Schedule of Proposed Conditions – Cumbria County Council – 27 August 2021

This schedule updates the original schedule of Proposed Conditions dated 11 August 2021. In the intervening period Cumbria County Council has had an opportunity to meeting with the applicant to discuss and attempt to agree possible changes. The Council has also received further information about the changes to the scheme within WCM’s Proofs of Evidence

As before, the schedule below refers to the set of conditions proposed by the council in relation to the original proposal, as set out in its own version of the Statement of Common Ground. Column 1 states the condition number, column 2 summaries any proposed changes the condition suggested by West Cumbria Mining, column 3 sets out a brief summary of the Council’s response, and column 4 outlines the suggested way to resolve and reach agreement (if possible). A “traffic lights” colour scheme has been added. Green represents conditions which are either agreed as originally drafted, or a revised drafting has been agreed. Amber represents conditions regarding which negotiation is ongoing, but where agreement is likely to be reached. Red represents conditions where negotiation may still be ongoing, but in the Council’s judgement agreement is unlikely to be reached.

Cumbria County Council is aware that the applicant is proposing to amend the scheme from that which was considered by its Development Control and Regulation Committee on the 2nd October 2020, and has now received some of this information. Most significantly, the Council expects amendments to be proposed to the method of construction of the conveyor and a revised approach proposed to mitigation of the impacts from greenhouse gasses. In addition, further ecological survey work has been undertaken and a report provided by BSG Ecology. At the time of writing the council has still had no opportunity to obtain specialist advice in respect of the implications of the further ecological surveys, the proposals to amend the conveyor construction, or the report setting out the revised methodology GHG management, which replaces that produced by AECOM for the planning application and ES. New information has also been received in respect of methane capture through the submission of the Proof of Evidence of Mr Tonks.

The County Council therefore expects to need to update this schedule, particularly in respect of the issues set out in the preceding paragraph, but also in relation to matters which might arise from Proofs of Evidence submitted by the various parties.

**Original Conditions List**

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| **Proposed condition** | **WCM Proposed Change** | **CCC Response** | **Proposed solution** |
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| Condition 1 - Definitions | Delete all.  Unnecessary as terms defined in ES and documents listed in Condition 2.  As compromise details can be inserted into the informatives. | It is essential to retain the definitions for clarity and so there can be a consistent interpretation of the proposal and conditions. This is particularly the case in respect of the definition of High Vol A coking coal. The whole premise of the proposal to grant planning permission was based on the product meeting a specific specification which is not contained within the ES, but was the basis upon which the County Council sought advice from steel makers and a coal broker in relation to the need for the product.  Reference to the ES would not be acceptable, because it is not sufficiently clear from the ES what these terms mean with the necessary degree of precision. **For example, in the CHPP document, metallurgical coal is defined as**  ***“Coal with particular physical and chemical characteristics that makes it suitable for use in the production of steel and separated from reject material during processing at the Coal Handling and Processing Plant. For the avoidance of doubt ‘Metallurgical Coal’ shall be defined as having a maximum ash content of 9% and a maximum sulphur content of 2%”***  **The use of this definition in preference to that contained in condition 1 would allow the sulphur content of the coal produced to increase from an average of 1.4% and a maximum of 1.6%, to an unrestricted average, and a maximum of sulphur of 2.49%. Ash would be permitted to increase from 8% to 9%.**  Other definitions **contained in condition 1** are important in order to interpret with precision the other conditions that use the**se** terms, for example in relation to the definition of mineral working, and the various stages of the development. **However, the council is negotiating further with the applicant and considering if the definitions can be dealt with in a different way**. | No change. **The council is likely to propose a new condition dealing with the definition of the coal which stands alone**. |
| Condition 2- Approved Plans and Documents | To be kept under review following Regulation 22 process | Agreed | Continue to update as appropriate |
| Conditions 3-5 | No proposed changes | Agreed | No change |
| Condition 6 - Construction and Environment Management Plan | There is significant amount of duplication between the details outlined in this condition and others throughout the draft list.  If the whole requirement of another condition is addressed in relation to this CEMP condition then that other condition is proposed for deletion  If the CEMP condition only partially addresses a topic then that other condition is retained and the relevant requirements of the CEMP is moved to that condition.  This approach should ensure that each point is only included in one place either as a separate condition or within CEMP, but not in both. | The Council is willing to discuss this condition further with a view to potentially reducing duplication, but needs to consider potential impacts of doing this on the enforceability and appropriateness of the full suite of conditions proposed as a whole.  There is also an advantage in having all the environmental management of construction in one place for ease of reference (to the benefit of the applicant, LPA, public and other regulators) | Continue to negotiate to determine if this condition can be amended.  **The applicant has suggested some amended wording to this condition, which the council has considered, and is likely to agree to in the main. However, we will keep under review whilst we consider the additional ecological survey information, “pipe jacking” proposals and reptile translocation proposals before finalising an updated wording.** |
