



Ministry of Housing,
Communities &
Local Government

Our ref: APP/P2935/V/16/3158266

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8 September 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY HJ BANKS & COMPANY LTD
LAND AT HIGHTHORN, WIDDRINGTON, NORTHUMBERLAND NE61 5EE
APPLICATION REF: 15/03410/CCMEIA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Woolcock BNatRes(Hons) MURP DipLaw MRTPI, who held a public local inquiry starting on 31 May 2017 and which closed in writing on 25 August 2017 into your client's application for planning permission for a mineral extraction and auger mining scheme, at Land at Highthorn, Widdrington, Northumberland, NE61 5EE in accordance with application reference 15/03410/CCMEIA dated 12 October 2015.
2. On 8 September 2016, the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.
3. The Secretary of State initially issued his decision in respect of the above application by way of his letter dated 22 March 2018. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 23 November 2018. The application has therefore been redetermined by the Secretary of State. In redetermining the appeal, the Secretary of State has taken into account all of the evidence submitted prior to his earlier determination of the appeal, including the Inspector's report, and all other material representations received following the close of the Inquiry, as well as the evidence submitted in response to the exercises set out in paragraphs 10-16 below.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the application be approved, and planning permission granted, subject to conditions.

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5. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

6. In reaching this position, the Secretary of State has considered the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1-3 and IRC2, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal. An appropriate assessment has been carried out by the Secretary of State, and this is dealt with further at paragraphs 69-70 below.

Procedural matters

7. The proposed development was described at the inquiry as "a surface mine (to include augur mining) for the extraction of coal, sandstone and fireclay, with restoration to agricultural and ecological uses".
8. The applicant stated in their Rule 19 response of 4 January 2019, that, in the light of the reduced timescale for the proposed mine to operate, it is more likely that, if approved, extraction would be 2.765 million tonnes of coal. The applicant requested that the application be re-determined on the basis of the lower output of coal.
9. The Secretary of State is satisfied that no interests have been prejudiced by these matters and has dealt with the application on this basis.

Matters arising since the close of the inquiry

10. Following the quashing of his decision letter, on 29 November 2018 the Secretary of State issued a letter under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the application. These matters were: any material change in circumstances, fact or policy, including the publication of the National Planning Policy Framework on 24 July 2018, that may have arisen since his decision of 23 March was issued and which the parties consider to be material to the Secretary of State's further consideration of this planning application. Alternatively, interested parties could ask for the inquiry to be reopened.
11. On 7 January 2019, the Secretary of State circulated the responses he had received to his letter of 29 November 2018. On 17 January 2019, he circulated the further representations he had received and informed the parties that he was of the view that there were no substantive issues that required the inquiry to be re-opened. The responses to the Secretary of State's correspondence are listed at Annex A below.
12. On 6 March 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the shadow appropriate assessment submitted on behalf of HJ Banks & Co on 28 February 2019 and to comment on the judgment of the Court of Justice of the European Union (CJEU) in Case C-323/17 People Over Wind and

Sweetman v Coillte Teoranta on the correct application of the Habitats Directive 92/43/EEC. Paragraphs 69-70 provide further information on this matter.

13. On 11 April 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on a proposed condition which would replace condition 6 as set out in the Inspector's report and a proposed amendment to condition 8. He subsequently wrote on 30 April 2019 to the main parties to afford them an opportunity to seek further views on three alternative draft conditions (two of which were as proposed by parties).
14. Also on 11 April 2019, the Secretary of State wrote to the main parties, both in this case and in his reconsideration whether to exercise his power to propose to make an order revoking the planning permission for the surface mining of coal on the site, known as Bradley, near Leadgate, Consett, County Durham. He explained he considered both cases raise issues in respect of whether greenhouse gas emissions resulting from the burning of coal extracted at the developments are a substitute for the greenhouse emissions that might in any event otherwise arise from burning imported coal; and whether there is a national need for coal and, if so, the extent of that need. Under the exceptional circumstances of the cases the Secretary of State provided the main parties of both cases with relevant extracts of the representations relating to the two issues identified above that had been made to date, and afforded them an opportunity to comment on them.
15. The Secretary of State also explained that the decisions on these two cases would be made in the context of the current Government policy on the generation of electricity from coal, and therefore any comments were invited to have regard to this including the Secretary of State for Climate Change's Written Ministerial Statement of 18 November 2015; the Government response to that consultation, 'Implementing the End of Unabated Coal by 2025', issued in January 2018; the Written Ministerial Statement 'The Clean Growth Strategy' of 12 October 2017; the Government's Clean Growth Strategy and the current National Planning Policy Framework. Additionally, parties were invited to note the Government published information provided by the following links:

Section 2 of BEIS Energy Trends March 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789352/Coal_March_2019.pdf

BEIS Digest of United Kingdom Energy Statistics 2018 July 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736148/DUKES_2018.pdf
16. The Secretary of State also explained his intention, at that time, to issue his fresh decision on Bradley at the same time as Highthorn. However, the Secretary of State has now decided to issue the Highthorn decision separately.
17. A list of representations which were received in response to the Secretary of State's letters above is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.

Policy and statutory considerations

18. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
19. In this case the development plan consists of the saved policies of the Northumberland Minerals Local Plan 2000 (MLP) and the saved policies of the Castle Morpeth Local Plan 2003 (CMLP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR18-21.
20. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Secretary of State for Energy and Climate Change's Written Ministerial Statement of 18 November 2015, the Government's response to that consultation, 'Implementing the End of Unabated Coal by 2025', issued in January 2018; the Written Ministerial Statement 'The Clean Growth Strategy' of 12 October 2017; and the Government's Clean Growth Strategy. In addition, the Secretary of State has considered Section 2 of BEIS Energy Trends March 2019; BEIS Digest of United Kingdom Energy Statistics 2018 July 2018 (see paragraph 13 of this letter). The Secretary of State notes that both the BEIS documents have since been updated.
21. The revised National Planning Policy Framework was published in July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.
22. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

23. The emerging plan comprises the draft Northumberland Local Plan. This is now undergoing the process of examination which has been delayed. The Secretary of State has noted that in their representation of 4 January 2019, the applicant referred to the publishing of the Regulation 18 draft plan and that they consider the proposal is in accordance with the policy MIN 7 (Coal). The Secretary of State has also noted that this policy is now MIN 9 in the examination draft Local Plan and the wording of the policy in the draft plan now reflects the wording of paragraph 211 of the Framework, notably carrying through the national policy presumption against coal extraction contained therein.
24. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State considers that the draft Northumberland Local Plan is at a relatively early stage in the examination process and that it may still be subject to change and considers, therefore, that any conflict with the emerging local plan should only carry very limited weight.

Main issues

Character and appearance

Landscape character

25. The Secretary of State has had careful regard to the Inspector's analysis at IRC15-19 and agrees, for the reasons given, that the proposal would have an adverse impact on landscape character of substantial significance.

Visual impact

26. For the reasons set out by the Inspector at IRC20-C30 the Secretary of State agrees that overall the proposal would have an adverse visual effect of moderate significance.

Cumulative effects

27. The Secretary of State has given careful consideration to the Inspector's analysis at IRC31-C37 and agrees, for the reasons given, that exceptional circumstances exist to justify an appropriate condition to prevent the concurrent sand extraction at Hemscott Hill Farm with the operation of the Highborn Mine. For the reasons given at IRC35-C36 the Secretary of State also agrees with the Inspector that the proposed second section 106 obligation relating to Hemscott Sand Extraction is not CIL compliant. In line with Regulation 122 of the CIL Regulations 2010, the Secretary of State considers that, as this obligation is not Regulation-compliant, it should carry no weight in the determination of this application.

28. For the reasons given at IRC39 the Secretary of State agrees that no cumulative impact would arise in respect of the Ferneybeds site. He further agrees that any future extension of the Highborn Mine would require a planning application, which would be determined on its merits having regard to prevailing policy.

29. The Secretary of State agrees, for the reasons given at IRC40, that there would be some adverse cumulative impact over time with previous surface mining in the locality. He further agrees that this would not be so substantial as to result in an unacceptable impact on the community and environment, but would add to the overall harm to the character and appearance of the area.

Conclusions on character and appearance

30. For the reasons set out above, the Secretary of State concludes, in agreement with the Inspector at IRC41, that the proposal would have an adverse effect on the character and appearance of the area of moderate/substantial significance and agrees with the Inspector at IRC123 that overall, this should be afforded considerable weight.

31. For the reasons given at IRC131-C132 the Secretary of State also agrees with the Inspector that the proposal would conflict with MLP Policy C3 which provides that unless there are exceptional circumstances where it can be demonstrated that the special landscape, heritage and nature conservation interests of the area would not be adversely affected, planning permission will not be granted for opencast coal sites in three areas, as defined by the proposals map. The proposal lies within one of the areas (IR20). He also agrees that it would conflict with CMLP Policy C3 (IRC133) which states that the Council has identified areas of high landscape value (AHLV) and will not permit development which will have a detrimental effect on such areas. The proposed

operational area of the surface mine would affect five fields in the AHLV comprising the coastal area of Druridge Bay (IR20). The Secretary of State further agrees that it would be at odds with MLP Policy E3 which requires an assessment of potential impact on the landscape (IR18) and with MLP Policy E20 which concerns the cumulative impact on local communities and the environment (IRC134 and IR18).

Local Amenity and Living Conditions

Residential outlook

32. The Secretary of State has considered the Inspector's reasoning at IRC42-C43 and agrees, for the reasons given, that the proposal would not, by reason of deprivation of outlook, unacceptably affect local amenities and the use of land and buildings which ought to be protected in the public interest.

Noise and blasting

33. For the reasons given at IRC44-C49, the Secretary of State agrees that, subject to the agreed noise controls, the proposal would not have a significant adverse impact on health and quality of life for the purposes of the Noise Policy Statement for England (NPSE). However, he further agrees that noise from the operational mine would at times be intrusive and would, to some extent, detract from the enjoyment of the area. He also agrees that it would be a relevant factor contributing to the cumulative noise impact over time (IRC49).

Dust and Air Quality

34. The Secretary of State has given careful consideration to the Inspector's assessment at IRC50-C54 and agrees that, subject to the proposals in the draft Environmental Management Plan, any such adverse impact could be readily addressed such that, at worst, any resultant harm would be of short duration. The Secretary of State considers that the likely effects of the proposal on air quality would not be a consideration that would weigh significantly against the proposal.

Light pollution

35. For the reasons given at IRC55, the Inspector agrees that sky glow would harm the rural character and isolated feel of the coastal area, especially on dark winter evenings.

Conclusions on amenity considerations

36. For the reasons set out above, the Secretary of State concludes, in agreement with the Inspector (IRC56), that the proposal would have an adverse impact of moderate significance in the short term, a minor adverse impact on local amenity in the medium term, but that this would be negligible over the long term. He further agrees that the proposal would have an adverse impact on the area and living conditions of the residents of minor significance. The Secretary of State agrees with the Inspector at IRC123 that the harm should be afforded slight weight against the proposal.

37. The Secretary of State agrees with the Inspector at IRC134, that the proposal would be at odds with MLP Policy E19 which requires that potential disturbance to local communities is required to be taken into account (IR18).

Biodiversity

38. The Secretary of State has had careful regard to the Inspector's analysis of biodiversity impacts at IRC57-C64, including the Inspector's consideration of the section 39 agreements pursuant to the Wildlife and Countryside Act 1981 (IRC62) (also included as the seventh obligation) For the reasons given, the Secretary of State agrees that in the short term the proposal would have an adverse effect of minor significance, a benefit of minor significance in the medium term, and a benefit of substantial significance over the long term. As such he concludes that the overall impact would be a benefit of moderate significance, in agreement with the Inspector at IRC64. The Secretary of State agrees with the Inspector at IRC123 that the benefit should be afforded moderate weight in favour of the proposal.

Heritage

39. The Secretary of State agrees with the Inspector at IRC65-C66 that the Low Chibburn Mediaeval Preceptory retains a significant presence in this flat landscape. He also agrees with the Inspector that OBM1, at 25 m high, would be a substantial feature in the low lying landscape to the south of the Preceptory. It would, to some degree, impinge upon the wide setting of this heritage asset, and adversely impact upon its setting. This would harm the historic significance of the SAM. The Secretary of State also agrees with the Inspector that, even with completion of the proposed enhancement works to the SAM, OBM1 would remain as an intrusive feature within the setting of the Preceptory. He further agrees with the Inspector, for the reasons given at IRC66-C67, that the sixth obligation in respect of the Chibburn Preceptory improvements would not comply with the CIL regulations. In line with Regulation 122 of the CIL Regulations 2010, the Secretary of State considers that, as this obligation is not Regulation compliant it should carry no weight in the determination of this application.

40. The Secretary of State agrees, for the reasons given at IRC68-C69, that the proposal would not adversely impact upon the significance of heritage assets in Widdrington.

41. For the reasons set out at IRC70, the Secretary of State agrees that the proposed development would not have any material effect on the setting of Cresswell Tower House. He further agrees, for the reasons given at IRC71, that the proposal would not in any way diminish the significance of Druridge Farmhouse and associated agricultural buildings. For the reasons given at IR72 the Secretary of State agrees with the Inspector that the proposal would not unduly affect the significance or setting of Hemscott Hill Farmhouse and associated heritage assets, but given the minimal negative effects identified by the applicant, the Secretary of State concludes that the proposal would give rise to 'less than substantial' harm to its setting, but at the bottom end of that scale. He further agrees, for the reasons set out at IRC73, that the proposed development would not have a significant adverse impact on any listed buildings in Cresswell or Ellington.

42. The Secretary of State agrees with the Inspector at IRC74 that the loss of undesignated heritage assets dating from World War II could be adequately mitigated by a programme of historic building recording and he considers that this would be consistent with paragraph 199 of the Framework. He further agrees, for the reasons given at IRC75, that the development would not materially impact on the setting or significance of the pillbox. However, he agrees, for the reasons given at IRC76, that the rig and furrow has a greater significance locally, and as such the loss of some areas merits greater weight than would otherwise have been the case.

43. Overall, the Secretary of State concludes, in agreement with the Inspector at IRC78-C79, that there would be negligible/minor adverse impact to designated heritage assets,

amounting to 'less than substantial' harm to their significance. In addition, he finds minor harm to non-designated heritage assets. Nevertheless, paragraphs 193 and 194 of the Framework state that great weight should be given to the conservation of listed buildings and paragraph 196 states that 'less than substantial' harm should be weighed against the public benefits. The Secretary of State has carried out this weighing exercise in paragraph 79 of this letter.

Hydrology

44. For the reasons given by the Inspector at IRC80-C85, the Secretary of State agrees while in the short term the changes to Hemscott Burn and local drainage could result in an adverse impact of minor significance, in the medium and longer term, and overall, the effect on the local hydrology would be negligible. The Secretary of State agrees with the Inspector at IRC123 that any harm should be afforded negligible weight.

Highway Safety

45. The Secretary of State agrees, for the reasons given by the Inspector at IRC86-C88, that the proposed development would not result in any severe residual cumulative highway impacts for the purposes of the Framework. The Secretary of State does not see any reason to change this consideration even with amendments to the Framework since the Inquiry. He further agrees that highway considerations could be addressed by the imposition of appropriate planning conditions. He concludes that in the short term the proposal could have a minor adverse impact on some road users, but overall the effect would be of negligible significance. The Secretary of State agrees with the Inspector at IRC123 that any harm should be afforded negligible weight.

Tourism and recreation

46. The Secretary of State has given careful consideration to the Inspector's analysis at IRC89-C95 and agrees with his conclusions for the reasons given. He agrees, for the reasons set out at IRC92-C93, that the third s106 obligation, to establish a Discover Druridge Partnership, along with a contribution of £400,000 to a charitable fund, would not be compliant with the CIL regulations. In line with Regulation 122 of the CIL Regulations 2010, the Secretary of State considers that, as this obligation is not Regulation-compliant, it should carry no weight in the determination of this application. The Secretary of State agrees with the Inspector that the fifth obligation, to establish and procure permissive bridleways, would be CIL compliant and that it should be given slight weight (IRC94). He concludes, for the reasons given by the Inspector at IRC95, that the proposal would have an adverse impact on tourism and recreation of minor significance. The Secretary of State agrees with the Inspector at IRC95 and IRC123 that the adverse impact should be afforded slight weight against the proposal.

Agriculture

47. For the reasons given at IRC96-C98, the Secretary of State agrees that, subject to appropriate conditions, the adverse effects on soil quality or agricultural productivity over the long term would not weigh heavily against the proposal. However, he also agrees that the adverse impact would be of substantial significance in the short term, reducing to minor significance in the medium term. Overall, he concludes, in agreement with the Inspector, that the proposal would have an adverse effect on agriculture of minor significance and this should be given slight weight (IRC98 and IRC123).

Demand/need for and supply of coal, fireclay and sandstone

48. The Secretary of State has had careful regard to the Inspector's analysis at IRC99-C109. The Secretary of State agrees, for the reasons given at IRC100, that there is no proper basis for giving much weight to the benefits of fireclay or sandstone extraction, and thus that in terms of mineral resources it is coal that is the primary consideration. The application considered at the public inquiry in 2017 proposes extraction of coal at Highthorn for power generation purposes until unabated coal is phased out for this purpose as a matter of Government policy by 2025. As noted in paragraph 8 above the applicant revised the proposal in 2019 such that if approved, the Highthorn site would allow the applicant to supply 2.765 million tonnes of coal over a period of 6 years (with coal extraction up to 2025) to UK customers.

49. The Inspector's conclusions on the future demand for coal and the prospects for Highthorn meeting that demand were, *inter alia*, that:

- The demand for coal for electricity generation has fallen significantly since 2012, but there is evidence that it continues to provide an important contribution to the energy mix.
- It is likely that predicted demand for coal in the period from 2018 – 2025 would exceed the supply from other permitted coal sites in the UK. Further, there is no evidence to indicate that the shortfall in supply would be made good by imports alone.
- There would be economic advantage for the UK in using indigenous coal and there would possibly be savings in terms of transport emissions.
- There is no evidence that Highthorn coal would create a surplus in UK domestic requirements.
- The evidence points to a likely need for the amount of coal for electricity generation which would be produced by the Highthorn operation up to 2025, and therefore a window currently exists for its use.
- There is no convincing evidence that substantial amounts of Highthorn coal would be likely to be used for purposes other than coal-fired power generation in the timeframe envisaged in the indicative working plan (IRC102).

50. As part of the Rule 19 process in November 2018 following the quashing of the Secretary of State's previous decision, and a reference back exercise in April 2019, the parties were asked to comment on whether there is a national need for coal and, if so, the extent of that need and any implications of changes to the Framework, in particular to paragraphs 144 and 149 of the 2012 Framework. A considerable volume of material has been received on this and other issues, as well as unsolicited representations. These have concentrated on arguments about the actual amount of coal needed for power generation in the period up to 2025 by which time the Government intends that electricity generation from coal will cease, whether the level of existing stockpiles of coal are already sufficient for this purpose, and whether imported coal is cheaper than coal mined at Highthorn. With reference to paragraph 205 of the Framework, in summary, the applicant considered that, while footnote 65 to paragraph 205 removed the automatic great weight to the benefits of coal extraction this did not change the weighting and balancing exercise carried out by the Inspector. Those opposing the proposal considered

the Framework amendment made a considerable difference and represented a significant shift in national policy on coal.

51. The Secretary of State has noted that the application was considered by the Inspector in the context of the 2012 Framework, and particularly paragraphs 144 and 149. Paragraph 144 is carried forward to paragraph 205 of the current version, but now with a footnote which states that it does not apply in the case of coal extraction which is now subject to paragraph 211 alone. The 'great weight' which previously applied to the benefits of mineral extraction therefore no longer automatically applies and the Secretary of State has considered the need for coal on the revised Framework basis.
52. The Secretary of State notes that the demand for coal for electricity generation purposes has continued to decline since the previous decision was quashed, as evidenced by the Digest of United Kingdom Energy Statistics 2019 and 2020 published by BEIS. This trend is recognized by the applicant. However, the applicant, in their representation of 29 April 2019, also recognizes it is not currently possible to detail with accuracy what proportion the different sectors would be served by coal produced from the Highthorn surface mine.
53. The representation from the applicant of 11 April 2019, states that "since 2015, reflecting the UK Government's stated aim of a stable and ordered transition away from coal use in the electricity generation the Company has diversified its customer base over the past five years, to align with the enduring need for coal in the industrial and domestic sectors in the UK beyond 2025." The letter goes on to state that: "At the time of writing, H J Banks has the majority of the anticipated production from its existing sites secured under agreement for sale, with 90% of currently contracted sales going to non-power station customers." This suggests that the applicant is selling around 10% of its coal output for use in electricity generation.
54. This has been reiterated in more recent letters dated 10 March and 6 April 2020 which state that the applicant is selling less than 10% of its coal output for use in electricity generation and as a consequence "now sees that the application has very little to do with the market for coal in the electricity sector". The Secretary of State therefore concludes that the applicant's case is that the primary use of coal to be won from the Highthorn mine would no longer be for electricity generation. While he considers that there could still be some need for this purpose, given the representations made by the applicant, he has proceeded on the basis that any assessment of the domestic need element of the application now needs to rest instead on the future market for coal production from Highthorn for industrial uses.
55. The Secretary of State agrees that Highthorn coal would be suitable for some industrial purposes, but notes that the 'steam' coal produced at Highthorn would not be appropriate for metallurgical uses. However, because the Inspector approached this application on the basis that Highthorn coal would be used for electricity generation and not for industrial use, he did not make any findings of fact on whether there was a future need for coal from Highthorn for industrial use and if so, to what extent. The Secretary of State has, therefore, carefully considered the information provided from the applicant and other parties as to the likely need for coal for industrial use in the future.
56. The Secretary of State has noted that the applicant has referred to inquiries received from, and relationships it has built with industry along with letters of support from industry. However the Secretary of State considers that this evidence is very general in nature and also notes that the applicant has not entered into any contracts for the sale of Highthorn

coal. The Secretary of State has also noted that the applicant contends that there is likely to be a strong continuing domestic need for coal for industrial purposes which Highthorn could satisfy. However, he considers that there is little objective evidence to demonstrate that previous use of coal for industrial uses is a reliable guide to future need. For example, he considers that some of the evidence provided by the applicant indicates that the annual demand for coal for industrial uses was considerably lower in 2017 and 2018 than in the period 2005 to 2016. As such, he concludes that there is only limited evidence before him of the on-going need for coal from Highthorn for these purposes. He further considers that there is little evidence to enable him to conclude that demand for coal for industrial uses will remain at current levels, and therefore gives only limited weight to the evidence on contracts relating to existing sites.

57. The Inspector noted that “if the Secretary of State were to conclude, on the basis of the available evidence, that no such ‘window’ exists for coal-fired generation, then the need for, and benefits of, Highthorn coal would be much diminished. The planning balance then would be fundamentally altered, and in those circumstances, I consider that there would be a strong case for refusing the planning application” (IRC165).
58. The Secretary of State has considered the applicant’s representation that the application now has very little to do with the market for coal in the electricity sector (only about 10 % of coal from Highthorn being predicted to be for electricity generation, according to the Applicant’s case as stated in its email of 30th April 2019) and concludes that there is effectively little or no such window for the use of Highthorn coal for electricity generation. However, given his conclusion at paragraph 54 above, that there is some need for coal for electricity generation, he considers that this is a benefit which attracts slight weight in favour of the proposal.
59. The Secretary of State has also concluded, having considered all the evidence provided to him, that there is limited objective evidence that the demand for coal for industrial purposes will remain at current levels beyond the very short term and that there is limited evidence to support the need for coal from Highthorn for industrial uses. He considers that overall, the weight attaching to need, taking into account both electricity generation and industrial uses, should be no more than moderate.

Employment and local/national economy

60. For the reasons given at IRC110, the Secretary of State agrees that the proposal would provide a significant level of employment in the area, albeit temporarily for the duration of the operation. He further agrees that these jobs would make a significant contribution to the local economy, both directly and due to a multiplier effect. He further agrees (IRC110) that there is no convincing evidence that this gain in local employment and economic activity would be outweighed by likely job losses or a reduction in the tourist economy as a result of the proposed surface mine. The Secretary of State considers that the provision of employment, in an area of need, is a benefit and would further have a positive impact on the local economy.
61. However, the Framework no longer gives great weight to the benefits of coal extraction (see footnote to para 205 of the Framework), including to the economy, and the Secretary of State has concluded in paragraph 58 on the basis of the evidence before him that the need for coal should be given no more than moderate weight in the planning balance. The national economic benefits of this scheme are therefore significantly diminished; however the Secretary of State recognises that local economic benefits

remain. Overall, he therefore considers, unlike the Inspector, that the economic benefits of the scheme should be afforded moderate weight.

Greenhouse Gases and climate change

62. The Inspector's conclusions on this issue are set out at IRC112– C115. In summary

- The extraction, processing and combustion of up to 3MT of coal from Highthorn would result in significant GHG emissions including releasing some 7 Mt CO₂ eq into the atmosphere.
- There would be extensive use of diesel plant and equipment to extract the coal. This would represent a substantial addition of carbon emissions to those generated from burning the coal.
- It is impossible to calculate the likely emissions overall from imported coal, but if it was transported some distance by ship that would be likely to result in overall higher carbon emissions than using indigenous coal.
- There is uncertainty as to what the nature of imported coal as a substitute for Highthorn coal replacement would be and what GHG emissions would result.
- If permission was granted, GHG emissions from the proposed scheme would adversely impact on measure to limit climate change. The impact would be temporally variable, but overall the adverse effect on GHG emissions and climate change would be of substantial significance.

63. The Secretary of State has given careful consideration to the Inspector's analysis set out above. For the avoidance of doubt, the Secretary of State notes the applicant's change to the estimated volume of extracted coal (from 3mt to 2.75mt) since the inquiry, but considers that the volume change is sufficiently small that it, of itself, makes no significant material impact to the Inspector's overall findings. For the reasons given the Secretary of State agrees that GHG emissions from the proposed development would adversely impact upon measures to limit climate change. However, the analysis of carbon effects by the Inspector was based on the prospective use of Highthorn coal for electricity generation rather than for industrial purposes. In order to obtain further information about the extent of such impact, parties were asked as part of the reference back exercise in April 2019 whether they considered that GHG emissions resulting from the burning of coal extracted at Highthorn would in effect substitute for the GHG emissions that would in any event arise from burning imported coal.

64. The applicant's position is that GHG arising solely from the use of coal – whether imported or indigenous – will be the same, as the source of the coal does not alter how it is used. But there would be possible savings in transport emissions from indigenous coal. The contrary view, which has been expressed by parties opposing the proposal, is that there is no evidence that indigenous coal has a smaller carbon footprint than imported coal and that any GHG benefit of increasing indigenous coal to replace imports would be offset either by the UK exceeding government projections of coal use in coal fired power stations or by exporting to other countries. In addition, if there is a stockpile of coal sufficient to meet need, the extraction and combustion of additional coal will lead to unnecessary GHG emissions.

65. The Secretary of State agrees with the Inspector that imported coal transported some distance by ship would appear likely to result in overall higher carbon emissions than using indigenous coal. But he considers that the representations received from the parties do not provide sufficient evidence to reach a robust conclusion on the comparative GHG emissions of using Highthorn coal as against imported coal. Furthermore, nor does the evidence clarify whether GHG emissions would be different if Highthorn coal is used for industrial purposes rather than electricity generation.
66. In terms of impacts of GHG emissions, the Secretary of State is guided particularly by paragraph 148 of the Framework and the duty in section 1 of the Climate Change Act 2008 to reach the specified target by 2050. Since the parties' written representations were received, the Climate Change Act has been modified to amend a target of 80% reduction from 1990 levels to net zero by 2050. The Government affords combating climate change particular importance.
67. However, the Secretary of State considers that it is not possible, on the evidence before him, to reach a clear and robust conclusion on the respective likely GHG emissions of imported or Highthorn coal or which would produce greater or lesser emissions in either electricity production or industrial use. For these reasons, in the changed circumstances of this particular case, he disagrees with the Inspector, and concludes that the impact on climate change is neutral in the planning balance.

National Planning Practice Guidance

68. The Secretary of State agrees, for the reasons given by the Inspector at IRC146, that allowing the proposal would not have a significant impact on future investment in renewable and low carbon infrastructure and as such concludes that the development would be consistent with his Department's guidance on renewable and low carbon energy.

Appropriate Assessment

69. Following the reference back to parties' exercise described in paragraph 10 of this letter, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017, the Secretary of State has carried out a screening assessment. He has concluded on the basis of this screening that an appropriate assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Annex B. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.
70. As the Secretary of State has concluded that the proposed development would not adversely affect the integrity of any European site, he is satisfied that there are no further issues in relation to this matter that need to be taken into account.

Planning conditions

71. The Secretary of State has considered the Inspector's analysis at IRC153-C158, the recommended conditions set out at the end of the IR and the reasons for them, and national policy in paragraph 55 of the Framework and the relevant Guidance. He has also given consideration to the reference back exercise referred to in paragraph 13 of this

letter and the proposed amendments to Condition 6 and Condition 8. He is satisfied that the conditions recommended by the Inspector, with amendments as proposed, comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

Planning obligations

72. For the reasons given at IRC116, the Secretary of State agrees with the Inspector that the first obligation in the s106 agreement, to create a Highbury Surface Mine Site Liaison Committee, would be CIL compliant. He also agrees with the Inspector that it should be given little, if any weight, given that it would be necessary as a direct consequence of the development, and would not result in any other advantage or benefit for the local community. He further agrees that the fourth obligation, a Skills Fund, would not be CIL compliant, for the reasons set out at IRC117. In line with Regulation 122 of the CIL Regulations 2010, the Secretary of State considers that, as this obligation is not Regulation compliant, it should carry no weight in the determination of this application. For the sake of clarity, the Secretary of State agrees with the Inspector that the seventh obligation (the section 39 agreements – Table 2 IRC122) are not subject to CIL Regulations and has taken these into consideration in paragraph 38 of this letter. For the reasons set out at IRC118-C120, the Secretary of State agrees that the eighth obligation, concerning the approval of a restoration security scheme and establishment of the restoration security is compliant with the CIL Regulations, but, like the Inspector, he does not afford it any weight as a benefit of the scheme because it would be an essential requirement.

73. Having had regard to the Inspector's analysis at IRC159, the planning obligation dated 15 June 2017, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IRC159 that the obligation, except where noted above, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for refusing planning permission.

Planning balance and overall conclusion

74. For the reasons given above, the Secretary of State considers that the application is not in accordance with MLP Policy C3, Policy C3 of the CMLP and MLP policies EP3, EP19 and EP20 of the development plan (IRC131-C134), and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

75. For the reasons given at IRC134 and IRC137, the Secretary of State agrees with the Inspector that policies MLP C3 and CMLP C3 have a high degree of inconsistency with the Framework applicable at the time of the inquiry and are out of date. He considers that this is still the case under the revised Framework. He has gone on to consider whether the presumption in favour of sustainable development in paragraph 11 of the Framework is engaged, and notes that the tests relating to the presumption have changed since the Inspector's report was written.

76. Taking into account his conclusions on policies MLP C3 and CMLP C3, the Secretary of State considers that the policies which are most important for determining the application

are out of date, and as such paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

77. Dealing first with heritage assets, he considers that paragraph 196 of the Framework is such a protective policy for the purposes of paragraph 11(d)i of the Framework.
78. As such, the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Low Chibburn Mediaeval Preceptory and Hemscott Hill Farmhouse is outweighed by the public benefits of the proposal.
79. Weighing in favour of the proposal, the Secretary of State gives moderate weight to the economic benefits, moderate weight to the biodiversity benefits and no more than moderate weight to the need for coal. He also attaches slight weight to the fifth obligation, to establish and procure permissive bridleways. Despite his conclusions that the public benefits relating to the need for coal and the economic benefits have diminished since the Inspector reached his conclusions, the Secretary of State agrees with the Inspector's conclusion on this heritage matter. He considers that the benefits of the application are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of Low Chibburn Mediaeval Preceptory and Hemscott Hill Farmhouse, to which he attached great weight in line with the Framework and s66 of the Planning (Listed buildings and Conservation Areas) Act. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.
80. As a result of this conclusion concerning heritage assets, the Secretary of State considers that paragraph 196 of the Framework does not provide a clear reason for refusing the development proposed. The Secretary of State has therefore gone on to apply paragraph 11 (d) ii of the Framework, and his conclusions in this regard are set out in paragraph 87 below.
81. The Secretary of State considers that paragraph 211 of the Framework is not a protective policy for the purposes of paragraph 11(d) i of the Framework as it is not covered at footnote 6. He has therefore gone on to consider the test at paragraph 211 of the Framework separately, and very carefully. He notes that the application was considered by the Inspector in the context of the 2012 Framework, and particularly paragraphs 144 and 149 of that version of the document. Since then, the Framework has been substantially revised. Paragraph 144 is carried forward to paragraph 205 of the current version, but now with a footnote which states that it does not apply in the case of coal extraction which is now subject to paragraph 211 alone. The 'great weight' which previously applied to the benefits of mineral extraction therefore no longer automatically applies and the Secretary of State has proceeded on the basis of a consideration of the benefits of this specific proposal, in the light of the evidence before him in this case. Paragraph 211 has also been expanded with the additional phrase at the end between brackets:

211. Planning permission should not be granted for the extraction of coal unless: a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impact).

82. The Secretary of State considers therefore that the national policy context for determining this application provided by the Framework is now more restrictive than at the time the application was considered by the Inspector in 2017.
83. Paragraph 211 of the Framework establishes a clear presumption against coal extraction proposals which can be overcome only if the tests in either (a) or (b) are satisfied. The Inspector concluded that, based on the considerable harm that the development would cause to the landscape alone, the development was not environmentally acceptable, and could not be made so, and that this balance was tipped even further by the other environmental harm that he identified (IRC128). The proposal did not therefore meet the criteria at paragraph 144(a) of the 2012 version of the Framework. For the reasons set out in paragraph 67 above, the Secretary of State disagrees with the Inspector at IRC127 on the climate change impacts of the proposal, which he has found to be neutral in the very particular circumstances of this case. He also sets the biodiversity benefits offered by the scheme against the landscape harm. However, the Secretary of State considers that, notwithstanding his slightly different findings to the Inspector on those two matters, the substantial extent of the landscape harm means that the proposal is still not environmentally acceptable, nor can it be made so by planning conditions or obligations; and that therefore the criteria at what is now paragraph 211(a) of the Framework are not met.
84. If paragraph 211(a) is not satisfied, a proposal can only be allowed if the criteria in 211(b) are met, and that the proposed development is likely to provide national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).
85. Weighing in favour of the proposal, the Secretary of State gives moderate weight to the economic benefits which will flow from the proposal, moderate weight to the biodiversity benefits and no more than moderate weight to the need for coal. He also attaches slight weight to the fifth obligation, to establish and procure permissive bridleways.
86. Against the proposal, the Secretary of State affords considerable weight to the harm to the character and appearance of the area. In accordance with the Framework and his statutory duty under section 66 of the Planning (Listed buildings and Conservation Areas) Act, he attributes great weight to the harm to heritage assets. He gives further slight weight to the harm to local amenity. The adverse impact on tourism and recreation is afforded slight weight, as is the impact on agriculture. He considers that, given controls on water resources, negligible weight should be given to any harm to the hydrology of the area, and that any additional risk to highway safety also attracts negligible weight in the planning balance.
87. He thus concludes that the proposed development is not likely to provide national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts). It therefore fails the test required by paragraph 211(b) of the Framework. The presumption against the granting of permission for the extraction of coal therefore applies in this case. Moreover, returning to apply paragraph 11 (d) ii of the Framework to the above analysis, he considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of this proposal, when assessed against the policies in the Framework taken as a whole. Therefore, the Secretary of State concludes that the presumption in paragraph 11 d) ii of the Framework in favour of sustainable development does not apply in this case.

88. As set out in paragraphs 27, 39, 46 and 72 above, the Secretary of State agrees with the Inspector that the second, third, fourth and sixth obligations are not compliant with the CIL regulations. Unlike the Inspector, he considers that as a result that they do not carry any weight in the planning balance as a whole or in the paragraph 11 (d) ii test or the paragraph 211 coal extraction test of the Framework. However, for the avoidance of doubt, and in recognition that the Inspector reached a different view, the Secretary of State has gone on to consider whether attributing weight to them would have materially affected his conclusions in this case, and has decided they would have not done so.

89. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission. The Secretary of State therefore concludes that planning permission should be refused.

Formal decision

90. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby refuses planning permission for a mineral extraction and auger mining scheme at Land at Highthorn, Widdrington, Northumberland, NE61 5EE in accordance with application reference 15/03410/CCMEIA dated 12 October 2015.

Right to challenge the decision

91. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

92. A copy of this letter has been sent to Northumberland County Council, Richard Buxton Solicitors on behalf of Save Druridge and Friends of the Earth.

Yours faithfully

Philip Barber
Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations
Annex B Appropriate Assessment

**Annex A
SCHEDULE OF REPRESENTATIONS**

Representations received in response to the Secretary of State's Rule 19 letter of 29 November 2018 and circulation of responses.

Party	Date
Richard Buxton on behalf of Save Druridge (RB)	20 December 2018
Northumberland County Council (NCC)	21 December 2018
Eversheds on behalf of H Banks Ltd (Eversheds)	4 January 2019
Friends of the Earth (FoE)	4 January 2019
RB	4 January 2019
FoE	11 January 2019
RB	11 January 2019
Eversheds	11 January 2019

Representations received in response to the Secretary of State's letter of 6 March 2019 regarding an Appropriate Assessment and circulation of responses on 25 March 2019

Party	Date
FoE	19 March 2019
RB	20 March 2019
Eversheds	28 March 2019

Representations received in response to the Secretary of State's letter of 11 April 2019 regarding a condition and circulation of responses. Secretary of State's further letter of 30 April 2019 and circulation of responses on 16 May 2019

Party	Date
RB	12 April 2019
RB	24 April 2019
Eversheds	25 April 2019
Eversheds	9 May 2019
FoE	15 May 2019
RB	15 May 2019
Eversheds	22 May 2019
RB	23 May 2019

Representations received in response to the Secretary of State's letter of 11 April 2019 regarding greenhouse gas emissions and need for coal and circulation of responses on 30 April 2019

Party	Date
NCC	26 April 2019
RB	26 April 2019
Eversheds	29 April 2019
FoE	29 April 2019
Eversheds	8 May 2019
FoE	9 May 2019
RB	9 May 2019
RB	10 May 2019

General representations/correspondence

Party	Date
Eversheds re pre commencement conditions	18 February 2019
Eversheds – copy of Court Order	12 June 2019
RB re Bradley open cast mine, Durham	28 August 2019
Eversheds - response	3 September 2019
RB	10 February 2020
Eversheds	10 March 2020
FoE	1 April 2020
Eversheds	6 April 2020
Banks Group	5 June 2020
Banks Group	18 July 2020

Other representations received

Party	Date
Jill Robson	25 November 2018
Frank Bewick	27 November 2018
Christina Buckley	3 December 2018
Lauren Conway	1 December 2018
Philip Hood	2 December 2018
Susan Scott	3 December 2018
Malcolm and Jean Cook	18 December 2018
Julia Moore	18 December 2018
Peter McFadden	28 January 2019
Sarah Robinson	28 January 2019
Kim Pierce	28 January 2019
Ginnie Herbert	28 January 2019
Nick Morphet	28 January 2019
David Laverack	28 January 2019
D E Reed	27 January 2019
Rachel Locke	17 February 2019
Penny Remfrey	15 February 2019
Jo Cottrell	15 February 2019
Gill Turner	17 February 2019
Ali Plowright	4 February 2019
Kate Olive	4 February 2019
Neal Clark	18 February 2019
Diana McCann	12 March 2019
Carolyn Evans	21 April 2019
Isa Clee	6 August 2019
Brian Hammond	30 August 2019
Jess D'Urso	5 August 2019
Christine Boulby & Harry Hammond	30 July 2019
Ewa Sikorski	4 December 2018
Julie Wilson	10 December 2018
Philip Riches	18 December 2018
Peter Dunn	19 December 2018
Deborah Johnson	17 December 2018
Komatsu Ltd	5 January 2019
Confederation of British Industry	9 February 2019

Harry Redpath	8 February 2019
Jordan Younger	7 April 2020
Craig Winters	8 January 2019
Peter Thompson	30 July 2020
West Somerset Heritage Railway	7 April 2020
John Ashton	27 July 2020
Keighley and Worth Railway	3 April 2020
Rt Hon David Gauke MP	16 January 2019
Lord Vinson	21 January 2019
Viscount Ridley	5 January 2019
Baroness Jones of Moulsecoomb	15 January 2019
North East Chamber of Commerce	10 January 2019
Rt Hon Sir Alan Campbell MP	8 February 2019
Dr David Golding	23 February 2019
Dr David Golding	28 March 2019
Anne Marie Trevelyan MP	5 May 2019
Banks Ltd	18 July 2020
Ronnie Campbell MP	10 September 2019
Alan Campbell MP	8 February 2019
Jackie Doyle-Price MP	12 March 2020
Johnny Mercer MP	1 May 2020
Heather Wheeler MP	2 July 2020
Paul Howell MP	15 June 2020
Richard Holden MP	17 June 2020
Ian Levy MP	16 June 2020
Dr David Golding	27 July 2020
Bridgestone Firestone	19 June 2020
Firtek	19 June 2020
Donaldson Filters	19 June 2020
Fuchs Lubricants	19 June 2020

Annex B

HABITATS REGULATIONS ASSESSMENT: RECORD OF THE SCREENING ASSESSMENT AND APPROPRIATE ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 AS AMENDED FOR AN APPLICATION CALLED IN UNDER SECTION 77 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PROJECT DESCRIPTION AND LOCATION: MINERAL EXTRACTION AND AUGER MINING SCHEME (SURFACE MINE) AT HIGHTHORN, WIDDRINGTON, NORTHUMBERLAND (NORTHUMBERLAND COUNTY COUNCIL)

REDETERMINED PLANNING APPLICATION DECISION APP/P2935/V/16/3158266 (PLANNING APPLICATION REF 15/03410/CCMEIA dated 12 October 2015)

Completion Date: 7 June 2019

Project description – further information

1. The project site and surroundings are described at paragraphs 21 – 61 of the Inspector's report arising from a public inquiry held into this application which sat for 13 days from 31 May 2017 then closed on 25 August 2017. The project proposal is described at paragraphs 62 – 69 of that report and in the planning application documentation. In summary the proposal is for the open cast extraction of coal and sandstone on an application site consisting of an area arable land, covering 325 ha, of which 250 ha would be directly affected by the proposed mining activities. A copy of the Inspector's report is attached to this assessment. No significant changes to the site and surroundings have occurred in the intervening period. However, due to the delays in determination, the applicant has indicated that the proposal is now likely to be for the extraction of 2.765 million tonnes of coal rather than the original 3 million tonnes, over a reduced time period of 4 years rather than the original 5 years, followed by restoration within 2 years.

Competent authority

2. The above project, being the redetermination of a 'called in planning application' decision, is to be determined by the Secretary of State for Communities and Local Government using his powers under section 77 of the Town and Country Planning Act 1990. The Secretary of State is therefore the 'Competent Authority' for the purposes of the Conservation of Habitats and Species Regulations 2017.

Part 1 - Screening

3. Northumberland County Council previously undertook a Stage 1 Habitats Regulation Assessment (HRA) (February 2016) in its role as Competent Authority with regard to Application No: 15/03410/CCMEIA. This concluded there would be no likely significant effects on Northumbria Coast SPA /Ramsar Site or Northumberland Marine SPA resulting from the development when the proposed mitigation was taken into account. For the appeal the Secretary of State became the Competent Authority for the purposes of Regulation 63 of The Conservation of Habitats and Species Regulations 2017. The Secretary of State adopted the conclusion of Northumberland County Council in his decision of 22 March 2018 for planning decision reference APP/P935/V/16/3158266 for the same development.

4. Since the appeal decision a judgment in the Court of Justice of the European Union (CJEU) in *People Over Wind and Sweetman v Coillte Teoranta* (12 April 2018) has been

handed down. The Secretary of State's planning decision for APP/P935/V/16/3158266 was then quashed in the High Court on 23 November 2018.

5. It will now fall to the Secretary of State to take a fresh HRA screening decision for this appeal, taking into account any relevant information, having regard to *People Over Wind and Sweetman v Coillte Teoranta* (12 April 2018). Therefore, in doing so, the Secretary of State considers that his own HRA assessment should not take environmental mitigation measures into account at the screening stage.

Screening Assessment

Relevant documentation

6. The Secretary of State has taken into account the Inspector's report dated 29 November 2017, Highthorn Surface Mine – information to inform a HRA (Argus Ecology) February 2019 ('Shadow HRA') and reference back specifically in relation to the matter of the Shadow HRA (and documentation referred to therein) of 6 March 2019. He has also taken into account the representations made by the parties as a result of his 'Rule 19' letter of 29 November 2018 including representations made specifically in respect of Conditions including those in response to his subsequent letters of 11 April and 30 April 2019.

7. The Secretary of State has also considered other relevant information associated with the application and inquiry, including the following:

Highthorn Surface Mine Appendix 3.1 Ecological Assessment (Argus Ecology) Sept 2015;
Highthorn Surface Mine Biodiversity Action Plan (Banks Mining) draft Oct 2015 April 2018;
Highthorn Surface Mine Environmental Management Plan (Banks Mining) updated March 2017;
Response to Northumberland County Council planning consultation of October 2015 (Natural England) November 2015
HRA assessment of likely significant effect on a European site (Northumberland County Council) Feb 2016;
Regulation 22 request for additional information Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended 2015) (Northumberland County Council) March 2016;
Highthorn Regulation 22 Information (Environmental Impact Assessment) Regulations 2011 (as amended 2015) April 2016;
Highthorn further Environmental Information T&CP (EIA) Regulations 2011 (as amended 2015) (Banks Mining) March 2017;
Highthorn Proposed Surface Mine planning application & environmental statement (Banks Mining) October 2015; and
Proof of Evidence to the public inquiry in respect of Ecology by David Feige Principal Ecologist Northumberland County Council.

8. The Secretary of State notes and agrees with sections 1.1 to 1.9 of the Shadow HRA which set out relevant background and context, the legislative and policy background, factual information and conservation status for the Northumbria Coast and Northumberland Marine Special Protection Areas (SPAs) related Supplementary Advice Conservation prepared by Natural England, together with the Northumbria Coast Ramsar.

Consideration and Conclusions

9. In screening the proposals before him, the Secretary of State needs to conclude whether they would be likely to have a significant effect on those conservation areas protected by the Habitats Directive, either alone, or in combination with other projects.

10. The Natura 2000 and Ramsar sites are summarised at section 3 of the Shadow HRA; the Northumberland Coast SPA covers an area of around 11087 hectares between the Tweed and Tees estuaries. It is classified under the Birds Directive for its support to breeding populations of Little Tern and Arctic Tern and also for supporting over wintering Purple Sandpiper and Turnstone. The Northumberland Marine SPA covers 88,498 hectares up to 20 km from the coast. This SPA is designated to protect water column habitats for foraging and maintenance behaviours by breeding colonies of certain seabird. The Northumbria Coast Ramsar covers the same area as the Northumbria Coast SPA due to three bird species of international importance; little tern, purple sandpiper and turnstone. These sites are protected in UK law by The Conservation of Habitats and Species Regulations 2017.

11. Consideration has also been given to the Coquet Island SPA. This SPA is some 9km from the proposed surface mine and the Secretary of State notes there is protection afforded by the Northumberland Marine SPA to certain species for which Coquet Island provides breeding habitat. Consequently the Secretary of State is satisfied that his consideration of the available information on the likely significant effects on the Northumberland Marine SPA includes adequate assessment of all qualifying features of Coquet Island's SPA.

12. The Shadow HRA (section 4.6 – 4.12) provided an initial screening of potential effects from impacts on the protected sites. In line with recent caselaw this does not exclude effect where mitigation is proposed. Surface water drainage from the site is planned to discharge into Hemscott Burn, which in turn discharges into the sea and is therefore a potential pathway to the marine environment (e.g. Northumberland Marine SPA) and rocky foreshore (Northumbrian Shore SPA and Ramsar). There is potential for toxic effects from different sources and for sediment inputs to marine organisms.

13. The Secretary of State notes that a surface water attenuation and settlement system is a necessary component of the operation of the proposed development. This is required by the Environment Agency and Lead Local Flood Authority in order to comply with the parameters of the discharge consent. However, on a precautionary basis the Secretary of State has considered these as embedded mitigation measures and concludes that without these mitigation measures there are likely to be significant effects.

14. The Secretary of State concludes that the proposal is likely to have a significant effect on the protected sites through a path to shore and sea due to the drainage from the site as identified in the Shadow HRA.

15. The Secretary of State has gone on to consider whether there are other impacts that may have potential effect pathways to the protected SPA and Ramsar sites, again without taking mitigation into account. Further impacts were discounted through the Shadow HRA in its screening assessment, and the available information is clear that these are not present in respect of land take, air quality and vibration (Shadow HRA table 4.1 refers). He has gone on to consider in more detail; visual impact, light pollution, noise impact and recreational impacts from human disturbance, the latter three issues also being raised by Save Druridge. In doing so the Secretary of State notes the earlier view of Natural England set out 30 November 2015. This sets out that the proposed mitigation is sufficient to ensure that there will be no disturbance to the SPA interest feature from visual, noise or human factors.

16. Screening indicates surface water drainage and emissions to water as the main likely adverse impact, but also that visual, light pollution, noise or human factors are also in scope

and to be included on a precautionary basis given they were screened out through mitigation. These issues will be set out in more detail and subject to further investigation.

17. The Secretary of State has also had regard to there being no other developments or operations identified which could have in combination effect with the appeal development on the protected sites concerned.

18. In light of the judgment of the CJEU mentioned above, the correct course of action is to undertake an Appropriate Assessment. As the competent authority in this case, he has carried out such an assessment in Part 2 of this document.

Part 2 – Appropriate Assessment

19. Under the Habitats Regulations, the competent authority must assess whether the development proposals are likely to have a significant effect on a habitats site either alone or in combination with other plans or development proposals. If it is likely that a significant effect will occur or where it is uncertain that a significant effect may occur, then an Appropriate Assessment must be undertaken. If the Appropriate Assessment, taking into account measures designed to either avoid or mitigate the impact, find that it will not adversely affect the integrity of the habitats site, then the competent authority can grant permission. If however the appropriate assessment cannot rule out that it will adversely affect the integrity of the habitats site and there are no alternative solutions, then planning permission may only be granted if there are imperative reasons of overriding public interest and compensatory measures.

20. The Secretary of State has identified at the screening stage potential to contribute towards a likely significant effect on the interest features for which the SPA and Ramsar sites have been classified from certain impacts, and that there were no other relevant plans and projects alongside which the application must be considered. In light of the likely significant effects identified, the Secretary of State has determined that an Appropriate Assessment is required.

21. In accordance with the *People Over Wind and Sweetman and Coillte Teoranta* ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage.

Relevant documentation

22. The Secretary of State has had regard to the Part 1 screening assessment and the documentation set out at paragraphs 6 and 7. As required by Regulation 63(3) of the Habitats Regulation, the Secretary of State as the competent authority has also sought the views of Natural England as the appropriate nature conservation body on a draft of this assessment, its views are summarised and considered at paragraph(s) 39 – 40 of this Appropriate Assessment.

Consideration

23. There are five potential effects on the integrity of the SPA and Ramsar sites identified though Part 1 – Screening; these relate to surface water and drainage, noise, visual, lighting and other human factors. For these the Secretary of State will identify the mitigation and consider relevant potential effects on the integrity of the SPA and Ramsar sites in view of the conservation objectives of these.

24. Taking into account the Rule19 responses received to his letter of 29 November 2018 the Secretary of State is content that there are no significant material changes that would alter the assessment of effects of the surface mine. Furthermore, in considering all these issues, the Secretary of State considers there has been no significant change in circumstances concerning the protected SPA and Ramsar sites since the public inquiry.

25. For the key issue of surface water and drainage the relevant impacts are restricted to:

- Potential discharge of toxins to surface waters / marine environment; and
- Potential discharge of elevated sediment loadings to surface waters / marine environment.

26. The mitigation measures which will be in place as identified at section 5.2 of the Shadow AA as also set out at proposed condition 3f) which will include:

- Settlement ponds solids;
- Working practices to reduce ingress of sediment into pumps;
- Possible use of flocculants, subject to Environment Agency approval;
- Measures to prevent leakage of hydrocarbon pollutants (fuels, lubricants etc.) and address any inadvertent spillage; and
- The use of bunds and ditches to intercept and retain fine particulate matter.

27. In respect of effects on the Northumberland Marine SPA the Secretary of State has considered the potential of these in relation to the Conservation Objectives of the sites concerned supporting habitat water quality (to reduce contaminants and to maintain turbidity). In doing so he also notes that the same attributes are identified for the Northumberland Coast SPA and Ramsar. Site specific advice is set out in Shadow HRA tables 5.1 – 5.4. Furthermore, for the reasons set out at para 11 of the Part 1 screening assessment, the Secretary of State has not further considered Coquet Island SPA.

28. For contaminants, the expert advice supporting the Shadow HRA Appendix 1 (DAB Geotechnics Ltd) confirms through chemical analysis that, based on geology, there is low risk of toxic materials such as heavy metals being mobilised as a consequence of mining operations. The mitigation will include lagoons that will contain the liquids for sufficient time to allow for the removal of 70% of suspended solids. This will be in conjunction with the controls required by the Environment Agency (EA) regarding discharge intended to ensure no mobilisation of heavy metals occurs. Pollution through fuels and lubricants is subject to its own legal controls, through physical containment and procedures to deal with spills. Therefore, with regard to contaminants the Secretary of State agrees there will be no effect on the integrity of the either SPA (or the Ramsar) as a consequence of contaminants entering the water environment.

29. Similarly, for turbidity, Shadow HRA Appendix 1 explains how the lagoons will reduce discharge in relation to the suspended solids. The Secretary of State agrees with the assessment that there will be no change in natural levels of turbidity that will prevent targets supporting relevant Conservation Objectives from being met. Therefore, no adverse effect on the integrity of either would follow as a consequence of sediment inputs to the water environment.

30. As regards noise, there are no statutory standards to assess noise impacts on wildlife. However, analysis undertaken in support of the proposal has been prepared having

regard to guidance from the Institute of Estuarine and Coastal Studies - *Waterbird Disturbance Mitigation Toolkit: Informing Estuarine Planning and Construction Projects*' (Inquiry Document CD 9.9). The Secretary of State is satisfied that this analysis provides information on the sensitivities of species occupying habitats in the vicinity of Highthorn.

31. The noise level arising from the proposed mine would remain below 55dB(a)eq, which is within the tolerances of the guidance and at a level that is unlikely to cause a response in birds. Adverse impact on the interest features through noise should not occur once the proposed mitigation measures through the planning conditions set out in IR Annex B are in place and the impacts will be negligible. To achieve this relevant mitigation primarily consists of a Noise Action Plan (see Annex B 3p)), and at conditions 35 – 39 with regard to the noise level limits and their monitoring, together with the means to control noise to within tolerance.

32. Human factors may relate to mining activity, the restoration works or through any change to the recreational disturbance such as from off lead dogs, following completion of the site restoration works. For the designated sites concerned disturbance may impact the relevant bird species. For mining and restoration this relates to the human activity associated with those works and are again handled through the various proposed conditions. A travel plan to encourage sustainable journeys will be required as a planning condition, see IR Annex B 3m) and, at Annex B 3o) v), controlled access will be in place.

33. In relation to recreational disturbance, the Inspector identified (IR C89-95) there would be a detrimental impact on recreational tourism and during the period over which the mine operates, which would reduce during the carrying out of the restoration phase. The IR says in the very long term the landscape and biodiversity improvements might add to the tourist attraction of the area. For the restored site this will be managed and include new and upgraded public footpath routes.

34. The section 106 contains the following provisions of particular relevance to this assessment in terms of mitigating any adverse impacts arising from human disturbance:

- To establish a Highthorn Surface Mine Site Liaison Committee (Schedule 2).
- To establish and procure permissive bridleways (Schedule 7).
- To implement, subject to the necessary consents, enhancement works associated with the Chibburn Preceptory, including a condition survey, installation of a metal parkland style fence, an improved access link and permissive circular path, interpretative boards and signage, along with the sowing of a wild flower meadow (Schedule 8).

35. The available information on recreational disturbance does not indicate this will contribute to a significant increase in recreational pressure on the SPA and Ramsar sites to the extent that there will be an adverse effect on the integrity of the SPA and Ramsar site when mitigation identified at paragraph 33 to this Appropriate Assessment and the s106 agreement is accounted for.

36. In terms of visual impact, disturbance to ornithological interest features would be unlikely to occur because the proposed surface mine is too far away from the designated sites for visual effects to be significant enough to cause disturbance, with the dune ridge acting as a natural buffer. Visual disturbance responses, whereby a bird responds to the sight of an object or activity, vary markedly according to the nature of the visual stimulus. For example, birds will often have a much stronger response to the sight of a person than a large machine, especially if the machine is slow-moving. The scale and location of soil and

overburden mounds would eliminate any visual disturbance to wildlife outside of the surface mine except for short periods of time when parts of specific mounds were being constructed or removed. This elimination of visual disturbance will be achieved through the proposed conditions set out in the Inspector's report, for example Annex B 3b) to c) and later at 3 r). Conditions relating to soil stripping and storage from 20 include further mitigation contributing to reducing visual impact.

37. On this basis the Secretary of State is satisfied that there will be no visual disturbance to areas of SPA/Ramsar Sites. Moreover, the Secretary of State also considers there is no indication of adverse impact on the SPA and Ramsar sites through light pollution. Light spill from the site has been calculated as being 0.02 lux or lower at sensitive receptors outside of the site; far below levels likely to cause adverse ecological effects. Therefore, it is clear that disturbance to ornithological interest features would not occur because the proposed surface mine is too far away from lighting to be significant enough to cause disturbance, with the dune ridge again acting as a natural buffer to this effect (see the imposition of condition 3e), which would preclude any adverse impact on the integrity of the site from visual disturbance.

38. In reaching the above conclusions on the extent of the impacts that may affect relevant SPA and Ramsar sites, the Secretary of State has also considered the likely increase in annual extraction that may result through reducing the period of extraction from 4 to 5 years. He has considered how that may alter the extent to which resulting impacts and the potential resulting effect on the SPA and Ramsar sites. The supporting environmental information for the application and IR consideration of impacts and proposed conditions, is predicated on a maximum rate of extraction 0.7mt a year. The extraction proposed is 2.765mt, now being over a 4 year period. At an average of 0.691mt a year this is within the maximum of 0.7mt permitted yearly and no other aspects of the proposed development will change as a result of the more rapid extraction proposed. On this basis the Secretary of State is satisfied that the information (and therefore resulting mitigation) informing the Appropriate Assessment has been set to adequately account for a rate of extraction that would see the mining operation completed within a 4 year period. Consequently, he is satisfied that the conditions and s106 agreement are capable of satisfactorily mitigating against this increased extraction rate.

Natural England

39. The Secretary of State has had regard to the representations of Natural England dated 6 June 2019 in addition to its representations made previously to Northumberland County Council.

40. Natural England advised, that, having considered the assessment of the measures proposed and mitigation for all identified adverse effects that could potentially occur as a result of the proposal, they concurred with the assessment conclusions of the Secretary of State, providing that all mitigation measures are appropriately secured in any permission given.

Conclusion

41. The Secretary of State has had regard to the available information, in particular those listed in paragraphs 6 & 7 of this document. Overall, the Secretary of State is satisfied that if the appeal were allowed, the mitigation he has identified would be sufficient to prevent any adverse effects on the integrity of the SPA and Ramsar sites either alone or in combination with other development. In the light of this conclusion, he has not needed to go on to

consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

42. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

Report to the Secretary of State for Communities and Local Government

by **John Woolcock** BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 29 November 2017

Town and Country Planning Act 1990

Section 77

Application by

HJ Banks & Company Ltd

to

Northumberland County Council

Inquiry held on 31 May, and 1, 2, 6, 7, 8, 9, 13, 14, 15, 16, 20 and 21 June, and closed in writing on 25 August 2017

Highthorn, Widdrington, Northumberland NE61 5EE

File Ref: APP/P2935/V/16/3158266

File Ref: APP/P2935/V/16/3158266
Highthorn, Widdrington, Northumberland NE61 5EE

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990 (hereinafter the 1990 Act), on 8 September 2016.
- The application is made by HJ Banks & Company Ltd to Northumberland County Council.
- The application No:15/03410/CCMEIA is dated 12 October 2015.
- The development proposed is mineral extraction and auger mining scheme.
- The Secretary of State has considered his policy on calling in planning applications in deciding whether to call in this application.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application;
 - i) the extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change (NPPF Chapter 10);
 - ii) the extent to which the proposed development is consistent with Government policies for conserving and enhancing the natural environment (NPPF Chapter 11);
 - iii) the extent to which the proposed development is consistent with Government policies relating to the sustainable extraction of minerals (NPPF Chapter 13);
 - iv) the extent to which the proposed development is consistent with the Written Ministerial Statement on the Central Government's commitment to replace coal fired power stations with gas, as made by the Secretary of State for Energy and Climate Change on 18 November 2015;
 - v) the extent to which the proposed development is consistent with the Department's amended online guidance on renewable and low carbon energy;
 - vi) the extent to which the proposed development is consistent with the development plan for the area and;
 - vii) any other matters the Inspector considers relevant.

Summary of Recommendation:

The application be approved.

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ABBREVIATIONS

AHLV	Area of High Landscape Value
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
Banks Mining	HJ Banks & Company Ltd
BEIS	Department for Business, Energy and Industrial Strategy
CAN	Coal Action Network
CCC	Committee on Climate Change
CCGT	Combined-cycle gas turbines
CCS/CCUS	Carbon Capture and Storage/Carbon Capture Usage and Storage
CD	Inquiry Core Document
CIL	Community Infrastructure Levy Regulations 2010
CMLP	Castle Morpeth Local Plan 2003
<i>ConsDoc</i>	<i>Coal Generation in Great Britain - The pathway to a low-carbon future 2016</i>
CPC	Cresswell Parish Council
CPRE	Campaign to Protect Rural England
Defra	Department for Environment, Food and Rural Affairs
Discover Druridge	A partnership with funding to secure a positive legacy for Druridge Bay by organisational and physical linkages that aim to improve green infrastructure
DCC	Durham County Council
DRM	Drift Mound
DUKES	Digest of UK Energy Statistics
EA	Environment Agency
eCS	Emerging Northumberland Local Plan Core Strategy Draft Plan
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EN-1	<i>Overarching National Policy Statement for Energy</i>
EP	Environmental Permit
ES	Environmental Statement submitted with the application and dated October 2015
EU	European Union
FEI.1	Further Environmental Information dated April 2016
FEI.2	Further Environmental Information dated March 2017
FoE	Friends of the Earth
<i>Framework</i>	<i>National Planning Policy Framework</i>
GCN	Great Crested Newts
GHG	Greenhouse gases
GLVIA3	<i>Guidelines for Landscape and Visual Impact Assessment, Third Edition</i> , Landscape Institute
<i>Guidance</i>	<i>National Planning Practice Guidance</i>
HA	Highway Authority
HE	Historic England
ID	Inquiry Document – document submitted at Inquiry
IEA	International Energy Agency
IED	Industrial Emissions Directive
LB&CA Act	Planning (Listed Buildings and Conservation Areas) Act 1990
LCA	Landscape Character Area
LCT	Landscape Character Type
LLFA	Lead Local Flood Authority

LNR	Local Nature Reserve
LUC	Land Use Consultants
LWS	Local Wildlife Site
LVIA	Landscape and visual impact assessment
MCZ	Coquet Island & St Mary's Marine Conservation Zone
MLP	Northumberland Minerals Local Plan 2000
Mt	Million tonnes
NCC	Northumberland County Council
NE	Natural England
NPSE	<i>Noise Policy Statement for England</i>
NT	National Trust
NWT	Northumberland Wildlife Trust
OBM	Over burden mound
OCGT	Open-cycle gas turbines
PCPA	Planning and Compulsory Purchase Act 2004
PIM	Pre-Inquiry Meeting
PINS	The Planning Inspectorate
PRoW	Public Rights of Way
pSPA	Potential Special Protection Area
Restoration First	Habitat improvement measures set out on Drawing PA12
ROMP	Review of old mineral permission
RSPB	Royal Society for the Protection of Birds
SAM	Scheduled Ancient Monument
SAVE	Save Druridge
Section 38(6)	Section 38(6) of the Planning and Compulsory Purchase Act 2004
Section 39	Section 39 of the Wildlife and Countryside Act 1981
Section 106	Section 106 of the Town and Country Planning Act 1990
SoCG	Statement of Common Ground between the applicant and NCC dated 7 April 2017, along with the Addendum dated 26 May 2017
SPA	Special Protection Area
SSM	Subsoil mound
SSSI	Site of Special Scientific Interest
TNP	Transitional National Plan
TSM	Topsoil mound
WMS1	Written Ministerial Statement <i>Priorities for UK energy and climate change policy</i> 18 November 2015
WMS2	Written Ministerial Statement <i>The Clean Growth Strategy Leading the way to a low carbon future</i> 12 October 2017
WS&SPC	Widdrington Station and Stobswood Parish Council
VP	View Point
WVPC	Widdrington Village Parish Council
1990 Act	Town and Country Planning Act 1990

Procedural and background matters

1. The application by HJ Banks & Company Ltd (Banks Mining) was accompanied by an Environmental Statement, dated October 2015, (ES) in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (hereinafter the EIA Regulations).¹ This included a non-technical summary, and set out the alternatives considered by the applicant, along with design iterations for the proposed development.²
2. Northumberland County Council (NCC) invited the applicant to submit Further Environmental Information (FEI) pursuant to Regulation 22 of the EIA Regulations. This was submitted in April 2016 (FEI.1), and included further information about the effects on the Coquet Island & St Mary's Marine Conservation Zone (MCZ), the effects on pink-footed geese, Cresswell Ponds Site of Special Scientific Interest (SSSI) and hydrology, along with more details about Restoration First.³ The latter is the name given to enhancements in the early stages of the proposed operation, rather than after mining had been completed. NCC subsequently resolved on 5 July 2016 to approve the application subject to conditions and the completion of a section 106 agreement. The application was called in for decision by the Secretary of State by a direction, made under section 77 of the 1990 Act, on 8 September 2016.
3. The Secretary of State later notified the applicant on 13 January 2017 that further information was required to comply with Schedule 4 of the EIA Regulations.⁴ The further information submitted comprised voluntary information in relation to greenhouse gas (GHG) emissions and climate change, ecology and cumulative effects, along with information responding to the Secretary of State's Regulation 22 request concerning off-site utility connections, the effects on existing agricultural holdings, phasing, tourism effects, cumulative visual effects and noise mitigation (FEI.2).⁵ This was circulated to consultees and interested parties, on deposit at NCC's office and on NCC's website, and was advertised for comment within 21 days of its publication on 10 March 2017. Four representations were submitted about FEI.2.⁶
4. A Pre-Inquiry Meeting (PIM) was held on 18 January 2017 to deal with procedural matters.⁷ I submitted my initial thoughts about the likely main considerations to the parties on 13 March 2017.⁸ A Statement of Common Ground (SoCG) agreed between the applicant and NCC is dated 7 April 2017.⁹ An addendum to the SoCG, updating suggested planning conditions, was submitted on 26 May 2017.¹⁰

¹ CD4.4. The transitional provisions in the Environmental Impact Assessment (EIA) Regulations 2017 mean that the 2011 EIA Regulations continue to apply to this application.

² ES Volume 1 pages 116 to 124 at CD4.4.

³ CD4.8.

⁴ CD4.9 Appendix 1.

⁵ CD4.9.

⁶ CD5.3.

⁷ CD17.1-17.3.

⁸ CD17.4.

⁹ CD17.5.

¹⁰ CD17.6.

5. The Inquiry opened on 31 May 2017 and sat for 13 days. An accompanied site visit took place on Monday 19 June, which included visits to Banks Mining's operational Shotton and Brenkley surface mines, and to nearby restored sites. I also visited the locality around the application site unaccompanied on 30 May, 22 June and 23 June. I visited Northumberlandia, a restored site, which adjoins Shotton surface mine on Monday 12 June and again on Friday 23 June. Also on 23 June, I visited Pegswood Country Park and drove in the vicinity of the Phase 1, Phase 2 and Phase 3 areas of restoration of this surface mine. On the same day, I also visited the Blagdon farm shop and café, and drove in the locality of Brenkley surface mine. I have also driven along the haulage routes proposed for transporting Highthorn coal, to the Port of Blythe and to the Butterwell Disposal Point. On Saturday 24 June I visited the area of the Hundred Acre restored surface mine, located at Oakenshaw, near Durham.
6. Notwithstanding the description of the proposed development on the application form, as set out in the above bullet points, NCC described the proposal as a surface mine (to include auger mining) for the extraction of coal, sandstone and fireclay, with restoration to agricultural and ecological uses. This description is confirmed in the SoCG.
7. The proposed development would require an Environmental Permit (EP) for crushing, screening and loading of coal, along with a discharge consent for water released from the proposed water treatment areas into a local drain and into Hemscott Burn. This would require an assessment under the Water Framework Directive to ensure that discharges would not cause deterioration of the Northumberland South coastal waterbody. Permission would also be required from the Lead Local Flood Authority (LLFA) to temporarily remove the upper reaches of Hemscott Burn in accordance with the Land Drainage Act 1991.¹¹ The scheme would also require an operating licence under Part II of the Coal Industry Act 1994. No EP or operating licence applications had been made at the time of the Inquiry.
8. On application, both Save Druridge and Friends of the Earth (abbreviated respectively to SAVE and FoE in this report), were granted Rule 6(6) status pursuant to The Town and Country Planning (Inquiries Procedure) (England) Rules 2000. Both participated fully in the Inquiry, opposing the proposed development.
9. A draft planning agreement was submitted in the lead up to the Inquiry, and a signed version is dated 15 June 2017.¹² In summary, the section 106 obligations include provision for the following:
 - 1) To establish a Highthorn Surface Mine Site Liaison Committee (Schedule 2).
 - 2) Withdrawal of the Hemscott Sand Extraction Periodic Review Application; and for the landowner to make no further planning application, to cease all sand extraction and to permit implementation of a dune recovery scheme (Schedule 3).
 - 3) To establish the Discover Druridge Partnership along with a contribution of £400,000 to the County Durham Community Foundation to be held in a charitable fund (Schedules 4 and 5).

