

West Cumbria Mining Called-In Planning Application  
 ria Mining Called-In Planning Application

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Section A  
CD14 Miscellaneous

# RICHARD BUXTON

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The Rt Hon Robert Jenrick MP  
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**Your ref: PCU/RTI/H0900/3255949**

Our ref: (SOU1/2)-MM  
Email: [mmcfeeley@richardbuxton.co.uk](mailto:mmcfeeley@richardbuxton.co.uk)

25 February 2021

### PRE-ACTION PROTOCOL LETTER THIS LETTER REQUIRES YOUR URGENT ATTENTION

Dear Minister,

1. This is a letter before action sent in accordance with the pre-action protocol for judicial review.

#### **Claimant**

2. We are instructed by South Lakeland Against Climate Change - Towards Transition ("**SLACC**"), a registered charity, of 92 Windermere Road, Kendal, LA9 5EZ.

#### **Proposed Defendant**

3. The proposed defendant is The Secretary of State for Housing Communities and Local Government ("the **Secretary of State**"), 2 Marsham Street, London, SW1P 4DF.

Partners: Richard Buxton\* MA (Cantab) MES (Yale), Lisa Foster Juris D MSc (UEA) MA (York), Simon Kelly BA MSt (Oxon), Paul Taylor BA (Oxon)  
Solicitors: Hannah Brown MA (Cantab), Matthew McFeeley BSc MPP Juris D, Ricardo Gama MMathPhil (Oxon), Lucy Cooter BA (Hons),

Sarah Knox-Brown MA (Hons)

Consultants: Paul Stookes\* PhD MSc LLB, Solicitor and Practice Manager: Caroline Chilvers BA (Hons)

Office Manager: Kath Kusyn

Authorised and regulated by the Solicitors Regulation Authority No. 74899

\* Solicitor-advocate

### **Decision to be Challenged**

4. The Claimant challenges the Secretary of State's ongoing refusal to reconsider whether to call in for his determination the application by West Cumbria Mining Ltd 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, (Ref. PCU/RTI/H0900/3255949).

### **Date of Decision**

5. Ongoing

### **Factual Background**

6. This matter relates to the proposed development of a new underground metallurgical coal mine and associated works at the Former Marchon Site near Whitehaven, Cumbria ("**the Application**"). The Secretary of State will be familiar with the background to this matter and so it is not set out at length here. However, the brief background is as follows:
7. On 28 September 2020, the Planning Casework Unit at MHCLG ("**the PCU**") on behalf of the Secretary of State wrote to Cumbria County Council ("**the Council**") issuing a "holding direction" under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 directing that permission not be granted while the Secretary of State considered whether to exercise his powers under Section 77 of the Town and Country Planning Act 1990 ("**the 1990 Act**") to 'call in' the application for determination.
8. On 9 October 2020, SLACC wrote to the PCU asking the Secretary of State to call in the Application and providing submissions and evidence in support of this request.
9. On 6 January 2021, the Planning Casework Unit wrote to SLACC stating that the "Secretary of State has decided, having had regard to [the Department's call-in] policy, not to call in this application." On the same date a letter was sent to the Council by the Planning Casework Unit indicating the same and lifting the Article 31 Direction.
10. On 14 January 2021, we wrote to the PCU on behalf of SLACC providing certain new information which had not been available at the time of SLACC's call-in request. Inter alia, this email noted that the "annual emissions of this mine will exceed the available emissions in the Climate Change Committee's sixth carbon budget projections for the entire coal mining subsector upon commencement of its mining operations." It also noted that the Climate Change Committee's projections in relation to coking coal use in the UK are incompatible with the Council's assumption, in resolving to grant permission, that the need for coking coal in the UK will not significantly decrease over the coming decades prior to 2050. The email then set out short submissions why, in light of this additional evidence, the criteria in the call-in policy were met and the Application should be called in.
11. On 17 January 2021, an email was received from the PCU acknowledging

receipt of the 14 January 2021 reconsideration request.

12. On 18 January 2021, we emailed the PCU providing a further attachment containing certain data cited in our email 14 January 2021 “[f]or the avoidance of any doubt that the data cited will be among the new information considered by the Secretary of State.”
13. On 21 January 2021, we wrote again to the PCU. This email:
  - (a) Requested that the Secretary of State issue a holding direction, noting that failure to do so could render the Secretary of State’s powers nugatory and that (at that time) “press accounts indicate that the County Council may issue a decision notice very soon”; and
  - (b) Noted that we had become aware of a recent news article which had quoted an MHCLG spokesperson as saying “Planning decisions should be made at a local level wherever possible. This application has not been called-in and is a matter for Cumbria County Council to decide.” Our email noted that “This raises significant concerns that the Department is approaching the question of reconsideration with a ‘closed mind’ and without an impartial consideration of relevant planning issues.” and requested that the PCU assure our client in this respect.
14. On 29 January 2021, we received an email from the PCU attaching a letter of the same date. Both the email and the letter were identical in substance (with the exception that the email stated “see attached letter”) and stated:
 

*“Thank you for your email/letter, which has been carefully considered.  
The decision of 6 January to not call-in is not being reconsidered.”*
15. On 2 February 2021, we wrote to the PCU noting, in summary, that:
  - (a) There was no indication that the Secretary of State had considered any of the new information we had provided, and, in fact, the language of the 29 January 2021 letter raised a strong implication that the Secretary of State had declined to reconsider his decision of 6 January 2021, rather than considering the new information provided by our client and determining that the call-in policy was not met; and
  - (b) There was no indication whether all of the emails we had sent had even been considered given that the letter and email referenced a singular “email/letter”.
  - (c) A 29 January 2021 letter from the Climate Change Committee to the Secretary of State constituted further new information, which the Secretary of State was asked to consider when reconsidering whether to call in the application. The letter then included further detail setting out how the Climate Change Committee letter underlined the extent to which the criteria in the call-in policy were met by this application.
16. On this basis, the 2 February 2021 letter asked the Secretary of State (in summary) to:
  - (1) Reconsider his decision whether to call in the Application;
  - (2) Confirm that the emails of 14, 18 and 21 January and their attachments

- were all considered before making the decision of 29 January 2021;
- (3) Confirm that the information contained in the 2 February 2021 letter and all information in these emails would be considered together in reaching a decision on the reconsideration request contained in the letter; and
  - (4) Provide reasons for any decision.
17. A response to the 2 February 2021 letter was requested within 14 days, i.e. by 16 February 2021, given the time-sensitive nature of the matter.
  18. On 9 February 2021, we wrote again to the PCU noting that we had received no acknowledgement that the 2 February letter had been received, despite our request for one. The 9 February 2021 letter also requested that the Secretary of State issue a holding direction to prevent his call-in powers from being rendered nugatory. Finally, our letter noted that a further news article, published that day, had quoted an MHCLG spokesperson as saying that "Planning decisions should be made at a local level wherever possible. This application has not been called in and is a matter for Cumbria County Council to decide."
  19. Since writing the 9 February 2021 letter, it has come to our attention that one or more MHCLG spokespeople has been quoted in almost identical fashion in other news outlets, indicating that this appears to be a form of words formulated and approved by MHCLG, and no mere 'one-off' accident. A few examples include:
    - (a) On 19 January 2021 a Sky News article relating to a hunger strike against the mine stated "A spokesperson for the department told Sky News: *"Planning decisions should be made at a local level wherever possible. This application has not been called-in and is a matter for Cumbria County Council to decide."*<sup>1</sup>
    - (b) On 28 January 2021, an article in the ENDS Report stated "A spokesperson for the MHCLG said *planning decisions should be made at a local level "wherever possible" and that the application was "a matter for Cumbria County Council to decide". The department added that the planning application relates to metallurgical (coking) coal, rather than coal for electricity generation.*"<sup>2</sup>
    - (c) On 5 February 2021 an article in the Guardian entitled "Experts pile pressure on Boris Johnson over 'shocking' new coalmine" stated "A government spokesperson said: *"Planning decisions are made at a local level wherever possible. This application was not called in by the communities secretary and it is a matter for Cumbria county council to decide. As the business secretary set out previously, this planning application relates to coking coal, rather than coal for electricity generation, which is needed for industrial processes like steel and would otherwise need to be imported into the UK."*<sup>3</sup>
  20. It may be noted that at the time that each of these articles were published there was an active request for reconsideration before the Secretary of State.

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<sup>1</sup> <https://news.sky.com/story/teenage-climate-activists-in-week-two-of-hunger-strike-over-new-cumbria-coal-mine-12191848>

<sup>2</sup> <https://www.endsreport.com/article/1705784/coal-mine-decision-sparked-whitehall-row-8-things-need-know>

<sup>3</sup> <https://www.theguardian.com/environment/2021/feb/05/experts-pile-pressure-on-boris-johnson-over-shocking-new-coalmine>

21. On 12 February 2021, an email was received from a Decision Officer at the PCU acknowledging receipt of our letters of 2.2.21 and 9.2.21 and indicating that a “response will follow shortly.”
22. On 17 February 2021, having had no response within 14 days of our letter of 2 February 2021, we wrote to the PCU noting that we were instructed to prepare a pre-action letter if we did not receive a firm indication by 4pm on 18 February 2021 that the Secretary of State would provide a substantive response to our letter by 4pm on 19 February 2021.
23. On 18 February 2021, an email was received from a Decision Officer at the PCU stating that the announcement by the Council that it would be reconsidering the application at a future meeting of its Development Control and Regulation Committee meant that “[t]he time-sensitive nature of this issue has therefore diminished” and that a substantive response to our correspondence would be provided “shortly.”
24. Later on 18 February 2021 we responded noting that it was not accepted that the Council’s announcement significantly altered the urgency of the matter (for reasons explained therein) and noted that we were instructed to prepare a pre-action letter if we did not receive a firm indication by 19 February 2021 that a substantive response would be provided by 4pm on Monday 22 February 2021.
25. No further response has been received.

### **Details of the Proposed Grounds of Challenge**

26. The Claimant challenges the decision on the following principal grounds:
  - (1) Error of law arising from the Secretary of State’s refusal to consider exercising the call-in power in section 77 of the 1990 Act, despite an express request to do so.
  - (2) Failure to take into account material considerations arising from the failure to have regard to the new information provided by the Claimant on 14 and 18 January 2021 and by the Climate Change Committee, on 29 January 2021.
  - (3) Failure to take into account a material consideration, namely the Secretary of State’s call-in policy; alternatively a failure to give cogent reasons for departing from that policy.
  - (4) Procedural unfairness arising from the failure to give reasons for the Secretary of State’s decision.

### **Ground 1 – Error of law arising from refusal to consider exercising the call-in power**

27. This ground proceeds on the basis that the Secretary of State has declined to consider exercising his call-in power, despite the Claimant’s explicit request on the basis of the relevant new information provided by the Claimant and by the Climate Change Committee, and that he continues to decline to consider the exercise of his power. There are three reasons that the Claimant believes this to be the factual position:
  - (a) The language of the Secretary of State’s 29 January 2021 letter and accompanying e-mail;

- (b) The repeated public statements, given in January and February, set out above;
  - (c) The refusal of the Secretary of State to confirm whether he had declined to consider the exercise of this power.
28. Section 77 of the 1990 Act entrusts the Secretary of State with a power to call-in applications. Where a power is entrusted to a public body, the House of Lords has held that the public body will almost always have a duty to consider whether it should exercise its power: *Stovin v Wise* [1996] AC 923 at 950, per Lord Hoffmann. The Secretary of State is required to consider exercising his discretionary powers “if an express request to do so is made to him”, bringing to his attention matters that are said to bring that development within the relevant power: *Threadneedle Property Investments Ltd v Southwark LBC* [2013] Env LR 1 at §70.
29. This is what has occurred in the instant matter. On 14 January 2021, the Claimant brought to the Secretary of State’s attention new information that brought the development within the power to call-in the Application and expressly requested the Secretary of State to consider exercising his power. The Secretary of State’s refusal to consider exercising the power therefore amounts to an error of law.