| Condition 7 - Construction Traffic Management Plan | Duplication between this condition and others.  Same approach as the CEMP | The Council is willing to discuss this condition further with a view to potentially reducing duplication, but needs to consider potential impacts of doing this on the enforceability and appropriateness of the full suite of conditions proposed as a whole.  **The applicant has proposed the addition of points (j) to (n) which are agreed, in order to simplify the requirements of the CEMP under condition 6.** | **Proposed to update as:**  **7. No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Mineral Planning Authority. The CTMP shall include details of:**  **a) the construction of the site access and the creation, positioning and maintenance of associated visibility splays;**  **b) access gates, shall be hung to open away from the public highway no less than 10m from the carriageway edge and shall incorporate appropriate visibility splays;**  **c) the pre-construction road condition established by a detailed survey for accommodation works within the highways boundary conducted with a Highway Authority representative and shall include confirmation of the routes used and network to be assessed;**  **d) details of road improvement, construction specification, strengthening, maintenance and repair commitments if necessary as a consequence of the development;**  **e) details of proposed crossings of the highway verge;**  **f) areas for vehicle parking, manoeuvring, loading and unloading for their specific**  **purpose during the development;**  **g) the surfacing of the access roads from the public highway into the site, which shall extend for a minimum of 25m from the edge of the carriageway;**  **h) construction vehicle routing;**  **i) the management of junctions to and crossings of the public highway and other public rights of way/footway; and**  **j) the scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs and banksman.**  **k) parking areas (including cycle parking) for the vehicles of construction workers and visitors;**  **l) details of wheel washing facilities including any drainage requirements and maintenance;**  **m) cleaning of site entrances and the adjacent public highway; and**  **n) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway.**  **The approved CTMP shall be implemented and the development shall be carried out in accordance with the approved details.**  **Reason: In the interests of highway safety**  **.** |
| Condition 8 - Ecology mitigation - Construction | Amendments in respect of Bat Survey and Mitigation Plan, transfer of text from condition 46. | The Council received additional ecological survey information on 9 August 2021, which we are seeking specialist advice on, and so cannot confirm if these matters are appropriate to control through a condition.  Section d) may change if trees on the conveyor route no longer need to be felled if the tunnelling methodology proves to be feasible. | Continue to negotiate to determine if the development is still acceptable in principle, and if so, whether this condition can be amended as suggested. |
| Condition 9-16 | No proposed changes | Agreed | No change |
| Condition 17 | Combine two conditions into one **and combine with condition 92**. | The drainage issues at the main mine site are different from the RLF, and it would be better for CCC to approve and monitor these schemes as separate self-contained designs.  **The main processing site is historically contaminated land which requires a particular approach to drainage, and the RLF is sensitive in that it is low lying and greenfield. The environmental issues which apply to each are quite different, and the two sites are geographically distinct. The Council would find it more efficient to review and approve the schemes separately so the correct specialist advice can be obtained on each, the schemes can be approved independently of one another, and for ease of monitoring the development once constructed.**  **The Council would have proposed that the reasons for the conditions be included separately to explain this approach, but is mindful that because any conditions issued will not have reasons given, the explanation is better contained in this schedule.**  **Minor changes are proposed to both conditions to incorporate condition 92, and allow it to be deleted.** | **Proposed to update as:**  **17. No Construction Works shall take place until a scheme detailing how surface water flows will be managed at the main mine site during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The surface water management plan shall include the following and be implemented before construction starts:**  **a) An assessment of potential flows that would need to be managed at the main mine site during operation;**  **b) Details of the measures which would be put in place to capture, manage, and discharge flows identified in part a).**  **c) Details of all measures which would be put in place to prevent surface water discharging onto or off the highway;**  **d) A programme for the installation, maintenance and removal of the measures set out in part b).**  **e) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;**  **f) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works;**  **g) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).**  **There shall be no surface water discharge to either Sandwith Beck or Rottington Beck.**  **Once approved, this surface water management plan shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.**  **Reason: To ensure the proposed development does not pose an unacceptable risk of pollution to controlled waters in accordance with policy DC20 of the Cumbria Minerals and Waste Local Plan, and to prevent flooding and/or pollution of ground and surface water in accordance with policies DC19 (Flood Risk) and DC20 (The Water Environment) of the Cumbria Minerals and Waste Local Plan.** |
| Condition 18 - Drainage | Combine two conditions into one **and combine with condition 92.** | **See above** | **Proposed update as:**  **18. No Construction Works shall take place until a scheme detailing how surface water flows will be managed at the Rail Loading Facility (RLF) during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. The surface water management plan shall include the following and be implemented before construction starts:**  **a) An assessment of potential flows that would need to be managed at the main mine site during operation;**  **b) Details of the measures which would be put in place to capture, manage, and discharge flows identified in part a).**  **c) Details of all measures which would be put in place to prevent surface water discharging onto or off the highway;**  **d) A programme for the installation, maintenance and removal of the measures set out in part b).**  **e) An assessment of potential contaminants which may be present in surface water runoff, and measures to segregate this surface water from clean runoff;**  **f) Assessment of potential options to retain, test and treat or remove potentially contaminated surface water runoff during the works;**  **g) Details of a monitoring scheme to be implemented to confirm that no contaminants are present in runoff from the site intended for discharge to controlled waters (before, during and post construction).**  **Once approved, this surface water management plan shall be implemented in its entirety and the development shall be carried out in accordance with the approved details.**  **Reason: To ensure the proposed development does not pose an unacceptable risk of pollution to controlled waters in accordance with policy DC20 of the Cumbria Minerals and Waste Local Plan, and to prevent flooding and/or pollution of ground and surface water in accordance with policies DC19 (Flood Risk) and DC20 (The Water Environment) of the Cumbria Minerals and Waste Local Plan.** |
