

**The Community Infrastructure Levy Regulations 2010 Compliance Statement  
(Draft)**

**Cumbria County Council (CCC)**

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

**Appeal Reference APP/H0900/V/21/3271069**

**Planning Application no. 4/17/9007**

## 1. INTRODUCTION

This statement will consider the planning obligations required to mitigate the impacts of the proposed metallurgical coal mine and make the development acceptable in planning terms.

The only council in Cumbria to have a CIL Charging Schedule is South Lakeland District Council.

Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out the tests for the use of planning obligations. Obligations should only be sought when they meet the following tests and the obligations are:

- a) necessary to make the development acceptable in planning terms,
- b) directly related to the development,
- c) fairly and reasonably related in scale and kind to the development.

## 2. OBLIGATIONS

The suggested planning obligations contained in the proposed S106 agreement for the application are summarised in the table below. The proposed S106 itself is contained in appendix 3. All policies referenced relate to the Cumbria Minerals and Waste Plan 2015-2030 unless otherwise noted.

Summary of s.106 Obligation	Policy and calculation	Requirement	Compliance with Reg 122
<b>Restoration Bond / Securities</b>			
Financial provision for restoration of the site by CCC, should the operator be unable to deliver this.	Policy SP16 Policy SP17 Policy DC18 Policy DC22  The amount will be determined by an independent mineral valuer, and reviewed on a periodic basis.	The Agreement requires that:  an independent mineral valuer be appointed (jointly) to quantify the cost of any phased restoration and aftercare including an appropriate contingency;  the preliminary works, construction and production phases can only proceed once	The restoration bond is required should the mine operator go out of business or suffer other issues which mean the land is not properly restored in accordance with the planning permission.  The development was considered by CCC in its

		<p>sufficient security has been provided to cover the cost of that remediation and aftercare;</p> <p>if the company or its successors fall into insolvency or otherwise default on relevant provisions in the S106 Agreement the security is used to pay for CCC to step in to carry out the restoration and aftercare; and</p> <p>if it does not fall into insolvency and complies with the relevant S106 obligations and the land is restored appropriately and aftercare is completed, the security is returned to the company on a phased basis.</p>	<p>previous Committee Reports to have significant environmental impacts.</p> <p>In particular, for example, the Pow Beck Valley area, within which the development is proposed, is a relatively attractive landscape and remains largely tranquil and undisturbed.</p> <p>Policy DC18 of the Cumbria Minerals and Waste Local Plan adopted in 2017 (CMWLP) states that proposals for development should be compatible with the distinctive characteristics and features of Cumbria's landscapes and should avoid significant impacts on the natural and historic landscape, ensure that significant adverse visual impacts are avoided, ensure high quality design (in respect of waste facilities) and direct minerals and waste developments to less sensitive locations where possible.</p> <p>CCC gave considerable weight in its previous Committee Reports on the application to landscape and visual impacts and considered that, if viewed in isolation without the national, local or community benefits</p>
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			<p>resulting from the mining, those impacts would result in adverse impacts upon visual receptors and the local landscape which were considered to be unacceptable environmentally (see, for example, paragraph 7.316 of the Committee Report dated 2 October 2020).</p> <p>Further detail on the landscape and other environmental impacts is provided in CCC's previous Committee Reports.</p> <p>Although national and Cumbria planning policy says bonds of this nature should only be used in exceptional circumstances, CCC consider this is an exceptional circumstance – because of the environmental context and impacts and related planning policy referenced above, WCM have no track record in the coal extraction industry, WCM currently has no income stream from mineral or other development and is currently solely funded from investors and there is no industry wide restoration guarantee in the way there is for aggregates (for example). The long time scale for which planning permission is proposed to be granted further increases</p>
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			<p>the risk of unforeseen circumstances causing the operator to be unable or unwilling to restore the site, particularly, given the above context, as restoration and aftercare is purely a cost at the end of the development (whether restoration is required on completion of the mineral extraction or earlier).</p> <p>Whilst the national, local and community benefits of the development were recognised in the previous Committee Reports, the developer should be required in the particular circumstances relating to this application to ensure that the costs of the development are internalised.</p> <p>The costs of restoration would be significant, which are understood to be around £4.5m at their peak.</p> <p>If WCM or a successor developer was unable to restore the site and carry out the aftercare, the costs would mostly likely be suffered by the environment and local community due to the impacts of an unrestored site in this currently otherwise attractive,</p>
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			<p>tranquil and undisturbed landscape.</p> <p>Further details and justification for this obligation is provided in the previous Committee Reports.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>HGV Routeing</b>			
HGVs to adhere to the approved route.	<p>Policy SP17 Copeland Core Strategy policy T1</p> <p>The obligation has no direct financial cost.</p>	<p>The clause requires all HGVs to adhere to the approved route set out within an approved Construction Traffic Management Plan. This is to avoid the impacts of HGVs using unsuitable local roads.</p> <p>HGVs will be required to follow the required route when accessing the site during the construction phase and once the mine is operational</p>	<p>CCC consider that some of the roads by which the site and RLF could be accessed are unsuitable for large numbers of HGVs, particularly during the construction phase, and the measures are necessary to protect the amenity of local residents.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Public Rights of Way Contribution</b>			
Contribution to maintenance and improvement of local rights of way	<p>Policy SP17 Copeland Core Strategy policy ER10 Copeland Core Strategy policy ENV6 Copeland Core Strategy policy T1</p> <p>£94,235 index linked.</p>	<p>To provide improved links between the nearby communities and the extremely popular Coast to Coast long distance footpath, and the England Coast Path National Trail.</p>	<p>CCC consider that the proposed development would adversely impact on the local rights of way network. In particular the rail loading facility (RLF) would directly affect the section of the important Coast to Coast path</p>