#### Ground 2 – Failure to take into account material considerations

30. It is well established that a decision-maker must take into account matters which are “so obviously material” to a decision that failure to consider them amounts to an error of law: see, eg, *R(Samuel Smith Old Brewery) v North Yorkshire CC* [2020] PTSR 221 at §31.
31. The material brought to the Secretary of State’s attention by the Claimant in the emails of 14 and 18 January and letter of 2 February is so obviously material that a failure to take it into account in deciding whether to exercise the call-in power amounts to an error of law. In particular:
- (a) The publication of the Sixth Carbon Budget reports showed that the annual operational greenhouse gas emissions of this proposed mine would exceed the available emissions in the Climate Change Committee’s sixth carbon budget projections for the entire coal mining subsector upon commencement of its mining operations, and by 2026 would represent 3.7 times the total emissions available for all open coal mines in the UK;
  - (b) The latest expert scientific evidence, provide by the Climate Change Committee in the Sixth Carbon Budget, is that the need for coking coal will significantly decrease over the decades leading to 2050; and
  - (c) Exceptionally, the Climate Change Committee wrote to the Secretary of State expressing the view that the proposed new mine would “*have an appreciable impact on the UK’s legally binding carbon budgets*”; that a grant of planning permission would commit the UK to emissions for decades despite the fact that there may be no domestic use for coking coal after 2035; and the decision to refuse to call in the Application gave a “*negative impression of the UK’s climate priorities in the year of COP26.*”
32. Matters which are relevant to the Secretary of State’s exercise of the call-in power include that the application:
- may conflict with national policies on important matters;
  - is likely to give rise to substantial cross-boundary or national controversy;



- could have significant effects beyond their immediate locality; and
- may involve the interests of foreign governments.

In light of this, the information brought to the Secretary of State's attention by the Claimant and by the Climate Change Committee is "so obviously material" to consideration of whether to exercise the call-in power that the Secretary of State's failure to do so amounts to an error of law.

### Ground 3 – Failure to take into account the Secretary of State's own policy

33. The Secretary of State has a policy in place which provides guidance on the criteria relevant to the decision to call-in. The Secretary of State is not bound by the policy, but is required to consider it when determining whether to call in an application and to have good reason to depart from that policy, given: (i) the principle of consistency and avoidance of arbitrariness; (ii) the duty to have regard to relevant matters; (iii) the need to give effect to legitimate expectations: see *R v SSHD ex § Urmaza* [1996] COD 497.
34. In *Westminster City Council v SSCLG* [2014] EWHC 708 (Admin) at §14 the Court emphasised that the discretion conferred by the Secretary of State by section 77 of the 1990 Act is very wide, but that the Secretary of State's judgment should be exercised "having regard to any policy in which he had identified the approach he will take to any call-in consideration". Mr Justice Collins stated: "If it can be shown that [the Secretary of State] has failed to have regard to his policy or has in any particular case misunderstood it, an error of law will have been established."
35. In the instant matter, the Secretary of State has failed to have regard to his policy, either by refusing to apply the policy at all, or by failing to consider whether the new information brought to the Secretary of State's attention against the indicators set out in the call-in policy. Accordingly, the Secretary of State has erred in law.

### Ground 4 – Failure to Give Reasons

36. There is no general duty on the Secretary of State to give reasons for refusing to call-in a planning application. However, there may be circumstances where there is something "aberrant" in the particular decision which calls for explanation and thus requires reasons to be given: see *Oakley v South Cambridgeshire District Council* [2017] 1 WLR 3765 at §14. A decision by the Secretary of State to decline to consider the exercise of his powers of call-in, despite an explicit request to do so, amounts to something "aberrant" requiring reasons to be given.
37. In light of the Delphic nature of the Secretary of State's e-mail and letter of 29 January 2021 and the lack of clarity as to whether the Secretary of State had declined to consider the exercise of his power of call-in, the Claimant asked the Secretary of State to provide reasons. The Secretary of State has refused to do so, leading to procedural unfairness.

### The Need for Expedition

38. As explained in our email to the PCU of 18 February 2021, in order to prevent the Secretary of State's powers to consider a call-in from being rendered nugatory, there is a need for expedition. If the Secretary of State refuses to issue a holding direction, the Claimant will have to seek expedition in order to

obtain a decision from the High Court before the County Council acts to render the Secretary of State's call-in power nugatory by issuing a decision notice. Expedition is therefore necessary to ensure that there is no doubt that Court will retain full power to order effective relief by the time judgment is given. If the claim is issued, we will therefore seek to have the standard judicial review timeframes significantly abbreviated.

### **Orders Sought**

39. The following orders will be sought from the Court:
- (i) An order that the claim be expedited;
  - (ii) An order requiring the Secretary of State to consider whether to call-in for his determination the application by West Cumbria Mining Ltd for development of a new underground metallurgical coal mine (Cumbria County Council Ref. PCU/RTI/H0900/3255949);
  - (iii) An Aarhus Costs Order;
  - (iv) Costs.

### **Details of Legal Advisors Dealing with this Claim**

40. Richard Buxton Solicitors  
Office A, Dale's Brewery  
Gwydir Street  
Cambridge  
CB1 2LJ

Attn: Matthew McFeeley

Tel: 01223 328933

Email: [mmcfeeley@richardbuxton.co.uk](mailto:mmcfeeley@richardbuxton.co.uk)

### **Counsel**

41. Estelle Dehon, Cornerstone Barristers

### **Details of Interested Parties**

42. Cumbria County Council  
Cumbria House  
117 Botchergate  
Carlisle  
Cumbria  
CA1 1RD

Attn: Paul Haggin, Development Control Case Officer

Email: [Paul.Haggin@cumbria.gov.uk](mailto:Paul.Haggin@cumbria.gov.uk)

43. West Cumbria Mining Ltd  
4th Floor, Oakfield House  
35 Perrymount Road  
Haywards Heath  
West Sussex  
RH16 3BW

Email: [info@westcumbriamining.com](mailto:info@westcumbriamining.com)

44. Please indicate whether the Secretary of State agrees that the above are interested parties in this matter. Should you consider that there are any further interested parties, please provide us with their details and an explanation of their interest.

#### **Details of Information Sought**

45. You are required to make full and frank disclosure in judicial review proceedings.
46. We therefore require full information on whether the Secretary of State has declined to consider the exercise of his call-in power and/or how the Secretary of State has considered the Claimant's request to the Secretary of State to call in the Application based on new material information.
47. Further, we ask the Secretary of State to provide answers to the following questions:
- (a) Was the Secretary of State advised as to the content of the new information submitted by the Claimant on 14 and 18 January 2021 before the Planning Casework Unit sent the e-mail and letter of 29 January 2021 to the Claimant?
  - (b) Was the Secretary of State at any point advised that he was not obliged to consider the exercise of his call-in power, despite the Claimant's explicit requests? If so, please provide this advice.

#### **What the Secretary of State is requested to do**

48. In order to avoid the need for the Claimant to issue the claim, the Secretary of State is asked to:
- (a) Issue a holding direction so that the Secretary of State can properly consider the information before him and decide whether to call in the Application;
  - (b) Confirm that the information previously submitted by the Claimant will be considered, together with the new information provided by the Claimant and by the Climate Change Committee; and
  - (c) Reconsider his decision whether to call in the Whitehaven mine application (Cumbria County Council ref. 4/17/9007; PCU ref. PCU/RTI/H0900/3255949) based on that information, in light of the Secretary of State's call-in policy.

#### **Other applications**

49. If the claim proceeds the Claimant will apply for a protective costs order (PCO) pursuant to CPR 45.43 on the basis that the claim is an environmental matter: *Venn v Sec State CLG* [2015] 1 WLR 2328. If you disagree that this is an Aarhus matter or with the making of a PCO please give your reasons.

**Address for Reply and Service of Court Documents**

50. Richard Buxton Solicitors  
Office A, Dale's Brewery  
Gwydir Street  
Cambridge  
CB1 2LJ

Attn: Matthew McFeeley

Email: [mmcfeeley@richardbuxton.co.uk](mailto:mmcfeeley@richardbuxton.co.uk)

**Proposed reply date**

51. **In light of the need for expedition, the Secretary of State's response is requested as soon as possible and in any event within 7 days, i.e. by 4 March 2021.** This is shorter than the usual time frame for response, but the Claimant considers this is both reasonable and practicable in the circumstances:

- (a) Seven days is reasonable given the time-sensitive nature of this matter as set out above; and
- (b) Seven days is practicable as the legal points and requests for information made in this letter have been raised by the Claimant in correspondence with the Secretary of State on a number of previous occasions (and were all raised by 9 February 2021 at the latest).

Yours faithfully,

  
**Richard Buxton Solicitors**  
**Environmental, Planning and Public Law**

cc: Cumbria County Council, Attn: Paul Haggin  
West Cumbria Mining

## Cumbria County Council

Environment & Regulatory Services • Planning Services  
 County Offices • Busher Walk • Kendal • LA9 4RQ  
 T: 01539 713413 • F: 01539 713 439 • E: [developmentcontrol@cumbria.gov.uk](mailto:developmentcontrol@cumbria.gov.uk)

Mr M Kirkbride  
 West Cumbria Mining Ltd  
 Haig Mining Museum  
 Solway Road  
 Kells  
 Whitehaven CA28 9BG

Date: 12 January 2018  
 Reference: RB\_4/17/9007

Dear Mr Kirkbride

**Location:** Pow Beck Valley and area from Marchon Site to St Bees Coast, Cumbria  
**Proposal:** Development of an existing surface mine entrance for a new underground metallurgical coal mine and associated surface development including: coal storage and processing buildings; access road; security fencing; lighting; outfall to sea; surface water management system; landscaping; at the former Marchon site (High Road) Whitehaven; interconnecting underground coal conveyor to a new coal loading and railway siding to the Cumbria Coast Railway Line, with adjoining office/welfare facilities; extension of railway under pass; security fencing; lighting; landscaping; construction of a temporary development compound and associated permanent service access off Mirehouse Road, Pow Beck valley south of Whitehaven.  
**Ref No:** 4/17/9007

I refer to the above planning application which is accompanied by an Environmental Statement and was validated on 31 May 2017. You will recall that in August 2017 this application was the subject of a further information request under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended).

I am writing to advise that, with reference to the above Regulations and Regulation 63(2) the Conservation of Habitat and Species Regulations 2017, the County Council as the Local Planning Authority is of the opinion that the Environmental Statement submitted to accompany this application should contain additional information. Further information is therefore requested. There are also some points of clarification and updating which are necessary in order for a robust assessment of the application to be made.

Please find attached a schedule which sets out in summary the further information which is required.

The information provided as a result of this request will be publicised and consulted on in due course. Please note that further information and/or clarification may be required as a result of further assessment and the receipt of consultation replies.

Please be advised that this application cannot be determined until such further information as requested has been provided and advertised in accordance with Regulation 22(7) of the EIA Regulations 2011 (as amended) and the County Council's Statement of Community Involvement (SCI) (July 2017). The SCI states that a minimum of 30 days will be given for representations to be made.

I look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Brophy', written in a cursive style.

Mrs Rachel Brophy BA(Hons) MA MRTPI  
Planning Officer  
Development Control

## West Cumbria Mining (WCM) - Schedule of Further Information Requirements

Non-technical summary of further information forming part of the Environmental Impact Assessment
A description of how WCM will address the need to temporarily divert footpaths during construction.
A Draft Environmental Management Plan & Code of Construction Practice
Draft Site Waste Management Plan
A draft Materials Management Plan for the construction phase.
Detailed review of the previous uses and potential risks of the site in relation to contaminated land.
Technical approach to ground investigations and soil remediation & handling.
Further details on planting and restoration at the Rail Loading Facility.
Assessment of visual impacts from houses on High Road and Landscape and Visual Impact Assessment (LVIA) Viewpoint 13.
Assessment of proposal on tranquility of Heritage Coast, and night-time assessment of lighting on Heritage Coast and Pow Beck valley.
Night time photomontages of Rail Loading Facility.
Draft Sustainable Travel Plan
Analysis of accident data in relation to junction between Mirehouse Road/St Bees Road/High Road, and WCM's proposal for improvements.
Address comments raised by Lead Local Flood Authority.
Address comments raised by the Environment Agency.
Updated planning statement
Dewatering strategy for the anhydrite mine (including operational stormwater discharges).
Updated Statement of Community Involvement (SCI)
An explanation to the Coal Authority relating to their concerns over a recorded shaft near the construction site.
Updates to drawings to include changes to the red line planning application boundary and relating to landscaping at the Rail Loading Facility
Updated Ecology Chapter (Ch 11)
Updated Marine Chapter (Ch 17)



FAO: Paul Haggin  
 Manager Development Control and Countryside Management  
 Environment and Regulatory Services  
 Cumbria County Council  
 County Offices  
 Busher Walk  
 Kendal  
 Cumbria  
 LA9 4RQ

10<sup>th</sup> December 2018

Dear Mr Haggin,

**Re: West Cumbria Mining - Variation to Planning Application Ref 4/17/9007**

**Development of:**

- **a new underground metallurgical coal mine and associated development including: the refurbishment of two existing drifts leading to two new underground drifts; coal storage and processing buildings; office and change building; access road; ventilation, power and water infrastructure; security fencing; lighting; outfall to sea; surface water management system and landscaping at the former Marchon site (High Road) Whitehaven;**
- **a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line with adjoining office / welfare facilities; extension of railway underpass; security fencing; lighting; landscaping; construction of a temporary development compound, and associated permanent access on land off Mirehouse Road, Pow Beck Valley, south of Whitehaven; and**
- **a new underground coal conveyor to connect the coal processing buildings with the coal loading facility.**

West Cumbria Mining (WCM) submitted a planning application in May 2017 for the development of a new metallurgical coal mine and associated infrastructure including rail loading facility near Whitehaven.