| Condition 19-20 | No proposed changes | Agreed.  **It should be noted that further details submitted under the “pipe jacking” proposal may impact on the wording of condition 19.** | No change, **but keep under review.** |
| 21. Marine Monitoring Plan | No longer required. Condition 21 was aimed at the dewatering phase which is no longer in the plan. There is some potential discharge to sea when there is a 1:100 year storm but in that instance the excess rain water is stored on site and releasing it over time.  Given this is now going to attenuated surface water rather than treated mine water, there is no justification for this condition. | The scheme involves a proposal to construct a marine discharge which requires control in order to ensure the scheme is acceptable.  **Furthermore, the applicant’s MCZ Assessment states that a Marine Monitoring Plan will be developed, which was the basis on which the planning application was originally considered. The applicant has informed the Council they are in the process of preparing such a plan.** | **No change.** |
| 22. MMO Licence | Does not comply with PPG  Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate.  Paragraph: 021 Reference ID: 21b-021-20190723 of the Planning Policy Guidance | This condition does not duplicate other regulatory regimes. The proposal is for a mine and minehead on the land, with the majority of the coking coal extraction from under the sea (and falling outside the remit of the planning system). This mine is one project in EIA terms, and from a land use perspective part of the development requires planning permission, and part requires an MMO licence, but it remains one development. **The term “licence” is slightly misleading in this context – since it is effectively a planning permission for mining operations beneath the seabed.**  The situation is considered by the Council to be similar to a proposal for a quarry which spans a County boundary, and requires permission from both planning authorities, **rather than a situation (for example) where an Environmental Permit is required to operate a development that has a planning permission.**  Since it is not yet known whether an MMO licence will be granted for the element of the proposal relating to extraction from under the sea, it would be unacceptable to allow land (including ancient woodland and an attractive rural valley) to be disturbed for the construction of an underground conveyor, and a rail loading facility, if this turns out not to be forthcoming.  In the Council’s view this is a Grampian Condition, which is appropriate, justified, and meets all the necessary tests.  **The above is made clear in the reason for the condition.**  **In discussion with the applicant, it was suggested to the Council that an MMO Licence is unlikely to be required. The Council considers that because the proposal involves development under the seabed, and because the proposal will have an environmental impact (including causing subsidence of the seabed – that an MMO Licence is required for the development to proceed. However, the Council has agreed to amend the condition to account for the eventuality that a Licence is not required.**  **The need for the condition is not agreed between the parties however.** | **Proposed amended condition:**  **22. No Construction Works shall take place until a licence (or such consents as are necessary) has been granted by the Marine Management Organisation (MMO) for the proposed extraction of High Vol A Coking Coal from under the seabed, which forms part of this development proposal, but is not permitted under the planning permission hereby approved.**  **Reason: The Construction Phase for the terrestrial elements of this development will result in environmental impacts that include noise and disturbance to nearby houses, adverse visual impacts and impacts upon landscape character, and adverse ecological impacts including the permanent loss of ancient woodland. In the event an MMO licence is not secured for the extraction of High Vol A Coking Coal, some of these impacts cannot be reversed, and in some cases would need continue for a further duration as a result of additional work required to make good the site. The adverse impacts from the Construction Phase are only considered acceptable due to the fact they would be off-set by the benefits resulting from the extraction of the High Vol A Coking Coal, and therefore it is necessary to ensure that the development as a whole has the necessary development consents to proceed, prior to environmental impacts being caused as a result of the Construction Works on the terrestrial elements.** |
| Condition 23-27 | No proposed changes | Agreed | No change |
| Conditions 28-30. Ancient Woodland | Delete. Tunnel jacking to be undertaken removes need for conditions 28 – 30 as no tree removal is required. | The Council has not received **full** proposals in respect of “tunnel jacking” and therefore cannot confirm if this would be acceptable in principle, and appropriate to control through a condition. | No change, but potential to review if a firm proposal is received, and the Council has sufficient time to obtain the necessary specialist ecological and hydrogeological advice to form a view. |
| Condition 31 | No proposed changes | Agreed | No change |
| Condition 32 – Conveyor route | Insert requirement to “provide details of the tunnel jacking to be undertaken in the vicinity of the Ancient Woodland” | The Council has not received **full** proposals in respect of “tunnel jacking” and therefore cannot confirm if this would be acceptable in principle, and therefore appropriate to control through a condition. | No change, but potential to review if a firm proposal is received, and the Council has sufficient time to obtain the necessary specialist ecological and hydrogeological advice to form a view. |
| Condition 33-34 | No proposed change | Agreed | No change |