¹¹ CD5.1(b).

¹² ID/APP11 including Schedules 1-10.

- 4) To establish a skills fund based on a coal sales payment equal to 7.5 pence per tonne of coal extracted (Schedule 6).
- 5) To establish and procure permissive bridleways (Schedule 7).
- 6) To implement, subject to the necessary consents, enhancement works associated with the Chibburn Preceptory, including a condition survey, installation of a metal parkland style fence, an improved access link and permissive circular path, interpretative boards and signage, along with the sowing of a wild flower meadow (Schedule 8).
- 7) To execute and deliver a section 39 agreement pursuant to the Wildlife and Countryside Act 1981 (Schedule 9).
- 8) Approval of a Restoration Security Scheme and establishment of the Restoration Security, and to maintain it until expiry of the statutory aftercare period (Schedule 10).

I requested a schedule from NCC about how these obligations squared with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).¹³ The obligations were discussed at the Inquiry. I deal later in this report with what weight should be given to each of these obligations in determining this application.

10. At the Inquiry the applicant submitted details about proposed additional areas for mitigation measures for pink-footed geese.¹⁴ These plans were discussed at the Inquiry, and the Royal Society for the Protection of Birds (RSPB) and Northumberland Wildlife Trust (NWT) made written submissions about these proposals. The intention was to require these measures as part of a scheme approved pursuant to a planning condition. This and the suggested planning conditions in the Addendum SoCG were considered at a without-prejudice discussion held towards the end of the Inquiry. These discussions resulted in a revised version of suggested conditions agreed between the applicant and NCC.¹⁵
11. The Committee on Climate Change (CCC) announced on its website that it was to publish its annual progress report on 29 June 2017.¹⁶ The Inquiry was therefore adjourned and left open for written submissions about the CCC progress report, and also for any written comments on a number of emails and letters received by The Planning Inspectorate (PINS) about the application, submitted at the Inquiry stage, but which were not circulated until 20 June 2017. CCC's 2017 progress report is at ID/OTH37.¹⁷
12. Following my unaccompanied site visit I requested a visualisation from Cresswell Tower. This was submitted by the applicant during the adjournment.¹⁸ The parties were given the opportunity to comment.
13. During the adjournment the Full Council of NCC resolved on 5 July 2017 to withdraw from examination, with immediate effect, the Northumberland Local

¹³ ID/NCC5.1 and NCC's response to my further questions at ID/NCC5.2.

¹⁴ ID/APP2.1, ID/APP2.2 and ID/APP2.3.

¹⁵ ID/OTH36.1.

¹⁶ ID/FOE7.

¹⁷ This is in three volumes. *Reducing emissions and preparing for climate change:2017 Report to Parliament Annex 1 Summary and Recommendations*; Volume 2 *Meeting Carbon Budgets: Closing the policy gap*; Volume 3 *Progress in preparing for climate change*.

¹⁸ ID/APP17.

Plan Core Strategy Draft Plan (eCS), which had been submitted for examination on 7 April 2017.¹⁹ The parties were given the opportunity to comment on any implications, for the determination of this application, of the withdrawal of the eCS.

14. Also during the adjournment there was an incident at a roundabout in Cramlington, which involved a coal lorry from Shotton overturning at a roundabout, spilling 29 tonnes of coal. This was also the subject of correspondence by the parties.²⁰
15. In the lead up to the Inquiry the parties discussed possible terms for agreements pursuant to section 39 of the Wildlife and Countryside Act 1981 for land in the vicinity of the application site. This matter was considered at the Inquiry and draft schedules submitted.²¹ During the adjournment, the applicant submitted three signed section 39 agreements.²² A summary of the provisions contained in these agreements is set out in Annex C of this report. The parties, along with the RSPB and NWT, were given the opportunity to comment on the section 39 agreements.
16. I have had regard to all the written submissions received during the adjournment, and have taken them into account in compiling this report and its recommendation. I subsequently closed the Inquiry in writing on 25 August 2017. On 12 October 2017 the Minister for Climate Change and Industry, Claire Perry, issued a Written Ministerial Statement on *The Clean Growth Strategy Leading the way to a low carbon future* (WMS2), which referred to a suite of related documents.²³ The parties were given the opportunity to comment and I have taken the responses into account.

Planning policy, guidance and statutory requirements

17. The development plan comprises saved policies of the Northumberland Minerals Local Plan 2000 (MLP) and saved policies of the Castle Morpeth Local Plan 2003 (CMLP).²⁴
18. MLP Policy S1 states that land will be made available for mineral working to provide an appropriate contribution to local, regional and national needs, but that permission would not be granted where there would be an unduly adverse impact on local communities or the environment. Policy EP3 requires an assessment of potential impact on the landscape, EP14 on the local economy, EP15 on tourism and recreation, and EP16 on public rights of way. Potential disturbance to local communities is required to be taken into account by Policy EP19, whilst Policy EP20 concerns the cumulative impact on local communities and the environment, including the effect on the landscape arising from the restoration of a number of sites over time, on the quality of life from an unbroken sequence of working and restoration. Policy R1 concerns site reclamation.

¹⁹ ID/NCC13.

²⁰ ID/APP21, ID/SAVE10.3 and ID/OTH3.2.

²¹ ID/NCC10.1 and ID/NCC10.2. There were amendments to the draft versions in the later signed agreements.

²² ID/APP25.1, ID/APP25.2 and ID/APP25.3.

²³ ID/OTH38.1.

²⁴ CD1.1.1 and CD1.2.1.

19. The strategy for coal set out in the supporting text to MLP policies provides, amongst other things, that environmental enhancement is seen as a vital element to the regeneration of the coalfield area, with the safeguarding of the best features of the local landscape a priority. It recognises that in the past opencast mining has damaged the appearance of the local landscape, most notably in the Druridge Bay area, and that measures are required to enhance its appearance.
20. MLP Policy C2 allocated two sites for opencast coal. Policy C3 provides that unless there are exceptional circumstances where it can be demonstrated that the special landscape, heritage and nature conservation interests of the area would not be adversely affected, planning permission will not be granted for opencast coal sites in the following areas, as defined on the proposals map:
- North Pennines Area of Outstanding Natural Beauty.
 - Tyne/Derwent watershed.
 - Northumberland coast between Amble and Lynemouth.

The application site is within the defined Northumberland coast. The supporting text to this policy notes that substantial reserves of coal still remain at Highthorn and Hemscoth Hill, and that the local authorities were working to upgrade the environment of Druridge Bay and its environs as reflected in the Northumberland Coast Management Plan, the Management Strategy for Druridge Bay and the establishment of a coast project to develop an integrated approach to the management of the coastal landscape. It adds that this change in emphasis from a landscape dominated by opencast workings to one being improved and conserved has been reflected in the recent extensions to the heritage coast designation. Policy C4 is also a constraint policy for a defined area in south-east Northumberland.

21. CMLP Policy C3 states that the Council has identified areas of high landscape value (AHLV) and will not permit development which will have a detrimental effect on such areas. These areas are defined on the proposals map and include the coastal area of Druridge Bay. The eastern part of the application site lies within the AHLV.²⁵ The proposed operational area of the surface mine would affect five fields in the AHLV.²⁶ The supporting text to Policy C3 states that all the open countryside is felt to be worthy of protection, but the AHLVs are important in terms of their special character and greater than average visual quality. Policies C10 and C11 of the CMLP concern, respectively, the integrity of sites of nature conservation interest, and protected species and their habitats.
22. Relevant policies of the emerging Northumberland Local Plan Core Strategy (eCS) were discussed at the Inquiry, but the eCS has now been withdrawn.
23. Shallow and deep-mined coal and fireclay are defined in the Glossary to the *National Planning Policy Framework* (hereinafter the *Framework*) as minerals of local and national importance, which are necessary to meet society's needs. Paragraph 142 states that minerals are essential to support sustainable economic growth and our quality of life, and that it is therefore important that there is a sufficient supply to provide, amongst other things, the energy and goods the country needs. The *Framework* states that minerals of local and national

²⁵ Drawing PA22 sheet 3/5 ES at CD4.4.

²⁶ APP/PP/1 Tab14 shows the extent of the operational area within the AHLV.

importance should be identified and policies for their extraction included in preparing local plans, along with setting out environmental criteria against which applications should be assessed so as to ensure that operations did not have unacceptable adverse impacts, to include taking into account cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality (paragraph 143). Great weight should be given to the benefits of mineral extraction, including to the economy (paragraph 144).

24. Paragraph 147 of the *Framework* provides that mineral planning authorities should indicate areas where coal extraction may be acceptable. Paragraph 149 states that permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or if not, it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.
25. The *National Planning Practice Guidance* (hereinafter the *Guidance*) sets out guidance on, amongst other things, the planning for mineral extraction, including assessing environmental impacts, restoration and aftercare. It refers to appropriate noise standards for normal mineral operations, along with limits for noisy short-term activities. It cites the provisions in the *Noise Policy Statement for England (NPSE)* which aims to avoid significant adverse impacts on health and quality of life. The guidance for coal extraction refers to the environmental duty under section 53 of the Coal Industry Act 1994. The *Guidance* notes that some areas may have been subjected to successive mineral development over a number of years and that authorities should ensure that the cumulative impact on the community and the environment would be acceptable.
26. *The Overarching National Policy Statement for Energy 2011 (EN-1)*, has effect on nationally significant infrastructure projects, but is also a material consideration in decision making for proposals that fall to be determined under the 1990 Act. EN-1 states that the UK economy is reliant on fossil fuels, and that they are likely to play a significant role for some time to come, but adds that the UK needs to wean itself off such a high carbon energy mix to reduce GHG emissions and to improve the security, availability and affordability of energy through diversification.²⁷ Under the heading of 'Electricity Market Reform' EN-1 provides that a clear market design that provides consistent, long term signals for investment in the new generating capacity is required to drive the decarbonisation of the generating mix.²⁸
27. Under Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations), a section 106 obligation cannot be a reason for granting permission unless it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. However, provision exists outside the 1990 Act, in section 39 of the Wildlife and Countryside Act 1981, to enable a relevant authority, for the purpose of conserving or enhancing the natural beauty or amenity of any land within their area or promoting its enjoyment by the public, to make a management agreement with any person having an interest in the land with respect to the management of the land during a specific term or

²⁷ CD3.4 paragraphs 2.2.5 and 2.2.6.

²⁸ CD3.4 paragraphs 2.2.18.

- without limitation of the duration of the agreement. Section 39 agreements are not affected by the statutory or policy requirements that apply to section 106 obligations.²⁹
28. In determining this application the Secretary of State is required to give special regard to the desirability of preserving the setting of listed buildings in accordance with the statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LB&CA Act).
29. The Secretary of State for Energy and Climate Change issued a Written Ministerial Statement to Parliament, entitled *Priorities for UK energy and climate change policy*, on 18 November 2015 (WMS1).³⁰ This states that one of the greatest and most cost-effective contributions we can make to emission reductions in electricity is by replacing coal-fired power stations with gas, and foreshadowed a consultation document to set out proposals to close coal by 2025 – and restrict its use from 2023. *Coal Generation in Great Britain - The Pathway to a Low-Carbon Future*, a consultation document, was subsequently published by the Department for Business Energy and Industrial Strategy (BEIS) in November 2016, and is referred to in this report as the *ConsDoc*.³¹ This consultation explores how to take action to regulate the closure of unabated coal to provide greater market certainty for investors in the generation capacity that is to replace coal stations as they close, such as new gas generators. The Foreword states that “Setting a clear end date for unabated coal generation will send a clear signal to investors in new generation capacity...”.
30. A summary of responses to the *ConsDoc* was published on 12 October 2017.³² This states that following the consultation, and as set out in *The Clean Growth Strategy*, the Government confirms that it will proceed with action to regulate the closure of unabated coal power generation units in Great Britain by 2025. It adds that options for implementation are being assessed, and that details on a regulatory approach for putting this into effect would be set out in due course. The summary makes clear that the *ConsDoc* focusses on electricity generation from coal, and is not about action to limit or prevent new coal mining operations in Great Britain. It notes that this, along with the on-going need for coal for other purposes including household heating and industrial processes such as iron and steel, cement, and other feedstocks, are outside the scope of the consultation.
31. The Written Ministerial Statement on *The Clean Growth Strategy Leading the way to a low carbon future* issued by the Minister for Climate Change and Industry, Claire Perry, on 12 October 2017 (WMS2) states that the strategy sets out policies and proposals across the whole of the economy and the country including business, housing, transport, power, the natural environment and the public sector. *The Clean Growth Strategy* states, amongst other things as key policies

²⁹ Regulation 122 of the CIL Regulations only applies to planning obligations under section 106 of the 1990 Act. The policy tests for planning obligations are set out in paragraph 204 of the *Framework*, and the glossary defines a ‘planning obligation’ as an obligation under section 106 of the 1990 Act to mitigate the impacts of a development proposal.

³⁰ CD3.7. The Rt Hon Amber Rudd also made a speech on a new direction for UK energy policy, which is at CD3.8.

³¹ CD3.10.

³² ID/OTH39.

and proposals, to phase out the use of unabated coal to produce electricity by 2025, and demonstrate international leadership in carbon capture usage and storage (CCUS).³³

The site and surroundings

The locality

32. The application site has an area of 325 ha, of which 250 ha would be directly affected by the proposed mining activities. The site is located, at its nearest point, about 0.5 km from the settlement of Widdrington Station to the west. Widdrington is 0.7 km to the north-west, and to the south lie Cresswell (1.6 km) and Ellington (1.3 km). The western boundary of the site has a frontage of about 1 km to the A1068, and its eastern boundary abuts the coastal road, classified as the C110.³⁴
33. The site comprises arable land, with temporary grass and permanent pasture/grassland, some woodland, hedgerows and ponds associated with Hemscott Burn, which traverses the site.³⁵ Soil analysis indicated that 99% of the site is classified as Grade 3b, moderate quality agricultural land, limited by soil wetness.³⁶
34. The submitted hedgerow survey recorded a total length of 9.77 km of hedgerows in the study area, which were assessed in 40 separate units.³⁷ The survey recorded that the site has a low hedgerow density and low connectivity of hedgerows. Some 44% of the length of hedgerows was considered to have an overgrown and leggy structure, and was poor in woody species, and 80% was assessed as being in an unfavourable condition.
35. The tree survey submitted with the application recorded 123 individual trees and eight tree groups on the site.³⁸ Only one tree (T13) a pedunculated oak in the centre of the site near Fox Covert was considered to be of high value (Category A). Seven tree groups and 14 trees were surveyed as Category B, with moderate retention value. Most of the trees (83) within the site were considered to be Category C trees and of low retention value due to their poor form, minor cavities, stripped bark, die-back, suckering growth or immaturity. The remaining 25 trees (Category U) were assessed as either dead or having compromised integrity.
36. The land slopes down generally from west to east towards the sea. To the east of the C110 is an area of dunes and the beach.³⁹ The levels on the western edge of the site near to the A1068 are around 28 m AOD, reducing to about 5 m AOD in the east near to the C110. Hemscott Hill is about 13 m AOD and the coastal dunes generally about 10 m to 12 m AOD. There is a flat strip of land to the east of the dunes approximately 400 m to 500 m wide, before the land rises towards

³³ ID/OTH38.1 and ID/OTH38.2.

³⁴ An aerial view of the site and surrounds is shown on Drawing PA03 in ES Volume 1 at CD4.4.

³⁵ Existing features of the site and its immediate locality are shown on Tab1 APP/PP/1.

³⁶ Soils and Agricultural Land Classification Assessment Appendix 13 ES Volume 4 at CD4.7.7.

³⁷ Hedgerow Survey November 2014 ES Volume 2 Appendix 3.7 at CD4.5.

³⁸ BS5837:2012 Arboricultural Survey January 2015 ES Volume 2 at CD4.5.

³⁹ Tab14 APP/PP/1 shows the site in relation to the fence along the dunes.

the A1068. Further to the west the land slopes more steeply up to Widdrington Station and along the line of the east coast railway, which is on a low ridgeline some 40 m to 45 m AOD. There is another elevated ridge (25 m to 30 m AOD) to the south of the site in the vicinity of Ellington.

37. The nearest residential properties are Hemscott Hill, Druridge Farm Cottages, High Chibburn, Stonecroft, Houndalee Cottages, Hagg Farm Cottages, Highthorn Cottages, Ellington Caravan Park and Blakemoor Farm.⁴⁰ The Drift Café is located to the south-east of the site. There is a PRoW across the site from Houndalee Cottages to Hemscott Farm, and other Public Rights of Way (PRoW) in the locality are shown on Tab16 APP/PP/1. Natural England (NE) has published a proposal for a footpath along Druridge Bay as part of the England Coastal Path.⁴¹ The proposed route between Cresswell and Hemscott Links is along the dunes.⁴²
38. The site is crossed by a 66 kV and a 20 kV overhead electricity cables.⁴³ Parts of the site are within flood zones 2 and 3 for coastal flooding.⁴⁴ Lynemouth wind farm is about 2.5 km to the south of the site, and there are other large wind turbines located to the west of Widdrington.

Landscape

39. The application site lies within National Landscape Character Area Profile 13 South East Northumberland Coastal Plain.⁴⁵ Key characteristics of this area include a wide low-lying coastal plain, with sweeping sandy beaches and rocky headlands, where restoration of mines has created large tracts of simple, featureless agricultural land with strips of plantation. The Northumberland Coast Area of Outstanding Natural Beauty (AONB) lies some 10 km to the north of the site.⁴⁶
40. In a 2007 study to determine whether there was land worthy of being considered as an extension of the AONB, Druridge Bay was described as a wild, windswept coastal landscape. The study noted that from the elevated dunes there are extensive views both out to sea and also inland across the flat coastal plain.⁴⁷ The Cresswell/Druridge Farmed Coalfield character area in this study extended inland from behind the coastal strip of Druridge Bay to the A1068. The report stated that this area no longer contains any working open-cast areas, and nor is it likely to in the future, given the planning restrictions in place.⁴⁸ It noted that restoration had produced simplified landscapes that did not replicate the detail and variety of the pre-mining landscape, remnants of which could be seen in the areas behind Cresswell Pond. The study assessed this character area as a distinct and highly valued landscape, memorable primarily for the many bodies of open water behind the coastal dunes, but with many of the restored areas lacking time-depth. The study concluded that, at that time, the character area did not

⁴⁰ These residential properties are shown on Tab13 APP/PP/1.

⁴¹ ID/SAVE5.

⁴² ID/SAVE6 Map 6a.

⁴³ Drawing PA23 ES Volume 1 at CD4.4.

⁴⁴ Drawing SR05 CD4.1.

⁴⁵ CD8.1 Figure 2 and Appendix 6 NCC/KH/3.

⁴⁶ CD8.1 Figure 3.

⁴⁷ CD8.3.

⁴⁸ CD8.3 paragraph 9.3.3.

fulfil all the criteria for natural beauty to an extent that would recommend it being put forward as land to be included in a potential boundary review of the AONB, but that these criteria may be met in the future, as the landscape matures and develops.⁴⁹

41. In the 2010 Northumberland Landscape Character Assessment the eastern part of the application site lies within Landscape Character Area (LCA) 40a Druridge Bay, which is part of Landscape Character Type (LCT) 40 Broad Bays and Dunes. The remainder is in LCA39a Coastal Coalfields.⁵⁰
42. LCA40a is described as an attractive, almost unbroken, stretch of sandy beach and mature sand dunes backed by a variety of landscapes, all of which owe their origins to the long history of mining and industrial activity in the area. Reference is made to the smelter works and power station to the south, and the legacy of opencast mining to the north. With the latter comprising a simplified landscape of reclamation, in places enhanced by subsidence wetlands, including the accessible wildlife reserves at Hauxley and Cresswell Pools. The description for LCT40 states that views along the northern section (in which the application site lies) are open, and the elemental coastal landscape remains dramatic, even with the presence of the power station, and that despite the development the landscape feels open and relatively tranquil.
43. LCA39a is described as a relatively flat coastal plain, which has been heavily modified by mining and industrial activity, with restoration resulting in oversimplified geometric landscapes of pasture and conifer blocks, which lack distinctive features. But there are pockets of unaltered rural character, including fragments of ancient woodland, and many old village centres. It is part of LCT39, in which the key characteristics include low-lying coastal farmland, generally open and expansive, with large-scale opencast mine sites, along with relatively simple landscapes on restored sites. Coastal views are often available on the eastward-sloping coastal plain, but frequently the most prominent feature in views are pylons, and chimneys, such as those at the Lynemouth smelter. There are also a number of westward views, including long views to the Simonside and Cheviot Hills. Mining activity has been ongoing in the area since the 15th century. The extent of the resultant modifications, and the simplistic approach to restoration, are such that the majority of this landscape is degraded in character and has lost much of its subtle variation in its natural characteristics. However, significant pockets of undisturbed land remain across the area, and despite the heavy modifications of the landscape, medieval ridge and furrow remains in places.

Wildlife

44. Designated areas of wildlife or nature interest in the vicinity of the application site are shown on Figure 3.1 of Mr Honour's Proof of Evidence.⁵¹ The Northumbria Coast Special Protection Area (SPA) is a European Site designated

⁴⁹ CD8.3 page 114.

⁵⁰ CD8.1 Figure 8. Tab14 APP/PP/1 also shows the LCA40a and LCA39a boundaries in relation to the boundary of the AHLV.

⁵¹ APP/KH/2.

for breeding and migratory birds.⁵² The boundaries of the SPA are contiguous with those of the Northumbria Coast Ramsar site.

45. Northumberland Marine Potential Special Protection Area (pSPA) to cover subtidal areas along 75 km of this coast was the subject of consultation in 2016 and attracts the same policy protection as sites classified as SPAs. It was classified for internationally important populations of breeding seabirds. The Coquet to St Mary's MCZ was designated in January 2016 to protect intertidal and subtidal habitats.⁵³ The inland boundary of the MCZ at Druridge Bay is the mean high water mark.
46. The coastline here is part of the Northumberland Shore SSSI that extends between the Scottish Border and the Tyne Estuary. Six non-breeding bird species are listed as notified features.⁵⁴ Cresswell Ponds SSSI, a shallow coastal lagoon, lies inland from the dunes and about 300 m to the south-east of the application site.⁵⁵ Hadston Links SSSI (coastal dunes) lies some 2.26 km to the north of the application site.⁵⁶
47. The nearest part of Cresswell Dunes Local Nature Reserve (LNR) is about 1.12 km from the application site. Druridge Pools Nature Reserve LNR was formed from former surface mining and is currently managed by NWT. Non-statutory sites in the locality include Warkworth Lane Ponds Local Wildlife Site (LWS) and Hadston Links LWS, which abuts Hadston SSSI. Further to the north are wildlife sites at East Chevington and Hauxley. The latter includes a visitor centre developed by NWT. Druridge Bay Country Park provides for more formal recreational activities.⁵⁷

Heritage

48. There are no designated heritage assets within the operational area of the proposed development. However, an undesignated World War II decoy control building is located within the site, and anti-glider ditches are also recorded.⁵⁸ This decoy site was used to lure bombing raids away from an airfield to the north-east. Heritage assets, including Scheduled Ancient Monuments (SAM) and listed buildings, in the wider area are documented in Appendix 4 of the ES at Appendix 1.⁵⁹
49. The 14th century ruins of Low Chibburn medieval preceptory are some 850 m to the north of a proposed topsoil mound (TSM1), and about 1.3 km from the top of the proposed northern overburden mound (OBM1). The preceptory is a SAM but has been subject to damage and is consequently on the Heritage at Risk Register. This historic site includes a 16th century house (Dower House) and remnants of a World War II pillbox.

⁵² CD9.12.

⁵³ CD9.11.

⁵⁴ CD9.14. A plan of the SSSI boundary is at ID/NCC3.

⁵⁵ CD9.13.

⁵⁶ CD9.15.

⁵⁷ These sites, along with the location of the former surface mines that gave rise to some of the features, are shown at Figure 1 ES at CD4.4.

⁵⁸ There is a photograph of this structure at Figure 15 ES Appendix 4 at CD4.6.

⁵⁹ Shown on Figure 1a at CD4.6.

50. The remains of Widdrington Castle and 18th century Gothic castle and gardens is a SAM, which is located south of Widdrington Farm. The remains survive below ground and are visible as earthworks, some 850 m to the north-west of the toe of proposed OBM1.
51. Cresswell Tower House, also known as Pele Tower, was built as a fortified tower house in the 15th century and is a SAM and Grade II* listed building. It is located adjacent to a wooded area, some 2 km to the south-east of proposed TSM4 and drift mound (DRM1).
52. Druridge Farmhouse and associated structures are Grade II listed buildings. So too, are several buildings in Ellington, including St Bartholomew's Church, along with structures associated with Cresswell Tower. Hemscott Hill Farmhouse, cartshed, shelter sheds and pigsties are also Grade II listed.
53. The Church of the Holy Trinity at Widdrington is a Grade I listed building located on high ground, some 950 m to the north-west of the toe of proposed OBM1.
54. The World War II pillbox located on a hilltop just south of Hemscott Farm is disguised as a stone cottage with a chimney stack. This heritage asset is undesignated, and lies about 500 m from proposed DRM1 and SSM3.
55. The dunes and beach to the east of the site along Druridge Bay is designated Heritage Coast.⁶⁰ Land owned by the National Trust and NCC to the east of the site is shown on the Landownership Information Map at Appendix I of NCC/FW/3.
56. Several fields, mostly located towards the centre of the site, shown on Figure 1b of the Archaeological Assessment, include areas of ridge and furrow, which is known locally as rig and furrow. Rig and furrow is evident across both fields in Areas 3 and 7, albeit less apparent in the southern part.⁶¹ Areas 14 to 17 contain faint traces of rig and furrow. Area 23 contains two distinct areas of rig and furrow earthworks, which measure between 6 m to 7 m from crown to crown.⁶² Area 33 has such earthworks of similar dimensions. Very slight rig and furrow earthworks, measured 5 m from crown to crown, are visible in the centre of the three fields that comprise Area 34.

Coal mining

57. There are abandoned underground coal workings within the application site boundary, which extend from the former Linton, Ellington and Ferneybeds Collieries, but there are no recorded mine openings, shafts or adits, within the site.⁶³ The Drift Café is named after a former drift mine in the area. The former Radar South surface mine, which was operational between 1956 and 1963, occupied a northern part of the application site.⁶⁴ APP/PP/1 Tab17 records 31

⁶⁰ The Heritage Coast boundary is shown on Drawing PA22 sheet 3/5 ES at CD4.4.

⁶¹ ES Volume 3 Appendix 4 pages 4 to 6 and Figure 1b at CD4.6. There are photographs of the rig and furrow in Areas 3 and 23 at Figures 18 and 39 in ES Appendix 4 at CD4.6.

⁶² This field was also identified by Mr Wilson from CPRE at ID/OTH28.2. It was indicated at the Inquiry that the adjoining field, Area 29, also contains some rig and furrow.

⁶³ Appendix D of Appendix 5 Hydrological Assessment ES at CD4.6.

⁶⁴ APP/SP/3 Appendix 1. APP/PP/1 Tab17 shows the red line site boundaries of past surface mining, which is larger than that indicated on ES Figure 22 at CD4.4.

past surface mines in the Amble/Ellington area in the period between 1943 and 2016, with up to five mines operating at the same time from 1975 to 1995.

58. Planning permission was granted in 2014 for a surface coal mine at Ferneybeds to extract 752,000 tonnes of coal. The Ferneybeds site is located to the south-west of the Highthorn application site, on the opposite side of the A1068.⁶⁵ However, the relevant statutory undertakers do not wish to relocate power and water infrastructure that currently crosses the Ferneybeds site. Banks Mining therefore announced in November 2016 that it would not be proceeding with Ferneybeds and has entered into a covenant with the statutory undertakers not to allow the coal reserves within the Ferneybeds site to be mined.⁶⁶
59. Lynemouth Colliery closed in 1994 and neighbouring Ellington Colliery closed in 2005. With the cessation of pumping, mine water has continued to rise. The Coal Authority and Environment Agency (EA) commissioned a joint project in 2012, to control pollution from mine water discharges. NCC indicated in 2013 that proposed mine water treatment works would be permitted development, and the works were subsequently carried out and operated by the Coal Authority. These include an abstraction point at Lynemouth Shaft No.1, along with mine water treatment lagoons and associated infrastructure.⁶⁷

Sand extraction

60. An area of dunes and beach of about 40 ha to the east of Hemscott Hill Farm has planning permission until 31 December 2020 for the extraction and processing of sand and gravel.⁶⁸ The permitted sand extraction extends almost to the mean low water mark. This would provide for the removal of sand down to a level of 4 m AOD to the west of the line ABC shown at ID/NCC6, an estimated 62,000 tonnes.⁶⁹ Condition 12 of the extant permission requires a detailed scheme of aftercare to be submitted for approval before 31 December 2015. The aftercare would bring the restored site to a condition suitable for grazing and nature conservation after uses.
61. However, no scheme pursuant to Condition 12 had been submitted at the time of the Inquiry. But an application for the review of an old mineral permission (ROMP) was validated by NCC in October 2013. This remained undetermined at the time of the Inquiry. NE has objected to the ROMP and requested further information about the effects on the Northumberland Shore and Cresswell Ponds SSSIs.⁷⁰ The EA objected because the submitted flood risk assessment does not fully consider the flood risk to land elsewhere as a result of sand extraction.⁷¹ The part of the permitted sand extraction site that lies below mean high water is

⁶⁵ APP/SP/3 Appendix 2.

⁶⁶ ID/APP6.1 and ID/APP6.2.

⁶⁷ ID/NCC9.

⁶⁸ This was granted planning permission on appeal in 1960 (SAVE/DL/3 Appendix 10 page 344 and 345). A plan showing the extent of the site is at ID/NCC6, and Appendix 2 lists the 12 conditions that currently apply. Condition 5 states that no working shall take place within 250 feet of the seaward boundary of the coastal road which adjoins the western boundary of the site.

⁶⁹ Existing dunes in this area 9 m, 12 m and 13 m high are shown on Figure 7 page 21 of ES Volume 1 at CD4.4.

⁷⁰ SAVE/DL/3 Appendix 10 pages 368 and 369.

⁷¹ SAVE/DL/3 Appendix 10 pages 365 to 367.

within the MCZ and the pSPA. Should the pSPA be confirmed then NCC would be required to undertake a review of existing consents. NCC noted that sand extraction below mean high water would require a licence from the Marine Management Organisation.⁷²

The proposed development

62. The scheme would extract either 3 million tonne (Mt) or 2.765 Mt (depending upon options for dealing with ground water) of coal from six seams, along with an estimated 10,000 tonnes of fireclay and 10,000 tonnes of sandstone, over a five year period. Operations, including site establishment and restoration, would last for seven years. The site would be worked in a north-south direction in five phases, with a depth of extraction ranging from 13 m in the west to either 71 m or 64 m (again depending on ground water options) in the east.⁷³ Auger mining is proposed within parts of the bunded operational area.
63. Overburden mounds would be located in the north-west (OBM1 would be 25 m high) and the south-west (OBM2 would be 27 m high) of the site. Topsoil mounds (TSM) 4 m to 6 m high, along with subsoil (SSM) and drift mounds (DRM) between 6 m and 12 m above ground level would be constructed around the operational area. The proposed development would remove four hedgerow lengths assessed to be in a favourable condition, totalling about 1 km.⁷⁴ All the trees on the site except for T120 would be cut down, but all the tree groups except for G1, which was assessed as Category C, would remain.⁷⁵
64. A site compound would be located adjacent to the A1068, from which the development would take vehicular access.⁷⁶ This proposes a priority access with a ghost island turning pocket on the A1068 to assist vehicles turning right into the site, with a deceleration length appropriate for the derestricted (60 mph) speed limit. A maximum of 150 HGVs would enter and 150 HGVs leave the site per day (300 per day), transferring coal south to either Battleship Wharf at Blyth, or Butterwell Disposal Point via the C125 for rail transport, in both cases along routes designated in NCC's Road Freight Network.⁷⁷ Works in the highway to construct access to the application site, and for some junction realignment at the Butterwell Disposal Site access, if used, would need to be the subject of section 278 agreements under the Highways Act. All haulage vehicles would be sheeted and would pass through a wheel wash before leaving the site. The PRoW across the site would require a temporary diversion for the duration of the operation.
65. Proposed hours of operation would be 0700-2200 Mondays to Fridays and 0700-1300 on Saturdays, with soils handling, HGV loading and coal despatched from 0700-1900 Mondays to Fridays and 0700-1300 on Saturdays. Plant maintenance would be restricted.⁷⁸ The applicant indicated that the proposed development

⁷² ID/NCC8.

⁷³ The working phases are shown on Tab3-Tab7 APP/PP/1.

⁷⁴ Figure 4 Hedgerow Survey November 2014 ES Volume 2 Appendix 3.7 at CD4.5.

⁷⁵ Paragraph 5.1.2 Arboricultural Survey January 2015 ES Volume 2 Appendix 3 at CD4.5.

⁷⁶ The location of the proposed access is shown on Figure 2.2 and Figure 2.3 of the Highways and Transport Assessment, which is at Appendix 12 of the ES Volume 4 at CD4.7.

⁷⁷ Proposed haulage routes are shown on Tab12 APP/PP/1. The Northumberland Freight Map is shown at Appendix 12 of the ES Volume 4 Appendix D at CD4.7.

⁷⁸ Condition 12 ID/OTH36.1.

- would create at least 50 new jobs and provide for the retention of at least 50 jobs transferred from existing sites. The updated indicative working programme shows coaling operations completed by the end of April 2023, with annual production from Highthorn ranging from 0.2 Mt in 2018 to 0.7 Mt in 2020 and 2021.⁷⁹ However, suggested Conditions 6 and 8 would require the development to commence within three years of any grant of planning permission, and for mineral extraction to commence within 12 months after that date, and cease not later than five years from the commencement of coal extraction.
66. Off-site mitigation and enhancement works, referred to as Restoration First, would include the creation of new wetland habitats and improvement of existing wetland areas, such as Hemscott Hill Ponds, new public access routes, improvement works to Chibburn Preceptory, and landscape improvements, are proposed prior to commencement of development and throughout Years 1-4 of site operations.⁸⁰ Progressive site restoration would be for agricultural uses, with new field patterns and hedgerows/copses, along with wetland habitats in the south of the site in association with Hemscott Burn.⁸¹ New and upgraded public access routes are proposed to link into the existing footpath network.⁸²
67. The ES stated that ground water levels in old mine workings are drawn down by pumping at Lynemouth, and so the majority of water that would require any treatment at the site would comprise surface water runoff. Application Plan PA18 indicates the proposed surface water drainage scheme and treatment areas intended to deal with this surface water.⁸³ However, there has been substantial groundwater recovery in the area following the closure of the Ellington colliery in 2005.⁸⁴ FEI.1 referred to negotiations with the Coal Authority about future pumping, and set out two options for Highthorn if only some or no further drawdown could be achieved by pumping at Lynemouth; (a) to leave a coal barrier around flooded workings, or (b) de-water flooded workings within the excavations at Highthorn by pumping at the site.⁸⁵ I asked at the PIM whether there was any more up-to-date information from the Coal Authority. On the first day of the Inquiry I enquired how surface and ground water would be managed at the Highthorn site.⁸⁶
68. The applicant indicated at the Inquiry that option (b) above, de-watering by large scale pumping at Highthorn, is no longer being pursued because of operational complexity and the need to ensure that the site timetable could be met.⁸⁷ The two remaining options are (i) drawdown facilitated by pumping at Lynemouth, and (ii) the retention of coal barriers around the flooded old workings. The applicant stated that both options are operationally feasible, and that discussions would continue with the Coal Authority, but that option (ii) was preferred. The provision of coal barriers would result in a loss of 235,000 tonnes of coal out of the total reserve of just over 3 Mt, and a revision to excavation pavements would

⁷⁹ Tab11 APP/PP/1 and APP/AC/2 Table 5.1 page 45.

⁸⁰ Restoration First proposals are shown on Tab8 APP/PP/1.

⁸¹ The restoration strategy for the site is shown on Tab9 APP/PP/1.

⁸² Rights of Way are shown on Tab16 APP/PP/1.

⁸³ ES Plans and Drawings at CD4.4.

⁸⁴ ES Chapter 16 and Appendix 5.

⁸⁵ CD4.8 Appendix 5.

⁸⁶ CD17.3.

⁸⁷ ID/APP5.

be necessary.⁸⁸ The proposed barrier separation of 37 m derives from regulations for deep mines.⁸⁹ In response to my request, the Coal Authority provided the Inquiry with additional information about pumping at Lynemouth.⁹⁰

69. If the proposed development was implemented the obligations in the section 106 and section 39 agreements, as outlined above and in Annex C, would apply.

The case for the applicant

The following summary of the applicant's case broadly follows the applicant's closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.⁹¹

Introduction

70. Banks Mining is a company with a long track record of safe, responsible and efficient operational management of surface mines, and of first class restoration and excellent relations with local communities. Although a personal permission is not sought, Banks Mining has made clear that it has no intention of selling the site on, and there has been no suggestion that it would do so. In those circumstances at least some regard can be given to Banks Mining's excellent track record.

Minerals Local Plan

71. The MLP when adopted in 2000 had a suite of policies, intended to work together, which covered an overall impact/benefit analysis approach for surface coal mining: Policy C1; allocation Policy C2; and two constraint Policies C3 and C4. The intention was that the allocations would be reviewed before the end of the Plan period (i.e. before 2007).
72. The position in 2017 is that Policies C1 and C5 have not been saved. The allocations in Policy C2 have either been used or are now sterilised by the Pegswood by-pass. There can be no doubt that in these circumstances Policy C3 is out of date and does not conform with the *Framework*. No review of the allocations policy has ever taken place, and there is now no policy in the MLP that allows benefits to be taken into account.
73. FoE argue that Policy C3 is not out of date because there has been no material change of circumstance and the reasons for the constraint policy remain, but that is simply incorrect. The fact that the allocations have been worked or sterilised and there has been no review means that any constraint policy cannot hold its original weight. It must carry less weight because there is no allocation or criteria policy which provides the balance. It is not correct that there is plenty of other land that could have been allocated. 60% of the coalfield is covered by constraint policies. Furthermore, it is not possible to know what land would have

⁸⁸ Drawing HJB/BA795/227 at ID/APP5 indicates the required revision to excavation pavements and depth.

⁸⁹ ID/APP10.

⁹⁰ ID/NCC7.1 and ID/NCC7.2. This is considered in more detail later in this report in the summary of consultations with the Coal Authority.

⁹¹ ID/APP16.

been allocated if there had been a review. The appropriate course must now be to judge the application against a criteria based policy. There is no policy support for an approach in which weight can only be reduced where current needs for coal cannot be met by working outside the Policy C3 designation. There is no sequential test set out in the *Framework*.

74. Further, there has plainly been a material change in the factual circumstances that lay behind Policy C3. The supporting text to Policy C3 at paragraph 4.44 refers to the work at the time in the Management Strategy for Druridge Bay and the establishment of the coast project to develop an integrated approach to restoration of the area. That work subsequently stalled and the aspirations it contained have not been fulfilled. Therefore, at least part of the underlying justification for the constraint has now gone.
75. Policy C3 is not in conformity with the *Framework*. It expressly imposes a test of "exceptional circumstances". FoE's analysis is that the exceptional circumstances are not a test of adverse environmental harm, but require exceptionality as an additional and necessarily higher hurdle. If this is correct then plainly Policy C3 is not in conformity with paragraph 149 of the *Framework*. Paragraph 149 does not impose an exceptionality test, and Policy C3 is beyond doubt a significantly higher test than that set out in paragraph 149. Given that this paragraph is accepted here as the key policy test, the fact that Policy C3 imposes a different and higher test is critical. On that point alone, Policy C3 can no longer carry any material weight.
76. Policy C3 does not give great weight, or indeed any weight, to the benefits from the proposal, and there is no other MLP policy that now allows those benefits to be taken into account. Therefore Policy C3 is not in conformity with paragraph 144 of the *Framework*, and there is no other MLP policy that overcomes that inconsistency. Benefits can still be taken into account as other material considerations, but the failure of the policy to do so makes it significantly out of step with the *Framework*. Further, Policy C3 is not a criteria based policy, and as such is not in conformity with paragraph 113 of the *Framework*. The lack of criteria might conform to paragraph 113 if its protection was commensurate with a national or local designation that itself carried weight. But in this case, as is set out below, the AHLV designation can itself carry no weight. Policy C3 has no criteria and acts as a total bar in an area which has been found not to justify even a local designation. For all these reasons, applying paragraph 215 of the *Framework*, Policy C3 can now carry only minimal, if any, weight.
77. If Policy C3 does carry any material weight then it would be necessary to consider whether the proposal conforms with it. There are two alternative ways to interpret Policy C3 - either it applies a test of exceptionality over and above there being no adverse effect on the special landscape - in which case it carries minimal weight for the reasons sets out above. Alternatively the nature of the exceptional circumstances is set out in the policy. The latter seems the more natural reading of the language, not least because of the lack of either "and" or a comma. If this reading is correct then the test becomes close to, if not the same as, that in paragraph 149. This does make sense because the exceptionality would be met by being able to show no adverse effects on the special landscape quality as set out in paragraphs 4.44 and 4.25 of the MLP, including the need to show measures to enhance the appearance of the area. But ultimately this

debate goes nowhere – either the policy is not in conformity with the *Framework* so paragraph 149 applies, or it applies a test similar to that in paragraph 149.

78. FoE places great weight on paragraph 4.25 of the MLP and the fact that the nature of the area is heavily influenced by its history of surface mining. There is no issue that this is fundamental to the area's character and that history was part of the reason for the area being in Policy C3. But that merely strengthens the argument that what the Mineral Planning Authority were looking for in Policy C3 was landscape enhancements to reverse some of the historic damage. The proposal would undoubtedly cause landscape harm within the application site during the operational phase, but the medium/long term landscape impact post restoration would be strongly positive. In those circumstances Policy C3 would be met. FoE called no landscape evidence at the Inquiry, and so did not challenge any of the substantive expert evidence as to the landscape impacts and overall landscape benefits. FoE has no evidence as to how to balance the short term adverse effects against the medium/long term landscape benefits; or what weight to give to the landscape benefits; or the prospects of any enhancement and restoration either to the application site or the wider landscape. In those circumstances it is impossible to see how FoE can submit that Policy C3 is not met. The Secretary of State will have to make a judgement, but it is worth noting that both the landscape witnesses agree that the overall impact on the landscape, post restoration and Restoration First, would be beneficial.

Castle Morpeth Local Plan

79. Policy C3 of the CMLP is even more obviously out of date than the MLP policy. Paragraphs 158 and 165 of the *Framework* make clear that policies should be based on adequate and up to date information about the characteristics of the area. There is nothing to indicate what contemporaneous evidence the Policy C3 designation, and the extensive AHLV designated, was made upon.
80. NCC's commissioned study by Land Use Consultants (LUC) in 2010 made two relevant findings in respect of the CMLP policy. Firstly, in respect of the Castle Morpeth AHLVs, it did not consider that these are based on a robust or consistent assessment of landscape value.⁹² Secondly, in respect of LCA39a, it was scored at 19 points, right at the bottom of the ranking index. There is therefore not just no evidence base to support the AHLV, but the consultants instructed to review it plainly considered it to be of limited landscape value. Quite apart from the guidance in PPS7 at the time, it is clear from the scoring that LUC did not consider this area was appropriate for special protection. As such CMLP Policy C3 should carry no weight.

National Planning Policy Framework

81. The key test is set out in paragraph 149. For the purposes of paragraph 14 and the issue of whether this is sustainable development, within the meaning of the *Framework*, paragraph 149 is a "specific policy". Therefore the starting point under the *Framework* is whether paragraph 149 is met, and therefore whether the development is environmentally acceptable or alternatively whether benefits outweigh any adverse impacts.

⁹² CD2.2.5 paragraph 2.5.

82. The *Framework* is critical in determining the approach to the issue of “need” upon which FoE place so much weight. Paragraph 144 gives “great weight” to the benefits of surface coal mining, including to the economy. There is no policy test in the *Framework* requiring a developer to show a “need” for the mineral in question. There is absolutely no policy that suggests that the fact that the minerals in question could be imported means that the policy support in the *Framework* should be reduced. Further there is no policy which imposes any kind of sequential test for mineral permissions. FoE’s arguments that the applicant has to show “need” that cannot be met by imports, or that permission should be refused if any need could be met outside the area of MLP Policy C3 are completely inconsistent with the *Framework*.

CCC advice and the Secretary of State’s first question concerning the extent to which the proposal is consistent with Government policies for meeting the challenge of climate change

83. This is not an application for new coal-fired electricity generation – it is an application for a surface coal mine. Many of the objectors, including FoE, constantly seek to elide the two. An application for new electricity generation from unabated coal would not be in conformity with WMS1 and the *ConsDoc* on coal phase-out.⁹³ However, there is nothing in either WMS1 or the *ConsDoc* which seeks to restrict or impact in any way on surface coal mining. The two matters are separate. This is not least because building new electricity capacity embeds the use of fossil fuels for the lifetime of the facility, whereas Highthorn would have a much shorter lifespan and would not embed coal use. If the Government had wished to link them, or to say that the consequence of coal phase-out was that surface mining should cease forthwith, or in 2025, or at some other point, then it would have said so. The elision that objectors seek to make does not exist in any policy statement.
84. Equally, if the Government had wished to change its approach to surface mining in planning policy it could and would have done so in the *Guidance*, or a separate WMS (as has happened with onshore wind and fracking), and again it has not done so. Where the Government wishes to prohibit a particular form of mineral extraction it simply says so.⁹⁴
85. Much of the climate change objection to the proposal is really about persuading the Government to bring in new policies and to send out a “message” or a “signal” to encourage investment and to play a role in diplomacy. Mr Ashton called for an embargo on all new coal mines; Mr Littlecott wanted changes to the Capacity Market; Professor Taylor called for increased support for and investment in renewables; and Professor Barrett sought changes to Government policy following the Paris Agreement. But none of these are existing Government policies. The application must be determined on the basis of policy as it stands now, not on what it should be or what it might be at some future date.
86. The question of “*the extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change*” has been effectively answered by the Government’s statutory advisor on climate change. The CCC does not set the policy, but it gives definitive advice on what does or

⁹³ CD3.7 and CD3.10.

⁹⁴ *Framework* paragraph 144(5) on peat extraction.

- does not fall within climate change policy (and duties) as set out in the carbon budgets. It has a virtually unique role being not merely a statutory advisor, but one whose advice the Government is under duty to pay close heed to.
87. The CCC's position is entirely clear. It published its scenarios as to how the Government can meet the 5th carbon budget in July 2016.⁹⁵ In its Central Scenario the CCC sets out the level of electricity that can be generated from coal up to 2025, within the Carbon Budget. This is not a prediction of what the market will do, but it is an analysis of what level of coal generation would meet climate change policy. The CCC Central Scenario includes very significantly more coal than Highthorn would produce.⁹⁶ Therefore, assuming that every piece of Highthorn coal was used for power generation, that would fit well within the CCC advice on the Carbon Budgets. That is the answer to the Secretary of State's first question.
88. FoE argue that coal demand from the power sector is actually lower than that in the CCC Central Scenario and likely to stay lower, that Government policy will have to change in the light of the Paris Agreement, that there are variables within the CCC scenario, and that other sectors might not meet their targets. However, the level of demand for Highthorn coal would ultimately be a matter for the market not the planning system. There are obvious benefits, in terms of GHG emissions, jobs, investment and balance of payments, in coal being sourced from within the UK rather than being imported. The CCC is not advising on future projections, and whether Government action on other sectors needs to be changed has to be a matter for Government.
89. CCC in its 2017 progress report remains of the view that there is significant, albeit diminishing, demand for coal in the electricity sector, but that this would be consistent with meeting the carbon budgets out to 2025. The BEIS Clean Growth Plan, due to be published after the end of the 2017 summer recess, will describe additional policy effort to meet the 4th and 5th Carbon Budgets. The 4th Carbon Budget would begin in the last year (2023) of Highthorn production. In that year Highthorn would be expected to produce 0.29 Mt of coal, corresponding to around 0.72 TWh of coal-fired electricity. The updated CCC scenario appears to have somewhere between 10 TWh and 20 TWh of coal-fired electricity in 2023. The levels of demand envisaged, even in the updated CCC scenario, are more than sufficient to absorb the production from Highthorn. There is also demand from other sectors. CCC's 2017 progress report does not alter the consistency of the proposed Highthorn surface mine with UK climate change targets and policy.⁹⁷
90. FoE submissions about the 2017 progress report referred to average annual load factors for gas of 40%. But this is made up of periods of peak demand where load factors are already at 100%, so gas-fired generation cannot increase its output in these periods. The system still needs coal in high demand periods with low wind output. Other technologies could meet this demand, but at a higher cost to consumers.⁹⁸ With respect to the most cost-effective forms of renewable energy, such as onshore wind and solar PV, the CCC considers the outlook is still

⁹⁵ CD3.25.

⁹⁶ APP/AC/2 Figure 5.1.

⁹⁷ ID/APP19.

⁹⁸ ID/APP20.

fairly negative in the absence of an expansion of Government support.⁹⁹ There is nothing in the 2017 progress report to say that new coal mines should be restricted, and the CCC considers that policies on carbon pricing and the coal phase-out are working, and that its updated scenario, with its levels of coal-fired electricity, is the lowest cost way of meeting the UK's carbon budgets.¹⁰⁰

Paris Agreement

91. The CCC has advised the Government on what it needs to do in terms of carbon emissions in order to meet the terms of the Paris Agreement, which is not to change the Carbon Budgets now, but to consider the matter within the timescales of the review provisions in the Agreement.¹⁰¹ That advice says nothing about either bringing the coal phase-out proposal forward from 2025, or about stopping coal mining now, or at any date. Such a review would be in 2020 and it is very unlikely that there would be any revision to the 3rd Carbon Budget for the period 2018-2022. If the 4th Carbon Budget was revised then that would only impact on the last year of Highthorn production. The CCC's advice will require there to be a series of future policy decisions to be made by the Government, which may well involve difficult decisions across a whole range of sectors, but those decisions have not been made. On energy policy, the nature of the 'trilemma' means that balancing security of supply with cost and climate change considerations is extremely difficult.¹⁰² That is a balance for Government to make. The determination of this planning application is not the place to change or set Government policy.
92. FoE consider that in order to meet the Paris Agreement a large proportion of the world's fossil fuel reserves will need to stay in the ground as "unburnable carbon". However, that does not mean that all reserves have to be sterilised. The approach in the Paris Agreement is that each individual country meets its obligations. FoE is effectively arguing that the UK should act over and above any domestic or international obligations in order to be a "world leader", but this is not a matter for the planning process. UK domestic coal production has already very significantly fallen since 2011.¹⁰³ FoE's submission that there should be no new permissions until the old ones have been exhausted, whether sensible and cost effective, or not, is simply not reflected in any form of Government policy.

Demand

93. Demand for coal-fired generation up to 2025 is a matter for the market and extremely difficult to assess. The level of generation will depend largely on the relative price of coal to gas, which is subject to considerable volatility, and wholly outside the control of the UK Government. The starting point must be the current role and need for energy from coal. There is no dispute that coal used for electricity generation has fallen rapidly in the period since 2012. However, it is equally clear that coal continues to play a very significant and indeed critical

⁹⁹ ID/OTH37 pages 55 and 57.

¹⁰⁰ ID/OTH37 page 15.

¹⁰¹ CD3.18.

¹⁰² The balancing of the need for energy security, CO₂ reduction and affordability has been called the trilemma.

¹⁰³ APP/AC/2 Figure 3.2.

role in supply in the UK energy market.¹⁰⁴ For significant periods during the winter months in 2016 coal was generating at power levels averaging 10 GW or more.

94. Coal cannot be phased out unless and until there is another, cost effective way of generating this power at the times when it is needed. The energy mix has to provide sufficient and cost effective capacity across the whole year. In terms of replacing coal-fired generation this is particularly an issue during the winter months when demand is high and some of the other sources, such as renewables, generate much less electricity. The *ConsDoc* states that “the Government has made clear that it will not proceed to impose requirements that would lead to the closure of unabated coal by 2025 without assurance that a secure and reliable electricity supply will be maintained”.
95. FoE place great reliance on the BEIS Updated Energy and Emissions Projections Reference Scenario to suggest that coal is not needed in the years up to 2025.¹⁰⁵ However, there are a series of reasons why this scenario should be treated with considerable caution. These include uncertainties such as, volatility of price, BEIS assumed a level of coal-fired generation in 2016 of 20 TWh which is well below the true figure of 30 TWh, the scenario relies on a very large amount of new gas-fired capacity which seems very unlikely to happen, certainly within the assumed timescales, and both the BEIS Reference Scenario and the High Coal Scenario are consistent with Government policies. The High Prices Scenario includes high levels of coal generation persisting to 2025 and the only difference compared to the Reference Scenario, is the relative price of coal and gas.

Energy supply and the Government’s position on coal phase-out (Secretary of State’s fourth question concerning consistency with the WMS) and the Clean Growth Strategy

96. The Government has made clear that its preferred option is to phase-out electricity from coal by 2025.¹⁰⁶ This is only a proposal for consultation, but it is fair to assume that it is the Government’s likely policy outcome. However, it is equally clear that coal phase-out is subject to the pre-condition that the Government is confident that there will be security of supply.¹⁰⁷
97. In the trilemma, the Government has made clear that energy security is the first priority and pre-condition, but it has also emphasised the importance of affordability.¹⁰⁸ The potential tension between price and carbon emissions is well set out in the National Grid Future Energy Scenarios.¹⁰⁹ The reference to ‘Gone Green’ having the highest electricity prices, but that being a positive because it would incentivise demand reductions. If the only concern was climate change

¹⁰⁴ APP/AC/4 Figure 14.

¹⁰⁵ CD3.17.1.

¹⁰⁶ CD3.8, CD3.7 and CD3.10.

¹⁰⁷ The International Energy Authority’s definition of energy security includes “the uninterrupted availability of energy sources at an affordable price”. FoE/ProfPT/3 Appendix 5.

¹⁰⁸ The introduction to the *ConsDoc* states that the “priority is to ensure that our country has the electricity it needs to meet all of our needs, at the lowest possible cost and to ensure that we decarbonise our energy supplies in line with the UK’s legally-binding commitments”. CD3.10.

¹⁰⁹ CD3.35.

then that approach would be correct and appropriate, but for the Government the idea that changes to energy supply will increase price to consumers is much less likely to be an acceptable, let alone desirable, outcome. Therefore, when considering much of the FoE evidence on energy supply and capacity, it is important to keep the potential impacts on price, certainly in the short term, firmly in mind. Many of the ideas advanced by FoE may well be theoretically feasible, but they would often come with significant cost implications.

98. The *Clean Growth Strategy* and its accompanying documents do not change the material accuracy or relevance of the applicant's evidence to the Inquiry reading compliance with national policy. The phase out of the use of unabated coal to produce electricity by 2025 is current policy, and the Highthorn proposal would complete production of coal within this timeframe. The *Clean Growth Strategy* addressed the relative importance of affordability in the 'trilemma' question and notes; "Every action to cut emissions must be taken while ensuring our economy remains competitive. As we have set out in our Industrial Strategy Green Paper, we attach great importance to making sure our energy is affordable." The applicant considers that this demonstrates that the Government will view all current and future policy in the light of the 'trilemma', not just looking to the single issue of emissions. The CCC recommended a review of the effectiveness of the planning system in achieving reductions in GHG, but the Government's 2017 response did not consider such a specific review is necessary. It added that "Planning policy and legislation already sets a clear expectation that local authorities will take account of climate change and seek to mitigate and adapt to its impacts."¹¹⁰

The Capacity Market and new gas

99. The Capacity Market is the mechanism by which the Government seeks to ensure sufficient capacity to meet the requirements of security of supply. So far the Capacity Market has signally failed to bring forward material quantities of new combined-cycle gas turbines (CCGT) generation capacity. Only one new large CCGT plant has been awarded a contract (1.9 GW at Carrington), but that project returned the contract in December 2016 as not being viable. In the most recent December 2016 Capacity Market auction only one new small CCGT plant was awarded a T-4 contract for 0.3 GW.¹¹¹ In terms of meeting the BEIS Central Scenario this is critical because these are contracts for new capacity delivering in 2021. So there is now no prospect of significant new CCGT capacity before 2022 at the earliest. The Capacity Market in 2016 instead awarded 6 GW capacity to coal-fired power generators. This is not an issue about whether 6 GW of new gas by 2022 is technically feasible or has planning permission, but whether the investment is there to bring it forward.
100. FoE consider that the Government could simply reform, or fine tune, the Capacity Market for the next auction in February 2018. But the reason coal is succeeding is that relying on existing coal is significantly cheaper than the costs of providing new CCGT capacity.¹¹² Of course the Government could change the rules of the auction, and prevent existing coal bidding, but that would come at a

¹¹⁰ ID/APP27 and ID/APP28.

¹¹¹ APP/AC/2.

¹¹² The clearing price in the auction was £22.50 per kWh, whereas the assumed price for new gas capacity was £49 per kWh.

- cost, which may or may not be politically and economically acceptable. It cannot simply be assumed that the Government will take every possible step to reduce or prevent coal-fired generation before 2025.
101. Other sources of capacity to fill the role of coal appear to be highly uncertain. Open-cycle gas turbines (OCGT) are a much more expensive form of generation, which leads to its very low load factors (1-3% compared to coal and gas in the range of 30-40%). OCGT covers the very short term peaks, albeit at a high cost.¹¹³ FoE place weight on the difference between the Secretary of State's reference in November 2015 to coal being replaced by "gas", and the *ConsDoc* which says "such as gas". How much reliance can be placed on those two words is open to debate, but unless there is actually some other source of energy available that is viable and cost effective, the debate is somewhat arid.
102. There is also a question mark over the level of growth in renewables in the immediate future. The Government has removed the Renewable Obligation Certificate subsidies for onshore wind and solar and very significantly reduced the feed in tariff for solar projects under 5 MW. Therefore, even the very small solar growth (individual properties) is much in doubt. The Conservative Manifesto made clear that there would be no new subsidy for onshore wind. It is completely unrealistic to suggest that this is not going to have a significant impact on investor confidence in the sector. There is no evidence that large scale projects can come forward without subsidy. So it is not possible to simply assume a continuing growth of renewables on the same trajectory as has taken place in recent years. Batteries, at the present time, only cover short periods, and so again cannot do the job of coal. This is certainly the case up to 2025.
103. There appears to be one major new interconnector that has got to a relatively advanced stage. This is to Norway, with 1 GW capacity. But no other project has got to either planning or funding stage. The process of leaving the EU and the uncertainty over energy market and regulatory change is certainly not going to encourage new investment in interconnectors in the short to medium term. There is then the additional problem that just at the periods when the UK is facing its peak demand, during the winter, the rest of Northern Europe will be facing similar conditions and not necessarily have spare capacity to export to the UK. Doubtless interconnectors can and will serve a role, but their growth and role have to be treated with caution, certainly in the period up to 2025.
104. There is great potential for smart grid technology, but it seems likely that the real gains are likely to be seen after 2025, and perhaps after 2030. It is notable that the Ofgem document FoE rely upon is only a "call for evidence". The projects referred to seemed at least in part to be demonstration projects not schemes already operating "at scale".¹¹⁴
105. The difficulties with predicting the sources of new energy capacity up to 2025 are encapsulated in National Grid's scenarios.¹¹⁵ The spectrum between 'Gone Green' and 'No Progression', and the sheer impossibility of predicting which courses are most likely to occur, show the extreme uncertainties in this field. The applicant has attempted to take a sensible and realistic view of an extremely

¹¹³ ID/APP14.

¹¹⁴ CD3.41.

¹¹⁵ CD3.35.

uncertain aspect of a very uncertain world, where FoE's "optimism" would have very real impacts on electricity consumers in the UK.

106. FoE rely on the Industrial Emissions Directive (IED) and the prospect that some of the existing coal-fired power stations may have to reduce production in 2020. The three alternatives are set out in the *ConsDoc*.¹¹⁶ The most likely scenario is Ratcliffe Power Station having upgraded so it can operate at full capacity, with the other power stations likely to operate in the Transitional National Plan (TNP) and thus be restricted to a 17% load factor. On this basis, there could be 25 TWh post 2020 from coal-fired power stations, thus requiring 10 Mt of coal per annum, even if IED has full effect. FoE also referred to the BREF standards, but these have not even been brought into effect yet, and would only become effective after the planned date for Brexit.¹¹⁷
107. It follows from this uncertainty that the only advice which can be given about the need for coal in cost-efficient electricity production up to 2025, is that it is undoubtedly needed in large quantities at the present time, and that it would be wholly unsafe to conclude that there will not continue to be such demand/need up to 2025.
108. The other basis for need for Highthorn coal is for users outside the power sector, principally for mineral and chemical products, paper and pulp. The historical demand for steam coal in the UK from outside the electricity generation sector ranged between 2.2 Mt and 2.9 Mt over the period from 2005 to 2015.¹¹⁸ The change in this level of coal use has been much less marked than in electricity generation. There is ample demand outside the energy sector to cover all the Highthorn production.¹¹⁹
109. FoE argue that there is no "need" for Highthorn because either there is adequate supply from other permitted sites in the UK, or the coal could be imported. In terms of a planning decision it is difficult to see why this is a relevant consideration. Where the energy generator sources its coal from is a matter for the market, not the planning system. There is nothing in the *Framework* which would support an approach that minerals should only be permitted if there is no alternative source, whether in the UK or globally. The current policy approach provides no scope to refuse Highthorn because coal could be sourced from elsewhere.
110. There is no dispute that there are other permitted coal sites in the UK, and a figure of 22 Mt was agreed at the Inquiry. There is also a large amount of coal from around the world available to be imported. But if this were a legitimate reason for refusal then no coal mines would have been permitted and probably very few mineral or aggregate sites at all. Importing coal would inevitably

¹¹⁶ Compliance options are; (1) Meet the emissions limit by 1 January 2016, (2) Participate in the TNP and by July 2020 either meet the limit, close or be limited to 1,500 hours a year (17% load factor), (3) Utilise the Limited Lifetime Derogation of 17,500 hours operation between January 2016 and December 2023 and then close. CD3.10.

¹¹⁷ BREF refers to EU Best available techniques Reference Documents.

¹¹⁸ APP/AC/2 paragraph 98.

¹¹⁹ APP/AC/2 Figure 5.7 trajectories of non-power sector demand for steam coal show annual demand around 2 Mt up to 2025.

generate additional CO₂ emissions.¹²⁰ However, the life cycle assessment is so complex as to be virtually meaningless. It is impossible to assess relative CO₂ emissions from coal production in Colombia, Russia and Northumberland, but the additional transport emissions are obvious.

Additionality/Substitution

111. There is no basis for believing that approving Highthorn would increase CO₂ emissions. FoE's case, and again that argued by many of the objectors, is really about symbolism and perhaps diplomacy.
112. Highthorn coal would go to existing users, largely energy generators who will choose whether or not to burn coal wholly regardless of whether it comes from Highthorn or elsewhere. The use of coal or gas will depend on price. The idea that Highthorn could impact on the global price of coal is farfetched. Highthorn would produce at most 0.7 Mt pa. The global production of coal is 5,500 Mt pa, so Highthorn's peak production would be 0.01% of global production. A 2013 International Energy Agency (IEA) Report suggests that even where a huge amount of coal is added to the global market coal consumption only increased by 8%, i.e. 92% of the coal produced was simply used in substitution for other coal.¹²¹ The IEA report was based on a huge coal reserve in the USA which contributed 150,000 Mt to global coal markets. That is 50,000 times larger than Highthorn. In the real world it is very hard to see how the Highthorn production level would impact on global coal prices, and even if it did so to a minuscule degree, how that would be sufficient to persuade any generator to generate using coal rather than gas.¹²² By far and away the greatest producer and user of coal is China, and it is China that effectively decides the global coal price.
113. FoE developed an argument that Banks Mining would sell coal at less than the global price and thereby either undercut Colombian coal or generate a price war. But it is impossible to see why Banks Mining should do so. The only scenario where this might be the case is if coal was being "dumped" at a lower price, but if the market totally collapsed then Banks Mining would bring production to an end and restore the site, in accordance with the permission. This is what happened at Rusha when it became no longer economic to continue production in the light of the closure of Longannet Power Station.
114. FoE argued that by allowing Highthorn the Secretary of State would be disincentivising investment in renewables. This argument about "signals" has become the key point of FoE's case. It is impossible to see how on the evidence this argument can be borne out. Investment in renewables was plainly high during the period of considerable growth in those renewables up to 2016. Most of this was before the coal phase-out policy, in periods when there were large amounts of coal generation; that does not appear to have put off investors in renewables. It is far more likely that potential investors would now be put off by the withdrawal of subsidy for onshore wind and solar, and the considerable difficulty, if not impossibility, of making larger schemes viable without subsidy. The reason for the effective embargo on onshore wind is not related to viability, but much more for planning reasons.

¹²⁰ NCC/JG/1 and NCC/JG/3.

¹²¹ International Energy Agency 2013 Report cited in CD13.7.

¹²² APP/AC/4 paragraph 3.13.

115. UK policy has already effectively reduced generation and emissions from coal quite dramatically, through the increase in the carbon price that was applied to fuels used for electricity generation (the Carbon Price Support rate).

Conclusion on climate change issues

116. The scheme would be wholly consistent with policy on climate change, and with the coal phase-out policy. The level of electricity from coal assumed by CCC entirely covers any production from Highthorn and therefore the proposal is consistent with the carbon budgets as advised by the CCC. It is also fully consistent with the coal phase-out policy for 2025. The policy, as set out in the *ConsDoc*, does not require or support phase-out before 2025 and the Highthorn production all predates 2025. In any event the WMS and the *ConsDoc* say nothing about stopping coal production. The *Framework* supports the continued extraction of coal, subject to environmental acceptability and does not seek to prevent it, as is the case with peat extraction. FoE's case is focused on what policy should be, and how it should be evolved, not on what the policy position is at the present time. The real planning issue in this case under paragraph 149 of the *Framework* is whether the proposal is environmentally acceptable.

Landscape and visual impacts

117. Landscape impacts should be divided into impacts during the mining operation and post-restoration; they also have to be considered within the site and outside the red line application boundary. The landscape character of the site itself (LCA39a) is assessed as being of moderate sensitivity.
118. There is no precise boundary in terms of physical features between LCA39a and LCA40a. However, there are two features clear on the ground. There is a clear edge to the dunes, which is the C110, and the character of the landscape changes markedly in topography and vegetation at this point. The features to the west of the road that appear to be of particular interest are the wetland ponds at Druridge and Cresswell. Therefore, the role of the fields to the west of the road within LCA40a seems to be a combination of the setting of the dunes, and to encompass within LCA40a the wetland areas.
119. Much of the character of the site, as well as the surrounding area has been fundamentally influenced by historic surface coal mining. Its need for enhancement has been consistently reflected in policy.¹²³ The northern part of the site (119 ha) was subject to a surface mining consent. Only a relatively small part was actually the subject of extraction, but the condition of the land suggests that much of it was soil stripped and mounded. There are no remnants of historic hedgerows or trees, and no rig and furrow on this northern part of the site. The southern part of the site has not been subject to any direct impacts of surface mining, but it too is a degraded landscape with little of what might be thought of as the historic landscape, except for some areas of rig and furrow.
120. The mounding and landscaping scheme during the operational phase of the proposed mine has been carefully designed to ensure virtually no views into the operational area of the mine at any stage. The mounds have been designed to minimise impacts on the landscape during the period that they would be in

¹²³ MLP paragraph 4.25.

place.¹²⁴ The contouring has been analysed in great detail to work with the contours of the site and its surroundings so as to form as naturalistic appearance as possible and not to appear as large bulky and alien features.¹²⁵ Thought and care has gone into the seeding regime on the mounds to ensure rapid but appropriate growth on the mounds. What has been achieved at other Banks Mining sites is an indicator of what can be achieved where the planning conditions and section 106 are in appropriate form.¹²⁶

121. The work on the site, including any part of the mounding, would have no impact on the beach. At no point from the dunes or the C110 would there be any views of the operations within the site. There would be no public views of this area save at a considerable distance, over 1 km, and from limited viewpoints. There would be a view of the mounds being constructed, but within a relatively short period, eight weeks for construction and up to five months for full grass coverage. Although some long distance views would be lost for the period of the works, most would be retained.
122. A network of new and improved footpaths is proposed, which would more than compensate for any temporary loss of the footpath across the site during the works. There are existing footpaths between Ellington/Widdrington and the coast, so the development would not limit access to the coast for walkers.
123. The restoration works on the wider landscape, and therefore many of the wildlife benefits, would commence immediately upon commencement of the planning permission, as part of Restoration First. These would involve the creation of wetland areas to the north of the site, creating a field pattern with hedgerows closer in appearance to what would have existed before surface mining took place, and removal of some of the dark coniferous shelter belts. This is all part of understanding, and mitigating for, the historic landscape harm.
124. On completion of on-site operations the site itself would be restored, following similar principles, with the topography restored to its current levels, save at Hemscott Burn where it would be reinstated as a swale, similar to the restoration at Brenkley. To a limited degree there would be impact on the time-depth of the southern part of the site, but this is very far from being an intact landscape. The environmental works and planting would significantly enhance the landscape quality, as well as the ecological interest of the site, with a slight/moderate benefit as the restoration matures, resulting in long term benefits.¹²⁷
125. The LVIA considers the magnitude of landscape effects during the working of the site to be medium due to the character/condition of the landscape within the site and the limited extent of its visibility from the surrounding landscape. Landscape effects would reduce to negligible/low on restoration of the site and becoming low/medium beneficial in the first five years after restoration and beyond. With moderate sensitivity to this type of development and medium magnitude of effects the significance of effect would be moderate, reducing with

¹²⁴ LVIA page 80 CD4.5.2.