An element of WCM's original proposal was to use the existing underground tunnels and the former underground Sandwith anhydrite mine to gain access to the target underground coal seams and use the existing void space in the former anhydrite mine to deposit reject material emanating as a by-product of mining.

The former anhydrite mine and much of the existing underground tunnels have become flooded over the time since they were decommissioned, and WCM would have needed to pump this water out and discharge it to sea. However, because this flood water may contain contaminants, in the light of responses received from statutory consultees, Cumbria County Council (CCC) and advised that significantly more investigation would be required in order to provide the further information that would need to be submitted before the Council could legally proceed with determining WCM's planning application.

*Cont.*





Faced with significant uncertainties around this additional requirement, WCM decided to redesign part of the proposal to avoid using the former anhydrite mine and the flooded sections of tunnels. Instead, WCM proposes to use the initial 450m of the existing tunnels which are not flooded, before diverting away from these and developing new tunnels to enable access to the target coal seams without passing through the former anhydrite mine.

In the intervening time while this design work was carried out CCC requested and WCM provided a number of other updates unrelated to the revised plan: -

- Additional details on the methods used to protect against contamination during the restoration of the site.
- Incorporation of the revised boundary of the Marine Conservation Zone in relation to the offshore mining.
- Additional details on how the mining will be carried out and where.
- Additional details on the extent and rates of undersea subsidence.
- Additional details on the methods used to dispose of reject material underground.
- Results of additional ecology and marine surveys requested by CCC (these do not alter the original conclusions in terms of impacts etc.)
- Additional details on the drainage proposals for the main site and the rail loading facility.
- Amendment of all reference to the National Planning Policy Framework as a result of this document being updated and re-issued by the Government in the summer.

This variation and the other changes have been described and assessed and are presented in a series of updated/new plans and an updated and consolidated Environmental Statement which accompany this letter.

CCC has considered whether the change to the proposal would constitute a new planning application or could be dealt with as a variation to the existing planning application. Having fully considered the matter, WCM were advised by CCC that the change could be dealt with as a variation, subject to WCM providing certain information, and on the advice that an updated consolidated Environmental Statement was submitted.

Furthermore, CCC suggested an amendment to the description of the development to that which is used here, in order to explicitly clarify the mining element of the development.

We believe that the updated consolidated ES provides the information requested by CCC submitted as 'any other information' under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 will ensure that, when CCC determine the application, there is one clear set of documents which contains all information relating to the application. Therefore, this consolidated set of documents includes the information submitted to CCC in the original application (May 2017), as well as the information provided by WCM in September 2017 and January 2018 in response to the two Regulation 22 Further Information notices issued by CCC.

*Cont.*



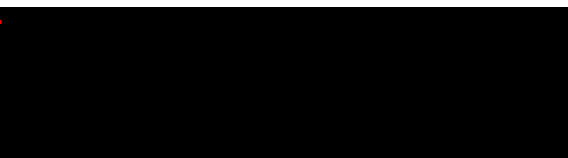
WCM understand that this will be consulted on in accordance with the Town & County Planning Act 1990 and the Town and Country Planning (Environmental Impact Assessment Regulations) 2011.

Please find enclosed the following in support of WCM's variation to planning application reference 4/17/9007:

- 7 hard copies of drawing packs showing site location and proposed development details
- 7 hard copies of the revised Environmental Statement and Supporting Information
- 7 CDs containing all information submitted

Please do not hesitate to contact WCM if you have any questions.

Yours sincerely



Mark A Kirkbride  
CEO

**From:** Haggin, Paul  
**Sent:** 02 April 2019 14:17  
**To:** 'Tim Farron MP'  
**Subject:** RE: (Case Ref: TF106789)

Dear Tim,

Thank you very much for letting us know that you have requested the call-in procedure.

We appreciate that there are the concerns about the mine and we await the Secretary of State`s decision.

Kind Regards

Paul Haggin  
Manager Development Control and Countryside Management  
Environment and Economy  
County Offices  
Kendal  
Tel 01539 713414  
Mob 07795827433

**From:** Tim Farron MP [<mailto:tim@timfarron.co.uk>]  
**Sent:** 02 April 2019 13:45  
**To:** Haggin, Paul  
**Subject:** FW: (Case Ref: TF106789)

Dear Paul

Apologies for not having written sooner.

I wished to inform you of my decision to request that the planning application for the West Cumbria mine be called-in. A significant number of my constituents contacted me to express their disappointment and frustration following the decision to approve the application. I wrote, on their behalf, to James Brokenshire MP, the Secretary of State for Housing, Communities, and Local Government, to request that he call in the application for review. I have enclosed the text of that letter below.

Please do let me know if you have any questions.

With best wishes

Yours sincerely

**TIM FARRON MP**

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From: [tim@timfarron.co.uk](mailto:tim@timfarron.co.uk)  
Sent: 25 March 2019 10:47  
To: [james.brokenshire@communities.gsi.gov.uk](mailto:james.brokenshire@communities.gsi.gov.uk)  
Subject: (Case Ref: TF106789)  
Dear James

I write to represent many of my constituents with regard to the recent approval of planning application 4/17/9007 by Cumbria County Council which approved the development of the Woodhouse Colliery, a deep coal mine in West Cumbria.

I was shocked to learn that Cumbria County Council had approved the development of a new coal mine in west Cumbria. Since then, many constituents have written to me to communicate their deep disappointment and concern that the development of coal is not only a step backwards to a dirty energy source from the past which is fundamentally damaging to our environment but is also contradictory to Government policy which supposedly aims to create a greener, cleaner future with investment in renewable energy sources. I am writing, on behalf of my constituents to request that the planning application be "called in" and reviewed for the following reasons:

**1. Additional fossil fuel extraction at a time when the world faces a totally unprecedented environmental catastrophe is obscene.**

- a. Although the development of the mine is for coking coal for use in the steel industry, a significant volume of high emissions "middlings" coal will inevitably be produced. There can be no watertight, enforceable way of guaranteeing that the coal will be used in limited-emissions processes.
- b. The coal's use as coking coal is itself a huge contribution to dangerous climate change. The "carbon" assessment provided as part of the planning procedure is oversimplified and unrealistic. It ignores the reduction in price of coal due to additional supply, which will increase the amount of coal sold and burnt.
- c. The applicant states that this coal will support the UK steel industry, whose future has now been secured. This is not the case, Port Talbot, for instance, is supported only until 2022. The British steel industry is also under severe threat from China.

**2. There are significant risks of subsidence offshore, where there are known to be layers of chemical and radioactive pollution on the sea bed. The application addresses this by extracting only a significant distance off shore and pumping mining waste back into the voids supposedly to reduce the risk of subsidence.**

- a. Toxic substances disturbed by subsidence would move freely through the marine environment and there could be no way of preventing adverse impacts in protected areas on fish and on other marine organisms. Our river salmon populations are plummeting, and have been described as an extinction event. There has been a recent 25% drop in the number of river salmon returning to Cumbria's rivers. Many die at sea due to changes in the marine ecology and environment. Further undermining of marine habitats will likely reduce this number further.
- b. No credible evidence seems to have been offered to the claim that pumping waste back into the mine will reduce subsidence. Pumping waste water back into shale gas wells has been shown to be the main cause of earthquakes in shale producing regions of the world. The Coal Authority response to the revised environmental impact assessment refers to the poor seismicity testing that has been undertaken. This is worrying as the assessment only takes into account onshore development. There is no evidence at all of the effects of offshore development.

**3. The development is said to bring more jobs and prosperity to the region. However, development of a mine is very likely to bring more problems than benefits in the long term.**

- a. There will very likely be new jobs during the development phase but the application emphasises a long term future with well paid jobs. These jobs are

promised as part of the offshore extraction, however, it is not yet known whether offshore extraction will be successful.

b. An earlier application/proposal by the same backers but a different company name proposed initial coal extraction, followed by Underground Coal Gasification (UCG). UCG has never been undertaken successfully in the UK but is included in the Coal Authority Licence which has been granted. The dangers of UCG including excess fugitive emissions, earthquakes and subsidence would have to be controlled by the Marine Management Organisation (MMO), with no input from Cumbria County Council.

c. It is likely that UCG would be refused by the MMO, in which case, this mine will close leaving us with fugitive methane gas emissions and a restoration problem similar to Keekle Head. The finance/ownership of this mine is in the hands of Australian and other international mining corporations. S106 agreements or deposited bonds would be very difficult to pursue. Even if funds are allocated, both historic Scottish and Cumbrian experience shows funds have never been enough to cover restoration.

Perhaps the best way to conclude is to compare the Woodhouse Colliery to the Highthorn development in Northumberland which you had previously rejected.

The Committee Report, on which the decision to pass the planning application is based, states there are NO Climate Change impacts because the “moderate” benefits of reduced GHG from transportation balance the TOTAL emissions from construction, extraction AND transportation. (Para 6.502 and 6.503). *Highthorn calculated the latter as 3.526 Mt CO<sub>2</sub>-eq.—these might be worse for a very “gassy” deep mine than opencast.*

Climate Change impacts directly attributable to mining development are significantly negative and have not been well balanced by the supposed positive outcomes of this particular application. The national economic benefit of the Woodhouse Colliery is moderate or minimal and the local economic benefit of short term construction and mining jobs, when balanced against the adverse environmental impacts and negative impact on tourism, is moderate at best. Therefore the development does not conform to the National Planning Policy Framework or the relevant policies of the Cumbria Minerals and Waste Local Plan and should have been refused, as planning officers recommended.

The development of coal when we know the dangers of fossil fuels is irresponsible. It is also contradictory to Government policy which is supposedly seeking the development of renewable sources of energy. As such, I believe this warrants the Department stepping up to "call in" planning application 4/17/9007 for review and rejection.

Thank you for your time and assistance in this matter.

With best wishes

Yours sincerely

**TIM FARRON MP**

**FAO: Cllr Stewart Young, Leader of the Council**

Cumbria County Council  
County Hall  
Kendal  
Cumbria  
LA9 4RQ

First by email: [Stewart.Young@cumbria.gov.uk](mailto:Stewart.Young@cumbria.gov.uk)

Copied to: Chair of the Development Control & Regulation  
Committee ([Geoffrey.Cook@cumbria.gov.uk](mailto:Geoffrey.Cook@cumbria.gov.uk);  
[nicola.harrison@cumbria.gov.uk](mailto:nicola.harrison@cumbria.gov.uk))

Direct Dial: 020 7650 1322

Email: [rowans@leighday.co.uk](mailto:rowans@leighday.co.uk);  
[adews@leighday.co.uk](mailto:adews@leighday.co.uk)

Your Ref: 4/17/9007

Our Ref: RWS/ADS/00168375/1

Date: 21 June 2019

Dear Cllr Young,

**Re: Whitehaven Coal Mine (app. ref. 4/17/9007)**

We write on behalf of Keep Cumbrian Coal in the Hole (KCCH).

**Introduction**

As you are aware, on 19 March 2019, Cumbria County Council's Development Control and Regulation Committee (the Council; the Committee) resolved that planning permission should be granted for a major new underground metallurgical coal mine on the "former Marchon" site in Whitehaven, Cumbria subject to various matters including the execution of a section 106 agreement. This permission, if and when actually granted (presumably by an officer acting under delegated powers), will allow for 50 years' of continuous coal-mining operations. At full capacity,<sup>1</sup> the mine will produce 2,430,000 tonnes per annum of "coking coal" and 350,000 tonnes per annum of "middlings coal" (otherwise known as "industrial coal").