	<p>The costings for the work were derived from standard costs used to estimate other rights of way works in Cumbria, including the then on-going establishment work for the ECP project. Also included are any necessary legal works such as Temporary Traffic Regulation Orders (TTROs) and/or Diversion Orders to reroute certain paths to a more accessible, suitable and sustainable alignment.</p> <p>The improvements would be undertaken by CCC, with funding secured from the applicant by way of a s106 agreement.</p>	<p>To make improvements to the popular Coast to Coast path, which is globally recognised for its landscape beauty and economic importance to the cross-country corridor through which the route passes. The route is of strategic importance to the rights of way network, local area and county.</p> <p>The improvements include better route alignment, surface and drainage works, signs, gates, boundary treatment and better route definition on specific footpaths.</p>	<p>crossing the Pow Beck valley, industrialising what has historically been a very picturesque and quite pastoral valley, along with causing potentially significant passage issues along this path during construction.</p> <p>The improvements are necessary to mitigate the harm that would be caused.</p> <p>This particular stretch of the ECP (stretch 2) was still in development at the time of the original s106 negotiations, however it recently opened to the public on 31 March 2021.</p> <p>The requirements are considered necessary, reasonable, and are directly related to the proposed development.</p>
<b>Highways Contribution (Traffic Calming)</b>			
<p>Traffic calming measures in the vicinity of the main mine site.</p>	<p>Policy DC1 Copeland Core Strategy policy T1</p> <p>£155,000 index linked for traffic control measures etc.</p>	<p>The contribution is required, to secure traffic calming measures within a 1.5 mile buffer of the main mine site boundary. The measures consist of four pedestrian crossing points, with dropped kerbs, central refuges and "Keep Left" bollards; traffic calming features and general signage; textured surfacing in specific locations and revised/enhanced road markings in the vicinity of the development.</p>	<p>The works are required to maintain pedestrian and general road safety as a result of increased traffic generated from the construction and operation of the development.</p> <p>The measures are considered necessary, reasonable, and are directly related to the proposed development.</p>