¹²⁵ As an example see the visualisation at VP17 and views of OBM2 from the west side of the site on the A1068.

¹²⁶ APP/MD/3 Appendix 8.

¹²⁷ APP/MS/2 paragraphs 4.1 and 9.1.

- site restoration to slight/moderate beneficial as the restoration establishes and matures.¹²⁸
126. For residential properties and settlements the LVIA found that the proposed development would have a visual effect of substantial significance for Highthorn (140 m), and moderate significance for Houndalee Farm and Cottages (256 m). An effect of slight/moderate significance was predicted for Warkworth Lane Cottage/Ellington Caravan Park (770 m-855 m), Teviotdale and cottage (697 m), Stonecroft (320 m), and properties at Druridge (526 m). The likely effect on other properties in the area was assessed as slight or imperceptible.¹²⁹
127. The likely significance of the effect on the A1068 and C110 is moderate reducing to slight/moderate. The effect on the public footpath from the A1068 to Hemscott Hill would be of substantial significance because this would be diverted to the south. An effect of moderate, reducing to slight/moderate, significance was assessed for the footpath between Ellington and Blakemoor Farm. On other PRoW the effect would be of slight/moderate, or imperceptible significance.¹³⁰
128. The LVIA assessed the visual effects on recreation/open space areas, finding an effect of moderate significance on the dunes, where there would be intermittent views of the site from a 4 km section of the dunes. An effect of slight/moderate significance was recorded for Cresswell Pond where viewing areas would be about 500 m and 700 m from the site. The effect on other recreation areas was considered to be of slight or imperceptible significance.¹³¹ There may be a view towards the application site from a small window on the spiral stair to the Pele Tower at Cresswell, but any view of the north-eastern corner of OBM1 would be likely to be heavily filtered by existing trees. Given the orientation and screening from nearby trees the effect of the proposed development from this vantage point would be imperceptible/slight.¹³²
129. There is evidence of poor agricultural quality on other restored sites.¹³³ It is difficult to comment on this without much more detail. However, the Highthorn agricultural restoration would be subject to a detailed scheme required by condition, and very closely controlled and monitored. There is very clear evidence from Brenkley that agricultural restoration can be highly successful.¹³⁴
130. Concerns about future extensions, as has occurred at some other sites, of the Highthorn mine are unfounded because the only possible extension here would be downwards. The nearest seam would involve working through 17 m of overburden, and as such would be very unlikely to be viable. In any event, a decision to go down further would have to be made before work began, thus being entirely different from a lateral extension.
131. The Ferneybeds site is crossed by utility infrastructure. Banks Mining has entered into a deed of covenant which ensures that the permission will not be

¹²⁸ CD4.5.2 page 45.

¹²⁹ CD4.5.2 pages 49-77.

¹³⁰ CD4.5.2 Table 6 and Table 7 and pages 78-154.

¹³¹ CD4.5.2 Table 8 and pages 155-171.

¹³² Visualisation at ID/APP17, comments from SAVE at ID/SAVE11 and response at ID/APP24.

¹³³ SAVE/GS/1.

¹³⁴ ID/APP7.1 and ID/APP7.2.

implemented and no mining will take place.¹³⁵ Therefore, there is no possibility of Ferneybeds creating any cumulative impact with the Highthorn mine.

Ecology

132. There are two separate ecological issues – harm to species or habitats by reason of the works, and the benefits that would accrue to species. On the first issue, the principle concern is harm from operational works to pink-footed geese. Large numbers use Druridge Bay and, although parts of the site do not seem to be a principal regular feeding ground, there is no doubt that pink-footed geese do use some parts of the site, in particular on the eastern side in relatively large numbers.¹³⁶ There are very large numbers of pink-footed geese in Northumberland and they are not on any of the endangered lists. Their favourable conservation status is precisely because they are relatively adaptable and are prepared to seek out the most nutritious food source.¹³⁷ The concern in relation to them is solely that the UK is their principal migratory location for the Icelandic and Greenland breeding population.
133. Concern has been raised about whether there would be sufficient alternative feeding areas when the site was being operated. A large area of the western part of the site would not be used in Phase 1.¹³⁸ Sacrificial crops would be grown on this land and when necessary grain feeding would take place. Similarly, towards the end of the operation works in Phase 5, the geese could return to the restored eastern part of the site.¹³⁹ During Phases 2, 3 and 4 a large part of the site would be operational and work could displace the geese. Banks Mining committed at the Inquiry to providing further geese mitigation areas in fields immediately to the north and east of the operational area, but within the red line of the application site.¹⁴⁰ Sacrificial crops would be grown on this land, and again if considered necessary, feeding provided. By this method the geese would be as well, if not better, provided for than is the case at the moment.
134. NCC considers that there would be “a quite significant oversupply” of land for pink-footed geese. RSPB’s only outstanding issue in this regard appears to be that the plans only cover the Phase 2, 3 and 4 works. But it would be unnecessary to supply additional mitigation land at the beginning and end phases as the geese would have more than ample land on the site at these stages. SAVE argues that on-site treatment lagoons would impact on the land available for the geese, but the lagoons would only take up a minimal amount of land.
135. Pink-footed geese are relatively sensitive to human disturbance, but relatively unconcerned about noise in the absence of human disturbance, at levels up to 55 dBA.¹⁴¹ The predicted noise levels at Cresswell and Druridge Ponds are well below this level and would be controlled at 55 dBA, which is well within the acceptable limit of the birds. The evidence of geese grazing on restored fields

¹³⁵ ID/APP6.1 and ID/APP6.2.

¹³⁶ Figures A1.1, A1.2 and A1.3 Appendix 3.4.1 Bird Surveys Appendix 3 of ES Volume 2 at CD4.5.

¹³⁷ WR25.3 Appendix 10.

¹³⁸ APP/PP/1 Tab3.

¹³⁹ APP/PP/1 Tab7.

¹⁴⁰ ID/APP2.1-2.3.

¹⁴¹ APP/KH/3.

very close to Brenkley working surface mine shows that they do not mind the limited noise coming off the operational workings.

136. The only other bird species of concern on the site are yellow wagtails. The scheme would be of considerable benefit to them because the Restoration First works would improve the surrounding environment considerably for this species. In practice it seems, as is the case at Shotton and Brenkley, that many species are more disturbed by footpaths and agricultural activities than by being in proximity to surface mining.¹⁴² A very important aspect of these works is the benefit to a number of bird species on the red and amber list, as well as those listed as priority species in section 41 of the Natural Environment and Communities Act 2006.¹⁴³ The most important habitat in the Druridge Bay area is the wetlands. This would be considerably extended and linked together under these proposals, allowing the area to fulfil its potential for waders and wildfowl. This would contribute to the maintenance and enhancement of ecological networks, in accordance with *Framework* paragraphs 117 and 118.
137. There would be no impacts on the Cresswell Ponds SSSI.¹⁴⁴ Concern has been raised that the works could materially impact on Great Crested Newts (GCN).¹⁴⁵ A full survey for GCN found no evidence of GCNs on or in the vicinity of the site. There was then further eDNA testing, entirely in accordance with best practice, to further check whether there were likely to be GCNs in the wider vicinity of the site. This confirmed presence in one pond at Druridge Pools. GCNs have a normal range of 500 m from breeding ponds and this distance is applied by NE as the maximum limit of possible effect.
138. The restoration works would be a major benefit for the wildlife of the area, and this seems to be almost universally accepted.¹⁴⁶ Druridge Bay is an important location for a large number of bird species. There would be 100 ha of coastal and flood plain grazing marsh created through the scheme, which would be a significant enhancement and a rare opportunity to improve Druridge.¹⁴⁷ SAVE suggests that the enhancements could be secured without surface mining, as some measures would have little cost. Even if this were correct, there is no evidence or likelihood that the landowners would agree to the works outside the scope of this proposal.
139. SAVE, RSPB and NWT expressed concern about some of the provisions in the final versions of the section 39 agreements, but acknowledge the improvements made to the earlier drafts. The agreements contain provision for active management for 25 years, and thereafter that the land be managed for the benefit of wildlife and ecology in perpetuity. Wildlife surveys in years 1 to 5, 9, 14, 19 and 24 would be sufficient to meet the objectives of the agreements. The agreements do not preclude a requirement for additional surveys arising from the review at the end of each five year period. Some flexibility in compliance with the Schedules 3 and 4 would be necessary to address any changes required over

¹⁴² APP/MS/3/5.

¹⁴³ NCC/DF/1 paragraph 5.4.

¹⁴⁴ ES Chapter 16 CD4.4.3, Appendix 5 CD4.6.2, and in CD4.8.5.

¹⁴⁵ ID/OTH4.

¹⁴⁶ FoE and SAVE did not challenge the applicant's evidence about the scale of the ecological benefits. NWT describes the proposals as being potentially "transformative".

¹⁴⁷ CD9.3.

the 25 year period. The same would apply concerning water management, and the flexibility within the agreements would not weaken the commitment to the management of wet grassland. The clauses in Mr Bell's agreement concerning development authorised by a planning permission, along with controls on water levels and management, do not weaken the provisions of the agreement.¹⁴⁸

140. SAVE raised concerns about pollution of watercourses and the MCZ, but these are wholly unfounded. There are simply no environmental pathways by which there could be any material impact. Firstly, all water coming off the site would be regulated by the discharge consent, which would set limits on what could be discharged. Secondly, the substances on the site are not pollutants. Thirdly, if any material, such as PM₁₀, were to get into the water course it would be hugely diluted in the sea. In relation to air borne pollution, quite apart from the very strict controls on the amount of dust that could be emitted, the distance involved would mean that very few dust particles would get into the sea, or even into Hemscott Burn, in any event.

Noise

141. A verification exercise has been undertaken to ensure that the background sound levels are correct.¹⁴⁹ The suggested noise conditions accord with the *Guidance* in every detail. The standards in the *Guidance* would themselves ensure that nuisance (within the meaning of the law) would not occur. The only point in *Fen Tigers* is that the fact of planning permission does not mean that there cannot be a nuisance, and the case says nothing about whether or not nuisance is likely to occur.¹⁵⁰
142. The suggested night-time noise condition is an issue for SAVE, but it appears to have misread the *Guidance* as requiring night-time noise simply to be reduced to a minimum, whereas it says reduce adverse effects to a minimum. There would be a considerable separation distance between the proposed operational works and the nearest noise sensitive receptors. Given that there would be a condition that no noise from the site was to be audible during the night-time period at the nearest noise sensitive location, a further BS4142 assessment is wholly unnecessary. Furthermore, the condition makes clear that no power tools could be used at night.¹⁵¹ Any maintenance work would be restricted to plant servicing and would take place within the buildings on the site. The pumps would necessarily be at the bottom of the void and would be acoustically insulated, so would be inaudible off-site at the nearest noise sensitive location.
143. The experience of those living near to Ffos-y-Fran surface mine is completely irrelevant because it is a different site, with a different permission.¹⁵² Equally the experience of Stobswood was in relation to a site granted permission a number of years ago, where again the terms of the conditions and the operational techniques may have been very different from what is now proposed at Highthorn.¹⁵³

¹⁴⁸ ID/APP26.

¹⁴⁹ APP/MD/2 pages 30 and 31.

¹⁵⁰ *Lawrence v Fen Tigers Ltd* [2014] UKSC 13 AC 822 at ID/SAVE9.2.

¹⁵¹ Condition 12 ID/OTH36.1.

¹⁵² SAVE/AA/1.

¹⁵³ SAVE/AB/1.

144. The tranquillity map produced by Campaign to Protect Rural England (CPRE) shows quite clearly that this area sits somewhere in the middle of the tranquillity spectrum.¹⁵⁴ The inaudibility condition would ensure no disturbance at night. During the day there is no requirement for inaudibility. This is an area with a busy road on the western side and considerable agricultural activity in the vicinity, so there would be very little change in terms of overall tranquillity.

Dust

145. A condition would require a dust action plan, and dust would be monitored in each of the nearby local dwellings. It would also be constantly monitored by the operator, so that if there was any issue with dust arising steps could immediately be taken. The Environmental Management Plan (EMP) would provide for measures such as putting dust minimisation measures around relevant plant, providing water spraying as and when necessary, and requiring all lorries coming off-site to be sheeted. NCC's Environmental Health Officer and Environmental Protection Officer did not object to the application.¹⁵⁵ A public health study undertaken by Newcastle University and reviewed by the Committee on the Medical Effects of Air Pollutants found no statistically significant correlation between open cast mining and childhood health issues.¹⁵⁶

146. Problems may have occurred at Ffos-y-Fran, but there are no reasons to believe that those would be repeated at Highthorn.¹⁵⁷ Experience much more relevant to Highthorn is that of the Brenkley liaison committee, where the process has worked well and issues have been properly addressed.¹⁵⁸ Also the evidence from Pegswood is that where there was an issue Banks Mining worked hard to fix it.¹⁵⁹ This shows that with the right conditions, section 106 obligations, and a properly functioning liaison committee, issues can be dealt with.

Lighting

147. Lighting would be controlled, by a range of techniques, so that there would be no material impact off-site and no sky glow. Reflected light was included in the ES assessment, and a precautionary approach of 10% reflected light has been taken, where in reality it is more likely to be 1%-2%.¹⁶⁰ SAVE is concerned about reflected light from lagoons, but there would be no lighting on the lagoons.

Traffic

148. Traffic generation from the site has been the subject of a Transport Assessment, which has been fully considered by the Highway Authority. All the HGVs from the site would be routed down the A1068 to either the Port of Blyth or Butterwell Disposal Point. Both routes are on the strategic highway network and a designated freight route. NCC could enforce any failures to comply with an approved Traffic Management Plan. The Highway Authority has carried out a

¹⁵⁴ APP/SP/3 Appendix 6.

¹⁵⁵ CD5.1(l) and CD5.1(m).

¹⁵⁶ NCC/FW/1.

¹⁵⁷ SAVE/AA/1.

¹⁵⁸ ID/OTH29.

¹⁵⁹ APP/MD/2.

¹⁶⁰ ID/APP9.

number of improvements along the A1068 and its junctions, and there is no evidence to support any road safety reason for refusal.

149. The main concern raised was for cyclists and horse riders, but neither Sustrans nor the British Horse Society have objected. For horse riders there are numerous routes that would avoid the A1068 and be far more pleasant to ride on, with or without Highbarn lorries. Some horse riders, wholly unquantified, will need to cross the A1068, but they have to do so at the present time. For cyclists, many of the leisure cyclists are more likely to choose to use the coastal route, which is the national cycle route. For those cyclists who choose to use the A1068 they already have to be prepared to deal with fast traffic, including HGVs.

Hydrogeology

150. The scheme for dealing with both surface water and groundwater set out in the application and the ES shows more than adequate capacity to treat all the water pumped or drained from the site before its discharge at two separate locations. Any water discharged off-site would be subject to a permit from the EA (after consultation with the LLFA). This would set out both the appropriate maximum amount of water to be discharged on greenfield rates, along with any limits on substances within the water. The total capacity of the proposed treatment system would be proportionately greater than the equivalent at Brenkley and Shotton. In common with many other mineral extraction sites the excavations would be used to store water during prolonged wet weather. Further, should there be a risk of overtopping in any of the lagoons then water would be pumped back into the excavations so that it could be properly managed.
151. Concern has been raised about acid mine water, but there is no evidence that the water quality at the Highbarn site is likely to be any different from that found at all the other current or historic surface mines in Northumberland. The *Guidance*, and the law, is clear that the proper working of the EA permit process should be relied upon.
152. Banks Mining has made it clear from the application stage onwards that there are different potential solutions for dealing with ground water, and the final choice has not yet been made. The water levels in the former flooded mine workings along the southern and eastern margins of the site would require that ground water levels be lowered for extraction at Highbarn to take place. This is because the water level in old deep mine workings is gradually rising and the proximity of these workings to the proposed void means that a solution would be required on the site.
153. The option to dewater the workings has now been discounted given the difficulties establishing fully functional deep wells and achieving the required level of dewatering within the time remaining before the proposed commencement of works. The two remaining options are either that Banks Mining agrees with the Coal Authority to pump to lower the water level at the site, or that a coal barrier be left on the southern and eastern sides of the site to prevent a significant level of water incursion. Either of the options is technically feasible and does not lead to any material changes to any environmental impacts.
154. The Coal Authority, unrelated to the Highbarn proposal, is committed to pumping from Lynemouth to a level of 34 m below AOD to control rising groundwater, prevent uncontrolled discharges and prevent the pollution of

aquifers. The possibility of the Coal Authority carrying out further pumping at Lynemouth in order to lower the ground water further to allow extraction of coal at Highthorn has been discussed. However, no agreement has yet been reached and in Banks Mining's view this is now the less preferred option.

155. The preferred option is to retain a coal barrier at appropriate levels on the southern and some part of the eastern parts of the site so that there is no interface with the old mine workings and therefore no more than limited seepage of groundwater into the void. This means that 235,000 tonnes of coal would not be extracted. This method of preventing incursion from flooded mine workings has been used elsewhere and is tried and tested. The proposed coal barriers have been designed to a width of 37 m, which is based on the Mines Regulations for safe underground workings.¹⁶¹ Plainly underground working creates significantly more risk from water incursion, so the exclusion distance adopted is precautionary.

Heritage

156. Heritage impacts were considered in the Landscape and Visual Impact Assessment (LVIA) and identified no more than minimal impacts.¹⁶² There would be no views of the proposed development from the enclosed main area of the churchyard at Holy Trinity, Widdrington. Druridge Farmhouse and buildings would be about 650 m from the proposed development and grassed soil mounds would screen views into the site. The listed buildings at Hemscott Hill Farmhouse, located some 270 m from the proposed development, are generally screened by modern farm buildings and vegetation. Grassed mounds would screen views of the surface mine. Some minimal negative effects on the significance of the setting of the farmhouse and associated buildings would be temporary and reversible.
157. Listed assets at Cresswell would be about 1.7 km from the site. The development would not affect the significance of the setting of these assets. The proposed development would be located about 850 m south of the SAM at Chibburn Preceptory. Visibility of the development from the SAM would be minimal and the proposal would not affect the visibility of the Preceptory from the surrounding landscape. The development would not affect the significance of the setting of the SAM. Widdrington Castle Mound is also about 850 m from the site. OBM1 would be visible from the southern edge of the castle site, but given its naturalistic shape and nearby tree belts, would not affect the significance of the setting of the castle.
158. For all these assets any harm would be temporary. Furthermore, on restoration of the site potential benefits for heritage assets would result from an improved field pattern and vegetation, along with better public access.

Tourism

159. Impacts on tourism are extremely difficult to predict. Tourist facilities happily operate in close proximity to Shotton, but it is accepted that Druridge is a very different landscape. However, visitors to Druridge Bay who were not told about

¹⁶¹ ID/APP5.

¹⁶² CD4.5.2 pages 173-185.

the mine would have no reason to realise that the activities on the site, where they were visible from public vantage points, were related to a surface mine. It is not possible to say that at least initially there would not be some negative impact on visitor numbers. But, it seems likely that once it became clear how little off-site impact there would be, any short term effects would cease. The experience of Brenkley Liaison Committee, about people being initially hostile but then increasingly coming to realise that the mine is an acceptable neighbour, is likely to be repeated at Highthorn.¹⁶³

160. SAVE referred to the wild camping at Hemscott Hill, but there has been no objection from the operator, and it is not possible to tell what impact there would be, or what the future of that activity is in any event. Even during the operational phase there would be real benefit to some parts of the tourist draw from the improvements for the various bird species resulting from Restoration First. The Discover Druridge initiative could lead to really significant improvements for tourists coming to the area. The previous initiatives have not been able to achieve the necessary improvements, doubtless in part through lack of funding and lack of engagement with landowners.

161. It is entirely understandable, and indeed to be expected, that some local residents and businesses are worried about the effect of the mine on visitors to the area. However, the evidence is clear from Brenkley and Shotton that surface mining can be conducted in a wholly environmentally acceptable manner, which means impacts on visitors, as well as residents, would be minimal. It follows from this that any impact on tourism would be likely to be very much less than SAVE fears.

Jobs and economic benefits

162. A major benefit of the scheme would be the creation of 50 new jobs and the ability to retain 50 existing jobs that would transfer from other sites coming to an end. These are skilled well paid jobs across a range of disciplines, which can give workers the skills to be used on other sites and industries.¹⁶⁴

163. In an area with high levels of unemployment, and particular issues around providing skilled work where so many employers have closed, this is a particularly important opportunity. Mining supports a diverse supply chain in the economy of the region. The economic benefits of mining to the economy go far beyond the immediate employment of 100 people. The employment opportunities in renewables in the North-East are much to be welcomed.¹⁶⁵ But there is no basis for thinking that renewable energy and coal mining are alternatives – indeed some of the skills gained at Highthorn may be transferrable to renewable energy production and installation.

164. The wider benefits to the community and the local area were emphasised at the Inquiry.¹⁶⁶ It is extremely noticeable that neither of the two parish councils objected, and Widdrington Station and Stobswood Parish Council made a very

¹⁶³ ID/OTH29.

¹⁶⁴ ID/OTH25, ID/OTH26 and ID/OTH27.

¹⁶⁵ FoE/ProfPT/1.

¹⁶⁶ ID/OTH21.

strong response to the consultation about the benefits of the proposal and the lack of harm that it thought would flow.¹⁶⁷

Chibburn Preceptory

165. NCC assesses the impact on the Preceptory as being less than substantial harm to the setting of the building. The provisions in the section 106 agreement would be a significant benefit to the building and its setting. The question of whether this provision is necessary within CIL Regulation 122 is ultimately one for the Secretary of State. If harm is found to the setting of the Preceptory then it would be necessary to mitigate that by way of the improvements, and the obligations would be necessary and within CIL. If not, then these benefits would not be a relevant consideration in the planning balance.

Sand extraction

166. If the sand extraction allowed under the permission at Hemscott Hill took place at the same time as the proposed operation at Highthorn then there would be a material cumulative impact. The LVIA records a cumulative visual effect of moderate/substantial significance from the C110.¹⁶⁸ The extant consent could be operated, albeit the conditions on a scheme to be submitted would now have to be complied with. It is correct that relatively little sand has been extracted for a number of years, and therefore the likelihood of the consent being more actively operated within its remaining years is not clear. The Secretary of State can place some weight on this benefit because it would be necessary if sand extraction did take place, and the degree of likelihood of it being further implemented is not quantifiable.

Discover Druridge

167. In terms of benefits and the necessity test in the CIL Regulations Discover Druridge is plainly necessary because of the perception of harm to tourism. For a matter such as this to be necessary it does not have to be shown that the harm being mitigated against will necessarily occur. The mitigation, here tourism benefits, would be necessary in order to mitigate and ensure against possible harm from the development.

168. All the matters set out in the draft Discover Druridge Masterplan are ones that would have a tourism benefit.¹⁶⁹ Although they are not fixed, the objective of Discover Druridge is to encourage people to explore Druridge Bay. There is a real inconsistency in SAVE's concern about impacts on tourism from the development, but refusal to accept the benefits of Discover Druridge to tourism in the area. Although precisely what is brought forward may vary, the overall effect would be for the benefit of visitors and therefore tourism.

Restoration security

169. A number of objectors, including RSPB, have raised concerns about the security and certainty around the restoration proposals, and the fear about the

¹⁶⁷ CD5.1u.

¹⁶⁸ Figure 285 and Figure 286 at page 216 of CD4.5.2.

¹⁶⁹ APP/PP/1 Tab10.

problems that have arisen on some other surface mine restorations.¹⁷⁰ However, this matter is comprehensively dealt with in the section 106 agreement at Schedule 10 and Appendix 3. That sets out a requirement for a restoration security scheme in accordance with principles set out, both for the calculation of the costs of restoration for each phase and the method by which the funding would be secured before work started on the subsequent phase. The security would have to be provided 12 months in advance of the commencement of each stage, so there can be absolute certainty that the security would be in place before any excavation starts. There is no possibility that the problems experienced at some other sites, primarily in Scotland, could happen here. By this method NCC and residents can be entirely confident that the restoration would take place and to the standard set out in the relevant schemes and conditions.

Conclusion

170. Either the proposal accords with Policy C3 of the MLP, or that policy is inconsistent with the *Framework* as to carry little or no weight. This proposal accords with the key policy test in paragraph 149 of the *Framework*. It is environmentally acceptable, and if the Secretary of State were to find that strictly within the limits of the site it was not environmentally acceptable because of the short term landscape harm, then the benefits in terms particularly of landscape improvements, ecological benefits, jobs, and Discover Druridge would outweigh any temporary landscape harm. There are no environmental reasons to refuse the application. In terms of climate change, the proposal is wholly consistent with Government policy, both as considered by the CCC, and in terms of the coal phase-out policy. This is a proposal which accords with policy and brings very substantive benefits. Planning permission should be given.
171. Withdrawal of the eCS does not alter the applicant's case that the proposal accords with the key policy test in paragraph 149 of the *Framework*. Under the terms of paragraph 216, policies of the eCS would be material to consideration of the proposed Highthorn development, but those policies did not receive significant weight in the subsequent consideration of the planning balance.¹⁷¹ The thrust of the applicant's closing submission to the Inquiry was that the eCS accorded with the *Framework*, and reflected the very concerns that FoE and SAVE were advancing in respect of cumulative effects and enhancement to the landscape. Therefore the withdrawal of the eCS cannot affect the planning balance, and has no material bearing on the decision to be reached by the Secretary of State.¹⁷²

¹⁷⁰ ID/APP15.

¹⁷¹ APP/SP/2 paragraphs 5.19 to 5.21 and paragraphs 10.1 to 10.8.

¹⁷² ID/APP23.

The case for Northumberland County Council (NCC)

The following summary of NCC's case broadly follows NCC's closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.¹⁷³

Introduction

172. NCC is satisfied that it was appropriate to resolve to approve the proposal as being one that is satisfactorily consistent with the development plan, and in line with national policy and guidance. The proposal would deliver, or facilitate the delivery of, many important benefits that provide, in turn, for a compelling case for approval. NCC continues to support the application.
173. On the principal issues about which the Secretary of State wishes to be informed, the proposal scores very highly, and in no particular order: (i) the benefits of coal extraction and outstanding UK demand for coal, which at present sits consistently with the Government's caution over security of energy supply, climate change and low carbon aims through the present transitional period; (ii) the absence of any policy-contravening effects for the UK's delivery of a positive strategy for renewable or low carbon energy; (iii) consistency with Government policy for the sustainable extraction of minerals; (iv) respecting the Government's most recent consultation on the appropriate time for phasing out coal-fired power generation; (v) respecting other strategic guidance on renewable and low carbon energy.
174. NCC is confident of the proposal with regard to 'more conventional' planning considerations, especially: landscape and ecology. In summary, there would be no significant or unacceptable adverse effects on the wider landscape. Whilst there would be some significant local landscape effects during site operations, the development must be taken as a whole. The net landscape and ecological gain securely deliverable through phased restoration strongly reinforces the case for approval. The dedicated proposals for mitigation would successfully minimise areas of disturbance during the operational period and achieve true coalescence with amenity and the landscape, and also with key (bird and animal) species and their habitats. NCC supports the proposal for the achievable delivery of transformative enhancements for Druridge Bay, along with the creation of a valuable link between ecological sites that would improve the connectivity and extent of wetland habitats.
175. No objectionable adverse effects would be caused to the Northumberland Shore SSSI, Cresswell Ponds SSSIs or the MCZ. Similarly, locally designated sites would not be impacted upon unacceptably. Overall management and the proposed working method are acceptable, as are the mechanisms proposed for reinstating after-uses. NCC's preference has been for section 39 agreements, but a Grampian condition would properly serve the same function in preventing development until delivery under these agreements.¹⁷⁴ No controversy arises.
176. In terms of national policy the proposal is environmentally acceptable. Properly understood, this conclusion is not at odds with NCC's earlier conclusion

¹⁷³ ID/NCC12.

¹⁷⁴ The signed section 39 agreements were submitted during the adjournment, and after NCC's closing submissions to the Inquiry.

on the proposal.¹⁷⁵ NCC has been justified in reaching this conclusion in the light of further expert landscape evidence, building upon the earlier appraisal by Durham County Council.¹⁷⁶

177. NCC is satisfied that this is a proposal that is capable of approval in two separate ways under national policy: environmental acceptability, and alternatively, the package of benefits would clearly outweigh even a contrary finding on environmental acceptability. NCC is well positioned to thoroughly adjudge these benefits quite independently of the applicant. This is especially so at local, community and regional level, and with regard to very important themes: the local economy and economic growth, including tourism and business; the landscape and ecology; and the development, leisure and recreational opportunities more generally. Many of these benefits are far-reaching and would carry much local significance, as well as a national perspective, another priority under paragraph 149 of the *Framework*. There is also the national context which recognises the benefits of coal extraction, including to the economy.

Benefits

178. The benefits deriving from/related to the proposal, may quite properly be taken into account by Secretary of State, either where they feature within the section 106 agreement, and are found to be 'necessary' to make the development acceptable and satisfy the other CIL tests; where the subject of a planning condition, the condition meets the guidance in paragraph 206 of the *Framework*; and/or as an integral part of the conventional planning balance, when looking to offset, or mitigate either identified, evidenced harms, or potential harms which may arise. For those matters caught by a section 39 agreement, these would be given effect to within an agreement not governed by CIL, or by the guidance under paragraph 206.

179. Chibburn Preceptory enhancement works would be necessary where it is found that harm arises under paragraphs 132 and 134 of the *Framework*. Some harm, albeit less than substantial harm (but nonetheless important in heritage terms), is required to be mitigated.¹⁷⁷ The targeted enhancement works become necessary, and all other CIL tests are met.¹⁷⁸

180. The Discover Druridge contribution would be necessary where it is found that the development would adversely impact upon tourism. Separately, the mitigation may operate in respect of archaeological impacts regarding the rig and furrow earthworks, and the WWII decoy building, which is proposed for removal and substitute modelling, or, integrated re-siting within a heritage trail.¹⁷⁹

¹⁷⁵ NCC's Officer Report to the Strategic Planning Committee states that the proposal would not wholly satisfy the first 'test' in paragraph 149 of the NPPF because residual impacts on the local landscape and visual amenity for some areas could not be addressed through conditions or legal agreement. Paragraph 8.8 CD4.13.

¹⁷⁶ Landscape advice from Durham County Council Appendix 5 at NCC/KH/3.

¹⁷⁷ Mrs Wilkinson's evidence to the Inquiry was that the proposed development would have a "low visual impact" on Chibburn Preceptory.

¹⁷⁸ ID/NCC5.1 page 9 schedule 8.

¹⁷⁹ ID/NCC5.1 pages 3 and 6 schedule 5. ES Volume 4 Appendix 4 Archaeological Assessment paragraph 3.8 at CD4.7.

181. Significant cumulative effects would arise were sand extraction at Hemscott to take place in conjunction with the Highthorn proposal.¹⁸⁰ There is no statutory obligation on NCC to revoke the extant consent under section 97 of the 1990 Act. This use has been permitted since 1960. There exists a discretion exercisable by a mineral planning authority, by reference to this section and separately, under Schedule 9 by means of modification, discontinuance, prohibition and suspension powers. There is nothing remotely questionable over revocation: neither the Marine Management Organisation, NE or EA (the three relevant statutory consultees) have advocated revocation at any stage.
182. In any event, the complaint appears to be that the proposed Hemscott mitigation is improperly and unlawfully relied upon by NCC and consequently, it is improper for NCC to invite this be taken into account by the Secretary of State, because it should not lawfully exist. But it exists until it is revoked; and there being no obligation to revoke, the NCC's discretion not having been the subject of any (successful) public law challenge (notably, there is no declaration that the consent is unlawful), SAVE's criticism in this parallel Inquiry is fundamentally flawed on multiple levels, and is in any event an impermissible collateral challenge. Even were a decision not to revoke properly the subject of any criticism, the permission is nonetheless extant as a matter of fact and cannot be ignored. This is especially so in the light of there having been no public law challenge to the decision not to revoke. The criticism relates only to the consent: as above, if the obligation to surrender fell away from the section 106 agreement, but this cannot be, in the absence of any finding of unlawfulness (and the Secretary of State cannot make that finding), the end result remains the same.
183. Even an alleged breach of Condition 12 of the sand extraction permission, if that is a second allegation, goes nowhere. Enforcement for breach is again wholly discretionary. SAVE does not seemingly allege, nor can it, that any breach (even if sufficiently in evidence before this Inquiry – which it is not) would operate to bring about the lapse of the consent. SAVE's criticisms are illogical and unfounded.
184. There is no inconsistency between the above and the SoCG, which states that "...it is agreed that the only elements of the works referred to in the legal agreement which has been identified as mitigation is the creation of Druridge Ponds and Hemscott Ponds; the remaining elements are considered to be enhancements/benefits". This cannot and does not encompass either the Discover Druridge contribution, or the surrender of the Hemscott consent, for neither entails any actual "works". To the extent that the Chibburn Preceptory works are qualifying works, all that the SoCG is confirming is that, at that date there was no agreement upon the works being mitigation because, the applicant had not specifically concluded that any harm would be caused to the setting of the Preceptory.¹⁸¹

Planning Policy Framework

185. The key development plan policies are plainly out-of-date. Dealing first with the MLP. Policies C1 and C5 have not been saved, and so Policy C3 is no longer

¹⁸⁰ ID/NCC5.1 page 2 schedule 3.

¹⁸¹ ES Volume 4 Appendix 4 Archaeological Assessment paragraph 5.63 at CD4.7.

- capable of serving any effective constraint function. The complete dismantlement of the suite of policies means that the purpose once underpinning Policy C3 has fallen away in its entirety. The function of Policy C2 (Allocations), has not been reviewed, and the identified sites are now used or sterilised. Similarly, the management strategy envisaged to coincide with the operation of Policy C3 in fact never occasioned. The integrated approach to the landscape strategy once provided for under policy has not taken place. Today's planning circumstances are, on any level, far removed from Policy C3. The explanatory text to Policy C3 only goes to emphasise these observations. Enhancements to an area could suitably operate as "exceptional circumstances" in light of historic environmental damage: this is ultimately what Policy C3 aspires to. This purpose is not served by applying any 'threshold' higher than 'no detriment being caused'.
186. There is nothing within the wording of the MLP Policy C3 itself that rescues it from the conclusion of significant inconsistency with the *Framework*. The opposite is true. In terms of paragraph 215 of the *Framework*, in the absence of Policy C1, Policy C3 does not enable any "benefits" to be taken into account, quite unlike paragraph 149 and section 38(6) of the PCPA. Policy C3 provides only for exceptional circumstances. The distinction is not without important difference. Paragraph 144 (bullet 1) of the *Framework* states that the benefits of mineral extraction (taken to include coal and surface coal mining) attract great weight. It is a purposely endorsed emphasis that finds nil recognition in Policy C3. Paragraphs 147 and 149 fall to be considered similarly.
187. By reason of the inconsistency alone, argument over the true construction of MLP Policy C3 becomes otiose. Nevertheless, NCC's and the applicant's interpretation is to be preferred. 'Exceptional circumstances' are demonstrated, for the purposes of this policy, where no detriment is caused: the syntax is decisive here. There is also nothing at odds with this construction within the specific context of surface coal mining. Even were, however, "exceptional circumstances" to be construed otherwise and as to give rise to any higher threshold test, then this only serves to accentuate the incompatibility with the *Framework*, under which there is plainly no exceptional circumstances test or anything similar. Paragraph 149 provides for a simple example of the differentiation in the tests applying (per the objector's construction): where the proposal is found to be environmentally acceptable, then, on the objector's interpretation of 'exceptional circumstances' it may well not meet Policy C3. Different tests, meaning different outcomes inevitably means significant inconsistency in *Framework* terms therefore.
188. As regards CMLP Policy C3 and AHLVs, this is not criteria based and is immediately inconsistent with paragraph 113 of the *Framework* (which conveys a clear steer in favour of criteria based policies for development affecting landscape areas, whilst respecting that extant non-criteria based policies may nonetheless exist to be applied under section 38(6) of the PCPA). Nor does Policy C3 allow for statutory distinctions to be made as between land designations where they exist. For the purposes of paragraphs 158 and 168 of the *Framework* there is no up to date evidence base for Policy C3. There was never a favourable landscape assessment underpinning this policy. The landscape assessment was targeted in respect of its treatment of the LCA39a area: rather than proposing that there should be no AHLVs at all, it was selectively concluded that there is no merit in the AHLV being designated, attributing it low value. This is demonstrated when

cross-referencing LCA39a and LCA40a with Table D3.2.¹⁸² There never was evidential support for the LCA39a area being within an AHLV.

189. None of the operational site falls within LCA40a. The physical dividing line separating the dunes and the coastal hinterland is noteworthy in this context. The difference between the dunes area and the hinterland is also clear. Within this context there is no physical impact, or inter-visibility from beyond the dunes.
190. The above observations also do not cut across giving appropriate recognition to the landscape distinctiveness evident across parts of the site and its surrounds. NCC has appropriately had regard to the application of landscape values, considering, in turn, historic mining activity and its degrading and community impacts, including the appraisal by Durham County Council.
191. Whilst limited, insignificant conflict arises with MLP Policy C3, no conflict arises with CMLP Policy C3. Even were there to be conflict however, for reasons of inconsistency, that conflict would prove equally insignificant. In conclusion on applying the development plan, the proposal gives rise to a mere few, limited and wholly inconsequential conflicts with policy.

Planning considerations

192. NCC has taken a forensic approach to material considerations, which is important for the purposes of section 38(6) of the PCPA. Site operations might be audible beyond the application boundary, but satisfactory noise limits for normal operation would be achievable. Perceptible vibration effects would be acceptable overall. NCC's Public Protection team are satisfied that there would be no conflict with the Noise Policy Statement for England (NPSE) and the *Guidance*.
193. NCC has had particular regard to potential health impacts. The predicted increase in concentrations of dust particles would remain satisfactory with good practice measures being proposed to manage emissions. The assessment in the ES demonstrates that the predicted increase in concentrations of the smaller dust particles at all identified receptors, based on a worst case scenario and without any mitigation, would remain below the National Air Quality Objectives and are compliant with the *Guidance*. The effects from lighting would fall within good practice limits, with light spill proving minimal and with no predicted increase in sky glow.
194. In residential amenity terms more generally, the proposed standoff of the operation areas from sensitive uses, the mitigations and protections proposed, together with recommended planning conditions, would mean that minor disturbances would be acceptable. The impacts on soils and agricultural land would also be acceptable.
195. The Highway Authority (HA) confirms that no road safety or network capacity issue would arise. Haulage routes would use an established freight network. The HA has assessed the most recent accident data, extending the significant period of assessment. Concerns expressed in highways terms are essentially grounded in irresponsible driving rather than any implicit problem with the network, capacity or proposed additional trips. Road safety has naturally been a

¹⁸² LCA40a scored 35 whereas LCA39a scored 19. CD2.2 Table D3.1 and page D-23.

paramount issue for the HA, and the additional trips could safely be accommodated. No severe residual cumulative impacts arise in terms of the *Framework*.

196. Mrs Wilkinson's evidence to the Inquiry about the likely effect on designated heritage assets included the following:¹⁸³

Holy Trinity - a very limited effect from noise.

Cresswell Tower - a very little visual effect at some distance.

Chibburn Preceptory - a low visual impact.

Widdrington Castle - a low visual impact.

197. There would be no objectionable impacts on the setting or significance of heritage assets. Rather, enhancement and mitigation would be secured, which is an important ambition of the *Framework*. Altogether, the historic environment would be well served, with no adverse effect upon special heritage interests. Of the four key designated heritage assets sited within the local vicinity, no harm other than 'less than substantial' would be caused. The proposal would entail the removal of some relict rig and furrow in areas of older permanent pasture, along with some post-medieval hedgerow boundaries, which would inevitably remove some of the time-depth from the landscape.¹⁸⁴ To the extent that this would result in some harm against which public benefits must be considered (paragraphs 132 and 134, and 149 of the *Framework*), then those of the proposal weigh favourably. The non-designated heritage assets within the wider vicinity would also be adequately safeguarded, as would be the case for potential archaeological interests. The planning obligations for Chibburn Preceptory would likely mean its removal from the Heritage at Risk Register.

198. No unacceptable environmental impacts would arise in the context of flood risk, surface or groundwater, land stability, contamination or mine gas. The impacts on agricultural holdings would be environmentally acceptable. No unacceptable cumulative effects would arise.

Landscape

199. There have been some significant cumulative adverse landscape effects as a result of past surface mine workings. However, the physical effects of the proposal would, on balance, be positive in the longer term, and so it would not have a significant adverse cumulative effect on the character of the landscape.¹⁸⁵ Historic impacts would not become intensified. There would be no adverse effects on the wider landscape or any significant adverse effect on the Heritage Coast or AHLV. There would be some significant effects on the local landscape during site operations, but in the medium-long term assimilating the restored landscape and enhancement measures would together result in clear beneficial landscape effects. A mere limited conflict with MLP Policies EP3 and C3 would consequently arise, attracting only modest weight. This would coincide with a limited conflict with MLP Policy EP19 in visual amenity terms. With regard to the totality of the assessed impacts throughout the lifetime of the proposal (to include restoration), it would be acceptable overall in both landscape and visual terms.

¹⁸³ Response to questions by Inspector.

¹⁸⁴ Landscape advice from Durham County Council Appendix 5 at NCC/KH/3.

¹⁸⁵ NCC/KH/1 paragraph 8.10 and Appendix 5 paragraph 4.2.1 at NCC/KH/3.

200. The host landscape character area comprises a mix of unaltered rural character with other areas of restoration that has resulted in an oversimplified geometric landscape. Despite modification of the landscape areas of rig and furrow remain. Historic and cultural associations include Chibburn Preceptory with recreation use focussed upon Druridge Bay, donating the host character area its landscape value. Also, the landscape comprises low lying coastal farmland (medium to large in scale), generally open/expansive, undulating landform, mixed farmland, and tree cover with coastal views available on the eastwards sloping coastal plain, with limited sense of remoteness and pockets of tranquillity. The landscape sensitivity of LCA39a to the nature of change proposed is adjudged to be medium, at best.
201. Potential cumulative effects have been addressed in the context of the existing baseline landscape, and whether any potential significant effects would arise in both a local and wider setting context. The assessment of combined impacts of the proposal, viewed together with other major development, has taken into account historic surface mine workings and relevant restorations and attendant impacts on the local landscape and local communities. The proposal would see the continuation of this history, with one example being the enhancement of shelterbelts and hedgerows in the northern part of the site, themselves legacies from previous surface coal mining restorations. If this is properly characterised as a cumulative landscape effect at all, then it would be acceptable. There is the potential for cumulative landscape effects, with regard to former surface mines, mineral extractions and a landfill site in LCA39a, but these have been assessed in the ES as being not significant upon establishment of final restoration.¹⁸⁶ As a result of the restoration proposed, including Restoration First, there would also be an increase in the biodiversity of the local area and an increase in the landscape framework, as compared to the existing.
202. The proposal would give rise to a significant adverse effect for the duration of the operational period. However, the long-term view throughout the period of the development is the proper way to evaluate the proposal, taking account of both extraction and restoration phases. This would not mean any significant adverse effect, not least on designated landscapes. There is compliance with MLP Policy EP20 and paragraph 144 of the *Framework*.

Ecology

203. No statutory or non-statutory designated areas fall within what is an ecologically unremarkable site. The proposal is also not one that would adversely or unacceptably impact on nearby sites. There would be no significant adverse effects on SSSIs or European sites. NE has signed off on the Habitats Regulations Screening Assessment, having concluded that there would be no significant effects.¹⁸⁷ Further, no ancient woodland or veteran or aged trees would be adversely affected by the proposal.

¹⁸⁶ LVIA section 6.8 of ES at CD4.5.2.

¹⁸⁷ Regulation 61 The Conservation of Habitats and Species Regulations 2010, Assessment of Likely Significant Effect on a European Site, dated 12 February 2016 by NE, concluded that the proposal is not likely to have a significant effect on the Northumbria Coast SPA, either alone or in-combination with other developments. CD5.1(k).

204. Sizeable areas are proposed for enhancement for nature conservation, and these would be managed according to an approved management plan. The Restoration First proposals and the site restoration scheme would together deliver a very significant net gain for nature conservation, not least by greatly increasing the extent, patch size and connectivity of important habitats in Druridge Bay and securing long-term appropriate management. This would include two areas of wet grassland being provided prior to commencement at Druridge Ponds (18.6ha) and Hemscott Ponds (9.2ha).
205. This would complement the eco-system approach, in moving away from reliance upon protected sites and species to achieve nature conservation objectives, and working to increase the ecological value of the wider area in order to counter the problems associated with the isolation and fragmentation of protected sites. The proposal would also assist in delivering the long term management of 100 ha of priority habitat/wet grassland and scrapes, within Druridge Bay which, as well as being of value in and of itself, would importantly increase the value of existing sites, hence supporting the development of the Northumberland Coalfield Nature Improvement Area and other important local initiatives.
206. There would be no significant adverse effects on internationally, nationally or locally designated sites or protected species. The mitigation proposed would ensure that any residual effects would be, at worst, minor negative for some species during site operation, and neutral-positive for pink-footed geese and minor positive for yellow wagtail upon restoration.¹⁸⁸ This is the relevant outcome, taking the proposal as a whole, noting that disaggregation is both artificial and unarguable in the face of an indivisible proposal such as this. The role of the development management system in the protection of the natural environment (paragraph 118 of the *Framework*) would be well served, given its aims of avoiding significant harm to biodiversity through appropriate site selection, and the provision of adequate mitigation for harm that cannot be avoided.
207. The most appropriate ecological response can also be confidently predicted given the feasibility of the proposal, whether secured by operation of a Grampian condition or by section 39 agreements. These would ensure the bespoke and timely delivery in satisfaction of relevant policies of the development plan and the *Framework* on the achievement of sustainable development, which includes the environmental role. Ecological impacts would be modest and acceptable in overall terms, having due regard to the nature of on-site habitats and limited off-site impacts (where identifiable at all), with ecological impacts being limited to temporary disturbances and the subject of satisfactory mitigation schemes.
208. The package of ecological enhancements weighs as a very significant material consideration and benefit (for paragraph 149 purposes). The long term management of new habitats would achieve key strategic nature conservation goals. The ecological enhancements would prove transformative in terms of Druridge Bay's overall ecological value, fulfilling what have been long-term

¹⁸⁸ ID/NCC4. At the Inquiry Mr Feige revised his evidence about the effect on pink-footed geese from minor adverse to slight positive.

aspirations for local nature conservation groups, and would also contribute towards the delivery of national nature conservation targets.

209. Historic mining operations have brought about restorative benefits, which have given rise (if inadvertently) to wildlife sites inland of the dunes. Real world examples of operational sites (Brenkley and Shotton) further demonstrate that new habitats can be created, and allowing species to inhabit both parts of the operational site and adjacent areas, because these are secure sites substantially free from disturbance.
210. RSPB's concerns have been successfully met. The NWT's satisfaction regarding implementation and the scope for enforcement compliment the prospect of long-term management. The proposal comfortably meets Government policy for conserving and enhancing the natural environment, in accordance with Chapter 11 of the *Framework* and its emphasis on the conservation and enhancement of biodiversity, and the protection of nationally and internationally designated sites and irreplaceable habitats. Ecological benefits are very important in the local and regional context attracting significant weight.

Energy and climate change

211. The development plan does not contain energy/technology-specific and climate change policies. NCC's decision to approve the proposal prior to call-in had regard to national policy, but this did not involve a comprehensive debate comparable to that which has now engaged the Inquiry. For this reason alone, NCC has not sought to engage exhaustively with, or lead any exhaustive evidence upon, the question of climate change and coal. Nonetheless, appropriate regard has been given to all relevant planning policy on the issue.
212. There may be little doubt as to the Government's direction of travel towards a low carbon energy system and that this transition will, in time, bring about the end of coal extraction for electricity generation purposes. The key contingent remains security of supply. Hence, with regard to present (and not future) policy, the Government is yet to reach the position where it has enunciated the end for coal. This proposal sits firmly within what is a transitional period, driven ultimately by the security of supply imperative, and which underscores the definite UK need for coal throughout the intended operational lifetime of the proposal.
213. Coal is a mineral of national significance. Its supply (and indeed that of fireclay) presents a national benefit (no less so in security of supply terms), to be attributed great weight under paragraph 144 of the *Framework*. This emphasis is not displaced, nor even undermined, by what future policy may bring for UK coal extraction. With forceful justification, this view has been expressed in respect of the *Bradley* and *Fieldhouse* appeals.¹⁸⁹
214. Quantification of the future demand for and consumption of coal (domestically and internationally), the coal market and market drivers, both domestically or globally, ultimately do not detract from what is unequivocally present UK policy, and which certainly remains the policy, pending Government's response to the

¹⁸⁹ CD7.4 and CD7.1.

2016 *ConsDoc*. FoE's invitation as regards how energy policy should be shaped is, respectfully, for another day. Whatever its merits, this presents a prospective vision against which this proposal simply does not fall to be considered.

215. Domestic climate change statutory obligations, international and domestic climate change policy and the contributory functions of the CCC, specific domestic and international emissions targets and broader political aspirations, and the machinations of carbon budgeting, are all ultimately contextual in the appreciation of present UK energy (and more specifically, coal) policy. Fundamentally, the proposal poses no inconsistency against these instruments. This reinforces the fact that the proposal meets with present policy.
216. Even where attention is given to the intricacies governing how future (and not existing) policy might be shaped, however meritoriously, present UK policy is straightforward both in its application and rationale. More specifically in terms of Chapter 10 of the *Framework*, NCC has given due regard to the approach that the planning system should adopt in assisting to secure radical reductions in GHG emissions, minimise vulnerability and provide resilience to the impacts of climate change, and support the delivery of renewable and low carbon energy. This emphasises the significance of the remaining demand for coal (rather than signalling for any future direction) within the energy supply transition. It is not considered that the development would impact adversely on the Government's ability to deliver a positive energy strategy, whether for low carbon energy or renewables.
217. The development would be complete by 2025, and before this operationally, coinciding with coal phase-out (security of supply contingent). The proposal is consistent with the *WMS* and *Guidance* on the development of a strategy for renewable and low carbon energy.
218. NCC notes, but does not in any way seek to participate in depth either in the merits of existing policy, the underpinning of that policy, or in the future policy debate. The reality remains that the proposal would, in additionality terms, mean no more than a negligible increase in coal production within the coal market, with its 3 Mt capacity serving less than 0.01% of global coal demand. On the evidence, coal price would be likely to be unaffected. There is no evidenced reason to suppose that the operator would participate in coal 'dumping' or in any significant level of exporting. Decision taking by power generators and other end users would likely remain entirely unchanged by virtue of the proposal. There is no credible or adequately evidenced case to suggest that any objectionable adverse market 'signal' would result from approving the Highthorn proposal. Indeed, on any case, any signal sent would prove less than diminutive and fleeting, ultimately constrained by the short operational duration of the proposal and its negligible capacity. This strongly indicates that the proposal would have little significance and ultimately prove entirely uncontroversial viewed against the Government's present energy and climate change policy framework.
219. CCC's 2017 progress report calls on the Government to publish plans to show how the 4th and 5th carbon budgets can be met.¹⁹⁰ CCC assumes that the use of coal for power generation will continue to decrease and notes the intention to

¹⁹⁰ ID/NCC14.

cease generation from unabated coal-fired plants by 2025, but does not call on the Government to make any particular recommendations or further actions needed to phase-out coal. The report notes that even if all coal generation stopped, emissions would fall the equivalent of less than two years' worth of further progress required by 2030, and so CCC's recommendations focus on other areas of the economy where there is greatest potential for emission reductions. CCC's priorities include contracts for low carbon generation in the 2020s, transport policies, a strategy for heat, and a new strategic approach to deploy CCS at scale by the 2030s with contracts awarded by 2020.

220. If the recommendation about CCS is adopted by the Government the future use of coal in the UK may not decline at the rate previously assumed, whilst also meeting carbon budgets. The CCC acknowledges the uncertainty about delivery of planned capacity, and this uncertainty may lead to the closure of unabated coal-fired power plants being realised later in the anticipated period of closure between 2022 and 2030.

Other benefits

221. Some objectors openly acknowledge many of the clear benefits of the proposal for leisure activities undertaken by locals and tourists, such as walking and cycling. To the extent that the proposal might impact adversely upon local tourism, the Discover Druridge contribution would in this event provide (mitigating) inward investment, directly targeted to tourist-related projects. The Northumberland Tourist Board does not object to the proposal. Importantly, it provides an independent insight into the tourist interests of Northumberland.

222. The tourism offer would be improved with the Discover Druridge contribution securing the delivery of targeted projects (the broad framework for which are already known), and the Partnership structure to offer the best opportunity for funded initiatives to succeed. The context for this investment should not be diminished. Druridge Bay and its surrounds have simply not seen anything like the substantial investment proposed, for a considerable period. The same is true for presently absent ecological and landscape enhancements, such as wetland areas and scrapes, bird watching opportunities, and greater accessibility.

223. In more general terms, the significance of local economic growth as a key driver of the Northumberland economic strategy should not be undervalued. First, a clear ambition would be realised to secure a significant level of future employment. But the economic-specific gains would extend far further than in/direct employment. Inward investment for local business and the related supply of goods and services; community funding, including for local skills training; and a contribution to the balance of payments, would each present plain benefits. MLP Policy EP14 provides the local policy footing for the role that minerals extraction may importantly play in support of driving economic growth, consistently with paragraphs 19 and 144 of the *Framework* and with the *Guidance*.

224. Furthermore, the surrender of the Hemscott Hill sand extraction consent would be necessary in the light of cumulative effects. With the adverse effects of exploiting this consent possibly proving substantial, and harm being caused to important landscape features and to the dune grassland priority habitat, its surrender would provide a further, if arguably less significant benefit.

Section 38(6) of the PCPA and the planning balance under the Framework

225. Viewed against the development plan and all relevant material considerations, having regard to Chapters 10, 11 and 13 of the *Framework* and to the *Guidance*, there is a compelling case for approval. Ultimately under paragraph 149 the development would be environmentally acceptable, taking into account all planning conditions and obligations. There is, therefore, no requirement under this paragraph for the Secretary of State to go on and conclude that national, local and community benefits of the proposed development, considered together, are required in order to clearly outweigh any environmental unacceptability.
226. Paragraph 14 of the *Framework* adds nothing of substance to national policy and paragraph 149 as it applies to the proposal. Arguably, paragraph 149 is a specific policy for paragraph 14 purposes, but the point is ultimately moot. Where, as here, the proposal is paragraph 149 compliant (by whichever means that conclusion is arrived upon), no specific resort to paragraph 14 is required. This in no way diminishes the application of the sustainability vein. Indeed, whilst not in accordance with all policies of the development plan (with the conflict being confined to few, very limited conflicts which are plainly outweighed by the host of material considerations indicating that permission should be approved), this is also a case in which the few and modest harms of the proposal would be significantly and demonstrably outweighed by its benefits: a direct application of paragraph 14, even were it necessary. Only specific policy may prevent approval in these circumstances. However, paragraph 149 is soundly met.
227. However, even if the proposal was not found to be environmentally acceptable, there should follow approval by reason of the benefits case. These clearly outweigh environmental unacceptability. This not being a borderline case, even were less weight (or even no weight) to be attributed to some of the benefits entertained by NCC, it would remain that paragraph 149 is met. The benefits are many and important; including the supply of minerals, economic benefits, in/direct employment net gain, local/regional tourism and recreational development, landscape and ecological enhancement, heritage enhancements and improved public access and connectivity, along with local, regional and national financial contributions. Matters such as the relinquishment of the sand extraction planning permission would also be beneficial.
228. Therefore, whilst NCC has rightly emphasised the key benefits of the supply of minerals and ecological enhancements, this is a case in which a plethora of important benefits, at local/community, regional and national level, attract substantial weight. Consistently, by Chapter 13 of the *Framework*, the proposal is also in accordance with the Government's policies on sustainable minerals extraction.
229. In conclusion on the statutory test, the proposal is broadly consistent with the development plan; there being only a few (and merely limited) conflicts with specific development plan policies which do not attract any significant weight (namely as regards local landscape and visual impact during site operations: Policies EP3, EP19 and (out of date) MLP Policy C3. Accordingly, there is consistency with the development plan. In light of the nature and very confined extent of the development plan conflicts identified, the merits and benefits of the proposal would together constitute very important material considerations that

(substantially) outweigh the conflicts, therefore indicating that permission should be granted even were it to be concluded that the proposed development is not in accordance with the development plan for section 38(6) PCPA purposes.

230. NCC considers that with the withdrawal of the eCS no weight should be attached to the formerly relevant eCS Policies. However, the overall conclusion, that the development should be approved, is not materially influenced by the withdrawal of the eCS.¹⁹¹

The case for interested persons supporting the scheme

The following interested persons appeared at the Inquiry in support of the proposed development, and a summary of their submissions is included below.

231. Graham Henderson is a local resident and has seen first-hand the benefits that coal mining has brought to the community. He has worked at Colliers Dean, Steadsburn, Butterwell and Maiden Hall opencasts, and now works as a fitter at Shotton. The restoration from opencast mining can bring improvements to the community. The entire coastal stretch that everyone loves, including the nature reserves and Druridge Bay Country Park, are all the direct result of coal mining. Neither the beach nor tourism would be destroyed by the proposal. Mining jobs are not unskilled or low paid. Mining has been a part of the community and has left a great legacy in terms of wildlife and open spaces for people to enjoy. It has supported countless families in the community. Approving the application would provide for the continuation of jobs and would leave the land better than it is now.¹⁹²
232. Jake Adkins spoke on behalf of the other apprentices who work for Banks Mining. In his apprenticeship he is learning how to maintain and repair some of the largest and most complex plant in Europe whilst earning a great wage. These transferable skills will provide great opportunities in the future. The mining industry is supporting young people getting into work and that should be taken into consideration. These jobs are really important and the apprentices want to continue gaining qualifications and skills to give them the best future possible. Banks Mining has invested in the apprentices, who want to work at Highborn and to continue successful careers in mining.¹⁹³
233. Cllr Kevin Batson considered that his duty as a local councillor was to help businesses move into the area to supply people with local jobs. Over the years the community has been decimated on the work front with job losses from major employers. Previous opencast mines in the area have created jobs and helped local businesses and community organisations. Mining has left long term benefits such as woodlands, ponds, wildlife habitat, and improved access to the countryside. The planning committee, which consisted of a mixed number of political groups voted to support the application. Renewable energy, such as wind turbines, cannot take the place of coal. Turbines do not fetch local jobs and

¹⁹¹ ID/NCC16.

¹⁹² ID/OTH25.

¹⁹³ ID/OTH26.

- are a blot on the landscape. Banks Mining is a considerate and well-run company who will support the community in developing a bright future for this area.¹⁹⁴
234. Steven White is a local resident who has worked for Banks Mining for 39 years. He highlighted that these are not short term, temporary jobs. Nor are they low skilled and low paid. He has worked on over 20 opencast sites in Northumberland and Durham. These have been operated and restored to high standards. The 50 jobs maintained would be just as important as the 50 new jobs. The wildlife would be looked after and no scar would be left on the landscape.¹⁹⁵
235. Cllr Shelly Willoughby stated that there had been misleading statements about the location of the proposed surface mine, with much emphasis wrongly on the devastation of Druridge Bay. The coastal bay would remain as it is. The proposed site is directly across the road from the proposed Ferneybeds site, which did not receive the same level of objections. Concerns that tourism would suffer is also an over-reaction to the proposal. Tourists would continue to visit the caravan parks at Cresswell, bird watchers would still visit the ponds, and so trade at the Drift Café and ice cream shop would remain.
236. There is no huge influx of tourists arriving at Druridge Bay. There are no amenities or toilets, no disabled access, in short a lack of the essentials important to many. The proposal is an opportunity to develop tourism, cycle paths for users to ride safely, and awareness of some of the hidden history. Time and effort has gone into ensuring protection of wildlife. The area has lost many jobs, resulting in considerable hardship. The scheme would provide 50 desperately needed jobs. This is a mining community, and the fact remains that coal is still needed. Banks Mining has made every effort to listen and address issues raised at consultation and workshops. Highthorn was always on the horizon; never a case of if but definitely when, as UK Coal owned the mineral rights for many years. The proposal is supported by parish councillors. The planning consent that was fairly and honestly proposed by mixed party members of NCC planning committee should be upheld.¹⁹⁶
237. Cllr Anita Lower has been Chair of the Brenkley Liaison Committee since 2010. This is an open forum which enables local residents to raise any concerns about the mining operation. It is rare that any complaints are raised, and where concerns have been raised they are always dealt with quickly and efficiently. Liaison covers updates on site operations, environmental monitoring, transport updates for the 100 HGVs a day, along with a community and planning update. A community manager from Banks Mining is a point of contact for all local residents. The closest premises around Brenkley are notified when blasting is going to take place. The local community has a good working relationship with Banks Mining. Financial contributions from mining have been used for community facilities, such as the village hall and play areas. The local jobs are good for the local economy.¹⁹⁷

¹⁹⁴ ID/OTH23.

¹⁹⁵ ID/OTH27.

¹⁹⁶ ID/OTH21.

¹⁹⁷ ID/OTH29.

238. Anthony Barber commented that many years of dereliction from past mining has given way to a steady re-birth of landscapes that can be enjoyed throughout the County. Historically little thought was given to what would happen after the coal had been won. Banks Mining has started by looking at the current landscape and given careful consideration to how it would be restored once mining operations ceased. There are a number of areas mined by Banks Mining locally to give peace of mind that this is something that would be delivered. Traffic movements and views of the site have been carefully planned to minimise local impact. Publicity about the application and photographs of the beach and dunes are misleading. The holiday makers would still come to the same beach, and to the caravan parks, the ice cream shop and café. It might be expected that the idea of an opencast mine would have had an adverse effect on the property market locally. But it would seem that this is not the case, especially for properties along the Cresswell Road from Ellington.¹⁹⁸

The case for Save Druridge (SAVE)

The following summary of SAVE's case broadly follows SAVE's closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.¹⁹⁹

Introduction

239. There is simply no justification for the Highthorn opencast coal mine and the destruction of a vast area of open, rural landscape of outstanding natural beauty that sits adjacent to Druridge Bay. It is common ground that Druridge Bay has significant ecological and biodiversity qualities. It is valued in that regard by the local community and visitors; whether human or wildlife.

240. The reasons for calling in the application were apt in the light of the socio-environmental impacts and harm that the proposal would have on the local area and the consequences for the wider world. The legislative and policy basis for refusing permission is clear. SAVE focuses on the proposal being contrary to policy for conserving and enhancing the natural environment, its unacceptable adverse effects on tourism and recreation (and policies relating to them), along with its adverse effect on the local economy and unnecessary risk to highway safety. However, SAVE supports the submissions by FoE about the proposal being contrary to policies about climate change, the sustainable extraction of minerals, and the commitment to phase-out coal-fired power stations, and the conflict with both the guidance on renewables and a low carbon economy, and the development plan for the area.

Noise and dust

241. Noise from the site would be heard beyond the site boundary. SAVE considers that the noise would be environmentally unacceptable for those experiencing it, whether they were local residents or visitors to the area. While conditions may be imposed that may comply with the *Guidance* they would not prevent the noise being a nuisance. There has been no assessment of noise during night-time

¹⁹⁸ ID/OTH32.

¹⁹⁹ ID/SAVE9.1. Submissions from SAVE members to NCC are at CD5.4(f), CD5.4(g), CD5.4(h) and CD5.4(i).

operations and activities upon which to decide whether noise emissions would arise during the night. Furthermore, any noise impacts and effects need to be seen in the context of other impacts such as potential dust and air pollution, light pollution and impact upon visual amenity. Nuisance is required to be assessed under the EIA Directive 2011/92/EU.²⁰⁰ Moreover, noise would also have an adverse impact on the locality having an urbanising, unpleasant effect which would disturb the peace and tranquillity of the area, whether or not it breached noise limits.²⁰¹

242. Given the nature, intensity, frequency and offensiveness of the noise it is likely that the operations would give rise to a nuisance in law at many of the sensitive receptors close to the site. Nuisance is commonly defined as an action which unduly interferes with a person's enjoyment of his/her land, and whether a particular activity causes a nuisance often depends on an assessment of the locality in which the activity concerned is carried out.²⁰² Setting maximum noise limits at sensitive receptors would be unlikely to prevent noise nuisance arising, given the nature of the noise, such as that arising from processing, grinding, mechanical and vehicles movements and blasting, likely to be experienced at quiet and sensitive receptors. The extent of some noise could often be continuous from 7 am until 10 pm (including for example excavation, extraction, auger mining and coal processing) and that other noise from soil handling, HGV loading and coal despatch would be between 7 am until 7 pm throughout the week. The duration of most noisy operations would be likely to continue throughout the life of the opencast, that is to say at least seven years.
243. Moreover, the offensiveness of the noise would be particularly acute with mechanical, industrial noise sources, blasting, crushing and screening of coal. The multiple use of plant, vehicles and equipment including HGV vehicles for transportation both within and to and from the site and, finally, that the sensitive receptors of the noise would include residents living close to the operations as well as visitors to the nearby area. The operation at the site would be a nuisance at the nearby noise sensitive receptors.²⁰³ The noise would be likely to reach Cresswell village, particularly when the local weather conditions suggest a prevailing westerly wind, with a direction of travel from the proposed opencast towards Cresswell.²⁰⁴ Noise nuisance from the opencast would fall within the scope of either a statutory or private nuisance.²⁰⁵
244. Noise and dust has been a problem for those living near to Ffos-y-fran opencast in Merthyr Tydfil.²⁰⁶ The nature of the noise meant that it was intrusive, including the persistent, low frequency droning of heavy machinery. There are many parallels between Ffos-y-fran and the Highborn proposal. Noise

²⁰⁰ CD3.13 page 16.

²⁰¹ SAVE/JR/1.

²⁰² Lord Neuberger in *Lawrence v Fen Tigers Ltd* [2014] UKSC 13, AC 822 at §3, 830D. *Sturges v Bridgman* (1879) 11 Ch D 852, 865.

²⁰³ SAVE/AG/1.

²⁰⁴ This direction of wind travel is clear from the weathering of trees and hedgerows visible across the proposed opencast site as clear from Viewpoint 18.

²⁰⁵ It could also amount a public nuisance if for example the noise from the opencast materially affected a sector of the public amenity, that is to say, consistent noise affecting enjoyment of the dunes.

²⁰⁶ SAVE/AA/1.

and the dust from the former opencast at Stobswood was regarded as the norm.²⁰⁷ NCC acknowledged that there had been problems of noise and dust from Stobswood.²⁰⁸ Problems of dust from the Brenkley opencast have been raised at the local liaison committee.²⁰⁹

245. SAVE submits that in terms of nuisance it is largely irrelevant as to whether any noise limits set in accordance with the *Guidance* are complied with. Those limits simply seek to set appropriate noise standards and are set in the context of assessing planning applications in the public interest. They do not purport to prevent nuisance, but rather weigh up the competing interests including matters of public interest. The nature of the noise, the duration of the operations over a long period of time, the intensity and the frequency of the noise would result in the proposal being environmentally unacceptable in noise terms and that environmental harm by way of nuisance would be likely to arise.
246. There has been no noise assessment of night-time operations, and a BS4142:2014 assessment should be provided to ensure that complaints were not likely at nearby sensitive receptors at night. The applicant's response to this was that it was unnecessary to do so because the operations carried on at night would not be audible. However, night-time operations such as the use of generators, power tools (drills, grinders, impact wrenches to remove wheels bolts) and hammering activity had the ability to give rise to noise which should be assessed. This is particularly so, when night-time noise levels are particularly low. An approach based on responding to complaints would be unacceptable as people simply do not complain, for a range of reasons, but instead suffer and put up with the noise. This could well result in residents experiencing unacceptable noise, but that this may not be addressed.
247. The *Guidance* states that proposals for the control of noise emissions (including night-time noise) should: (1) consider the main characteristics of the production process and its environs, including the location of noise-sensitive properties and sensitive environmental sites; (2) assess the existing acoustic environment around the site including background noise levels; (3) estimate the likely future noise from the development and its impact on the neighbourhood; (4) identify proposals to minimise, mitigate or remove noise emissions; and, (5) monitor the results. The applicant has failed to provide relevant environmental information necessary for assessing environmental harm and it cannot be said that no noise would arise without assessing this, including for example the night-time background, baseline noise levels. It cannot be said that the proposal would be environmentally acceptable.
248. Noise impacts and effects, along with dust and air emissions, need to be seen in the context of continuing operations over a number of years, rather than as isolated events. The *Guidance* states that areas may have been subjected to successive mineral development over a number of years, and that cumulative impact is capable of being a material consideration when determining individual planning applications.