KCCH was one of the many objectors to the planning application, focussing its objections on environmental grounds. KCCH noted the lack of any carbon footprint assessment of the emissions from the mining activities and it doubted the applicant's (West Cumbria Mining) allegations of expected CO<sub>2</sub> savings from import substitution of coking coal.

KCCH does not expect planning permission actually to be granted for at least a few months from the date of this letter, having regard to the need for WCM and others to enter into a significant section 106 agreement in advance of any permission being granted. KCCH was also informed, on 13 June 2019, that the Secretary of State is still considering whether to call-in the application for his own determination and that he does not expect to make a decision on this before July.

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<sup>1</sup> After five years of production.

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Consequently, it may be some time before a grant of planning permission could be made. KCCH nonetheless seeks – by way of this letter – to inform the County Council of a number of flaws and omissions in the planning assessment underlying the Committee’s resolution to grant. We consider that these flaws also represent a number of grounds for a legal challenge, should any subsequent decision to grant planning permission be based on the same reasoning/assessment. Through this letter we, therefore, intend to put the Council on notice that there is a serious risk of legal challenge, should any such planning permission be granted.<sup>2</sup>

Furthermore, we invite the Committee to formally re-consider its resolution to grant permission (and by this letter ask officers to refer the matter back to the Committee for that purpose), taking into account the substance of each of the matters raised below. Each of the matters is plainly a material consideration which could, and we believe would, lead the Committee to reverse its previous resolution.

With that in mind we note that British Steel went into compulsory liquidation in May, putting 5,000 jobs at risk and prompting a Parliamentary inquiry which will consider the serious challenges being faced by the UK steel sector. We consider that this recent news fundamentally undermines the “need” case for “coking coal” in the UK market. As a result, it materially impacts on the Council’s assessment that the “supply of indigenous metallurgical coal to support the UK steel industry in place of imported coal is positive and should be afforded considerable weight” and its conclusion that there will be a “likely need” for metallurgical coal for the steel industry which has the potential to result in “national benefits” of “considerable weight” (officer’s report at 6.514).

What is more, on 12 June 2019 legislation was laid before Parliament designed to implement the Government’s announcement that the UK will eradicate its net contribution to climate change by 2050. The legislation will amend the Climate Change Act 2008 to achieve this and it is expected to greatly enhance the duties imposed by the Act. We consider this recent announcement to be another material change in circumstances, since the resolution to grant, mandating reconsideration by the Committee.

For this reason alone, we request that the Committee formally reconsider its resolution to grant. There has been a clear change to the factual circumstances underlying the resolution made on 19 March and it cannot be known whether the Committee would reach the same conclusion again in light of these new facts.

## Issues and legal flaws

### **1. Failure to consider GHG emissions of the mining operations**

There can be no doubt that the mine will emit green-house gases (GHG) through its production processes. This was accepted by officers in the report to the Committee (OR) at 6.44. KCCH can

<sup>2</sup> We reserve the right to vary/add to any of the issues raised below.

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see no evidence that the applicant provided *any* estimate for the GHG emissions arising from the mining operations themselves. It appears that the only assessment of site emissions is in Chapter 15 of the Environmental Impact Assessment, but this concerned local air quality impacts and dust emissions.

The development's impact on climate change was central to the planning balance. The Committee was required to consider this under both national and local policy. In carrying out the balancing act at "stage 1" of the NPPF paragraph 211 test (and the policy test in DC13 of the Cumbria Minerals and Waste Local Plan), the emissions from mining operations were afforded "moderate weight" (officer report at 6.503). This is the same broad category of weight ("moderate") afforded to the potential benefits alleged to arise through GHG savings from import substitution of coking coal (at 6.502). However, whilst a crude estimate (5.3 million tonnes of CO<sub>2</sub>) was provided for the alleged GHG savings, there is no equivalent estimate for the expected emissions from the operations themselves.

It follows that the mine's GHG emissions was a material consideration that was left out of account. Furthermore, the Committee could not rationally balance (as it needed to do) (i) the alleged GHG savings against (ii) the new GHG emissions, without comparable (and robust<sup>3</sup>) information on each.

## **2. Failure to consider the need for, and GHG impacts of, Middlings Coal**

The production of middlings coal will constitute up to 15% of total output. This is roughly 364,000 tonnes per annum and is a significant amount of production. It correlates, for example, to the 360,000 tonnes per annum of coking coal that will be supplied to UK steel plants.<sup>4</sup>

In stark contrast to the Committee's assessment of the coking coal to be produced from the mine, the Committee has failed to lawfully consider the need for the middlings coal – both in terms of the level of demand for it and where that demand will arise.

The OR states, at 6.70 that:

*...since government policy is to move away from coal as an energy source, the likely market for this product will be industrial processes such as cement manufacture. Since the middlings coal would otherwise be disposed of with the waste rock material, I consider that if markets are available for this product for non-energy uses, this is potentially a beneficial use of a product that would otherwise be disposed of as waste. (emphasis added)*

There is no further assessment of whether such markets are available, nor where they are located (whether in the UK, Europe or elsewhere in the world). There is no consideration of the

<sup>3</sup> For the avoidance of doubt, KCCH does not accept that the figure of 5.3million tonnes alleged from GHG import-substitution savings is robust.

<sup>4</sup> It is understood that the rest is likely to be destined for export, see officer's report at 6.412

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likelihood of import substitution for middlings coal, or the CO<sub>2</sub> emissions associated with transporting it to its end destination. Moreover, the Committee failed to consider whether – if permission were to be refused – any “need” for middlings coal would be likely to be met by imported industrial coal or lower carbon-emitting sources.

In short, the Committee failed to have regard to the carbon footprint of the middlings coal and its potential GHG emissions impacts. This failing fundamentally undermined any assessment of the development’s overall impact on climate change.

It was irrational for the Committee to consider only the potential carbon footprint of the coking coal<sup>5</sup> and not all coal to be produced. What is more, the Council has suggested a 15% restriction on the production of middlings coal, without providing any reasons why this is a suitable limit (see the officer’s report at 6.72-6.74).

### **3. Failure to consider the GHG impacts of an increase in coal production**

The UK Parliament passed a motion to declare a climate emergency on 1 May 2019. As the High Court recently stated, the increase in global temperatures is “potentially catastrophic” (*R (Spurrier and others) v Secretary of State for Transport* [2019] EWHC 1070 (Admin) at [559]). In this context, it was imperative on the Committee to scrutinise any potential for an increase in GHG impacts arising from increased coal production at Whitehaven. It failed to do so.

Any addition to the global stock of fossil fuels will de facto increase the likelihood of GHG emissions. If the Whitehaven Coal Mine were to be permitted, a very substantial amount of coal will be added to the global stock over a very significant amount of time (50 years). This will clearly increase GHG emissions and is a highly material consideration that the Council should have had regard to.

This is notwithstanding any (non-binding) intentions of the applicant that the coal to be produced will not be used for power-generation industries (KCCH have particular concerns that there is little guarantee on how the middlings coal will eventually be used and nothing to prevent it from being used in power-generation industries).

#### **(i) Exports**

It is also notwithstanding any (again non-binding) intentions of the applicant that some of the coal to be produced will substitute for imports that would otherwise have had to travel further (with associated transport-related CO<sub>2</sub> emissions). In addition to there being no assessment of import-substitution in relation to middlings coal (see point 2 above), KCCH highlights that the vast majority of coking coal will be exported (only 360,000 tonnes is destined for the UK steel plants at Scunthorpe and Port Talbot).

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<sup>5</sup> KCCH maintains that there were flaws in its assessment of the carbon footprint of the coking coal as well (as addressed elsewhere in this letter).

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Nothing in the proposed planning permission restricts these exports to Europe (or Western Europe) and it remains entirely possible for the applicant to export the coal further afield (particularly as the permission will remain in place for 50 years, over which time the markets for both coking coal and middlings coal will continue to change). If the coal is exported further afield, the alleged GHG savings from import substitution could easily be cancelled out, or outweighed by additional transport emissions associated with exported coal from the mine to non-European destinations.

The Committee should have considered these possibilities but failed to do so.

## (ii) Worldwide prices

Finally, the increase in coal production could lead to a depreciation in the worldwide price of coal which could, in turn, lead to an increase in demand for coal. The OR noted that this concern had been raised (at 6.45) but concluded that it was an issue “far broader than can be addressed or influenced through this planning application” (at 6.50). That is not a sustainable answer.

This conflicts with the approach taken by the Secretary of State in his decision on the Highthorn open cast coal mining development at Druridge Bay in south-east Northumberland. In assessing this application, the Inspector did consider whether the additional production of coal could affect international prices, albeit he concluded that it could not (at C114 of the report) and the Secretary of State did not disagree with this position (para 34 of the letter). Notably, the Highthorn mine proposes to extract significantly less coal than at Whitehaven (the total amount of coal to be extracted will be a maximum of 3 million tonnes) and for a much shorter period (5 years).

## ***Climate Change Act 2008***

The failings noted at points 1-3 above also prevented the Committee from fully appreciating, and having regard to, the Development’s contribution to the UK’s CO<sub>2</sub> emissions, in a context where the Government has set legally binding national targets to cut emissions by 80% of 1990 levels by 2050 through the Climate Change Act 2008 (in order to comply with the UK’s international commitments to keep the global temperature rise to 2 degrees above pre-industrial levels in 2050).

## **4. Failure to consider and apply ENV2**

Policy ENV2 of Copeland’s Local Plan (2013-2028) is not listed as a relevant policy for the Development in the OR. However, it states that:

*To reinforce the Coastal Zone’s assets and opportunities the Council will:*

...

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# Leigh Day

*E Protect the intrinsic qualities of the St Bees Head Heritage Coast in terms of development proposals within or affecting views from the designation. At the same time encourage schemes which assist appropriate access to and interpretation of the Heritage Coast area.*

The Development clearly impacts on the St Bees Heritage Coast area. Officers advised that it would have a “moderate adverse impact” on the heritage sensitivity of St. Bees Heritage Coast (at 6.375 and 6.383).

However, there appears to have been no consideration whatsoever of development plan policy ENV2 and whether the “intrinsic qualities” of the St Bees Heritage Coast could be protected. As a result, the Committee has unlawfully failed to have regard to a relevant policy in the development plan.


## Conclusion

For the reasons given above, KCCH formally requests that the Committee reconsiders its resolution to grant planning permission for the Whitehaven Coal Mine development and asks that the Committee has full regard to each of the considerations listed above when it does so. The Council’s officers are asked to facilitate that process.

In the event that the Council refuses to reconsider its resolution to grant, KCCH requests that the Council provide its reasons for doing so.

Please reply within 14 days of the date of this letter, and send all future correspondence in this matter to Rowan Smith and Anna Dews (solicitors with conduct of this matter) using the details in our letterhead.

Yours faithfully,



**Leigh Day**

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Ministry of Housing,  
Communities &  
Local Government

Paul Haggin  
Manager Development Control and  
Countryside Management  
Environment and Economy  
County Offices  
Kendal

Please ask for: John Oakes  
Tel: [REDACTED]  
Email: [REDACTED]  
Your ref: 4/17/9007  
Our ref: PCU/RTI/HO900/3225496

By e mail

Date: 1 November 2019

Dear Sir,

**Town and Country Planning Act 1990**

**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**

**Application number: 4/17/9007**

I refer to the above application which has been the subject of third-party requests to call in for determination by the Secretary of State for Housing, Communities and Local Government.

The Secretary of State has carefully considered this case against call-in policy, as set out in the Written Ministerial Statement by Nick Boles on 26 October 2012. The policy makes it clear that the power to call in a case will only be used very selectively.

The Government is committed to give more power to councils and communities to make their own decisions on planning issues and believes planning decisions should be made at the local level wherever possible.

In deciding whether to call in this application, the Secretary of State has considered his policy on calling in planning applications. This policy gives examples of the types of issues which may lead him to conclude, in his opinion that the application should be called in. The Secretary of State has decided not to call in this application. He is content that it should be determined by the local planning authority.

Planning Casework Unit  
Ministry of Housing, Communities and Local Government  
5 St Philips Place  
Colmore Row  
Birmingham B3 2PW

Tel: 0303 44 48050  
pcu@communities.gov.uk

In considering whether to exercise the discretion to call in this application, the Secretary of State has not considered the matter of whether this application is EIA Development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The local planning authority responsible for determining this application remains the relevant authority responsible for considering whether these Regulations apply to this proposed development and, if so, for ensuring that the requirements of the Regulations are complied with.