| Condition 35 – Operational Lighting Scheme | Insert requirement to provide “procedures to ensure lighting equipment is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife.” From OEMP condition 62 | The Council will need to review the potential wider implications of this change.  **The applicant has proposed the insertion of bullet (h) from the OEMP condition 62, which the Council agree.** | **Proposed updated condition:**  **35. No external lighting shall be installed for the operational phase of the development until a scheme and programme for external lighting has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be designed in accordance with Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light and detail:**  **a) Location, type, purpose and intensity of lights;**  **b) Control mechanism (i.e. switch, timer, sensor) and anticipated duty cycles;**  **c) Types of masking or baffle at head;**  **d) Type, height and colour of lighting columns / bollards;**  **e) Number and size of lighting units per column / bollard;**  **f) Light spread diagrams showing lux levels at the site boundary and assessment of the impact of these on adjacent land uses, railway line, habitat and nearby residential properties; and**  **g) Phasing of the implementation of the lighting scheme.**  **h) procedures to ensure lighting equipment is positioned so as to minimise nuisance or disturbance to surrounding properties, public highways or wildlife.**  **All external lighting shall be designed not to illuminate potential bat habitat (e.g. hedgerows and trees). The lighting shall be installed and operated in accordance with the approved scheme and programme.**  **Reason: To ensure that the effects of lighting are minimised in accordance with policies DC16 (Biodiversity) and DC18 (Landscape & Visual Impact) of the Cumbria Minerals and Waste Local Plan and to.** **ensure that the impact of lighting does not have undue visual impact in accordance with policy DC22 of the Cumbria Minerals and Waste Local Plan, or impact unacceptably on landscape character or local amenity.** |
| Condition 36. Cycle storage | Delete, as a duplicate of 61 | The Council disagree – the operational travel plan starts at a later date than the commencement of construction works, and does not include a specific requirement to provide cycle storage.  **A slightly different wording is now proposed by the Council because it is recognised that the requirements and locations for cycle parking are likely to be different at the construction phase and operational phases.** | **Proposed updated condition:**  **36. Prior to the commencement of Construction Works at the Rail Loading Facility, a scheme for cycle storage at the Rail Loading Facility to cover the construction and operational phases of the development shall be submitted to and approved in writing by the Mineral Planning Authority. The cycle storage shall be provided in accordance with the approved scheme.**  **Reason: To aid in the delivery of sustainable transport objectives.** |
| Condition 37 -40 | No proposed change | Agree | No change |
| Condition 41 Site Waste Management Plan (construction) | Insert requirement to comply with Duty of Care Regulations from CEMP condition | The council will need to review the potential wider implications of this change.  **Having discussed further with the applicant, it is agreed that the text can be added from the CEMP condition 6 as bullet (e).** | **Proposed updated condition:**  **41. Prior to the commencement of Construction Works, a Site Waste Management Plan (SWMP) shall be submitted to and approved in writing by the Mineral Planning Authority. The SWMP shall include details of:**  **a) the anticipated nature and volumes of waste that will be generated by construction work;**  **b) the measures to minimise the generation of waste as a result of demolition, building, engineering and landscape works;**  **c) measures to maximise the re-use on-site of such waste;**  **d) measures to be taken to ensure effective segregation at source of other waste arising during the carrying out of such works, including the provision of waste sorting, storage, recovery and recycling facilities as appropriate; and**  **e) compliance with Duty of Care Regulations.**    **The approved SWMP shall be implemented throughout the period of Construction Works on site.**  **Reason: To ensure the construction activities associated with the proposed development do not pose an unacceptable risk of pollution to controlled waters through the inappropriate management of waste on site in accordance with policy DC20 of the Cumbria Minerals and Waste Local Plan.** |
| Condition 42- | No proposed change | Agree | No change |
| Condition 43. Surface Water Quality Management Plan | Insert requirement to monitor marine discharge and water pollution risks | The council **has reviewed** the potential wider implications of this proposed change. **Since condition 21 needs to be retained, and deals with different wider issues than proposed condition 43, both are considered necessary, and it would not be appropriate to combine them.** | No change |
| Condition 44 and 45 | No proposed change | Agree | No change |
| Condition 46 Habitat Management Scheme | Combine with condition 8 to reduce duplication | The Council has received additional ecological survey information on 9 August 2021, and is awaiting comment from an ecological specialist. | Council to review to determine if the development is acceptable in principle, and if so, whether this condition can be amended. |
| Condition 47-48 | No proposed change | Agree | No change |
| Condition 49 – RLF Design Detail | Delete C as a duplication of condition 18 | **The Council has reviewed and agrees that 49 (c) is a duplication of condition 18 and is therefore unnecessary.** | **Proposed amended condition:**  **49. Prior to the commencement of construction of the Rail Loading Facility (RLF), detailed designs of the following components of the RLF development shall be submitted to and approved in writing by the Mineral Planning Authority:**  **a) The new underbridge required beneath the proposed rail siding immediately adjacent to the Network Rail underbridge; and**  **b) The new rail sidings and the interface with the existing network rail embankment.**  **These designs shall include a rationale for the chosen design based upon geotechnical site investigation work which has been undertaken, together with all other design considerations including functional and aesthetic.**  **Once approved these components of development shall be carried out in accordance with the approved designs.**  **Reason: to ensure the ongoing safety of the operational railway.** |
| Condition 50-54 | No proposed change | Agree | No change |