<b>Highways Contribution (Junction Improvements)</b>			
Junction improvements in the vicinity of the site.	<p>Policy DC1 Copeland Core Strategy policy T1</p> <p>£68,327 index linked for junction improvements.</p>	Civics works and street lighting for junction improvements - Mirehouse Road/St Bees Road and RLF Access Road/Mirehouse Road.	<p>The works are required to maintain pedestrian and general road safety as a result of increased traffic generated from the construction and operation of the development.</p> <p>The measures are considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Travel Plan Monitoring Fee</b>			
Monitoring of the Travel Plans	<p>Policy DC1 Copeland Core Strategy policy T1 Copeland Development Management Policies DPD policy DM22</p> <p>A fee of £13,200 for the monitoring and reviewing of two Travel Plans is required (£6,600 per Travel Plan).</p> <p>£13,200 index linked</p>	Monitoring and review of Travel Plans as required.	<p>CCC will need to administer some elements of the Travel Plans, the cost of which should fall to the operator of the proposed mine, rather than local taxpayers.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>S106 Administration Costs</b>			
Administering of the provisions of the Section 106 Obligations	Costs are estimated at up to a maximum of £15,000 per annum index linked, plus an additional £15,000 index linked in any year in which there is a Proposed GHG Report submitted for approval to CCC.	Cover CCC's reasonable costs relating to implementing and administering of the provisions of the Section 106 Obligations	The amended CIL Regs 2010 states in Reg 122(2) that the legal restriction that a S106 obligation can only constitute a reason for granting planning permission if the obligation is necessary, directly related to the development and reasonable does "not apply in relation to a planning obligation which



			<p>requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—</p> <p>(a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and</p> <p>(b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.”</p> <p>As is indicated by the amendment to the CIL Regs introducing this provision, there is a recognition that the modern approach to S106 obligations, particularly for developments that are large, complex or to be carried out over a long period, is for the developer to cover or contribution to the cost of monitoring and administering the agreement to internalise the cost, avoid excessive costs on the public purse and to ensure that obligations can be properly</p>
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			<p>monitored by the Council to ensure compliance. On a complex development in a sensitive environment, that is imperative on an application such as this one.</p> <p>CCC will need to administer some elements of the s106 agreement over a long development period and a number of time consuming and relatively expensive items are involved (which potentially might also include the need for reference to external expert advice), the cost of which should fall to the operator of the proposed mine, rather than local taxpayers.</p> <p>As per paragraph 5.2.1, Schedule 1 of the S106 Agreement the costs are capped an annual amount, but will not exceed the actual amount incurred by CCC.</p> <p>The requirement is considered to fairly and reasonably relate in scale and kind to the development and the agreement is drafted in a manner to ensure the payments do not exceed the actual costs incurred by CCC over the lifetime of the development. In any event, the</p>
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			obligations are otherwise considered necessary, reasonable, and directly related to the proposed development.
<b>Extension to the Aftercare Period</b>			
Extended aftercare period	<p>Policy SP16 Policy DC22</p> <p>Aftercare will be undertaken by the operator, and therefore does not require a financial contribution through the s106.</p>	<p>Extension of the aftercare period to cover the period from 5 to 10 years or until CCC issues a certificate certifying that it is satisfied with the aftercare (whichever is the later) for parts of the site (with the first 5 years covered by a condition).</p>	<p>CCC consider that the proposed restoration may take longer than five years of management to properly establish, and so contingency for a longer period of active management is necessary.</p> <p>In such circumstances, the S106 obligation is required because paragraph 2(6), Part 1, Schedule 5 of the Town and Country Planning Act 1990 prevents an aftercare condition being imposed for more than 5 years.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Heritage Asset Enhancements Contribution</b>			
Enhancement of local heritage assets.	<p>Policy DC17 Copeland Core Strategy policy ENV4 Copeland Development Management Policies DPD policy DM27</p> <p>The applicant is proposing an annual heritage contribution of £5,000 for 10 years (total of £50,000).</p>	<p>Annual heritage contribution of £5,000 for 10 years (total of £50,000) to promote the enhancement of the industrial heritage assets known as Barrowmouth Gypsum and Alabaster Mine; Saltom Coal Pit and Haig Colliery to include any of the following: restoration and enhancement of the condition of those assets and their</p>	<p>CCC consider the proposed development would result in harm to the setting of local heritage assets. Considerable importance and weight must be given to that harm under NPPF policy and case law.</p>