The Article 31 Direction issued pursuant to the Secretary of State's letter of 1 July 2019 is hereby withdrawn.

Yours sincerely



John Oakes  
Senior Planning Manager



10<sup>th</sup> March 2020

**FAO Mr Paul Haggin**

Manager Development Control and Sustainable Development  
Cumbria County Council  
Busher Walk  
Kendal  
LA9 4RQ

Ref: 4/17/9007

**Re: West Cumbria Mining Company – Whitehaven**

Dear Paul,

I am writing to provide an update on West Cumbria Mining (WCM)'s application (ref: 4/17/9007) for a new metallurgical mine at Whitehaven. As you are aware, the application is currently subject to a resolution to grant planning permission which was confirmed by the committee on 31 October 2019. However, the decision notice has not yet been issued because the last stages of the Section 106 negotiations are ongoing, although we are sure of securing agreement. There is also an outstanding application for Judicial Review of the resolution to grant planning permission.

Throughout the progress of this application WCM has continued to refine and work on its feasibility study having regard to market demands, the results of additional on-site tests and the latest technology that is available.

As you will recall the original application description was to mine 2,430,000tpa of metallurgical coal and 350,000tpa of middlings/industrial coal. However, we are pleased to inform you that as a result of the further feasibility work that has been carried out, it has become clear that there is now an opportunity to adjust the processing of the mined coal so that 100% of the processed coal exported from the site (i.e. 2,780,000tpa) will now be metallurgical coal.

Since this adjustment relates only to the internal processing of the product within the coal handling and processing plant, with no difference to the external appearance of the site or the overall quantity of coal that is being mined or exported, it is not considered that it will give rise to any material difference in the effects of the proposal. However, given that there will be some difference in the composition of the product that is being exported, we intend to seek to amend the description in the application. We will provide the Council with a further detailed explanation of the proposed amendment in order for it to consider this further. Whilst we do not consider that it is likely to be necessary, for the sake of prudence, we will include an addendum to the Environmental Statement.

West Cumbria Mining (Holdings) Limited, 4<sup>th</sup> Floor, Oakfield House,  
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Registered in England and Wales, Company No. 07113291

Claim No: CO/4880/2019

APPENDIX 1 p2

Without prejudice to whether this is actually lawfully required, we would nonetheless suggest for the sake of prudence that the application then be returned to committee so that the proposed amendment can be considered by the Council. In doing so, WCM considers that it would also be prudent to take this opportunity to consider and respond to the Green Alliance Report that was filed in the court proceedings by the claimant without the permission of the court, after the application had come before committee (and indeed after the Judicial Review itself was issued and the Council and interested party filed their defences). This will allow the Council to take both the Green Alliance Report and WCM's response into account when reconsidering the application.

In terms of timescales, we anticipate being able to provide you with the additional information within the next four weeks. Given the outstanding Judicial Review proceedings, it would also be sensible to update both the Court and the Claimant on the recent developments regarding this application.

Whilst we consider that the Claimant's application is without merit, in any event, a subsequent resolution by the Council's Development Control Committee would be likely as a collateral consequence to render the current proceedings academic. Accordingly, we would also welcome discussions with you as to how the overriding objective could most effectively be achieved.

Yours sincerely,



Mark Kirkbride

CEO

(for and on behalf of the organisation)



Ministry of Housing,  
Communities &  
Local Government

Paul Haggin  
Manager Development Control and  
Sustainable Development  
Environment and Regulatory Services  
Cumbria County Council  
County Offices  
Busher Walk  
KENDALL  
LA9 4RQ

**Please ask for:** Gerry Carpenter  
**Tel:** 07826890416  
**Email:** gerry.carpenter@communities.gov.uk  
**Your ref:** 4/17/9007  
**Our ref:** PCU/RTI/H0900/3255949

**Date:** 28 September 2020

Dear Mr Haggin

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015**

**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  
(Application no: 4/17/9007)**

1. I am directed by the Secretary of State to refer to the above planning application.
2. In exercise of his powers under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Secretary of State hereby directs your Council not to grant permission on this application without specific authorisation. This direction is issued to enable him to consider whether he should direct under Section 77 of the Town and Country Planning Act 1990 that the application should be referred to him for determination.
3. This direction does not, of course, prevent your Council from considering the application, forming a view as to the merits or, if they are so minded, refusing permission.
4. I would be grateful for acknowledgement of your receipt of this letter. Please contact me on the number above if you have any queries.

Planning Casework Unit  
Ministry of Housing, Communities and Local Government  
5 St Philips Place  
Colmore Row  
Birmingham B3 2PW

Tel: 0303 44 48050  
PCU@communities.gov.uk



Yours sincerely

*Gerry Carpenter*

**Gerry Carpenter**  
**Senior Planning Manager**  
**Authorised by the Secretary of State to sign in that behalf**



Ministry of Housing,  
Communities &  
Local Government

Paul Haggin  
Manager Development Control and  
Sustainable Development  
Environment and Regulatory Services  
Cumbria County Council  
County Offices  
Busher Walk  
KENDAL  
LA9 4RQ

**Please ask for:** Gerry Carpenter  
**Tel:** 0303 44 4 4815  
**Email:** gerry.carpenter@communities.gov.uk  
**Your ref:** 4/17/9007  
**Our ref:** PCU/RTI/H0900/3255949

By e mail

**Date:** 6 January 2021

Dear Mr Haggin

**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**

**(Application no: 4/17/9007)**

I refer to the above application which has been the subject of third party requests to call in for determination by the Secretary of State for Housing, Communities and Local Government.

The Secretary of State has carefully considered this case against call-in policy, as set out in the Written Ministerial Statement by Nick Boles on 26 October 2012. The policy makes it clear that the power to call in a case will only be used very selectively.

The Government is committed to give more power to councils and communities to make their own decisions on planning issues, and believes planning decisions should be made at the local level wherever possible.

In deciding whether to call in this application, the Secretary of State has considered his policy on calling in planning applications. This policy gives examples of the types of issues which may lead him to conclude, in his opinion that the application should be called in. The Secretary of State has decided not to call in this application. He is content that it should be determined by the local planning authority.

Planning Casework Unit  
Ministry of Housing, Communities and Local Government  
5 St Philips Place  
Colmore Row  
Birmingham B3 2PW

Tel: 0303 44 48050  
pcu@communities.gov.uk

The Article 31 Direction issued pursuant to the Secretary of State's letter of 28 September 2020 is hereby withdrawn.

Yours sincerely

*Gerry Carpenter*

**Gerry Carpenter**  
**Senior Planning Manager**

*This decision was made by the Secretary of State and signed on his behalf*

# RICHARD BUXTON

## SOLICITORS

ENVIRONMENTAL, PLANNING & PUBLIC LAW

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Gwydir Street  
Cambridge CB1 2LJ  
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www.richardbuxton.co.uk  
law@richardbuxton.co.uk

The Rt Hon Robert Jenrick MP  
Secretary of State for Housing, Communities and Local Government  
c/o Planning Casework Unit  
5 St Philips Place  
Colmore Row  
Birmingham  
B3 2PW

**By email only:** [pcu@communities.gov.uk](mailto:pcu@communities.gov.uk)  
**cc to:** [Andrew.Lynch@communities.gov.uk](mailto:Andrew.Lynch@communities.gov.uk)  
[Gerry.Carpenter@communities.gov.uk](mailto:Gerry.Carpenter@communities.gov.uk)  
[John.Oakes@communities.gov.uk](mailto:John.Oakes@communities.gov.uk)

**Your ref: PCU/RTI/H0900/3255949**

Our ref: (SOU1/2)-MM  
Email: [mmcfeeley@richardbuxton.co.uk](mailto:mmcfeeley@richardbuxton.co.uk)

25 February 2021

### PRE-ACTION PROTOCOL LETTER THIS LETTER REQUIRES YOUR URGENT ATTENTION

Dear Minister,

1. This is a letter before action sent in accordance with the pre-action protocol for judicial review.

#### **Claimant**

2. We are instructed by South Lakeland Against Climate Change - Towards Transition ("**SLACC**"), a registered charity, of 92 Windermere Road, Kendal, LA9 5EZ.

#### **Proposed Defendant**

3. The proposed defendant is The Secretary of State for Housing Communities and Local Government ("the **Secretary of State**"), 2 Marsham Street, London, SW1P 4DF.

### **Decision to be Challenged**

4. The Claimant challenges the Secretary of State's ongoing refusal to reconsider whether to call in for his determination the application by West Cumbria Mining Ltd 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, (Ref. PCU/RTI/H0900/3255949).

### **Date of Decision**

5. Ongoing

### **Factual Background**

6. This matter relates to the proposed development of a new underground metallurgical coal mine and associated works at the Former Marchon Site near Whitehaven, Cumbria ("**the Application**"). The Secretary of State will be familiar with the background to this matter and so it is not set out at length here. However, the brief background is as follows:
7. On 28 September 2020, the Planning Casework Unit at MHCLG ("**the PCU**") on behalf of the Secretary of State wrote to Cumbria County Council ("**the Council**") issuing a "holding direction" under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 directing that permission not be granted while the Secretary of State considered whether to exercise his powers under Section 77 of the Town and Country Planning Act 1990 ("**the 1990 Act**") to 'call in' the application for determination.
8. On 9 October 2020, SLACC wrote to the PCU asking the Secretary of State to call in the Application and providing submissions and evidence in support of this request.
9. On 6 January 2021, the Planning Casework Unit wrote to SLACC stating that the "Secretary of State has decided, having had regard to [the Department's call-in] policy, not to call in this application." On the same date a letter was sent to the Council by the Planning Casework Unit indicating the same and lifting the Article 31 Direction.
10. On 14 January 2021, we wrote to the PCU on behalf of SLACC providing certain new information which had not been available at the time of SLACC's call-in request. Inter alia, this email noted that the "annual emissions of this mine will exceed the available emissions in the Climate Change Committee's sixth carbon budget projections for the entire coal mining subsector upon commencement of its mining operations." It also noted that the Climate Change Committee's projections in relation to coking coal use in the UK are incompatible with the Council's assumption, in resolving to grant permission, that the need for coking coal in the UK will not significantly decrease over the coming decades prior to 2050. The email then set out short submissions why, in light of this additional evidence, the criteria in the call-in policy were met and the Application should be called in.
11. On 17 January 2021, an email was received from the PCU acknowledging

receipt of the 14 January 2021 reconsideration request.