| Condition 55 – Construction noise (temporary operations) | Clarification that it is days that the site is operating when the noise can go up to 70dB.  Current wording is imprecise as weeks include Saturday afternoons (from 1pm) and Sundays when the site will not be under construction. | **The Council has been able to review and it is agreed the words 8 weeks can be amended to say with 56 working days.** | **Proposed amended condition:**  **55.The equivalent continuous noise level attributable to temporary operations relating to the construction of the development in the vicinity of the noise sensitive properties identified in condition 78 shall not exceed 70dB(A) (LAeq 1hour free field) for a total of 56 working days in any 52 week period. During periods of temporary operations, a daily record shall be maintained noting the location and type of operations occurring within 200m of a noise sensitive property. The operator will afford the Mineral Planning Authority access to this record on request.**  ***Reason: In the interests of amenity and in accordance with policy DC3 of the Cumbria Minerals and Waste Local Plan.*** |
| Conditions 56-59 | No proposed change | Agree | No change |
| Condition 60. Footpath through main mine site | Replace “mineral working” with “working of HVA coal” because the current wording is imprecise, change provides clarity in relation to trigger point | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and the condition needs to remain in its current form to secure adequate control. | No change |
| Condition 61 | Replace “mineral working” with “working of HVA coal” because the Current wording is imprecise, change provides clarity in relation to trigger point.  Combine with condition 84 | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and the condition needs to remain in its current form to secure adequate control.  **Following review, the Council agrees this can be combined with condition 84. The use of the term “mineral working” in the condition remains under discussion with the applicant, but the Council have not currently agreed to this proposed change.** | **Proposed amended condition:**  **61. No mineral working shall take place until an operational travel plan (OTP) has been submitted to and approved in writing by the Mineral Planning Authority. The OTP shall include details of:**  **a) The measures to be undertaken to promote the use by staff of public transport, cycling, walking and sharing vehicles to the site;**  **b) The measures to manage shift patterns to avoid cumulative traffic issues; and**  **c) The measures to be employed to monitor the effectiveness of the OTP and reporting to the outcomes of the Mineral Planning Authority.**  **The OTP shall be assessed in accordance with the details submitted every 5 years from the date of approval and reported to the Mineral Planning Authority in writing. Where the assessment identifies shortcomings with the existing travel plan, a revised travel plan shall be prepared and submitted to and approved in writing by the Mineral Planning Authority within three months of the assessment having been carried out.**  **The development shall be carried out in accordance with the approved OTP.**  **Reason: To promote the use of sustainable transport options and the effective management of traffic in accordance with policy DC1 of the Cumbria Minerals and Waste Local Plan, and promote sustainable modes of transport in accordance with paragraph 32 of the National Planning Policy Framework** |
| Condition 62. OEMP | Replace “mineral working” with “working of HVA coal” because the current wording is imprecise, change provides clarity in relation to trigger point  Combined from Condition 84  There is significant amount of duplication between the details outlined in this condition and others throughout the draft list.  If the whole requirement of another condition is addressed in relation to this OEMP condition then that other condition is proposed for deletion  If the OEMP condition only partially addresses a topic then that other condition is retained and the relevant requirements of the OEMP is moved to that condition.  This approach should ensure that each point is only included in one place either as a separate condition or within OEMP, but not in both.  Duplication of 64 and 63, 85, issues with 35 | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and that part of condition needs to remain in its current form to secure adequate control.  In respect of the comments related to the OEMP and duplication with other conditions, the Council is willing to discuss this condition further with a view to potentially reducing duplication, but needs to consider potential impacts of doing this on the enforceability and appropriateness of the full suite of conditions proposed as a whole.  **It is anticipated the drafting of the proposed condition can be finalised following review of the recent ecological information**. | Council to review and is likely to agree some changes to the current wording. |
| Condition 63. Dust Management Plan | Replace “mineral working” with “working of HVA coal” because the Current wording is imprecise, change provides clarity in relation to trigger point | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and the condition needs to remain in its current form to secure adequate control. | No change |
| Condition 64 – Noise management plan | Replace “mineral working” with “working of HVA coal” because the Current wording is imprecise, change provides clarity in relation to trigger point | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and the condition needs to remain in its current form to secure adequate control. | **No change** |
| Condition 65. Mine gas capture | Replace “mineral working” with “working of HVA coal” because the Current wording is imprecise, change provides clarity in relation to trigger point | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and the condition needs to remain in its current form to secure adequate control.  **The applicant has submitted additional detail on this issue in their evidence.** | **The council is proposing amendment of this condition as a result of additional detail submitted in the applicant’s evidence. The proposed condition is set out in the table of additional conditions resulting from the submission of further information/changes to the proposal.**  **If the amended condition is attached as proposed, this condition could then be deleted. If the additional condition is not accepted, condition 65 needs to be retained in this form.** |
| Condition 66-71 | No proposed change | Agree | No change |
