**Key Issues**

Due to the proposed development being a continuation of existing mining activity, the usual approach to establishing a baseline was not available (i.e. there was no ‘undeveloped’ site from which to establish a baseline).

Under Regulation 18(4)(a) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No. 571), hereafter referred to as the EIA Regulations, a requirement has been introduced that, where a scoping opinion (or direction) has been issued, an environmental statement must be based on the most recent scoping opinion (or direction).

For the Boulby Mine, we prepared a scoping report, which detailed the scope of the assessment that we proposed to carry out. We submitted this report to the NPA (which is the local planning authority – LPA) together with a request for a scoping opinion. The NPA’s scoping opinion proposed a methodology for identifying the baseline that differed from what we proposed in our scoping report. This raised a question about how to proceed with an EIA in a situation where a developer disagrees with a scoping opinion (or direction).

**Purpose of the project**

In 2017, Cleveland Potash Ltd, the operators of Boulby Mine in the North York Moors National Park, commissioned Amec Foster Wheeler to request a scoping opinion from the National Park Authority (NPA) for a proposal to extend the life of the mine.

**Description of the project**

Boulby Mine is a deep mine that has been operational for over 40 years. The planning permission for the mine, which allows the extraction of different forms of potash as well as rock salt, has an expiry date of 2023. Cleveland Potash Ltd wanted to extend the permission to enable it to continue mining operations beyond this date.

The proposed development would involve all elements of the mine continuing to operate as at present, with no structural changes to any above-ground features. Underground mining would be within the existing red line boundary.
Lessons learnt

Our scoping report proposed that the baseline situation should be based on the existing mining operation due to:

- The proposal being for a continuation of existing activities;
- The length of time that the mine had been operational;
- The lack of information about the environmental status of the site prior to the mine’s development;
- No detailed restoration plan having been approved for the site after 2023, only a commitment to provide agricultural land, woodland and public access; and
- The coastal location of the mine meaning the success of any restoration plan would be uncertain (due to the likelihood of poor plant survival and slow growth rates), and therefore it would be difficult to predict the environmental quality of the restored site.

The NPA’s scoping opinion specified a different approach, whereby a future baseline was to be predicted and used for the assessment. This future baseline was to be based on a scenario where the mine was closed, decommissioned and restored.

A dialogue took place with the NPA regarding the definition of the baseline, but neither party was prepared to change its stance. This left Cleveland Potash Ltd in a difficult position given the requirement under Regulation 18(4)(a) (i.e. an environmental statement must be based on the most recent scoping opinion or direction) and that there was no legal basis upon which to challenge or appeal the scoping opinion. Considering this, the company decided that it had no option but to pursue the approach to baseline definition that had been identified by the NPA.

Lessons learnt continued

Other developers are likely to be exposed to similar situations regarding differences of opinion about the baseline or indeed about other matters that are addressed in a scoping opinion. Any resultant discussions between the LPA and the developer over aspects of the scoping opinion will risk delays and extra costs.

In light of the difficulties with scoping opinions, another option is to issue LPAs and consultation bodies with a scoping report for comment but not to submit a request for a scoping opinion. This removes the risks associated with having a scoping opinion with which the developer disagrees. The comments that are received and any subsequent discussions with consultees can then be used to inform changes to the proposed scope of the assessment; subsequently, further changes are likely to be made to the proposed scope, in response to, for example, additional comments from consultees, changes to the scheme or new environmental information.

One important downside of not requesting a scoping opinion relates to there being no legal basis for LPAs to comment on the scoping report within a specified period, whereas LPAs must consult consultation bodies and adopt a scoping opinion within five weeks of a request for a scoping opinion being received (or a longer period where this is agreed in writing). In the absence of a request for a scoping opinion, the outcome may be that comments are...
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<th>Lessons learnt continued</th>
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<td>supplied later than requested (if at all), resulting in delays to the programme for submitting the planning (or other relevant) application; it may also be the case that no agreement is reached about the scope resulting in the LPA not being satisfied with the environmental statement.</td>
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<td>Given the disadvantages of both the use and non-use of scoping opinions, we suggest that consideration could be given to a minor amendment being made to the EIA Regulations which would allow an ‘appeal’ of a scoping opinion to the relevant Secretary of State. This would provide an opportunity for a developer to challenge a scoping opinion through an authority independent to both the developer and the LPA. This would also bring the scooping procedures in line with the screening procedures under Regulation 6 (10)(b).</td>
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