent impacts on the marine environment, (especially the MCZ). At this point we would merely remark that these would raise even greater concerns for UCG where large scale subsidence is possible and controllability is reduced. Potential for methane leaks to atmosphere would need to be assessed, as would the need for carbon capture and storage of CO<sub>2</sub> from the electricity generation.

SUMMARY of consideration of MWLP DC13 and NPPF 211

SLACC believes that the proposed development fails test 1 of both DC13 and the NPPF paragraph 211, but also the relative weights ascribed by WCM to impacts and benefits are gravely in error. The impacts from the GHG emissions are major adverse and the overall benefits fall only into local and community benefits, and are moderate.

SLACC appreciates that local Cumbrian representatives, and in particular those from the West Coast, will balk at the description of the benefits of WCM’s proposal as moderate. Unfortunately planning convention limits itself to minor, moderate and major, and we have no higher category to describe the long term and catastrophic impacts of climate change. These are in any case not a simple categorisation, and the weighing of benefits is not just manipulation to make one side lower than another. Environmental Impact Assessment is about values and people, and while it is very understandable that local representatives would place a high value on benefits to people they know and understand, and problems that are immediate or relatively near term, this process should attempt to also consider the value of people a bit further away, and those who are younger than the last generation of miners who would like to see those jobs return.

The County Council as Local Planning Authority needs to make it clear that people elsewhere in Cumbria are suffering from flooding, those in Whitehaven will relatively soon be suffering from sea level rise, and the impacts for society as a whole from climate change are catastrophic. SLACC consider that in reality, the needs of both groups of people are

actually on one side of the balance, and the only real benefit, if this mine were granted planning permission, would be to the investors of West Cumbria Mining.

#### Other Conflicts with NPPF

The NPPF paragraph 148, which the Revised Submissions referred to in<sup>76</sup> as a conflict states:

*148. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change.*

These issues have been addressed above. SLACC argues that the proposal is significantly in conflict with Para 148

NPPF paragraph 205 *“When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy”* is footnoted-*“Except in relation to the extraction of coal, where the policy at paragraph 211 of this Framework applies”*

This makes it clear that the inclusion of a separate paragraph (211) related to coal overrides NPPF paragraphs 203 -205 which refer to the importance of minerals and the fact they can only be worked where they are found. Any arguments made by WCM that refer to those NPPF paragraphs should not be included as considerations.

Finally, under NPPF paragraph 175(c), the loss of ancient woodland means that there is a strong presumption against the grant of planning permission. That presumption can only be displaced by wholly exceptional reasons justifying the loss. Given the assessment of the benefits of the proposed development, set out above, that presumption has not been displaced and, for that reason too, planning permission should be refused.

## **10. Conclusion**

The Revised EIA provided in support of the application is shot through with errors. It starts from an erroneous baseline; it underestimates the extent of operational GHG emissions; it fails to assess usage GHG emissions; it takes the wrong approach to assessing the significance of the emissions that it has calculated and it uses a significance criterion that is laughable. The errors in the Revised EIA mean that the Council does not at present have a proper ES on which it can base a decision.

The proposed Section 106 Agreement fails entirely to provide the GHG mitigation that WCM claims, and is so vague that it may well be unenforceable. It cannot be relied upon as a valid planning obligation that the Council should take into account.

Therefore WCM’s revised application as now before the County Council is still founded on the two, now discredited “planks” of perfect substitution and a 50 year enduring need for the coal in the UK and European Market.

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<sup>76</sup> WCM Revised Planning Statement Page 47

It would cause significant additional GHG emissions, which SLACC has shown to be highly significant, even though WCM has made no rational or consistent attempt to quantify, and granting consent to this planning application would not be consistent with the UK government's carbon reduction obligations under the Climate Change Act 2008 or the Paris Agreement and clearly contrary to Paragraph 148 of the National Planning Policy Framework.

No exceptional circumstances have been established that would justify the harm to an area of Ancient Woodland, because the coal from this mine is not essential, and would not make any significant contribution to the UK economy or to society's need for steel.

It is contrary to the Development Plan Policy DC13, and fails both the first and the second test of NPPF paragraph 211. It is environmentally unacceptable, and the significant impacts are not outweighed by the, on balance, moderate community benefits.

As the Council does not at present have a proper ES on which it can base a decision, it is open to the Council to ask WCM to remedy the failings in the ES. However, SLACC notes that WCM have so far resisted all requests to provide the necessary GHG assessments, and this is the third time that the proposal will have been put before the DC&R Committee. The technological advances in steel making, escalating speed of global heating and clarity on international and national policy since 2016, when this proposal was first presented to the County Council, mean that this proposal for a new deep metallurgical coal mine is no longer tenable and SLACC urges the Council to refuse planning permission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Mason'.

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