| Condition 72. Hazardous Substances Consent | Does not comply with PPG  Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate.  Paragraph: 021 Reference ID: 21b-021-20190723 of the Planning Policy Guidance | The Council has included this condition at the request of the HSE. The Council is unable to provide a planning justification for this condition, but would request that the HSE is notified by the Inquiry that the applicant wishes this to be deleted, and that they provide their own justification for its retention in the event the appeal is granted. | No view |
| Condition 73-78 | No proposed change | Agree | No change |
| Condition 79. Transport | Insert “generated by the extraction of coal” to clarify than office generated waste for example could be removed by road. | The condition is clear that office generated waste could be removed by road, because it is not a “mineral, product[s] or waste extracted from the mine”. The amendment of this condition as proposed could result (for example) in the export of mine construction waste by road, which has not been assessed through the EIA. | No change |
| Condition 80 - 83 | No proposed change | Agree | No change |
| Condition 84 (travel plan) | **Delete in order to combine with condition 61.** | Council to review.  **The Council has reviewed and agrees condition 84 can be deleted and combined with condition 61.** | **Delete condition.** |
| Condition 85-87 | No proposed change | Agree | No change |
| Condition 88 (soils) | Delete because it is a duplication of Conditions 87. DEFRA guidance is consistent with not allowing removal or handling of soils that aren’t dry and in a non-plastic state. | The Council to review is to review the implications of this proposed change. | The Council consider it is highly likely an acceptable form of this condition can be agreed. |
| Condition 89 | No proposed change | Agree | No change |
| Condition 90 No Blasting | Unnecessary as planning permission is not sought for the use of blasting. All coal and overburden removal will be undertaken using electric mining equipment. The proposed development section of the planning statement listed in Condition 2 does not refer to blasting.  Applicant has no objection to committing to no blasting however including this condition fails the test of necessity outlined in Planning Practice Guidance as planning permission is not sought for the use of blasting | This condition is suggested because a significant number of people locally were concerned that there *might* be blasting. While the council accepts blasting will not occur, this condition does serve a purpose (albeit not one that meets the tests of a valid planning condition) in reassuring some local residents with genuinely held concerns about this issue that blasting could not take place.  **Notwithstanding the above, in the event the Inspector wishes to delete this condition, we would respectfully request he satisfy himself that description of the development as proposed in the EIA is sufficient to ensure blasting cannot occur.** | No change |
| Condition 91 Lighting | Duplication of Condition 2 which refers to the same plan and Condition 35 | **Agreed.** | **Delete condition** |
| Condition 92 Surface Water Discharge | Delete. Duplication of Conditions 17, 18, 19.  Detailed surface water plans approved will demonstrate that there will be no surface water discharge into Sandwith Beck or Rottington Beck | The Council considers it is necessary to be explicit in relation to the absolute bar on discharge to Sandwith Beck and Rottington Beck due the historic issues with flooding. Without this control the proposed development would be unacceptable.  **Having discussed this further with the applicant, it is agreed that this condition could be deleted, and combined with conditions 17 and 18, instead of being proposed as a standalone condition.** | **Delete condition and combine as proposed with conditions 17 and 18** |
| Condition 93-100 | No proposed change | Agreed | No change |
| Condition 101 (renewable electricity) | Replace “mineral working” with “working of HVA coal” because the Current wording is imprecise, change provides clarity in relation to trigger point | Mineral working is defined in condition 1, which the applicant is proposing to delete. The definition of “mineral working” is wider than the “working of HVA coal” and the condition needs to remain in its current form to secure adequate control. | No change **in respect of the original scheme, however, an additional condition 102 is proposed below to take account of additional commitments offered in the Inquiry Proofs which the Council expects would be agreed.** |

**Additional conditions (or amendments) resulting from changes to the scheme**

|  |  |  |  |
| --- | --- | --- | --- |
| **Original condition** | **CCC Proposed New condition** | **Reasoning for proposed change** | **WCM response** |
| 65. No mineral working shall take place until a Mine Gas Capture Management scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall:  a) identify the potential for the capture and subsequent management of methane, carbon dioxide, carbon monoxide and hydrogen sulphide or other mine gases which may impact upon the climate or environment during the operational lifetime of the mine;  b) identify the potential for beneficial use of the gases;  c) identify measures to prevent uncontrolled emissions of mine gases to the atmosphere; and  d) include provision for review and updating no less that once every five years, to take account of updates in available technology and changing environmental conditions.  The development shall be carried out and the gases managed and used beneficially in accordance with the approved Mine Gas Capture Management scheme.  *Reason: To ensure that the objectives set out in policy DC13 of the Cumbria Minerals and Waste Local Plan are met, and because it is national planning policy that methane capture should be employed for all coal projects, in order to manage adverse impacts on the climate.* | 65. No mineral working shall take place until a Mine Gas Capture Management scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall:  a) identify the potential for the capture and subsequent management of methane, carbon dioxide, carbon monoxide and hydrogen sulphide or other mine gases which may impact upon the climate or environment during the operational lifetime of the mine;  b) identify the potential for beneficial use of the gases;  c) identify measures to prevent uncontrolled emissions of mine gases to the atmosphere;  **d) include data setting out the amount of methane produced in the mine, the methods by which it is managed, the volumes managed through each method, and the volume of residual methane released to the atmosphere;**  **e) include the date for installation; and**  f) include provision for review and updating no less that once every five years, to take account of updates in available technology and changing environmental conditions.  