The project is for the development of a metallurgical (coking) coal mine, a 2.3 km underground conveyor and rail loading facility. The proposal would be the first metallurgical mine in the UK for decades and will reduce dependence upon imports from Australia and America.

The proposal for the main mine site relates to the site of a former chemical works on the western outskirts of Whitehaven, Cumbria. The underground conveyor runs 2.3km south east and would transport coal to the rail loading facility in order for it to be transported via rail.

Extraction is proposed to take place for 50 years at a rate which will increase from initial development to a maximum of 3.15 million tonnes per annum of ‘Run of Mine’ (raw extraction material before processing). It is expected that Capital Investment for construction and equipping the mine will be in the region of £165 million with the creation of in excess of 500 jobs. Construction is anticipated to take around 2 years with initial target coal measures being on-shore. As extraction continues it will move under the sea (offshore) to utilise the greatest reserves of coal.

The legislative requirement for undertaking Environmental Impact Assessment comes from the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. These regulations require applications for specified types of development to be accompanied by an Environmental Statement.

However, the Town and Country Planning regime extends only to the mean low water mark therefore components of any development extending beyond the mean low water mark do not, indeed they cannot, require planning permission. The consenting regime for offshore developments is administered by the Marine Management Organisation (MMO). Curiously, the MMO’s jurisdiction is seaward of the mean high water mark, meaning that the intertidal area between mean low and high water marks is subject to dual control by two different authorities.

Due to this exceptional circumstance the key question is: what is the area over which the EIA should examine potential environmental impacts? As an ES is required by the Town and Country Planning regime, should the EIA only consider the effects on the area within that regime? Or should it even be to just the mean high water level on the premise that the MMO would deal with the intertidal area? Or should it extend to a broader area incorporating ‘offshore’ areas i.e. beyond the mean low water mark? The answer, in this case and perhaps unsurprisingly, was to look at the potential effects on the marine environment.

The potential effects result from two aspects of the development. Firstly, the mineral extraction under the seabed has the potential for subsurface collapse and subsidence of the seabed by up to around half a metre. This subsidence may not be uniform and could alter wave dynamics and so could change beach morphology.
Secondly, the dewatering of historic mine workings, in order to access the target coal measures, requires the potential discharge of large volumes of water which could affect the chemical composition, salinity, temperature of receiving waters. The sea around St Bees up to and including the coastal areas adjacent to the development site are designated as a Marine Conservation Zone (MCZ) as part of the wider Cumbria Coast MCZ.

The offshore component of development, the undersea mining, has the potential to affect the intertidal areas which are within the jurisdiction of the Town and Country Planning regime. Similarly, a component of the onshore development, the dewatering operation, has the potential to affect a sensitive area of the marine environment and could give rise to the need for additional onshore development to treat water before discharge. Given these interrelationships, inevitably the EIA includes assessments on the impacts on marine environment.

A review of case law suggests that this is the correct approach. In R (Edwards) v Environment Agency [2008] UKHL 22; [2008] Env LR members of the high court considered that a change to a type of fuel used by a cement kiln to waste tyres as a partial replacement for coke could be caught by the EIA regulations albeit that the change may not amount to development for the purposes of the Planning Act. In other words, the EIA Directive can apply outside the context of “development” as defined in the 1990 Act.

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