12. On 18 January 2021, we emailed the PCU providing a further attachment containing certain data cited in our email 14 January 2021 “[f]or the avoidance of any doubt that the data cited will be among the new information considered by the Secretary of State.”
13. On 21 January 2021, we wrote again to the PCU. This email:
  - (a) Requested that the Secretary of State issue a holding direction, noting that failure to do so could render the Secretary of State’s powers nugatory and that (at that time) “press accounts indicate that the County Council may issue a decision notice very soon”; and
  - (b) Noted that we had become aware of a recent news article which had quoted an MHCLG spokesperson as saying “Planning decisions should be made at a local level wherever possible. This application has not been called-in and is a matter for Cumbria County Council to decide.” Our email noted that “This raises significant concerns that the Department is approaching the question of reconsideration with a ‘closed mind’ and without an impartial consideration of relevant planning issues.” and requested that the PCU assure our client in this respect.
14. On 29 January 2021, we received an email from the PCU attaching a letter of the same date. Both the email and the letter were identical in substance (with the exception that the email stated “see attached letter”) and stated:
 

*“Thank you for your email/letter, which has been carefully considered.  
The decision of 6 January to not call-in is not being reconsidered.”*
15. On 2 February 2021, we wrote to the PCU noting, in summary, that:
  - (a) There was no indication that the Secretary of State had considered any of the new information we had provided, and, in fact, the language of the 29 January 2021 letter raised a strong implication that the Secretary of State had declined to reconsider his decision of 6 January 2021, rather than considering the new information provided by our client and determining that the call-in policy was not met; and
  - (b) There was no indication whether all of the emails we had sent had even been considered given that the letter and email referenced a singular “email/letter”.
  - (c) A 29 January 2021 letter from the Climate Change Committee to the Secretary of State constituted further new information, which the Secretary of State was asked to consider when reconsidering whether to call in the application. The letter then included further detail setting out how the Climate Change Committee letter underlined the extent to which the criteria in the call-in policy were met by this application.
16. On this basis, the 2 February 2021 letter asked the Secretary of State (in summary) to:
  - (1) Reconsider his decision whether to call in the Application;
  - (2) Confirm that the emails of 14, 18 and 21 January and their attachments

- were all considered before making the decision of 29 January 2021;
- (3) Confirm that the information contained in the 2 February 2021 letter and all information in these emails would be considered together in reaching a decision on the reconsideration request contained in the letter; and
  - (4) Provide reasons for any decision.
17. A response to the 2 February 2021 letter was requested within 14 days, i.e. by 16 February 2021, given the time-sensitive nature of the matter.
  18. On 9 February 2021, we wrote again to the PCU noting that we had received no acknowledgement that the 2 February letter had been received, despite our request for one. The 9 February 2021 letter also requested that the Secretary of State issue a holding direction to prevent his call-in powers from being rendered nugatory. Finally, our letter noted that a further news article, published that day, had quoted an MHCLG spokesperson as saying that "Planning decisions should be made at a local level wherever possible. This application has not been called in and is a matter for Cumbria County Council to decide."
  19. Since writing the 9 February 2021 letter, it has come to our attention that one or more MHCLG spokespeople has been quoted in almost identical fashion in other news outlets, indicating that this appears to be a form of words formulated and approved by MHCLG, and no mere 'one-off' accident. A few examples include:
    - (a) On 19 January 2021 a Sky News article relating to a hunger strike against the mine stated "A spokesperson for the department told Sky News: *"Planning decisions should be made at a local level wherever possible. This application has not been called-in and is a matter for Cumbria County Council to decide."*<sup>1</sup>
    - (b) On 28 January 2021, an article in the ENDS Report stated "A spokesperson for the MHCLG said *planning decisions should be made at a local level "wherever possible" and that the application was "a matter for Cumbria County Council to decide". The department added that the planning application relates to metallurgical (coking) coal, rather than coal for electricity generation..*"<sup>2</sup>
    - (c) On 5 February 2021 an article in the Guardian entitled "Experts pile pressure on Boris Johnson over 'shocking' new coalmine" stated "A government spokesperson said: *"Planning decisions are made at a local level wherever possible. This application was not called in by the communities secretary and it is a matter for Cumbria county council to decide. As the business secretary set out previously, this planning application relates to coking coal, rather than coal for electricity generation, which is needed for industrial processes like steel and would otherwise need to be imported into the UK."*<sup>3</sup>
  20. It may be noted that at the time that each of these articles were published there was an active request for reconsideration before the Secretary of State.

<sup>1</sup> <https://news.sky.com/story/teenage-climate-activists-in-week-two-of-hunger-strike-over-new-cumbria-coal-mine-12191848>

<sup>2</sup> <https://www.endsreport.com/article/1705784/coal-mine-decision-sparked-whitehall-row-8-things-need-know>

<sup>3</sup> <https://www.theguardian.com/environment/2021/feb/05/experts-pile-pressure-on-boris-johnson-over-shocking-new-coalmine>

21. On 12 February 2021, an email was received from a Decision Officer at the PCU acknowledging receipt of our letters of 2.2.21 and 9.2.21 and indicating that a “response will follow shortly.”
22. On 17 February 2021, having had no response within 14 days of our letter of 2 February 2021, we wrote to the PCU noting that we were instructed to prepare a pre-action letter if we did not receive a firm indication by 4pm on 18 February 2021 that the Secretary of State would provide a substantive response to our letter by 4pm on 19 February 2021.
23. On 18 February 2021, an email was received from a Decision Officer at the PCU stating that the announcement by the Council that it would be reconsidering the application at a future meeting of its Development Control and Regulation Committee meant that “[t]he time-sensitive nature of this issue has therefore diminished” and that a substantive response to our correspondence would be provided “shortly.”
24. Later on 18 February 2021 we responded noting that it was not accepted that the Council’s announcement significantly altered the urgency of the matter (for reasons explained therein) and noted that we were instructed to prepare a pre-action letter if we did not receive a firm indication by 19 February 2021 that a substantive response would be provided by 4pm on Monday 22 February 2021.
25. No further response has been received.

### **Details of the Proposed Grounds of Challenge**

26. The Claimant challenges the decision on the following principal grounds:
  - (1) Error of law arising from the Secretary of State’s refusal to consider exercising the call-in power in section 77 of the 1990 Act, despite an express request to do so.
  - (2) Failure to take into account material considerations arising from the failure to have regard to the new information provided by the Claimant on 14 and 18 January 2021 and by the Climate Change Committee, on 29 January 2021.
  - (3) Failure to take into account a material consideration, namely the Secretary of State’s call-in policy; alternatively a failure to give cogent reasons for departing from that policy.
  - (4) Procedural unfairness arising from the failure to give reasons for the Secretary of State’s decision.

### **Ground 1 – Error of law arising from refusal to consider exercising the call-in power**

27. This ground proceeds on the basis that the Secretary of State has declined to consider exercising his call-in power, despite the Claimant’s explicit request on the basis of the relevant new information provided by the Claimant and by the Climate Change Committee, and that he continues to decline to consider the exercise of his power. There are three reasons that the Claimant believes this to be the factual position:
  - (a) The language of the Secretary of State’s 29 January 2021 letter and accompanying e-mail;



- (b) The repeated public statements, given in January and February, set out above;
  - (c) The refusal of the Secretary of State to confirm whether he had declined to consider the exercise of this power.
28. Section 77 of the 1990 Act entrusts the Secretary of State with a power to call-in applications. Where a power is entrusted to a public body, the House of Lords has held that the public body will almost always have a duty to consider whether it should exercise its power: *Stovin v Wise* [1996] AC 923 at 950, per Lord Hoffmann. The Secretary of State is required to consider exercising his discretionary powers “if an express request to do so is made to him”, bringing to his attention matters that are said to bring that development within the relevant power: *Threadneedle Property Investments Ltd v Southwark LBC* [2013] Env LR 1 at §70.
29. This is what has occurred in the instant matter. On 14 January 2021, the Claimant brought to the Secretary of State’s attention new information that brought the development within the power to call-in the Application and expressly requested the Secretary of State to consider exercising his power. The Secretary of State’s refusal to consider exercising the power therefore amounts to an error of law.

#### Ground 2 – Failure to take into account material considerations

30. It is well established that a decision-maker must take into account matters which are “so obviously material” to a decision that failure to consider them amounts to an error of law: see, eg, *R(Samuel Smith Old Brewery) v North Yorkshire CC* [2020] PTSR 221 at §31.
31. The material brought to the Secretary of State’s attention by the Claimant in the emails of 14 and 18 January and letter of 2 February is so obviously material that a failure to take it into account in deciding whether to exercise the call-in power amounts to an error of law. In particular:
- (a) The publication of the Sixth Carbon Budget reports showed that the annual operational greenhouse gas emissions of this proposed mine would exceed the available emissions in the Climate Change Committee’s sixth carbon budget projections for the entire coal mining subsector upon commencement of its mining operations, and by 2026 would represent 3.7 times the total emissions available for all open coal mines in the UK;
  - (b) The latest expert scientific evidence, provide by the Climate Change Committee in the Sixth Carbon Budget, is that the need for coking coal will significantly decrease over the decades leading to 2050; and
  - (c) Exceptionally, the Climate Change Committee wrote to the Secretary of State expressing the view that the proposed new mine would “*have an appreciable impact on the UK’s legally binding carbon budgets*”; that a grant of planning permission would commit the UK to emissions for decades despite the fact that there may be no domestic use for coking coal after 2035; and the decision to refuse to call in the Application gave a “*negative impression of the UK’s climate priorities in the year of COP26.*”
32. Matters which are relevant to the Secretary of State’s exercise of the call-in power include that the application:
- may conflict with national policies on important matters;
  - is likely to give rise to substantial cross-boundary or national controversy;

- could have significant effects beyond their immediate locality; and
- may involve the interests of foreign governments.

In light of this, the information brought to the Secretary of State's attention by the Claimant and by the Climate Change Committee is "so obviously material" to consideration of whether to exercise the call-in power that the Secretary of State's failure to do so amounts to an error of law.

### Ground 3 – Failure to take into account the Secretary of State's own policy

33. The Secretary of State has a policy in place which provides guidance on the criteria relevant to the decision to call-in. The Secretary of State is not bound by the policy, but is required to consider it when determining whether to call in an application and to have good reason to depart from that policy, given: (i) the principle of consistency and avoidance of arbitrariness; (ii) the duty to have regard to relevant matters; (iii) the need to give effect to legitimate expectations: see *R v SSHD ex § Urmaza* [1996] COD 497.
34. In *Westminster City Council v SSCLG* [2014] EWHC 708 (Admin) at §14 the Court emphasised that the discretion conferred by the Secretary of State by section 77 of the 1990 Act is very wide, but that the Secretary of State's judgment should be exercised "having regard to any policy in which he had identified the approach he will take to any call-in consideration". Mr Justice Collins stated: "If it can be shown that [the Secretary of State] has failed to have regard to his policy or has in any particular case misunderstood it, an error of law will have been established."
35. In the instant matter, the Secretary of State has failed to have regard to his policy, either by refusing to apply the policy at all, or by failing to consider whether the new information brought to the Secretary of State's attention against the indicators set out in the call-in policy. Accordingly, the Secretary of State has erred in law.

### Ground 4 – Failure to Give Reasons

36. There is no general duty on the Secretary of State to give reasons for refusing to call-in a planning application. However, there may be circumstances where there is something "aberrant" in the particular decision which calls for explanation and thus requires reasons to be given: see *Oakley v South Cambridgeshire District Council* [2017] 1 WLR 3765 at §14. A decision by the Secretary of State to decline to consider the exercise of his powers of call-in, despite an explicit request to do so, amounts to something "aberrant" requiring reasons to be given.
37. In light of the Delphic nature of the Secretary of State's e-mail and letter of 29 January 2021 and the lack of clarity as to whether the Secretary of State had declined to consider the exercise of his power of call-in, the Claimant asked the Secretary of State to provide reasons. The Secretary of State has refused to do so, leading to procedural unfairness.

### The Need for Expedition

38. As explained in our email to the PCU of 18 February 2021, in order to prevent the Secretary of State's powers to consider a call-in from being rendered nugatory, there is a need for expedition. If the Secretary of State refuses to issue a holding direction, the Claimant will have to seek expedition in order to

obtain a decision from the High Court before the County Council acts to render the Secretary of State's call-in power nugatory by issuing a decision notice. Expedition is therefore necessary to ensure that there is no doubt that Court will retain full power to order effective relief by the time judgment is given. If the claim is issued, we will therefore seek to have the standard judicial review timeframes significantly abbreviated.

### **Orders Sought**

39. The following orders will be sought from the Court:
- (i) An order that the claim be expedited;
  - (ii) An order requiring the Secretary of State to consider whether to call-in for his determination the application by West Cumbria Mining Ltd for development of a new underground metallurgical coal mine (Cumbria County Council Ref. PCU/RTI/H0900/3255949);
  - (iii) An Aarhus Costs Order;
  - (iv) Costs.

### **Details of Legal Advisors Dealing with this Claim**

40. Richard Buxton Solicitors  
Office A, Dale's Brewery  
Gwydir Street  
Cambridge  
CB1 2LJ

Attn: Matthew McFeeley

Tel: 01223 328933

Email: [mmcfeeley@richardbuxton.co.uk](mailto:mmcfeeley@richardbuxton.co.uk)

### **Counsel**

41. Estelle Dehon, Cornerstone Barristers

### **Details of Interested Parties**

42. Cumbria County Council  
Cumbria House  
117 Botchergate  
Carlisle  
Cumbria  
CA1 1RD

Attn: Paul Haggin, Development Control Case Officer

Email: [Paul.Haggin@cumbria.gov.uk](mailto:Paul.Haggin@cumbria.gov.uk)

43. West Cumbria Mining Ltd  
4th Floor, Oakfield House  
35 Perrymount Road  
Haywards Heath  
West Sussex  
RH16 3BW

Email: [info@westcumbriamining.com](mailto:info@westcumbriamining.com)

44. Please indicate whether the Secretary of State agrees that the above are interested parties in this matter. Should you consider that there are any further interested parties, please provide us with their details and an explanation of their interest.

