HEARING STATEMENT by THE COAL AUTHORITY (427)

“Is the Key Diagram adequate, clear and comprehensive in presenting a spatial expression of the Core Strategy policies and giving sufficient spatial direction to subsequent DPDs in terms of the broad locations of future minerals (including safeguarding areas) and waste management developments?”

Main Points Raised by The Coal Authority in Original Representation

- Key Diagram is incomplete as it only identifies Minerals Consultation Areas (MCA) for sand/gravel and limestone, but not for coal despite paragraph 4.12 of the Core Strategy referring to a Coal MCA existing already;
- The MCA being cited appear to be based upon an out of date 1982 evidence base, despite reference in chapter 4, page 24 footnote (v) also referring to more recent evidence, namely the BGS information from 2001; it is unclear from the document how its evidence base is devised.

Changes Being Sought by The Coal Authority in Original Representation

A. Amend the text to refer to the correct evidence which has been used to draw up the MCA, and base the MCA on the most up to date evidence base;
B. Illustrate the broad boundaries of the MCA for Coal on the Key Diagram.

The Coal Authority Examination Commentary – Evidence Base

1. PPS12(2004) in paragraph 2.2 requires all local development documents to “…be clear, succinct and easily understood by all…”, it also goes on to say “A comprehensive and credible evidence base should underpin the policies in local development documents.”
2. Paragraph 2.11 of PPS12(2004) indicates to us that the Minerals part of the Core Strategy “...should take account of the need to contribute appropriately to national, regional, and local requirements at acceptable social, environmental and economic costs.” Coal is a locally distinctive issue to this plan area and as such must form part of the overall evidence base underpinning the Core Strategy.

3. The need for the information base to be kept up to date is highlighted in paragraph 4.8 of PPS12(2004). The Coal Authority is concerned in this context that the County Council appears to be proposing the continuation of using an MCA devised in 1982, despite more up to date evidence in the form of the 2001 British Geological Survey (BGS) data being available. No indication has been given that the MCA has been reconsidered in response to this new evidence, although paragraph 4.8 of the Generic Development Control Policies document under Policy DC9 talks about minor amendments having been undertaken based on updated geological evidence but gives no further clarity on this issue.

4. The Coal Authority has, since submission of these two DPDs, been in a position to start a roll-out of even newer Coal Resource Maps across the UK; the Cumbria Surface Coal Resource Plan 2008 has been submitted as a Core Document to the Examination. The latest plan illustrates the coal resource capable of being surface mined, which are a result of a joint project between the BGS and The Coal Authority to illustrate primary, secondary and tertiary coal resource, combined with the past and current surface mining data. A pdf showing the Coal Resource Area was attached to our original submission representation.

5. Test 7 of the relevant 2004 Tests of Soundness indicates that strategies/policies/allocations should be the most appropriate having considered all relevant alternatives and be “...founded on a robust and credible evidence base;” The Planning Inspectorate document ‘Development Plans Examinations – A Guide to the Process of Assessing the Soundness of Development Plan Documents’ helps us to articulate the Tests of Soundness in terms of how we should apply them to an individual DPD. This gives further guidance as to what may be considered robust and credible evidence, “i.e. be prepared in accordance with national guidance and good practice guidance.”
6. National Guidance on safeguarding is set out in MPS1 Planning and Minerals in paragraph 13, however this gives no guidance in terms of a best practice approach. The MPS1 Companion Guide ‘Planning and Minerals: Practice Guide’ indicates in Paragraph 33 that “MPAs should seek advice from the minerals industry operating in their areas when they are considering the delineation of MCAs.” In this case Cumbria propose to continue to utilise 1982 defined areas as opposed to areas based upon consultation with the industry.

7. Good practice is set out in the document ‘A Guide to Mineral Safeguarding in England’ published in October 2007 which indicates that the best available geological and mineral resource information should be utilised as Step A, a good starting point for which is the impartial CLG/BGS County series of Mineral Resources Maps. Then Step B should be a refining of these resources in discussion with the Industry. Steps C and D then involve accounting for sterilisation resulting from proximal development; and taking into account other planning considerations. The County Council do not seem to have followed this Good Practice Approach.

8. It is the view of The Coal Authority that discussion is required to determine whether the evidence base underpinning the proposed Coal MCA meets this Test. It is noted that Paragraph 10.2 of the Core Strategy identifies that the County Council propose to identify safeguarding and consultation areas in the Site Allocations Policies DPD which is to follow later in the LDF Programme. However the Core Strategy then effectively contradicts this statement by including Policy 14 on safeguarding and then sets out MCAs for Limestone and Sand/Gravel on the Key Diagram, and DC Policy 9 in the Generic Development Control Policies DPD also addresses this issue.