		<p>setting, the erection of interpretation boards, the laying out of heritage trails, activities that enhance public understanding of the heritage assets (through survey, other fieldwork and research) and activities that promote public appreciation of the assets through outreach projects.</p>	<p>Through the EIA process these enhancements were proposed as mitigation for this harm, but the sites lie outside of the planning application red line boundary.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Main Band Colliery Restoration</b>			
<p>Restoration and aftercare of additional Main Band Colliery land outside of the Application redline boundary.</p>	<p>Policy DC22 Copeland Local Plan policy ENV6</p> <p>The work will be undertaken by the operator and therefore does not require a financial contribution through the s106. Some funds will be provided by CCC to assist with cost of restoring areas outside the application site.</p>	<p>The whole of the former Main Band Colliery site is proposed to be restored following its use as a construction compound during the building of the RLF. A substantial part of the former colliery lies within the application site, however, CCC will contribute towards the cost of restoration of the part outside the application site through funds held from a bond in a previous S106 agreement for that purpose relating to the Main Band Colliery land.</p>	<p>The Main Band Colliery site will be used as a construction compound for the RLF but is partly outside the application site.</p> <p>CCC consider a quality restoration of the whole Main Band Colliery site following its temporary use is necessary in order to bring the land back into a beneficial use following construction work and the obligations are reasonable because the Council can provide funds to the developer to cover some of the costs outside of the current application site.</p> <p>This requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Pedestrian and Cycle Path</b>			

<p>Cycling and access improvements.</p>	<p>Policy SP15  Policy DC2  Copeland Local Plan policy T1  Copeland Development Management Policies DPD policy DM22</p> <p>Copeland Local Plan policy ENV6</p> <p>Contribution of £72,000 index linked.</p>	<p>Provision of access for pedestrians and cyclists along Cycle Path Part 1 to form part of the St. Bees – Mirehouse Road cycle route if it comes forward (with Cycle Path 1 being the southern part of the Rail Loading Facility access, comprising approximately half of the access to the RLF).</p> <p>A financial contribution towards the cost of the St. Bees – Mirehouse Road cycle route which would pass either through or directly adjacent to the RLF site.</p> <p>If planning permission has not been obtained for the whole of the St Bees – Mirehouse Road Cycle and work has not begun within 10 years from the date of the Agreement, Cycle Path Part 1 and the contribution would not need to be provided.</p>	<p>Policy SP15 says that Minerals and waste management developments, including restoration and afteruse, should help to create new green infrastructure, and to conserve and manage where it is existing, and enhance its functionality, quality, connectivity and accessibility.</p> <p>In the Glossary to the CMWLP defines “green infrastructure” as including “green space”.</p> <p>“Green spaces” is defined as a non-exhaustive list including cycling routes, pedestrian paths and rights of way.</p> <p>The proposed access to the RLF is lightly used, and the proposed development would generate more traffic on the route.</p> <p>Cycling is also to be encouraged through the Travel Plans, and provision needs to be made for the future construction of a St Bees – Mirehouse Road cycling route.</p> <p>The obligations provide mitigation, including for impacts on existing paths, and additional local and community benefit connecting to the overall St.</p>
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			<p>Bees – Mirehouse Road cycle route and also allowing pedestrian access should the overall cycle route come forward.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Drain Surveys and Maintenance</b>			
<p>Survey and maintenance of two drains outside of the Application redline</p>	<p>Policy DC16 Policy DC19 Policy DC20 Copeland Local Plan policy ENV3 Copeland Development Management Policies DPD policy DM11 Copeland Development Management Policies DPD policy DM24 Copeland Development Management Policies DPD policy DM25</p> <p>The work would be undertaken by the developer, and so does not require a financial contribution.</p>	<p>The obligation requires drain surveys and maintenance schemes to be undertaken for two drains that run outside of the application site prior to commencement of development, with ongoing maintenance</p>	<p>It is necessary to ensure drains running outside of the site are capable of carrying the anticipated effluents and are effectively managed and maintained without unacceptable environmental impacts. The obligation for the western drain to the seaside is required as mitigation to the Habitats Regulation Assessment.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Residential Land Restriction</b>			
<p>Restrictions on the residential use of Lake View and Stanley House.</p>	<p>Policy DC2 Policy DC6</p> <p>In order to comply with the obligation, the developer would purchase the houses from the current residents, and so no financial contribution is required.</p>	<p>Lake View and Stanley House properties, from the Commencement of Construction until Production at the Site ceases, shall not to be occupied other than by persons solely or mainly employed on the proposed development site.</p>	<p>The restriction of occupancy is necessary because the impacts of the development in respect of the amenity of these residents is considered to be unacceptable.</p> <p>The requirement is considered necessary, reasonable, and is</p>

