

Attn: The Planning Policy Team
The Old Vicarage
Bondgate
Helmsley
York
YO62 5BP

Date: 21 May 2019
Our ref: 50303/10/JG/AK/17418791v1
Your ref:

Dear Sir/Madam

North York Moors: Representations on the Pre-Submission Draft Local Plan

Lichfields welcomes this opportunity to submit representations to the North York Moors National Park Authority ("NYMNP") on the 'Pre-Submission Draft Local Plan' ("the Consultation Report"), on behalf of our client, Sirius Minerals Plc ('Sirius').

When reviewing the Pre-Submission Draft and preparing these representations, we have had due regard to the tests of 'soundness' set out in Para 35 of the National Planning Policy Framework ("NPPF") which stipulates that plans should be positively prepared, justified, effective and consistent with national policy.

Sirius Minerals' North Yorkshire Polyhalite Project

Sirius is developing the North Yorkshire Polyhalite Project, much of which is located within the boundary of the North York Moors National Park ("NYMNP"). The Project will deliver a significant contribution to the national economy and transformational benefits to the local economy.

Sirius recognises that development can have an adverse impact upon the NYMNP, but the construction of its Project demonstrates that such impacts can be satisfactorily mitigated, monitored and controlled through the planning and environmental permitting process and that positive and constructive working relationships can be formed between the National Park Authority and developer.

The experience gained by Sirius in applying for planning permission for the Project in the NYMNP puts the Company in a good position to reflect on how the application of policy for major economic proposals should, and can, strike an appropriate balance between protecting the NYMNP's special qualities and supporting the ongoing growth and diversification of its economy.

Sirius has been granted the necessary planning permissions and Development Consent Order to allow the construction of the Project. These include the granting of planning permission by Redcar & Cleveland Borough Council ("RCBC") in August 2015 for a material handling facility ("MHF") at Wilton International (Ref: R/2014/0626/FFM). Planning permission was also granted in October 2015 for the minehead (in the North York Moors National Park) and a 36.5km tunnel ("Material Transport System" or "MTS"), linking the minehead site to a portal at Wilton in Redcar (Ref: R/2014/0627/FFM/ Amended Ref: R:2018/0139/VC). Finally, a Development Consent Order was granted by the Secretary of State in July 2016 for new Harbour facilities at Bran Sands, Teesside. Upon completion it will represent an annual output of approximately £2.3

billion to UK GDP and £2.5 billion of exports per annum, and will deliver significant national and local economic benefits, including the creation of approximately 2000 construction-phase jobs and approximately 1000 permanent operational phase jobs (project-wide).

Response to Consultation

National Planning Policy Framework

The NPPF, sets out the Government's commitments in relation to plan-making as well as how these policies should be applied at the local level. It provides a number of important recommendations in relation to plan-making, many of which are of particular importance to these representations.

Firstly, the NPPF stipulates that plans should be '**sound**'. To be found 'sound' a plan must be positively prepared, justified, effective and consistent with national policy (Para 35).

A number of concerns are raised in relation to the soundness of this plan, in particular its consistency with paragraph 8 of the, which states that the planning system should pursue economic, social and environmental objectives in mutually supportive ways; paragraph 80, which states that planning policies and decisions should help create the necessary conditions for businesses to invest, expand and adapt; and paragraph 172, which sets out how major development within National Parks should be assessed.

Secondly, the NPPF stipulates that plans should be '**flexible**'. "*Planning policies should be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances*".

At present a number of the draft policies, specifically those relating to dark skies and the rural economy, do not allow sufficient flexibility and should be reworded in line with the flexibility envisaged within the NPPF.

Thirdly, the NPPF recommends that the plans **be aspirational, yet achievable**. In other words, they should not be reliant on overly onerous obligations to be delivered.

The remainder to this letter is dedicated to demonstrating why the plan in its current form is neither sound nor consistent with national planning policy requirements in relation to plan-making.

Strategic Policy A - Achieving National Park Purposes and Sustainable Development

Strategic Policy A seeks to support sustainable development whilst achieving the National Park purposes.

Sirius welcomes the latest text changes to Strategic Policy A, however, it remains concerned that the wording as drafted places the prevention of development in advance of promoting sustainable development and is therefore inconsistent with paragraph 11 of the NPPF, which states that "*plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change*".