²⁰⁷ SAVE/AB/1.

²⁰⁸ NCC/FW/4 at paragraph 3.2.3.

²⁰⁹ Evidence of Cllr Anita Lower ID/OTH29.

249. The area is one of peace and quiet, of beauty and tranquillity.²¹⁰ On CPRE's tranquillity map at Appendix 6 of APP/SP/3 the site is shown in green.²¹¹ SAVE considers that for outdoors in parkland and conservation areas noise criteria should be limited to 45 dB $L_{Aeq, 1hr}$ during the daytime, evening and night-time periods, but even at these levels the increase in noise would be clearly identifiable, and at times, intrusive.²¹² In conclusion on the accumulation of harm, noise and dust would be likely to arise from Highthorn and would impact on the locality. Indeed these effects may, for some residents, including those living along the northern edge of Cresswell, combine with adverse visual effects and light pollution. The cumulative impact of a range of polluting effects would be likely to amount to a nuisance to many local residents, and so the proposal would therefore be environmentally unacceptable.

Light pollution

250. The question of sky glow has not been adequately assessed. Sky glow in an intrinsically dark area such as the coastal area of Highthorn would be likely to have a significant adverse effect on the night landscape.²¹³ It is acknowledged that the lights recommended to be used may have an upper light ratio of 0%, but this would not prevent sky glow adversely affecting the night sky, particularly towards the E1 coastal area.²¹⁴ There has not been an assessment of reflective light, for example from the surface of water bodies and drainage ditches, into the night sky, or consideration of light affected by atmospheric conditions with light being reflected by moisture particles in the night air. Furthermore, the submitted evidence about lighting does not take into account the likely need for additional lagoons as a result of ground water treatment on-site.²¹⁵ There has been no analysis or critique of the 10% reflective quality assumption made, where much of the material excavated, including mudstones, are of a lighter colour than coal. ID/APP9 does not amount to an assessment of sky glow.

251. Horizontal light would also cause sky glow, which is apparent from areas such as Shotton. The applicant's statement that Shotton was in a more industrialised area alongside other sources of light pollution simply affirms SAVE's concern that similar light effects and operations at Highthorn would be worse when carried on in an intrinsically dark area. Shotton and Brenkley opencast sites are known and accepted by the applicant to cause sky glow. There is nothing in any lighting report to explain why similar levels of sky glow would not arise at Highthorn.

²¹⁰ SAVE/DL/1.

²¹¹ Where dark green is "Most tranquil", yellow appears as intermediate, and red is "Least tranquil". A note of caution is made on reliance upon the CPRE tranquillity map. The Technical Report accompanying the map: Jackson et al (2008) *Tranquillity Mapping: developing a robust methodology for planning support* (Northumbria University etc. 2008) notes that: "The results of this study provide a value of relative tranquillity for each individual 500m x 500m grid square for the whole of England at a snapshot of time in 2006." It is certainly arguable that the Highthorn area has become more tranquil over the last 10 years with the closure of some opencast and other industrial operations such as Alcan in nearby Lynemouth.

²¹² At the Inquiry Mr Green amended his Proof of Evidence at paragraph 4.3 from 42 $L_{Aeq, 1hr}$ to 45 $L_{Aeq, 1hr}$.

²¹³ The night landscape is shown in the photographs at Appendix 5 of SAVE/IR/1.

²¹⁴ SAVE/IR/1.

²¹⁵ As identified in the evidence submitted to the Inquiry by Dr Blythe at ID/APP5.

Instead, the applicant has persistently avoided providing an assessment of sky glow. The proposed operations at Highthorn would cause similar levels of sky glow to Brenkley and Shotton, even if lights with an upper light ratio of 0% were used. This is because, among other things, there would be reflective light (even at 10%, but likely in reality to be far higher) and there would be impacts arising from atmospheric conditions. The proposed development would diminish the value of the dark night landscape currently enjoyed in the locality.

Outlook and visual amenity

252. The proposal would significantly adversely affect the outlook and visual amenity of local residents and visitors to the area. There have been a number of reports on landscape and visual assessment presented by the applicant and NCC. All appear to acknowledge that the proposal would cause significant or moderate adverse visual impacts. The impacts are then downplayed by stating that this would only be for seven years, which is medium term or, in the case of visitors to the bay and dunes, that viewers would simply look the other way.²¹⁶ People do visit the top of the dunes, from which there are views across Northumberland. Cyclists frequently stop at the top of Hemscott Hill to enjoy the view. The proposed designation of the Cresswell to Amble section of the England Coast Path by NE follows the top of the dunes from Cresswell for at least a kilometre.²¹⁷ Walkers travelling north along this section of the Coast Path would, when looking ahead, directly face the opencast site.
253. The landscape evidence adduced by the applicant and NCC should be given little weight. This sought to avoid the likely visual impact of industrial-type operations in what is currently rural, open countryside. NCC chose not to assess the site from the homes on the northern edge of Cresswell, while the applicant considered that the views from sensitive receptors would have minor adverse effect, but did not explain why. Potential views from the Pele Tower, an emerging major tourist attraction within Cresswell village, were dismissed as being 'hidden by trees'. Photographs taken from an upper window within the staircase/turret show that the opencast, including one of the overburden mounds, would be visible from the tower during the summer and the winter.²¹⁸ Overall, a more accurate professional view was submitted to NCC by the DCC consultant, who noted an adverse effect of moderate or substantial significance from many vantage points, particularly during the early phases of the operation.²¹⁹
254. Local residents living either close to the site, or along Cresswell's northern boundary, consider that there would be a clear view of the operational site, in an area of the most unspoilt and beautiful coastline in the country. The sea, the dunes and the ponds form a massively important wildlife and landscape feature that appears to have received no genuine consideration by the applicant or NCC. The views experienced by residents and visitors would not be in visual isolation, but would be heightened by the aural impacts of noise and vibration and potential instances of dust and air pollution, which would be likely to attract the viewers' attention and draw them towards the opencast operations. After seven

²¹⁶ GLVIA 3rd edition at CD8.2.

²¹⁷ ID/SAVE6 plans 6a & 6b.

²¹⁸ ID/SAVE11 Annex 1.

²¹⁹ NCC/KH/3 Appendix 5 section 3.

years of despoliation there would be no certainty at all that the landscape would return, but would be lost for the many local residents and visitors who enjoyed the simplicity, serenity and beauty of this open landscape.²²⁰

255. The landscape and walking/cycling within this area is vital to its enjoyment.²²¹ The opencast would be visible from the PRow linking Ellington to Druridge Bay, taking in Blakemoor Farm, Wansbeck Lane or the Causeway to Cresswell Ponds. The dust and noise would destroy the experience of walking in this area. The loss of visual amenity and adverse impact on landscape could not be made acceptable through conditions.²²² For those mounds that did limit views of the opencast operations, the view would be of an artificial landscape analogous to what is found, for instance, with other man-made facilities, such as large-scale sewage treatment works that are often bunded. This was evident from the site visit to the Shotton and Brenkley mines.

256. In summary, on outlook and visual amenity, the applicant and NCC have attempted to downplay the significant adverse visual impact, which was accepted by the DCC consultant, by applying a myopic, theoretical, plan-focussed and artificial approach to visual assessment that seeks to ignore the reality and actual beauty of the area through selective analysis. The reality is that there would be a significant adverse visual impact on the area from the opencast that would affect a large number of residents and visitors.

Biodiversity

257. The area in and around the site already enjoys high levels of biodiversity, with numerous statutory ecological designations. Further ecological enhancements, such as increased wetlands, could be provided in the area, but given the existing high quality ecological status of the locality, those further enhancements should not be at any cost. Moreover, some of those enhancements, including creating scrapes and water areas, are suggested to have little cost attached in any event.²²³ These enhancements could be secured without the need to destroy a large area of land and risk the potential of significant adverse harm to the existing wildlife and human habitats and structures.

258. The uncertainty about the potential disruption to existing biodiversity is sufficient to justify refusing permission. Opencast mining would inevitably have an effect on the environmental factors that will limit distribution of populations and communities in the natural world. Many species under threat are extremely sensitive to changes in the ecosystem, particularly those species lower down the food chain in the trophic pyramid. This is particularly important to potential effects on, for example, sand eels within Druridge Bay, on which the internationally important roseate tern relies.

259. Sand eels are particularly sensitive to changes in environmental factors, which could be altered in Druridge Bay by wind-blown or water-borne inclusions. Marsh harrier, which had not nested in Northumberland since 1880, depends upon prey organisms, including bats, for its survival. It cannot be certain that disturbance

²²⁰ SAVE/DrRQ/1 and photographs at Appendix 3 of SAVE/DrRQ/1.

²²¹ SAVE/EW/1.

²²² CD4.13 paragraphs 7.49-7.68.

²²³ NCC/DF/1 at paragraph 5.14.

by the opencast would not adversely affect this species. Decisions should be taken in the light of comparisons through "time" or "space" and an understanding that the effects of intervention in the environment cannot be confined to the area of activity. Comparisons with areas that have been previously mined show that the assertion of retrieving the environment after seven years is entirely misplaced.²²⁴

260. There is uncertainty as to whether pink-footed geese would use the suggested areas indicated at ID/APP2.1-3. Alternative feeding areas for birds displaced by Lynemouth Wind Farm have "... not been well used to date by target species, especially the fields closest to the proposed surface mine."²²⁵ The applicant is seeking to engineer nature by placing 'sacrificial crops' to entice pink-footed geese onto areas adjacent to opencast mining operations, and to areas that have not, to date, been used by the species. There is an air of unreality about these plans. Greylag geese may visit Brenkley, but this is unlikely to be replicated by pink-footed geese at Highthorn, where the proposed mitigation site would be next to excavation areas (rather than over 100 m distant), and there would be no bunds between many excavation areas within the site and the proposed feeding grounds. There is a probability of doubt that the proposed mitigation would fail entirely. The risk of failure would be too great. The only certainty in relation to pink-footed geese would be if there were no opencast operations.
261. In conclusion on ecology and biodiversity, it is not disputed that off-site enhancements may further improve the ecology of this locality. However, the present position on biodiversity is already very good. The ecological reasons to refuse permission are that in carrying out the opencast operations there is a risk of disruption to the current ecological equilibrium of the area. Finally, if potential ecological enhancements are available, such as increased land opportunities, then SAVE would welcome the opportunity to help deliver these, working with landowners, NCC and others to help secure funding, project support, volunteering and so on. SAVE echoes RSPB's and NWT's concerns about the section 39 agreements. In particular that uses of land, such as camping, whilst not technically in breach of the section 39 provisions might adversely affect the intended ecological enhancements.²²⁶

Hydrology

262. SAVE does not comment as to whether the EA or the LLFA could effectively regulate any discharge consent necessary for the opencast operations. Its concern about hydrology is that, even at the conclusion of the Inquiry, it is still far from certain whether pumping operations at Lynemouth for dewatering the local area, including Highthorn, could adequately accommodate the Highthorn opencast proposal. The Coal Authority's present position is that the "control level of -34 m AOD should be viewed as a preliminary target, and not necessarily one which will be maintained in the long term" and that "Any long term pumping is dependent on continued funding."²²⁷

²²⁴ SAVE/ProfJH/1.

²²⁵ NCC/DF/3 at paragraph 4.2.

²²⁶ ID/SAVE13.

²²⁷ ID/NCC7.2.

263. Far from providing any reassurance that the hydrology of the locality is manageable, this raises increasing concern that water levels in the locality are continuing to rise, and whether there would be sufficient space on site to construct the necessary treatment lagoons, whilst providing feeding areas for pink-footed geese. In reality, the scheme appears to be reverting, by the back door, to the abandoned large scale on-site pumping option. It is impossible for the Secretary of State to be able to assess the extent of the likely environmental impacts and effects (including the indirect, secondary, and cumulative effects) arising from local hydrological considerations. For instance, the option of additional lagoons could undermine the ecological mitigation argument that pink-footed geese could be accommodated on-site during the operations.
264. In conclusion on hydrology, there remains far too much uncertainty on a critical environmental aspect of the proposal. In the circumstances, the Secretary of State can only reasonably and lawfully refuse permission.

The use of agricultural land

265. There are three concerns relating to the use or loss of agricultural land for the duration of the opencast operations. (1) The loss of land currently used for food production. This may be a reasonably modest adverse impact, but it is nevertheless relevant to consider as another cumulative effect of a series of adverse effects of varying significance. (2) The quality of the restored land. Contrary to evidence of the applicant and NCC that the land would be improved for agriculture post-operation, the Inquiry heard personal experience that restored land quality was poor, with productivity about 40% less than other land in the area that had not been subject to surface mining.²²⁸ There is, at the very least, uncertainty as to whether the quality of land post-opencast would be as good as prior to opencast operations. (3) The loss of 100 ha of currently used agricultural land for possible ecological mitigation/enhancement. While not a major point, it nevertheless raises a material consideration that the ecological enhancements may be beneficial in ecology terms, but there is an adverse impact in the loss of farm and agricultural land.

Tourism, recreation and the local economy

266. During operations, the boundary and overburden mounds would create oversized, artificial structures in what is a generally open landscape. These would dominate the immediate area. There would also be environmental impacts of noise, dust and light pollution. As a consequence of this Cresswell would no longer be the gateway to a rural coastal area acknowledged to be of high landscape value. The area around Highthorn would cease to be part of the scenic beauty of Druridge Bay, with the opencast likely to dislocate or disturb the seamless rural view from Druridge Bay to the Cheviot Hills in the distance. For the duration of the operations and for a considerable period afterwards the scheme would have an urbanising and artificial effect on the locality. It is in this context that tourism for the locality needs to be assessed.

²²⁸ SAVE/GS/1. Mr Shields' experience of land quality was consistent with evidence presented by Coal Action Network and the experience of Karen Thompson (Reference 4, page 4) who explained that farming on previous opencast land resulted in poor stock.

267. The proposal is already having a direct adverse effect on the tourist economy. Ellington Caravan Park is experiencing the biggest drop in renewals of site fees for the last 15 years.²²⁹ People simply do not want to renew their pitches close to an opencast coal mine. The perception, fear and concern about adverse impacts have resulted in direct financial loss. The loss of tourist business would also have a knock-on effect for spending in the local economy.
268. The opencast proposal is already having an adverse impact on the locality by the owner's reluctance to further invest and expand the Drift Cafe.²³⁰ This business has grown rapidly in three years, employing local people in permanent posts. Based upon the last three years' growth, this business could reasonably employ in excess of 60 local staff over the next two to five years. It is projected that, but for the opencast, the Drift Cafe was likely to generate between £3 million to £4 million in the local economy. The Drift Cafe is acting as a catalyst to bring visitors to this part of Northumberland for those who simply want to enjoy the local, natural beauty. However, this catalytic effect was likely to stall.
269. Notwithstanding having planning permission for further expansion at the Drift Cafe, the owner has chosen not to do so, and was unlikely to proceed with the project if permission was granted for the surface mine, relying on visitor surveys undertaken in 2016, in which 50% of those completing the survey stated that they would go elsewhere if the opencast went ahead. It was also quite reasonable for those completing the survey to comment in the way that they did. Whether based upon a person's perception or their actual experience if, in fact, people avoid an area dominated by opencast because of what they perceive may be impacts, then it is having a material adverse effect.
270. The applicant did not consider tourism in any material way beyond suggesting that some businesses close to opencast mines were carrying on. However, Shotton and Brenkley are not in tourist areas, but in locations entirely different to Highthorn.²³¹ The likely levels of income into the local tourist economy could seriously be undermined by the opencast operations.

Heritage assets

271. Low Chibburn Preceptory is located in an open, rural landscape, where it is likely that noise from the operation would be audible and that dust deposition could occur, which would adversely affect the amenity of the area. It is uncertain what material difference the proposed enhancements to the Preceptory would make. According to HE the main vulnerability to the site is unlicensed metal detecting.
272. Cresswell Pele Tower is on HE's Heritage at Risk register, and its principal vulnerability is from vandalism. It has recently received significant grant funding for renovation and development.²³² The proposed surface mine would have some impact on visual amenity and potentially noise at the Tower.

²²⁹ SAVE/NF/1.

²³⁰ SAVE/DL/1.

²³¹ APP/SP/3 Appendix 7.

²³² SAVE/DL/1 paragraph 47 and Appendix 6, page 138. See also the evidence of Mr Barry Mead of Cresswell (ID/OTH34).

273. The two SAMs complement one another. The opencast proposal would operate between the two, and could disturb any potential historical view or the impression that visitors may want to visit both. When travelling from one to the other visitors would have a journey disrupted by the impacts of the opencast operations.
274. The adverse effects of the opencast on heritage assets may not of themselves be substantial. However, the presence of those assets underlines the nature and character of the area, while the adverse effects that arise would be one of the many cumulative impacts that collectively justify refusing permission. The adverse impact of the opencast on heritage assets is a material consideration in favour of refusing permission.

Highway safety

275. SAVE broadly agrees with the updated analysis by the Highway Authority and does not dispute the evidence about capacity presented by the traffic experts. However, concerns remain about highway safety.²³³ This is because the nature of the traffic using the A1068 means that there is an elevated potential for road crashes due to the high level of slow traffic and vulnerable users. This road is well used by cyclists, and non-road users need to cross the A1068 in places.²³⁴ Without increased safeguards for users such as cyclists this increased risk would persist and be exacerbated by, among other things, 300 HGVs on the road. Problems at peak times in safely entering the highway from an existing adjoining property at Teviotdale were evidenced in the short video shown at the Inquiry.²³⁵
276. The concern is as much about irresponsible and negligent drivers using the road, for example, trying to overtake in dangerous situations. There is nothing that the Highway Authority could do about this. But it is precisely because the authorities and, indeed, responsible road users are unable to prevent irresponsible driving that such driving should be taken into account when determining this application. Neither the applicant nor NCC are able to say that the increase in HGVs would not result in the potential increase in irresponsible driving, when the increased HGVs will heighten the conditions and circumstances for such driving to arise, that is to say, slower driving conditions on a single carriageway with a 60 mph limit.
277. In summary, SAVE submits that highway concerns about a material increase in the number of HGVs on the A1068 are material considerations, and a further reason why the opencast should be refused.

Fireclay and sandstone

278. The quantity and quality of fireclay and sandstone that may be available at Highthorn remains very uncertain, and more detailed analysis and market testing would be required. Furthermore, it is unknown whether a revised reduction in coal extraction to around 2.765 Mt would have any effect on the extraction of other minerals. The possible extraction of fireclay and sandstone should be given little or no weight in determining whether permission should be granted.

²³³ SAVE/LT/1.

²³⁴ SAVE/EW/1.

²³⁵ SAVE/GS/2 Appendix 3.

Sand extraction at Hemscott Hill

279. NCC's note to the Inquiry dated 20 June 2017 is wrong as a matter of law.²³⁶ The sand extraction permission extends to the mean low water mark and up into the dunes. One of the key concerns of the EA is that the proposal would significantly increase the flood risk to the locality. Other concerns, as explained by the applicant and NCC, are that further sand extraction would have significant adverse ecological effects, including harm to the Northumberland Shore SSSI.
280. The terms of the section 106 agreement are ineffective in attempting to prevent further sand extraction. The covenants fail to prevent anyone other than the landowner from applying for planning permission, and it fails to restrict that landowner from granting a licence to anyone to enter his land to pursue that permission. The spectre of sand extraction and the considerable misinformation about the effects is unfortunate. It has led many local residents and community groups, including parish councils, into believing that the applicant can secure the cessation of sand extraction, and that it would achieve this through the grant of the opencast permission.
281. NCC has failed to make the true legal position clear; which is that any sand extraction that may be carried out at present that purported to be carried on under the original permission would be unlawful. It would be in breach of the 1997 revised Condition 12. It would also contravene EU legislation including the EIA Directive that requires an assessment of likely significant effects to be undertaken before any consent is granted. NCC has failed to carry out an environmental impact assessment of any sand extraction at Hemscott Hill.
282. Aside from the fact that NCC has failed to assess the impact of sand extraction on the MCZ, the correct legal position in terms of matters falling within the scope of the EIA Directive has been made clear by the Court of Justice of the European Union in a case which held that Member States are required to nullify the unlawful consequences of a breach of Community law, and that a Member State is likewise required to make good any harm caused by the failure to carry out an environmental impact assessment.²³⁷ Thus, the correct legal position on sand extraction is that NCC is failing to comply with its obligations under the EIA Directive. If, as has been suggested by both the applicant and NCC, there are likely to be significant environmental effects from further extraction, then NCC must revoke the sand extraction permission immediately under section 97 of the 1990 Act. Indeed, NCC is acting unlawfully in failing to do so.
283. It is extremely important for the marine environment and its fragile coastal ecology, for the local community and for tourism, that sand extraction from Druridge Bay does not resume. However, it is disingenuous to suggest that the locality, nature and the local community must suffer opencast coal mining as a way to resolve this. Any further sand extraction would be unlawful and NCC is failing in its EU obligations in delaying any EIA of this, and in not revoking the original 1960 permission. In terms of determining the opencast application, no weight should be given to the question of sand extraction, its cessation by covenant relies upon a breach of EU law by NCC.

²³⁶ ID/NCC8.

²³⁷ Case C-201/02, *Wells v Secretary of State* [2004].

Site restoration

284. The Highthorn site does not, of itself, need to be restored, and absent any benefits that could accrue from the opencast, the operations would have an unacceptable impact.²³⁸ Furthermore, necessary site restoration may not be straightforward, and it would be possible that problems of site restoration, as had occurred at other sites, could arise. Notwithstanding the intention to restore sites, the reality is that often this simply did not arise within suggested timescales.²³⁹
285. The section 106 agreement is wholly uncertain in the financial arrangements for restoration security. There are complex calculations as to how the value of any financial package may be determined. However, it is entirely uncertain what that financial sum for restoration may be. Moreover, the process of securing financial provision is vague, with any one of a number of options held over to later determination; for example, the interpretation clause of 'restoration security' refers to any one of either a financial guarantee, a bond, a designated account, a parent company guarantee, and/or 'such other arrangement'. This is inadequate. Given the recent problems in Scotland and Wales with failed restoration and where public funding has had to step in, the lack of certainty for restoration security should justify refusing permission.
286. There is no certainty that a future operator of Highthorn would not seek to extend its operations. This creates an unnecessary level of uncertainty as to the extent and scope of the opencast proposals. This is particularly so in the light of multiple extensions to the Brenkley/Delhi and Shotton opencast sites, which for Shotton resulted in a proposed '8 years green to green' ending up as a '12 years green to green'.²⁴⁰ The uncertainty arising from the reality of repeat applications is a material consideration, which leans towards refusing permission.

Employment and financial factors

287. The applicant and NCC rely heavily upon employment and finances as benefits for the opencast scheme. However, the real value of these is questionable. In the light of either a 10% reduction in coal extraction due to hydrology complications, or an increase in the financial costs of de-watering, the potential sums available are now uncertain. The financial effect of either option would be considerable, and a commercial risk for the operator. However, the Secretary of State must also consider whether any financial or associated benefits are, in fact, likely or just illusory. For instance, it is not known whether a 10% reduction in extraction would inevitably mean a reduction in employment needs.
288. Recent commercial decisions by the applicant to close the uneconomic surface mine at Rusha in Scotland, and not to proceed at Ferneybeds, mean that any socio-economic benefits it presents as accruing from Highthorn should be given little weight. If the demand for coal continues to fall there is a realistic possibility that fewer and fewer jobs will be required.

²³⁸ Cross-examination of Mr Simmons.

²³⁹ SAVE/EW/3 Appendices 6 and 8.

²⁴⁰ CD7.3.1 paragraph 1.10.

289. Moreover, SAVE queries the decision to re-deploying just 50 of the estimated 200 employees that are said are employed at Brenkley and Shotton (300 employees on Harry Banks' estimate). Jobs at Highthorn would inevitably be temporary. These may be even more temporary in the light of the possible revisions to the proposal. This must be seen in contrast to the potential impact on permanent, long-term jobs that are likely to be created if the proposal did not proceed. It is likely that the Drift Cafe would pursue its proposals and increase its employment base to 60 (an increase of 37 employees) and that similar tourist-based, and other local businesses would do the same.²⁴¹ Regard should also be had to the employment loss involved in losing the agricultural land to opencast.
290. In concluding on the possible employment and financial benefits of the opencast; it is clear that any limited, temporary employment opportunity that may arise from the opencast is dwarfed by the potential jobs that are likely to arise should permission be refused. Moreover, these employment prospects would be long-term, permanent posts linked to the emerging sustainable tourist economy in the area.²⁴² In the circumstances, little weight should be given to the employment and perceived financial value of the opencast.

Discover Druridge

291. The allocation of the £400,000 to be paid on commencement of the operations, or soon after, is too uncertain in its application to be given any weight. There is no certainty whether any of the money would be paid towards any particular project. Some projects could receive more, others potentially nothing, it would all be at the discretion of a, yet to be formed, partnership body.
292. The proposed benefits suggested in Discover Druridge are precisely what the wild, Druridge Bay area does not need. The beauty and intrinsic value of the Highthorn area is there because it has, to a large extent, been left undisturbed for many years.²⁴³
293. Moreover, should funds be needed, these are often readily raised within the local community.²⁴⁴ In summary, while it would be the case that £400,000 in the local community would be a benefit. The price of opencast is far too high. There is, in reality, no need for the Discover Druridge funds. The local community are quite capable and willing to raise any funds necessary.

GHG emissions from coal extraction

294. The likely GHG emissions that would arise from the extraction, processing and delivering of coal, the non-combustion emissions, would be in the order of 3.526 Mt CO₂ eq.²⁴⁵ These would be in addition to the GHG that would arise from burning the extracted coal that would include 7 Mt CO₂ eq. This is a significant

²⁴¹ SAVE/GF/1.

²⁴² A resident of Widdrington Station (a former mining village), has chosen to pursue training and a career in renewable engineering, regarding coal as no longer the way forward and that a renewables-based future was essential. SAVE/AB/1.

²⁴³ SAVE/EW/1.

²⁴⁴ ID/OTH34.

²⁴⁵ ID/OTH24.1 and ID/OTH24.2.

level of CO₂ emissions that has not, to date, been taken into account in the assessment or analysis of the proposal.

295. The assessment of GHG by Wardell Armstrong is inaccurate.²⁴⁶ It fails to account for a significant proportion of CO₂ eq emissions.²⁴⁷ The enormity of the non-combustion GHG emissions became evident on the site visit when it was made clear that a significant proportion of the extraction operation was to remove overburden and that the coal extracted was a very small proportion of the materials actually removed. The non-combustion GHG consequences of the proposal are of such magnitude that this would justify refusing permission.
296. CCC's 2017 progress report notes that current policies on climate change fall far short of what is needed to meet targets for GHG reductions, that climate policy is increasingly connected to wider issues, and that there is increasing risk to communities from more extreme weather patterns and the uncertainty associated with flooding. This highlights the need to refuse permission for Highthorn, which is the antithesis of the urgent need for action on climate change. Refusing permission would have associated benefits related to pollution and transport impacts, along with the risk of flooding and from groundwater.²⁴⁸
297. CCC refers to the future use of Carbon Capture and Storage (CCS), but this applies to all fossil fuels not simply coal, and the Government has chosen not to fund CCS development and research, even for gas-fired power stations. The reference in CCC's 2017 progress report does not suggest at all that coal extraction and combustion should not cease with urgency.²⁴⁹
298. The applicant has suggested that there is likely to be significant coal demand from other sectors such as the industrial sector, which also would be far higher than the production from Highthorn. However, this is inconsistent with the evidence from Wardell Armstrong, which states that coal produced from the Highthorn site would primarily contribute to power generation within the UK.²⁵⁰
299. SAVE considers that *The Clean Growth Strategy* supports its submission that the application should be refused because the mining operation would be wholly incompatible with the clean growth policies, such as removing the most inefficient form of electricity generation through the combustion of coal. The opencast operations would be contrary to clean growth policy to enhance the benefits and value of natural resources and natural capital which provide flows of services to the economy and society. Natural capital includes food, pollutant removal, flood risk removal, recreational and educational opportunity, and is central to SAVE's submissions about the effects of the proposal on tourism and recreation.²⁵¹

Planning policy and law

300. Given the planning balance here, and for the reasons set out above, the only reasonable and lawful conclusion that the Secretary of State can reach is to refuse permission. Furthermore, the Secretary of State must also comply with

²⁴⁶ CD4.9.9.

²⁴⁷ ID/OTH24.3.

²⁴⁸ ID/SAVE10.1.

²⁴⁹ ID/SAVE11.

²⁵⁰ ID/SAVE11 citing ID/APP19 paragraph 5.2 and ID/APP18 paragraph 3.10.

²⁵¹ ID/SAVE14 and ID/SAVE15.

- legal obligations and, in particular, act lawfully in terms of the EIA Directive and, be consistent with any international obligations, including the Paris Agreement.
301. The proposal is contrary to policy on climate change; contrary to policy on sustainable extraction; contrary to the government's WMS on the phase-out of coal for power stations; contrary to guidance on renewables and low carbon energy; and, contrary to local plan policy. It is contrary to policy on conserving and enhancing the natural environment, in particular the environmental harm in terms of noise, potential dust emissions, visual amenity, but also on the wider environmental harm in terms of GHG emissions. It is also unacceptable for a number of socio-environmental and economic reasons, including the significant adverse harm to tourism and the local economy, the effects on heritage matters, and on highway safety.
302. The applicant submits that 'the application as a whole' would be of benefit, yet many of the add-on benefits through obligations are, in truth, unnecessary and irrelevant to the consideration of this permission. They should not form part of the planning assessment. As a matter of law, the Secretary of State is required to assess those matters set out in Annex IV of the EIA Directive before consent is granted, as far as the Secretary of State reasonably requires the developer to provide the information. The Secretary of State asked for various aspects of information in his call-in letter. These reasonably include the question of nuisance (including noise, dust deposition and light pollution); the impacts on water, air, climatic factors, material assets, and landscape. In the light of these considerations, the Secretary of State can only reasonably conclude that permission must be refused.
303. The Secretary of State must also ensure that the Government's international commitments are met. This may be more critical than ever with the need to maintain standing and gravitas in a world outside the EU. The UK will have to seize opportunities such as this to underline its international credentials. This point was made with force by Mr John Ashton CBE.²⁵² Refusing this proposal would demonstrate the UK's commitment to critical international agreements.
304. The withdrawal of the eCS removes any argument that the emerging core strategy may have supported the proposal. SAVE did not consider this was the position in any event. Any submission that the saved development plan policies are incompatible with the *Framework* is undermined by NCC's view that planning applications will now continue to be determined in accordance with the statutory development plan unless material considerations, including the *Framework* and other national guidance, indicate otherwise. NCC's withdrawal note suggests that MLP Policy C3 and CMLP Policy C3 remain relevant.²⁵³

Conclusions

305. There is an air of unreality about the proposal in the approach by the applicant and NCC to the Highthorn opencast application. There is over-reliance on theoretical, hypothesised analysis about what locally may, or should be acceptable in socio-environmental terms. They have closed their minds to the urgent and pressing need to tackle climate change. They have failed to grasp

²⁵² ID/OTH3.1.

²⁵³ ID/SAVE12.1.

that there is no longer a need for coal. They have ignored the onus now placed upon civil society, including businesses and public bodies, to reject the burning of fossil fuels for the benefit of all. They appear to have convinced themselves, on the basis of limited and/or uncertain evidence, that the proposal would not have adverse material impacts. The reality is entirely the opposite. The proposal is already having a material adverse impact on local tourism and businesses.

306. Finally, it is clear from the diverse range of interested persons attending and giving evidence to the Inquiry that these views are felt widely throughout the community and beyond. For all the reasons set out above, together with those presented by FoE and the large number of interested persons opposing the application, SAVE invites the Secretary of State to refuse permission for the Highthorn opencast proposal.

The case for Friends of the Earth (FoE)

The following summary of FoE's case broadly follows FoE's closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.²⁵⁴

Introduction

307. This is an application that plainly conflicts with the development plan: it proposes the extraction of 3 Mt of coal from a site that lies in an area specifically protected from surface extraction; and it involves digging up a landscape designated in the development plan as an AHLV. As a consequence, permission should be refused unless material considerations outweigh that conflict.

308. The application was justified by reference to the need for coal generally, and specifically the need for coal in power stations.²⁵⁵ At the time the application was made, there may have been some justification in that approach. Today, however, there is none. Since the application was made, the demand for coal in the UK has fallen off a cliff. In contrast to the 30% figure relied on in the application documents, by 2016 the share of electricity generation from coal had dropped to 9.1%.²⁵⁶ In contrast to the total annual demand of 50 Mt relied on in the application documents, in 2016 coal demand plummeted to 17.9 Mt – a level which the application suggested would not be reached until "the mid 2020s".²⁵⁷

309. The Government has adopted a clear policy to phase-out the use of unabated coal in power stations by 2025. In practice, and in the absence of any prospect of CCS technology, that means that coal will not be burned in any power station after 2025, and that most coal-fired power stations will have closed even earlier. The policy was adopted in pursuit of "one of the greatest and most cost-effective contributions we can make to emission reductions in electricity... replacing coal-fired power stations with gas."²⁵⁸ There is no longer a need for Highthorn coal. Not a 'reduced' need; not a 'less weighty' need; no need.

²⁵⁴ ID/FOE8. FoE's submissions to NCC are at CD5.4(d) and CD5.4(k).

²⁵⁵ CD4.1 paragraphs 3.1 and 3.4; CD4.4.3 ES paragraphs 2.3–2.6.

²⁵⁶ CD3.22.1 pages 50–51.

²⁵⁷ CD3.22.2 and CD4.4.3 paragraphs 2.3–2.6.

²⁵⁸ CD3.7.

310. The applicant has not put forward a figure on likely demand for coal to 2025.²⁵⁹ Only FoE has done so. FoE's figure relies on robust and verifiable evidence, adjusted to take account of a further 32% decline in demand in the first quarter of 2017, and suggests a likely demand to 2025 of 40.2 Mt. Agreed indigenous supply is 25.5 Mt. Given that imported coal has made up 69% of the UK's coal supply over the last 10 years, and amounted to 19 Mt in 2015 alone, there is simply no prospect at all that imported coal will account for less than the 15 Mt difference between indigenous supply and demand between now and 2025. Imported coal will continue to be part of the energy mix irrespective of the volume of indigenous supply because imported coal competes on price. The need for coal in the UK in the seven years to 2025 will be met by existing stockpiles and consents, together with a level of imports substantially lower in percentage terms than has been the case over the last 10 years, and substantially lower in volumetric terms than the total imports in the single year of 2015. Highthorn would not meet an unmet need. If coal is extracted from Highthorn, it would produce coal that creates a surplus in UK domestic requirements.
311. There is no remaining 'window' in which an application for the extraction of coal in the UK can be treated favourably. But even if there were such a window, it would be a very narrow one indeed. Suggested Conditions 6 and 8 would permit coaling at Highthorn to 2027.²⁶⁰ This would be long after the last coal-fired power stations had closed down, and long after any public need for coal could possibly outweigh the conflict with the development plan and the landscape and environmental harm that would be caused by the proposed development.

The development plan

312. The statutory presumption in favour of the development plan is the starting point for all decision making and is not displaced by national planning policy.²⁶¹ A failure to comply with Policy C3 of the MLP and Policy C3 of the CMLP would amount to a failure to comply with the development plan as a whole. NCC's officer's report erroneously suggested that the relevant development plan test was the same as that in paragraph 149 *Framework*.²⁶² The Addendum to the Committee Report did not cure this error.²⁶³ The Committee was not provided with clear advice on the conflict with any specific policy in the development plan or any clear analysis of the significance of that conflict.
313. It is evident from the supporting text to MLP Policy C3 that the purpose of designating the Northumberland Coast area was different to the purpose of designating the North Pennines AONB and the Tyne/Derwent watershed. Whereas those areas were designated on account of their inherent landscape value and natural beauty, the Northumberland Coast area was designated in recognition of the cumulative successive impacts of opencast mining on the landscape and on local communities. The "special landscape interests" that Policy C3 seeks to protect for the Northumberland Coast area are the interests of

²⁵⁹ Mr Carmel expressly disavowed the suggestion that he had done so, noting that his 100 Mt figure was simply a figure that might be consistent with the CCC's Central Scenario rather than a projection of what demand is likely to be.

²⁶⁰ ID/OTH36.1.

²⁶¹ *Suffolk Coastal DC v Hopkins Homes* [2017] UKSC 37.

²⁶² CD4.13.

²⁶³ CD4.16.

- conserving and improving a landscape that has been subjected to the cumulative successive impacts of mining over 60 years. The application is not compliant with Policy C3 of the MLP because it would result in the continuation of the successive cumulative impacts of open cast mining that justified the adoption of the policy in the first place.
314. NCC and the applicant respectively sought to rely on the DCC analysis as evidence that the cumulative successive impacts of the proposed development had been properly considered and were acceptable. Their respective landscape experts were in possession of the DCC analysis of cumulative successive impacts and both were aware of the approach to cumulative successive effects as set out in the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3)*. However, inexplicably, both chose to ignore those effects when conducting their own LVIA's and/or providing evidence to the Inquiry.
315. This omission resulted in a failure to consider the extent to which the local community would experience the apparently 'temporary' effects as temporary. The majority of the application site is a pre-mining landscape, of which there are only small pockets remaining within the landscape character area. As demonstrated by the rig and furrow patterns which can still be seen on the site today, that pre-mining landscape has a time-depth lacking in the adjacent restored landscapes. The 2007 Landscape Character Assessment carried out by the Northumberland Coast AONB Partnership recognises the pre-mining landscape to have a much greater detail and variety than the restoration landscapes that are characteristic of the wider area.²⁶⁴ The remnants of the pre-mining landscape are, accordingly, all the more important to protect, and that is part of the purpose of MLP Policy C3.
316. The proposed development would re-set the clock on the maturing of a landscape that was improving as a result of respite from long-term mining. Indeed, the 2007 LCA recognised the possibility that the landscape might meet the tests for designation as an AONB if permitted to mature.²⁶⁵ By failing to consider the cumulative successive effects of long-term mining and focusing simply on the apparently 'temporary' nature of the adverse landscape impacts, NCC and the applicant thereby missed some of the more significant impacts of the proposed development.
317. MLP Policy C3 is a coal constraint policy and its objective is not merely improvement, but conservation of the landscape.²⁶⁶ On no assessment would the extraction of 3 Mt of coal from the site result in the conservation of, for instance, the detail and variety of the pre-mining landscape and the rig and furrow earthworks. Moreover, to the extent that 'improvements' would be made to the landscape, they would be made to the small pockets of the LCA that are in no need of 'improvement'. The site does not need restoration.
318. Although MLP Policy C3 could be better worded, it is clear that mere environmental acceptability, or mere compliance with landscape, heritage and nature conservation policies, is not sufficient to satisfy the policy. Were that the

²⁶⁴ CD8.3 paragraph 11.14.1.

²⁶⁵ CD8.3.

²⁶⁶ CD1.1.1 paragraph 4.44.

case, Policy C3 would be indistinguishable from Policy C5, and Policies C2, C3, C4 and C5 create a hierarchy of policies, where C3 is the most restrictive. The requirement to demonstrate exceptional circumstances is a requirement that elevates the level of protection above the ordinary and gives the landscape of the application site a level of protection equivalent to the North Pennines AONB and the Tyne/Derwent Green Belt. On its proper interpretation, MLP Policy C3 requires exceptional circumstances to justify mineral extraction in certain parts of the County, as opposed to merely requiring environmental acceptability.

319. However, no evidence has been submitted to demonstrate exceptional circumstances, and the evidence points strongly towards there being none. The MLP states that there is no shortage of potential sites for opencast coaling in Northumberland.²⁶⁷ Yet this application is made for opencast coaling within an area of coal constraint and without any analysis of the availability of alternative sites.²⁶⁸ For all these reasons the application fails to comply with MLP Policy C3.

320. The eastern part of the surface mine's operational area, including the north-eastern part of the proposed void and the eastern subsoil mounds, would be within the AHLV. The proposal would therefore have a detrimental effect on the AHLV. Nonetheless, both the applicant and NCC argue that digging a hole in the AHLV and piling subsoil mounds upon it would have no detrimental effect.²⁶⁹ NCC's evidence is hard to understand given its findings about landscape effects. In relation to LCA39a (which includes part of the AHLV), there would be a major/moderate to moderate landscape effect locally (within approximately 1-2 km) which would be significant, during the temporary operational phase. For LCA40a (which also includes part of the AHLV), there would be a moderate adverse effect that was significant locally (within approximately 1-2 km) where there is visibility, during the temporary operational phase. VP18 and VP16, which are both in the heart of the AHLV show, respectively, a major/moderate to moderate adverse effect, and a moderate adverse effect, during the seven operational years.²⁷⁰

321. NCC argues that the effect would be temporary; would only involve a small part of the AHLV; and that the long term effects would be beneficial. The latter should be treated with caution because the majority of the site is a pre-mining landscape characterised by detail and variety, including rig and furrow earthworks. Even the most successful man-made, restored landscape would not replace this pre-mining, virgin, landscape. None of NCC's points overcomes the conflict with the policy. Seven years of significant adverse landscape and visual effects on a substantial part of the AHLV does not, on any reasonable assessment, comply with a policy that requires there to be no detrimental effect. For those reasons, the proposal conflicts with Policy C3 of the CMLP.

Weight to be given to development plan policies

322. The applicant and NCC contend that a material consideration weighing against refusal is that the development plan in general, and the C3 policies in particular,

²⁶⁷ CD1.1.1 paragraph 4.23.

²⁶⁸ The sum total of evidence before the Inquiry on alternative sites is the information contained a page 116 of the ES Volume 1 at CD4.4.3.

²⁶⁹ Mr Halliday said that there would be "a significant adverse effect."

²⁷⁰ NCC/KH/1.

are out of date and should be accorded limited weight. But the fact that parts of a plan are out of date does not mean that all policies are out of date. The mere fact that a plan is chronologically old, or predates the *Framework*, does not mean its policies are necessarily out of date. Furthermore, the *Framework* permits policies that protect valued landscapes and permits local landscape designations to achieve this. It also allows, provided it is justified by an evidential basis, a planning authority to grant the same level of protection to a local landscape designation as that given to national landscape designations. Finally, the *Framework* requires mineral planning authorities to take account of the cumulative effects of mineral extraction, both in plan-making and decision-taking.

323. The MLP was founded on the principles of sustainability set out in Minerals Planning Guidance Note 1, all of which are reflected in the *Framework* and cannot be said to be out of date in any significant way. Turning to MLP Policy C3, it is a designation which provides equivalent protection to a local landscape as it does to two national designations (AONB and Green Belt). It does so in order to provide respite to a landscape and to a community subjected to long-term, successive mining projects and to protect that landscape and that community from the unacceptable cumulative successive impacts of surface coal mining. Such an approach is permissible in a *Framework* compliant world, provided that it is justified by evidence. FoE submit that the evidence here was and is compelling. The Northumberland Coast area of coal constraint is an area that has been extensively mined over a long period. The protection provided by the mineral planning authority was approved through a local plan process, and received strong support from Castle Morpeth Borough Council.
324. The *Framework* supports the identification of areas where the extraction of coal may be acceptable and, by implication, where it is likely to be less acceptable or not acceptable. There is nothing in paragraphs 144 or 149 of the *Framework* prohibiting a high degree of protection to be given in a Minerals Plan to a locally designated area, provided that is justified by evidence. The first bullet point of paragraph 144 gives great weight to the benefits of mineral extraction, but there is nothing in the MLP preventing great weight from being given to the benefits of mineral extraction in applications for planning permission in areas outside of those covered by Policies C3 and C4.
325. It is correct that no review of the MLP was undertaken and that Policy C2 is out of date, with its allocations now exhausted. But that does not impact on the weight to be attached to Policy C3. The 'C' policies of the MLP provide for a hierarchy of protection, with Policy C3 representing the highest level of protection. The weight to be given to that highest level of protection should only be reduced if it becomes apparent that the failure to update the MLP has resulted in a situation where current needs for coal cannot be met by working in those areas outside the Policy C3 designation. That is clearly not the position in this case. The fact that 60% of Northumberland is constrained by MLP policy takes the argument no further because that 60% represents both Policy C3 and Policy C4 constraint areas and, the Policy C4 constraint area imposes a lower level of constraint and should be the starting point for meeting unmet need before any consideration is given to sites within the Policy C3 area.
326. NCC says that Policy C3 is out of date because it applies an exceptional circumstances test rather than reflecting the *Framework* paragraph 149 approach

- of requiring environmental acceptability or national, regional and local benefits that outweigh any environmental harm. That approach would ignore the fact that an exceptional circumstances test for opencast mining cannot be contrary to the *Framework*, *per se*, because that is exactly the test in paragraph 116 that would be applied to an application for an opencast mine in the AONB. The Northumberland Coast area of the Policy C3 designation is a valued landscape.²⁷¹ On account of the fact that the designation is limited and justified by evidence, there is nothing about an exceptional circumstances test that is in conflict with up to date national policy or guidance. Accordingly, the Secretary of State is urged to give significant weight to MLP Policy C3 as part of the development plan.
327. A number of the points made above in relation to Policy C3 of the MLP apply with equal force to Policy C3 of the CMLP. In addition, the written evidence on behalf of both the applicant and NCC sought to argue that there has been a move away from local landscape designations, in favour of criteria-based policies based in landscape character. However, paragraph 113 of the *Framework* explicitly contemplates that there will still be locally designated areas following the replacement of PPS7. There are examples of post-*Framework* development plans where such designations have been found compliant and upheld.²⁷²
328. The only basis in which it could be argued that CMLP Policy C3 was not consistent with the *Framework* is if it was not underpinned by an adequate evidence base. There is nothing before the Inquiry, beyond the text of the policy and the reasoned justification, which demonstrates the basis on which the AHLV was defined, but it does not follow from this that there was no proper evidential support for the designation. The Proposals Map indicates that the planning authority did not seek to attribute AHLV status to large swathes of the district, but instead applied a proportionate approach, identifying targeted and well defined areas. The landscape character assessment work which has been carried out since the CMLP was adopted entirely supports the conclusion that there is an area of hinterland behind the dunes of Druridge Bay and extending into the flat plain beyond the C110 which is of higher landscape value.²⁷³
329. On any fair reading of that LCA, it provides clear evidential support for the AHLV designation of an area of land towards the coast, abutting the dunes, incorporating the wetlands and pre-mining landscape. The landscape in this area of the AHLV is distinctive, both in and of itself, by virtue of the combination of the wetlands, restored agricultural fields and the pre-mining landscape; and by association with the Heritage Coast and the intervisibility with the dunes. The 2010 LCA concluded that "the highest-scoring landscapes [in the 2010

²⁷¹ CD8.3 paragraph 11.14.12 and CD4.13 paragraph 7.63.

²⁷² FoE/RB/1 Box 1 page 15.

²⁷³ CD8.3 page 39 notes that the "extensive views both out to sea and also inland across the flat coastal plain" contributes to the special character of the Heritage Coast as experienced from the dunes. At page 61 a distinction is made in the Druridge/Cresswell Farmed Coalfield LCA between the land to the west of the character area that is defined predominantly by restored mining landscapes, and the land "towards the coast" which is described in more glowing terms: "the landscape has an open, windswept feeling. The areas of wetland create various effects through the reflection of sunlight in their pools. Restored landscapes with their ruler straight lines are juxtaposed with areas of farmland that have never been disturbed by mining."

assessment] relate quite closely to the existing areas of landscape protection [as defined by the local planning authorities].”²⁷⁴

330. There is a substantial degree of overlap between LCA40a and the AHLV, the difference is precisely the position of the line drawn where the hinterland no longer contributes to the natural beauty experienced along the C110 and the dunes. Neither LCA40a nor the AHLV considered it appropriate to draw the line at the hard-edged landscape feature of the C110. The assessments concur that the area of high landscape value extends beyond the C110 into the fields beyond. The difference between them is at most a difference of three fields.
331. Importantly, however, whereas the AHLV boundary is carefully defined along field boundaries and carefully extended in order to, for instance, include Chibburn Preceptory, the LCA40a boundary is a broad-brush line which cuts through the middle of fields and ponds with no apparent care for careful delineations. That is the nature of landscape character assessment and there will be substantial variation within LCAs. Moreover, there is no hard-edged landscape feature that marks the distinction between LCA39a and LCA40a. There is a gradual transition from one of the highest rated landscapes in the County (LCA40a) to one of the lower rated landscapes (LCA39a), and so the eastern areas of LCA39a abutting the boundary with LCA40a are likely to share many of the same characteristics as that highly rated landscape.
332. The suggestion that there is no evidential support for the AHLV designation is simply baseless. Although the 2010 LCA drew the boundary of the highly valued landscape a matter of two or three fields closer to the dunes, that was a matter of judgement. It is difficult to see any material difference between the field in the immediate foreground of VP18 (which is within LCA40a) and the two fields just beyond (which are within the AHLV). Certainly, it cannot be said that the decision to include the more westerly fields within the AHLV was without foundation, such that CMLP Policy C3 is out of date. For those reasons, the policy should be given significant weight in determining this application.

The emerging Core Strategy

333. The withdrawal of the eCS does not affect FoE’s evidence and submissions on planning policy. The application should be refused on account of the conflict with the MLP and CMLP. To the extent that the applicant has suggested that the eCS favoured a different approach that is no longer the case.²⁷⁵

Paragraphs 144 and 149 of the Framework

334. The key relevant policy in the *Framework* is paragraph 149, and the presumption in favour of sustainable development in paragraph 14 does not apply unless paragraph 149 is first satisfied. Paragraph 149 is unique in the context of minerals policies insofar as it commences with a statement that planning permission “should not be granted unless...”. That wording reflects the inherently disruptive impacts of surface coal mining.
335. The proposal is environmentally unacceptable because of the cumulative successive impacts on the landscape and local community, and the harm to the

²⁷⁴ CD2.2.5 page D-17 paragraph 3.3.

²⁷⁵ ID/FOE10.

AHLV. In addition, environmental acceptability for open cast coal mining requires consideration of the same downstream effects on which the Secretary of State has asked to be informed: the climate change impacts; the impacts on the transition from coal to gas; and the impact on the delivery of renewable technologies. If the Secretary of State were to conclude that the application was contrary to the Government's policies on meeting the challenge of climate change; or contrary to the WMS on coal phase-out; or contrary to the online guidance on delivery of renewable and low carbon energy; then it would not be environmentally acceptable.

336. This submission relates simply to the meaning of 'environmental acceptability' for the purposes of paragraph 149 of the *Framework*.²⁷⁶ FoE submit that 'environmental acceptability' must include a consideration of the downstream effects of consenting the application on the UK's ability to meet its domestic and international law obligations to tackle climate change. That is, after all, part of the purpose behind the prohibition on peat extraction.²⁷⁷

337. This is also not a case, like that considered in *Frack Free Balcombe* where the downstream environmental effects would be regulated by another statutory body.²⁷⁸ There is no regulatory body that limits the consumption of coal, or the carbon emissions released by coal-fired power stations. The EU Emissions Trading Scheme imposes an overall cap on the UK's emissions, but does operate to restrict the emissions that can be released by any particular operator. If the result of consenting Highborn is that more coal is burned in the UK, there is no regulatory body to prevent that result. Furthermore, there is no regulatory body that could remedy the effects of the market signal sent by consenting a new opencast coal mine.

Other matters on which the Secretary of State has asked to be advised

338. These include the extent to which the proposed development is consistent with the following issues, which are inextricably connected; Government policies for meeting the challenge of climate change, the WMS, and the *Guidance* on renewable and low carbon energy.

339. WMS1 notes that "One of the greatest and most cost-effective contributions we can make to emission reductions is by replacing coal-fired power stations with gas".²⁷⁹ The phasing out of coal will only be possible if there are sufficient low-carbon and renewable facilities available to replace it. The Government's policies on the phasing out of coal and the promotion of renewable energy do not exist in a vacuum. Rather, phasing out coal-fired power is simply one of the key ways in which the Government intends to give effect to its policy on climate change. This can only be achieved if alternative low-carbon and renewable technologies can be developed to deliver needed electricity. This wider context is critical to the evaluation of the Highborn proposal.

²⁷⁶ Whereas in *Friends of the Earth v North Yorkshire Council and Third Energy* [2016] EWHC 3303 (Admin) and in the *An Taische* case [2014] EWCA Civ 1111 the Courts were considering the requirements of European law in the context of the EIA Directive.

²⁷⁷ *Framework* paragraph 144 5th bullet point.

²⁷⁸ *Frack Free Balcombe* [2014] EWHC 4108 (Admin).

²⁷⁹ CD3.7. CD3.10 is to similar effect.

What is the Government's Policy for Meeting the Challenge of Climate Change?

340. The UK is subject to a number of international obligations to address the impacts of climate change and reduce GHG emissions, some of which have been given the force of domestic law through the Climate Change Act. This requires the Government to identify and take steps to meet the series of carbon budgets which, together, will result in at least an 80% reduction in emissions by 2050 from 1990 levels. When introducing the 2016 *ConsDoc*, Greg Clark observed that "My priority is to ensure that our country has the electricity it needs to meet all of our needs, at the lowest possible cost and to ensure that we decarbonise our energy supplies in line with the UK's legally-binding commitments."²⁸⁰ The Paris Agreement has now been ratified and commits the UK to achieving the reductions in GHG emissions which will be required to keep global warming to well below 2 degrees, and to seek to keep it to 1.5 degrees. This was a "turning point towards a low carbon future" which sends a "strong signal to business that the shift to a clean economy is global, transformational and irreversible".²⁸¹
341. At this macro-level, national policy on climate change is uncontroversial. Precisely how the Government intends to achieve its targets is an area where policy is still evolving, and is necessarily subject to fine-tuning as economic circumstances change. However, some things are clear. In particular, virtually all statements by the CCC and BEIS recognise that the transition to low-carbon electricity will not occur unless investors can be persuaded to invest in renewable and low-carbon technologies. To this end, the Government has repeatedly stated the importance of sending out the right signals. For example, in 2011 EN-1 advised that: "What is required is a clear market design that provides consistent long term signals for investment in the new generating capacity and transmission and distribution infrastructure that is required."²⁸²
342. In her 2015 speech, Amber Rudd said: "In the next 10 years, it's imperative that we get new gas-fired power stations built. We need to get the right signals in the electricity market to achieve that." and that "Paris must deliver a clear signal that the future is low carbon that unleashes the levels of private investment and local action needed."
343. The 2016 *ConsDoc* explained the purpose of the phase-out in the following terms: "Setting a clear end date for unabated coal generation will send a clear signal to investors in new generation capacity, including new gas power stations and low-carbon alternatives such as renewables and nuclear." It added that "This consultation explores how to take action to regulate the closure of unabated coal to provide greater market certainty for investors in the generation capacity that is to replace coal stations as they close, such as new gas generators." And that "Uncertainty about when the remaining coal stations will close creates uncertainty for those considering investing in new flexible replacement capacity, such as new gas generation." The *ConsDoc* states that "It is against this backdrop of more challenging conditions for coal generation and uncertainties over the rate and timing of closures that we are seeking views through this consultation on when and how to put into effect the closure of unabated coal

²⁸⁰ Forward to CD3.10.

²⁸¹ CD3.10 paragraph 1.

²⁸² CD3.4 paragraph 2.2.18.

while ensuring secure, reliable and affordable supplies in intervening years. By doing this, we expect to improve the investment climate for new, lower-carbon, flexible replacement capacity, such as gas generation.”

344. It is Government policy that the decisions which it makes should send the right signals. Climate change is an area within which the Government intends that the UK should be a world-leader, not only because of the competitive edge this can provide, but also because it is a foreign policy objective to set an example. WMS1 states “We are world leaders in offshore wind and globally we can make a lasting technological contribution”.²⁸³ Amber Rudd said: “Our most important task is providing a compelling example to the rest of the world of how to cut carbon while controlling costs. As I set out earlier, it is not clear we have done that so far.”²⁸⁴ The CCC’s recommendations following the Paris Agreement note that: “Early action will allow the UK to fulfil its commitment under the Paris Agreement and position it to take competitive advantage in the global shift to a zero-carbon world”.²⁸⁵

The relationship between Government Policy on Climate Change and the Framework and the Guidance

345. Paragraph 93 of the *Framework* states that: “Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure” and paragraph 97 states that: “To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources.”
346. The role of planning is not simply limited to permitting the development of facilities for renewable and low-carbon energy, or even promoting development which is more energy efficient, but that it extends to actively preventing or discouraging development which is likely to displace or compete with the renewable and low-carbon technologies that the policy seeks to encourage. If (as it does) the *Framework* explicitly advocates the use of planning to help secure radical reductions in GHG emissions, a proposal which is likely to discourage the provision of the facilities for renewable and low-carbon energy which are needed to provide those reductions must logically be contrary to paragraph 93.
347. The same principles apply to the *Guidance*, which advises that: “Increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses.” The steps the planning system can take to help bring about this increase include restraining development which supports the more carbon-intensive alternatives.

²⁸³ CD3.7.

²⁸⁴ CD3.8.

²⁸⁵ CD3.18 page 7.

Is the Highthorn application consistent with national policy?

348. Since Government policy is to phase-out the use of coal in electricity generation, it is difficult to understand how or why there should be any need to provide more coal for use in coal-fired power stations. There is already more consented coal, globally, than the world can afford to burn, and so there is simply no excuse for opening up new, as yet unconsented reserves.²⁸⁶
349. The applicant assumes that Highthorn coal would meet a need that would otherwise not be met by other readily available sources of coal. However, that is not the case. Illustrations such as Mr Carmel's Figures 5.1 and 5.2 are meaningless unless they also show the amount of coal which has already been consented and is available to meet the same "need".
350. The applicant's analysis states that the relevant budgets for the period in which Highthorn would be operational are the 3rd and 4th carbon budgets. But this assumes that coal extraction at Highthorn would run according to Banks Mining's illustrative timetable. In reality, the rate of extraction would depend on the market for coal. Given the recent collapse in demand, it is entirely possible that it would take much longer, and that Highthorn would still be producing coal long after the last coal-fired power station has closed. The suggested conditions, assuming permission was granted late 2017/early 2018, would permit extraction at Highthorn to continue until as late as 2027, four years after BEIS's most recent projections suggest that the use of coal in coal-fired power stations could have ceased. Indeed, under those Conditions, it would be possible for extraction only to begin in the last year of coal-fired production.
351. The analysis assumes that the coal would be sold to UK power stations. But there is nothing which would require this, or would prevent the operator from selling the coal for export. Banks Mining has already exported small quantities of coal to Spain, and has said that there are "considerable overseas opportunities for us to work towards" and that it is "planning to pursue other opportunities to supply overseas customers both within and outside mainland Europe."²⁸⁷
352. The applicant argues that CCC's Central Projection shows that it would be possible to meet the 4th and 5th carbon budgets with coal-fired power stations operating until 2025. However, the CCC is the Government's adviser on climate change. Its reports do not represent or set Government policy. The Central Projection is therefore, at best, one representation of how the 4th carbon budget will be met. Furthermore, the UK is not on track to meet the 4th carbon budget, and the Government will need to adopt new policies to ensure that it is met.²⁸⁸ In its 2016 Progress Report, the CCC has expressly advised that progress to date is not enough; that policy strengthening will be required; and that there will be a need to develop new policies.²⁸⁹ Amber Rudd has said that achieving the 4th budget is going to be "tough".²⁹⁰

²⁸⁶ FoE/ProfJB/1 section 4.

²⁸⁷ FoE/SB/3 Appendix 11.

²⁸⁸ CCC Progress Report Foreword page 7 and Executive Summary page 11 at CD3.9. BEIS updated projections as at March 2017 at CD3.17.1 page 9. APP/AC/2 paragraph 19.

²⁸⁹ CD3.9 pages 27, 21 and 37.

²⁹⁰ CD3.8.

353. No-one can say what new policies will be adopted to meet the 4th and 5th carbon budgets. However, de-carbonising electricity generation has been one of the relative success stories and has further capacity to outstrip expectations. Sectors such as transport and heating are proving much more difficult and there is no certainty that they will be able to make the reductions required. In such circumstances it would be extremely unwise to assume that these sectors will be sufficiently decarbonised by 2025 for the continued use of coal in electricity-generation to be compatible with achieving the 4th carbon budget.
354. The CCC projections predate the Paris Agreement. Current policies will at best deliver about half the reductions required in order to meet obligations under the Paris Agreement.²⁹¹ Although the CCC has decided not to amend its recommendations for the 4th or 5th carbon budgets at this point in time, it is very clear that this decision was not based on the belief that further changes are not necessary, but simply on a concern that the targets set should remain credible and achievable.²⁹²
355. CCC's position is understandable, but it is essential that it does not become an excuse for complacency or back-sliding. CCC's Central Scenario is already being overtaken by events. The latest BEIS projections suggest that it will, in fact, be possible for coal-fired generation to have ceased by 2022-2023. In a world where the UK is currently under-performing, and where the ability of sectors such as transport and heat to deliver what is required is increasingly doubtful, it is essential that the Government does not allow achievable gains in power generation to slip away, but "banks" them against the more difficult tasks that lie ahead.²⁹³ Doing so would increase the chances of achieving the reductions in transport and heating that are also needed. Reductions in these areas are heavily dependent on persuading existing users to switch to electricity. However, there is absolutely no point in making that switch if the electricity we use to run cars or heat homes is still generated from "the dirtiest fossil fuel" of all.²⁹⁴
356. The CCC 2017 progress report notes that three-quarters of the decline in carbon emissions from 2012 to 2016 has come from the reduction in the use of coal for power generation.²⁹⁵ Gas generation load factors increased from 25% in 2015 to 43% in 2016. A further 16 Mt of carbon dioxide savings would come from reducing coal to zero, which would be 35% of the progress in the power sector to 2030 if coal was replaced by gas, and 28 Mt or 61% if replaced by renewables. Coal-phase out remains a very large component of the required progress. Electricity generation will have to contribute greater emission savings given the lack of progress in heating and transport. Policies must be strengthened in order to meet the 4th and 5th carbon budgets, and the CCC considers that proposals should leave open the possibility of reducing emissions more quickly than required by the budgets, given that the Paris Agreement has more ambitious aims than those on which the UK carbon budgets are currently based.

²⁹¹ CD3.18 Executive Summary page 7 and page 12.

²⁹² CD3.18 pages 7, 8 and 51.

²⁹³ CD3.10 paragraph 72.

²⁹⁴ CD3.8.

²⁹⁵ ID/OTH37 page 9.

357. Coal is unnecessary even in 2016 other than as back-up, with the CCC noting sufficient low-carbon capacity to meet over half annual demand, and sufficient gas capacity to meet the remainder. But that additional capacity may be required in a backup role to ensure system security. CCC's updated scenario reflects the changes to coal economics, with the 2017 Central Scenario of 67.4 Mt of coal for power could be used in 2018-2025, down from 103 Mt in 2015, and falling to zero by 2026.²⁹⁶ The CCC's projection is not of demand, but is a scenario which meets the 4th carbon budget. Nevertheless, an estimated remaining demand of 25.7 Mt (with imports of 7 Mt/yr) would compare with a supply of 25.5 Mt.²⁹⁷ BEIS projections contain less coal than the CCC scenario, because the latter reflects variability in projected generation. But rapidly changing coal economics means in practice that less coal will be used to 2021 than is assumed by the CCC, which would allow the existing carbon budgets to be made with less increase of effort in the underperforming and harder sectors of transport and buildings.
358. The applicant's argument assumes that the amount of electricity which is generated from coal is fixed. However, that is not the case. This would depend on, amongst other things, the relative economics of coal and gas generation.²⁹⁸ Coal is currently out-bidding gas in the Capacity Market Auctions, which is inhibiting the construction of new CCGT facilities.²⁹⁹ The market for coal-fired electricity is elastic. Accordingly, it is necessary to consider the likely effect of consenting Highthorn on the viability of coal-fired generation.
359. Restricting supply of fossil fuels can have positive effects on carbon emissions because restricting supply not only limits the amount of fossil fuel that can be burned, but also because it can have the effect of increasing the price of the fossil fuel and incentivising the shift to alternatives.³⁰⁰ Increasing the supply of a fossil fuel can have a negative impact on carbon emissions because it can have the effect of decreasing the price of coal, making it more attractive and increasing demand, and disincentivising the shift to alternatives. The applicant accepts that Highthorn coal may not be entirely a substitute, and accepts the theoretical possibility that around 8% of newly extracted coal would be 'additional' to coal that would otherwise have been burned, but argues that the quantity of coal involved is unlikely, on its own, to affect global coal prices.³⁰¹
360. That may or may not be the case. But cumulatively, multiple decisions taken in different parts of the world to consent apparently "small scale" coal extraction projects result in cumulatively large volumes of new coal on the market, which would have the effect of shifting coal prices significantly, thereby increasing demand. For that reason, decision makers must recognise that the cumulative effect of decisions to grant consent for the extraction of new coal has an impact on the price of coal and an impact on demand for coal both domestically and internationally. The implications of this for the amount of coal that would be burnt is not easily quantified. No exact figure has been suggested or agreed in

²⁹⁶ ID/OTH37 page 48 with conversions.

²⁹⁷ ID/FOE9 paragraph 3.3.1.

²⁹⁸ CD3.10 paragraph 9 and CD3.23 paragraph 21.

²⁹⁹ APP/AC/2 paragraph 52.

³⁰⁰ CD13.7.

³⁰¹ APP/AC/4 paragraph 3.14 and evidence of Mr Carmel.

the Inquiry and it may be more or less than the hypothesised 8%. The exact effect depends on the elasticities of supply and demand of traded coal markets, but the effect is not zero.³⁰²

361. Consent for new coal today would increase global supply generally and unlock more of the “unburnable carbon” that must remain in the ground. There should be no new permissions until known resources, which include sites that already have permission, have been exhausted. In a world with very limited burnable carbon, and where coal is more polluting than gas and oil, extracting and burning coal amounts to a deeply inefficient use of that highly limited resource.

362. What really matters is not the likely impact of Highthorn on the global price of coal, but its impact on the UK market, and the coal-fired power station(s) that would buy it. The real-world consequence is that power stations in the UK would be likely to have access to cheaper coal, which means that they would be able to afford to burn more of it, and would be in a better position to compete with gas and renewables. That is exactly the opposite of what the Government is trying to achieve. It would make nonsense of the Government’s efforts to disincentivise coal through Carbon Pricing, and would be a waste of the money that has been spent on public subsidies for renewables. Anything which enhances the viability of coal is itself an obstacle to the investment in the low-carbon and renewable technologies. Nowhere is this more evident than in the failure (to date) of the Capacity Market Auctions to bring forward needed gas-fired generation.

363. Mr Ashton’s unchallenged expert evidence encapsulates the unanticipated international consequences of consenting what might appear to be a relatively insignificant domestic project. It aligns with the recognition in the *ConsDoc* of the non-monetised benefits of coal phase-out, and the positive impact on the international climate change arena of the UK being one of the first developed countries to close unabated coal generation.³⁰³

364. Although the 2016 publication is a consultation document, it is absolutely clear that the Government recognises the policy imperative of phasing out coal-fired power by 2025. The central thrust of the consultation is not whether this should be the case, but how it should be achieved. In particular, the Government is concerned that there should not be a sudden “cliff-edge” in 2025. It is for this reason that the Government is consulting on a progressive phase-out from 2023. Critically, the *ConsDoc* makes it clear that the Government believes that this can be done without any threat to energy security.³⁰⁴

365. CCGT’s comparative lack of success in the 2016 T-4 Capacity Market Auctions means that there is unlikely to be much new gas capacity by 2021, but that need not be a cause of concern at this stage, because CCGT is not the only form of gas that can contribute to the 7 GW in the BEIS projections.³⁰⁵ The likely maximum feasible technical build rate for new CCGT power plants in the UK is around 6 GW per year.³⁰⁶ It would therefore only require one year at that rate to add the

³⁰² APP/ProfJB/1 paragraph 4.8.

³⁰³ CD3.10 page 7.

³⁰⁴ CD3.10 paragraphs 21 and 56.

³⁰⁵ APP/AC/2 Figure 2.2 shows that OCGT secured a contract for 1 GW in the last round of the Capacity Market.

³⁰⁶ CD3.10 paragraph 61.

remainder of the 7 GW “required”, and that there is some 18 GW with planning permissions for CCGT in the pipeline.³⁰⁷ All that is needed is the economic conditions to encourage these schemes to come forward. Over a third of the total requirement could be achieved in a single plant.³⁰⁸

366. In any event, the BEIS projections are neither Government policy, nor are they fixed. “The Government does not intend to specify the level of replacement generation that will need to come forward to proceed with these policies. Rather, the specific level of generation, including new gas, that will need to come forward in order to meet this condition will be decided on the advice of the System Operator, scrutinised by the Panel of Technical Experts taking account of the expected rate of coal closure as well as the range of other factors that influence the need for capacity.”³⁰⁹ This is important, because there has been a pronounced shift since WMS1 (where gas was identified as the principal replacement for coal) and the *ConsDoc*, where it is only one of a number of technologies which could fill the void. Hence, BEIS 2017 projections show the proportion of gas dropping off in the period up to 2022, while renewables increase.³¹⁰ Furthermore, if gas is lagging behind, other technologies are ahead of the game.³¹¹

367. Although the CCC and the National Grid have published various future scenarios showing “options for flexibility”, none of these includes an increased role for coal.³¹² In any event, this confuses the market prospects for coal with whether coal-fired power is consistent with the Government’s climate change targets. If coal is still needed beyond 2025, that would represent a failure to meet Government policy, which is likely to place the Government in breach of its obligations under the Climate Change Act. Consequently, even if it is the case that the Capacity Market is not yet delivering the needed proportions of low-carbon and renewable energy, all this tells is that “We need a course correction”; and that is what the Government is consulting on.³¹³ The outcome of the consultation is not yet known, but the direction of travel is clear, and coal forms no part of the destination. If the Capacity Market is currently not delivering as expected, the answer is not to plan for more coal, but to fix the Capacity Market.