#### **Details of Information Sought**

45. You are required to make full and frank disclosure in judicial review proceedings.
46. We therefore require full information on whether the Secretary of State has declined to consider the exercise of his call-in power and/or how the Secretary of State has considered the Claimant's request to the Secretary of State to call in the Application based on new material information.
47. Further, we ask the Secretary of State to provide answers to the following questions:
- (a) Was the Secretary of State advised as to the content of the new information submitted by the Claimant on 14 and 18 January 2021 before the Planning Casework Unit sent the e-mail and letter of 29 January 2021 to the Claimant?
  - (b) Was the Secretary of State at any point advised that he was not obliged to consider the exercise of his call-in power, despite the Claimant's explicit requests? If so, please provide this advice.

#### **What the Secretary of State is requested to do**

48. In order to avoid the need for the Claimant to issue the claim, the Secretary of State is asked to:
- (a) Issue a holding direction so that the Secretary of State can properly consider the information before him and decide whether to call in the Application;
  - (b) Confirm that the information previously submitted by the Claimant will be considered, together with the new information provided by the Claimant and by the Climate Change Committee; and
  - (c) Reconsider his decision whether to call in the Whitehaven mine application (Cumbria County Council ref. 4/17/9007; PCU ref. PCU/RTI/H0900/3255949) based on that information, in light of the Secretary of State's call-in policy.

#### **Other applications**

49. If the claim proceeds the Claimant will apply for a protective costs order (PCO) pursuant to CPR 45.43 on the basis that the claim is an environmental matter: *Venn v Sec State CLG* [2015] 1 WLR 2328. If you disagree that this is an Aarhus matter or with the making of a PCO please give your reasons.

**Address for Reply and Service of Court Documents**

50. Richard Buxton Solicitors  
Office A, Dale's Brewery  
Gwydir Street  
Cambridge  
CB1 2LJ

Attn: Matthew McFeeley

Email: [mmcfeeley@richardbuxton.co.uk](mailto:mmcfeeley@richardbuxton.co.uk)

**Proposed reply date**

51. **In light of the need for expedition, the Secretary of State's response is requested as soon as possible and in any event within 7 days, i.e. by 4 March 2021.** This is shorter than the usual time frame for response, but the Claimant considers this is both reasonable and practicable in the circumstances:

- (a) Seven days is reasonable given the time-sensitive nature of this matter as set out above; and
- (b) Seven days is practicable as the legal points and requests for information made in this letter have been raised by the Claimant in correspondence with the Secretary of State on a number of previous occasions (and were all raised by 9 February 2021 at the latest).

Yours faithfully,

  
**Richard Buxton Solicitors**  
**Environmental, Planning and Public Law**

cc: Cumbria County Council, Attn: Paul Haggin  
West Cumbria Mining

# Officer Decision Record

This decision contains information which is exempt from publication by virtue of Paragraph 5 of Schedule 12A of the Local Government Act 1972

**Title of Report:** West Cumbria Mining planning application – Public Inquiry

**Decision of:** Angela Jones - Executive Director Economy and Infrastructure

**Cabinet Member:** Councillor Celia Tibble - Environment

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## 1. What was the decision about?

This decision relates to the planning application on West Cumbria Mining (WCM) and the Council's obligation to submit a Statement of Case to the Planning Inspectorate in which it sets out its position on the called-in application.

## 2. Decision of the Executive Director

The decision of the Executive Director is as follows:

- Position on the “called-in application” (paragraph 1 above) - for the purposes of the called-in inquiry the decision will be taken by the Executive Director Economy and Infrastructure.
- The Executive Director will use existing delegated powers to submit the Statement of Case to the Planning Inspector on behalf of the Planning Authority (the Council).
- The Statement of Case will set out the background and history of the planning application, including the 3 previous Development Control and Regulation (DC&R) Committee decisions in support of the application.
- The Statement of Case will also refer to/include the officer decision (decision date: 8<sup>th</sup> February 2021 – ODR signed on 15<sup>th</sup> February 2021) to return the matter to DC&R, to consider the implications of Climate Change Committee report on the Sixth Carbon Budget which was made prior to the Secretary of State's Call In, received on 11 March 2021.
- The Council, as a consequence of the timing of the Secretary of State for MHCLG Call-in, which includes the initial information being required to be provided by Cumbria County Council by 23<sup>rd</sup> April 2021, is not able to determine a position on its implications with the Council's DC&R Committee. The Statement of Case therefore will not provide a Council decision as to whether it now supports or opposes the Planning Application in light of the 6<sup>th</sup> Carbon Budget.
- The Council will fully assist the Inspector by participating in the discussion at the Case Management Hearing and the Public Inquiry, to ensure the Planning Inspector has all the relevant planning documentation, previous decisions and relevant policy to inform his decision.

Should a challenge be received from the Planning Inspector, applicant or other interested party, reconsideration of the above decision will be undertaken.

The Statement of Case is being finalised. A subsequent Officer Decision record will outline and record the Executive Director's approval of the formal submission in line with PINS guidance and process.

### 3. Background to the decision

The Council's DC&R Committee have resolved on 3 separate occasions to grant planning approval to West Cumbria Mining to develop 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. See Table 1 below for the timeline.

This is a highly complex, controversial and sensitive planning application, attracting ongoing national and international interest.

On 2 separate occasions the Ministry for Housing, Communities and Local Government (MHCLG) has issued an Article 31 'Holding Direction' but has subsequently chosen not to Call-In the application. See Table 1 below for the timeline.

**Table 1:**

DC&R	DC&R Determination	Holding Direction	Call In
19 <sup>th</sup> March 2019	Unanimously supported	Issued on 1 <sup>st</sup> July 2019	Confirmation on 1 <sup>st</sup> November 2019 the application would not be Called In
31 <sup>st</sup> October 2019	Ratifies its original decision		
May 2020	To note: WCM resubmitted an amended planning application to extract only Metallurgical Coal and not up to 15% Middlings Coal (Industrial Coal) as originally submitted. A Greenhouse Gas Emissions Assessment was conducted by AECOM on behalf of WCM that forms Appendix 2 to Chapter 19 of their Environmental Statement. Chapter 19 of the ES is headed Greenhouse Gas Emissions. This was also used to respond to the findings of a Green Alliance report.  NB. The S106 agreement requires WCM to produce a GHG Plan every five years after 2032 to ensure ongoing mitigation of GHG emissions in accordance with all relevant legislation, policy, guidance and standards.		
2 <sup>nd</sup> October 2020	Amended application -supported	Issued 28 <sup>th</sup> September prior to DC&R	Formal confirmation received on 6 <sup>th</sup> January 2021 that the application would not be Called In
-	-	-	11 <sup>th</sup> March 2021, SoS made decision to Call In.

On the 28<sup>th</sup> September 2020, prior to the DC&R Committee meeting held on 2<sup>nd</sup> October 2020, the Secretary of State had exercised his powers under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, and had directed the Council not to grant permission on this application without specific authorisation. This meant

that DC&R could consider the application but the Council was unable to release the Decision Notice until the Secretary of State holding direction was lifted.

Furthermore, the Decision Notice could not be released until the Section 106 (S106) agreement had been signed. The Holding Direction was lifted on 6th January 2021 and the S106 was expected to be ready for final signature in early February 2021.

### **The Climate Change Committee Report on the 6th Carbon Budget**

The Climate Change Committee's Report on the Sixth Carbon Budget was published on 10th December 2020, two months after the DC&R Committee but before the S106 legal agreement between the Council and West Cumbria Mining was finalised, and before the holding direction Article 31 was lifted by MHCLG on 6th January 2021.

The Council received a letter dated 7th January 2021 from Richard Buxton's Solicitors bringing to our attention the Committee for Climate Change report on the sixth carbon budget for the UK. The letter requested that in light of this report the Council refers the West Cumbria Mining planning application back to DC&R Committee. A further letter was received from Richard Buxton's Solicitors on 29<sup>th</sup> January 2021.

To inform the Executive Director decision on whether to return the decision to DC&R advice and opinion was sought from the Council's planning team, legal team, external legal advisors and planning consultants. The advice concluded that the information contained within the Climate Change Committee's report could be deemed to be of material consideration that might have led DC&R Committee to reach a different view to the one it reached on 2<sup>nd</sup> October 2020, in particular in relation to the lifespan of the development and the GHG controls to be applied.

On the balance of all the information and advice provided, the Executive Director made a delegated decision to return the application to DC&R Committee (*ODR ref: West Cumbria Mining planning application – reconsideration back to Development Control & Regulation Committee – signed 15<sup>th</sup> February 2021 – reflecting formal decision made on 8<sup>th</sup> February 2021*).

### **Call In**

On 11<sup>th</sup> March 2021 the Council received a letter from MHCLG, planning casework team, advising that the Secretary of State had decided to call-in this application because of the further developments since his original decision not to Call In the application. Extracts below from the letter:

*“.....It is noted that the planning application for this development was first submitted to Cumbria County Council in May 2017 and has been considered by your planning committee on three occasions, without a final outcome being reached. Four years later, it is now being reconsidered a further time.*

*There are occasions when it is appropriate for Secretary of State to use his call-in powers, and he considers that this application should be called in for his own determination. The Secretary of State accordingly directs, under his powers in section 77 of the 1990 Act, that the application shall be referred to him instead of being dealt with by the Local Planning Authority.*

*The Secretary of State has decided to call this application in because of the further developments since his original decision. The Climate Change Committee's recommendations for the 6th Carbon Budget have been published since he was advised on this decision. The Secretary of State recognises that proponents and opponents take different positions on that matter, and considers that this should be explored during a public inquiry. Furthermore controversy about the application has increased. Overall the Secretary of State considers that*



*this application raises planning issues of more than local importance, and further considers that the limbs of the call-in policy relating to potential conflict with national policies in Chapters 14 and 17 of the Framework and substantial cross-boundary or national controversy are satisfied"*

This means there will now be a public inquiry presided over by an independent planning inspector who will hear evidence and submissions from all parties and will then issue a report to the Secretary of State in which the inspector will make recommendations about whether the project should be granted planning permission, and if so on what terms by way of planning conditions and planning obligations, or refused. The Secretary of State will then consider the inspector's report and recommendations and make the final decision either to allow or refuse the application.

### **Public Inquiry Timetable and Procedural Guidance**

**By 23rd April 2021** - To submit all documentation that was considered at application stage including representations from interested parties and consultees.

**By 6<sup>th</sup> May 2021** - Statement of Case giving full details of the case we will put forward at the inquiry including any documents, maps or plans we intend to refer to or use in evidence. To include a list of any conditions or limitations we would agree to, if the application were to be allowed. A copy of the completed agreed Statement of Common Ground, listing all matters that are not only agreed, but also confirming areas where there is disagreement.

**1st June 2021 – 10.30am case management conference** - Parties are requested to focus only on the matters that are in dispute and give detailed consideration as to exactly what topics could most efficiently be dealt with as a round table discussion at the inquiry (or possibly just by written submissions).

**By 10 August 2021** - Send copies of proof(s) of evidence (and a written summary if the proof is over 1500 words in length). A 'proof of evidence' is a written statement that the Planning Authority, the applicant or a witness wishes the Inspector to take into account at the inquiry.

Inquiry will open on **7<sup>th</sup> September 2021**

### **Statement of Case and Statement of Common Ground**

The Government has directed the Council to a Procedural Guide to Call In which outlines the responsibilities of the applicant, the local planning authority and other parties. The guidance explains what should be included in the Statement of Case and Statement of Common Ground. [Government procedural guide to Call In](#)

The procedural guidance does not specifically state that the Local Planning Authority must set out its position on the called-in application, i.e. to give an opinion as to whether the Council supports, opposes or remains neutral.

This is understood to be custom and practice, and in normal circumstances the planning authority would have determined the application through their usual planning committee process prior to the Call In. The DC&R Committee would have decided to either approve the application or reject it.

#### **4. Reasons for the decision**

The following matters were taken into consideration in making the decision:

- **Timing of Call In**

The Secretary of State for MHCLG has called-in the planning application rather than letting the local authority decide. The Secretary of State could have delayed the formal granting of planning permission until he had decided whether to call-in an application, by what is sometimes called a holding direction. This power is set out in Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Under Article 31 the Council would have been permitted to resolve its position on the application but would have been prevented from making a formal decision. If MHCLG had chosen to issue a Holding Direction, DC&R Committee would have resolved its position on the application and the Council would have had a clear position to inform the Statement of Case.