Although the revised wording for Strategic Policy A now states that the Authority will take a positive approach to development in line with the presumption in favour of sustainable development set out in the NPPF, it continues to require that such development is also consistent with national park statutory purposes.

It is this requirement that sustainable development also be consistent with National Park purposes which places the prevention of development in advance of promoting sustainable development and means that the plan is neither positively prepared nor consistent with national planning policy. Sirius recommends that the wording of this policy be updated in line with the more positive approach to development set out within the Development Management Policies of the Peak District National Park, May 2019 which states that:

(A) When considering development proposals the National Park Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (2012). **It will work proactively with applicant to find solutions that are consistent with National Park purposes:**

- (i) to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park; **and**
- (ii) to promote opportunities for the understanding and enjoyment of the valued characteristics of the National Park.

(B) Planning applications that accord with the policies in the Development Plan will be approved without unnecessary delay, unless material considerations indicate otherwise”.

Strategic Policy D – Major Development

Strategic Policy D sets out the circumstances which must be met to demonstrate that proposals for major developments are within the public interest.

Although Sirius welcomes the latest changes made to the wording of Strategic Policy D, it does not support the wording in its current form.

Para 172 of the NPPF states that major developments within National Parks should be refused other than in exceptional circumstances and where it can be demonstrated that the project is within the public interest. It then goes on to identify three considerations which should be assessed when justifying such developments.

The first of these considerations relates to the need for the development. Para 172 states that applications should include an assessment which sets out “*the need for the development, including in terms of any national considerations*”. Strategic Policy D on the other hand states that applications must include an assessment which justifies the need for the development, which can include a national need but which also demonstrates the contribution the development makes to the national economy:

*“The need for the development **which can include** a national need **and** the contribution of the development to the national economy”.*

Similarly, the NPPF states that consideration should be given to the “*impact of permitting it, or refusing it, **upon the local economy***”. It does not define the term ‘local economy’ nor does it seek to limit the definition of a local economy to individual planning boundaries. Strategic Policy D on the other hand specifically requires applicants to demonstrate “*the impact of permitting it, or refusing it, upon the **local economy of the National Park***”.

Sirius is concerned that by limiting the definition of local economy to the ‘National Park planning boundary’, officers may be inclined to dismiss the economic benefits major development within the Park brings to immediately adjoining areas such as Whitby and Redcar, locations which officers themselves have admitted have strong economic ties with the National Park “*socio-economic factors do not stop at landscape designation boundaries and the economy of the National Park is clearly strongly linked to and influenced by the economies of the main towns and areas outside the Park, particularly Whitby*” (extract from Committee Report for the Sirius Minerals’ Mine planning application).

The economic benefits major development within the National Park can bring to economies outside of the National Park is also widely documented in the Statutory Consultee responses provided to NYMNPA as part of the Sirius Minerals Mine Application:

- Scarborough Borough Council Statutory Consultee Response: “*The development of the proposed new potash mine is an unprecedented economic opportunity for the Borough of Scarborough and represents the biggest inward investment for many decades.....This investment provides an opportunity to radically transform the coastal economy bringing significant economic growth and*

job creation.....In conclusion, the development of the new mine is critical to enabling the Borough of Scarborough to further diversify the coastal economy and to create a more resilient economic base”.

- Local Enterprise Partnership (LEP) Statutory Consultee Response: *“This is a proposal that is of fundamental importance to the economic and social well-being of areas both within and outside the National Park, the boundary of which is not reflective of any functional economic areas.....the NYM National Park boundary is not a relevant boundary in economic terms. National Parks are designated on the basis of their special qualities in terms of landscape, geology, biodiversity and archaeology. However, in economic and social terms areas within the Park are closely intertwined with adjacent areas outside the designated landscape, particularly with the towns of Scarborough and Whitby on the coast. It is essential that these linkages are given full consideration in the assessment of this proposal, which is of fundamental importance to the economic and social well-being of areas both within and outside the National Park...Without a vibrant economy and sustainable communities in and surrounding the Park, the Park itself will be threatened”.*

In summary, Sirius believes that Strategic Policy D has been drafted in a way that is not positively prepared as it puts prevention of development in advance of promoting sustainable development. Sirius recommends that the policy be updated in line with SP5 (Major Development) of the Yorkshire Dales National Park Local Plan 2015-2030 which states that:

“Planning permission will only be granted for major development in exceptional circumstances and where it can be demonstrated to be in the public interest. Consideration of such applications should include an assessment of all of the following:

- a) The need for the development, including in terms of any national considerations;*
- b) The impact on the local economy of permitting or refusing it;*
- c) The cost of, and scope for, developing it outside the National Park, or meeting the need for it in some other way;*
- d) Any detrimental effect on the environment, the landscape character, recreational opportunities and the extent to which that could be moderated”.*

The Environment

Strategic Policy E – The Natural Environment/ Strategic Policy G – Landscape

Strategic Policy E seeks to ensure that development proposals conserve and enhance the natural environment. Strategic Policy G seeks to conserve and enhance the distinctive landscapes of the North York Moors.

