

North York Moors National Park Authority

2 December 2021 Planning Committee members update sheet

Item 4, NYM/2019/0764/MEIA

The Authority has received updated comments from Anglo American on behalf of Woodsmith Potash mine, in brief they state:

Anglo American comments on Environmental Impact Assessment (EIA)

Following publication of the officer report, Anglo American wish to offer further comments. The proposals have evolved significantly since the EIA scoping opinion was offered back in 2017, are all stakeholders satisfied that the Environmental Statement is appropriate and urge the Committee to consider whether the Environmental Statement is robust enough that your officer's conclusions can be based on it?

Officer response: It is acknowledged that the applicant's proposals evolved since a Scoping Opinion was provided in 2017. National Guidance on EIA states that where a scoping opinion or direction has been issued, an Environmental Statement must be based on the most recent scoping opinion or direction issued, so far as the proposed development remains materially the same as the proposed development which was subject to the opinion or direction. Officers note that the EIA scoping process is not mandatory and in any event the submitted EIA is based on the actual development proposed. Views have been sought from all relevant statutory consultees during assessment of the application and additional expert review has been undertaken where necessary.

Guidance states that the Local Planning Authority must take into account the information in the Environmental Statement, the responses to consultation and any other relevant information when determining a planning application, and that the Environmental Statement must include the information that may reasonably be required to enable the Local Planning Authority or Secretary of State to come to a reasoned conclusion on the significant effects of the proposed development on the environment. Assessment of the proposal against a baseline of the site in a restored condition is an important element in consideration of the proposal but it is also necessary to take into account other available information, including the real world context provided by the development in its current form, in reaching a decision on the proposal.

Anglo American comments on Section 106

In terms of the justification for there not being a restoration bond in place (like Woodsmith) is it prudent to rely on the applicants £9,821,000 restoration monies held on their accounts, things could change, is the amount the right amount?

In terms of the Section 106 package, this is less than the Woodsmith package, ask Members to consider whether they are consistent?

Particularly note that that there is no similar STEM or East Cleveland employment opportunity contribution, ask Members to query the justification for their omission.

The Core Policy D/Policy ENV8 amount is much less than for Woodsmith, this should be explained.

The Section 106 needs to have provision in case the planned demolition and removal of processing does not take place so that contributions are increased not decreased.

Officer response: It is necessary to acknowledge the materially different circumstances relating to the two cases at the point in time where the planning decision is being made, as explained in Paras. 21.6.6 and 21.6.7 of the officer report. National guidance states that exceptional circumstances are required in order to justify a need for provision of a restoration bond. A planning obligation to require such a bond would also need to satisfy the legal tests in the Community Infrastructure Levy (CIL) Regulations. Caution is required when comparing different cases as individual circumstances need to be taken into account. As an established mine operated by a globally significant business, the 'exceptional circumstances' threshold is not considered to be met and a requirement for a restoration bond is not considered to be justified or reasonable in this instance.

Similarly, with regard to the Section 106 obligations proposed in the case of Boulby Mine, the scope and purpose of these is set out in Sections 22.2 to 22.8 of the officer report. These need to meet the requirements of the CIL Regulations (i.e. that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind). This can only be judged in the specific circumstances of any individual case. The Section 106 contributions proposed for Boulby Mine are considered to be those necessary to address residual harm arising from that particular development, and have been derived following an objective process of assessment. Whilst the scope and scale of these may differ from those relating to the Woodsmith Mine development, this is a reflection of the differing nature, context, impacts and duration of the respective developments.

With regard to a STEM contribution and an equivalent East Cleveland Employment opportunity contribution, these do not form part of any Section 106 reasonable offer from ICL as developer (by contrast with the York Potash proposal). In that case the STEM and Employment contributions were negotiated directly between Scarborough Borough Council & York Potash with no input from the National Park Authority, but the S106 regulations required the NPA as the relevant planning authority to include them in the agreement between the NPA and YPL S106 for completeness. In the case of Boulby Mine neither Redcar and Cleveland Borough Council or Scarborough Borough Council have indicated that a similar contribution may be required in this instance. Officers also note that, as the mine is in existence it is already delivering skills and training and employment to the local workforce.

The proposed contribution for Policy ENV8 (10% carbon offsetting) is based on the expected carbon emissions from the development and the calculated expected costs of delivering the required amount of offset through the mechanism of peatland
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restoration. The significant difference in the required contributions for the Woodsmith Mine and Boulby Mine cases reflects three main factors: the additional amount of carbon expected to be emitted by the Woodsmith development, the much longer planned lifespan of that development (103 years relative to 25 years) and the significantly greater costs of delivering carbon offsetting via woodland restoration compared with peatland restoration. In combination these factors scale up to a substantial difference in the overall total contribution required. The issue here is not the actual cost of the offsetting but that it achieves the policy requirement of 10% of emissions.

Officers recommend, based on legal advice, that if permission is granted conditions be imposed to require completion of the phased partial deconstruction works by the end of 2027. It is considered that this represents the most robust approach to controlling this aspect of the development as there is no right of appeal against a breach of condition notice, whereas Section 106 obligations can, by agreement, be subject to change after five years. If the developer wished to retain some or all of these structures beyond that date then a further permission would be required for a variation of conditions. That would provide the National Park Authority with the opportunity to consider any further Section 106 requirements for any resulting impacts over an extended period of time. In any event it is expected that the detailed wording of a legal obligation for mitigation or compensation of landscape related impacts would require that the related contribution remains at the higher rate currently agreed in principle until such time as the structures are removed.

Please see the document submitted by Lichfield on behalf of Anglo American Woodsmith Ltd at appendix A.