The development shall be carried out and the gases managed and used beneficially in accordance with the approved Mine Gas Capture Management scheme. **Once the system is installed, the level of methane extracted shall not be lower than 95% of the total methane produced from the mine during any calendar month.**  **Data in accordance with point d) above for the preceding calendar year shall be submitted to the Mineral Planning Authority by the 28 February annually, and approved in writing.**  *Reason: To ensure that the objectives set out in policy DC13 of the Cumbria Minerals and Waste Local Plan are met, and because it is national planning policy that methane capture should be employed for all coal projects, in order to manage adverse impacts on the climate.* | At the time the application was determined, WCM were unable to provide any detail in respect of the methane capture systems proposed, and their overall efficiency. The original planning condition therefore could not set any limit on the total amount of methane emitted, because it was not possible to determine if any limit set was reasonable. The approach taken was to allow reasonable limits to be set through a Mine Gas Capture Management scheme agreed with the Council.  In its evidence for the Public Inquiry, WCM has confirmed the system it proposes to use, and has confirmed this will be effective in removing 95% of the methane produced. Having received this additional information, the Council suggests this should now be adopted as the lower limit for the duration of the life of the mine. However, scope should be left to further improve the level of methane extraction if advances in technology allow this. |  |
|  | **102. No mineral working shall take place until details all the plant, machinery and vehicles to be used during the Operational Phase of the development has been submitted to and approved in writing by the Mineral Planning Authority. Further approval shall be obtained in writing for any proposed change to the approved plant, machinery and vehicles during the operational life of the mine. During the Operational Phase of the mine, only the approved plant, machinery and vehicles shall be used on the site or in the mine**  **Reason: to minimise greenhouse gas emissions from the development.** | In its proofs of evidence, the applicant has changed it proposal to commit to using electric and biofuel powered plant, machinery and vehicles, and updated its modelling of GHG emissions as a result. An additional condition is necessary in order that this commitment can be enforced. |  |

**Schedule of issues and uncertainties resulting from the amendments in respect of whether conditions can be applied (including section 106 issues)**

|  |  |  |  |
| --- | --- | --- | --- |
| Issue for original application | Change | Uncertainties for conditions/section 106 | WCM response |
| **Specification of coal** | | | |
| The definition of the coal contained the Proofs of Evidence (Appendix 3 Mark Kirkbride, and Appendix 2 Stuart Haszeldine) is different to that which the council was provided with when corresponding with UK steel manufacturers and the coal broker, Javelin, in determining the acceptability of the product to serve a UK and European market. The specification for the coal which the applicant supplied the Council is included in Appendix 1. | Inherent moisture increased from 2.5%, to 3.0%  Ash increased from <4% to <5%  Total Sulphur (air dried) increased from <1.4% to <1.5% | It is important the definition of HVA A coal in condition 1 is consistent with the advice taken from the steel industry in respect of the product specification of the coal, or that if changes from the specification originally proposed are made, that the decision is made with a correct understanding of the original specification on which the Council’s October 2020 Committee Report was based.  The Council will not be giving evidence on this issue, but in order to assist the Inquiry wishes to make transparent specification of the coking coal on which the Committee Report was based. |  |
| **Methane capture and location of VAM capture equipment** | | | |
| Methane capture was proposed in the original scheme, but the precise system was intended to approved under a condition. | A Ventilation Air Methane (VAM) capture system is now proposed, together with details of its size, proposed location, and effectiveness. | At the time the Council proposed to grant planning permission it was envisaged (perhaps erroneously) that the methane extraction would take place within the mine itself. The methane capture system now proposed occupies approximately half of the clean coal and rejects store building.  It is the Council’s understanding that all the space within the clean coal and rejects store building was required for its stated purpose in the ES, and therefore the displacement of this storage space could have a significant impact in respect of the ability for the mine to operate under the terms of the proposed planning permission.  The Council notes that the applicant’s Landscape Proof of Evidence paragraph 2.81 states *“I agree with the judgments regarding visual effects on visual receptors which take into account the design of the enclosing structures on the main mine site.”* and *“The absence of the enclosing structure would have resulted in a highly visible array of processing infrastructure and activity.” s*o the feasibility of accommodating the methane capture infrastructure within the clean coal and rejects store building will be important to evaluate.  The Council also seeks confirmation from the applicant that the proposed technology is appropriate to be sited within a building, as all except one of the units given as examples are sited externally.  Further information in respect of this issue is required to confirm how the development is now proposed to operate in order to determine the acceptability of the development in principle, and whether additional/amended conditions may be required. |  |
| **Ecology** | | | |
| The proposal to grant planning permission was based on the ecological survey information submitted under the original planning applications. | Additional ecological surveys have been undertaken for the purposes of the Inquiry which have found additional species, and new mitigation measures (including the need to translocate reptiles) are now proposed. This has resulted in a material change in circumstances from when the application was originally considered in respect of its ecological impacts. | The Council is currently considering the implications of the additional survey information and ecological mitigation proposals, and is seeking specialist advice on the potential requirement for amended/new conditions or updates to the proposed section 106 agreement. |  |