As stated in our representations on the “A Sense of Tranquillity, a Strong Feeling of Remoteness and Dark Skies” Topic Paper in January 2018 and in our representations on the “Preferred Options Draft” in October 2018, Sirius recognises the importance of protecting and enhancing the natural environment and distinctive landscapes of the NYMNP but believes that this should be done in such a way that allows beneficial economic development to be delivered.

At present, neither Strategic Policy E nor Strategic Policy G refer to the ability to moderate the impact of proposals to make development acceptable or the ability to provide compensation where on-site moderation (not minimisation) is not achievable. Sirius believes that these policies should be amended to reflect this potential, bringing them back in line with Strategic Policy H and paragraph 175 of the NPPF.

Policy ENV2 – Tranquillity

Whilst Sirius welcomes the additional explanatory text provided in relation to how this assessment-based approach will work, Sirius maintains its original position that it does not support the policy in its current form.

Sirius continues to believe that the subjective nature of this matter means that it will be problematic to implement, with different people having different views on what they believe to be tranquil. This is evident even in the type of terminology used to define tranquillity. “A *sense of tranquillity is an increasingly precious resource. Tranquillity is about a feeling of peace and remoteness...*” “Tranquillity is a *state of peace and calm*”.

Sirius remains confident therefore that there would be difficulties in assessing development proposals against such criteria and that there is a real danger that each officer will interpret the criteria differently, based on his/her perception of what they consider tranquil.

Policy ENV3 – A Strong Sense of Remoteness

Sirius welcomes the changes made to the Remote Areas map and has no further comments to make on Policy ENV3.

Policy ENV4 - Dark Night Skies

Policy ENV 4 seeks to maintain (and where possible enhance) the darkness of the night skies above the National Park. It requires that all development proposals minimise light spillage through good design and through following a number of ‘lighting principles’.

Paragraph 8 of the NPPF states that the planning system has three overarching objectives. These include those relating to economic, social and environmental objectives, “*which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives)*”. The wording of Policy ENV4 places protecting the dark skies of the NYMNP ahead of enabling growth and diversification within the economy and has as a result the potential to impact on the long-term sustainability of the Park.

Sirius considers that a balance needs to be struck between protecting the dark skies of the NYMNP and enabling the ongoing growth and diversification of the existing economy.

Strategic Policy K - Rural Economy

Strategic Policy K seeks to promote development that fosters the economic and social well-being of local communities within the National Park, subject to it achieving a number of set criteria.

Whilst the policy seeks to promote and protect existing rural businesses and small and micro businesses, it does not allow for either the establishment or the ongoing support of major developments within the National Park. Not only does this approach have the potential to curtail the long-term economic performance of some of the National Park’s largest employers, but also has the potential to discourage future economic investment within the Park.

Consequently, Sirius recommends that the wording of Strategic Policy K be updated to recognise the significant economic and social benefits generated by such developments.

Policy BL1 – Employment and Training Development

Policy BL1 seeks to promote development for employment and training related purposes and sets out instances in which such development can be supported.

Whilst the policy allows for the development of employment and training related facilities within the main built up areas of Helmsley and the villages and some small-scale adaptation of existing buildings within the open countryside, flexibility is needed in relation to new development within the open countryside which may be required to support mineral exploitation. This will ensure that this policy is consistent with the National Park Authority's objective of diversifying the rural economy and reducing seasonal employment as set out under paragraph 2.30 of the Local Plan and paragraph 83 of the NPPF which states that "*Planning policies and decisions should enable...the development and diversification of agricultural and other land-based rural businesses*"

Summary

In summary, whilst Sirius welcomes the latest changes made to the wording of the draft local plan policies, it remains of the opinion that further work is still needed on the wording of these policies if they are to align with the aspirations of national planning policy and to be found **sound**.