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Date: 1 December 2021

Our ref: 50303/18/JG/JCx/20450618v3

Your ref: NYM/2019/0764/MEIA

Dear Sir / Madam

NYM/2019/0764/MEIA: Comments to Members on behalf of Anglo American Woodsmith Ltd

On behalf of our client, Anglo American Woodsmith Ltd, we have reviewed the officer report in respect of application ref. NYM/2019/0764/MEIA which is to be considered by the North York Moors National Park Authority planning committee on 2 December.

Following our review of the report, we would be grateful if you could bring the following matters to the attention of the planning committee:

Environmental Impact Assessment Baseline

Throughout the various written representations of Anglo American in respect of this application, Anglo American has agreed with planning officers that the appropriate baseline position for the Environmental Impact Assessment should be that of a restored, greenfield site. This is consistent with the Scoping Opinion that was issued by NYMNPA in August 2017. We note that Members are reminded of this throughout the committee report as part of officers' assessment of the application. Prior to any determination of the application, we would urge the National Park Authority to consider whether the individual assessments of environmental effects included within the Environmental Statement (and subsequent updates) provided by the applicant truly reflects this requirement and thus, that the conclusions reached by officers on the acceptability of the declared environmental effects (with mitigation/compensation) are robust.

It is noted that a single Scoping Opinion was issued. The application proposals evolved significantly from the point of the initial, Scoping Opinion being provided. Anglo American would ask that the National Park Authority confirm that, in the context of paragraph 1.4.4 of the committee report, all stakeholders were satisfied that the scope of the Environmental Impact Assessment as finally submitted was appropriate.

Restoration Bond

The committee report states how, in contrast to the Woodsmith Project, a restoration bond is not considered to be necessary in the case of the Boulby scheme (please refer to paras 21.6.4 – 21.6.6).

Whilst the committee report points to assurances by the applicant that a reclamation provision amounting to £9,821,000 is available amongst their current funds, it is far from prudent for the NYMNPA not to have an accurate understanding of potential reclamation costs and the extent to which the currently available funds (and for which there is no guarantee that these will be available in the future) are likely to be sufficient or not. Indeed, at para 21.6.9 of the committee report, it is noted that “*officers are not in a position to judge whether this amount would be adequate to fully meet all liabilities for site restoration*”.

By contrast, Anglo American is obliged to review their restoration bond provisions on an annual basis. This reflects the significance that the NYMNPA gives this matter and should hold equal weight in respect of the Boulby scheme.

Extent of S106 Obligations

The Woodsmith Project was subject to a number of S106 obligations, relating to its perceived impacts, which included the following financial contributions:

- Whitby Tourism Contribution
- Welcome to Yorkshire Contribution
- York Potash Undergraduate Programme
- Visit England Contribution
- Visit Britain Contribution
- Tourism Contribution
- Signage Tourism Contribution
- Scarborough BC Local Opportunities Contribution
- Principal Core Policy D Contributions to landscape and ecology
- NYMNPA Tourism Contribution 1) construction phase; 2) operational phase
- Noise mitigation contribution
- Monitoring Contribution 1) initial; 2) ongoing
- Local Business Tourism Contribution
- Landscape and Ecology Compensation Contribution
- Geological Data Contribution
- Archaeological Data Contribution.

In the case of the Boulby scheme, we note that the financial contributions being sought are grouped together into broad obligation categories, with no further detail provided as to the purpose or intended beneficiary of the proposed financial contributions. For the sake of transparency, we trust that Members will want to seek further clarity on this in order to ensure that the requested contributions are appropriate and also that none have been missed.

Furthermore, we note that some of the obligations which were identified as relevant to the Woodsmith Project, do not appear to have been applied to the Boulby scheme in a consistent manner. For example, in respect of Core Policy D payments (now ENV8) a maximum payment of £80,000 pa is proposed in relation to the Boulby scheme. This is in contrast to the Woodsmith Project, where an equivalent payment of £675,000 pa was deemed to be applicable. It is unclear as to how the former amount has been calculated and why such a smaller amount (in comparison to the Woodsmith Project) is considered to be justified.

We also note an absence of any proposed S106 obligations relating to support for employment and training within the local community. In the case of the Woodsmith Project, for example, there is an obligation for Anglo American to pay £40,000 pa to support people into employment (referred to as “Scarborough Employment Opportunities”). It is unclear why an equivalent payment is not applicable here.

Given NYMNPA’s duty to be consistent in its decision making, we request that Members seek further clarification on these points prior to the determination of the application.

Compensatory Payments

In a number of cases, the compensatory payments (e.g. in respect of landscape harm) are proposed to decrease as and when buildings are removed from site or reduced in scale. The S106 agreement will need to ensure, however, that compensatory payments continue to endure where buildings are not decommissioned as anticipated.

The removal of processing activities on site by 2027 should also be made subject of the S106 Agreement rather than a planning condition which could, more easily, be removed or amended by the applicant in the future. This would also allow for compensatory payments to be made should processing activities not cease at Boulby, acknowledging the fact that NYMNPA has no control over CPL’s ability to deliver an off-site processing facility.

Concluding Remarks

The matters identified in this letter follow a detailed review of the officer report in respect of application NYM/2019/0764/MEIA. It also follows Anglo American having provided more detailed, technical responses to the CPL’s submission prior to it being presented to the planning committee.

We trust that Members will be made aware of these matters at the earliest opportunity so that they can be fully taken into account in their determination of the application.

Yours faithfully

Justin Gartland
Chairman

Copy – Anglo American Woodsmith Ltd