368. The applicant’s argument that removal of subsidies will lead to a slump in the delivery of renewable technology overlooks the reasons why the Government has reduced or eliminated subsidies for onshore wind and solar, namely that these are no longer needed, because these areas are capable of standing on their own two feet.³¹⁴ It also overlooks the fact that although subsidies for onshore wind and solar have ended, there is still a significant pipeline of projects that have obtained funding which are yet to come on stream. These projects will continue

³⁰⁷ CD3.38 page 42.

³⁰⁸ ID/FOE2. Eggborough has recently applied for a Development Consent Order for a 2.5 GW CCGT facility, anticipated to be operational by 2022.

³⁰⁹ CD3.10 paragraph 55.

³¹⁰ CD3.17.1 page 32 and CD3.17.2 page 12.

³¹¹ For example, BEIS projections show only 5 GW of supply from interconnectors by 2022 (CD3.17.3), whereas Professor Taylor stated Ofgem’s figures indicate that there are 6.9 GW in the pipeline which can be delivered by that date.

³¹² CD3.38 page 66, CD3.9 page 52 Table 2.1 and CD3.35 pages 72 and 83.

³¹³ CD3.8 and CD3.23 page 1.

³¹⁴ CD3.8.

to increase the contribution made by renewable energy. Not all subsidies have been removed. The Government's enthusiasm for off-shore wind continues unabated. Similarly, areas such hydro, biomass, anaerobic digestion, and small-scale solar continue to be eligible for subsidy. Furthermore, a large number of small scale projects are capable of making a significant contribution.³¹⁵ If on-shore wind and solar are not yet capable of standing on their own two feet, the answer is not to return to the coal-age, but to revisit the policy on supporting and subsidising those technologies.

369. As to the possible impact of Brexit and exchange rate fluctuations, the applicant acknowledges that, if Highbury was refused, coal-fired power stations would be able to meet their needs via alternative sources, either domestically or most likely, from foreign sources of coal production.³¹⁶
370. It is essential to move to a low-carbon economy as quickly as possible. If existing policies are not doing so fast enough the only answer consistent with obligations under the Climate Change Act is to change the policy framework. It is utterly perverse to suggest that, because the existing policies may not be enough, the overall objective should be abandoned.
371. *The Clean Growth Strategy* is clear confirmation that coal phase-out by 2025 is settled Government policy. Demand for coal continues to drop much faster than expected, with updated energy statistics in September 2017 indicating that FoE's projection for coal demand from 2018-2025 should be 37 Mt not the 47.3 Mt included in the previous submissions. This is far lower than previous projections by BEIS and the CCC. Recent Government announcements underline the UK's clear desire to be a world leader on climate change, and the importance of diplomacy. *The Clean Growth Strategy* makes it clear that the Government remains fully committed to ambitious decarbonisation targets post-Brexit. Action is necessary in the non-power sectors, but power is the sector which is expected to deliver the greatest percentage and absolute reductions in carbon emissions between 2017 and 2032.³¹⁷ FoE stress that renewable energy continues to get cheaper, and is a better investment for securing long-term jobs, and that coal phase-out would pose no issue for security of supply because of the Capacity Market.³¹⁸

The need for coal

372. Mineral extraction is inherently damaging to the environment, and only tolerated because society needs the minerals for a range of activities. Absent a need for the coal proposed to be extracted, there can be no basis whatsoever for granting permission for the present application. In those circumstances, it is highly relevant to note the dramatic changes which have taken place, even in the short time since this application was made.

³¹⁵ For example, BEIS latest figures show over 887,000 installations producing a total of 6 GW of solar power – 10% of which was installed in a single quarter last year. CD3.22.1 page 59.

³¹⁶ APP/AC/2 paragraphs 16 and 65.

³¹⁷ *The Clean Growth Strategy* table 6 page 147, included at ID/FOE12.

³¹⁸ ID/FOE11 and ID/FOE12.

373. The application was made on the basis that;
"At least one third of the electricity generated in the UK is produced by coal-fired power stations ..." ³¹⁹
"Government projections show coal playing an important part of the energy mix until at least 2030". ³²⁰
"The annual market for coal in the UK is approximately 50 million tonnes a year, of which the power generation sector currently had a demand for 35-45 million tonnes per annum". ³²¹
"There is every indication of a future for coal into the long term with the development of CCS technology."
Eighteen months later none of these apply.
374. Since October 2015, coal-fired generation has dropped sharply. In contrast to the figure of "at least one third" referred to in the ES, by 2016 the share of generation from coal had dropped to 9.1%. In 2016 alone, coal-fired generation fell by 59% from 75.6 TWh to 30.7 TWh. ³²² The drop in coal-fired generation has been matched by a drop in the demand for coal. In 2016, coal demand plummeted to 17.9 Mt – a level which the ES suggested would not be reached until "the mid 2020s". ³²³ The 2016 *ConsDoc* provides that an "orderly transition away from unabated coal generation" will not present any risks to the security of our electricity supplies. Government support for CCS was withdrawn in 2015. There is no prospect of coal-fired power stations operating with CCS being on-stream within the anticipated working life of the Highthorn scheme. Figures for the first quarter of 2017 indicate that demand for coal is continuing to fall. ³²⁴ The recent strengthening of the IED restrictions on emissions through the LCP-BREF will raise still higher the costs for coal-fired power stations wishing to continue. ³²⁵ Of themselves, these changes suggest that the "need" for coal is a far less weighty consideration than the ES suggests. In FoE's submission, the true picture is even more stark than that.
375. 2016 data estimated a total demand for coal between 2018 and 2025 of 47.3 Mt, as against the Digest of UK Energy Statistics (DUKES) figures showing 50.2 Mt of consented coal resources and stocks. On this basis, there is simply no need for the coal from Highthorn. The applicant suggests that the proper figure is in the order of 100 Mt cumulative demand for coal from the electricity and other sectors. ³²⁶ But this is not what demand in the UK would actually be, it is merely consistent with the CCC's Central Scenario. As the consumption figures for last year show, the Central Scenario shows a significantly higher level of consumption than has actually transpired. In short, there is no reason here to amend the 47.3 Mt figures upward: if anything, the figures for the first quarter of 2017 show the reverse to be the case.

³¹⁹ CD4.1.

³²⁰ Planning and Environmental Statement page 9.

³²¹ CD4.3 paragraphs 2.3-2.6.

³²² CD3.22.1 pages 50-51.

³²³ CD3.22.2 and CD4.3 paragraph 2.6.

³²⁴ ID/FOE6.1.

³²⁵ FoE/CL/4 paragraphs 2.5-2.6.

³²⁶ APP/AC/4 paragraph 2.10.

376. On the supply side, updated figures from the Coal Authority show 22 Mt of consented coal in existing mines or with the benefit of planning permission.³²⁷ Making allowances for consumption between now and the end of 2017, and adding in stockpiles, this gives a total supply-side figure of 25.5 Mt. On that basis, if compared with the original estimate of a demand of 47.3 Mt, it is clear that there would no longer be sufficient indigenous coal to meet demand. However, if supply figures are updated to reflect 2017 statistics, the same should apply for demand. Figures for the first quarter of 2017 show that demand for coal has dropped by a further 32%. If that is factored into the original calculation, total demand would fall to 40.2 Mt. This is still 15 Mt more than supply, but imports are bound to meet the 15 Mt shortfall between 2018 and 2025.³²⁸
377. Power stations have ongoing contracts with foreign suppliers, and there is no prospect that indigenous coal is capable of completely displacing imported coal within the energy mix. In pure volumetric terms, the UK imported substantially more coal in the single years of 2013 (43 Mt), 2014 (36 Mt) and 2015 (19 Mt) than would be required in the seven years from 2018–2025.³²⁹ There is simply no prospect that in the seven years to 2025, the UK will not inevitably import substantially more than the likely difference between indigenous supply and predicted demand.
378. There is no need for the coal from Highthorn. Significantly, this conclusion applies to the total demand for non-metallurgical coal, whether that is used in the power sector or by other industries. However, in so far as the applicant relies on demand from other industries, the majority of the coal it produces is likely to be sold to power stations. It is difficult to see how any material weight could be attached to the contribution which Highthorn might make to meeting non-power needs.

Security of supply

379. Refusing this application would pose no risk to security of supply. It would mean that instead of sourcing from Highthorn, coal-fired power stations would be able to meet their needs via alternative sources, either domestically or most likely, from foreign sources of coal production.³³⁰

Jobs

380. FoE do not underestimate the importance of employment to the local community and economy. However, the *ConsDoc* recognised that the proposed phase-out of coal-fired power stations would inevitably have impacts on

³²⁷ ID/APP4. FoE have been unable to corroborate this because the data is commercially confidential.

³²⁸ ID/FOE6.2. [Inspector's note – FoE in ID/FOE11 updated this prediction using data published after the close of the Inquiry. The other parties have not commented on this (see ID/APP28). I do not consider that it would be necessary to invite further comment in order to determine the application. If the update is correct it would mean FoE's predicted shortfall reducing from 14.7 Mt, rounded up to 15 Mt, (calculated by 40.2 Mt minus 25.5 Mt) to 11.5 Mt (37.0 Mt minus 25.5 Mt). This difference, if correct, would not alter my overall conclusions about the likely future need for coal.]

³²⁹ CD3.22.3 Table 2.4.

³³⁰ APP/AC/2 paragraphs 65 and 16.

associated employment in coal production, but commented that “These impacts would however be expected at some point in time even in the absence of the proposals in this consultation” and that “we would expect that the losses of activity in the coal supply chain will to some extent be compensated by increased activity in supply chains for lower-carbon forms of generation”. The argument that this application should be allowed because it will provide jobs is simply putting off the inevitable. In 2015, an estimated 234,000 full-time equivalent employees were working directly in low carbon and renewable energy activities in the UK.³³¹ By contrast, the Coal Authority advises that in the third quarter of 2016, only 962 people were employed in coal mining. Coal is not the future, and it would not do those who currently work in the industry any favours by encouraging them to delay their transition out of it.

Savings in transport emissions

381. Even where it has previously been accepted that there would be a saving in carbon emissions by using indigenous coal, this is a matter which Inspectors have regarded as being a “very modest” benefit to which “only slight weight” should attach.³³² The alleged transport emission savings, even if real, are negligibly small in the context of the total emissions caused by extracting and burning the coal.³³³ Also no allowance has been made for economies of scale associated with extracting coal from very large mines overseas, which may mean that the emissions associated with extraction are less. It also assumes that indigenous coal is simply a substitute for imports, and will not lead to any additional coal being burnt. If Highthorn were to result in as little as 8% additional coal being burnt, the carbon emissions would be of the order of ten times NCC’s estimated savings in transport.

Previous decisions

382. Every planning application has to be determined on its own merits. However, decision-makers are expected to act consistently. FoE are conscious of the fact that some of the matters they now raise have not been determinative on previous occasions. Attention is therefore drawn to the following changes in circumstances since the previous decisions.

383. The market for coal has continued to decline. At the time of the *Fieldhouse* Inquiry, 30% of UK electricity came from coal.³³⁴ In 2016, that figure was 9.1%.³³⁵ In 2017 it is likely to drop still further. In the *Fieldhouse* decision, there was a legitimate argument that the proposal would meet a pressing need for coal. By contrast, in the Highthorn application, the UK’s predicted demand to 2025 will be met by existing stockpiles and consented mines, together with a level of imports that is inevitable and unprecedentedly low. There is no pressing need in this case. The coal price has continued to fall and the economics for operators has continued to deteriorate. WMS1 has been followed up by the *ConsDoc*, from which it is clear that it is Government policy to phase-out coal by

³³¹ CD3.57.

³³² CD7.4 paragraph 93 and CD7.1 paragraph 146.

³³³ FoE/ProfJB/1.

³³⁴ CD7.1 paragraph 98.

³³⁵ CD3.22.4.

2025. Furthermore, the CCC has advised that the 4th and 5th carbon budgets will not be met without stepping up efforts to decarbonise the economy.

384. Current evidence calls into question the assumption in paragraph 98 of the *Fieldhouse* decision that there is a fixed demand for coal. The reality is more nuanced: demand responds to price and market signals. The evidence also calls into question the presumption that carbon emissions associated with burning indigenous coal are lower than imported coal. There is a degree of additionality such that consenting a new coal mine necessarily leads to the burning of more coal whether in the short term, by increasing demand, or in the longer term, by increasing the overall stock of extractable coal. There is also the real possibility that Highthorn coal may, at least in part, be exported.

385. The Government has ratified the Paris Agreement, requiring emissions reductions in excess of those contained in Climate Change Act, and has acknowledged that the Paris Agreement marks a turning point in shifting to a low carbon future. The Secretary of State has specifically asked to be informed about these matters. If the *Fieldhouse* decision was conclusive of how these matters should be determined in relation to this application, there would have been no point in this request. These are significant changes which would provide a clear basis for coming to a different conclusion on the present application.

Section 106 Contributions: Chibburn Preceptory, Sand Extraction, and Discover Druridge

386. The SoCG records that the only element of the works referred to in the section 106 agreement which has been identified as mitigation is the creation of Druridge Ponds and Hemscott Ponds, and that the remaining elements are considered to be enhancements/benefits.

387. Notwithstanding ID/NCC5, witnesses for the applicant and NCC expressly and categorically denied that the improvements to the Preceptory, the contribution to Discover Druridge, or the removal of the permission for sand extraction, were necessary in order to make the development acceptable.

388. Either these obligations are not necessary, in which case they would not satisfy the requirements of CIL Regulation 122, and it would be unlawful for the Secretary of State to place any weight on them in determining this application; or if they are necessary, it must logically follow that the proposed development would be unacceptable without them. If that is the case, it would be wrong to place the supposed "benefit" of these obligations on the scales in favour of the application, without at the same time recognising that they are needed to balance the "harm" which would otherwise be caused. However, in order to do that, there would need to be a clear recognition and explanation of the "harm" for which the mitigation is required.

Overall balance and conclusion

389. This application is contrary to the development plan. It should therefore be refused unless the Secretary of State considers that there are material considerations which indicate otherwise. This conflict arises because the proposed development would cause actual harm to one of the last remaining areas of land which has so far escaped the ravages of mineral extraction, and is protected for that very reason. It would cause actual harm to a landscape which

is not only designated as an AHLV as a matter of policy, but is also highly valued in reality by local residents and visitors to the area alike.

390. The principle "other material consideration" which is relied on to outweigh the conflict and this harm is need. However, there is no need. On any analysis, we are in the last days of the use of coal in electricity generation. The demand for coal has fallen through the floor. What little requirement there may be for coal between now and 2023/25 can easily be met from already consented, indigenous sources, together with the level of imports which have for many years now been the main source of coal for the energy industry.
391. Coal is the dirtiest fossil fuel to use to generate electricity, and it is essential to the future of the planet to stop burning it as quickly as possible. This is the Government's direction. Investment in low-carbon and renewable energy will be necessary to do so. Coal competes with the very technologies that should be encouraged. Government has taken, and continues to take, steps to positively discourage the use of coal. Making it easier to burn coal would turn back the clock on other achievements. The UK cannot preach to the rest of the world about leaving their coal in the ground while granting a new permission for the extraction of coal here.
392. In her speech in November 2015, Amber Rudd said: "it cannot be satisfactory for an advanced economy like the UK to be relying on polluting, carbon intensive 50 year old coal-fired power stations. Let me be clear: this is not the future." There may be a small window left within which coal will continue to be burned, but it is getting smaller by the day, and it is not a window which requires the release of any new reserves. If coal is not the future, and if there is no need for further indigenous coal to meet predicted demands, then there can be no justification for opening up new reserves anywhere, let alone in one of the few remaining unspoilt areas in this stretch of the Northumbrian coast. If the Government means what it says, if it wants to show investors in low-carbon and renewable energy that it is serious, if it wants to lead the rest of the world by example, it's time to "walk the talk".

The case for interested persons opposing the scheme

The following persons appeared at the Inquiry objecting to the proposed development, and a summary of their submissions is included below.

393. John Ashton CBE was a Special Representative and roving Ambassador for Climate Change for three Foreign Secretaries from 2006-2012.³³⁶ The outcome of this application affects the UK's national and international interests, as well as local ones. Mr Ashton grew up in this area and considers Druridge Bay to be a place of rare tranquillity, beauty and solace.
394. The proposal is in contempt of Government policies on climate change, the rapid phase-out of coal-fired power, and renewable and low-carbon energy. To allow it would harm national interests, out of proportion to the small quantity of coal that would be extracted and any short-term gains. A successful response to climate change is an overriding national interest. Success is imperative and

³³⁶ ID/OTH3.1, ID/OTH3.2 and WR2.

failure unconscionable. That was the rationale for the Climate Change Act 2008, why policy must be applied rigorously, and why the climate imperative must prevail where there is ambiguity. The UK was an architect of the 2015 Paris Agreement and must now ensure its ambition matches it. Policies will develop and intensify, including over the lifetime of the proposed development at Highthorn.

395. Keeping climate change within 2 degrees in accordance with the Paris Agreement will need a carbon-neutral economy globally by 2100, carbon-neutral energy globally soon after 2050, and in the UK carbon-neutral electricity by around 2030. This means that globally there is no room for the opening up of new fossil fuel resources. Nearly all coal that could be developed must stay in the ground. Where alternatives are available coal must be excluded from the energy system as a matter of urgency. That is why there is a coal phase-out policy and why it will only have its intended effect if it is taken to include an embargo on all new mines. Not all of this is explicit in UK policies, but their logic and purpose should apply, otherwise they will fail.
396. No project, not even a small one, can be isolated from the system of which it is part. Approving new coal mines or exporting coal will make restructuring to a carbon-neutral energy system harder. It will take longer, cost more, and will not help leverage a similar restructuring everywhere. To restructure the energy system policy must focus on investment. Investors want to see clarity in government, and alignment across policies, including planning decisions. In diplomacy we must walk our talk. Diplomats must build support for coal phase-out in other economies. If the UK approves new mines those the UK is seeking to influence will consider this to be hypocrisy.
397. The cost of renewable technologies has plummeted and digital power systems can accommodate intermittent generation on grids, including wind and solar. The need for baseload power, the last justification for coal, has evaporated. The coal phase-out is becoming self-fulfilling, whereas tourism in the North-East has a great future. Coal has no place in that future.
398. Nigel Williams has a holiday cottage in Cresswell. The unspoiled wide-open countryside sloping down from Cresswell to the seven mile stretch of dunes and sand is what attracts visitors to the area. There is nowhere quite like Druridge Bay for open skies and rugged, unspoiled beauty. The birdlife in the area is very special and attracts birdwatchers from all over the country. Wildlife in the area is unrivalled and should be protected. Guests have stated that the mine would deter them from visiting. It would harm tourism and adversely affect local employment.³³⁷
399. Rev Rick Simpson has holiday cottages in Cresswell. He has kept a list of birds seen in the area over the past ten years, which includes 176 different bird species. He has seen and photographed butterflies, dragonflies, lizards, red squirrels and otters. This area is not 'low-grade land'. It is an amazing place and the best beach in Northumberland. It could all be severely compromised, some of it ruined, by removing habitat and degradation through dust and noise pollution. Along with the climate change effects of the proposal, this would be seen as a double act of ecological vandalism. It would also jeopardise a growing

³³⁷ ID/OTH7.

- and sustainable tourism industry. Claims about restoration are not credible. The next generation in 50 years' time will know that refusing this application was the right thing to do.³³⁸
400. Malcolm Reid spoke for Greenpeace and Transition Town.³³⁹ The latter aims to make the local community more resilient and less dependent upon fossil fuels. The human species is at risk from climate change. It was shown four years ago that four/fifths of known reserves of fossil fuels will have to stay in the ground or runaway climate change will result from irreversible feedback effects of a two degree increase in temperature. The latest research in 2016 is that if all mines and wells currently in production are fully exploited the two degree increase will be exceeded. This implies that no new wells or mines should be permitted to open. The UK is on the brink of managing without coal.
401. Banks Mining originally claimed the proposal would create 100 new jobs. The subsequent planning application referred to 50 new jobs and 50 transferred jobs. But Shotton mine employs 150 and is due to close in 2018. The Inquiry heard that 91 of its existing employees live within 10 miles of Highthorn. So if these all relocated to Highthorn that would mean only 9 new jobs. This is important because the issue of employment is important to those who live in Widdrington Station. There is also the possibility that pollution from the proposed mine would deter visitors and result in job losses from existing tourism businesses in the locality.
402. NCC's decision to approve the application was affected by the possibility of costs arising from an appeal. There were also irregularities in the way that Cresswell Parish Council resolved to support the application, and it appears that its decision was swayed by the offer to stop sand extraction from the beach at Hemscott.³⁴⁰
403. David McKechnie regularly cycles in the area. The proposal would change the C110, from a pleasant country lane enjoyed by cyclists, walkers and horse riders to a noisy, dusty ordeal. This is part of the National Cycle Route 1, the Coast and Cycles route, and the North Sea Cycle Route. The latter is an international project and the world's longest cycling route. These routes contribute to jobs and the local economy, as documented in the *Economic Impact of Cycle Tourism in North East England 2007*.³⁴¹ Cyclists using cafes, pubs, bunk houses, caravan parks, bed and breakfast establishments and hotels would create more jobs than would Highthorn mine.
404. Coal Action Network (CAN) was set up in 2008 to link together various communities opposing opencast coal mines. CAN's objections are additional to the local history, amenity use, biodiversity and community impacts raised by local residents. The harm caused by the Highthorn mine would outweigh any potential benefits, and so the scheme would be contrary to the *Framework*.³⁴²

³³⁸ ID/OTH8 and WR20.

³³⁹ ID/OTH10.1 and WR17.

³⁴⁰ ID/OTH10.2.

³⁴¹ ID/OTH11.

³⁴² ID/OTH12 and WR5.

405. One of the main benefits of the proposal would be the creation of new employment. However, Banks Mining's accounting for job creation on other schemes should be drawn into question. For example, at the Rusha mine it was claimed in the 2007 planning application that it would create up to 57 jobs, but official statistics from the Coal Authority during its operation between 2013 and 2016 show that this never increased beyond 39 people.
406. Restoration is another area where perceived benefits to the local community would be less than Banks Mining asserts. There is currently a crisis of unrestored mines. Even if sufficient funds were available for restoration this could not return the land to what it was before mining took place. It is not possible to restore soil biodiversity and geology to what was there before. Agricultural restoration of Stoney Heap mine in Durham has not been successful, with sheep affected, soils blown away, and a significant impact on water quality, aquatic ecosystems and flooding. In addition carbon lost from soils by erosion is released to the atmosphere and contributes to climate change. The reality from working restored sites is that restoration is not a benefit.
407. In order to honour the 2008 Climate Change Act the Highthorn proposal must be rejected. Burning Highthorn coal would add to atmospheric carbon and contribute to catastrophic climate change. Internationally agreed limits on carbon in the atmosphere cannot be met if all fossil fuel reserves are used. If the Highthorn scheme is approved it would set a precedent for further coal mining in the UK. No further mines should be approved because there is no market for coal and sites are likely to be abandoned. There are already many sites with planning permission which could be started were there financial incentive to do so. The industry is in decline and approving any new coal mines would increase uncertainty for those living nearby. The likely demand for Highthorn coal for uses other than power generation should be questioned given the availability of higher quality coal from existing UK mines.
408. The argument that generation of electricity from coal is a national benefit is no longer valid as the Government has said that it wants to phase-out coal. Its consultation sets out proposals to close coal by 2025 – and restrict its use from 2023. But the Government is being asked to bring this date forward. Even without decisive Government action to close remaining power stations the international coal market and EU air quality standards are closing coal-fired power stations or resulting in them not being upgrading. Of those remaining there is a question mark over the length of time before these also close. The international perception is that the UK is leading the way on phasing out coal, but if further coal mines are approved this would cast doubt over this commitment.
409. Dr David Golding CBE referred to the disastrous effects of climate change for developing nations. There is a moral and legal need for the UK to send a clear signal to industry and finance, and to the wider world, about a decisive break with its polluting past, and embarking on a journey towards a sustainable future.³⁴³

³⁴³ ID/OTH13.

410. Rebecca D'Andrea has visited Druridge Bay many times and considers it a special place. Even though the proposed mine would not be directly on the beach, it would completely change the silence and unspoilt beauty of the Bay.³⁴⁴
411. Amy Fok considers that places such as Druridge Bay are important educational grounds for students, and also retreats for people who enjoy tranquillity, sunshine and sea breeze. They play a key role in generating a stable environment, which is functionally and culturally invaluable. A coal mine at Druridge Bay is not desirable, or anywhere in the world, for the reasons set in an open letter from Mr Mnqondo, which was read out at the Inquiry.
412. Mr Mnqondo represents a community in South Africa which has experienced the effects of blasting, dust, water theft, and other impacts of an opencast mining operation. He also expressed concern about climate change from South Africa's reliance on fossil fuels, with predictions of extreme droughts followed by excessive rain and flooding. A new coal mine in the UK would provide legitimacy for mining companies to continue to exploit and devastate Africa and other countries. Every coal mine contributes unacceptably to warming the earth. There is a worldwide movement working to ensure that all people can enjoy a climate-safe future, but for it to become a reality, nations like the UK, which bear the greatest historical responsibility for climate change, must meet their climate targets and lead the way by stopping the extraction of dirty fuels. Rejecting the Highthorn proposal would make a globally significant statement about the UK's climate leadership.³⁴⁵
413. Maxwell Tait lives at Houndalee Cottages. It is impossible to understand how local and national Government could support this application when considering climate change. This development would be made unsustainable because renewable energy is the way forward and soon coal-fired power stations will no longer exist. It is impossible to understand how the proposal could benefit wildlife in the area. The mine would bring a louder constant noise that would be different from existing variable noise from the road. In the evenings the noise level diminishes significantly, with increased periods of silence, yet working hours for the proposed mine would be until 10 pm. Noise would impact on the lifestyle quality of nearby residents, as well as those visiting the Drift Café.³⁴⁶
414. The A1068 is a fast road with a 60 mph speed limit. The additional traffic from the mine would substantially increase traffic along this road. This would pose an unnecessary increased risk of injury to cyclists, pedestrians, horse riders and other road users.
415. Carbon dioxide from the site would contribute to global warming and there would be local pollution from vehicles. Dust would have the potential to impact upon the health and well-being of local residents, especially for those who already suffer from asthma.
416. Andy Blanchflower raised concerns about emissions from vehicles operating on the site and used in transporting coal.³⁴⁷

³⁴⁴ ID/OTH14.

³⁴⁵ ID/OTH15.

³⁴⁶ ID/OTH16.

³⁴⁷ ID/OTH17.

417. David Malone read a letter to the Inquiry from Steve Emsley. This objected to the proposal on the grounds that extraction of coal is not compatible with the objectives of meeting climate change targets now or in the future. One of the consequences of allowing the development would be the addition of about 7 Mt of carbon dioxide to the atmosphere, accelerating climate change and damaging the lives of many millions of people around the world. Fossil fuel extraction is the complete reversal of the meaning of sustainable development as set out in the *Framework*. Coal has already caused a huge proportion of the increase in carbon dioxide in the atmosphere. To be serious about the Paris Agreement it will need to be reflected in day to day decision making. The proposal is not compatible with the Climate Change Act 2008. It is time to end coal burning and coal mining of all types in the UK.³⁴⁸
418. Save Newcastle Wildlife considers that the proposal would have a significant adverse effect on the ecology of the region. The Northumberland Coast is internationally significant for birdlife. There is no solid evidence that the site could be successfully returned to the landscape and biodiversity of its original state. The scheme would violate principles set out in the *Framework* and would be contrary to development plan policies. The health and well-being of future generations and the integrity of fragile ecosystems should not be undermined by the lure of short-term employment opportunities.³⁴⁹
419. Martin Swinbank raised issues about the surface water environment and the effects on Great Crested Newts.³⁵⁰ The proposed mine would occupy a considerable portion of the catchment of Hemscott Burn. All treated water discharged from the mine would pass through the Hemscott ponds to the sea. The EA lists these as having moderate ecological quality, which is the same standard as Cresswell Ponds SSSI. The bathing water quality at Druridge Bay is currently excellent. Any discharge of pollutants would threaten both the biologically important features of the area and the amenity value for both local residents and tourists. The risks of this would be disproportionate to the benefits of the scheme.
420. The surveys undertaken for the presence of Great Crested Newts may not be sufficient to establish that the area is not used by this protected species. Given the potential for disruption to the ecosystem at Hemscott Burn/Ponds, the disturbance of water flow, possibility of soil and subsoil washing from the site, along with the possibility of accidental pollution, it would be prudent to revisit these ponds and conduct at least eDNA analysis so as to be absolutely sure that Great Crested Newts are not present and cannot be adversely affected by the proposed development.
421. The A1068 is a busy and fast stretch of road. The proposed access to the development would be on a long bend, where sight lines are not ideal. A roundabout rather than a ghost lane would require vehicles to slow down, diminishing the likelihood and severity of collisions.
422. Alnwick Area Friends of the Earth has over 180 supporters who oppose the development because of the effects of burning coal on anthropogenic climate

³⁴⁸ ID/OTH18 and WR7.

³⁴⁹ ID/OTH2, ID/OTH19.1, ID/OTH19.2 and WR19.

³⁵⁰ ID/OTH4 and WR21.

change. The UK has signed and ratified the Paris Agreement and refusing this application on the grounds of incompatibility with UK climate change policy would re-inforce that message to the world. As the rest of the world moves away from coal to cheaper renewable energy the market for coal is shrinking, and with it market value. There will be very limited options to economically export UK coal. The end of surface coal extraction in the UK is unlikely to be a tidy process, and with falling markets the operator may not have the means of restoring the site as envisaged.³⁵¹

423. The measures proposed in Restoration First, off-site incremental wetland creation and land management, would not result in ecological gains that would counter the disturbance within the site, where the whole ecosystem would be totally destroyed. The effects of that destruction would radiate in all directions, impacting with noise, dust, light pollution, nitrogen oxides and heavy metals, along with potential for accidental discharges of contaminated water – all into an extremely sensitive area that includes SSSIs and the MCZ. Infilling and restoration of the void would never return the site to its current position.
424. Eliminating emissions from transport will be one of the more difficult aspects of the decarbonisation of everyday life. Digging out, processing and transporting coal would require huge quantities of diesel oil to be burnt. With the move to renewable energy this would become unnecessary.
425. Northumberland has stunning beaches, ancient castles and peaceful countryside. Druridge Bay sits within this context, with its beautiful beach, nature reserves and dark skies. Tourists come to see the bird and other wildlife, and to find a tranquil corner in a busy world. It is justifiably much loved and valued in this regard. A mine here would cast a dark shadow over the area for a generation, and the thriving tourist industry would falter. The harm which would be done locally, nationally and internationally would be grossly disproportionate to the perceived gain.
426. Anne Bromley considers that the application is a case of cynical opportunism given that coal is supposed to be phased out by 2025. Allowing the application could result in other applications for coal extraction in Northumberland, or that similar arguments could be used to justify fracking. Mining would destroy any archaeological remains. There is no certainty that the operation would not, by reason of noise, dust, bright lights at night, and human/machine activity, result in disruption to the habitat of pink-footed geese. Their lifespan is about 20 years so disruption for eight years would be significant and may cause flocks to move elsewhere.³⁵²
427. Tom Bradley submitted an assessment of the likely GHG emissions arising from the extraction of the coal, before its use in a power station. This applied international standards along with a reference life cycle data system handbook developed by the Institute for Environment and Sustainability and a database produced by the Ecoinvent Centre. The analysis demonstrates that coal mining is an energy intensive process, and that the mining itself has significant environmental impacts. The extraction of the Highborn coal would have a larger

³⁵¹ ID/OTH5 and WR8.

³⁵² ID/OTH22.

carbon footprint than building and operating a silicon based solar farm in the UK of equivalent power generation.³⁵³

428. Further analysis compared the results from the Ecoinvent database for a hard coal mine operation in Western Europe to the estimates provided by Wardell Armstrong for the applicant based on data from Banks Mining using Defra figures. This shows that Wardell Armstrong's prediction for the Highthorn mine (0.0626 kgCO₂ eq/kg coal) would be 6.7 times more sustainable than the average coal mine in Western Europe (0.4252 kgCO₂ eq/kg coal). Mr Bradley suggests that the difference is due in part to the Wardell Armstrong estimate excluding various external activities leading up to mining, and that coal has a large short term impact due to the lifetime of methane in the atmosphere. It is misleading to compare emissions from the mine with the UK carbon budget as other sectors such as farming cannot avoid emissions. Claiming that mine emissions would be a small percentage of the overall budget is an argument that could be used by all sources of GHG, and an excuse for inaction by all sectors. This would not enable the UK to hit targets under the Paris Agreement.³⁵⁴
429. Campaign to Protect Rural England (CPRE) opposes the development in terms of its carbon dioxide emissions, as well as its landscape impacts.³⁵⁵ Coal demand is diminishing and coal-fired power stations could close earlier than the expected date of 2025. The market requirement for coal in the UK is now almost non-existent, and granting planning permission would result in planning blight. Exporting coal to Spain would create additional transportation carbon dioxide emissions. The national need is being met by imports of cheap coal. Indigenous coal should be reserved as a strategic resource and conserved for an emergency situation. Given the rapid decline in demand for coal the operator might in future be in financial difficulty, and an upfront bond or legally binding financial guarantee should be applied if planning permission were to be granted. This should be determined by an independent assessor and should be a rolling bond sufficient to restore the land and to carry out aftercare.
430. English countryside should not be destroyed to supply coal to Spain. The Highthorn site is part of the everyday landscape that affects people throughout their everyday lives. It consists typically of fields, woods and hedgerows. This English landscape is part of the national heritage, which is now in danger of disappearing at an ever increasing rate. The site contains rig and furrow, which is a diminishing legacy of medieval agriculture. There is an urgent task to create a sustainable future for the little that is left. The scheme would result in a reduction of agricultural productivity for years. Druridge Bay is perhaps the most renowned and popular destination on the North-East coast. Opencast mining is dirty, dusty and noisy and would be an unacceptable intrusion here. The great importance of the local landscape for resident and migratory birds is renowned. Opencast mining is the very antithesis of sustainable development and is in complete contradiction of the *Framework*.
431. Malcolm Green opposes the development because burning more fossil fuels presents an unacceptable risk to life on earth, and that the development would

³⁵³ ID/OTH24.1, ID/OTH24.2 and WR3.

³⁵⁴ ID/OTH24.3.

³⁵⁵ WR6, ID/OTH28.1 and ID/OTH28.2.

damage a place of extraordinary beauty, tranquillity and natural richness. Druridge Bay is a place for peace and reflection. Its significance for people's emotional well-being and mental health cannot be underestimated. The effects of climate change are already being felt by puffins. In 2015 the puffin was red-listed and declared vulnerable to global extinction. Its numbers have plummeted as the North Atlantic has warmed. Plankton has dramatically declined leading to a catastrophic reduction in the population of sand eels on which seabirds feed. Puffins are just one example of the suffering of many animal and human communities worldwide caused by climate change. Even if it is not 100% certain about the risks of climate change, the precautionary principle says stop – coal must be left in the ground.³⁵⁶

432. Bill Parker lives at Houndalee and commented on the dark skies in the area, and his concerns about light pollution, along with noise and air pollution effects from the proposed compound and entrance to the site on the respiratory health of those living nearby. The soils would take years to recover after surface mining. The development would be visible from the main coastal route and the beach itself. It would harm tourism. The PRoW to Hemscott Hill is well used and a suitable alternative would need to be provided for dog walkers. It is Government policy to stop coal by 2025, but another Government could change this plan, and the operator of Highthorn could move onto the next site, such that surface mining would continue during his lifetime. NCC never visited his property to discuss the proposal.
433. Barry Mead is a local resident, heritage consultant and archaeological volunteer for Druridge Bay. He presented evidence about local heritage projects that have been successful in raising funds, or were bidding for funding. These included Cresswell Pele Tower (£838,000), Rocket House at Newbiggin by the Sea (£206,000) and Cresswell Village Hall (£80,000).³⁵⁷
434. Ken Johnson is a Chartered Mining Engineer formerly employed at Ellington Colliery. Blasting would be necessary to free/loosen sandstone from the Yard Seam. This was necessary to free/loosen the sandstone overlying the Yard Seam at the former Radar South opencast coal site, which was worked between 1953 and 1958. Wildlife was disturbed for many years because of blasting. The same would happen at Highthorn if it were to be approved.³⁵⁸

Written representations

Pre-application community consultation

435. The applicant employed a range of measures in contacting and consulting people in the local community. These included distributing leaflets and letters, attending parish council meetings, publishing newspaper articles, and undertaking community workshops. Banks Mining spoke to many local residents, businesses and organisations before submitting the application. The resultant

³⁵⁶ ID/OTH31.1, ID/OTH31.2 and WR11.

³⁵⁷ ID/OTH34.

³⁵⁸ ID/OTH35.

views, priorities and suggestions have been taken into account in the applicant's adaptation of the proposal.³⁵⁹

Application stage

436. NCC received some 2,500 written responses objecting to the scheme. A petition with 11,239 signatures was submitted objecting on the grounds that the proposal would damage delicate ecosystems, on a site that is important for birds, and would harm tourism businesses. Another petition with 5,788 signatures stated that the application should be rejected. NCC also received over 1,000 letters in support of the proposed development, along with a petition containing 153 signatures from those who considered that there is a need for the coal, and that mining was part of the cultural heritage of the North-East and that this sector of employment is respected and valued.³⁶⁰
437. The following is a summary list of issues, not in any particular order, cited by supporters of the proposed development in representations to NCC.
- Tourism benefits of Discover Druridge
 - Wildlife enhancements
 - New footpaths, cycle ways, bridleways and bird hides
 - Restoration would improve nature conservation and tourism
 - Proven track record of operator in restoring sites
 - Longer term landscape improvements
 - Cessation of sand extraction at Druridge Bay
 - Employment and benefits to the local economy
 - Benefits of Skills Fund
 - Coal vital to energy UK needs
 - Better to use local resources than importing coal
438. Summary list of issues cited by objectors in representations to NCC, again not in any particular order.
- Highway safety
 - Adverse effects on SSSIs and nature conservation
 - Adverse impact on landscape, tourism and the local economy
 - Adverse impact on residential amenity from noise, dust, blasting and lighting
 - Cumulative adverse landscape impact with other development
 - Light pollution effect on dark skies
 - Harm to water courses
 - Harm to heritage assets
 - Proximity to coastline and heritage coast
 - Adverse effect on nearby listed buildings
 - The site is within a defined constraint area in the Minerals Local Plan
 - Contrary to 2006 Druridge Bay Management Plan
 - Decline in the market for coal
 - This coal is not nationally significant
 - Imported coal is cheaper and less polluting
 - Effect of future coal price on restoration of the site

³⁵⁹ Statement of Community Involvement Appendix 1 ES Volume 2 at CD4.5.1. A summary is at CD4.4 pages 124-129.

³⁶⁰ These submissions are included in CD5.5 Volumes 1-12, and are summarised in Section 5 of the Strategic Planning Committee report at CD4.13.

- Climate change impacts from burning the coal
- Government proposals to phase-out coal burning power stations
- Renewable energy is increasing and can provide more jobs
- Loss of property values in the locality
- No confirmation that site would not be extended in future

Inquiry stage

439. Following the call-in of the application 1,320 written representations were submitted by Interested Persons to PINS.³⁶¹ These are summarised below.

440. Some 1,221 of these representations were submitted via FoE's website, which provided a link to PINS. FoE clarified that it contacted everyone on its mailing list who had previously objected to the application (over 8,000 objectors) to explain that they could submit further written evidence to PINS. FoE did not set up a 'template text' for responses as it wanted to encourage objectors to write in their own words, but did offer some initial pointers in a box above the submission form. This stated that "Your submission could cover the following:

- Any personal links you have to Druridge Bay – do you live nearby or enjoy visiting it?
- Why a new coal mine isn't compatible with tackling climate change
- How a new coal mine is inconsistent with the Government's commitment to phase out coal
- How we need to cut emissions radically to meet the Paris Agreement
- Why Druridge Bay is a special place for wildlife
- How renewable energy is the future, not dirty coal."³⁶²

However, 162 of the representations via this FoE route just included a name and address, with no additional comment. It is not clear what was intended with these submissions and they have not therefore been included in the following summary of all the written representations to PINS. The objections referred to in the following summary therefore include 1,059 representations made via FoE's website.

441. There were 8 written representations in support of the scheme, and 1,147 objections, along with three representations that made neutral comments.

442. Those in support of the scheme mostly commented on the importance of surface mining for local employment. Some said that refusal would result in job losses of highly skilled engineers. Others commented that as the same amount of fossil fuels would be used, it would be better for the local economy and wider supply chain to use indigenous supplies rather than imported coal. Some supporters considered that restoration would leave the area in a better state. A brick manufacturer stated that it requires a supply of fireclay, which with the decline of coal mining has become more difficult to source, and that fireclays have lower iron content and are valued for the production of buff coloured bricks, which exhibit superior technical properties, such as strength and durability.

443. Of those objecting to the scheme about 90% of the representations stated that the proposed coal extraction would not be compatible with the UK Government's commitment to phase-out coal, and to cut carbon dioxide emissions in line with

³⁶¹ These are included in Folders A-D.

³⁶² Question from Inspector and FoE's written response on file.

the Climate Change Act and Paris Agreement.³⁶³ Burning coal, the most polluting fossil fuel, would not tackle climate change. Some added that the UK is leading the world in reducing its carbon footprint, and that it would be hypocritical to allow this coal extraction, and a betrayal of the duty to reduce carbon emissions. Many considered that a tipping point has been reached for the planet, that the precautionary principle should apply, and that there was an international and moral obligation to keep coal in the ground. Especially as the UK is not pursuing CCS technology. Renewable energy was seen as the future, where investment should be focussed on sustainable energy sources. Rejecting this proposal would send a positive message about future energy needs, and would stimulate research and development into clean alternatives. Others considered that it is not a choice between indigenous or imported coal, but that the decision would send an international signal, where effective diplomacy relied upon action at home, and so allowing the scheme would undermine the national interest. Others questioned the need for the coal where there was extant planning permission for 25 Mt of coal, that mines in Scotland were mothballed, and 14 coal mines with planning permission had not started because there was no market for coal.

444. About 39% of objectors referred to the adverse impact of the proposal on the landscape. Many cited the beautiful and much loved coastline, and considered that the Heritage Coast should be protected, and that Druridge Bay should be part of the AONB. Comments included how much the proposed development would appear as a blot on this unspoilt countryside. Others said that the land would never be the same after restoration as it would appear man-made without natural profiles. Some considered that the proposal would conflict with landscape policies in the development plan, and particularly with NCC's aims to ensure that new development and land uses were complementary to the landscape character of the bay. Others were concerned about an adverse cumulative impact that would result if Stobswood, Highborn and Ferneybeds were all operational. It was noted that Widdrington village would be sandwiched between 14 wind turbines and an opencast mine.
445. Some 35% of objectors raised concerns about the effects of the proposal on nature conservation and biodiversity, including Cresswell Ponds. Many considered that this was a special place for wildlife and that it would be impossible or would take centuries to restore the natural balance, especially as the soil profile would be disturbed. Objectors noted that the scrubland around Druridge Bay with a high diversity of wildlife, especially birds, was being depleted. Some thought that the habitat destruction would amount to eco-vandalism. Issues were highlighted for sea birds, wading birds, pink-footed geese, golden eye ducks, purple sandpipers and marsh harriers. The impact of noise on geese was raised, along with the loss of feeding grounds for geese. The adequacy of the ecological surveys undertaken was also questioned. Some considered that any mitigation should include the sale of land to a wildlife trust, otherwise the proposed mitigation would be impossible to enforce.
446. Some 9% of objectors commented on the likely pollution and health effects of the proposed development. These included concerns about noise, dust and

³⁶³ These percentages add up to more than 100% because some respondents raised more than one issue.

disruption, resulting in damage to the health of the general public and those working on the site, which would add to the costs of the National Health Service. Air pollution and respiratory disease was a particular concern. This included concern about diesel fumes from vehicles and other particulate matter. Blasting was considered to have an adverse effect on horses using nearby bridleways, in what is a peaceful and tranquil setting. Light pollution and effects on wildlife was raised, along with acid mine drainage. Others referred to the pollution that would result from burning high sulphur coal, including acid rain and dioxin emissions. Concern was also raised about opencast mining releasing stored and trapped carbon dioxide and methane.

447. About 8% of those who submitted objections at this stage commented on the likely adverse effects of the scheme on tourism and the local economy. They considered that the development would detract from the amenity of visitors, where tourism was the North-East's newest and growing industry. Some considered that lorries would spoil the coastal route. With Brexit tourism from abroad was considered likely to become more important, and protecting the natural coastline would generate more jobs than coal extraction. A local operator considers that the scheme would have a devastating impact on a local caravan park.
448. Short term gains compared with long term harm was a concern raised by 4% of objectors. These objectors considered the proposal to be short-sighted and that the jobs secured would be trifling by comparison with the resultant damage. It was suggested that a proper cost/benefit analysis would prove that the economic argument would not make up for the damage. The jobs would not be local, as they would be specialised and short term, and so it would be better to invest in tourism jobs. The opencast mine would not build an economy or environment for the future.
449. Highway safety and the effects of HGVs on the A1068 were mentioned by 2% of objectors. Some commented that this rural road had few passing places and lacked footways. The road has some dangerous bends, and others thought that there would be conflict between HGVs and tourist traffic on this route.
450. Some objectors questioned whether sufficient funds would be available for restoration of the site, and considered that NCC had a poor record on securing compliance with conditions. Concern was expressed about what legacy would be left for future generations, where other mines had been mothballed with only partial restoration. Permanent damage to agricultural land was also a concern to some, who considered that it would deter farming and woodland management.
451. Other objectors referred to the likely effects on water quality. Concerns were raised about implications for the water table, flooding and pollution of Helmscott Burn and the MCZ.
452. The written representations included a comment that good practice required that a social cost/benefit analysis should be undertaken. Another thought that rail should be used to transport coal from the site using a former track with an extension. Concerns about the effects on local archaeology, including Mesolithic and early Bronze Age remains, along with the loss of the World War II decoy communications building, were raised by some objectors. Local residents consider that they have already made a contribution to energy production in the area because of the nearby wind turbines. The effect on property values was

also cited. Concern was raised about local democracy, where most people do not want this project. Others thought that Government policy should be changed quickly to prevent all other such destructive developments.

Other written representations submitted prior to the opening of the Inquiry

453. PINS received 25 other written representations in the lead up to the Inquiry.³⁶⁴ These are summarised as follows.
454. Advanced Radiators (WR1) wrote in support of the proposal because of the direct jobs and significant support and employment to other businesses in the region and the wider UK. Banks Mining currently helps to support this family business, which employs 23 staff in the North-East. The loss of contracts with Banks Mining would have a major detrimental impact upon Advanced Radiators.
455. John Ashton (WR2) set out matters that he later raised during his appearance at the Inquiry.
456. Tom Bradley (WR3) outlined issues that he elaborated on at the Inquiry.
457. Karen Carins (WR4) wrote as Chair of Stannington Parish Council, and has served on different liaison committees that Banks Mining has set up for the benefit of the community. The Parish has benefitted, and continues to benefit, from Banks Mining open casting operations. This has included contributions to the improvement of the village hall, car park, playground, community building, village show, church and school, along with assistance to local clubs such as the Women's Institute and the Cricket Club. The area has benefitted from the land sculpture at Northumberlandia. Where mining has ceased the land has been put back to a better condition than it was before, including a beautiful wildflower meadow and richer wildlife. Open casting has always been a controversial issue, as people have preconceived ideas concerning the operations, but Stannington Parish has seen considerable benefits to all, in landscape, facilities and employment.
458. The documentation cited by The Coal Action Network (WR5) was incorporated into its submission to the Inquiry by Ms Harris, and is summarised above.
459. Mr Wilson for the Campaign to Protect Rural England CPRE (WR6) presented a statement to the Inquiry and it is summarised above. CPRE's earlier submission to NCC is at CD5.4(b).
460. The letter from Stephen Emsley (WR7) was read out at the Inquiry.
461. The statement by FoE Alnwick Area (WR8) was given by Mr Swinbank in his appearance at the Inquiry. Alnwick FoE's earlier submission to NCC is at CD5.4(c).
462. Fuchs Lubricants (UK) Plc (WR9) has been a major supplier to the coal industry in the UK for over 100 years. It strongly supports the application as the proposal would secure employment both in Northumberland and at the Fuchs Lubricants' site at Stoke-on-Trent.

³⁶⁴ Folders E and F.

463. GKN Driveline Services Ltd (WR10) supports the surface mine proposal because of the considerable number of direct jobs into the economy, and that mining activity would provide significant support and employment to other businesses in the region and the wider UK. GKN is pleased to provide services to surface mining and knows the benefits it brings to the region in terms of jobs and families across Northumberland and the North-East.
464. Malcolm Green (WR11) elaborated on his written representation in his appearance at the Inquiry, which is summarised above.
465. Komatsu UK (WR12) expressed support for the proposal because of the considerable number of direct jobs into the economy, and that mining activity would provide significant support and employment to other businesses in the region and the wider UK. Komatsu provides services to surface mining and currently employs 395 staff in the North-East. Long term contracts that Banks Mining would place as a result of the Highthorn scheme would allow continued investment in Komatsu's business and employees.
466. Caroline Lucas MP (WR13) welcomed the decision to call in the application on climate change grounds. Reference was made to a recent report from Oil Change International that if global temperature change was to be kept below two degrees there can be no new fossil fuel infrastructure. Permitting new opencast mines is entirely at odds with the Paris Agreement's goal of keeping global temperature rise below 1.5 C, which has been ratified by the UK, and with the Government's commitment to phase-out coal, as a crucial part of meeting carbon budgets under the legally-binding Climate Change Act. Coal is a fuel of the past, and is no longer economically viable. There are just 900 jobs left in coal mining, whilst off-shore wind employs some 15,000 people. The Port of Blyth hosts the NAREC off-shore wind testing centre and is perfectly placed to generate new jobs. There is, in addition, the impact on the beautiful environment and rich wildlife of Druridge Bay, a place loved by residents and visitors, and a great advantage to Northumberland's tourism industry. Now is the time for the UK Government to show leadership on this issue, and reject this application, and to set a clear precedent for coal to be left in the ground. The submission included a written representations to NCC from the then Leader of the Green Party of England and Wales, dated 28 January 2016, and from the Berwick-upon-Tweed Constituency Green Party, dated 9 November 2015.
467. The North East England Chamber of Commerce (WR14) endorsed the approach of Banks Mining as a responsible business and operator. The Chamber represents about 3,000 businesses across the region, and has worked closely with Banks Mining for many years. Within the North-East there are numerous examples of positive economic, social and environmental legacies from their mining operations. The business has successfully restored over 110 surface mines, in close consultation with local communities. Full account should be taken of the benefits a responsible business such as Banks Mining brings to local communities.
468. Northumberland Wildlife Trust (NWT) (WR15) has been involved in negotiations about nature conservation measures associated with the proposed surface mine, and also submitted comments to NCC.³⁶⁵ NWT's final position on

³⁶⁵ CD5.1(q), CD5.2(l) and CD5.3(c).

the application is set out in a written statement to the Inquiry dated 19 June 2017.³⁶⁶ NWT maintains its objection to the application for reasons related to coal extraction and climate change. This is the wrong time to be extracting coal, given Government aims to reduce carbon emissions from fossil fuels and to phase-out coal production. Carbon produced by this development would add to the difficulty nationally of reducing GHG emissions and meeting climate change targets by 2020. Whilst encouraged by the latest proposals for section 106 and section 39 agreements, NWT remains concerned about the financial security offered for restoration. This is crucial given past experience with insufficient funding for restoration at other surface mines. There is also concern about the impact of the development on those who enjoy visiting the area to watch wildlife and experience nature. Concern was expressed about this having an adverse effect on visitors to NWT's new wildlife discovery centre to be opened at Hauxley, some seven miles to the north of the application site.

469. However, NWT is now satisfied, with the revised provisions, about maintaining habitat for pink-footed geese, subject to a mitigation plan to address patterns of cropping and phasing of extraction. NWT is also satisfied that marsh harrier overflying the site would not be a major concern, and that the revised provisions for habitat mitigations would be appropriate for waders. In regard to hydrological issues at Cresswell Pond SSSI, NWT accepts that there is no further work that could be carried out at this stage. However, NWT remains concerned about a marginal risk, and requests the imposition of a condition if planning permission was granted for monitoring and action if obvious effects on water levels and quality were observed at any point in the development.³⁶⁷

470. NWT was encouraged by the latest information about the section 106 and section 39 agreements, which detail how the habitat creation and management would be enacted. However, there remains concern that the 25 year maintenance would not be sufficient in the long term, and an annual monitoring programme should be set up. Furthermore, timescales for habitat creation appear to be tight, especially if planning permission is required. Reference was also made to the Heronry at Druridge Pools West shelter belt, which should not be removed.

471. Subsequently, NWT comments on the submitted section 39 agreements considered that the final versions weakened management for the Restoration First areas for species and habitat. NWT supports RSPB objections regarding annual monitoring, water management and grazing levels. Allowing water to stand and reduced grazing levels are essential if waders and wildfowl are to benefit at key times of the year. NWT seeks amendments that would remove this uncertainty.³⁶⁸

472. Pirtek fluid transfer solutions (WR16) wrote in support of the proposal. Pirtek employs 22 staff in the North-East and provides services to surface mining. In addition to the direct jobs, mining activity would provide significant support and employment to other businesses in the region and the wider UK.

³⁶⁶ ID/OTH33.1.

³⁶⁷ This is addressed in suggested Condition 3g) at Annex B.

³⁶⁸ ID/OTH33.2.

473. Malcolm Reid (WR17) presented additional evidence at his appearance at the Inquiry, which is summarised above.
474. Jonathan Rodger (WR18) subsequently appeared as a witness for SAVE.
475. Rachel Locke appeared at the Inquiry for Save Newcastle Wildlife (WR19).
476. Reverend Rick Simpson (WR20) appeared at the Inquiry and his evidence is summarised above.
477. Martin Swinbank (WR21 and WR22) also appeared at the Inquiry.
478. Unite the Union (WR23) is the recognised trade union on Banks Mining sites, and wrote to support and endorse Banks Mining as a responsible employer. Attention was drawn to Banks Mining's long and proud track record of working with Unite to preserve jobs, which are well paid, highly skilled and permanent. Banks Mining has strong relationships with local colleges and takes apprentices each year. It has a proud record of restoring over 110 surface mines. It is the first company in Europe to complete the assessment for the global Bettercoal initiative. Coal is used for a variety of purposes, including iron and steel manufacturing, cement manufacturing, domestic heat generation, food production, smokeless briquettes and carbon fibre products. It is far better to mine good quality UK coal than import it from Colombia and Russia, where labour conditions and health and safety and environmental standards are far lower than in the UK.
479. The Chair of Widdrington Station and Stobswood Parish Council (WR24), writing on behalf of the Parish Council, stated that the proposal has been supported whole heartedly from the onset. Banks Mining has gone above and beyond in its efforts to work alongside residents, as well as looking to the future to ensure that the legacy left from what is possibly the last fanfare of opencast mining is one that would enhance this area for generations to come. In uncertain times it is not possible to state that coal will never be needed again. In addition, the employment and apprenticeship opportunities cannot be overlooked, given job losses in other sectors in the area.
480. The Royal Society for the Protection of Birds (RSPB) (WR25) submitted comments to NCC about the application, and about FEI.2.³⁶⁹ In the lead up to the Inquiry RSPB submitted a Written Representation, dated 26 April 2017, along with an Executive Summary and Appendix of 50 references (WR25). These set out RSPB's objections in relation to ecological mitigation, restoration and management, along with concerns about climate change mitigation. On the latter, RSPB's review of the evidence indicated that granting consent for the application would undermine the UK's climate change mitigation efforts to avoid, mitigate and compensate for the significant harm to biodiversity resulting from climate change. In commenting on the draft section 106 and section 39 agreements the RSPB was concerned that there was insufficient detail to provide certainty ecologically, legally and financially on the mitigation and enhancement measures, including in the long term.
481. On 29 May 2017 RSPB submitted further comment on the Restoration First package and mitigation measures for wintering pink-footed geese. Subject to

³⁶⁹ CD5.1(s), CD5.2(m) and CD5.3(d).

appropriate species targeting and design, RSPB acknowledged that there is great potential for the Highborn site restoration to develop habitats to complement and enhance those already present in the local area. Management recommendations by species were included, along with sward conditions for breeding waders.³⁷⁰ Additional notes set out key requirements for pink-footed geese, and highlighted the need for off-site mitigation during Phases 2, 3 and 4.³⁷¹

482. RSPB updated its position on 19 June 2017. While appreciating the constructive efforts of the applicant and NCC, RSPB reaffirmed its objection to the application on the grounds of unresolved concerns regarding ecological matters, including financial security, and climate change mitigation.³⁷² With the proposed additional 50.1 ha of off-site mitigation areas for pink-footed geese (as shown on ID/APP2.1-2.3) throughout Phases 1-5, the RSPB was happy in principle with the mitigation, subject to approval of an appropriate scheme, that would include a sacrificial cropping and grazing regime. RSPB confirmed that the draft section 39 agreement reflects the target bird species for Restoration First set out in its earlier comments. It noted that the draft now covenants NCC and the applicant to maintain features for a period of 25 years. There is also broad agreement between the parties on the management parameters for the five Restoration First areas necessary to deliver the required habitat, but the RSPB remains concerned about timescales for the approval of the Habitat Creation Scheme and management plan, as well as a definition for an annual monitoring scheme.

483. RSPB's concerns regarding provision of financial security for restoration include its definition and underlying principles, especially given that it does not contain any costings of restoration and aftercare. The section 106 agreement should specify the types of security that would be acceptable, either funds held in escrow or a bond, so as to provide the necessary certainty. The current lack of certainty is a factor to be taken into account in determining this application.³⁷³

484. The RSPB noted that final drafts of the section 39 agreement should have been available before the start of the Inquiry.³⁷⁴ But commented on the section 39 agreements after these were submitted during the adjournment, considering that these had weakened provision for wildlife compared to the earlier drafts.³⁷⁵ In particular, RSPB requested an annual monitoring report to inform discussions on the need for any remedial measures and the five yearly review of the management plan, and considered that more time should be allowed to prepare management plans and a monitoring scheme prior to the commencement of development. It also objected to actions only being required to be "substantially" in accordance with the principles set out in the agreement. Concern was also raised about controls on grazing levels and water management.

³⁷⁰ ID/OTH6.1.

³⁷¹ ID/OTH6.2.

³⁷² ID/OTH6.3.

³⁷³ These concerns are set out in detail, along with the applicant's response, at ID/APP15.

³⁷⁴ WR25 page 48 and ID/OTH6.3.

³⁷⁵ ID/OTH6.5.

Other written representations submitted during the Inquiry

485. Thomas Stewart stated that it is accepted that climate change has in recent years brought about the premature deaths of people throughout the world – directly through flooding and natural disasters and indirectly through land loss, drought, crop failure and increased air pollution. Any action that perpetuates climate change, or delays a meaningful response to its threat will contribute to these deaths. Machinery in the mine would all be driven by diesel engines. Transporting the coal would add 1 million miles being driven by HGVs on Northumberland roads every year. The resultant increase in nitrogen dioxide pollution would also increase the number of premature deaths. However, there is a technical revolution underway regarding alternative sources of power generation, and the speed of change is increasing. The UK is at a crossroads, and in determining this application can choose either to side with the climate change deniers, or side with those in the world who see a more hopeful future.³⁷⁶
486. Tony Glenton endorsed the views of John Ashton about the coal heritage of the area, as part of its history, but not part of its future. Today's opportunities lie in other areas, in which responsibly managed tourism will play a major part in Northumberland's future. The Highthorn proposal would undermine, not add to, those opportunities. The time has come when surface coal, following the demise of deep mined coal in Northumberland, is past.³⁷⁷

Written representations from other consultees

487. The following sets out the views of other consultees, where these are not summarised elsewhere in this report.
488. Berwick upon Tweed Constituency Green Party objected to the application on the grounds that the scheme was a financial risk to the County from instability of the coal market, and would conflict with environmental protection provisions of the CMLP. On the first matter, the proposal would not benefit the local economy in the long term, and as the coal market is in decline, a financial bond would be required if permission were to be granted to ensure decommissioning and restoration. The second objection concerns excavating the coal, which would release methane gas, and burning the coal, as both would have a detrimental effect on global climate change. The submission also cited loss of habitat, plus ground, water and air pollution from the operation, which would adversely affect the biodiversity of the entire ecosystem along the coastline. It added that ground and water pollution can occur from acid mine drainage, and that open cast mining would destroy the unique genetic soil profile of the site, and so would affect all species that rely on its ecology.³⁷⁸
489. As owner of the coal, The Coal Authority, encouraged and supported the application in its representations to NCC in 2015. Adding that the proposal was seeking to work coal in environmentally and socially acceptable ways to meet the market requirements, and would contribute to the Government's policy

³⁷⁶ ID/OTH20.

³⁷⁷ ID/OTH30.

³⁷⁸ CD5.4(a).

framework for a diverse and secure energy supply incorporating the principles of sustainable development.³⁷⁹

490. Concerning pumping of ground water from the mining block that contains the application site, The Coal Authority advised by email dated 16 June 2017 that test pumping commenced at the Lynemouth shaft in February 2015. It is anticipated that pumping at 250 litres per second will be able to start in the autumn of 2018 and designs are currently being prepared for the additional treatment capacity needed to achieve the required quality of water discharge. It added that the control level of -34 m AOD should be viewed as a preliminary target and that any long term pumping was dependent on continued funding. The Coal Authority does not have any formal, or statutory, commitments in respect of pumping and water levels. Plans for test pumping at Hauxley are underway, but any such pumping is not likely to affect the proposed opencast coal site at Highthorn.³⁸⁰
491. Cresswell Parish Council (CPC) in November 2015 advised NCC that it had no objections to the proposal providing; (1) the sand extraction licence at Bells farm (Hemscott Hill) was withdrawn and cancelled, (2) confirmation that no further extension planning applications would be submitted, and that Highthorn would proceed from green to green in seven years, (3) the development would adhere to noise and pollution restrictions, and (4) the land was restored in accordance with the agreed proposal.³⁸¹ CPC later advised that it did not oppose the application and considered that the proposal to cease sand extraction at Druridge Bay would be a greater benefit to the area than the damage caused by the mine site. However, CPC acknowledged that this view is not shared by other residents, who at a Parish Meeting held on 18 May 2016 voted on a show of hands to oppose the proposed surface mine at Highthorn.³⁸²
492. The Environment Agency (EA) in its consultation response to NCC in November 2015 considered the proposal acceptable with respect to biodiversity, subject to conditions requiring restoration and monitoring of waterbodies. In terms of groundwater the EA considered that remaining uncertainties concerning water management could be addressed by a planning condition, which would need to deal with any on-site pumping and necessary storage ponds to hold and treat this water prior to discharge to the Hemscott Burn, which might have practical implications. Although partially within flood zones 2 and 3, the EA was satisfied that the proposed development would not increase the risk to property, and that the risks and consequences from inundation during a tidal surge would be matters for the operator.³⁸³ The EA later stated that it was satisfied that the information presented clarified any links between ground water levels and potential impacts on nearby waterbodies, namely Cresswell Ponds, and so no longer required a monitoring condition, but noted that there may be other requirements for monitoring that fell outside the EA's remit.³⁸⁴

³⁷⁹ CD5.1(t) and CD5.2(n).

³⁸⁰ ID/NCC7.2.

³⁸¹ CD5.1(a).

³⁸² Folder D Representation (1240).

³⁸³ CD5.1(b).

³⁸⁴ CD5.2(a).

493. Historic England (HE) advised NCC that the proposal would potentially have an impact on the setting and significance of highly designated heritage assets located within 1.7 km of the site by reason of noise and visual intrusion. However, overall, HE concluded that there would be a small amount of reversible harm to these assets, of a temporary and short-term nature.³⁸⁵
494. Low Chibburn Medieval Preceptory survives as an isolated ruin, but it was designed to see and be seen in the landscape. It is likely to have been a place of tranquillity. Restoration in the locality from previous surface mining in the 1950s has left a landscape dominated by a linear field pattern and notable linear coniferous tree belts. These have impacted on views which would likely have been significant in the post 16th century between the monument and Widdrington. The enhancement works proposed in the section 106 obligation could enable the monument to be removed from the Heritage at Risk Register, and are welcomed, but are not considered to be directly relevant to HE's decision making process.
495. The site of Widdrington Castle and 18th century Gothic Castle and gardens survives as an earthwork mound on the eastern side of Widdrington village. The Church of the Holy Trinity is also located in Widdrington. The village is located in an elevated position in relation to the otherwise fairly level and flat landscape. Mid-20th century opencast mining and restoration has significantly changed the setting of these heritage assets with the introduction of tree belts. OBM1 would obstruct views of Widdrington from the south and south-east prior to its removal (in Phase 5 of the proposed operation), but the modern tree belts already impact on the setting by screening views such that neither the Church or the Castle Mound are readily visible in the modern landscape.
496. There are likely to be indirect impacts on the setting of these designated heritage assets from potential noise during working hours from blasting and trucks/machinery. All the assets have a rural and tranquil setting that would be impacted by noise, but given the separation distance, mitigation through planning conditions could control noise to certain levels, and noise would be temporary and intermittent.
497. The National Trust (NT) owns 1.6 km of links and beach to the east of the application site, and applauds the proposed Restoration First approach and the wider partnership to deliver long term ecological, economic and social benefits for the area. However, in 2015 NT advised NCC of its concern about medium to long term guarantees and whether these benefits would be realised, and so objected to the proposal.³⁸⁶
498. Banks Mining does not own the land and so in the medium to long term these commitments appear to rely entirely upon measures such as agri-environment schemes or 'other voluntary arrangements', and section 39 agreements. These do not give sufficient guarantee that land management practices would bring about environmental benefit, and experience elsewhere suggests that such schemes are extremely difficult to enforce. Similar concerns arise with the delivery of the Discover Druridge partnership, and the uncertainty should be

³⁸⁵ CD5.1(c).

³⁸⁶ CD5.1(d).

taken into consideration when balancing the national, local or community benefits against the likely impacts of granting planning permission.

499. Removing the Hemscott Hill sand extraction permission would help to protect 13% of the total Druridge Bay beach and dune system. However, the permission will expire in 2020 and is currently under review. The intention is welcomed, but the benefits of this proposal should be balanced against how long extraction would actually continue. There would be no apparent direct impacts from the proposal for the MCZ, but there may be indirect impacts through discharge offshore, which would need to be understood and mitigation required if necessary. NT also raised concerns about changes in the local topography from the mounds possibly affecting wind patterns and turbulence with effects on the dynamic dune system.

500. In June 2016 NT acknowledged that a planning condition could provide adequate control over the delivery of the proposed works at Druridge Pools, and that a section 106 agreement could provide a mechanism to enforce the abandonment of planning permission for sand extraction at Hemscott Hill. However, NT reiterated its concerns about funding and delivery of the other proposed benefits. A bond was considered necessary to guarantee funding and NT preferred that land owning parties involved with Restoration First should be signatories to the section 106 agreement. Until a more robust legal framework for securing these wider objectives was available NT maintained its objection to the planning application.³⁸⁷

501. NT commented, in response to consultation about FEI.2 that to accord with paragraph 93 of the *Framework* a condition should be imposed to require the operator to submit a method statement to include measures to reduce GHG emissions, relating particularly to the transport of coal. NT reiterated its concern about delivering benefits and the need for a bond. With respect to cumulative impacts NT noted that Ferneybeds is no longer intended to proceed, but questioned the means of ensuring that this would be so, given the extant planning permission. Concern was also raised about monitoring compliance with conditions, especially for any breach of noise limits.³⁸⁸

502. Natural England (NE) commented on the application in November 2015, and reminded NCC about compliance with the Habitat Regulations concerning the Northumbria Coast European site. NE advised, given the nature and scale of the proposal, that it was satisfied that there is not likely to be an adverse effect on the SSSIs at Cresswell Ponds and Northumbria Coast, subject to compliance with planning conditions. In exercising its duty under Schedule 5 of the 1990 Act and having regard to national policy about the sustainable use of soils, NE accepted that soils within the site boundary fall within Grade 3b under the Defra system of Agricultural Land Classification, and NE broadly supported the site working and land reclamation proposals. NE referred to its Standing Advice concerning protected species.³⁸⁹

503. In February 2016 NE provided additional comments confirming that it would be appropriate to specify agriculture as an after-use, and suggested the imposition

³⁸⁷ CD5.2(c).

³⁸⁸ CD5.3(a).

³⁸⁹ CD5.1(e) and reiterated in CD5.3(b).