| The original proposals to construct the conveyor beneath the areas of ancient woodland involved, cut and cover trenches, but with a narrower section of piling where the conveyor crosses beneath the Bellhouse Gill. | “Pipe jacking” is now proposed, but details were only provided on the proposed methodology on 25 August, and the Council needs to obtain further specialist technical advice on the amended proposal. | It is not clear, if the conveyor tunnel is proposed to be 2m below the surface, whether this is acceptable, due to potential impacts on tree roots and/or the groundwater regime in immediate locality.  The Council is seeking specialist advice, however, in order to give a robust opinion, it would be particularly helpful be provided with a cross-section of the full underground route of the conveyor from the main mine site to the RLF, so it can be determined how far below ground the conveyor is at the critical “pipe-jacking” points under the ancient woodlands, and St. Bees Road.  On the aerial photo (Figure 9) the shaft excavation area for zone 1 appears to intrude into the woodland area and further information and explanation in relation to this element of the proposal is required for the Council to form a robust opinion in respect of its acceptability.  Further information is required in respect of the issue to determine if the proposal is acceptable in principle, and whether amended/new conditions or updates to the proposed section 106 agreement are required. |  |
| **Hydrogeology/Hydrology** | | | |
| The original proposals to construct the conveyor under the St. Bees Road involved with piling where the conveyor goes beneath the Bellhouse Gill. | “Pipe jacking” is now proposed, but details were only provided on the proposed methodology on 25 August, and the Council needs to obtain further specialist technical advice on the amended proposal. | Further information is required in respect of possible impacts from the use of groundwater pumps during construction to (particularly in respect of ecology and hydrogeology) to determine if the proposal is acceptable in principle, and whether amended/new conditions or updates to the proposed section 106 agreement are required. |  |
| **Traffic and Transport** | | | |
| The original proposals to construct the conveyor under the St Bees Road involves a trench construction and closure of the road whilst the works were taking place. | “Pipe jacking” is now proposed, but details were only provided on the proposed methodology on 25 August, and the Council needs to obtain further specialist technical advice on the amended proposal. | The methodology suggests it is intended to tunnel potentially as high as 2m beneath the St Bees Road whilst it remains open to traffic. However, it is not clear from the information provided how this might potentially impact on the safety of road users, and/or the integrity of the road and any potential service or drainage pipes installed beneath.  Further information on this issue is required to determine if the proposal is acceptable, and whether amended/new conditions or updates to the proposed section 106 agreement are required |  |
| **Pipe Jacking methodology - Engineering/Operational Hours** | | | |
|  |  | No information is included with specific reference to site geology and ground conditions to justify why pipe jacking is a preferred and suitable technique for this project, and the Council would need this information (or an explanation for its absence) to determine if a condition is necessary or appropriate to regulate this issue.  No information is provided on pump noise. It is anticipated this is likely covered within the existing proposed conditions, but confirmation of this from the applicant would be helpful.  The proposed hours of working for the pipe jacking works are 0700 until 1900, which is outside the construction hours set out in condition 53 (Monday to Friday 0800 hours to 1800 hours, Saturday 0800 hours to 1300 hours, Sunday & Bank Holiday No working). The Council anticipates that this is likely to be an error, but if extended working hours are proposed this would require further consideration in respect of its acceptability in principle. |  |
| **GHG and Climate Change** | | | |
|  | A statement is included in the GHG modelling that an additional 20.5 Ha (21.5?) of grassland and 1.5 Ha of woodland will be provided by the development, which will off-set some of the GHG emissions from the mine. | The Council would like to understand what this mitigation relates to, in order to confirm it is in agreement that the mitigation is all additional to the current baseline situation. |  |
|  | New information has been provided on the proposed methane capture system. | The proposed methane capture system is stated to be net 90% effective, due to CO2 produced in the process. The modelling in respect of climate change appears to assume a 95% figure in respect of methane capture, and the Council is not clear which baseline has been used for methane recovery.  Further information is required for the Council to determine whether amendments to the wording of proposed condition 65 or the section 106 are required. |  |
| The original section 106 proposed a clause that the applicant prepare a Proposed GHG Report which included   1. an assessment of the greenhouse gas emissions and the impacts on the climate and environment of the construction, operation and decommissioning of the Development; 2. so far as reasonably practicable carried out in compliance with up to date legislation government policy and accepted national guidance and standards and shall be in accordance with the methodology followed for the purposes of the AECOM Report (which states CO2 emissions which are below 1% of total UK emissions are not environmentally significant)   (c) any GHG Mitigation (if any); and  (d) details of the monitoring and reporting to the Council | The applicant has subsequently negotiated with the Council and agreed they would go further than proposed in the original draft section 106, and use *“best endeavours”* to mitigate GHG emissions or secure Carbon Offsets to reach a net zero limit, provided such measures are technically possible and within their control. | The section 106 has been amended accordingly. |  |
| **Heritage** | | | |
|  | The proof of Mark Kirkbride makes a commitment to “the refurbishment and future operation of a former local mining heritage museum. | This is not a commitment contained in the planning application and ES, or required through the current proposed conditions or section 106 agreement. However, the council is happy to amend the section 106 in accordance with the stated intention of the applicant to undertake this. |  |

**Appendix 1 – Coal Specification provided to the Council on which the 20 October Committee Report was based**