The Coal Authority Examination Commentary – Illustration of Matters

9. PPS12(2004) in paragraph 2.5 states “A proposals map illustrating the spatial extent of policies must be prepared and maintained to accompany all development plan documents.” (our emphasis).

10. The County Council have accepted the principle of identifying the MCA for Coal on the Key Diagram as they indicate in their letter of the 16th September 2008 to The Coal Authority suggesting a proposed Pre-Examination Change. This proposed course of action would help
to meet the concerns of The Coal Authority, however it is imperative that this is based upon a credible and accurate evidence base which has not yet been clarified by the County Council. Nor have the County Council as yet actually published an illustration of how the proposed Coal MCA will appear on the Key Diagram. Consequently we are not yet clear on the spatial illustration of this key part of Policy 14 in the Core Strategy, nor have they indicated how the intend to illustrate DC Policy 9 also on safeguarding.

11. Paragraph 2.13 of PPS12(2004) indicates that the Key Diagram may illustrate constraints, we consider that the MCA is a constraint which should be appropriately shown. The Guidance goes on to state that “A key diagram will not be sufficient where the Core Strategy contains policies which need to be identified on an ordnance survey or similar map base at a registered scale as these must be illustrated on a submission proposals map.” This guidance appears to indicate that policies in the Core Strategy which require illustration to indicate their spatial coverage should then be set out on either a key diagram or a proposals map. Both types of plan can then accompany the Core Strategy, in this case Cumbria have taken the usual approach of only producing a Key Diagram. This approach would be sufficient provided that indicative illustration on a Key Diagram could sufficiently inform a reader as to where Policy 14 which sets out the MCA then actually applies. The Coal Authority consider that illustration on a Key Diagram is sufficient for the Core Strategy, given that it would then be expected that the MCA would then be illustrated precisely on a Proposals Map accompanying a later DPD.

12. This is however complicated by the fact that Cumbria has chosen not to publish any illustration of the Proposals Map changes that the Development Control Policies DPD will consequently require to the existing Adopted Proposals Map. Policy DC9 of the Development Control Policies DPD refers to safeguarding of minerals and as such it is our view that the MCA referred to for sand/gravel, limestone and coal should then be geographically illustrated on an amendment to the Proposals Map. The Proposals Map should then have been submitted alongside this DPD.

13. Advice on the Proposals Map is set out in paragraphs 2.20 to 2.27 of PPS12(2004), this makes it clear that in accordance with Regulation 6 of the 2004 Development Plan Regulations, that the Proposals Map should express geographically the development plan
policies. Paragraph 2.26 states “Local Planning Authorities, when submitting their development plan document in accordance with Regulation 28, must include a submission proposals map to identify how the adopted proposals map will be amended or added to.” (our emphasis). As set out in our original representations on the Development Control Policies DPD we considered this to be a failing that undermined the application and implementation of Policy DC9. This is because whilst the Core Strategy Key Diagram can broadly illustrate the Coal MCA, actual defined boundaries must be shown on an ordnance survey map base within the overall LDF to allow its effective application and implementation. PPS12(2004) allows for two possibilities in the view of The Coal Authority:

- Either supplement the Key Diagram in the Core Strategy with detailed OS Map based plans showing the boundaries of the MCA as PPS12(2004) allows for in paragraph 2.13;
- or
- A Submission Proposals Map should accompany the Development Control Policies DPD to illustrate the MCA boundaries.

14. The existing Adopted Proposals Map from the Minerals & Waste Local Plan 1996 (MWLP) only details areas in relation to sand and gravel extraction (policies 30 & 31 in MWLP - saved) and an area where coal extraction would not be permitted (policy 38 in MWLP - saved). The Proposals Map did not illustrate any existing MCA or Safeguarding Areas, consequently the introduction of the MCA in the Core Strategy are new matters which will require precise definition through an amendment to the Proposals Map at the appropriate stage. A question to be addressed is; when is the appropriate stage? This may well be a discussion point at the Public Examination, however it is our contention that the joint submission of the Core Strategy and the Development Control Policies DPD constitutes the appropriate stage. It is noted that the former Key Diagram for the Cumbria and Lake District Joint Structure Plan did not illustrate how it intended to apply Policy R46 on safeguarding minerals resources, although this policy no longer applies as it was superseded by Policy EM7 of the North-West RSS on the 30th September 2008.