- of planning conditions to outline an aftercare strategy, to include 'wildlife islands' and 'conservation headlands'. NE also accepted a variation here, for operational reasons, from Defra's Guidance about the normally recommended maximum heights for topsoil mounds of 3 m, and 5 m for subsoil mounds.³⁹⁰
504. NE's May 2016 response referred to the potential impact on pink-footed geese, and commented on the evidence indicating that there is no hydrological link between the proposed operation and Cresswell Ponds.³⁹¹
505. The Natural History Society of Northumbria objected to the application on the grounds that the mitigation proposed is not sufficient to avoid an overall negative impact on flora and fauna. The applicant and landowners have not committed to a long term management agreement with conservation partners or land transfer. The ES has not adequately considered the impact of lowering the water table on adjacent wetland wildlife habitats. Further coal extraction in Northumberland would exacerbate global warming, which in turn has a negative effect on flora and fauna.³⁹²
506. Network Rail has no objection in principle to the development subject to concerns about haulage routes that pass over railway lines.³⁹³
507. Northumberland Coast AONB Partnership commented that the proposal would have no impact on the AONB itself. A 2007 study found that the Druridge/Cresswell Farmed Coalfield character area does not currently fulfil the criteria for consideration for inclusion in the AONB because of the immaturity of much of the landscape following recent opencast restoration.³⁹⁴
508. Northumbrian Water referred to a public sewer that runs adjacent to the site.³⁹⁵
509. Widdrington Station and Stobswood Parish Council (WS&SPC) in commenting on the application advised NCC that it had no objections to the proposal, and considered that it would provide much needed jobs, including support for local businesses.³⁹⁶ WS&SPC added that the proposal would enhance local nature reserves that were currently lacking in investment, as there is a need to encourage visitors to stay in the locality. The Community Benefit Fund and skills fund were welcomed by WS&SPC.³⁹⁷
510. Widdrington Village Parish Council (WVPC) conducted a survey of residents that indicated a 70/30 split with the majority against the proposal.³⁹⁸ WVPC's submission to NCC in December 2015 raised concerns about the proposed access off the A1068, and preferred that access be via a new roundabout at the junction of Mile Road and the A1068. Reservations were expressed about the speed of vehicles on the A1068, along with restricted visibility at the proposed access

³⁹⁰ CD5.1(f).

³⁹¹ CD5.2(d).

³⁹² CD5.4(e).

³⁹³ CD5.1(g).

³⁹⁴ CD5.2(k).

³⁹⁵ CD5.1(r).

³⁹⁶ CD5.1(u).

³⁹⁷ ID/OTH9.

³⁹⁸ CD5.1(v). There was a response from about 30% of those on the electoral roll.

because of road curvature and elevation changes, and the resultant conflict with slow moving HGVs, and risk to cyclists on this popular cycling route. WVPC suggested that provision of a combined cycle and pedestrian path from Hagg House Farm to the Houndalee roundabout would significantly mitigate the hazard.

511. Noise disturbance from the operational mine, and at night for residents living near the proposed workshops, was also raised. WVPC would have liked to have seen more analysis of the long term effects on local employment opportunities. Reference was made to the Steadsburn open cast site where NCC appears to be unable to enforce compliance with restoration requirements, and if permission was granted for the Highthorn scheme sufficient financial arrangements should be in place to enable full restoration of the site in the event of financial failure of the operator.³⁹⁹
512. Consultation with various departments of NCC are summarised as follows. The County Archaeologist advised that the site retains a high potential for the discovery of significant archaeological remains spanning the prehistoric to the modern, and that if present, such features would be impacted by the proposed development. The operational mine would be some 425 m to the west of the pillbox at Hemscott Hill, whereas the defensive foci of the structure is to the north, east and south, and so the development would not materially impact the setting or significance of the pillbox. In June 2016 HE considered that the decoy control building lacked the special architectural or historic significance to merit designation. Nevertheless, if it cannot be preserved *in-situ* then consideration should be given to relocating or reconstructing the building off-site as part of the proposed Discover Druridge heritage trail, but the loss of the building could be mitigated by a programme of historic building recording, consistent with paragraph 141 of the *Framework*.⁴⁰⁰
513. The Coastal Authority has no objection to the proposal from a coastal erosion perspective.⁴⁰¹ NCC's Conservation Officer did not raise any built conservation objection to the proposal. The small amount of temporary harm to the setting of nearby heritage assets would appear to be negligible as well as time limited. The ability to retain and restore the character, appearance, setting and significance of designated heritage assets in the long term would be unaffected by the proposed surface mine.⁴⁰² NCC's Principal Ecologist and AONB Officer completed a Habitats Regulation screening assessment that concluded that it is unlikely that the proposal would have a significant effect on the Northumbria Coast SPA and Northumberland Marine potential SPA. NE endorsed this assessment.⁴⁰³ The Restoration First and site restoration proposals would result in 100 ha of wet grassland and shallow open water. These habitats, because of their scale and location, have the potential to be of immense value for key species in the Druridge Bay area.⁴⁰⁴
514. The Public Health Protection Unit made no objection, but suggested conditions, and later added that the scheme would be unlikely to impact upon potable water

³⁹⁹ CD5.1(v).

⁴⁰⁰ CD5.1(h).

⁴⁰¹ CD5.1(i).

⁴⁰² CD5.1(j).

⁴⁰³ CD5.1(k).

⁴⁰⁴ CD5.2(f).

supplies.⁴⁰⁵ The Highway Authority was satisfied that the proposed development is acceptable in highways terms subject to the imposition of appropriate conditions. It noted that section 278 agreements would be necessary in relation to the site access and for the improvements to the Butterwell Disposal Point access, along with a section 59 agreement for any damage and extraordinary maintenance on the C125.⁴⁰⁶ The Lead Local Flood Authority had no objection to the application from a flood risk perspective, subject to conditions.⁴⁰⁷ NCC's Countryside/Rights of Way Officer had no objection provided PRow were protected throughout, and a temporary diversion order application be made as early as possible.⁴⁰⁸

Conditions and obligations

515. NCC and the applicant reached agreement about the imposition of planning conditions in the event that the application was approved. Interested persons and local residents made representations about possible conditions at the Inquiry and these, and other suggestions, were considered at a without-prejudice discussion about possible planning conditions, which took place towards the end of the Inquiry.⁴⁰⁹
516. The RSPB considered that Condition 3 should avoid the risk of site clearance works, not regarded as development, damaging ecological interests before the mitigation scheme was fully agreed.⁴¹⁰ SAVE reiterated its view that the lighting condition would not prevent sky glow, and remained unconvinced about the adequacy of the obligation provisions for a bond.
517. Save Newcastle Wildlife considered that a specific condition would be necessary to secure appropriate mitigation for farmland birds, and that lighting controls would be necessary to safeguard bats. Additional tree planting was considered necessary to enhance red squirrel habitat. Concern was raised about updating the Biodiversity Action Plan and certainty that sufficient restoration, mitigation and management would be delivered to compensate for the effects of the scheme.⁴¹¹
518. Local residents raised concerns about the opportunity to comment on the many matters that NCC would need to approve in discharging some of the suggested conditions. NCC informed the Inquiry that there is no formal requirement to consult in dealing with any such approvals. However, NCC listed a number of matters for approval in suggested Condition 3 that could be presented to the liaison committee and/or publicised in the local area following receipt of an application to discharge these conditions.⁴¹²

⁴⁰⁵ CD5.1(m) and CD5.2(g).

⁴⁰⁶ CD5.1(n).

⁴⁰⁷ CD5.1(o).

⁴⁰⁸ CD5.1(p).

⁴⁰⁹ ID/OTH36.1.

⁴¹⁰ ID/OTH6.3.

⁴¹¹ ID/OTH19.2.

⁴¹² ID/NCC11.

Conclusions

Preliminary matters

- C1. The following conclusions are based on the written submissions, the evidence given by those who appeared at the Inquiry, and my inspections of the site and its surroundings. In this section the figures in parenthesis [] at the end of paragraphs or sections indicate source paragraphs from this report.
- C2. I am satisfied that the ES and FEI reasonably comply with the requirements of the EIA Regulations. In considering the application, and in making the recommendation below, I have taken into account the Environmental Information, which includes all the evidence adduced at the Inquiry. In doing so I have come to a different view about the significance of, and weight to be given to, some environmental effects from that set out in the ES. [1,2,3]
- C3. The proposed development was described at the Inquiry as "a surface mine (to include auger mining) for the extraction of coal, sandstone and fireclay, with restoration to agricultural and ecological uses". The application should be dealt with on this basis. [4,6]
- C4. Some of the written representations and submissions to the Inquiry referred to the applicant as a responsible coal mining company, with a good track record in operating and restoring surface coal mines. There are no reasons to doubt this evidence. However, it was clarified at the Inquiry that a personal permission is not sought, and so any grant of planning permission for the proposed development would run with the land. Accordingly, no reliance should be placed on HJ Banks & Company Ltd operating and restoring the proposed surface mine. All necessary controls on, and requirements for, the proposed development, would need to be specified in the conditions imposed on any planning permission, or secured in the signed section 106 and section 39 agreements. [70,233,237,437,467,478,479]
- C5. Suggested alterations to the application scheme for additional mitigation areas for pink-footed geese were discussed at the Inquiry, and the subject of written responses from RSPB and Northumberland Wildlife Trust (NWT). This is a matter that does not substantially alter the proposal, and given that there was an opportunity at the Inquiry for comment, taking the revised mitigation into account would not be prejudicial to the interests of any persons or party. The provision of mitigation areas for the geese could be reasonably dealt with by the imposition of appropriate planning conditions.⁴¹³ [10]
- C6. Similarly, at the Inquiry, the applicant clarified options for dealing with ground water. The likely implications of these options were discussed at the Inquiry, and the evidence of Dr Blythe and the Coal Authority is part of the Environmental Information now before the Secretary of State. The options for dealing with ground water do not substantially alter the scheme. I am satisfied that there is scope within the site and the proposed scheme to provide the necessary treatment lagoons for each of the options considered at the Inquiry. This is again a matter that could be covered by planning conditions, without compromising other aspects of the proposed development or its associated mitigation

⁴¹³ Suggested Condition 3o) Annex B.

measures.⁴¹⁴ Dealing with the ground water issue in this way would not be prejudicial to anyone. [59,67,68]

Main considerations

C7. The matters about which the Secretary of State particularly wishes to be informed for the purposes of considering this application, along with other matters that I consider might be relevant here, are as follows.

- (1) The effects of the proposed development on the character and appearance of the area, including cumulative effects.
- (2) The effects of the proposed development on the local amenity of the area and the living conditions of nearby residents, with particular reference to;
 - (i) residential outlook,
 - (ii) noise and blasting,
 - (iii) dust and air quality,
 - (vi) light pollution,
- (3) The effects of the proposed development on biodiversity.
- (4) The effects of the proposed development on heritage assets.
- (5) The effects of the proposed development on hydrology.
- (6) The effects of the proposed development on highway safety.
- (7) The effects of the proposed development on tourism and recreation.
- (8) The effects of the proposed development on the use of agricultural land.
- (9) The need for the coal, fireclay and sandstone, having regard to likely future demand for, and supply of, these minerals.
- (10) The effects of the proposed development on employment, and the local and national economy.
- (11) The effects of the proposed development on the emission of greenhouse gases (GHG) and climate change.
- (12) Whether the proposed development would be environmentally acceptable or could be made so by planning conditions/obligations, and if not, whether national, local or community benefits would clearly outweigh the likely impacts.
- (13) The extent to which the proposed development would be in accordance with the development plan for the area.
- (14) The extent to which the proposed development would be in accordance with the *National Planning Policy Framework* (the *Framework*) concerning:
 - (i) Policies for meeting the challenge of climate change (Chapter 10).
 - (ii) Policies for conserving and enhancing the natural environment (Chapter 11).
 - (iii) Policies relating to the sustainable extraction of minerals (Chapter 13).
- (15) The extent to which the proposed development would be in accordance with the *National Planning Practice Guidance* (the *Guidance*) concerning renewable and low carbon energy.

⁴¹⁴ Suggested Condition 3f) Annex B.

- (16) The extent to which the proposed development is consistent with the Written Ministerial Statement on the Central Government's commitment to replace coal fired power stations with gas, as made by the Secretary of State for Energy and Climate Change on 18 November 2015 (WMS1). To this consideration should now be added consistency with WMS2, which was made on 12 October 2017, and *The Clean Growth Strategy*. [16]
- (17) Whether any permission should be subject to any planning conditions or obligations and, if so, the form that these should take.

C8. The remainder of this report addresses the matters outlined above, using the following approach. For each of the main considerations 1-11 above the report considers the likely effects of the proposed development in the short, medium and long term. Impacts are described and significance assessed. For the purposes of assessing this application, I consider that it would be appropriate to consider short term effects over the first six years of the operation.⁴¹⁵ Medium term effects would apply from 7 up to 16 years.⁴¹⁶ Beyond 17 years long term effects would apply.⁴¹⁷

C9. I have combined the short, medium and long term effects to arrive at a judgement about the overall effects of the scheme for each of these considerations. This takes into account the nature and duration of operations, along with restoration, aftercare and long term management. This analysis takes into account, where appropriate, the suggested planning conditions, along with CIL-compliant obligations and the section 39 agreements. The significance of effects is a matter of judgement, and for consistency I have used a rating scale for both negative and positive effects (harm and benefits), increasing from negligible to minor, moderate, substantial and finally major significance. This is to assist the Secretary of State to come to an overall judgement about the planning balance that applies in this case.

C10. For clarity about these judgements, and to assist in awarding appropriate weight, I have set out my views about the significance of effects in Table 1 of this report. I have also included Table 2 concerning my judgements about the compliance of obligations with CIL Regulation 122, along with the weight to be given to obligations which are not considered to be CIL-compliant. Table 3 sets out my judgements about what weight should be given to relevant considerations in the planning balance. These tables are intended to facilitate any necessary adjustment of the overall planning balance, should the Secretary of State come to different judgements about the significance of effects, and weight in the planning balance, from those at which I have arrived. In considering the relative weight to be given to various considerations I have used a scale increasing from

⁴¹⁵ During this period the coaling operation is planned to be completed, with OBM1 and OBM2 removed [APP/PP/1 Tab11].

⁴¹⁶ Suggested Condition 73 would require aftercare for five years following soil restoration and for 10 years from creation of new woodland planting [ID/OTH36.1].

⁴¹⁷ The section 39 agreements would require maintenance of features for 25 years and thereafter their management in perpetuity to promote biodiversity [ID/APP25.1, 25.2 and 25.3 Schedule 1 paragraphs 2.2 and 2.3].

negligible (little or no weight), to slight, moderate, considerable, and finally great weight.

C11. If section 106 obligations are not necessary, or for other reasons would not satisfy the requirements of CIL Regulation 122, they would be matters on which it would be unlawful for the Secretary of State to place any weight. However, if an obligation complied with CIL Regulation 122 because it was required mitigation that would not necessarily preclude it from also being considered a benefit in the overall planning balance. Whether it would do so, and what weight it should attract, would depend upon the particular circumstances. [178]

C12. For the reasons set out more fully later in this report, paragraph 149 of the *Framework* is considered to be key to the planning balance in this case. It is therefore appropriate to deal with a preliminary point about how paragraph 149 should apply in relation to CIL, so that this can be adequately addressed in this report in considering the likely effects of the proposed development. For coal extraction, paragraph 149 provides that national, local and community benefits can be weighed against likely impacts. In principle, it seems to me that any such benefits required by section 106 obligations, which would otherwise be non-CIL compliant, could be found necessary to make coal extraction acceptable in planning terms if they tipped the paragraph 149 balance in favour of the proposal, and so for that reason would comply with the CIL Regulations. Whether they would do so is a matter to be determined in each case. If not, the obligations could remain binding on the parties, but even if desirable for the area, or for other reasons, should not weigh in the balance as any part of a reason for granting planning permission. This would apply to the Highborn application if CIL-compliant and other legitimate planning benefits were not together sufficient to outweigh the likely harm. Then it would be necessary to also weigh in the balance non-CIL compliant section 106 local, community and national benefits in order to assess whether these would tip the paragraph 149 balance in favour of the proposed development.

C13. Therefore, for each of the main considerations 1-11 above, I assess harm/benefits having regard to the suggested planning conditions, CIL-compliant obligations and section 39 agreements, but also set out where relevant any non-CIL compliant obligations that should be taken into account, if needed, to assess whether cumulatively they would tip the paragraph 149 balance in favour of granting planning permission.

C14. My recommendation is based on these findings.

(1) Character and appearance

Landscape character

C15. The site lies within a relatively flat coastal plain, in which the key characteristics include low-lying coastal farmland, generally open and expansive, which has been heavily modified by past mining and industrial activity. But there are pockets of unaltered rural character. The application site reflects this mix, with large areas affected by past surface mining and characterised by oversimplified geometric landscapes of pasture and conifer blocks, which lack distinctive features, along with fragments of undisturbed land, some containing medieval rig and furrow. Restoration has produced simplified landscapes that do not replicate the detail and variety of the pre-mining landscape, remnants of

which could be seen in the areas behind Cresswell Pond. The Northumberland Coast AONB lies some 10 km to the north of the site. A study in 2007 assessed the character area that contains the application site as a distinct and highly valued landscape, with bodies of open water behind the coastal dunes, but with many of the restored areas lacking time-depth. The study concluded that the character area did not fulfil all the criteria for natural beauty to justify its inclusion in a boundary review of the AONB, but noted that the criteria may be met in the future, as the landscape matured. The evidence before the Inquiry about the eastern part of the application site, especially the contribution it makes to the setting of the dunes and beach at Druridge Bay, along with the recreational use of this area, indicates to me that this is a valued landscape for the purposes of applying the *Framework*. [36,39,40,117,507]

- C16. The operational area of the proposed development is located within LCA39a, an extensive designation that encompasses much of the rural area set back from the coastal strip between Morpeth and Amble. The simplistic approach to past mining restoration, over large parts of LCA39a, has resulted in a landscape degraded in character, which has lost much of its subtle variation in its natural characteristics. However, these landscapes are maturing and some features, particularly wetland areas resulting from past mining, now add considerable interest and variety to the local landscape. Other parts are maturing into an unremarkable but pleasant agricultural landscape that often provides the context for wider or more distant views towards the sea in the east and the hills towards the west. Areas of land unaffected by past mining now provide valuable time-depth in this landscape. [41,118]
- C17. There are currently no operational surface mines in the locality. A working surface mine, covering some 250 ha and including extensive mounding, would now be an intrusive feature in LCA39a. The activity associated with mining would be very different from the existing agricultural operations in terms of its nature and intensity. The surface mine would reset the time-depth clock on a landscape that is in part maturing from previous restoration, with the remainder comprising an older landscape with remnants of rig and furrow. The proposed restoration scheme for the Highthorn surface mine would be more appropriate than the restoration undertaken for past surface mining. However, I am not convinced that this would be sufficient to justify the loss of what remains of the historic landscape on this site. Where landscape time-depth does exist in this locality its rarity warrants it being granted greater significance and importance. I find that the proposal would have a significant adverse effect on LCA39a. [32,43,238,320]
- C18. An eastern section of the application site, outside the proposed operational area, lies within LCA40a. This area is described as an attractive, almost unbroken, stretch of sandy beach and mature sand dunes backed by a variety of landscapes, which include the smelter works and power station to the south, and the legacy of opencast mining to the north. The latter is enhanced by subsidence wetlands, including the wildlife reserves at Hauxley and Cresswell Pools. It was apparent from my site visits that this elemental coastal landscape remains dramatic, even with the presence of the power station, and that despite some nearby development the landscape feels open and relatively tranquil. The application site forms part of the setting for LCA40a and there are views from the top of some dunes across the site. The proposed mounds would affect how the wider landscape of sea and hills was appreciated. At times noise and sky glow,

for the reasons set out later in this report, would impact adversely on the tranquillity and isolation of the beach and dunes. This would have an adverse effect on this part of the Heritage Coast. I find that the proposal would have a significant adverse effect on LCA40a. [41,42,55,118,189,320,329,438]

- C19. I consider that the applicant and NCC have understated the likely effects of the proposal on the landscape character of the area. In the short term the operational mine would have an adverse effect of major significance. With restoration, in the medium term, this would become of moderate significance, and in the long term of minor significance. In time a new landscape character would evolve, but I do not consider that this would compensate for the loss of the existing time-depth in this landscape. I find overall that the proposal would have an adverse impact on landscape character of substantial significance. [119,123-125,199-202,284,286,437]

Visual effects

- C20. Coastal views are often available on the eastward-sloping coastal plain that contains the application site, but wind turbines, pylons and chimneys, such as those at the Lynemouth smelter, are prominent features. There are also a number of westward views, including long views to the Simonside and Cheviot Hills. The dunes and beach, along with the wetland features and open agricultural land make this an attractive coastal location, which is acknowledged as a valued landscape. [40]
- C21. During the construction of the perimeter mounding operational activities associated with the mine would be apparent and visually intrusive at close range from many public vantage points. But this phase of the operation would only be for a limited duration. On completion of the earth mounds views into the operational surface mine and parts of the void would be limited to a few distant vantage points. The mounds would be shaped and grassed over, but nonetheless would still appear as artificial structures in this open plain. They would themselves, given their size and the extensive area that they would enclose, become dominant features in this landscape, which would harm the appearance of the area. This is apparent from the visualisations submitted with the LVIA. The following paragraphs of this report consider views broadly from the coastal strip towards and across the application site (VP15-VP21) including parts of the AHLV, views from the south (VP1-VP5), and from the west looking towards the sea (VP6-VP14).⁴¹⁸ [63,120,121,320]
- C22. From VP15 OBM1 would be a substantial feature rising above Stonecroft in views to the south from Low Chibburn Preceptory and the footpaths in its vicinity. This long mound rising to a height of 25 m above the existing ground level would dominate the outlook over this flat landscape. The same would be so from VP16, a high point on the dunes. The extensive nature of the mounding would be clear from VP17, the entrance to the National Trust car park. In this wide view of the coastal plain OBM1, OBM2, topsoil and subsoil mounds would extend over a considerable distance and along much of the horizon.
- C23. The expanse of mounding would continue around to VP18 Hemscott Hill, which is an important vantage point because of its elevation in this low-lying landscape.

⁴¹⁸ CD4.5.2. LVIA View Point Location Plan following page 237.

The lines of hedgerows, albeit some of them gappy, and shelterbelts marking field boundaries across this landscape, recede into the middle distance, giving a feeling of depth to this view. The proposed mounding would truncate views across this area resulting in a loss of visual depth. What would be seen as a wall of mounding would also screen views towards features on the horizon that provide the viewer with orientation and a sense of direction. In particular, the higher ground at Widdrington would no longer be visible. The mounds could be grassed over, but their overall bulk and resultant screening effect on interesting visual features would render this a much poorer outlook from a significant vantage point. The proposed development would have a detrimental effect on the AHLV.

- C24. In the view from Cresswell Ponds car park (VP19) the mounding would almost completely obscure the existing skyline and would dominate the middle distance. The same effect, but at closer range, would be apparent to those using Warkworth Lane, the bridleway and the Cresswell footpath in the vicinity of Blakemoor Farm (VP20 and VP21).
- C25. In more distant views from the south the mounding would soften more into the landscape and from VP1, to the rear of St Bartholomew's Church, Cresswell, the distant hills would still be seen on the horizon. A small section of the working site beyond the perimeter storage mounds would be apparent from this vantage point, but given the separation distance of about 2 km this would not be particularly intrusive. A similar orientation would apply to any views from Pele Tower, which is located further into Cresswell. Any views towards the site from an elevated vantage point in the tower would be at some distance and would be unlikely to be any more intrusive than would be so from St Bartholomew's Church. It is evident in these visualisations how far the proposed development would be set back from the dunes and beach at Druridge Bay. OBM2 would be a more intrusive feature in views from the elevated part of the Ellington footpath (VP2). But the mounding would be seen set well back from the caravans and cabins located within Ellington Caravan Park. A small part of the excavation area and land stripped to subsoil would be visible along part of this walk, but mostly the operational area would be obscured by mounding and the woodland to the north of the caravan park. [12,128,253]
- C26. From VP3, the entrance to Ellington Caravan Park from the A1068, the mounding would extend across a wide section of the land between the A1068 and Druridge Bay. However, it was apparent from my site visit that the mounding would not impact much on the outlook from within the caravan park because of the local topography and the screening effect of vegetation. This is apparent from VP4. In closer views, the mounds would appear as large and incongruous structures in glimpses from public vantage points, such as from the bridleway at VP5.
- C27. A topsoil mound 5 m high would extend for some 800 m along the eastern side of the A1068 (VP6). From some vantage points OBM2 would appear above this topsoil mound. The mounding would appear as a dominant feature close to the road. It would obscure views over this low-lying coastal plain towards the sea on the distant horizon. From vantage points further to the west the proposed surface mine would have less of a visual effect. Given the separation distance, along with the local topography and vegetation, OBM2 would not be unduly prominent from VP7.

- C28. From VP8 the sea would remain on the horizon beyond OBM2. Similar considerations would apply from VP9 and VP10. VP11 on the A1068 near Houndalee Cottages indicates the extent of the screen mounding proposed around the site compound area. Again this would effectively obscure views into the operational site, but would screen out features such as the Ellington ridgeline that currently give the area some of its visual attraction. The mounding would screen out views of the chimney stacks at Lynemouth, but at this distance these are not dominant in views of the existing wide landscape. The scheme would have little effect on views from within Widdrington (VP12 and VP13). From the eastern edge of the village (VP14) OBM1 would be a significant feature that blocked views towards the sea, and which diminished the contribution that the Ellington ridgeline currently makes to the appearance of this landscape.
- C29. The visual impact of the mounding on high sensitivity receptors, such as the occupiers of nearby residential properties, those using the recreational PRoW close to the application site, as well as parts of the C110, would be significant. The extensive mounding would limit views into the working mine, but would also obscure views over the wider area, and so would result in a much blander and less interesting setting for Druridge Bay and its beach and dunes. [122,126-128,255,256,403]
- C30. I consider that the applicant and NCC have understated the likely visual effects of the proposal. In the short term the operational mine and its surrounding mounds would have an adverse effect of substantial significance on the visual amenity of the area. With restoration this would soften to a moderate adverse effect. In the long term, as the proposed wetland areas, hedgerows and planting matured, the restoration scheme would add some interesting visual features that would ultimately result in a minor benefit to the appearance of the area. Overall, I consider that the proposal would have an adverse visual effect of moderate significance.

Cumulative effects

- C31. The *Framework* provides that applications should be assessed so as to ensure that operations do not have unacceptable adverse impacts, taking into account cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality. MLP Policy EP20 concerns the cumulative impact on local communities and the environment, including the effect on the landscape arising from the restoration of a number of sites over time, on the quality of life from an unbroken sequence of working and restoration. [18]

Cumulative effect with sand extraction at Hemscott Hill Farm

- C32. An area of dunes and beach of about 40 ha to the east of Hemscott Hill Farm has planning permission until 31 December 2020 for the extraction and processing of an estimated 62,000 tonnes of sand and gravel. Condition 12 of the extant permission requires a detailed scheme of aftercare, for grazing and nature conservation, to be submitted for approval before 31 December 2015. However, no such scheme has been submitted. But an application for the review of an old mineral permission (ROMP), validated in 2013, remained undetermined by NCC at the time of the Inquiry. There are outstanding objections to the ROMP from NE and EA. [60,61]

- C33. Relatively little sand has been extracted from the Hemscott Hill Farm site for a number of years, and there is some doubt about the likelihood of any resumption. However, the permission remains extant, and if sand extraction took place at the same time as the proposed operation at Highthorn then there would be a cumulative adverse visual effect of moderate/substantial significance, particularly from the C110. A realistic prospect of the resumption of sand extraction cannot be ruled out, albeit there are potentially serious impediments regarding wildlife and flooding, along with concerns about the impact on the MCZ. [166]
- C34. SAVE submits that any further sand extraction would be unlawful, and that NCC is failing in its EU obligations in delaying any EIA of this proposal, and in not revoking the original 1960 permission. However, in determining this planning application for the Highthorn surface mine it is not for the Secretary of State to decide whether, or on what basis, sand extraction at Hemscott Hill Farm could resume; that would be a matter for NCC in the first instance, and ultimately a matter for the Courts. [279-283,300,437]
- C35. Schedule 3 of the Highthorn section 106 agreement provides for the withdrawal of the Hemscott Sand Extraction Periodic Review Application; and for the landowner to make no further planning application, to cease all sand extraction and to permit implementation of a dune recovery scheme. There was some debate at the Inquiry about whether the mechanism preferred by NCC to achieve 'surrender' of the extant planning permission would be effective. SAVE considers that the covenants would fail to prevent anyone other than the landowner from applying for planning permission, and that the obligation fails to restrict that landowner from granting a licence to anyone to enter his land to pursue that permission. The proper interpretation of the section 106 agreement would be a matter of law, but it seems to me that the evidence before the Inquiry could not rule out all the potential avenues by which its intention might be frustrated. [9(2),181-183,387]
- C36. But even if the section 106 agreement achieved its intended outcome, I am not convinced that this obligation would be necessary to mitigate the impacts of the proposed development. I consider that all that would be required to overcome unacceptable cumulative harm, and render the Highthorn proposal acceptable in this regard, would be to prevent the sand extraction and surface coal mine operations proceeding concurrently. If the obligation in the section 106 agreement did bite it would do far more than that. Furthermore, Clauses 4 and 5 of Schedule 3 would require implementation of an approved Dune Recovery Scheme. NCC stated that "Today, there is an established need for these works in the light of identified damage."⁴¹⁹ So it cannot be the case that the necessity for dune recovery works would arise from the Highthorn development. I find that this obligation would exceed what was necessary to mitigate the impacts of the proposed development.
- C37. Nevertheless, if the Secretary of State shares my concerns about the obligation then this issue could be appropriately addressed by the imposition of a condition in a Grampian form. Such a condition would require that no development at Highthorn should take place until a legally binding mechanism to

⁴¹⁹ ID/NCC5.2 paragraph 3.

prevent the extraction of sand from Hemscott Hill Farm proceeding concurrently with the operation of the Highthorn surface mine had been submitted to and approved in writing by the Mineral Planning Authority.⁴²⁰ The imposition of such a condition would require there to be exceptional circumstances, but that seems to me to be the case here given the proximity of the schemes, along with their likely cumulative environmental impact.

C38. If required to be taken into account to determine whether non-CIL compliant benefits would tip the paragraph 149 balance, I consider that the local or community benefits of measures to seek the surrender of the extant permission for sand extraction and to implement a dune recovery scheme should only be given slight weight for two reasons. First, there is some doubt about whether sand extraction would be resumed before the permission expired. Secondly, existing planning conditions require that the site be restored for agriculture and nature conservation on expiration of the permission. [224,402,491]

Other potential cumulative effects

C39. There are currently no operational surface mines in the locality. Land to the west of the application site has planning permission for a surface coal mine at Ferneybeds. However, infrastructure constraints affect this permission and covenants now prevent the Ferneybeds site from being worked. Therefore no cumulative impact would arise with the working of the Highthorn proposal. There is no evidence that the proposed Highthorn mine could potentially be expanded in future, given the local constraints and depth of the coal seams. In any event, any future extension of the mine would require a planning application, which would need to be determined on its merits having regard to prevailing policy. [58,130,131,186,438,491,501]

C40. The wider locality has a long history of mining and the restoration of previous surface mines is a feature of the area. The 31 past surface mines in the Amble/Ellington area in the period between 1943 and 2016, and up to five mines operating at the same time from 1975 to 1995, indicates that the area has been subjected to successive mineral development over a number of years. However, restoration works for all but the more recent mines have generally reached an advanced stage of maturity. Nevertheless, local communities have seen surface mining somewhere in this area over a long period. The proposed Highthorn mine would, therefore, result in some adverse cumulative impact overtime with previous surface mining in the locality. This would not be, by itself, so substantial as to result in an unacceptable impact on the community and environment, but it is a consideration that would add to the overall harm I have identified to the character and appearance of the area. [18,25,57,176,190]

Conclusions on character and appearance

C41. On the basis of the submitted evidence and from my site visits, I have found that the proposal would have an overall adverse effect, combining short, medium and long term effects, of substantial significance for landscape character and of moderate significance for visual effects. The proposed development would also result in some adverse cumulative impact overtime with previous surface mining in the area. The scheme would not protect a valued landscape. Taking all this

⁴²⁰ Suggested Condition 87 in Annex B.

into account, I find that the proposed development would have an adverse effect on the character and appearance of the area of moderate/substantial significance. The resultant harm is a factor that should be given considerable weight in the planning balance. [174,438,444]

(2) Local amenity and living conditions

Residential outlook

- C42. Residential receptors were taken into account in the LVIA and included above in my findings about character and appearance. Deprivation of outlook is a separate consideration. It concerns whether development would have such an overwhelming and oppressive impact on the outlook from a dwelling and its amenity space that it would result in unsatisfactory living conditions. Local concerns about what would be seen from some dwellings is understandable, as views of what is now open countryside would change to views of the surface mine, its mounding and activities associated with it. [252-254]
- C43. However, it was evident at my site visits that the proposed development, given the height of mounding and the separation distance from nearby properties, would not have an overbearing or dominating impact from the nearest residential dwellings at Highthorn (140 m) or Houndalee Farm and Cottages (256 m). The likely impact on the outlook from dwellings further from the site would not be significant. In my judgement, the proposed surface mine would not result in an overwhelming or oppressive impact on the outlook from nearby dwellings or their associated amenity space that would result in unsatisfactory living conditions. I find that the proposal would not, by reason of deprivation of outlook, unacceptably affect local amenities and the use of land and buildings which ought to be protected in the public interest. [37,126,432]

Noise and blasting

- C44. The area is affected to some extent by road traffic noise from vehicles on the A1068. But away from the A1068 noise is limited to that generated by agricultural activities and the intermittent traffic along the C110. The central and eastern parts of the site are relatively tranquil. The tranquillity of the beach, dunes and wetlands is an important part of their attraction. [42,141,144,244,249,393,410,411,425,426,431]
- C45. Activities at the proposed surface mine would generate considerable noise at times from the movement and operation of large diesel vehicles and equipment. Blasting would be particularly intrusive in this quiet area. However, noise from the site could be limited by planning conditions to levels that would accord with the *Guidance*.⁴²¹ SAVE correctly points out that compliance with such conditions might not by itself prevent a nuisance occurring. But that would be a matter of law to be determined on the basis of the particular circumstances, having regard to the character of the noise and many other considerations. Speculation about whether a noise nuisance would arise is not a matter that is very helpful in determining this application on its planning merits. [25,141,194,241,245,413,432,438,446,496]

⁴²¹ Suggested Conditions 35-40 Annex B.

- C46. The suggested conditions include restricted times for soil handling and coal loading (0700-1900 hours Monday to Friday, 0700-1300 hours Saturday) and for excavation, mineral extraction and processing (0700-2200 hours Monday to Friday, 0700-1300 hours Saturday). Plant and vehicle maintenance would also be restricted. Conditions would preclude any engine start up or the use of any power tools or hammering activity that could give rise to noise audible at any noise sensitive residential premises, between the hours of 2200 and 0700. Also during these times drainage pumps, electrical generators and lighting sets would be located, orientated or acoustically insulated to render them inaudible at any sensitive residential premises. These conditions would be reasonable and enforceable, and would effectively control noise at night.⁴²² I therefore disagree with SAVE that a night-time BS4142:2014 assessment should be required, and I am satisfied that sufficient environmental information has been adduced to properly assess the likely noise impact. The experience of nearby residents at other surface mines is not necessarily a guide to the likely noise impact at Highthorn because much would depend on the specific circumstances and provisions for noise control and monitoring. [65,142,143,241-243,246,247,511]
- C47. However, compliance with the suggested noise conditions proposed would not mean that noise would not be intrusive in the locality at times. In the prevailing westerly or south-westerly winds noise from the operation could be refracted downwind towards the dunes and beach, and towards Cresswell depending on the wind direction. This effect was evident on my site visits to Shotton on windy days. On those visits low frequency noise from large diesel engines, along with the distinctive noise from tracked vehicles, was evident and intrusive in sheltered downwind locations some distance from the working mine. If this effect occurred at Highthorn it would harm the tranquil character of the beach and dunes, and could impair living conditions for residents in Cresswell. [5,241-243]
- C48. The Inquiry heard that blasting to remove sandstone overlying the Yard Seam at the former Radar South opencast coal site between 1953 and 1958 disturbed wildlife. However, any blasting at Highthorn would only be carried out in accordance with an approved scheme. It is not clear what controls applied in the 1950s, but stringent controls would be imposed now.⁴²³ I am not convinced that blasting within the proposed void would have a substantial adverse effect on the amenity of the wider area for residents, visitors or wildlife. [434]
- C49. I am satisfied that the noise controls suggested here would avoid the proposal having a significant adverse impact on health and quality of life for the purposes of applying the *Noise Policy Statement for England*. Nevertheless, noise from the operational mine would at times be intrusive and would, to some extent, detract from the enjoyment of the area. It would also be a relevant factor contributing to the cumulative impact over time in a locality that has been subjected to successive mineral development over a number of years. [25,192,248]

Dust and air quality

- C50. The movement of topsoil, subsoil and overburden, along with the extraction and processing of minerals, on the scale proposed here, would have the potential to generate dust. Furthermore, the use of diesel plant to undertake this work

⁴²² Suggested Condition 12 Annex B.

⁴²³ Suggested Conditions 41-46 Annex B.

would result in emissions that could impact adversely on air quality. Given the nature and scale of the proposed works local anxiety about air pollution and any related health implications are understandable. [415,423,426,430,438,446]

- C51. However, effective measures to control dust could be employed when necessary. Such measures were in use on the windy days that I visited Shotton and its environs, and it was evident that fugitive dust was suppressed, with no visible dust leaving the site. A planning condition would require the monitoring of dust levels to be carried out by the operator in accordance with an approved dust action plan, and appropriate measures here could be included in an approved Environmental Management Plan (EMP).⁴²⁴ Subject to strict control and effective monitoring, I do not consider that likely visible dust emissions from the operation would unduly affect the amenity of the area. [145,237,244]
- C52. Except for work on mounding, which would be for a limited period at the beginning and end of the operation, large diesel vehicles and plant operating on the site would generally be working within the void. Diesel emissions, along with any mine gas, might be concentrated within the void or parts of it at times. But even on relatively still days any such emissions would disperse into the atmosphere beyond the site boundaries and would quickly be diluted. This would also apply to all particulate matter such as PM₁₀ and PM_{2.5}. It would be unlikely that any concentration of air pollutants would have a significant effect on the local air quality around the site, or any material implications for the health of those living nearby or visiting the area. A public health study undertaken by Newcastle University and reviewed by the Committee on the Medical Effects of Air Pollutants found no statistically significant correlation between open cast mining and childhood health issues. [145,198,415,423]
- C53. A planning condition would require HGVs to use a wheel wash, and to be fully covered by sheeting to prevent any mineral leaving the loads of that vehicle.⁴²⁵ This is a matter that could be effectively enforced and which would prevent fugitive emissions from vehicles. The additional exhaust emissions from HGVs transporting coal on the local road network would not materially add to air pollution levels along the proposed routes. [145,146,193,416]
- C54. Dust and poorer air quality might at times affect areas close to the mining operation, as has evidently occurred at other surface mines. But with monitoring and remediation measures, such as those set out in the draft EMP, any such adverse impact could be readily addressed such that, at worst, any resultant harm would be of short duration. I find that the likely effects of the proposal on air quality would not be a consideration that would weigh much against the proposal. [244]

Light pollution

- C55. Dark skies at night are a feature of the Druridge Bay area, and objectors raised concerns about light pollution. A planning condition could require a scheme for lighting that ensured that all illumination did not result in an upward light ratio greater than zero and to accord with levels for light intrusion for residential properties in E1 and E2 Zones, as described in the Institute of Lighting

⁴²⁴ Suggested Condition 3t) and Conditions 47-48 Annex B.

⁴²⁵ Suggested Conditions 14 and 17 Annex B.

Professionals 2012 *Guidance Notes for the Reduction of Obtrusive Light*.⁴²⁶ However, where vehicles and plant would be moving around the site up until 10 pm at night it seems to me that it would not be possible to prevent some sky glow at times, particularly in certain atmospheric conditions with a low cloud base. This would harm the rural character and isolated feel of the coastal area, especially on dark winter evenings. [147,193,250,251,423,426,432,438,446]

Conclusions on amenity considerations

C56. The overall effects on amenity need also to consider the possibility of a combination of impacts in some places, and for some receptors, that might include adverse effects from outlook, noise, and potentially dust, air and light pollution. Some impacts might have a cumulative effect over time given the past history of surface mining in the area. Taking all these considerations into account, I find that the proposal would in the short term have an adverse effect on the amenity of the local area of moderate significance. In the medium term, once mining and restoration work was completed, the scheme would initially have a minor adverse effect on local amenity, but in the long term it would have a negligible effect. Overall, I consider that the proposal would have an adverse effect on the amenity of the area and living conditions of residents of minor significance. This is a consideration that should be given some slight weight in the planning balance.

(3) Biodiversity

C57. The Druridge Bay area is a wildlife resource of considerable importance, with numerous designated sites in the locality. However, the application site comprises arable land, temporary grass and permanent pasture/grassland, with a low hedgerow density and low connectivity of hedgerows, and with most of the trees considered to be Category C trees and of low retention value. I concur with NCC's view that this is an ecologically unremarkable site. Nevertheless, the excavation and mounding would destroy or displace existing wildlife, including species lower down the food chain in the trophic pyramid. But there is no evidence that the surface mine, given the proposed mitigation, would have a significant adverse effect on any protected species, important habitat or designated sites. Of primary concern with respect to the application site would be the effects of the proposal on pink-footed geese and yellow wagtails. [34,35,44-47,203,257,430]

C58. Many objectors to the application raised concerns about the effects of the proposed surface mine on wildlife. However, the RSPB and NWT are largely content with the proposed mitigation measures, but have reservations about some aspects of the section 106 agreement and section 39 agreements, which I deal with later in this report. Save Newcastle Wildlife considers that the proposal would have a significant adverse effect on the ecology of the region. The Natural History Society of Northumbria objects to the application on the grounds that the mitigation proposed is not sufficient to avoid an overall negative impact on flora and fauna. [210,398,399,418,438, 468-471,480-482,488,505]

C59. Pink-footed geese use the Druridge Bay area in large numbers. They use parts of the application site as a feeding ground at times, in particular its eastern side,

⁴²⁶ Suggested Condition 3e) Annex B.

in relatively large numbers. Concern has been raised about whether there would be sufficient alternative feeding areas when these fields were affected by the mining operation. Mitigation measures were the subject of discussion and negotiation, outside the Inquiry, between the applicant/NCC and RSPB/NWT. This resulted in revised plans being submitted during the Inquiry for mitigation areas, where sacrificial crops could be grown or grain feeding take place. I am satisfied that during Phases 1 and 5 of the operation unused parts of the site would be sufficient for these purposes. During Phases 2-4 pink-footed geese would be displaced from a large operational area of the proposed mine. But it seems to me that the alternative fields identified within the site boundary as feeding areas would reasonably compensate for this loss. There is no evidence that geese using areas outside the application site, such as in the vicinity of Cresswell and Druridge Ponds, would be likely to be disturbed by noise from the mining operation. Given that pink-footed geese appear to be opportunistic in seeking out new feeding grounds, I consider that SAVE takes an unduly pessimistic view about the prospects of providing appropriate mitigation. [10,132-135,260,426,434]

C60. There is no reason to doubt that the measures proposed in Restoration First would benefit yellow wagtails and adequately provide for any displaced from the application site. The proposals to improve wetland habitat in the locality would be beneficial for waders and wildfowl. These habitat improvements, including on restoration of the site about 100 ha of coastal and flood plain grazing marsh, would also be beneficial for other birds and wildlife affected by the proposed surface mine. I agree with NCC's Principal Ecologist that these wet grassland and shallow open water habitats, because of their scale and location, would have the potential to be of immense value for key species in the Druridge Bay area. There is evidence from the restoration of other surface mines that new habitats beneficial for wildlife can be created, provided that there are adequate controls and sufficient funding. This was apparent from my site visits to Shotton, Brenkley, Pegswood and Oakenshaw. [5,136,138,204-206,209,231,233,423,438,445,457,509,513]

C61. I am satisfied that sufficient survey work has been undertaken to assess whether Great Crested Newts are present in the locality, and that the proposal would not adversely affect Cresswell Ponds SSSI. It also seems to me that controls on dust and discharge of water would mean that it would be unlikely that the operation would give rise to any pollution that would have a significant effect on sand eels within Druridge Bay, on which the internationally important roseate tern relies. The proposal would not have a significant adverse effect on other SSSIs or nature reserves in the locality. [137,258,259,419,420,438,502-504]

C62. The section 39 agreements pursuant to the Wildlife and Countryside Act 1981 are a material consideration in determining this application. Initially these would provide necessary mitigation and aftercare, but in the long term the requirement that from the end of the 25 year maintenance period each part of the Management Areas would be managed in perpetuity in such a way as promoted the development and conservation of its biodiversity, would be particularly advantageous. I do not consider that the reservations expressed by RSPB, NWT and SAVE detract significantly from the overall benefits of the section 39 agreements. I consider that they contain adequate provision for wildlife surveys throughout the operational and aftercare stages. It would be reasonable to include some flexibility in the detailed arrangements given the period over which

the obligations would endure, and specific provisions about future water management would not significantly undermine the achievement of objectives for the management of wet grassland. The section 39 agreements should therefore be given considerable weight.

[9(7),15,139,207,261,470,471,484,497,498,Annex C]

C63. The Secretary of State is the competent authority for the purposes of Regulation 63 of The Conservation of Habitats and Species Regulations 2017.⁴²⁷ This requires an appropriate assessment of the implications for a European site or a European offshore marine site for a project which is likely to have a significant effect on the Site (either alone or in combination with other plans or projects). Natural England in 2016 endorsed an assessment by NCC, which concluded that the proposal is not likely to have a significant effect on the Northumbria Coast SPA, either alone or in-combination with other developments. Nothing raised at the Inquiry indicates that this assessment should be revised or updated. On the available evidence, I am satisfied that the proposal is not likely to have a significant effect on the SPA, or the Northumberland Marine Potential Special Protection Area (pSPA), either alone or in-combination with other developments. [44,45,175]

C64. In the short term, I consider that the proposed development would have an adverse effect on biodiversity of minor significance given the mitigation proposed by Restoration First. In the medium term, as the on-site restoration matured, along with the on-going benefits of the off-site mitigation works, the scheme would result in a benefit to biodiversity of minor significance. In the long term, with some 100 ha of land subject to the section 39 agreements, I consider that there would be a benefit to the wildlife resource in the Druridge Bay area of substantial significance. Combining these into an overall effect, it seems to me that the whole scheme would result in a benefit for biodiversity of moderate significance. This is a factor that should be given moderate weight in favour of the proposal in the planning balance. [174,208]

(4) Heritage assets

Low Chibburn Medieval Preceptory

C65. The Preceptory survives as an isolated ruin, but it was designed to see into, and be seen in, the local landscape. Notwithstanding the changes to its setting by past mining restoration, the Preceptory retains a significant presence in this flat landscape. OBM1, at 25 m high, would be a substantial feature in the low lying landscape to the south of the Preceptory. It would, to some degree, impinge upon the wide setting of this heritage asset, and adversely impact upon its setting. This would harm the historic significance of the SAM. [9(6),49,157,165,196,494,VP15]

C66. NCC acknowledges that the development would have a low visual impact on the setting of the Preceptory, resulting in some harm, which should be given great weight in accordance with paragraph 132 of the *Framework*. NCC notes that the works for the improvement of the PRow and access, security and interpretation would all be modest, and so considers that the section 106

⁴²⁷ The Conservation of Habitats and Species Regulations 2017 came into force on 30 November 2017.

obligation would be fairly and reasonably related in scale and kind to the proposed development.⁴²⁸ NCC considers the obligation CIL compliant, and that it should be given great weight.⁴²⁹ However, it seems to me that the enhancements proposed in the sixth obligation of the section 106 agreement, whilst welcomed by Historic England, would not mitigate much, if any, of the identified harm. Even with completion of the proposed enhancement works to the SAM, OBM1 would remain as an intrusive feature within the setting of the Preceptory. [179,184,271,387]

C67. I do not consider that the sixth obligation would be necessary, and so find that it would not comply with the CIL Regulations. However, if required to be taken into account to determine whether non-CIL compliant benefits would tip the paragraph 149 balance, I consider that the local, community or national benefits of the proposed improvements to the Preceptory should be given some slight weight.

Widdrington heritage assets

C68. The remains of Widdrington Castle and 18th century Gothic castle and gardens survive below ground and are visible as earthworks, some 850 m to the north-west of the toe of proposed OBM1. The setting of this SAM comprises the nearby fields. The local topography and existing vegetation would mean that the proposed surface mine and mounding would not have a significant effect on how these assets were appreciated in their local setting. [157,196,495]

C69. The Church of the Holy Trinity at Widdrington is a Grade I listed building located on high ground, some 950 m to the north-west of the toe of proposed OBM1. A part of OBM1 would be visible above a local rise in the land. Parts of OBM2 would be visible in the distance. However, the church is set well within the village and the fields immediately adjoining it. The local topography and existing trees would mean that the proposal would not have any significant effect on the setting of the church. I find that the proposed development would not adversely impact upon the significance of heritage assets in Widdrington. [50,53,156,196,495,VP12,VP13]

Other listed buildings

C70. Cresswell Tower House, also known as Pele Tower, is a SAM and Grade II* listed building. Structures associated with the Tower are Grade II listed. It is located adjacent to a wooded area, some 2 km to the south-east of the proposed mounding around the mine. In this location the Tower is appreciated in a wide setting, but adjoining woodland limits views to it from the north-west and south-west. Its setting is more focused on land to the north, including parts of the dunes, along with open fields and the coastline to the east and south. The proposed surface mine and mounding would not be sited in this direction, and given the separation distance, along with intervening development in Cresswell, would not have any material effect on the setting of the Tower. [51,196,272,ID/APP17,ID/SAVE11]

⁴²⁸ ID/NCC5.2 paragraphs 13-16.

⁴²⁹ ID/NCC5.1 section 8(1).

- C71. The setting of Druridge Farmhouse and associated Grade II listed structures consists of the immediate fields around these buildings. The proposed mounding would be apparent in the wider context of these heritage assets, but would not have much, if any, effect on their setting. The mounding would not in any way diminish the significance of these agricultural buildings. [52,156,VP17]
- C72. The setting for Hemscott Hill Farmhouse, and Grade II listed cartshed, shelter sheds and pigsties, extends to nearby fields, but not to the more distant agricultural landscape in which the proposed mounding would be seen. The applicant identified some minimal negative effects on the significance of the farmhouse and associated buildings. Given the separation distance, size and position of modern farm buildings, along with vegetation, I do not consider that the proposal would unduly affect the setting of these heritage assets or their significance as part of the agricultural history of the area. [156,VP18]
- C73. Several buildings in Ellington and Cresswell, including St Bartholomew's Church, are listed. These buildings largely relate to the settlements in which they are located and have a limited setting that would be unaffected by the proposed surface mine. There is an outlook from the rear of the church towards the proposed development, but the proposed mounding and surface mine would be seen in the distance, well beyond the nearby fields that contribute to the setting of the church. I do not consider that the proposed development would have a significant adverse effect on any listed buildings in Cresswell or Ellington. [52,157,VP1]

Undesignated heritage assets

- C74. The undesignated World War II decoy control building located within the site, along with anti-glider ditches, would be removed by the proposed development. The decoy control building lacks the special architectural or historic significance to merit designation. Nevertheless, it is a feature of some historic interest. I consider that its loss could be mitigated by a programme of historic building recording, consistent with paragraph 141 of the *Framework*. It would not be necessary to require its relocation, or for it to be reconstructed off-site, as part of the proposed Discover Druridge heritage trail. This has been raised as a possibility, but the section 106 agreement does not specify how the Discover Druridge contribution would be allocated. [48,180,452,512]
- C75. The World War II pillbox located on a hilltop just south of Hemscott Farm is undesignated. The operational mine would be some 425 m to the west of the pillbox at Hemscott Hill, whereas the defensive foci of the structure is to the north, east and south, and so I do not consider that the development would materially impact upon the setting or significance of the pillbox. [54,512]
- C76. Several fields, mostly located towards the centre of the site, include areas of rig and furrow. These would be removed as part of the development, resulting in a loss of a feature that provides some indication of time-depth in the historic landscape. These areas of undesignated rig and furrow might not be particularly important in national or regional terms, but locally they have a greater significance because of the extent to which the historic landscape has been transformed by past surface mining. In this context their loss should be given more weight. [56,430]

C77. Although parts of the application site retain a high potential for the discovery of significant archaeological remains spanning the prehistoric to the modern, there is nothing to indicate a likelihood that it would contain any features of archaeological interest that might warrant *in situ* preservation. On that basis, I am satisfied that archaeology is a matter that could be reasonably addressed by the imposition of a planning condition requiring a programme of archaeological work in accordance with the Highthorn Archaeology Mitigation Brief.⁴³⁰ It has also been suggested that the Discover Druridge contribution might in part fund measures to mitigate any harm to local archaeology. [221,426,452,512]

Conclusions on heritage assets

C78. With the exception of the loss of the non-designated heritage assets on the site, any adverse impact on designated assets would be temporary and reversible. Noise from the operational surface mine might at times detract from the character of the area, but would be unlikely to have a significant effect on the setting of any heritage assets. However, I am not convinced that the improved field pattern, planting and public access proposed as part of the restoration scheme would be of much benefit to heritage assets in the area. Any such benefits would not outweigh the harm I have identified. The development would preserve the setting of listed buildings in the locality. However, it would have an adverse impact on the setting of the Preceptory SAM, and would remove some undesignated heritage assets. [28,438]

C79. I consider that the proposal would have an adverse effect on heritage assets of minor significance in the short term. But the effect would be negligible in the medium and long term. Overall, the harm would be of negligible/minor significance. This would be less than substantial harm to the significance of designated assets, which should nonetheless be weighed against the public benefits of the proposal. In addition, the minor harm to non-designated assets should be weighed in a balanced judgement, in accordance with the *Framework*. Together, these would be a consideration that should be given some slight weight against the proposal in the planning balance. [158,197,273,274,438,493,496,513]

(5) Hydrology

C80. There has been substantial groundwater recovery in the area following the closure of Ellington colliery in 2005. The water levels in the former mine workings, now flooded, along the southern and eastern margins of the application site would require that ground water levels be lowered to enable extraction at Highthorn to take place. De-watering by large scale pumping at Highthorn is not being pursued by the applicant because of operational complexity and the need to ensure that the site timetable could be met. The two remaining options are; (i) drawdown facilitated by pumping at Lynemouth by the Coal Authority, and (ii) the retention of coal barriers around the flooded old workings. Both options would be operationally feasible.

C81. Negotiations are continuing with the Coal Authority, but the applicant's preferred option would be to retain a coal barrier at appropriate levels so that there would be no interface with the old mine workings, and no more than limited

⁴³⁰ Suggested Condition 56 Annex B.

seepage of groundwater into the void. Ground water management would be a matter for the operator, but it seems to me that there would be scope within the operation, and the site, to deal with ground water, whichever option prevailed, without a significant adverse effect on land or water resources beyond the site boundary. This would include the possibility of additional on-site treatment lagoons being required, along with any resultant impact on ecological mitigation measures. There is no evidence of any hydrological link between the proposed excavations and Cresswell Pond SSSI, and the application site is located within a different mining block to Hauxley.

C82. I am satisfied that ground water and drainage considerations could be adequately addressed in the circumstances that apply here by the imposition of appropriate planning conditions.⁴³¹ The Environment Agency also considers that any remaining uncertainties concerning water management could be addressed by a planning condition dealing with any on-site pumping and necessary storage ponds to hold and treat water prior to discharge to the Hemscott Burn.

C83. The proposed development would require a discharge consent for water released from treatment areas. This would specify the maximum amount of water to be discharged on greenfield rates, along with any limits on substances within the water. There is no convincing evidence that acid mine water here would give rise to any insurmountable problems. The relevant authorities would need to be satisfied that discharges would not cause deterioration of the Northumberland South coastal waterbody and the Coquet Island & St Mary's Marine Conservation Zone. The *Framework* states that it can be assumed that the pollution control regime will operate effectively.

C84. Parts of the site are within flood zones 2 and 3 for coastal flooding. But the excavations could be used to store water during prolonged wet weather or tidal inundation, and any risk of overtopping of the treatment lagoons could be managed by pumping water back into the excavations. Flood risk would be an issue for the operator, but would be unlikely to significantly affect safety or property outside the operational site.

C85. In the short term the changes to Hemscott Burn and local drainage could result in an adverse impact of minor significance, but in the medium and longer term, and overall, I consider that any effect on the local hydrology would be likely to be negligible. Any harm to hydrology should not be given much weight in the overall planning balance.

[7,38,59,67,68,134,140,150-155,262-264,296,419,420,423,438,446,451,469,488,490,492,499,504,505,514]

(6) Highway safety

C86. The operational surface mine would result in a maximum of 150 HGVs entering and 150 HGVs leaving the site per day. This would add up to 300 HGV movements per day onto the local road network. The coal lorries would be distinctive, and their increased presence on local roads would be noticeable. However, the route used to transfer the coal to either Battleship Wharf at Blyth, or Butterwell Disposal Point for rail transport, would follow a part of the

⁴³¹ Suggested Conditions 49-51 Annex B.

designated Road Freight Network. The proposed priority access with a ghost island turning pocket on the A1068 with a deceleration length appropriate for the 60 mph speed limit would provide an appropriate access to the site compound. A planning condition would prevent loaded HGVs from turning right out of the site access.⁴³² There is no technical highway evidence to indicate that a roundabout would be required here, or that the site access should be via a roundabout at the junction of the A1068 and Mile Road.

C87. HGVs might be slower moving vehicles on single carriageway sections of the A1068, but there is no convincing evidence that any capacity, junction or forward visibility limitations would result in the additional traffic from the proposed surface mine having an unacceptable adverse effect on highway safety. The Highway Authority has considered the accident record for local roads and has no objection to the proposal. However, there is local concern about conflict between HGVs and vulnerable road users such as cyclists, equestrians and pedestrians. But any such vulnerable users who currently use the A1068 would already have to be prepared to deal with fast traffic, including HGVs, and for many there would be alternative, safer and more attractive routes available. Provision of a combined cycle and pedestrian path from Hagg House Farm to the Houndalee roundabout would not be necessary to mitigate any harm arising from the scheme. Accidents such as that which occurred at the roundabout in Cramlington involving a coal lorry are adventitious. This incident does not indicate that the additional coal lorries on local roads would significantly increase the risk to other users of the highway.

C88. I do not consider that the proposed development would result in any severe residual cumulative highway impacts for the purposes of applying the *Framework*. The highway considerations here are matters that could be addressed by the imposition of appropriate planning conditions.⁴³³ In the short term the surface mine could have a minor adverse impact on some road users, but overall the effect would be of negligible significance. Little weight should, therefore, be given in the planning balance to concerns about highway safety.

[14,64,148,149,195,275-277,414,421,438,449,510,514]

(7) Tourism and recreation

C89. Many local businesses rely on tourist trade. These provide accommodation, recreation, goods and services to visitors to the area. Businesses located near to the application site are understandably apprehensive about the potential for an operational surface mine to deter visitors and so affect their trade. Some consider that this application has itself resulted in a fall in bookings for accommodation. Other businesses are awaiting the outcome of the application before committing to new investment in tourism infrastructure.

[37,161,266-269,398,399,432,438,447,466,486]

C90. There is some evidence that local businesses can operate successfully close to the surface mine at Brenkley and Shotton. However, the locality in which these mines lie has more of the characteristics of an urban fringe area, and so it is not directly comparable with the Druridge Bay area. I have found that the proposed

⁴³² Suggested Condition 13 Annex B.

⁴³³ Suggested Conditions 3 i-m) Annex B.

surface mine would adversely affect the character of the area, and this might be sufficient to discourage some visitors. The extent to which this would apply in practice would only be apparent once the development was operational. I have no doubt that the beach, dunes and birdlife would for many people remain a strong attraction for them to visit the area. It may well be that, with the mitigation measures proposed, the scheme would not have such a serious impact as some businesses currently anticipate. Nevertheless, if people perceive the proposed mine to be problematic for visitors and businesses which rely on their custom that could, by itself, have a significant adverse impact on the local economy. [5,159,235,236,238,270,438]

C91. Any such impact would be temporary, and would diminish with the restoration of the site. In the very long term the proposed wetlands, planting and improvements to PRow could provide additional recreational opportunities in the area. SAVE argues that there are other means to achieve these objectives without requiring a surface mine. But past experience indicates that landowners, for whatever reason, have not made these opportunities available to the local community and wildlife organisations. In the absence of the Highborn surface mine scheme there is nothing to indicate that this situation would change, notwithstanding the ability of the local community to fund raise for such works. However, I have doubts about the contribution Discover Druridge could make in this regard, and question how this obligation should be taken into account in the overall planning balance. [138,160,222,433,437,509]

C92. The third obligation, to establish a Discover Druridge Partnership along with a contribution of £400,000 to a charitable fund, does not provide any certainty about what the funds would go toward, other than stating in Appendix 1 that it would offer the opportunity to establish organisational and physical linkages that would aim to improve green infrastructure in areas of Druridge Bay and its hinterland, encompassing the area from High Hauxley to Cresswell, and setting out a draft vision statement. NCC considers that it would operate to contribute to offsetting any adverse impact on tourism, or separately provide mitigation for archaeological impacts. SAVE considers that it would not be necessary to make the development acceptable. [9,167,168,221,291-293,387,457]

C93. I consider that the aims and ambition for Discover Druridge are so broad that the fund could be used in ways that were completely unrelated to the acceptability of the coal extraction in planning terms. I find, therefore, that this obligation would not be necessary, and would not be CIL compliant. However, if I am wrong about this, and the obligation would be required to mitigate harm to the local tourism economy and to archaeology, then it could properly be taken into account in the planning balance. But in those circumstances, as necessary mitigation, it should not be given much weight as a benefit in the overall balancing exercise. Nevertheless, if required to be taken into account to determine whether non-CIL compliant benefits would tip the paragraph 149 balance, I consider that the local or community benefits of Discover Druridge should be given moderate weight because a £400,000 contribution would be a significant boost to local resources. [437]

C94. The fifth obligation in the section 106 agreement to establish and procure permissive bridleways would be CIL compliant because it would be necessary to address the effects of the required footpath diversion and to promote access in

the vicinity of the Heritage Coast. It should be given some slight weight as a benefit of the proposal. [9(5),437,514]

C95. In the short term, I consider that the surface mine would have an adverse effect of moderate significance on tourism and recreation in the locality. This effect would be less pronounced as the operation moved into the restoration phase, but it would be likely, at least initially, that the raw feel to the new landscape would have an adverse effect of minor significance on local tourism and recreation. In the very long term the landscape and biodiversity improvements might add to the tourist attraction of the area, but this would depend upon many factors, and so I consider that the long term effect of the scheme should be assessed as being of negligible significance in determining this application. Combining these into a single overall assessment of likely impact on tourism and recreation, I consider that the scheme would have an adverse effect of minor significance. This should be given some slight weight against the proposal in the planning balance.

(8) Agriculture

C96. The *Framework* provides that the planning system should contribute to and enhance the natural environment by, amongst other things, protecting and enhancing soils. For mineral sites it notes, albeit for the preparation of local plans, that worked land should be reclaimed at the earliest opportunity, and that high quality restoration and aftercare takes place, including for agriculture. Soil analysis indicated that 99% of the application site is classified as Grade 3b, moderate quality agricultural land, limited by soil wetness. The proposal would not affect the best and most versatile agricultural land.

C97. The proposed surface mine would result in the loss of most of the agricultural land on site for the period it was being worked, and it would be likely for some time after restoration that the productivity of the agricultural land would fall short of its current productivity. It would also be relevant that some 100 ha of land currently in agricultural use would be subsequently managed primarily for the benefit of wildlife, which could represent a significant loss of agricultural land for the local area. The proposed surface mine would, therefore, be at odds with the underlying aims of the *Framework* concerning soil conservation. However, Natural England, having regard to its statutory remit under Schedule 5 of the 1990 Act, raises no objection provided that any permission was subject to conditions to safeguard soil resources and to promote a satisfactory standard of reclamation.

C98. Subject to appropriate soil handling and restoration, which could be secured by planning conditions, I do not consider that any adverse effects on soil quality or agricultural productivity in the long term would weigh significantly against the proposal. But in the short term the adverse effect on agriculture would be of substantial significance, albeit reducing to minor significance in the medium term as the site restoration matured. Overall, I find that the proposal would have an adverse effect on agriculture of minor significance, which should be given some slight weight against the proposal in the planning balance.

[33,66,129,194,265,406,430,432,502,Annex C]

(9) Demand/need for and supply of coal, fireclay and sandstone

- C99. Shallow and deep-mined coal and fireclay are defined in the *Framework* as minerals of local and national importance, which are necessary to meet society's needs. Paragraph 142 states that minerals are essential to support sustainable economic growth and our quality of life, and that it is therefore important that there is a sufficient supply to provide, amongst other things, the energy and goods the country needs. The need for, and supply of, minerals is therefore a material consideration in determining this application. [213,489]
- C100. The applicant estimates that the scheme would provide 10,000 tonnes of fireclay and 10,000 tonnes of sandstone. There is evidence of a local need for fireclay by a brick manufacturer, but whether the Highthorn site could supply this market would depend upon the quality of the fireclay. There is no certainty about this, and so no proper basis for giving much weight to the benefits of any fireclay extracted from the site. The same applies to sandstone. Furthermore, there is nothing to indicate how the estimated supplies of fireclay and sandstone might be affected by any reduction in the proposed excavation to provide necessary coal barriers for hydrological reasons. In terms of mineral resources it is therefore coal that is the primary consideration here in considering supply and demand in accordance with relevant policy. The scheme would extract either 3 Mt or 2.765 Mt (depending upon options for dealing with ground water) of coal from six seams, at a maximum rate of 0.7 Mt per year. [62,278,442]
- C101. Banks Mining has in the past exported some coal to Spain. Such exports might be of some benefit to the UK's balance of payments, but would clearly fall outside the scope of paragraph 142 of the *Framework* concerning a sufficient supply to provide the energy that the UK needs. Any exports of coal should not, therefore, be a significant consideration in assessing the need for coal in determining this application. [351]
- C102. The applicant argues that another basis for need for Highthorn coal is for users outside the power sector, principally for mineral and chemical products, along with paper and pulp. The annual demand for steam coal in the UK from this sector ranged between 2.2 Mt and 2.9 Mt over the period from 2005 to 2015. Depending on the market some Highthorn coal could potentially be used by the industrial sector. But there is no convincing evidence that substantial amounts of Highthorn coal would be likely to be used for purposes other than coal-fired power generation in the timeframe envisaged in the indicative working programme, or the period specified for the operation in the suggested planning conditions. The emphasis should therefore be on assessing the need for Highthorn coal for the generation of electricity. This is the basis on which the applicant assessed the likely carbon emissions from the proposed development. [108,298,378]
- C103. The demand for coal for electricity generation has fallen significantly since 2012, but there is evidence that it continues to provide an important contribution to the energy mix, particularly during the winter. Assessing the likely future need for coal is problematic as this depends on a whole host of market considerations. The BEIS Updated Energy and Emissions Projections Reference Scenario relies on a large amount of new gas-fired capacity. Given the outcome of recent Capacity Market auctions there is some doubt about how much new capacity would be available in the timescale that the Highthorn mine would

operate. The Government has clarified that it will not impose requirements that would lead to the closure of unabated coal by 2025 without assurance that a secure and reliable electricity supply will be maintained. [93-97,105,115,308,357,374,437,438]

C104. WMS1 refers to replacing coal-fired power stations 'with gas'; the *Consdoc* refers to replacement capacity 'such as gas'. Clearly the provision of new gas capacity is an important element of the strategy to maintain a secure and reliable electricity supply. However, the comparative lack of success in the 2016 T-4 Capacity Market Auctions of combined-cycle gas turbines (CCGT) means that there is unlikely to be much new gas capacity by 2021/22. Open-cycle gas turbines (OCGT) are a much more expensive form of generation with low load factors, and so would be unlikely to make a more substantial contribution than they currently do, particularly at peak times. There is significant new gas capacity with planning permission and in the pipeline, which could be developed if the economic conditions were favourable. Measure could be introduced to encourage this, such as changes to how the Capacity Market operates. But there is some doubt about how much new gas capacity will be provided to replace coal-fired generation in the period during which the Highthorn mine would be operational. [90,99-101,360,366,367,371]

C105. I do not share the applicant's view about the likely future contribution of renewable sources of energy. The evidence indicates a likelihood that the strong trajectory of growth in renewables will continue into the foreseeable future. The applicant also underestimates the role that new battery technology could play in the period in which the Highthorn mine would be operating. Using large scale batteries to spread out peaks in demand could impact upon the role that coal currently plays in that regard. [102,365,368]

C106. The Industrial Emissions Directive (IED) is likely to result in some of the existing coal-fired power stations reducing production in 2020. But there is scope for the use of a substantial amount of coal even if the IED had full effect. Again, it would be a matter for the market, but it seems likely that significantly more coal than would be produced annually at Highthorn could be required by IED compliant generators post 2020. It is not possible at this stage to speculate about the likely effects of any more restrictive controls on emissions. Similarly, the introduction of smart grid technology could have an effect on demand for coal at peak times, but it is too early to be certain about what impact this might have during the time the Highthorn mine would be operational. The same applies to interconnectors with other countries. In the longer term these could have a significant effect, but there is uncertainty about what contribution they will make in the timeframe that is relevant here. [103,104,106,397]

C107. In terms of the future supply of coal a figure of 25.5 Mt was agreed at the Inquiry to be likely to be available from other permitted coal sites and stocks in the UK. But the parties did not come to any consensus about the likely demand for coal to 2025.⁴³⁴ This would depend upon many factors, which makes predictions difficult and open to question. Nevertheless, based on available evidence, it currently looks likely that predicted demand for the period from 2018-2025 would exceed the supply from other permitted coal sites in the UK. If

⁴³⁴ See Inspector's footnote to paragraph 376 of this report.

so, FoE argue, given that imported coal has made up 69% of the UK's coal supply over the last 10 years, and amounted to 19 Mt in 2015 alone, there is simply no prospect at all that imported coal would account for less than the likely difference between supply from other permitted coal sites in the UK and demand between now and 2025. However, there is nothing to indicate that any difference between demand and known UK supplies over this period would, or should, be made good by imports alone. There would be economic advantage for the UK in using indigenous coal, and possibly savings in transport emissions. There is no evidential basis for FoE's conclusion that Highthorn coal would create a surplus in UK domestic requirements. [109,308-310,348-350,374-379,381,437,438]

C108. Ultimately the need for coal in the period that the Highthorn mine would be operational would be dependent in large part on the relative prices of coal and gas. This is a matter for the market and would be unlikely to be influenced by granting planning permission for 3 Mt of coal. Whether the need for coal would be met from indigenous or imported supplies would also be a matter for the market. Nevertheless, there is some force in the applicant's submission, given the uncertainty about the need for coal up to 2025, that it would be unsafe to conclude that there will not continue to be demand/need for coal over this period, particularly for the duration of the planned Highthorn operation.