- **Delegations for Major Applications**

The statutory requirements relating to the determination of planning applications are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015, SI 2015/595 in England (the England DMPO). In England, guidance on determining planning applications is set out in Planning Practice Guidance.

Cumbria County Council as the Local Planning Authority discharges its planning functions to the DC&R Committee. The membership of the DC&R Committee comprises of between 14 and 18 members of the County Council.

Delegated officers powers can be used to deal with planning applications, usually minor applications. Delegated powers enable planning officers to determine applications themselves without needing a decision from the planning committee. Designated officers consider the recommendations that are outlined in a delegated report by the case officer and a decision is agreed and issued without the need for the committee to determine the application and without public participation.

This is a major application and if this application had not been Called In it would have been determined by DC&R Committee, not through an officer delegation. Call-In has preceded the referral back to DC&R Committee. The relevant powers relied on for this decision is that found in the Council's Constitution under paragraph 12(1)(g) of the Scheme of Delegation to officers.

- **Planning Inspector**

The Planning Inspectorate and MHCLG are aware that the application was granted approval by DC&R Committee in October 2020. The application was Called-In before DC&R Committee had the opportunity to meet to consider the implications of the Climate Change Committee Report on the 6<sup>th</sup> Carbon Budget.

This is an unusual and unprecedented situation and we do not yet know what the Planning Inspector will require from the Council in light of this. The Case Management Officer has said:

*"I'd suggest the Council prepare their statement based on the latest available information be that the implications of the 6th Carbon Budget or any other matter. This will ensure the inquiry is fully informed on all relevant matters"*.

## 5. What options have been considered?

[REDACTED]

**Option 1:** Revert to the DC&R Committee through the normal Planning Committee process in order to reach a Council's position for the Inquiry, ie whether to support the application or oppose it.

**Option 2:** As above but the Committee having decided the Council's position, the Committee delegates to the Executive Director the decision on whether planning conditions and / or obligations should be different.

**Option 3:** A specific delegation made by full Council to the Executive Director to decide the Council's position for the Inquiry on the application based on a Planning Officer's report. The Executive Director will consider the recommendations that are outlined in a delegated report by the planning case officer and a decision is agreed for inclusion within the Statement of Case. This officer decision would be made without Members input or public participation.

**Option 4:** A general delegation by full Council to the Executive Director to make the decision on behalf of the Council. As Option 3 above re. process.

**Option 5:** The Executive Director exercises her existing delegated powers, contained in the Council's Constitution, make a decision on the Council's position on the application for the purposes of the inquiry. (RECOMMENDED OPTION)

**Option 6:** For DC&R to expressly delegate the entire decision to the Executive Director.

Option 5 is the preferred option for the Executive Director. The Executive Director will set out the Council's position having regard to the previous planning applications (see above table) determined by DC&R. However, in light of the Secretary of State's decision to Call-in the planning application in advance of DC&R Committee considering the implications of the CCC 6<sup>th</sup> carbon budget the Executive Director will not be able to set out a position taking into account the CCC 6<sup>th</sup> Carbon Budget.

This preferred Option is therefore the basis of this Officer Decision Record.

## 6. What risks were identified?

Risks and mitigation identified against the preferred option (Option 5) above.

Risk	Mitigation (if applicable)
Reputational risk - the Council being portrayed as relinquishing a responsibility to take a position and be questioned about it on the matter of the CCC 6 <sup>th</sup> Carbon Budget (single item). <b>(Low)</b>	Strict adherence to the process. Should a challenge be received from the Planning Inspector, applicant or other interested party, reconsideration of this decision will be undertaken.
Financial risk - the main source of a costs risk would be procedural unreasonableness in the inquiry process. <b>(Low)</b>	The basic circumstances in which costs may be awarded are: (a) a party has behaved unreasonably; and (b) the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense.  Strict adherence to the process would result in it being highly unlikely that this could be evidenced by either party.


**7. What resources will be needed/how will the decision be funded**

Associated costs of this decision will be funded from the Development Control (legal reserves) budget.

There is no expectation that this decision will incur additional costs, outside of those which the Council will necessarily incur from its' participation in the planning inquiry.

**8. What Legal considerations were relevant to the decision**

See *Delegations for Major Applications* above.

The Executive Director Economy and Infrastructure is authorised by virtue of paragraph 12(1)(g) of the Scheme of Delegation to officers in the Council's Constitution.

[REDACTED]

**Executive Members were briefed on 1<sup>st</sup> April 2020**

Leader – Councillor Stewart Young

Deputy Leader – Councillor Peter Thornton

Environment Portfolio Holder – Councillor Celia Tibble

**Key Decisions**

**Notice on Forward Plan?** No

**Rule 15 Notice?** N/A

**Rule 16 Approval by Chair of Scrutiny Board?** N/A

**Exempt from Call in?** No

**Decision - APPROVE**

**Signature of decision maker:**

*A Jones*

**Name:** Angela Jones

**Post title:** Executive Director Economy and Infrastructure

**Date:** 20 April 2021

**Delegated authority to make the decision:**

# Officer Decision Record

This decision contains information which is exempt from publication by virtue of Paragraph 5 of Schedule 12A of the Local Government Act 1972

**Title of Report:** West Cumbria Mining planning application – Public Inquiry

**Decision of:** Angela Jones - Executive Director Economy and Infrastructure

**Cabinet Member:** Councillor Celia Tibble - Environment

## 1. What was the decision about?

The decision relates to the determination of the Council's position for the purposes of the public inquiry to be held following the call-in by the Secretary of State for Housing, Communities and Local Government of West Cumbria Mining Limited's application for a new metallurgical coal mine at Whitehaven ("the WCM Application").

## 2. Decision of the Executive Director

The decision of the Executive Director (taken under her existing delegated powers) is as follows:

- To confirm the previous decision of the Executive Director of 20<sup>th</sup> April 2021, that the Council's position on the WCM Application for the purposes of the called-in public inquiry, is settled by the Executive Director rather than any other decision making body of the Council, including the Council's Development Control and Regulation Committee ("the DC& RC").
- The previous decision of the Executive Director was that the Statement of Case would not provide a Council decision as to whether it now supports or opposes the Planning Application in light of the Climate Change Committee Report on the 6th Carbon Budget.
- This decision goes further, the Executive Director is now making a decision to provide a neutral position and that the neutral position should take the form of strict neutrality such that, by virtue of neither supporting or opposing WCM's Application, the Council will not submit any proofs of evidence to, or call any witnesses at, the public inquiry but will participate therein only to the extent of (a) making an opening statement to explain its neutral position and then (b) appearing at the conditions/planning obligation(s) session to assist the inquiry in relation to the without prejudice question of the conditions to be imposed/planning obligation(s) to be entered into should WCM's Application be allowed.
- To approve the Council's Statement of Case (attached at: Appendix 1) to reflect the position of strict neutrality as above.

## 3. Background to the decision

The background to the decision is set out in the Official Decision Record of the Executive Director's previous decision of 20<sup>th</sup> April 2021 ("the Previous ODR") and is not repeated here. The Previous ODR should, however, now be read in connection with the Rectification Note (dated :04<sup>th</sup> May 2021) attached to this ODR which corrects one of the reasons for the decision of 20<sup>th</sup> April 2021 being the Council having insufficient time to return the decision to DC&RC.

#### 4. Reasons for the decision

[REDACTED]  
[REDACTED]  
[REDACTED] The Executive Director is now exercising her existing delegated powers, contained in the Council's Constitution, to make a decision on the Council's position on the WCM Application for the purposes of the called-in inquiry.

The Executive Director's decision is that the Council will adopt a neutral position and that this will be a position of strict neutrality. In consequence, the Council's Statement of Case should be settled to reflect this position. The Statement of Case will therefore explain the position of strict neutrality and confine itself to factual considerations, namely: an account of the proposals contained in WCM's Application, the evolution of those proposals, the history of the Council's consideration of the WCM Application and a survey of relevant planning policy.

#### 5. What options have been considered?

- a) Not to make a decision on the Council's position - This results in the position whereby the Council is simply considered to be neutral by default but it doesn't actively support that position. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

- b) Strict Neutrality – This is the recommended approach to best reflect the Council's position which neither supports nor opposes the application. The decision to follow the course of strict neutrality is considered to be the only proper and logical outcome of the adopted position of neither supporting nor opposing WCM's Application.

- c) Neutrality – This approach would entail calling a witness (or witnesses) to express their professional opinion of where things now stand in the light of events since 2<sup>nd</sup> October 2020, in particular to express their professional opinion on the implications of the Climate Change Committee's Sixth Carbon Budget Report for the resolution of the DC & RC on that occasion to approve WCM's Application and whether, in the witness's (or witnesses') opinion the WCM Application should continue to be supported or not.

#### 6. What risks were identified?

Each of the options considered in section 5 above is considered to carry a degree of reputational risk. That risk is inherent and already been considered in the position that the Council has taken already not to consider the evidence since October 2020 and form a position either in support of or opposing the WCM Application.

- a. Not making a decision on the Council's position - This would be contrary to the requirements of the planning inspector and inquiry process [REDACTED]  
[REDACTED]. There would likely be a significant reputational impact on the Council if it did not take a position as it is not a credible stance for a local planning authority to avoid taking a clear position on the application at an inquiry, even where it is not the decision making body.
- b. The position on Strict neutrality or Neutrality - It is not considered that the risk is any greater in the case of the strict neutrality option, than the neutrality option and could even be less in that calling any witness (or witnesses) who were able to

Speak to only their personal (albeit professional) opinion but, in so doing, were not putting forward the Council's case would be to embark on an exercise lacking any real point which would have the additional risk of creating confusion from a public perspective as to the Council's position on the WCM Application.

**7. What resources will be needed/how will the decision be funded**

Associated costs of this decision will be funded from the Development Control (legal reserves) budget.

There is no expectation that this decision will incur additional costs, outside of those which the Council will necessarily incur from its' participation in the planning inquiry.

**8. What Legal considerations were relevant to the decision**

The Executive Director Economy and Infrastructure is authorised by virtue of paragraph 12(1)(g) of the Scheme of Delegation to officers in the Council's Constitution.

**Executive Members below were briefed on 28<sup>th</sup> April 2021 at 16:00**

Leader – Councillor Stewart Young

Deputy Leader – Councillor Peter Thornton

Environment Portfolio Holder – Councillor Celia Tibble

**Key Decisions**

**Notice on Forward Plan?** No

**Rule 15 Notice?** N/A

**Rule 16 Approval by Chair of Scrutiny Board?** N/A

**Exempt from Call in?** No

**Decision**

**Signature of decision maker:** 

**Name:** Angela Jones

**Post title:** Executive Director Economy and Infrastructure

**Date:** 5 May 2021

**Delegated authority to make the decision:** 12.1(g) of the Scheme of Delegation, Part 3 of the Constitution.



## RECTIFICATION NOTE – OFFICER DECISION RECORD


This rectification note seeks to correct reasoning in the Officer Decision Record of 20<sup>th</sup> April 2021 (“the ODR”) in relation to the position of the Council for the called-in public inquiry into the application of West Cumbria Mining Limited for a metallurgical coal mine at Whitehaven (“the WCM Application”). The fifth bullet in section 2 of the ODR ascribed the decision not to refer back to the Development Control and Regulation Committee (“DC&RC”) to the timing of the call-in of the WCM Application by the Secretary of State for Housing, Communities and Local Government.

*•The Council, as a consequence of the timing of the Secretary of State for MHCLG Call-in, which includes the initial information being required to be provided by Cumbria County Council by 23rd April 2021, is not able to determine a position on its implications with the Council’s DC&R Committee. The Statement of Case therefore will not provide a Council decision as to whether it now supports or opposes the Planning Application in light of the 6th Carbon Budget.*

This statement could be interpreted as the Council having insufficient time to refer the matter to DC&RC. This is not the case. The Council could have returned the matter to DC&RC, it was the decision of the Executive Director not to do so. The reasons for the officer decision are explained in paragraph 4 of the ODR dated 20<sup>th</sup> April 2021.

For clarity, the reason the Executive Director made the decision, in consultation with Members, was that it was not considered to be appropriate nor in the Council’s interest to proceed with a lengthy committee meeting over a number of days, incurring costs and reputation risk for the Council when the Council was no longer the decision making body.

Dated : 5<sup>th</sup> May 2021

Signed : 

.....

Angela Jones – Executive Director Economy and Infrastructure