15. What precise form a Key Diagram and Proposals Map should take is set out in Annex A of PPS12(2004). Paragraph A1 states “Broad Areas of Protection/little anticipated change can also be shown.” This would include aspects such as safeguarding and consultation areas. In relation to Proposals Maps paragraph A2 makes it clear that “...in relation to minerals and
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waste development plan documents the following will need to be shown on the proposals map: areas of significant mineral reserves subject to safeguarding policies and mineral consultation areas;…” As can be seen from earlier statements The Coal Authority is of the view that the surface coal resource within Cumbria should be safeguarded by appropriate safeguarding policies through the use of an MSA together with a MCA to ensure the effective implementation of the safeguarding.

16. Whilst the nature of the tool(s) used is for a different debate under matter 7, it is clear from PPS12(2004) that safeguarding and consultation areas should be clearly indicated on the proposals map. In this case we do not have any Submission Proposals Map accompanying the Submitted DPD as PPS12(2004) requires. This will prejudice the production of the relevant District Local Development Frameworks, as they are required to include the necessary mineral safeguarding and consultation areas on their Proposals Map in addition.

17. Alternatively the inclusion of a plan to clarify the MCA boundaries would be permitted in either the Core Strategy or Development Control Policies DPD under paragraph A7 of Annex 1 to PPS12(2004).

18. The absence of a Submission Proposals Map published alongside the Generic Development Control Policies Document means that the LDF is not being produced in accordance with the Cumbria Minerals and Waste Development Scheme published in October 2007. In that document in paragraph 2.6 it clearly states that a Proposals Map will illustrate the matters from the Core Strategy, the Site Allocation Policies DPD and the Generic Development Control Policies DPD. It could be argued therefore that the production fails the Procedural Test 1 of Soundness without such a Proposals Map at this stage, however it is noted that on page 16 of the LDS the County Council do indicate that it was their intention to produce the Proposals Map alongside the Site Allocation Policies document. This is a matter for debate at the Public Examination to test out the guidance in PPS12(2004) against the 2004 Development Plan Regulations versus the Local Development Scheme agreed by the Secretary of State. Page 8 of the LDS makes it clear that the Proposals Map will include safeguarding and consultation areas.
19. Regulation 6(1)(b) of the Town and Country Planning (Local Development) (England) Regulations 2004 indicates that any LDD which contains policies applying to sites or areas should be articulated on an accompanying LDD showing how the existing adopted proposals map is to be amended. It is our view that the Core Strategy and the Generic Development Control Policies DPD fall within the scope of this Regulation.

20. The approved Local Development Scheme appears to be at odds with Regulation 9 of the 2004 Regulations which states “When a local development scheme is prepared it must specify that the adopted proposals map will be revised- (a) at the same time as any DPD is adopted, (b) so as to illustrate geographically the application of the policies in the DPD or revision.” This Regulation appears to suggest that a Submission Proposals Map must accompany any and every DPD when it is submitted.

21. Prior to submitting our Submission Representations on this matter The Coal Authority sought advice from GO-NW on this procedural issue, they were unable to provide a definitive view on this matter and considered it was a matter which should be appropriately tested and debated through Public Examination. Regulation 14 deals with the form and content of the Proposals Map and Regulation 14(4) considers the process of first adoption. At first adoption it must illustrate geographically the policies of any DPD adopted at the same time, together with any old policies which apply at the time. This latter category would include saved policies and any previously adopted DPD as the Proposals Map. It is the view of The Coal Authority that the Proposals Map must remain an iterative document subject to revision every time any and each DPD is submitted.

22. It is for the Inspector to conclude whether the Procedural Soundness Test 1 is met. The lack of the identification of appropriate safeguarding and consultation areas on the Key Diagram and the absence of a Submission Proposals Map is considered to fail the conformity Test 4 as it does not reflect National Planning Policy in PPS12(2004) and MPS1. Test 6 on coherence, consistency and effectiveness can also only be met if the appropriate policies are then prescribed geographically on a Key Diagram as a minimum, and preferably a Submission Proposals Map.
23. There is also a further issue of how DC Policy 9 on Mineral Safeguarding is to be properly implemented without the boundaries of the MCAs being shown on an accompanying Proposals Map, the Inspector will need to assess this against Soundness Tests 8 and 9.

**Conclusion**

24. It is considered that the Core Strategy Key Diagram should be amended by the inclusion of a Coal MCA, and the MCA should be based upon a credible and robust evidence base derived from the latest available resource data. The Generic Development Control Policies DPD should be accompanied by a Submission Proposals Map properly defining the boundaries of the MCA to allow the effective implementation of the Policy DC9.

**The Coal Authority**

20<sup>th</sup> October 2008