C109. The evidence before the Inquiry points to a likely need for the amount of coal that the Highthorn site would produce during its operational life in order to ensure a sufficient supply to provide the energy the country needs. Given this finding, along with my views regarding consideration (16) later in this report, I consider that a 'window' currently exists for the use of the Highthorn coal. But this window is narrowing. Much will depend on the details of the implementation for the phase-out of unabated coal for power generation, including the regulatory approach adopted and its timing, which are yet to be determined by the Government. The benefits of the coal and to the economy are related so I have considered them together in assessing significance. How these should weigh in the planning balance is a matter that should properly be incorporated into the next consideration (10), which deals with economic effects.
[30,105,107,173,219/220,358,362,369]

(10) Employment and local/national economy

C110. There would inevitably be some uncertainty about how many new jobs the proposed scheme would create, as this would depend upon how many employees were able to transfer from existing surface mines that were closing. It is more relevant to consider the overall number of jobs that would be either retained or created. The applicant estimates this to be 100 jobs, but this could be affected by the quantity of coal extracted, along with many other operational considerations. Nevertheless, the mine would provide a significant level of employment in this area, and these would be skilled and well paid jobs, albeit temporary for the duration of the operation. These jobs would make a significant contribution to the local economy, both directly and due to a multiplier effect. There is no convincing evidence that this gain in local employment and economic activity would be outweighed by likely job losses or a reduction in the tourist economy as a result of the proposed surface mine.
[162-164,223,231-234,236-238,287-290,401,403,405,437,442,448,454,457,462,463,465,466,467,472]

C111. FoE argue that the phase-out of coal-fired power stations would inevitably have impacts on associated employment in coal production, and that allowing this application because it would provide jobs would be simply putting off the inevitable. That approach would deprive the local economy of the benefit of these jobs, even if temporarily. Furthermore, if the coal is needed to contribute to national energy needs it would make a significant contribution to the national economy. The *Framework* provides that great weight should be given to the benefits of mineral extraction, including to the economy (paragraph 144). I find that the benefits of the coal and employment to the economy would be of major significance. But these benefits would only apply in the short term, and so overall I consider that they would be of substantial significance. But in the overall planning balance this is a factor which should be given great weight in accordance with the provisions of the *Framework*. [23,223,380,478,479]

(11) Greenhouse gases and climate change

C112. Some 90% of objectors to the proposed development stated that the coal extraction would not be compatible with the UK Government's commitment to cut carbon dioxide emissions in line with the Climate Change Act and Paris Agreement. Many shared the view expressed by Caroline Lucas MP that permitting new opencast mines would be entirely at odds with the Paris Agreement's goal of keeping global temperature rise below 1.5 degree Celsius, which has been ratified by the UK, and with the Government's commitment to phase-out coal, as a crucial part of meeting carbon budgets under the legally-binding Climate Change Act. Many objectors to the proposal commented that burning coal, the most polluting fossil fuel, would not tackle climate change. [443,446,485]

C113. Burning Highthorn coal would release some 7 Mt CO₂ eq into the atmosphere. The Inquiry heard very different estimates for the likely GHG emissions from extracting, processing and transporting the coal, and restoring the site. Undertaking a life cycle assessment for emissions is complex and the outcome would depend much on the many assumptions that would have to be made. Without being able to properly test these assumptions figures for life cycle GHG emissions may well be of spurious precision. What was evident from my site visits is the scale of the task here, in constructing/removing mounds and shifting overburden, that would be necessary to extract 3 Mt of coal and restore the site, and which would all rely on the extensive use of large diesel plant and equipment. Although the Inquiry could not agree a figure for carbon emissions from this process, it would be likely to be a substantial addition to the 7 Mt CO₂ eq from coal combustion. Again it is impossible to calculate the likely emissions overall from imported coal, but if it was transported some distance by ship that would be likely to result in overall higher carbon emissions than using indigenous coal. [110,294,295,407,417,422,424,427-429,438,485]

C114. FoE argue that using Highthorn coal would have some effect on the price and availability of coal that would ultimately result in more coal being used and greater carbon emissions. The economics of supply and demand theoretically could come into play if Highthorn coal, either by itself or via some cumulative effect, would be likely to significantly affect the market. But that seems highly improbable. The international market for coal would be dominated by other factors, and the 0.7 Mt per year contribution from Highthorn would be insignificant by comparison with global production in the order of 5,500 Mt per

year. Even if contributions from other small coal mines resulted in a cumulative effect, it is difficult to see how this would make much of an impact on the world market price for coal, where there is evidence that a massive contribution of 150,000 Mt in the USA to the global market resulted in only an 8% increase in coal consumption. [111-113,218,358-362]

C115. The extraction, processing and combustion of up to 3 Mt of coal would result in significant emissions of GHG, albeit probably less than would result from using the same quantity of imported coal. But in assessing this application I do not consider that the argument that imported coal would substitute for Highthorn coal if the application was refused should hold sway. In this scenario there would be some uncertainty about what might replace the energy that would have been generated from Highthorn coal, possibly resulting in a different level of GHG emissions. Whereas if the application was approved and the permission implemented there is much more certainty about the likely GHG emissions that would result. I find that GHG emissions from the proposed development would adversely impact upon measures to limit climate change. Most of the GHG would be emitted in the short term, resulting in an adverse effect of substantial significance, reducing to minor significance in the medium term. GHG emissions in the long term would be negligible, but given that the effects of carbon in the atmosphere would have a cumulative effect in the long term, I consider that overall the scheme would have an adverse effect on GHG emissions and climate change of substantial significance, which should be given considerable weight in the planning balance. [400]

Section 106 obligations not included in the above conclusions

C116. The first obligation in the section 106 agreement would establish a Highthorn Surface Mine Site Liaison Committee to share information between the local community, the operator and the authorities. This would be necessary in the interests of community involvement in the regulation of the operation so as to safeguard local amenity, and so would be CIL compliant. But this should attract little, if any, weight in the planning balance, given that it would be necessary as a direct consequence of the development, and would not result in any other advantage or benefit for the local community. [9(1)]

C117. The skills fund (fourth obligation) based on a coal sales payment equal to 7.5 pence per tonne of coal extracted, for the purposes of providing training and employment opportunities meeting the needs of the local area, offering local people access to grants to help them to take up an offer of work linked to training, would not be CIL compliant. NCC concurs with this finding.⁴³⁵ This obligation would, however, provide up to £225,000 for local training depending upon how much coal was extracted. This would make a significant contribution in promoting local employment opportunities, and so would have some local and community benefits, which should attract moderate weight if required to be taken into account for assessing compliance with paragraph 149. [9(4),437]

C118. The eighth obligation concerns the approval of a restoration security scheme and establishment of the restoration security. There are exceptional

⁴³⁵ ID/NCC5.1 schedule 6(1).

circumstances here that would warrant a bond or other financial guarantee.⁴³⁶ These are the potential restoration costs in this case given the size of the operation, along with past experience in some other opencast coal mining operations where insufficient funds have been available to undertake restoration. I consider that secure provisions for a guaranteed sum sufficient to cover restoration and aftercare costs, at all phases of the operation, and set out in unassailable terms, would be a prerequisite for any implementation of the application scheme. [9(8),285,422,429,450,491,500]

C119. The provisions in the obligation would give considerable discretion to NCC about how the restoration security would apply. Schedule 10 requires a Restoration Security Scheme to be approved in accordance with the principles set out in Appendix 3 of the section 106 agreement. This sets out volumes for topsoil, subsoil and overburden, along with tonnes of coal remaining, at each phase, but leaves the cost of restoration and aftercare during each phase to be assessed. The obligation provides that the Restoration Security could be a financial guarantee, and/or a bond, and/or a designated fund held in an Escrow Account and/or a parent company guarantee and/or any such other arrangement as agreed between the developer and NCC. The obligation is open to criticism for its want of certainty. [169,302]

C120. Nevertheless, conclusions should be drawn on the basis that NCC, acting reasonably, would do so in the public interest to ensure, in all eventualities, that the site was appropriately restored. Working on that presumption, there is no reason to doubt that the obligation would provide NCC with the necessary process and funding to undertake, or complete, necessary work in circumstances where an operator was in default of any restoration or aftercare commitments. There is no reason to refuse the application because of the way the section 106 agreement deals with restoration security. I consider that the provisions for a restoration security scheme in the obligation would be necessary here to make coal extraction acceptable in planning terms. This obligation is CIL-compliant, but should not be given any weight as a benefit of the scheme because it would be an essential requirement.

⁴³⁶ Sixth bullet point of *Framework* paragraph 144 states that bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances.

Summary tables of significance of effects, weight for obligations, and overall weight in the planning balance

C121. The following table summarises my judgements about the significance of effects for the main considerations in this case, using a scale from negligible, minor, moderate, substantial and major.

	Significance of effects			
	short term (0-6 years)	medium term (7-16 yrs)	long term (17+ years)	overall effect
Landscape character	major adverse	moderate adverse	minor adverse	substantial adverse
Landscape appearance	substantial adverse	moderate adverse	minor benefit	moderate adverse
(1) Combined Landscape Character and appearance				moderate/ substantial adverse
(2) Local amenity	moderate adverse	minor adverse	negligible	minor adverse
(3) Biodiversity	minor adverse	minor benefit	substantial benefit	moderate benefit
(4) Heritage	minor adverse	negligible	negligible	negligible/ minor
(5) Hydrology	minor adverse	negligible	negligible	negligible
(6) Highway safety	minor adverse	negligible	negligible	negligible
(7) Tourism and recreation	moderate adverse	minor adverse	negligible	minor adverse
(8) Agriculture	substantial adverse	minor adverse	negligible	minor adverse
(9) and (10) Minerals, Employment local/national economy ⁴³⁷	major benefit	negligible	negligible	substantial benefit
(11) GHG and Climate Change	substantial adverse	minor adverse	negligible	substantial adverse

Table 1

⁴³⁷ These are considered together because the economic benefits flow from the minerals, and to assess significance separately might result in double counting of benefits.

C122. The following table sets out my views about compliance of the section 106 obligations with CIL regulation 122, along with my judgements about what weight should be awarded to the obligations, using a scale ranging from negligible to slight, moderate, considerable and great.

Section 106 obligation	CIL compliant	Weight in planning balance of CIL compliant benefits	Weight to non-CIL compliant obligations if needed to tip NPPF p149 balance
1. Liaison committee	yes	negligible	NA
2. Hemscott sand extraction	no	NA	slight
3. Discover Druridge	no	NA	moderate
4. Skills fund	no	NA	moderate
5. PRow	yes	slight	NA
6. Chibburn Preceptory improvements	no	NA	slight
7. Section 39 agreements	Not subject to CIL Reg 122 and taken into account in assessing landscape and biodiversity effects in Table 1 and given considerable weight.		
8. Restoration security	yes	negligible	NA

Table 2 [NA is not applicable]

C123. The following table sets out my judgements about what weight should be given to relevant considerations in the planning balance, using a scale ranging from negligible to slight, moderate, considerable and great.

Relevant consideration	Weight in planning balance
(1) Character and appearance	considerable adverse
(2) Local amenity	slight adverse
(3) Biodiversity	moderate benefit
(4) Heritage	slight adverse
(5) Hydrology	negligible
(6) Highway safety	negligible
(7) Tourism and recreation	slight adverse
(8) Agriculture	slight adverse
(9) and (10) Minerals, Employment local/national economy ⁴³⁸	great benefit
(11) GHG Climate Change	considerable adverse

Table 3

⁴³⁸ These are considered together because the economic benefits flow from the minerals, and to assess significance separately might result in double counting of benefits.

(12) Environmental acceptability and the paragraph 149 planning balance

C124. For the reasons set out later in this report, paragraph 149 of the *Framework* is considered to be a key consideration in the planning balance that applies in this case. Paragraph 149 states that permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or if not, it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.

C125. What is 'environmentally acceptable' is not defined in the *Framework*, and there is no guidance about what factors should be taken into account. There is potentially wide scope in what environmental considerations might apply. But it seems to me from the way this policy is framed that the first limb applies to environmental rather than social or economic dimensions of the balancing exercise. However, the analysis would need to take into account short, medium and long term environmental considerations. Furthermore, any environmental benefits applied in considering the first limb should not be taken into account in the second limb. If these were not mutually exclusive a risk of double counting might arise.

C126. 'Acceptable' here, in terms of how high the bar is set for a threshold that would justify a grant of planning permission, has its ordinary meaning of 'adequate', 'satisfactory' or 'tolerable'.⁴³⁹ Therefore, an environmentally acceptable proposal need not necessarily result in no harm, or even no 'net' harm. An unfavourable outcome (for the proposal) to the balancing of its environmental benefits against its environmental disadvantages, need not inevitably rule out a finding that the proposal was, nonetheless, environmentally acceptable. It is the overall judgement about the adequacy of the proposal, whether it would satisfy expectations or needs, and could be endured with forbearance, that would be determinative. It is on this basis that I turn next to consider the environmental balancing exercise in this application, having regard to the matters previously set out in this report, and to judgements about weight as set out in Table 3.

C127. I have found that harm to the landscape character and appearance of the area should be given considerable weight against the proposal. Harm to local amenity should be given some slight weight against the scheme. The overall moderate benefit for wildlife would be a consideration attracting moderate weight in favour of the proposed development in the planning balance. The minor impact during the operation and negligible effect with restoration would mean that the slight harm to heritage assets would to some extent weigh against the proposal, but the harm would be far outweighed by the public benefits of the proposal with regard to its contribution to the local and national economy. Given controls on water resources little weight should be given to any harm to the hydrology of the area as a result of the operation and its restoration. Any additional risk to highway safety as a result of the additional HGVs on local roads would be a minor consideration that should properly attract little weight in the planning balance. Potential harm to local tourism should be given some slight weight in the planning balance. The overall harm I have identified to agriculture from the scheme would weigh to some extent against the proposal and should be given

⁴³⁹ The Concise Oxford Dictionary.

slight weight. Coal is defined in the *Framework* as a mineral of local and national importance, which is necessary to meet society's needs. In accordance with the *Framework* great weight should be given here to the benefits of the coal extraction, including to the economy. The GHG emissions from the extraction, transport and combustion of the coal, along with the implications for climate change, are considerations that should be given considerable weight against allowing the proposal. [82,301,388]

C128. The planning balance here requires first a determination as to whether the scheme would be environmentally acceptable, and if not, whether other benefits would clearly outweigh the harm. On the first limb of paragraph 149 concerning environmental harm/benefits, in my judgement, the considerable landscape harm would significantly outweigh any biodiversity or other environmental benefits of the scheme. The other environmental harm I have identified would tip the balance even further against a favourable finding for the proposal under the first limb. I do not, therefore, consider that the scheme would be environmentally acceptable, or could be made so by the imposition of planning conditions or obligations. I therefore turn to the second limb of paragraph 149. [177,225,300,335-337]

C129. I find, on the available evidence, a likely national need for Highthorn coal, and that its extraction, processing, transport and combustion to generate electricity, would benefit the economy. This is a consideration to which the *Framework* attributes great weight. In my judgement, the national benefits of the proposal would clearly outweigh the likely adverse impacts. I find that the balance in the second limb of paragraph 149 falls in favour of the proposal. I consider that the proposal would comply with paragraph 149 of the *Framework*. [227,228,239]

C130. If the Secretary of State were to come to a different judgement about this, and to find that this balance fell against allowing the application, then it would be necessary to consider whether non-CIL compliant benefits would tip the paragraph 149 balance. However, it seems to me that in these circumstances the slight weight that I consider should be given to the Chibburn Preceptory improvements and to provisions for Hemscott sand extraction, along with moderate weight to the local or community benefits of Discover Druridge and the skills fund (Table 2), would not make much difference in the overall planning balance having regard to the importance of the other considerations. Therefore, in my judgement these benefits would not be rendered CIL-compliant by virtue of their necessity to achieve compliance with paragraph 149.

(13) Development plan

C131. FoE interpret saved Policy C3 of the Northumberland Minerals Local Plan 2000 (MLP) differently from the applicant and NCC. But the syntax of MLP Policy C3 means that it says exceptional circumstances, for the purposes of applying this policy, are where it can be demonstrated that the special landscape, heritage and nature conservation interests of the area would not be adversely affected. The area in question here is the Northumberland coast between Amble and Lynemouth, and the policy implies that the area has special landscape, heritage and nature conservation interests. So if these special interests were adversely affected then planning permission would not be granted for an opencast coal site. That seems to me to be a straightforward and sensible reading of the policy. I disagree with FoE's interpretation that MLP Policy C3 requires exceptional circumstances to justify mineral extraction in certain parts of the County, as

opposed to merely requiring environmental acceptability.
[71-78,170,185-187,313-319,438]

C132. I have found that the proposal would, taking into account short, medium and long term effects, have an adverse effect on the character and appearance of the area of moderate/substantial significance. This harm would be sufficient to demonstrate that the area's special landscape would be adversely affected. Accordingly, MLP Policy C3 provides that planning permission should not be granted for the proposed Highthorn surface mine. I consider, therefore, that the proposed development would conflict with MLP Policy C3.

C133. It would also conflict with Policy C3 of the Castle Morpeth Local Plan 2003 (CMLP) because the proposed operational area of the surface mine would have a detrimental effect on five fields which are located within the designated area of high landscape value (AHLV). [21,32,78,79,188,191,321]

C134. The proposal might gain some support from MLP Policy S1 by making land available for mineral working to provide an appropriate contribution to local, regional and national needs, if the permission would not result in an undue adverse impact on local communities or the environment. However, it would be at odds with the underlying aims of MLP Policies EP3, EP19 and EP20, concerning landscape, local disturbance and cumulative effects, respectively. Furthermore, the conflict with MLP Policy C3 and CMLP Policy C3 would bring the proposal into conflict with the development plan as a whole. Paragraph 215 of the *Framework* states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the *Framework*. Neither of the C3 policies provides for the balancing of the economic, social and environmental dimensions to sustainable development for the purposes of applying the policy provisions of the *Framework*. These development plan policies do not provide for any weighing of benefits against harm, which is necessary for the planning system to properly perform its economic, social and environmental roles, taking into account local circumstances, as set out in paragraphs 6-10 of the *Framework*. I find, therefore, that MLP Policy C3 and CMLP Policy C3 have a high degree of inconsistency with the *Framework*. These policies retain their status and weight as saved development plan policies, but the *Framework* is an important other material consideration in the circumstances that apply here, and I turn to this in the next section of this report.
[18-21,199,229,304,307,312,322-332,389]

C135. No weight should be given to the Northumberland Local Plan Core Strategy Draft Plan (eCS) because this has been withdrawn. [13,22,171,230,304,333]

(14) National Planning Policy Framework

C136. At the Inquiry the parties considered whether relevant development plan policies here were out-of-date for the purposes of applying paragraph 14 of the *Framework*. But they considered that this was not an issue that helps much in determining this application. Even if the second bullet point for decision-taking in paragraph 14 applied that would just refer the issue to paragraph 149, which is a specific *Framework* policy that potentially could indicate that the development should be restricted. This is why the parties considered paragraph 149 to be key to the planning balance in this case. However, given my findings about the likely effects on a valued landscape, it is necessary to consider further how the provisions of the *Framework* should properly apply in this case.

[24,73,81,226,334]

- C137. I have found that relevant saved policies in this case have a high degree of inconsistency with current national policy. In accordance with paragraph 215 of the *Framework*, I find that MLP Policy C3 and CMLP Policy C3 can be given little weight, and so are out-of-date. Accordingly, paragraph 14 of the *Framework* is engaged. This provides that the presumption in favour of sustainable development means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole; or specific policies in the *Framework* indicate development should be restricted.
- C138. Benefits and harm from this proposal are set out in section (12) of my conclusions. I do not consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole.
- C139. Paragraph 149 is a restriction on development in principle, and a specific policy which could indicate that development should be restricted for the purposes of applying paragraph 14 of the *Framework*. However, I have found for the reasons set out in section (12) of my conclusions that the proposal would comply with paragraph 149 of the *Framework*.
- C140. I also consider that paragraph 109, concerning valued landscapes, can be read as a restriction on development in principle, which is caught by footnote 9. The first bullet point of paragraph 109 of the *Framework* is, therefore, a specific *Framework* policy that indicates that development should be restricted. The presumption in favour of sustainable development does not apply here because I have found that the site is a valued landscape, which would not be protected by the proposed development.
- C141. Therefore, the planning balance that applies in determining this application is a straightforward balancing exercise of weighing the benefits of the proposed development against the harm, having regard to the three dimensions to sustainable development, as set out in paragraphs 6-10 of the *Framework*, without applying a 'tilt' in favour of the grant of planning permission.
- C142. This planning balance is a matter of judgement. I have set out my views about the likely significance of effects and weight to be given to relevant considerations above, and summarised my judgements in Tables 1-3. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, require in this case that a balancing exercise be performed to weigh the benefits of the proposed development against its disadvantages. The policies in paragraphs 18-219 of the *Framework*, taken as a whole, constitute the Government's view of what sustainable development means in practice for the planning system.
- C143. If the Secretary of State were to find that national, local or community benefits clearly outweigh the likely impacts so as to justify the grant of planning permission for the surface mine, then the scheme would comply with paragraph 149, which is a specific policy for coal extraction. On that basis the proposed development would be consistent with Government policies relating to the sustainable extraction of minerals (*Framework* Chapter 13). However, the proposal would, to some extent, be at odds with Government policies for conserving and enhancing the natural environment (*Framework* Chapter 11)

because it would not protect a valued landscape, and so would be contrary to paragraph 109.

C144. The extraction and combustion of up to 3 Mt of coal would generate GHG emissions, which would be at odds with the core planning principle about supporting the transition to a low carbon future in a changing climate. But the overall thrust of the *Framework* with respect to climate change is for planning to play a key role in helping to shape places to secure radical reductions in GHG emissions and supporting the delivery of renewable and low carbon energy infrastructure. Discouraging the extraction and use of coal is not included in any of the measures set out in paragraph 95 for supporting the move to a low carbon future, or in paragraph 96 concerning the determination of planning applications. The approach taken in the *Framework* for coal contrasts with that taken for peat extraction.⁴⁴⁰ I find therefore that the proposed development would not be inconsistent with Government policies for meeting the challenge of climate change as set out in Chapter 10 of the *Framework*. [345,346,404]

C145. I find that the overall planning balance in applying the *Framework* as a whole falls in favour of the proposal. I consider, for the reasons set out above, that the proposal would represent sustainable development for the purposes of applying the *Framework*. The proposed development gains considerable support from the *Framework*, which is an important other material consideration in determining this application.

(15) National Planning Practice Guidance

C146. FoE argue that increasing the supply of a fossil fuel could have a negative impact on carbon emissions because it could decrease the price of coal, increase demand, and disincentivise the shift to alternatives. The *Guidance* helps local councils in developing policies for renewable and low carbon energy and identifies relevant planning considerations. The proposed surface mine would only be inconsistent with this guidance if granting permission would impact adversely on the aim of increasing the amount of energy from renewable and low carbon technologies, or would impair the important role planning has in the delivery of new renewable and low carbon energy infrastructure.⁴⁴¹ However, there is evidence that growth in renewable and low carbon technologies has continued to proceed concurrently with the use of coal, and continues to do so even with the changes in subsidies for renewable energy. I do not consider that allowing this surface mine would have a significant effect on future investment in renewable and low carbon infrastructure. I find that the proposed development would be consistent with the Department's amended online guidance on renewable and low carbon energy. [217,341,347,359,368]

(16) Written Ministerial Statements and The Clean Growth Strategy

C147. WMS1 and the *ConsDoc* set out an intention to close unabated coal generation. WMS2 and *The Clean Growth Strategy* take this forward, with Government confirmation that it will proceed with action to regulate the closure of unabated coal power generation units in Great Britain by 2025. But options for

⁴⁴⁰ Fifth bullet point of paragraph 144 of the *Framework* states that when determining planning applications authorities should not grant planning permission for peat extraction from new or extended sites.

⁴⁴¹ Paragraph:001 Reference ID:5-001-20140306.

implementation are still being assessed and the details for a regulatory approach to put this into effect are yet to be set out. A summary of responses to the *ConsDoc*, published on 12 October 2017, notes that the consultation focusses on electricity generation from coal, and that it is not about action to limit or prevent new coal mining operations in Great Britain. It adds that this, along with the ongoing need for coal for other purposes, including household heating and industrial processes such as iron and steel, cement, and other feedstocks, are outside the scope of the consultation. [30,211,212,339,364,371,408,438]

C148. Key policies of *The Clean Growth Strategy* include phasing out the use of unabated coal to produce electricity by 2025, and demonstrating international leadership in carbon capture usage and storage (CCUS). However, CCUS is not likely to be a significant factor for the use of Highthorn coal given the anticipated timescale for the completion of the mining operation and the current position regarding the introduction of commercial CCS/CCUS at scale. The proposed Highthorn mine would not conflict with these Government initiatives because regulatory measures to achieve the intended closure of unabated coal for electricity generation are yet to be set out. The extent that the proposal would affect the natural capital of the area, particularly with respect to tourism and recreation, is considered in the relevant sections of this report and my conclusions. [29,30,31,297,299,309,339-344]

C149. The Committee on Climate Change (CCC) does not set policy, but it is a statutory advisor to the Government about what does or does not fall within climate change policy as set out in the carbon budgets. It published its scenarios as to how the Government can meet the 5th carbon budget in July 2016, including the level of electricity that could be generated from coal up to 2025, within the Carbon Budget. This Central Scenario includes significantly more coal than the Highthorn mine would produce. CCC's updated 2017 Central Scenario could meet the 4th carbon budget with 67.4 Mt of coal for power used in 2018-2025, down from 103 Mt in 2015, and falling to zero by 2026. [11,357]

C150. The Government may have to take policy initiatives in the light of the Paris Agreement, and other sectors such as heating and transport might prove to be more difficult to decarbonise. Nevertheless, CCC's 2017 progress report remains of the view that there is significant, albeit diminishing, demand for coal in the electricity sector, that if used would still be consistent with meeting the carbon budgets out to 2025. The progress report notes that even if all coal generation ceased, emissions would fall the equivalent of less than two years' worth of further progress required by 2030, and so CCC's recommendations focus on other areas of the economy where there is the greatest potential for emission reductions. But considerable carbon dioxide savings would come from reducing coal to zero, and so coal-phase out remains a large component of the required progress. Much would depend on the timing of when this occurred. [86-89,219,296,300,352-356]

C151. CCC has advised that meeting the terms of the Paris Agreement will require new policy initiatives, but that Carbon Budgets should not be reconsidered until they are next reviewed. It is therefore unlikely that the 3rd Carbon Budget for 2018-2022 would be revised, and any revision to the 4th Carbon Budget would only affect what is anticipated would be the final year of coal production at Highthorn. FoE rightly point out that the suggested conditions would, assuming permission was granted early in 2018, permit extraction at Highthorn to continue

until as late as 2027. However, it seems to me that any operator would wish to capitalise on any market for coal that existed before the phase-out of unabated coal for electricity generation took effect, and so there is no reason to doubt the applicant's anticipated programme. [91-92,340,350-355]

C152. The window available for the use of unabated coal for generation in the UK is narrowing. However, the only firm indication from the Government is the commitment to phase-out the use of unabated coal for electricity production by 2025. This would provide a window for use of the Highthorn coal, which would not breach CCC's current carbon budgets. In the absence of more details about options for implementing the coal phase-out, which are still being assessed, and the details of the regulatory approach to give it effect, I find that the proposed development would not be inconsistent with the Written Ministerial Statement on the Central Government's commitment to replace coal-fired power stations with gas, as made by the Secretary of State for Energy and Climate Change on 18 November 2015 (WMS1), and that furthermore, it would not be inconsistent with WMS2 and *The Clean Growth Strategy*. [30,83,85,90,116,173,214,215,240,311]

(17) Planning conditions and obligations

Conditions – as numbered in Annex B

C153. Otherwise than as set out in the decision and conditions, it would be necessary that the development was carried out in accordance with the approved plans, to ensure that it was in accordance with the scheme considered at the Inquiry (Conditions 1 and 2). Given the level of detail contained in the submitted documents, subsequent approval would be required for the matters set out in Condition 3. Conditions 4 and 5 would provide a necessary link to the section 39 agreements. A commencement period of three years would be appropriate here, and to effectively enforce conditions, notification of the dates of commencement of coal extraction, coal export from the site, completion of extraction, along with completion of site restoration, would be necessary (Conditions 6 and 7). Conditions would be required to ensure that the development was carried out in an orderly manner, and restored without unnecessary delay (Conditions 8, 9 and 10).

C154. Site preparation works would be necessary to safeguard the local environment (Condition 11). The hours of working would need to be controlled in the interests of the amenity of the area (Condition 12). Conditions 13-19 concerning access, number of HGVs and their sheeting, car parking and off-site highway works would be necessary in the interests of highway safety and dust control. Strict control of soil stripping and storage would be a pre-requirement of later successful restoration (Conditions 20-29). Site working and maintenance would need to be controlled so as to minimise adverse effects on the local environment (Conditions 30-33). A restriction of permitted development rights for buildings, plant and machinery would exceptionally be necessary here, given the potential for the proposed surface mine to impact adversely on the amenity of the area (Condition 34).

C155. Controls on noise emissions would be required in the interest of the amenity of nearby residents (Conditions 35-40). For similar reasons, so too, would controls on blasting (Conditions 41-46). Dust control would be needed for health and amenity reasons (Conditions 47-48). Surface and ground water drainage would need to be directed to water treatment areas before discharge, and oils, fuels

and chemical storage appropriately bunded, and groundwater monitored, so as to safeguard watercourses (Conditions 49-51). Measures to deal with any land contamination would also be necessary for this reason (Conditions 57 and 58). Conditions would also be necessary to safeguard wildlife, and in the interest of biodiversity (Conditions 52-55). An archaeological scheme and recording would be necessary in the interests of local heritage (Condition 56). To achieve satisfactory restoration of the site and to comply with MLP Policy R1, requirements would need to be set out for the removal of structures, plant and features (Conditions 59-62), along with specifications for the replacement of overburden (Conditions 63 and 64), replacement of soils (Conditions 65-68) and maintenance of site restoration records (Conditions 69 and 70).

C156. Approval of a scheme for the construction of ponds would be necessary to ensure that these achieved wildlife benefits in the long term (Condition 71). Aftercare and effective management for five years from replacement of topsoil, along with an annual review of soil replacement operations, would be necessary to ensure that the site was left in a satisfactory state (Conditions 72-76). This would also require;

- 1) cultivation after replacement of soils (Conditions 77 and 78),
- 2) provision of surface features (Conditions 79 and 80),
- 3) drainage (Conditions 81-83),
- 4) cultivation after the installation of field drainage (Condition 84) and,
- 5) establishment and maintenance of a grass sward (Condition 85),
- 6) maintenance of hedges and trees during the aftercare period (Condition 86).

Conditions regarding completion and aftercare would be necessary to ensure compliance with Schedule 5 of the 1990 Act concerning the required standard of restoration.

C157. If the Secretary of State shares my concerns about the obligation for sand extraction from Hemscott Hill Farm then it would be necessary to impose a condition in a Grampian form to require that no development at Highthorn should take place until a legally binding mechanism to prevent the extraction of sand from Hemscott Hill proceeding concurrently with the operation of the Highthorn surface mine has been submitted to and approved in writing by the Mineral Planning Authority (Condition 87). Conditions in this form should only be imposed in exceptional circumstances. But the likely cumulative harm would justify it being used in the particular circumstances that apply here. This condition was not discussed at the Inquiry and if the Secretary of State is minded to impose such a condition it should be first referred to the parties for comment.

C158. It would not be necessary to impose any other conditions. In particular, a condition to deal with any site clearance works not regarded as development would not be necessary as there are other controls to safeguard wildlife in these circumstances [516]. Save Newcastle Wildlife's concerns about mitigation for farmland birds and lighting controls to safeguard bats would not require a specific condition, as these are matters that would be addressed in complying with the suggested conditions [517]. It would not be necessary to impose a condition to require the operator to submit a method statement about measures to reduce GHG emissions, relating particularly to the transport of coal, as there are other

controls on HGVs [501]. I am satisfied that NCC would be able to monitor compliance and enforce any breach of the suggested conditions [450,511,518].

Obligations

C159. The details of, and weight to be given to, the obligations in the section 106 agreement and the section 39 agreements are set out about above and summarised in Table 2. There is nothing to indicate that any other obligations would be necessary. [9,69,386]

Overall conclusions

C160. There is considerable local opposition to the proposed development, which is evident from the written representations and the submissions made at the Inquiry, but also considerable support for the scheme. One of the aims of national planning policy is to strengthen local decision making.⁴⁴² However, local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons. The application therefore falls to be determined on its planning merits.

C161. The Secretary of State is required to decide this application having regard to the development plan, and to make the determination in accordance with it, unless material considerations indicate otherwise. Regard should also be given to the environmental duty under section 53 of the Coal Industry Act 1994. Other decisions for surface coal mines have been cited, but this proposal falls to be determined on its own merits. I have found that the proposal would conflict with the development plan, but that the *Framework* is an important other material consideration in this case. [170,172,305-307,382-385,389,390]

C162. The *Framework* does not impose for coal any restrictive approach along the lines of that which applies to peat extraction. But instead the *Framework* includes paragraph 149 as a specific policy for coal. The Government considers that existing planning policy and legislation already sets a clear expectation that climate change will be taken into account. It has not varied or qualified its planning guidance, as it has done for wind turbines. The Government has now set out its latest thinking about coal in WMS1, the *ConsDoc*, WMS2 and *The Clean Growth Strategy*. [84,98]

C163. There is no basis for finding that the great weight to be awarded to the benefits of mineral extraction, including coal, as required by the *Framework*, should now be reduced because of reliance on imported coal in the future, or for any of the other economic or environmental considerations relied on by those opposing the application, or as a result of the Government's recent statements on UK energy and climate change policy. FoE's submission that no new planning permissions for coal extraction should be granted until known resources have been exhausted does not square with existing planning policy. I consider that the proposed development would comply with the *Framework*, taken as a whole, and that this is a material consideration which would indicate that the application should be determined other than in accordance with the provisions of the development plan. [361]

⁴⁴² *National Planning Policy Framework Annex 1: Implementation.*

C164. FoE and other objectors are concerned that allowing this application would send the wrong signal to potential investors in energy infrastructure, and to the rest of the world, with regard to the UK's position on climate change. However, EN-1 indicates that a clear market design that provides consistent, long term signals for investment in new generating capacity is required to drive the decarbonisation of the generating mix. The *ConsDoc* states that setting a clear end date for unabated coal generation will send a clear signal to investors in new generation capacity. More recently, *The Clean Growth Strategy* states that if the UK wants other countries to follow its example it will need low carbon technologies to be cheaper and to offer more value than high carbon ones.⁴⁴³ It is therefore evident that the Government considers that a clear market design, along with setting a clear end date for unabated coal generation, and devising low carbon technologies, are the actions that would send appropriate signals to investors and other countries. In this regard granting planning permission for the Highthorn application would only signal that the planning balance here, given current policy, fell in favour of the proposal. I do not consider that concerns about sending a wrong signal to investors, or any adverse impact on UK diplomacy regarding climate change, should be influential in determining this application on its planning merits.

[26,27,114,218,303,342-344,363,392-397,409,412,443]

C165. I have found, having regard to current policy that the planning balance here falls in favour of granting permission. This is on the basis that a 'window' currently exists to use Highthorn coal before application of the Government's phase-out policy for unabated coal-fired power generation substantially reduced the need for this coal. Other non-electricity generation uses for coal are outside the scope of the *ConsDoc*, but substantial amounts of Highthorn coal would be unlikely to be used for purposes other than coal-fired power generation in the timeframe specified for the operation in the suggested planning conditions. However, if the Secretary of State were to conclude, on the basis of the available evidence, that no such 'window' exists for coal-fired generation, then the need for, and benefits of, Highthorn coal would be much diminished. The planning balance then would be fundamentally altered, and in those circumstances, I consider that there would be a strong case for refusing the planning application. Nevertheless, that is not the judgement I have come to in applying current policy to the particular circumstances that apply to this proposal. [372]

C166. Overall, I find that the proposed development would accord with national policy. For the reasons given above and having regard to all other matters raised in evidence, I conclude that the application should be approved.

⁴⁴³ ID/OTH38.2 page 10.

Recommendation

C167. I recommend that the planning application No:15/03410/CCMEIA, dated 12 October 2015, for a surface mine (to include auger mining) for the extraction of coal, sandstone and fireclay, with restoration to agricultural and ecological uses at Highthorn, Widdrington, Northumberland NE61 5EE be granted planning permission subject to the conditions set out in Annex B to this report.

John Woolcock
Inspector

ANNEX A - APPLICATION PLANS

Plans and drawings upon which the determination should be made i.e. excluding drawings or figures submitted within the planning application for illustrative or information purposes are as follows:

- PA02 – Application boundary
- PA06 – Composite working method
- PA07 – Phase 1 working method
- PA08 – Phase 2 working method
- PA09 – Phase 3 working method
- PA10 – Phase 4 working method
- PA11 – Phase 5 working method
- PA12 – Restoration First
- PA13 – Restoration strategy
- PA16 – Compound layout
- PA18 – Surface water drainage scheme and treatment areas
- PA19 – Overburden construction phasing
- PA24 – Access details

ANNEX B – SUGGESTED PLANNING CONDITIONS (1 - 86/87)

Approved documents

1. The development hereby permitted shall only be carried out in accordance with the following documents and plans:

a) Description of the working method as contained in the Highthorn Planning Application and Environmental Statement Volume 1 Chapter 6 Working Method.

b) Mitigation measures as set out in the Highthorn Planning Application and Environmental Statement Volume 1 Chapter 26 (as amended by Further Environmental Information dated March 2017).

c) Drawings:

- PA02 – application boundary
- PA06 – composite working method
- PA07 – phase 1 working method
- PA08 – phase 2 working method
- PA09 – phase 3 working method
- PA10 – phase 4 working method
- PA11 – phase 5 working method
- PA12 – restoration first
- PA13 – restoration strategy
- PA16 – compound layout
- PA18 – surface water drainage scheme and treatment areas
- PA17 – haulage route
- PA19 – overburden construction phasing
- PA24 – access details

d) Documents:

Highthorn Surface Mine Environmental Management Plan dated June 2017 or the latest version of the Environmental Management Plan in accordance with Condition 3t)

Highthorn Archaeology Mitigation Brief dated 23 May 2017

2. From the commencement of development to the completion of soils replacement, a copy of this permission, including all documents hereby approved and any other documents subsequently approved in accordance with this permission and legal agreements, shall always be on display in the site offices and subsequently shall be made available to all persons with a responsibility for the site's restoration and aftercare.

Matters Requiring Subsequent Approval

3. The development hereby permitted shall also only be carried out in accordance with the latest scheme or schemes to be approved in writing by the Mineral Planning Authority which shall include provision for the matters listed below. Those details

required by Condition 3a) through to Condition 3q), along with Condition 3t), shall be submitted to and approved in writing by the Mineral Planning Authority prior to the commencement of the development. Those details required by Condition 3r) and Condition 3s) shall be submitted prior to the commencement of site restoration.

3a) A definitive Soil Handling Strategy, which shall clearly describe the proposed soil stripping, handling and replacement methods to be used at the site, appropriate to the grade of soil and intended after-use. The Soil Handling Strategy shall also include details of the proposed soil depths upon restoration and plant and machinery to be used. The Soil Handling Strategy shall be based on the following documents (or updated versions of these);

- i. soil handling strategy detailed within the Highthorn Planning Application and Environmental Statement, Volume 1, paragraphs 6.14 – 6.19 along with Appendix 13, section 8;
- ii. Department of the Environment Guidance on Good Practice for the Reclamation of Mineral Working to Agriculture (1996);
- iii. Defra's Good Practice Guide for Handling Soil, Sheets 1–4 (handling soil using 360 degree excavators and dumptrucks) and sheet 15 if low ground pressure bulldozers are to be used during restoration.

3b) A scheme for the retention and protection of peripheral hedgerows (except where essential access is required).

3c) Details of the grass seeding for the outer face of the overburden mounds and the maintenance regime including management measures for farmland birds and brown hare.

3d) A scheme for the monitoring of stythe gas emissions around the site at Hemscott Hill and Highthorn Farms (or such other properties as may be approved in advance in writing by the Mineral Planning Authority).

3e) A scheme for the type and location of lighting that ensures that all lighting/illumination does not result in an upward light ratio (measured by Sky Glow apparent) greater than zero and accords with levels for light intrusion for residential properties in E1 and E2 Zones as described in the document Institute of Lighting Professionals 2012 Guidance Notes for the Reduction of Obtrusive Light.

3f) A scheme for surface and ground water management which shall include;

- i. a construction method statement relating to the settlement lagoons and the overburden storage areas;
- ii. the treatment and removal of suspended solids from surface water and ground water run-off;
- iii. details of how potential silt release into the water course will be minimised;
- iv. plans showing how and where silt released into the water course will be captured and controlled; and
- v. details of the stream diversions that shall be undertaken.

The scheme shall demonstrate that all water discharges from the site shall be no greater than the existing greenfield run-off rate from the undeveloped site.

3g) A scheme for the monitoring of environmentally sensitive areas which shall include;

- i. a monitoring programme detailing the surface water bodies to be monitored, which shall include Cresswell Ponds SSSI; and
- ii. details of the monitoring programme including the monitoring of changes in water quality and levels.

3h) Details of the type and height of fencing to be provided around the site boundary, alongside public rights of way and within the site.

3i) Details of the proposed highway works to create the site access in the location shown on Drawing PA24. The development shall not be brought into use until the highways works have been constructed in accordance with the approved plans.

3j) A Construction Method Statement covering the setting up of the site compound, providing for;

- i. details of temporary traffic management measures, temporary access, routes and vehicles;
- ii. vehicle cleaning facilities;
- iii. the parking of vehicles of site operatives and visitors;
- iv. the loading and unloading of plant and materials;
- v. storage of plant and materials; and
- vi. measures to control the emission of dust and dirt.

3k) Details of abnormal load deliveries including routeing.

3l) Details of wheel cleaning equipment to be installed.

3m) A Travel Plan for the site setting out measures proposed to encourage sustainable journeys including details of cycle parking on site.

3n) Details of the early mitigation measures at Druridge Ponds and Hemscott Ponds as shown on Drawing PA12 and described in the document Highborn Planning Application and Environmental Statement Volume 1 Chapter 26, including but not limited to plans and method statements.

3o) A mitigation scheme for pink-footed geese, for the areas shown on plans HJB/BA795/175, HJB/BA795/176a, HJB/BA795/177a, HJB/BA795/178a and HJB/BA795/179, including, but not limited to;

- i. details of the grazing regime to be applied;
- ii. the provision of sacrificial crops (including management) and supplementary feeding;
- iii. details of the management of the sward height;
- iv. details for the fertiliser application; and

v. measures for the control of access to minimise disturbance.

3p) A Noise Action Plan, which may be included within an Environmental Management Plan, including the exact locations of noise monitoring points and proposed monitoring frequency. The locations of noise monitoring points should be chosen so as to ensure that the possibility of off-site noise affecting measurements is reduced to a minimum.

3q) A Dust Action Plan, which may be included within an Environmental Management Plan, including the exact locations of monitoring points and proposed monitoring frequency and methodology to be used for assessing monitoring results. The Dust Action Plan shall utilise the baseline Real Time and Passive Dust Monitoring information.

3r) A detailed Restoration Scheme, with timescales, for the site in accordance with the details shown on Drawing PA13 approved under Condition 1. The Restoration Scheme shall include (but not be limited to);

- i. the final contours for the site (at 2 metre intervals), indicating how such contours tie in with the existing contours on adjacent land;
- ii. the replacement of soils (including soil making materials as appropriate) including depths to an overall minimum depth of 300mm for topsoil and 900mm for subsoil;
- iii. the initial drainage of the restored site; and
- iv. details of the highway reinstatement works to close the site access junction with the A1068.

3s) An Aftercare Strategy for the aftercare of the site. The strategy shall identify the measures, with timescales, to be taken during the aftercare period for which agriculture, woodland and ecological use is intended, which shall include, but not be limited to;

- i. cultivation after replacement of topsoil;
- ii. the erection of fences;
- iii. the seed mix including species and rates for the areas of agricultural after-use;
- iv. the planting of trees and hedges:
 - (i) the species to be planted, and the percentage of the total to be accounted for by each species;
 - (ii) the size of each plant and the spacing between them;
 - (iii) the preparations to be made to the ground before planting; and
 - (iv) the fencing off of planted areas where appropriate;
- v. a detailed specification for the ecological uses including a modified programme of soil re-spreading, cultivation, seeding (including species composition, seeding rate and seeding method), fertilising (if appropriate), management and cutting and weed growth management;
- vi. a detailed specification for woodland and hedge uses, including species composition, supplier of the plants, planting pattern and density and the management and monitoring of the planting area during the aftercare period;

- vii. a subsequent maintenance and management programme during the aftercare period once the hedgerow, tree, and shrub planting has been carried out, which shall include the weeding of the planted area, repairing of any damaged fencing, and the replacement of any plants which die or are seriously affected by disease and a detailed schedule as to when the aftercare period commences for each area;
- viii. the provision of appropriate site interpretation material based on the results of the archaeological works to be undertaken; and
- ix. the provision of field boundary features and wildlife islands having regard to the details shown on Drawing PA13.

3t) A revised Environmental Management Plan which shall include provision for an annual review of the content of the plan, with the outcome of the review to be approved in writing by the Mineral Planning Authority.

4. No development shall take place until a detailed habitat creation scheme for the areas shown on the drawing titled S.39 Agreement Features Plan with reference HJB/BA795/189B as appended to the section 106 Agreement (dated 15 June 2017) and which are described in Chapter 8 of the Environmental Statement has been submitted to and approved in writing by the Minerals Planning Authority.

5. No development shall take place until the Mineral Planning Authority is satisfied that the habitat creation scheme specified and approved pursuant to Condition 4 will be implemented and thereafter maintained in accordance with an Agreement under the terms of section 39 of the Wildlife and Countryside Act 1981. Such agreement to provide for:

a) All habitat creation to be undertaken in accordance with the habitat creation scheme approved under Condition 4 and in accordance with the following timescales:

- i. Prior to Commencement
 - Druridge Ponds (18.6ha)
 - Hemscott Ponds (9.2ha)
- ii. During the First Year Following Commencement
 - Druridge Pools North (4.5ha)
- iii. During the Second Year following Commencement
 - Druridge Pools West (6ha)
 - Chibburn Pools (11ha)
- iv. During the Fourth Year following Commencement
 - Hedgerows and Shelterbelts (5.5km)
- v. Upon Site Restoration
 - Hemscott (50.5ha)
 - Wildlife Islands in fields A1 and A3

b) The management of each of the above areas for a period of 25 years from the date that the habitat creation works are completed, in full accordance with a management plan approved in advance by the Mineral Planning Authority.

The management plan will include a monitoring and reporting scheme and will be reviewed on a five yearly basis, with each review subject to approval in writing by the Mineral Planning Authority.

c) The establishment of a Management Advisory Group with the role of advising the Mineral Planning Authority on progress of the management of the features created under the terms of Condition 4. The constitution of the Advisory Group shall be approved in advance in writing by the Mineral Planning Authority.

Commencement

6. The development hereby permitted shall commence no later than three years from the date of this permission.

7. The Mineral Planning Authority shall be notified in writing of the date of commencement of development and of the following at least seven days prior to their commencement;

- a) the commencement of coal extraction;
- b) the commencement of the export of coal from the site;
- c) the completion of extraction of coal; and
- d) the completion of site restoration.

Completion

8. The extraction of minerals shall commence no later than 12 months from the commencement of development as notified under Condition 7 and thereafter shall cease not later than five years from the commencement of coal extraction as notified to the Mineral Planning Authority.

9. The site shall be restored in terms of the replacement of all soils;

- a) no later than 17 months after the cessation of minerals extraction; or
- b) if the period referred to in a) above extends beyond the end of September, by the end of July the following year.

10. In the event of extraction ceasing or significantly reducing for a period of six months from that specified in the approved working phasing programme as detailed in paragraphs 6.54 – 6.73 (inclusive) of the Application and Environmental Statement Volume 1 Section 6 Working Method and as shown on the phasing plans Figures PA7 - PA11 (inclusive) as approved under Condition 1, the Mineral Planning Authority shall be notified in writing within one month of the date of such cessation or reduction. Within one month of that date of notification, a revised scheme for the restoration of the site or modification of the phasing of restoration, including timescales for completion, shall be submitted to the Mineral Planning Authority for approval. The revised scheme shall be implemented as approved.

Works Required for Site Preparation

11. Before substantive soil stripping (other than for preliminary works themselves) begins, the following works shall be carried out in accordance with the relevant schemes approved under Condition 3. The Mineral Planning Authority shall be notified, in writing, within two working days of each of the specified works being carried out.

- a) The construction of the approved site drainage cut-off ditches, water treatment areas and other drainage facilities appropriate to the area to be stripped.
- b) The formation of the site offices and compound with surfaces formed with tarmacadam, concrete or consolidated clean stone, levelled to preclude ponding of water.
- c) The formation of the site access, with surfaces formed with tarmacadam or concrete levelled to preclude ponding of water.
- d) Perimeter fencing and fencing alongside rights of way and permissive rights of way.
- e) Protective fencing alongside hedgerows and outside the canopies of trees bounding the site.
- f) The installation of wheel cleaning equipment to prevent the transfer of mud to the public highway.
- g) The provision of notice boards of durable material and finish;
 - i. to be placed at the site entrance, indicating the name, address and telephone number of the company responsible for the operation of the site, and details of where any complaint can be made; and
 - ii. to be placed so as to be clearly visible to all drivers of heavy goods vehicles exiting the site access, instructing them to turn left when exiting.
- h) The provision within the site of a water supply for the approved dust suppression measures and sufficient number of water bowsers and/or dust suppression equipment.
- i) The implementation of works to create the wet scrapes required for the offsite ecological mitigation at Druridge Ponds and Hemscott Ponds, as detailed on Plan PA12 and approved under Condition 3n).

Working Hours

12. All activities on the site associated with the permitted development shall only take place during the following periods:

- a) Soils handling :
0700 - 1900 hours Monday to Friday, 0700 – 1300 hours Saturday
- b) Excavation and mineral extraction including auger mining :
0700 - 2200 hours Monday to Friday, 0700 – 1300 hours Saturday
- c) Coal processing (crushing, screening and stockpiling) :
0700 - 2200 hours Monday to Friday, 0700 – 1300 hours Saturday
- d) HGV loading and coal dispatch :
0700 - 1900 hours Monday to Friday, 0700 – 1300 hours Saturday
- e) Plant maintenance :
Between the hours of 0700 Monday to 1700 Saturday; and
Between the hours of 0900 to 1600 on Sunday;
Subject to the following restrictions that:
 - i. Between the hours of 2200 and 0700 (Night Time) plant/vehicle maintenance shall not include any engine start up or the use of any power tools or hammering activity that could give rise to noise audible at any noise sensitive residential premises; and
 - ii. With the exception of site drainage pumps and the use of electrical generators, no operations including the maintenance of vehicles and plant or working shall take place outside these hours or at any time on Bank, or other public holidays, save in cases of emergency.

All drainage pumps, electrical generators and lighting sets will be located, orientated or acoustically insulated to render them inaudible at any sensitive residential premises between the hours of 2200 and 0700 (Night Time). The Mineral Planning Authority shall be notified within 48 hours after the occurrence of any such operations or working.

Site Access and Transport

13. Vehicular access for all vehicles to and from the site shall only be via the access as shown on Drawing PA24. All mineral laden HGVs shall turn left on exiting the site.

14. Before leaving the site all HGVs shall have their wheels and bodies cleaned so that no dirt is deposited on the public highway.

15. The total number of heavy goods vehicles entering and leaving the site shall not exceed 300 (150 in and 150 out) per operational day Monday to Friday and 150 (75 in and 75 out) on Saturdays. A record of all HGVs leaving the site shall be maintained by the operator and a certified copy of this record shall be provided to the Mineral Planning Authority within two working days of request.

16. Full details of all loaded vehicles (and weights thereof) leaving the site and their destination shall be kept available for inspection by the Mineral Planning Authority for the duration of site operations.

17. The loads of all laden minerals heavy goods vehicles leaving the site shall be fully covered by sheeting to prevent any mineral leaving the loads of that vehicle.

18. The car parking area within the approved site compound as shown on Plan PA16 shall be retained for the duration of the approved site in accordance with the approved plans and shall not be used for any purpose other than the parking of vehicles associated with the development.

19. No material shall be exported to the Butterwell Disposal Point until details of the proposed highway works at the junction between the C125 and Butterwell Disposal Point Access Road, including junction widening and signage to prevent vehicles travelling west along the C125, have been submitted to and approved in writing by the Mineral Planning Authority and the highway works have been constructed in accordance with the approved plans.

Soil Stripping and Storage

20. The method of soil stripping, handling and storage within the site shall only be undertaken in accordance with the Soil Handling Strategy approved under Condition 3a) and shall be appropriate to the quality of the soils and intended after-use.

21. The Mineral Planning Authority shall be given at least two working days' notice in writing (excluding Sundays and Bank or other public holidays) of any intended individual phase of topsoil or subsoil stripping.

22. All topsoil shall be stripped from any areas to be excavated, or used for the stationing of plant and buildings, the storage of subsoil and overburden, haul roads, and other areas to be traversed by heavy machinery, and stored until required for restoration in accordance with the approved scheme. The Mineral Planning Authority shall be given the opportunity to verify that the full depth of topsoil has been satisfactorily stripped prior to the commencement of subsoil stripping.

23. No heavy plant or vehicles shall cross any areas of unstripped topsoil except for the purpose of stripping operations.

24. Sufficient subsoil or similar material from within the site approved in writing by the Mineral Planning Authority (as identified by the Soil Handling Strategy approved under Condition 3a)) shall be stripped from any areas to be excavated or used for the stationing of plant and buildings, the storage of overburden, haul roads, and other areas to be traversed by heavy machinery to ensure that a minimum of 1.2 metres depth of such material is available for replacement over all areas intended for agricultural or other land-based after-uses.

25. The stripping and movement of topsoil and subsoil shall only be carried out under sufficiently dry and friable conditions, to avoid soil smearing and compaction, and to ensure that all available soil resources are recovered. Appropriate methods of soil stripping shall be separately approved in writing by the Mineral Planning Authority for any permanently wet or waterlogged parts of the site.

26. No stripping, movement, replacement or cultivation of topsoil or subsoil shall be carried out during the months of October, November, December, January, February and March inclusive without the prior approval of the Mineral Planning Authority.

27. Topsoils and subsoils shall be stored according to their quality or any approved soils stripping plan, in separate heaps which do not overlap unless a suitable separation layer is used involving geosynthetic material or a layer of sand. A minimum stand-off distance of two metres shall be maintained between soil storage mounds and the site boundary and/or site drainage ditches.

28. No topsoil, subsoil or soil making materials shall be removed from the site or imported to the site.

29. Within three months of the commencement of soil stripping, and every 12 months thereafter, the Mineral Planning Authority shall be supplied with a plan indicating the area stripped of topsoil and subsoil, the location of each soil storage heap, and the quantity and nature of material within the mounds together with details of the type of plant used to strip/store those materials. A balance of the quantities of material stored with the proposed depth profile by each soil quality to be replaced following restoration shall also be provided. The plan shall identify any potential shortfall of soil material and proposals for revised soil profiles will be submitted for approval in writing by the Mineral Planning Authority.

Site Working

30. The development hereby permitted, including soil handling, storage and replacement, extraction and restoration, shall only be carried out in accordance with the approved documents in Condition 1 and schemes subsequently approved in accordance with Conditions 3a) and 3t).

31. Overburden and soils shall only be stockpiled in the areas shown on Drawing PA06 composite working method to heights not exceeding those shown on the plan.

32. Coal, fireclay and stone shall only be stockpiled in the areas shown on Drawing PA16 compound layout to heights not exceeding four metres.

Site Maintenance

33. From the commencement of the development, until restoration of the site, the following site maintenance operations shall be carried out:

a) The maintenance of fences in a stockproof and secure condition, between any areas used for development, and adjoining agricultural land;

b) The retention of fencing around all retained trees and hedgerows;

c) The care and maintenance of trees and hedgerows to be retained within the site boundary and treatment of those affected by disease, in accordance with accepted principles of good woodland management and good arboricultural practice (including the provision of protective fencing);

- d) The maintenance of all the hard surfaced access roads within the site, over which licensed road vehicles operate, clean from mud;
- e) The maintenance of drainage ditches, water treatment areas, and the clearance of mud and silt from water treatment areas to avoid reducing their capacity for intercepting sediment; and
- f) All areas of the site, including undisturbed areas and all topsoil, subsoil and overburden mounds, shall be managed to minimise erosion and shall be kept free from injurious weeds (as defined by The Weeds Act 1959). Cutting, grazing or spraying shall be undertaken, as necessary and appropriate to the approved after-use of the land where the materials in mounds are to be replaced, to control plant growth and prevent the build-up of a seed bank of such weeds, or their dispersal onto adjoining land.

Buildings, Plant and Machinery

34. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no buildings, plant, or machinery, other than approved under Condition 1 above, shall be erected or placed on the site without the prior written approval of the Mineral Planning Authority.

Conditions continued -

Noise

35. The noise emitted from operations on the site shall not result in noise levels greater than those listed below:

All levels expressed as dB L _{Aeq} 1hr (free field)	Day normal operations 0700 - 1900	Day short term operations 0700 - 1900	Day exceptional operations 0700 - 1900	Evening 1900 - 2200	Night 2200 - 0700
Druridge Farm Cottages	49	55	70	43	42
Hemscott Hill	47	55	70	44	42
Blakemoor Farm	47	55	70	44	42
Kennels Cottage	49	55	70	46	42
Warkworth Lane Cottage	54	55	70	51	42
Highthorn	53	55	70	51	42
Hagg Farm Cottages	55	55	70	51	42
Houndalee Cottages	55	55	70	50	42
Widdrington Village	55	55	70	46	42
Stonecroft	49	55	70	46	42
High Chibburn	50	55	70	44	42
Ellington caravan park (caravans)	54	55	70	51	42
Ponds at Hemscott Hill	55	55	70	55	55
Cresswell Pond NR	55	55	70	55	55
Druridge Bay NR	55	55	70	55	55
Druridge Pools NR	55	55	70	55	55

36. Exceptional operations referred to in Condition 35 are soil-stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and

maintenance. Short term operations referred to in Condition 35 are those defined at paragraph 19.10 of the Highthorn Planning Application and Environmental Statement Volume 1 and include works associated with the construction of the site access on to road A1068. The total period of exceptional operations that results in higher than normal noise levels shall not exceed eight weeks in any calendar year at any individual noise sensitive receptor. Where work is likely to take longer than eight weeks in any one year, the lower short term operations limit as specified in Condition 35 will apply.

37. A schedule of exceptional and short term operations setting out the type of activity, location and duration shall be maintained on site by the operator and submitted in writing to the Mineral Planning Authority every three months.

38. Noise monitoring shall be carried out in accordance with the scheme approved under Condition 3p). On request, the operator shall, within two working days furnish the Mineral Planning Authority with the particulars of the measurements recorded and the plant and equipment operating on the site at the time.

39. All plant and machinery used on site shall be fitted with a silencer and operate with the doors or cowls of its engine(s) in the closed position.

40. All mobile site plant shall use automatic broadband noise reversing alarms.

Blasting

41. Blasting within the site shall take place only between the hours of 1000 and 1600 Monday - Friday and at no time on Saturdays, Sundays and Bank Holidays, during the hours of darkness or restricted daylight. Any charges which misfire or any blasts which cannot be detonated within the prescribed period for safety reasons may be detonated as soon as possible after the prescribed period if, in the opinion of the operator this is necessary for safety purposes. Any such occurrences shall be notified in writing to the Mineral Planning Authority within 24 hours of the event.

42. Blasting shall not occur more than four times in any one day.

43. Prior to the commencement of blasting, a blasting scheme shall be submitted to and approved in writing by the Mineral Planning Authority. This scheme shall include:

- a) Provisions for a test blast to be carried out, including details of its timing and notification to be provided to the Mineral Planning Authority and other relevant parties.
- b) Details of how the blasts will be carried out including shot firing rules.
- c) Confirmation as to whether blasting will take place on the hour or half hour.

Notices giving details of when blasting is to occur shall then be placed at appropriate locations on the boundary of the site and shall be maintained for the duration of site operations. All blasts shall be carried out in accordance with the approved scheme. Such scheme shall be reviewed annually and the revised scheme shall be submitted

to and approved in writing by the Mineral Planning Authority. The development shall thereafter take place in accordance with the revised scheme.

44. Each blast within the site shall be preceded by the sounding of a siren. Red warning flags shall be placed at appropriate locations on the boundary of the site to indicate that blasting is taking place. After a blast, a siren will be sounded to indicate that the blast has been successfully completed.

45. The peak particle velocity resulting from blasting within the site shall at no time exceed 12 mm/sec at any vibration sensitive premises measured at any point immediately outside of those vibration sensitive premises, and 95% of all blasts recorded over a 12 month period shall not exceed 6 mm/sec peak particle velocity. The measurement shall be the maximum of three mutually perpendicular directions taken at the ground surface at the vibration sensitive premises.

46. Prior to the commencement of blasting the site operator shall submit to the Mineral Planning Authority for written approval a scheme for the monitoring of peak particle velocity and vibration attributable to blasting at sensitive properties. This scheme shall include the locations of the sensitive properties. The monitors shall then be maintained at the approved sensitive properties during the period of blasting on site. If requested in writing by the Mineral Planning Authority additional monitoring shall be conducted. The results of all monitoring shall be made available to the Mineral Planning Authority upon request within 48 hours.

Dust

47. The Dust Action Plan approved in accordance with Condition 3q) shall be implemented for the duration of the development. It shall be reviewed annually and the revised Plan shall be submitted to and approved in writing by the Mineral Planning Authority. The development shall thereafter take place in accordance with the revised Plan.

48. Monitoring of dust levels shall be carried out by the operator in accordance with the Dust Action Plan approved in accordance with Condition 3q). On written request the operator shall, within two working days, furnish the Mineral Planning Authority with the particulars of the measurements recorded.

Water and Drainage

49. The surface water and ground water drainage scheme shall be implemented in accordance with the approved details under Condition 3f) for the duration of the development and all water from the operational part of the site shall be discharged into the approved water treatment areas prior to discharge into any ditch, stream, watercourse, or culvert outside the site.

50. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank it contains plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. Associated pipework shall be located above ground

and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund. The bund shall be sealed with no drain for removal of contained liquids. Any bund contents shall be bailed or pumped out under manual control and disposed of safely.

51. Prior to the stripping of soil from the mineral extraction area, a scheme for the installation of groundwater monitoring boreholes shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of the location(s) of the boreholes and how the monitoring of water levels and presence of gas shall be undertaken. The scheme shall be implemented until the completion of the site restoration, as notified under the terms of Condition 7d).

Ecology

52. No site clearance works or development affecting trees, scrub, ground vegetation or other semi-natural vegetation shall take place between March and August inclusive unless survey work immediately prior to the start of works confirms that breeding birds are absent. If nesting birds are found then work in that area must be avoided until the birds have fledged.

53. Mitigation measures in relation to bats as contained in paragraph 14.27 of the document entitled Highthorn Planning Application and Environmental Statement Volume 1 shall be adhered to. Details of the location and design of bat boxes shall be submitted to and approved in writing by the Mineral Planning Authority prior to their placement and these shall be subsequently retained until the completion of the site restoration, as notified under the terms of Condition 7d).

54. Mitigation measures in relation to red squirrels as contained in paragraph 14.27 of the document entitled Highthorn Planning Application and Environmental Statement Volume 1 shall be adhered to and details of the location and design of the feeders shall be submitted to and approved in writing by the Mineral Planning Authority prior to their placement and these shall be subsequently retained until the completion of the site restoration, as notified under the terms of Condition 7d).

55. An updated version of the draft Site Biodiversity Action Plan at Appendix 14 of the Environmental Statement Volume 4 dated October 2015 shall be submitted to the Mineral Planning Authority for written approval within six months of the commencement of development and shall thereafter be reviewed and approved in writing by the Mineral Planning Authority on an annual basis. The actions identified in the approved Site Biodiversity Action Plan and subsequent approved updates shall be implemented within the timescales identified in the Site Biodiversity Action Plan.

Archaeology

56. A programme of archaeological work is required in accordance with the document Highthorn Archaeology Mitigation Brief dated 23 May 2017. The archaeological work shall comprise three stages. Each stage shall be completed and approved in writing by the Mineral Planning Authority before it can be discharged.

- a) No development or archaeological mitigation shall commence on site until a written scheme of investigation based on the brief has been submitted to and

approved in writing by the Mineral Planning Authority. The investigation shall be undertaken in accordance with the approved scheme.

b) The archaeological recording scheme shall be completed in accordance with the approved written scheme of investigation.

c) The programme of analysis, reporting, publication and archiving shall be completed in accordance with the approved written scheme of investigation.

Contamination

57. If during development contamination not previously considered is identified, then a method statement regarding this material and how it shall be managed shall be submitted to and approved in writing by the Mineral Planning Authority. The approved scheme shall then be implemented in full.

58. Piezometers PZ1 and PZ6 as shown on Figure 7 of Appendix 5 of the Planning Application and Environmental Statement shall be maintained during site operations and for six months following restoration, as notified under Condition 7d). Monitoring shall take place on a monthly basis during this period. The results of the monitoring shall be provided to the Mineral Planning Authority within two working days of request.

Restoration

59. Restoration of the site shall be in complete accordance with the approved documents in Condition 1 and schemes subsequently approved in accordance with Condition 3r).

60. In accordance with the restoration requirements, all areas of hardstanding, including site compounds, access road and haul roads, shall be broken up and removed from the site or buried at sufficient depth not to affect the final restoration of the site.

61. In accordance with the restoration requirements, all water treatment areas shall, unless to be retained in accordance with the approved plans, be emptied of slurry, filled with dry inert material, and restored to levels shown on the approved restoration plan.

62. In accordance with the restoration requirements, all fixed equipment, machinery, and buildings shall be removed from the site within two years of completion of mineral extraction.

Replacement of Overburden

63. Overburden shall be replaced to such levels, and in such a way that, after the replacement of subsoil and topsoil, the contours of the restored land conform to the approved restoration contours. The final layer of overburden shall be graded to minimise the risk of ponding. The Mineral Planning Authority shall be notified in writing when the overburden replacement has been complied with, and shall be given an opportunity to inspect the surface before further restoration works are carried out.

64. Prior to the replacement of subsoil, the overburden shall be scarified and surface picked of any large stones or boulders that may have a detrimental effect on the final restoration.

Replacement of Soils

65. The Mineral Planning Authority shall be notified in advance prior to each phase of soil replacement.

66. The movement and replacement of soils shall only be carried out under sufficiently dry and friable conditions, to avoid soil smearing and compaction. The material stripped and stored in accordance with Conditions 22 and 24 shall only be re-spread when the conditions referred to in the Soils Handling and Management Strategy are met.

67. No movement, replacement or cultivation of subsoil shall be carried out during the months of October, November, December, January, February and March inclusive, without the prior written consent of, by methods and for a period approved by, the Mineral Planning Authority.

68. The Mineral Planning Authority shall be given the opportunity to inspect each stage of soil replacement prior to further restoration being carried out, and shall be notified as to the progress and stage of all works. A record plan of the progress of restoration shall be maintained at the site office and made available to the Mineral Planning Authority upon request.

Maintenance of Site Restoration Records

69. During the restoration period, the developer shall maintain on site separate plans for the purpose of recording successive areas of overburden, subsoil, and topsoil replacement approved by the Mineral Planning Authority.