			directly related to the proposed development.
<b>GHG Reports and Mitigation (*this text will need reviewing should an updated GHG approach is agreed)</b>			
Monitoring for GHG emissions and optimising operations over time as new technologies and opportunities emerge.	<p>Policy SP13 Policy DC2 Policy DC8 Policy DC13 Copeland Development Management Policies DPD policy DM11</p> <p>Measures would be implemented by the operator, and so no financial contribution is required.</p>	<p>Prior to 1 January 2033 and every subsequent 5 year anniversary, submit a "Proposed GHG Report" for approval assessing greenhouse gas emissions ("GHG") and the impacts on the climate and environment of the construction, operation and decommissioning of the Development and any necessary GHG Mitigation.</p> <p>To provide the approved GHG Mitigation and associated monitoring and reporting.</p> <p>Cease the use and operation of the Development in the event of the service of a GHG Mitigation Failure Notice by CCC, until the issues have been remedied.</p>	<p>Planning permission would be granted for an extended period until 2049, during which time it could be expected that new technologies will emerge to assist with the management of GHG emissions from the operations.</p> <p>Because the operations will produce more than negligible emissions and the objective of the UK is to be completely carbon neutral by the proposed end date for the development, CCC consider that active management of the emissions from the operations is required in order that the development remains acceptable in planning terms, particularly towards the end of its operational life.</p> <p>The obligations are considered necessary and reasonable for reviewing the GHG emissions from the mining operations and decommissioning to ensure they remain acceptable for the remaining duration of the development on the basis of the accepted national guidance and</p>

			<p>standards in force at the time to secure appropriate additional mitigation or that the mining cease if necessary in order to ensure the mine does not compromise the Government's net zero GHG target for 2050 or its trajectory towards it in the period beforehand. The backstop is that mining must cease if the developer is unwilling to provide further mitigation at the time to ensure this is the case.</p> <p>The requirement is considered necessary, reasonable, and is directly related to the proposed development.</p>
<b>Mortgagees</b>			
Restrictions on mortgaged land	n/a	Not to Commence Construction unless the mortgages over part of the land against which the agreement is enforceable are released without the relevant mortgagees having to enforce their security, or the mortgagees enter in to and deliver to the Council S106 deeds accepting that their interests are subject to the S106 Agreement.	The relevant mortgagees refused to sign the S106 Agreement. Without the obligation, the mortgagees could acquire part of the land if the borrowers in question were to default on their loans and then those parts of the Site could be developed from the obligations. The obligations in the agreement safeguard against that risk and are considered adequate legal protection in such circumstances.
<b>Hutbank Land</b>			



To be confirmed, once required ecological information is received.			
<b>Others</b>			
CCC anticipate that WCM may propose further (as yet unspecified) mitigation - particularly in respect of GHG emissions and ecology. Once the proposals become clear, it may prove necessary to update the proposed s106 and add to or amend this CIL statement accordingly.			

## APPENDICES

- Appendix 1 – Cost Breakdown - Highways
- Appendix 2 – Cost Breakdown – Footpaths
- Appendix 3 – Cost Breakdown - Cycleway
- Appendix 4 – Proposed s106