70. Within three months of the restoration of the final topsoil layer, the developer shall make available to the Mineral Planning Authority a plan with contours at two metre intervals to indicate the final restored landform of the site, together with details of the depth and composition of the reinstated soil profiles.

Ponds

71. Prior to restoration commencing on any pond area, a scheme for how the pond areas will be constructed, shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details of the profiles, lining and depths, cross sections, type of liner and methodology of how the liner will be installed. These will be fully implemented as approved. The Mineral Planning Authority shall be given the opportunity, with reasonable notice, to inspect the finished surface. No planting of ponds or pond margins shall be undertaken without the prior written approval of the Mineral Planning Authority. No topsoil shall be applied to areas to be restored to ponds without the prior written approval of the Mineral Planning Authority.

Aftercare – General

72. Following the completion of soils replacement for each full field enclosure or other whole manageable and practical compartments of the land, as notified to the Minerals Planning Authority under the terms of Condition 68, the land shall be put into aftercare. Effective aftercare management for these compartments of land shall take place in accordance with the following aftercare conditions, the approved documents in Condition 1, and scheme subsequently approved in accordance with Condition 3s).

73. The aftercare period shall extend for a period of five years effective management from the date of topsoil replacement as notified under Condition 68. The Aftercare Period for all areas of new woodland planting shall be extended to 10 years from the date of their creation which shall be notified in writing to the Mineral Planning Authority within seven days of the event.

Annual Review

74. Before 30 September of every year, or such other date approved in writing by the Mineral Planning Authority, during the aftercare period not less than four weeks prior to the annual review meeting held in accordance with Condition 75, a report shall be submitted by the developer to the Mineral Planning Authority and Natural England (or successor), recording the operations carried out on the land since the date soil replacement operations were completed, or previous aftercare meeting, and setting out the intended operations for the next 12 months.

75. Every year during the aftercare period the developer shall arrange to attend a site meeting to be held before 30 November, to discuss the report prepared in accordance with Condition 74, to which the following parties shall be invited:

- a) The Mineral Planning Authority.
- b) Natural England (or successor).
- c) All owners of land within the site.
- d) All occupiers of land within the site.
- e) Representatives of other statutory and non-statutory bodies as appropriate.

76. The aftercare of the site shall take place in accordance with the scheme approved under Condition 3s).

77. No later than the end of the first September following completion of soil replacement the land shall be sown with a short-term grass seed mixture or other approved crop, the details of which shall have been submitted to and approved in writing by the Mineral Planning Authority before sowing takes place.

78. Where adverse weather conditions prevent compliance with Condition 77, alternative treatment of the reinstated soils to stabilise these over the winter period shall be approved in writing beforehand by the Mineral Planning Authority and thereafter implemented in accordance with the approved details.

Provision of Surface Features

79. From the date of commencement of the aftercare period, as notified under Condition 68, in any part of the site:

- a) The installation of water supplies for any livestock shall be completed within 12 months;
- b) The erection of stock-proof fences and gates shall be completed within 24 months;
- c) Access tracks shall be completed within 24 months (and prior to the commencement of any underdrainage installation or an alternative time to be approved in advance in writing with the Mineral Planning Authority);
- d) Hedgerows shall be planted within the first available season (which runs between 1 November and 31 March) following the completion of soils replacement; and
- e) Proposed woodland areas shall be sown with an approved grass seed mix within the first available season. Trees shall then be planted in suitably prepared ground during the next available planting season (which runs between 1 November and 31 March).

80. The works referred to in Condition 79 shall be carried out in accordance with the strategy approved under Condition 3s). The Mineral Planning Authority shall be given a minimum of one week's written notice, prior to commencement of, and following completion of each of the above works.

Drainage on Areas to be Restored to Agriculture

81. Following the completion of each phase of restoration, surface drainage works (including watercourses, field boundary ditches, and surface grips) shall be installed within three months to intercept run-off, prevent erosion, and avoid flooding of the land. During each calendar year, such drainage works shall be completed prior to the end of September, and maintained or improved as necessary throughout the aftercare period.

82. A comprehensive under drainage system in accordance with a scheme to be submitted to and approved in writing by the Mineral Planning Authority beforehand, shall be installed in the proposed agricultural land shown on Drawing PA13 Restoration Strategy and restoration details approved under Condition 3r) for such after-use no later than 24 months from the commencement of the aftercare period. At least seven days' notice of the intention to carry out the approved under drainage shall be given to the Mineral Planning Authority, such works to proceed only subject to their approval.

83. Within three months following the completed installation of the approved under drainage, an underdrainage record plan shall be submitted to the Mineral Planning Authority.

Cultivation after installation of field drainage on areas to be restored to agriculture

84. As soon as the ground is sufficiently dry after installation of the underdrainage, the land shall be subsoiled, using an agricultural winged tine subsoiler, operating at a depth and tine spacing approved in writing beforehand by the Mineral Planning Authority. Exposed stones larger than 100 mm in any dimension and other objects liable to obstruct future cultivation shall be removed. The agricultural land shown on Drawing PA13 and restoration details approved under Condition 3r) for such after-use shall then be worked to prepare a seedbed suitable for the sowing of a seed mix. The seed shall be sown before the end of September.

Establishment and maintenance of grass sward for areas to be restored to agriculture

85. During the aftercare period the following shall be carried out in respect of the agricultural land shown on Drawing PA13 and restoration details approved under Condition 3r) for such after-use:

- a) The soil shall be tested and fertiliser shall be applied to the land at a rate targeted to achieve the following nutrient levels in accordance with the Department for Environment, Food and Rural Affairs Index system:
 - i. Potash - Index 2.
 - ii. Phosphate - Index 2.
 - iii. pH – 6.
- b) Soil testing and applications of lime and fertiliser shall be made at the time of reseeding if required and subsequently at intervals not exceeding 12 months thereafter;
- c) Reseeding any areas where a grass sward fails to become well established with the approved species mixture;
- d) The grass sward to be reduced to 50-100 mm in length, by cutting or grazing, before the end of October during each year of aftercare, unless otherwise approved in writing by the Mineral Planning Authority;
- e) The condition of the grass sward to be inspected annually, with appropriate measures taken to control weed infestation; and
- f) No vehicles (with the exception of low grade pressure tyres required for agricultural work), machinery or livestock shall be permitted on the land during the months of November, December, January, February and March, without the prior written approval of the Mineral Planning Authority.

Maintenance of hedges and trees

86. Hedges and trees planted shall be maintained during the aftercare period in accordance with good woodland and/or agricultural practice, such maintenance to include the following:

- a) The early replacement of all dead, damaged or diseased plants.

- b) Weeding early in each growing season, and as necessary thereafter to encourage healthy growth of plants.
- c) Maintaining any fences around planted areas in a stock proof condition.
- d) Measures to combat all pests and/or diseases that may significantly reduce the viability of the planting scheme.

Hemscott sand extraction

If the Secretary of State considers that exceptional circumstances exist and that it would be necessary to impose a condition, having referred the matter back to the parties, the following condition is suggested.

87. No development shall take place until a legally binding mechanism to prevent the extraction of sand from Hemscott Hill proceeding concurrently with the operation of the surface mine hereby permitted has been submitted to and approved in writing by the Mineral Planning Authority.

End of Conditions

ANNEX C - SUMMARY OF SECTION 39 AGREEMENTS

The agreements would be binding on persons deriving title under or from the current owner(s), registered as a local land charge and enforceable by NCC. The agreements contain similar provisions, although the agreement with William Bell has specific provisions, which are set out below.

Schedule 1 requires approval of a Management Plan and to take all reasonable steps to deliver Features [these are specified below for each of the agreements and total 92.36 ha and 5.5 km of hedgerows and shelter belts] in accordance with an approved Habitat Creation Scheme. The approved Management Plan shall substantially accord with the management principles set out in Schedule 3 and those elements of Schedule 4 relating to the management of the Features. Maintenance would be carried out for a Maintenance Period of 25 years from the respective completion date for each Feature, and The Management Plan would be subject to review at five yearly intervals for the duration of the Maintenance Period. From the end of the 25 year maintenance period each part of the Management Area would be managed in perpetuity in such a way as promoted the development and conservation of its biodiversity and that no activities should take place that would prejudice this, excepting any redevelopment authorised by a new planning permission.

Schedule 2 sets out provisions for a Management Advisory Group Constitution and Annual Monitoring Scheme. Remedial Measures contained within the Annual Monitoring Report must seek to balance the ecological objectives of the agreement and the legitimate interests of the owner with respect to current or proposed uses of the land. The developer covenants to implement the Approved Remedial Measures in accordance with the timescales specified in the Annual Monitoring Report.

The agreements include provision for dispute resolution by an Appointed Expert for the Management Plan and its revision, the Habitat Creation Scheme, Annual Monitoring Scheme and Remedial Measures.

Schedule 3 provides that for the Maintenance Period for each Feature created for the species listed in Schedule 4 to be retained and managed having regard to specified relevant guidance, and the owner and developer covenant that the Management Area shall be safeguarded against harmful activities.

Schedule 4 sets out target species, key guidance and parameters for habitat creation and management, wildlife islands, hedgerows and shelterbelts.

Features as shown on Plan 1 and Plan 2 of the Section 39 Agreement Plan are listed below for each of the agreements.

Section 39 Agreement with Storys dated 19 July 2017 [at ID/APP25.1]

1. The Hedgerows and Shelter Belts (Area 1 approx. 5.5 km) during the fourth year.
2. Chibburn Pools (Area 2 approx. 11 ha) during the second year.
3. Druridge Pools North (Area 3 approx. 4.5 ha) during the first year.
4. Druridge Pools West (Area 4 approx. 6 ha) during the second year.
5. Druridge Ponds (Area 5 approx. 18.6 ha) prior to commencement of development.

Section 39 Agreement with Harworth Estates dated 20 July 2017 [at ID/APP25.2]

1. Hemscott Burn (Area 8 approx. 41.3 ha) by completion of restoration.
2. Wildlife islands (Area 9 approx. 1.1 ha) by completion of restoration.

Section 39 Agreement with William Bell dated 17 August 2017 [at ID/APP25.3]

1. Hemscott Burn (Area 7 approx.3.26 ha) by completion of restoration.
2. Hemscott Link (Area 6 approx.6.6 ha) prior to commencement.

This agreement does not include the provisions of clause 4.3 of the other agreements which states that grazing during the winter months should be reduced or avoided to allow increased flooding in some areas and ensure there are suitable habitats for wintering waterfowl and waders. It also adds for avoidance of doubt that if the naturally occurring water levels fall below 5% of the field having standing water that it would not be necessary to artificially pump water onto the land.

PROOFS OF EVIDENCE and WRITTEN REPRESENTATIONS

[These documents are also in the Core Documents with separate CD numbers]

Applicant

APP/SP/1 Summary of Proof of Evidence of Stewart Provan
APP/SP/2 Proof of Evidence of Stewart Provan
APP/SP/3 Appendices 1-7
APP/SP/4 Rebuttal Proof of Evidence of Stewart Provan
APP/SP/5/1-4 Appendices 1-4 to Rebuttal

APP/AC/1 Summary of Proof of Evidence of Alon Carmel
APP/AC/2 Proof of Evidence of Alon Carmel
APP/AC/3 Appendices 1-3
APP/AC/4 Rebuttal Proof of Evidence of Alon Carmel

APP/MS/1 Summary of Proof of Evidence of Mark Simmons
APP/MS/2 Proof of Evidence of Mark Simmons
APP/MS/3/1-7 Appendices 1-7
APP/MS/4 Rebuttal Proof of Evidence of Mark Simmons

APP/MD/1 Summary of Proof of Evidence of Mark Dowdall
APP/MD/2 Proof of Evidence of Mark Dowdall
APP/MD/3/1-19 Appendices 1-19
APP/MD/4 Rebuttal Proof of Evidence of Mark Dowdall
APP/MD/5/1-6 Appendices 1-6 of Rebuttal

APP/KH/1 Summary of Proof of Evidence of Kevin Honour
APP/KH/2 Proof of Evidence of Kevin Honour
APP/KH/3 Rebuttal Proof of Evidence of Kevin Honour

APP/PP/1 Plans Pack Tabs 1-17
(copies of plans from other documents before the Inquiry)

Northumberland County Council

NCC/FW/1 Proof of Evidence of Frances Wilkinson
NCC/FW/2 Summary
NCC/FW/3 Appendices A-Q
NCC/FW/4 Rebuttal Proof of Evidence of Frances Wilkinson with Appendix A

NCC/JG/1 Proof of Evidence of Julie Gartside, including Appendices A and B
NCC/JG/2 Executive Summary
NCC/JG/3 Rebuttal Proof of Evidence of Julie Gartside

NCC/KH/1 Proof of Evidence of Kenneth Halliday
NCC/KH/2 Summary
NCC/KH/3 Appendices 1-8

NCC/DF/1 Proof of Evidence of David Feige, including Appendix One
NCC/DF/2 Summary
NCC/DF/3 Rebuttal Proof of Evidence of David Feige

Save Druridge Rule 6 Party

SAVE/AB/1 Proof of Evidence of Amy Boutflour
SAVE/AB/2 Appendices 1 and 2

SAVE/AA/1 Proof of Evidence of Alyson Austin
SAVE/AA/2 Summary
SAVE/AA/3 Appendices 1-6

SAVE/AG/1 Proof of Evidence of Andrew Green, including Summary
SAVE/AG/2 Appendices 1-8
SAVE/AG/3 Rebuttal Proof of Evidence of Andrew Green

SAVE/IR/1 Proof of Evidence of Ivor Rackham
SAVE/IR/2 Summary
SAVE/IR/3 Appendices 1-5

SAVE/DrRQ/1 Proof of Evidence of Dr Richard Quinby
SAVE/DrRQ/2 Appendices 1-4

SAVE/ProfJH/1 Proof of Evidence of Professor John Hobrough
SAVE/ProfJH/2 Appendix 1

SAVE/LT/1 Proof of Evidence of Lynne Tate
SAVE/LT/2 Summary
SAVE/LT/3 Appendices 1-5

SAVE/EW/1 Proof of Evidence of Elizabeth Waddell
SAVE/EW/2 Summary
SAVE/EW/3 Appendices 1-10

SAVE/DL/1 Proof of Evidence of Duncan Lawrence
SAVE/DL/2 Summary
SAVE/DL/3 Appendices 1-10

SAVE/NF/1 Proof of Evidence of Neil Fairclough
SAVE/NF/2 Appendices 1-3

SAVE/GS/1 Proof of Evidence of Grant Shields
SAVE/GS/2 Appendices 1-3

SAVE/GF/1 Proof of Evidence of Gayle Finlayson

SAVE/JR/1 Proof of Evidence of Jonathan Rodger
SAVE/JR/2 Appendices 1 and 2

Friends of the Earth Rule 6 Party

FoE/RB/1	Proof of Evidence of Richard Bate
FoE/RB/2	Summary
FoE/CL/1	Proof of Evidence of Chris Littlecott
FoE/CL/2	Summary
FoE/CL/3	Appendices 1-12
FoE/CL/4	Rebuttal Proof of Evidence of Chris Littlecott
FoE/CL/5	Appendix to Rebuttal
FoE/SB/1	Proof of Evidence of Simon Bullock
FoE/SB/2	Summary
FoE/SB/3	Appendices 1-12
FoE/SB/4	Rebuttal Proof of Evidence of Simon Bullock
FoE/SB/5	Appendix to Rebuttal
FoE/ProfJB/1	Proof of Evidence of Professor John Barrett
FoE/ProfJB/2	Summary
FoE/ProfJB/3	Appendices 1-7
FoE/ProfJB/4	Rebuttal Proof of Evidence of Professor John Barrett
FoE/ProfJB/5	Appendix to Rebuttal
FoE/ProfPT/1	Proof of Evidence of Professor Phil Taylor
FoE/ProfPT/2	Summary
FoE/ProfPT/3	Appendices 1-13

Other representations

Written representations to PINS November 2016

Folder A - representations via FoE website A-G.

Folder B - representations via FoE website H-N.

Folder C - representations via FoE website O-Z.

Folder D – other representations.

Other written submissions by Interested Persons submitted prior to the Inquiry

Folder E

WR1 Letter from Advanced Radiators

WR2 Written Statement by John Ashton CBE

WR3 Letter from Tom Bradley

WR4 Letter from Karen Carins

WR5 Additional submission from the Coal Action Network including appendices 1-18

Folder F

WR6 Proof of Evidence by George Wilson on behalf of CPRE North East Region

WR7 Letter from Stephen Emsley

WR8 Statement from Friends of the Earth Alnwick Area

WR9	Letter from Fuchs Lubricants (UK) Plc
WR10	Letter from GKN Driveline Services Ltd
WR11	Letter from Malcolm Green
WR12	Letter from Komatsu UK
WR13	Correspondence from Caroline Lucas MP including; Submission from Green Party of England and Wales Berwick-upon-Tweed Constituency Green Party
WR14	Letter from North East England Chamber of Commerce
WR15	Written submission by Northumberland Wildlife Trust
WR16	Letter from Pirtek fluid transfer solutions
WR17	Submission by Malcolm Reid
WR18	Written Statement by Jonathan Rodger
WR19	Written submission by Save Newcastle Wildlife
WR20	Written Submission by Reverend Rick Simpson
WR21	Written submission by Martin Swinbank
WR22	Letter from Martin Swinbank 17 May 2017
WR23	Letter from Unite the Union
WR24	Letter from Chair of Widdrington Station and Stobswood Parish Council
WR25.1	Written Representation for the RSPB
25.2	Executive Summary
25.3	Appendix 1 References 1-50

APPEARANCES

FOR THE APPLICANT:

Nathalie Lieven QC	Instructed by Stewart Provan HJ Banks and Co Ltd.
She called	
Mark Dowdall BSc (Hons) MIOA	Environment and Community Director, HJ Banks and Co Ltd.
Alon Carmel MSc (Economics) MSc (International Relations) BA(Hons) Politics Philosophy and Economics	Senior Consultant/Principal, NERA Economic Consulting
Kevin Honour MSc MCIEEM	Director, Argus Ecology Ltd.
Mark Simmons BA (Hons) PGDip (Landscape Architecture) LMLI	Landscape Architect, HJ Banks and Co Ltd.
Stewart Provan BSc (Hons) MRTPI	Principal Development Planner, HJ Banks and Co Ltd.
Dr David Blythe MA PhD MIMMM MIQ FGS GMICE	Director of DAB Geotechnics Ltd.

FOR NORTHUMBERLAND COUNTY COUNCIL (NCC):

Juan Lopez of Counsel	Instructed by Peter Bracken on behalf of NCC Legal Services.
He called	
David Feige BSc (Hons) MPhil CEnv MCIEEM	Principal Ecologist and AONB Officer, NCC.
Julie Gartside MEng (Hons) (Mechanical Engineering and Energy Systems)	Technical Director, Carbon Management and Energy Efficiency, SLR Consulting Ltd.
Frances Wilkinson BSc (Hons) (Town and Regional Planning) MRTPI	Principal Planning Consultant, Amec Foster Wheeler Environment & Infrastructure Ltd.
Kenneth Halliday BSc (Hons) MPhil CMLI	Director of Landscape Planning, Stephenson Halliday.

FOR SAVE DRURIDGE:

Dr Paul Stookes
Solicitor Advocate

Instructed by Save Druridge.

He called

Lynne Tate	Local resident.
Elizabeth Waddell	Local resident.
Neil Fairclough	Ellington Caravan Parks Ltd.
Dr Richard Quinby	Local resident.
Grant Shields	Local resident.
Amy Boutflour	Local resident.
Alyson Austin	Resident Merthyr Tydfil.
Gayle Finlayson	Businesswoman from Cramlington.
Andrew Green	Spire Environmental Ltd.
BSc(Hons) MSc MIOA	
Ivor Rackham	Resident Amble.
Professor John Hobrough BSc(Hons) MSc (Ecology) DipEd PhD	Ecologist and educationalist.
Duncan Lawrence	Drift Cafe.
Jonathan Rodger	Local resident.

FOR FRIENDS OF THE EARTH:

Paul Brown QC
Toby Fisher of Counsel

Instructed by Naomi Luhde-Thompson, Friends of
the Earth.

They called

Richard Bate MA MPhil MRTPI	Senior Partner, Green Balance.
Simon Bullock Chris Littlecott	Senior Campaigner, Friends of the Earth. Programme Leader for Fossil Fuel Transition, E3G.
Professor Phil Taylor BEng EngD CEng FIET SMIEEE DipManSci FHEA	Head of Engineering and Deputy Pro Vice Chancellor Newcastle University, Director of the EPSRC National Centre for Energy Systems Integration, Non-executive Director Northern PowerGrid, Siemens Professor of Energy Systems.
Professor John Barrett FRSA [gave evidence via a video conference]	Chair in Energy and Climate Change, University of Leeds, Director of the Centre of Industrial Energy, Materials and Products.

INTERESTED PERSONS:

John Ashton CBE	Retired diplomat.
Nigel Williams	Local resident.
Rev Rick Simpson	Local resident.
Malcolm Reid	Retired maths teacher, speaking on behalf of Greenpeace and Northumberland Transition Town.
David McKechnie	Cyclist.
Anne Harris	Coal Action Network.
Dr David Golding CBE PhD DSc DCL	Associate, Institute for Sustainability, and Honorary Chaplain, Newcastle University.
Rebecca D'Andrea	Student Newcastle University.
Amy Fok	Student Newcastle University.
Maxwell Tait	Local resident.
Andy Blanchflower	Resident Gateshead.
David Malone	Read a letter from Stephen Emsley resident Newcastle upon Tyne.
Rachel Locke	Save Newcastle Wildlife.
Martin Swinbank BSc(Hons)	Ecologist and representing Alnwick Friends of the Earth.
Anne Bromley	Local resident.
Tom Bradley MSc CPhys MInstP	Independent expert working in Northumberland.
Graham Henderson	Employee Banks Mining.
Jake Adkins	Apprentice Banks Mining.
Cllr Ken Batson	Councillor for the Parish of Widdrington Station and Stobswood.
Steven White	Employee Banks Mining.
Cllr Shelley Willoughby	Chair of Widdrington Station and Stobswood Parish Council.
George Wilson	On behalf of Campaign to Protect Rural England (CPRE) North East Region.
Cllr Anita Lower	Chair of the Brenkley Liaison Committee.
Anthony Barber	Retired teacher and local resident.
Malcolm Green	Retired manager of a country park.
Bill Parker	Local resident.
Barry Mead	Heritage consultant.
Ken Johnson BSc MSc FIMM FIMME	Chartered engineer formerly employed at Ellington mine.

Staff from Banks Mining, officers from NCC, members of SAVE and FoE, along with members of the public, joined in the without-prejudice discussion about possible planning conditions and the obligations set out in the section 106 agreement and section 39 agreements.

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

APPLICANT

ID	APP1	Opening on behalf of HJ Banks & Company Limited.
ID	APP2.1	Pink Footed Geese Management Areas Phase 2.
	APP2.2	Pink Footed Geese Management Areas Phase 3.
	APP2.3	Pink Footed Geese Management Areas Phase 4.
ID	APP3	Note concerning coal fired power stations awarded Capacity Market contracts for 2020/21 [requested by Inspector].
ID	APP4	Email dated 5 June 2017 and table from Coal Authority.
ID	APP5	Written Statement by Dr Blythe DAB Geotechnics Ltd.
ID	APP6.1	Note regarding Ferneybeds Surface Mine.
	APP6.2	Deed of Grant dated 15 February 2016.
ID	APP7.1	Note relating to restoration of agricultural land post surface mining.
	APP7.2	Brenkley Lane Aftercare Report Year 3:2016.
ID	APP8	Note concerning monitoring of noise condition at Houndalee.
ID	APP9	Note on Lighting Impact Assessment by Enlighten.
ID	APP10	Regulation 35 from The Mines Regulations 2014.
ID	APP11	Agreement under section 106 of the Town and Country Planning Act 1990 (as amended) relating to Highthorn, Widdrington, Northumberland, dated 15 June 2017.
ID	APP12	Draft Annual Load Factors for 2016/17 Generation TNUoS Charges, Tariff Information Paper, National Grid.
ID	APP13	Extract from Digest of United Kingdom Energy Statistics 2016 concerning UK Renewables Policy and Renewables Obligation.
ID	APP14	Note by Alon Carmel in response to evidence submitted by Professor Taylor.
ID	APP15	Response to further written submissions by RSPB and section 106 agreement.
ID	APP16	Closing submissions on behalf of applicant.
ID	APP17	Additional visualisation from Pele Tower at Cresswell [requested by Inspector]
ID	APP18	Rebuttal of report produced by Mr Tom Bradley 15 June 2017.
ID	APP19	Note on the CCC's Progress Report to Parliament 2017.
ID	APP20	Rebuttal to FoE Note on the CCC's Progress Report to Parliament 2017.
ID	APP21	File Note dated 14 July 2017 re (i) incident involving an HGV travelling from Shotton on 3 July 2017 and (ii) flooding.
ID	APP22	File Note dated 14 July 2017 re mitigation scheme for pink-footed geese, with attachments, concerning plans 175a and 179a.
ID	APP23	File note dated 17 July 2017 re NCC's withdrawal of the eCS.
ID	APP24	File note dated 19 July 2017 re response to submissions by SAVE about Pele Tower visualisations.
ID	APP25.1	Section 39 agreement with Storys dated 19 July 2017, which relates to habitat feature at Chibburn Pools, Druridge Ponds, Druridge Ponds North, Druridge Ponds West and hedgerows and shelterbelts.
	APP25.2	Section 39 agreement with Harworth Estates dated 20 July 2017, which relates to Hemscott Burn and the wildlife islands.

- APP25.3 Section 39 agreement with William Bell dated 17 August 2017, which relates to another part of Hemscott Burn as well as Hemscott Link.
- ID APP26 File note dated 18 August 2017 in response to RSPB, NWT and SAVE's comments on section 39 agreements.
- ID APP27 File note dated 27 October 2017 concerning *The Clean Growth Strategy* and related documents.
- ID APP28 File note dated 3 November 2017 commenting on FoE and SAVE submissions concerning *The Clean Growth Strategy* and related documents.

NORTHUMBERLAND COUNTY COUNCIL

- ID NCC1 Opening submissions on behalf of Northumberland County Council.
- ID NCC2 Extract from Birds of Concern.
- ID NCC3 Extract from plan showing boundary of Northumberland Shore SSSI.
- ID NCC4 Tracked changes to Proof of Evidence by David Feige.
- ID NCC5.1 Note on schedule of planning obligations and compliance with CIL Regs [requested by Inspector].
- NCC5.2 Note on Inspector's further questions concerning obligations.
- ID NCC6 Note on Hemscott Hill Sand Extraction [requested by Inspector].
- NCC6.1 Email from Natural England dated 15 June 2017 clarifying consultation about ROMP application.
- NCC6.2 Schedule of suggested conditions for Hemscott sand extraction ROMP.
- ID NCC7.1 Email on behalf of the Inspector to Coal Authority dated 15 June 2017 requesting information about pumping at the former Lynemouth colliery.
- NCC7.2 Response by Coal Authority dated 16 June 2017.
- ID NCC8 Note on Inspector's question concerning sand extraction at Hemscott.
- ID NCC9 Note on Ellington/Lynemouth Mine Water Treatment Works.
- ID NCC10.1 Note on draft section 39 agreement Wildlife and Countryside Act 1981.
- NCC10.2 Draft Schedules 3 and 4 of section 39 agreement.
- ID NCC11 Note about discharge of planning conditions and community notification.
- ID NCC12 Closing submissions on behalf of Northumberland County Council.
- ID NCC13 Note of NCC re withdrawal of the Northumberland Local Plan Core Strategy Draft Plan.
- ID NCC14 Further information in light of the Committee on Climate Change June 2017 Reports to Parliament.
- ID NCC15.1 Email from Inspector dated 10 July 2017 seeking clarification about the mitigation scheme for pink-footed geese, and plans 175a and 179a.
- NCC15.2 Email from NCC dated 13 July 2017 stating that plans 175a and 179a were intended to fully substitute plans 175 and 179.
- ID NCC16 Note on the implications of the withdrawal of the Northumberland Local Plan CS Draft Plan.

SAVE DRURIDGE

- ID SAVE1 Opening submissions on behalf of Save Druridge.
- ID SAVE2 Recent relevant correspondence (pages 1-27).
- ID SAVE3 Site Notification Northumberland Shore SSSI.
- ID SAVE4 Extract from *A Handbook on Environmental Impact Assessment*, Scottish Natural Heritage.
- ID SAVE5 England Coast Path, South Bents to Amble, Natural England's Report to the Secretary of State: Overview.
- ID SAVE6 England Coast Path, Chapter 6:Cresswell to Leazes Street, Natural England's Proposals.
- ID SAVE7 Extract from Parish Newsletter.
- ID SAVE8 Update to evidence by Duncan Lawrence.
- ID SAVE9.1 Closing submissions of Save Druridge.
- SAVE9.2 Authorities.
- ID SAVE10.1 Note on Committee on Climate Change Report 2017.
- SAVE10.2 Annex 1 *Summary and recommendations Reducing emissions and preparing for climate change*; 2017 report to Parliament.
- SAVE10.3 Annex 2 Extracts from webpages concerning overturned coal lorry at Cramlington roundabout.
- ID SAVE11 Response to CCC Report 2017 submissions and visualisations from the Cresswell (Pele) Tower.
- ID SAVE12.1 Note on withdrawal of the Northumberland Local Plan Core Strategy.
- SAVE12.2 NCC Statement of Withdrawal of Northumberland Local Plan: Core Strategy.
- SAVE12.3 Frequently asked questions following withdrawal.
- ID SAVE13 Email dated 15 August 2017 commenting on section 39 agreements and noting applications for camping at Hemscott.
- ID SAVE14 Email dated 26 October 2017 concerning *The Clean Growth Strategy*.
- ID SAVE15 SAVE comments on applicant's submission concerning *The Clean Growth Strategy*, dated 3 November 2017.

FRIENDS OF THE EARTH

- ID FOE1 Opening statement on behalf of Friends of the Earth.
- ID FOE2 Application by Eggborough Power Ltd for Development Consent for a gas-fired electricity generating station with a gross output capacity of up to 2,500 MW, dated 30 May 2017.
- ID FOE3 Note from Professor Taylor with regard to gas generation capacity.
- ID FOE4 Planning permission for electrical interconnector between the UK and Norway associated development including underground cables to Blyth substation, dated 7 November 2014 (NCC Application No.13/03524/OUTES).
- ID FOE5 Extract from National Grid website entitled *Interconnectors – Norway*.
- ID FOE6.1 Update to Simon Bullock's Proof of Evidence paragraphs 3.19 and 3.20.
- FOE6.2 Tracked changes.
- ID FOE7 Extract from Committee on Climate Change website concerning publication of annual progress report on 29 June 2017.

ID	FOE8	Closing submissions on behalf of Friends of the Earth.
ID	FOE9	Further submission of FoE July 2017 concerning the Committee on Climate Change progress report.
ID	FOE10	Email dated 17 July 2017 re NCC's withdrawal of the eCS.
ID	FOE11	Comments on <i>The Clean Growth Strategy</i> and related documents, dated 27 October 2017.
ID	FOE12	FoE comments on Banks Mining submission on the Clean Growth Strategy, dated 3 November 2017.

OTHER DOCUMENTS

ID	OTH1	NCC notification letter about the Inquiry and list of those notified.
ID	OTH2	Additional evidence by Rachel Locke Save Newcastle Wildlife.
ID	OTH3.1	Statement by John Ashton CBE.
	OTH3.2	Letter dated 7 July 2017 concerning coal spill in Cramlington.
ID	OTH4	Statement by Martin Swinbank including appendices.
ID	OTH5	Statement by Alnwick Area Friends of the Earth.
ID	OTH6.1	RSPB comments on target species and associated management requirements for off-site enhancement areas with the Restoration First package, dated 29 May 2017.
	OTH6.2	RSPB comments on mitigation requirements for impacts on wintering pink-footed geese, dated 29 May 2017.
	OTH6.3	Further Written Representations for RSPB, dated 19 June 2017.
	OTH6.4	Emails between RSPB and Banks.
	OTH6.5	Further Written Representations for RSPB dated 10 August 2017 on section 39 agreements.
ID	OTH7	Statement by Nigel Williams including location plan.
ID	OTH8	Statement by Rev Rick Simpson.
ID	OTH9	Minutes of Special Meeting of the Parish Council held at Community Centre on Monday 30 November 2015, Widdrington Station & Stobswood Parish Council.
ID	OTH10.1	Statement by Malcolm Reid.
	OTH10.2	Note dated 12 June 2017 and amended statement by Malcolm Reid.
ID	OTH11	Statement by David McKechnie.
ID	OTH12	Submission by the Coal Action Network with attachments.
ID	OTH13	Submission by Dr David Golding CBE.
ID	OTH14	Submission by Rebecca D'Andrea.
ID	OTH15	Submission by Amy Fok.
ID	OTH16	Statement by Maxwell Tait.
ID	OTH17	Submission by Andy Blanchflower.
ID	OTH18	Letter from Stephen Emsley.
ID	OTH19.1	Submission by Rachel Locke, Save Newcastle Wildlife.
	OTH19.2	Comments on suggested conditions.
ID	OTH20	Written statement by Thomas Stewart.
ID	OTH21	Submission by Cllr Shelly Willoughby.
ID	OTH22	Submission by Anne Bromley.
ID	OTH23	Submission by Cllr Kevin Batson.
ID	OTH24.1	<i>Life Cycle Assessment of Coal Mining</i> submission by Tom Bradley.
	OTH24.2	Further submission including Dataset Information.
	OTH24.3	Rebuttal of evidence presented by Wardell Armstrong.
ID	OTH25	Statement of Graham Henderson.

- ID OTH26 Statement of Jake Adkins.
- ID OTH27 Statement of Steven White.
- ID OTH28.1 Extract from *Turning the Plough* submitted by George Wilson CPRE.
- OTH28.2 Plan of rig and furrow areas identified by Mr Wilson.
[requested by Inspector]
- ID OTH29 Summary proof of evidence by Cllr Anita Lower.
- ID OTH30 Letter dated 14 June 2017 from Tony Glenton CBE TD FCA DL.
- ID OTH31.1 Submission by Malcolm Green.
- OTH31.2 Updated Submission by Malcolm Green.
- ID OTH32 Submission by Anthony Barber.
- ID OTH33.1 Updated statement by Northumberland Wildlife Trust dated 19 June 2017.
- OTH33.2 Further comments by NWT dated 11 August 2017 concerning section 39 agreements.
- ID OTH34 Submission by Barry Mead.
- ID OTH35 Submission by Ken Johnson.
- ID OTH36.1 Suggested planning conditions discussed at Inquiry.
- OTH36.2 Highthorn Surface Mine Archaeology Mitigation Brief
[submitted by NCC concerning suggested Condition 56].
- ID OTH37 Committee on Climate Change 2017 Annual Progress Report to Parliament *Meeting Carbon Budgets: Closing the policy gap*.
- ID OTH38.1 Written Ministerial Statement *The Clean Growth Strategy Leading the way to a low carbon future*, Minister for Climate Change and Industry, Claire Perry, 12 October 2017.
- OTH38.2 *The Clean Growth Strategy Leading the way to a low carbon future* October 2017.
- OTH38.3 *Government Response to the Committee on Climate Change 2017 Report to Parliament – Meeting Carbon Budgets* October 2017.
- ID OTH39 *Coal Generation in Great Britain Summary of responses to consultation*, BEIS, October 2017.

CORE DOCUMENTS

01. ADOPTED DEVELOPMENT PLAN POLICIES

- CD 1.1 Saved Policies of the Northumberland Minerals Local Plan (March 2000)
- CD 1.1.1 Northumberland Minerals Local Plan
- CD 1.1.2 Northumberland Minerals Local Plan Map
- CD 1.1.3 List of Saved Policies Issued By the Secretary of State (31 August 2007)
- CD 1.2 Saved Policies of the Castle Morpeth Local Plan (February 2003)
- CD 1.2.1 Castle Morpeth Local Plan
- CD 1.2.2 Castle Morpeth Local Plan Maps
- CD 1.2.3 Castle Morpeth Local Plan Inset Maps
- CD 1.2.4 List of Saved Policies Issued By the Secretary of State (31 August 2007)

02. EMERGING DEVELOPMENT PLAN POLICIES AND EVIDENCE BASE DOCUMENTS

- CD 2.1 Northumberland Core Strategy
- CD 2.1.1 Pre-Submission Draft (October 2015)
- CD 2.1.2 Proposed Major Modifications (June 2016)
- CD 2.1.3 Proposed Further Major Modifications (November 2016)
- CD 2.1.4 Proposed Additional Major Modifications (February 2017)
- CD 2.1.5 Proposed Minor Modifications (February 2017)
- CD 2.1.6 Consolidated Document Showing Proposed Modifications to Pre-submission Draft (February 2017)
- CD 2.2 Northumberland Key Land Use Impact Study (September 2010)
- CD 2.2.1 Northumberland Key Land Use Impact Study Introduction
- CD 2.2.2 Part A - Landscape Sensitivity at Settlement Edges
- CD 2.2.3 Part B - Proposed Extension of the Green Belt Around Morpeth
- CD 2.2.4 Part C - Landscape Sensitivity to Key Land Uses
- CD 2.2.5 Part D - Landscapes Potentially Requiring Additional Protection
- CD 2.3 Northumberland County Council - A Green Infrastructure Strategy (Oct 2011)

03. NATIONAL PLANNING POLICY, COMPANION GUIDES, MINISTERIAL STATEMENTS AND LEGISLATION

- CD 3.1 DCLG: National Planning Policy Framework (March 2012)
- CD 3.2 DCLG: National Planning Policy Guidance [electronic copy]
- CD 3.3 Coal Industry Act 1994 - Section 53
- CD 3.4 DECC: Overarching National Policy Statement for Energy (EN-1) (July 2011)
- CD 3.5 DECC: Planning Our Electric Future: A White Paper for Secure, Affordable and Low - Carbon Electricity (July 2011)
- CD 3.6 DECC: Energy Security Strategy (November 2012)
- CD 3.7 DECC: Written Ministerial Statement and Speech (Priorities for UK Energy and Climate Change Policy) (November 2015) (HCWS312)
- CD 3.8 DECC: Amber Rudd Speech on a New Direction for UK Energy Policy (Nov 2015)
- CD 3.9 CCC: Meeting Carbon Budgets - 2016 Progress Report to Parliament (June 2016)
- CD 3.10 BEIS: Coal Generation in Great Britain - The pathway to a low-carbon future (November 2016)
- CD 3.11 Climate Change Act 2008
- CD 3.12 Planning and Compulsory Purchase Act 2004
- CD 3.13 EIA Directive 2011/92/EU
- CD 3.14 Town and Country Planning (Environmental Impact Assessment) Regs 2011

- CD 3.15 Town and Country Planning Act 1990
- CD 3.16 DECC: National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) (July 2011)
- CD 3.17 BEIS: Updated Energy and Emissions Projections 2016 (March 2017)
- CD 3.17.1 Updated Energy and Emissions Projections 2016 (Report)
- CD 3.17.2 Annex J - Total Electricity Generation By Source
- CD 3.17.3 Annex K - Total Cumulative New Electricity Generating Capacity
- CD 3.17.4 Annex L - Total Electricity Generating Capacity
- CD 3.17.5 Statistical Press Release - UK Energy Statistics - 2016 Provisional Data (23 February 2017)
- CD 3.17.6 Annex G - Major Power Producers' Generation By Source
- CD 3.17.7 Annex A - Greenhouse Gas Emissions By Source
- CD 3.17.8 Annex B - Carbon Dioxide Emissions By Source
- CD 3.17.9 Annex C - Carbon Dioxide Emissions By IPCC Category
- CD 3.17.10 Annex M - Growth Assumptions and Prices
- CD 3.18 CCC: UK Climate Action Following the Paris Agreement (October 2016)
- CD 3.19 BEIS: Budget Notice for the Second CFD Allocation Round (13 March 2017)
- CD 3.20 BEIS: Consumer-Funded Policies Report (November 2016)
- CD 3.21 BEIS: Digest of UK Energy Statistics (July 2016) (Extract Report)
- CD 3.21.1 Digest of UK Energy Statistics - Chapter 2
- CD 3.21.2 Coal Commodity Balances
- CD 3.21.3 Table 2C Identified GB Coal Resource Assessment at 6 June 2016
- CD 3.22 BEIS: Energy Trends (March 2017) (Extract Report)
- CD 3.22.1 Energy Trends Report - Section 2, 5 and 6.
- CD 3.22.2 Table 2.1 - Supply and Consumption of Coal
- CD 3.22.3 Table 2.4 - Coal Imports
- CD 3.22.4 Table 5.1 - Fuel Used in Electricity Generation and Electricity Supplied
- CD 3.22.5 Statistical Release for Monthly Energy Production, Consumption and Prices (April 2017)
- CD 3.23 BEIS: The Future of Coal Generation in Great Britain - Impact Assessment (09 November 2016)
- CD 3.24 CCC: Carbon Budgets - How We Monitor Emissions Targets
- CD 3.25 CCC: Fifth Carbon Budget Central Scenario Data
- CD 3.26 BEIS: 2016 UK Provisional Greenhouse Gas Emission (30 March 2017)
- CD 3.27 CCC: Sectoral Scenarios for the Fifth Carbon Budget - Technical Report (November 2015) (Extract)
- CD 3.28 CCC: The Fifth Carbon Budget: The Next Step Towards A Low-Carbon Economy (November 2015)
- CD 3.29 DECC: Electricity Market Reform Delivery Plan (December 2013) (Extract)
- CD 3.30 DECC: The Carbon Budget Order 2016 (July 2016)
- CD 3.31 HM Government: Building Our Industrial Strategy Green Paper (Jan 2017)
- CD 3.32 The Climate Change Levy (General) (Amendment) Regulations 2013
- CD 3.33 ICIS: Updated: UK 1.9GW CCGT Developer Gives Up Capacity Market Contract
- CD 3.34 National Grid: Capacity Market Auction Guidelines (July 2016)
- CD 3.35 National Grid: Future Energy Scenarios (July 2016)
- CD 3.36 National Grid: National Grid EMR Electricity Capacity Report (May 2016)
- CD 3.37 National Grid: Provisional Auction Results - T-4 Capacity Market Auction 2020/21 (December 2016)
- CD 3.38 CCC: Power Sector Scenarios For The Fifth Carbon Budget (October 2015)
- CD 3.39 United Nations: Paris Agreement (December 2015)

- CD 3.40 HM Government: The Carbon Plan - Delivering Our Low Carbon Future (December 2011)
- CD 3.41 BEIS & OFGEM: A Smart, Flexible Energy System - A Call For Evidence (November 2016)
- CD 3.42 HM Treasury: Spring Budget 2017 (March 2017)
- CD 3.43 National Grid: Capacity Market Register T-4 2016 (3 March 2017) [electronic copy]
- CD 3.44 Planning (Listed Buildings and Conservation Areas) Act 1990
- CD.3.45 National Infrastructure Commission: Smart Power Report (2016)
- CD 3.46 DECC: Renewable Energy Roadmap (November 2013)
- CD 3.47 KPMG: Energising the North (2016)
- CD 3.48 Carbon Tracker: Unburnable Carbon - Are the World's Financial Markets Carrying a Carbon Bubble? (2014)
- CD 3.49 IPPR North: Who will Power the Powerhouse? (February 2017)
- CD 3.50 BEIS: 2015 UK Greenhouse Gas Emissions
- CD 3.50.1 Final Figures: Statistical Summary
- CD 3.50.2 2015 UK Greenhouse Gas Emissions, Final Figures (7 February 2017)
- CD 3.50.3 Final UK Greenhouse Gas Emissions National Statistics 1990-2015
- CD 3.50.4 Renewable Electricity in Scotland, Wales, Northern Ireland and the Regions of England in 2015
- CD 3.51 DECC: 60th Anniversary - Digest of United Kingdom Energy Statistics (July 2009)
- CD 3.52 IPCC: 5th Global Assessment (Working Group 3) - Chapter 5
- CD 3.53 House of Commons: Consumption-Based Emissions Reporting: Government Response to the Committee's Twelfth Report of Session 2010-12
- CD 3.54 House of Commons: Setting the Fifth Carbon Budget: Government Response to the Committee's Fifth Report of Session 2015-16
- CD 3.55 The Crown Estate: Offshore Wind Operational Report (January - December 2015)
- CD 3.56 CCC: The Renewable Energy Review (May 2011)
- CD 3.57 ONS: UK Environmental Accounts: Low Carbon and Renewable Energy Economy Survey - Final Estimate 2015

04. MAIN APPLICATION DOCUMENTS

- CD 4.1 Scoping Report (December 2014)
- CD 4.1.1 Highthorn Scoping Report
- CD 4.1.2 Appendix 1 - Banks Restoration Brochure
- CD 4.1.3 Appendix 2 - Banks Community Brochure
- CD 4.1.4 Appendix 3 - Banks Coal Brochure
- CD 4.1.5 Appendix 4 - Shotton Environment Management Plan
- CD 4.1.6 Appendix 5 - Schedule of Key Questions
- CD 4.1.7 Appendix 6 - Development With Care Policy
- CD 4.1.8 Appendix 7 Environmental Policy
- CD 4.1.9 Highthorn Plans
- CD 4.2 Scoping Opinion of Northumberland County Council (February 2015)
- CD 4.3 Supplementary Scoping Opinion of Northumberland County Council on Cumulative Effects (March 2015)
- CD 4.4 Environmental Statement Volume 1: Non-Technical Summary, Planning Application Forms, Planning and Environmental Statement and Planning Application Drawings (October 2015)
- CD 4.4.1 Non-Technical Summary

- CD 4.4.2 Forms
- CD 4.4.3 Planning Application & Environmental Statement
- CD 4.4.4 Drawings
- CD 4.5 Environmental Statement Volume 2: Appendices 1 - 3 (October 2015)
- CD 4.5.1 Appendix 1 – SCI
- CD 4.5.2 Appendix 2 – LVIA
- CD 4.5.3 Appendix 3 - Ecology Assessment
- CD 4.6 Environmental Statement Volume 3: Appendices 4 - 6 (October 2015) and Further Environmental Information - Geophysical Survey (November 2015)
[NB: FEI incorporated into Appendix 4]
- CD 4.6.1 Appendix 4 - Archaeological Assessment
- CD 4.6.2 Appendix 5 - Hydrological Assessment
- CD 4.6.3 Appendix 6 - Geotechnical Assessment
- CD 4.7 Environmental Statement Volume 4: Appendices 7 - 15 (October 2015)
- CD 4.7.1 Appendix 7 - Main Gas Risk Assessment
- CD 4.7.2 Appendix 8 - Air Quality Assessment
- CD 4.7.3 Appendix 9 - Noise Assessment
- CD 4.7.4 Appendix 10 - Lighting Assessment
- CD 4.7.5 Appendix 11 - Vibration Assessment
- CD 4.7.6 Appendix 12 - Transport Assessment
- CD 4.7.7 Appendix 13 - Soils & Agricultural Assessment
- CD 4.7.8 Appendix 14 - Draft Site Biodiversity Action Plan
- CD 4.7.9 Appendix 15 - Draft Environmental Management Plan
- CD 4.7.10 Appendix 16 - Discover Druridge
- CD 4.8 Regulation 22 Information (April 2016)
- CD 4.8.1 Highthorn Regulation 22 Covering Letter
- CD 4.8.2 Highthorn Regulation 22 Information
- CD 4.8.3 Highthorn Regulation 22 Appendices Index
- CD 4.8.4 Appendix 1 - NCC Correspondence
- CD 4.8.5 Appendix 2 - DAB Geotechnics Correspondence
- CD 4.8.6 Appendix 3 - Pink Footed Geese
- CD 4.8.7 Appendix 4 - Cresswell Ponds SSSI
- CD 4.8.8 Appendix 5 - DAB Geotechnics Correspondence
- CD 4.9 Further Environmental Information 2 (March 2017)
- CD 4.9.1 Non-Technical Summary
- CD 4.9.2 FEI2 Statement
- CD 4.9.3 PA15 Rev A - Indicative Working Programme Update
- CD 4.9.4 Appendix 1 - Letter from PINS dated 17 January 2017
- CD 4.9.5 Appendix 2 - Letter from Eversheds dated 16 January 2017
- CD 4.9.6 Appendix 3 - Electricity Sub-Station at Shotton Surface Mine
- CD 4.9.7 Appendix 4 - H&H Land and Property Report (March 2017)
- CD 4.9.8 Appendix 5 - Draft Environmental Management Plan (Updated March 2017)
- CD 4.9.9 Appendix 6 - Greenhouse Gas Emission (March 2017)
- CD 4.9.10 Appendix 7 - Argus Ecology Report (February 2017)
- CD 4.10 Officer Presentation to Public Meeting Held On 25 February 2016
- CD 4.11 Minutes of Public Meeting Held On 25 February 2016
- CD 4.12 Proposed Heads of Terms for the Section 106 Agreement (16 June 2016)
- CD 4.13 Officer Report to the Northumberland County Council Strategic Planning Committee
- CD 4.14 Legal Opinion Prepared for Friends of the Earth By Paul Brown QC (30 June 2016)

- CD 4.15 Legal Opinion Prepared for the Applicant By Richard Kimblin QC (30 June 2016)
- CD 4.16 Addendum Report to the Northumberland County Council Strategic Planning Committee (05 July 2016)
- CD 4.17 Minutes of the Northumberland County Council Strategic Planning Committee Held On 05 July 2016
- CD 4.18 Delegated Report Prepared By Northumberland County Council Regarding Departure of the Application from the Development Plan (06 September 2016)
- CD 4.19 Secretary of State Call-In Letter (08 September 2016)
- CD 4.20 Call-In Inquiry Start Letter (15 September 2016)

05. CONSULTATION RESPONSES

- CD 5.1 Consultee Responses to Application (October 2015)
 - (a) Cresswell Parish Council
 - (b) Environment Agency
 - (c) Historic England
 - (d) National Trust
 - (e) Natural England
 - (f) Natural England (29 February 2016)
 - (g) Network Rail
 - (h) NCC Archaeology
 - (i) NCC Coastal Erosion
 - (j) NCC Conservation Officer
 - (k) NCC Ecologist
 - (l) NCC Environmental Health
 - (m) NCC Environmental Protection Officer
 - (n) NCC Highways
 - (o) NCC Lead Local Flood Authority
 - (p) NCC Public Rights of Way
 - (q) Northumberland Wildlife Trust
 - (r) Northumbrian Water
 - (s) RSPB
 - (t) The Coal Authority
 - (u) Widdrington Station and Stobswood Parish Council
 - (v) Widdrington Village Parish Council
- CD 5.2 Consultee Responses to Further Environmental Information (April 2016)
 - (a) Environment Agency
 - (b) Historic England
 - (c) National Trust
 - (d) Natural England
 - (e) Network Rail
 - (f) NCC Ecologist
 - (g) NCC Environmental Protection Officer
 - (h) NCC Highways
 - (i) NCC Lead Local Flood Authority
 - (j) NCC Public Rights of Way
 - (k) Northumberland Coast AONB Partnership
 - (l) Northumberland Wildlife Trust
 - (m) RSPB
 - (n) The Coal Authority

- CD 5.3 Consultee Responses to Further Environmental Information 2 (March 2017)
 - (a) National Trust
 - (b) Natural England
 - (c) Northumberland Wildlife Trust
 - (d) RSPB
 - CD 5.4 Public Representations of Other Interested Parties Environmental Impact Assessment (October 2015)
 - (a) Berwick upon Tweed Constituency Green Party
 - (b) CPRE
 - (c) Friends of the Earth - Alnwick
 - (d) Friends of the Earth
 - (e) Natural History Society of Northumbria
 - (f) Save Druridge - Duncan and Kate Lawrence
 - (g) Save Druridge - Jonathan Rodger
 - (h) Save Druridge - Jonathan Rodger (13 December 2015)
 - (i) Save Druridge - Lynne Tate, Gary Smith and Andy Shelley
 - (j) National Planning Casework Unit
 - Further Environmental Information (April 2016)
 - (k) Friends of the Earth
 - CD 5.5 Public Representations (Objection, Support, General, Late Comments)
06. HIGH COURT DECISIONS
- CD 6.1 *The Queen on the Application of an Taisce (The National Trust for Ireland) v The Secretary of State for Energy and Climate Change v NNB Generation Company Limited* - [2014] EQCA Civ 1111 [electronic copy]
 - CD 6.2 *The Queen on the Application of Friends of the Earth Limited, Frack Free Ryedale (By David Davis and Jackie Cray) v North Yorkshire County Council v Third Energy UK Gas Limited* - [2016] EWHC 3303 (Admin) [electronic copy]
07. VARIOUS SURFACE MINE APPEAL DECISIONS
- CD 7.1 Appeal Decision for *Fieldhouse* (3001645) (Durham County Council)
 - CD 7.2 Appeal Decision for *Halton Lea Gate* (2164056) (Northumberland County Council)
 - CD 7.3 Appeal Decision for *Shotton* (2022344) (Northumberland County Council)
 - CD 7.3.1 *Shotton* Appeal Inspectors Report
 - CD 7.3.2 *Shotton* Appeal Decision Letter
 - CD 7.4 Appeal Decision for *Bradley* (2150277) (Northumberland County Council)
08. LANDSCAPE AND VISUAL DOCUMENTS
- CD 8.1 Northumberland Landscape Character Assessment (August 2010)
 - CD 8.1.1 Part A - Landscape Classification
 - CD 8.1.2 Part A - Annexe A (Landscape Characteristics)
 - CD 8.1.3 Part A - Figure 1 (Study Area)
 - CD 8.1.4 Part A - Figure 2 (National Character Areas)
 - CD 8.1.5 Part A - Figure 3 (Existing Landscape Character Assessments)
 - CD 8.1.6 Part A - Figure 4 (Topography)
 - CD 8.1.7 Part A - Figure 5 (Natural Heritage Designations)
 - CD 8.1.8 Part A - Figure 6 (Cultural Heritage Designations)
 - CD 8.1.9 Part A - Figure 7 (Historic Landscape Characterisation)
 - CD 8.1.10 Part A - Figure 8 (The Landscape Classification)
 - CD 8.1.11 Part B - The Changing Landscape

- CD 8.1.12 Part B - Figure 1 (Guiding Principles for the Landscape)
- CD 8.2 LI and IEMA: Guidelines for Landscape and Visual Impact Assessment (Third Edition)
- CD 8.3 Landscape Character Assessment of Coast and Countryside Areas Adjacent to the Northumberland Coast Area of Outstanding Natural Beauty (Extract & Full Document)

09. ECOLOGY AND ENVIRONMENTAL DOCUMENTS

- CD 9.1 Bat Conservation Trust: Bat Surveys for Professional Ecologists - Good Practice Guidelines (3rd Edition) (2016)
- CD 9.2 DEFRA: Biodiversity 2020: A Strategy for England's Wildlife and Ecosystem Services
- CD 9.3 Making Space for Nature: A Review of England's Wildlife Sites and Ecological Network (2010)
- CD 9.4 DEFRA: The Natural Choice - Securing the Value of Nature (2011)
- CD 9.5 NE: National Character Area Profile - 13. South East Northumberland Coastal Plain (2013)
- CD 9.6 Proposal for Locally Determined Nature Improvement Area within the Northumberland Lowlands and Coast LNP Area
- CD 9.7 Northumberland Wildlife Trust: Druridge Bay Living Landscape [electronic]
- CD 9.8 DEFRA: Providing and Protecting Habitat for Wild Birds [electronic copy]
- CD 9.9 TIDE Tidal River Development: Waterbird Disturbance & Mitigation Toolkit [electronic copy]
- CD 9.10 CIEEM: Guidelines for Ecological Impact Assessment In The UK and Ireland (2nd Edition) (January 2016)
- CD 9.11 DEFRA: Coquet to St. Mary's Marine Conservation Zone (January 2016)
 - CD 9.11.1 Designation Map
 - CD 9.11.2 Fact Sheet
 - CD 9.11.3 Feature Map
- CD 9.12 Northumbria Coast SPA Citation (Version 2.0) (January 2000)
- CD 9.13 Cresswell Ponds SSSI Citation
- CD 9.14 Northumberland Shore SSSI Citation
- CD 9.15 Hadston Links SSSI Citation
- CD 9.16 AES-LTD: Brenkley Breeding Bird Survey 2013
- CD 9.17 AES-LTD: Brenkley Breeding Bird Survey 2014
- CD 9.18 AES-LTD: Shotton Breeding Bird Survey 2014
- CD 9.19 Banks: Shotton Triangle - Ecological Mitigation Plan (2016)
- CD 9.20 ODPM: Circular 06/2005 Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System (16 August 2005)
- CD 9.21 NE: Research on the Assessment of Risks & Opportunities for Species in England as a Result of Climate Change (July 2015)

10. TOURISM AND ECONOMY DOCUMENTS

- CD 10.1 Northumberland Destination Management Plan 2015-2020
- CD 10.2 Northumberland Economic Strategy 2015-2020

11. HERITAGE DOCUMENTS

- CD 11.1 HE: Historic Environment Good Practice Advice in Planning Note 2 (July 2015)

CD 11.2 HE: Historic Environment Good Practice Advice in Planning Note 3 (July 2015)

12. RESIDENTIAL AMENITY DOCUMENTS

CD 12.1 ILP: Guidance Notes for the Reduction of Obtrusive Light (2011)

CD 12.2 DEFRA: Noise Policy Statement for England (NPSE) (March 2010)

13. OTHER DOCUMENTS

CD 13.1 Druridge Bay - A Strategy for Management to 2010

CD 13.2 Hemscott Hill Sand Extraction Site Environmental Statement Non-Technical Summary (September 2013)

CD 13.3 Climate Analytics: Implications of the Paris Agreement for Coal Use in the Power Sector (November 2016)

CD 13.4 Climate Analytics: A Stress Test for Coal in Europe Under the Paris Agreement (February 2017)

CD 13.5 Carbon Brief: How the UK Generates Its Electricity (12 October 2015)

CD 13.6 Carbon Brief: UK Wind Generated More Electricity Than Coal in 2016 (05 January 2017)

CD 13.7 Lazarus M. & Erickson P.: Supply-Side Climate Policy: The Road Less Taken (2015)

CD 13.8 Erickson, P., Lazarus, M. & Tempest, K.: Carbon Lock-In From Fossil Fuel Supply Infrastructure (2015)

CD 13.9 Meinshausen et. al.: Greenhouse Gas Emission Targets for Limiting Global Warming 2°C (2009)

CD 13.10 BSG: Mineral Planning Factsheet (2010)

CD 13.11 E3G: G7 Coal Phase Out: United Kingdom - A Review for Oxfam (October 2015)

CD 13.12 Association of UK Coal Importers and Producers: Coal Generation in Great Britain - The Pathway to a Low-Carbon Future: Consultation Response

CD 13.13 Swale Local Plan Documents

CD 13.13.1 Interim Findings On Swale Local Plan (ID/9d)

CD 13.13.2 Swale Local Plan Submission Draft (December 2014) (Extract)

CD 13.13.3 Swale Proposals Map

CD 13.13.4 Key to Proposals Map

CD 13.14 Christchurch and East Dorset Local Plan Documents

CD 13.14.1 Christchurch & East Dorset Local Plan - Core Strategy (2 June 2014)

CD 13.14.2 Christchurch & East Dorset Local Plan Policies Map (North Sheet)

CD 13.14.3 Christchurch & East Dorset Local Plan Policies Map (South Sheet)

CD 13.14.4 Christchurch & East Dorset Local Plan Policies Map Key

14. NCC INQUIRY DOCUMENTS

CD 14.1 NCC Statement of Case (24 January 2017)

CD 14.2 NCC Suggested Unaccompanied Visit

CD 14.3 NCC Proof of Evidence - Planning (Frances Wilkinson)

CD 14.3.1 Main Document

CD 14.3.2 Appendices

CD 14.3.3 Summary Proof

CD 14.4 NCC Proof of Evidence - Climate Change (Julie Gartside)

CD 14.4.1 Main Document

CD 14.4.2 Summary Proof

CD 14.5 NCC Proof of Evidence - Landscape (Ken Halliday)

- CD 14.5.1 Main Document
- CD 14.5.2 Appendices
- CD 14.5.3 Summary Proof
- CD 14.6 NCC Proof of Evidence - Ecology (David Feige)
 - CD 14.6.1 Main Document
 - CD 14.6.2 Summary Proof
- CD 14.7 NCC Rebuttal Proof of Evidence - Planning (Frances Wilkinson)
- CD 14.8 NCC Rebuttal Proof of Evidence - Climate Change (Julie Gartside)
- CD 14.9 NCC Rebuttal Proof of Evidence - Ecology (David Feige)

15. APPLICANT INQUIRY DOCUMENTS

- CD 15.1 Applicant Statement of Case (24 January 2017)
 - CD 15.1.1 Applicant Covering Letter
 - CD 15.1.2 Applicant Initial Statement of Case
- CD 15.2 Applicant Suggested Unaccompanied Visit
- CD 15.3 Applicant Correspondence (Call-In Decision) (21 March 2017)
 - CD 15.3.1 Applicant Correspondence to Secretary of State
 - CD 15.3.2 Planning Inspectorate Responses to Applicant
- CD 15.4 Applicant Supplement Statement of Case (07 April 2017)
- CD 15.5 Applicant Proof of Evidence - Planning (Alexander Stewart Provan)
 - CD 15.5.1 Summary Proof
 - CD 15.5.2 Main Document
 - CD 15.5.3 Appendices
- CD 15.6 Applicant Proof of Evidence - Climate Change (Alon Carmel)
 - CD 15.6.1 Summary Proof
 - CD 15.6.2 Main Document
 - CD 15.6.3 Appendices
- CD 15.7 Applicant Proof of Evidence - Landscape and Visual (Mark Simmons)
 - CD 15.7.1 Summary Proof
 - CD 15.7.2 Main Document
 - CD 15.7.3 Appendices
- CD 15.8 Applicant Proof of Evidence - Environmental Management (Mark Dowdall)
 - CD 15.8.1 Summary Proof
 - CD 15.8.2 Main Document
 - CD 15.8.3 Appendices
- CD 15.9 Applicant Proof of Evidence - Ecology (Kevin Honour)
 - CD 15.9.1 Summary Proof
 - CD 15.9.2 Main Document
- CD 15.10 Applicant Proof of Evidence Plans Pack
- CD 15.11 Applicant Rebuttal Proof of Evidence - Planning (Alexander Stewart Provan)
 - CD 15.11.1 Main Document
 - CD 15.11.2 Appendices
- CD 15.12 Langley Marina Decision Notice (28 February 2011)
- CD 15.13 East Ayrshire Council Committee Report (20 January 2017)
- CD 15.14 Carsgailoch Withdrawal (20 September 2016)
- CD 15.15 Lanehead Extension Decision Notice (29 March 2010)
- CD 15.16 Applicant Rebuttal Proof of Evidence - Climate Change (Alon Carmel)
- CD 15.17 Applicant Rebuttal Proof of Evidence - Landscape and Visual (Mark Simmons)
- CD 15.18 Applicant Rebuttal Proof of Evidence - Environmental Management (Mark Dowdall)

- CD 15.18.1 Main Document
- CD 15.18.2 Appendices
- CD 15.19 Applicant Rebuttal Proof of Evidence - Ecology (Kevin Honour)

16. RULE 6 PARTY INQUIRY DOCUMENTS

- CD 16.1 Save Druridge Letter from, Richard Buxton Environmental & Public Law (09 January 2017)
- CD 16.2 Save Druridge Statement of Case (20 January 2017)
 - CD 16.2.1 Save Druridge Letter to PINS
 - CD 16.2.2 Save Druridge Statement of Case
- CD 16.3 Friends of the Earth Statement of Case (23 January 2017)
 - CD 16.3.1 Friends of the Earth Statement of Case
 - CD 16.3.2 Friends of the Earth Letter to PINS
- CD 16.4 Save Druridge Letter and Noise Report, from Richard Buxton Environmental & Public Law (27 March 2017)
 - CD 16.4.1 Covering Letter
 - CD 16.4.2 Spire Noise Report
- CD 16.5 Save Druridge Supplement Statement of Case (07 April 2017)
 - CD 16.5.1 Save Druridge Letter to PINS
 - CD 16.5.2 Save Druridge Supplement Statement of Case
- CD 16.6 Save Druridge Proof of Evidence - Amy Boutflour
 - CD 16.6.1 Main Document
 - CD 16.6.2 Appendices
- CD 16.7 Save Druridge Proof of Evidence - Alyson Austin
 - CD 16.7.1 Main Document
 - CD 16.7.2 Appendices
 - CD 16.7.3 Summary Proof
- CD 16.8 Save Druridge Proof of Evidence - Andrew Green
 - CD 16.8.1 Main Document
 - CD 16.8.2 Appendix 1
 - CD 16.8.3 Appendix 2
 - CD 16.8.4 Appendix 3
 - CD 16.8.5 Appendix 4
 - CD 16.8.6 Appendix 5
 - CD 16.8.7 Appendix 6
 - CD 16.8.8 Appendix 7
 - CD 16.8.9 Appendix 8
- CD 16.9 Save Druridge Proof of Evidence - Ivor Rackham
 - CD 16.9.1 Main Document
 - CD 16.9.2 Appendix 1
 - CD 16.9.3 Appendix 2
 - CD 16.9.4 Appendix 3
 - CD 16.9.5 Appendix 4
 - CD 16.9.6 Appendix 5
 - CD 16.9.7 Summary Proof
- CD 16.10 Save Druridge Proof of Evidence - Richard Quinby
 - CD 16.10.1 Main Document
 - CD 16.10.2 Appendices
- CD 16.11 Save Druridge Proof of Evidence - John Hobrough
 - CD 16.11.1 Main Document
 - CD 16.11.2 Appendices

CD 16.12 Save Druridge Proof of Evidence - Lynne Tate
CD 16.12.1 Main Document
CD 16.12.2 Appendices
CD 16.12.3 Summary Proof
CD 16.13 Save Druridge Proof of Evidence - Liz Waddell
CD 16.13.1 Main Document
CD 16.13.2 Appendices
CD 16.13.3 Summary Proof
CD 16.14 Save Druridge Proof of Evidence - Duncan Lawrence
CD 16.14.1 Main Document
CD 16.14.2 Appendix 1
CD 16.14.3 Appendix 2
CD 16.14.4 Appendix 3
CD 16.14.5 Appendix 4
CD 16.14.6 Appendix 5
CD 16.14.7 Appendix 6
CD 16.14.8 Appendix 7
CD 16.14.9 Appendix 8
CD 16.14.10 Appendix 9
CD 16.14.11 Appendix 10
CD 16.14.12 Summary Proof
CD 16.15 Save Druridge Proof of Evidence - Neil Fairclough
CD 16.15.1 Main Document
CD 16.15.2 Appendices
CD 16.16 Save Druridge Proof of Evidence - Grant Shields
CD 16.16.1 Main Document
CD 16.16.2 Appendices
CD 16.17 Save Druridge Proof of Evidence - Gayle Finlayson
CD 16.18 Save Druridge Proof of Evidence - Jonathan Rodger
CD 16.18.1 Main Document
CD 16.18.2 Appendices
CD 16.19 Friends of the Earth Proof of Evidence - Richard Bate
CD 16.19.1 Main Document
CD 16.19.2 Summary Proof
CD 16.20 Friends of the Earth Proof of Evidence - Coal Phase Out (Chris Littlecott)
CD 16.20.1 Main Document
CD 16.20.2 Appendices
CD 16.20.3 Summary Proof
CD 16.21 Friends of the Earth Proof of Evidence - Coal Phase Out (Simon Bullock)
CD 16.21.1 Main Document
CD 16.21.2 Appendices
CD 16.21.3 Summary Proof
CD 16.22 Friends of the Earth Proof of Evidence - Climate Change (John Barrett)
CD 16.22.1 Main Document
CD 16.22.2 Appendices
CD 16.22.3 Summary Proof
CD 16.23 Friends of the Earth Proof of Evidence - Renewable Energy (Phil Taylor)
CD 16.23.1 Main Document
CD 16.23.2 Appendices
CD 16.23.3 Summary Proof
CD 16.24 Save Druridge Rebuttal Proof of Evidence - Andrew Green
CD 16.25 Friends of the Earth Rebuttal Proof of Evidence - Chris Littlecott

- CD 16.25.1 Main Document
- CD 16.25.2 Appendices
- CD 16.26 Friends of the Earth Rebuttal Proof of Evidence - Simon Bullock
- CD 16.26.1 Main Document
- CD 16.26.2 Appendices
- CD 16.27 Friends of the Earth Rebuttal Proof of Evidence - John Barrett
- CD 16.27.1 Main Document
- CD 16.27.2 Appendices

17. OTHER INQUIRY DOCUMENTS

- CD 17.1 Pre-Inquiry Meeting Draft Agenda (18 January 2017)
- CD 17.2 Pre-Inquiry Meeting Attendance List (18 January 2017)
- CD 17.3 Pre-Inquiry Meeting Note (07 February 2017)
- CD 17.4 Secretary of State and Inspector Issues (13 March 2017)
- CD 17.5 Statement of Common Ground (07 April 2017)
- CD 17.6 Addendum to Statement of Common Ground (26 May 2017)

18. OTHER CORRESPONDENCE

- CD 18.1 RSPB Highthorn PINS Letter from E. Charman (16 January 2017)
- CD 18.2 RSPB Highthorn PINS Letter from A. Dodd (02 February 2017)
- CD 18.3 RSPB Written Representations
- CD 18.3.1 Summary Proof [WR25.2]
- CD 18.3.2 Main Document [WR25.1]
- CD 18.3.3 Appendices [WR25.3]



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.