Whilst Sirius is fully supportive of the need to protect the special qualities of the NYMNP, it considers that in some instances the emerging policies do not allow the appropriate application of weight to social and economic objectives and places protecting the national park purposes in advance of social and economic development. Further work is therefore needed on the wording of these policies to ensure that the plan supports social, economic and environmental objectives in mutually supportive ways and to ensure that the policies are sufficiently '**flexible**'. Consequently, it is considered that the proposed policies should be amended as discussed.

Thank you for this opportunity to comment on the Pre-Submission Draft of the Local Plan. Sirius looks forward to future discussions with the National Park Authority on the emerging Local Plan.

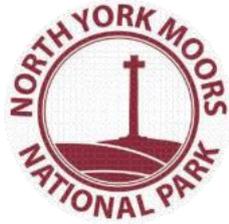
Yours sincerely



Justin Gartland
Chairman

Copy William Woods – Sirius Minerals Plc

Robert Staniland - Sirius Minerals Plc



North York Moors National Park Authority

Local Plan – Pre-Submission Draft Representation Form.

www.northyorkmoors.org.uk/localplan

Please fill out this form if you want to provide your views on our Local Plan 'Pre-Submission' draft.
Please read the Guidance Notes at the end of this document before completing this form.

[Note: This formal response form is based on the template Model Representation Form prepared by the Planning Inspectorate]

Please return the completed form by 5.00pm on Friday 24th May 2019 to:

North York Moors National Park
Authority
The Old Vicarage
Bondgate, Helmsley, York
YO62 5BP

or an electronic version of the form is available online at

<http://www.northyorkmoors.org.uk/localplan>

which can be e-mailed to: policy@northyorkmoors.org.uk

This form is available in Large Print or other formats on request.

Office Use Only:

Parish:

Reference no:

Your personal details will not be passed on to anyone else or published although we may publish aggregated data. This will not include individual contact details.

Privacy Statement:

North York Moors National Park Authority is a 'Data Controller' as defined by Article 4(7) of the General Data Protection Regulations (GDPR). This means that the Authority has a duty of care towards the personal data that it collects and uses.

The Authority is committed to ensuring the responsible collection and use of personal data in the course of its business. We will ensure that personal data is processed fairly and lawfully, and that the rights of data subjects are properly respected. When collecting personal information from you, we will tell you how this information is to be used, and will not use your details for other purposes without your consent. The Authority has appointed Alison Johnson to be its Data Protection Officer, contact details are: Alison Johnson – Audit and Fraud Manager, Telephone No: 01723 (384431) E-mail address: dataprotection@scarborough.gov.uk

A full Privacy statement can be found at <http://www.northyorkmoors.org.uk/about-us/termsandconditions>

The data collected will be used for the purpose of informing the Authority of the level of demand for Custom and Self-Build Housing within the National Park, and for bringing together those on the list with those with suitable land (consent would be requested before details are passed on).

This form has two parts:

- Part A – Personal Contact Details.
- Part B – Your representation(s). Please fill in a separate sheet for each representation you wish to make. This form is editable, meaning the only parts that can be filled in/alterd are those indicated by 'click to enter text'. It is important that personal contact details are included for each representation. If you are having difficulties filling out the form please contact us at policy@northyorkmoors.org.uk or 01439 772700.

PART A – Personal Contact Details

Title:	Mr
First Name:	Justin
Surname:	Gartland
Job Title (where relevant)	Chairman
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Organisation or Group:	Lichfields
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Telephone no:	0113 397 1397
Email Address:	justin.gartland@lichfields.uk

PART B – Your representation(s)

Please use a separate sheet for each representation

3. To which part of the Local Plan does this representation relate?

Paragraph?	Please refer to attached cover letter	Policy?	Please refer to attached cover letter	Policies Map?	Please refer to attached cover letter
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4. Do you consider the Local Plan is:

a) Legally compliant?	Yes	X	No	Click here to enter text.
b) Sound?	Yes	Click here to enter text.	No	X
c) Complies with the Duty to Co-operate?	Yes	X	No	Click here to enter text.

5. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible. If you wish to support the legal compliance, soundness of the Local Plan or its compliance with the duty to co-operate, please use this box to set out your comments.

Please refer to attached cover letter
(Continue on a separate sheet / expand box if necessary)

6. Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the test you have identified at question 5 above where this relates to soundness. You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible. (Please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

Please refer to attached cover letter
(Continue on a separate sheet / expand box if necessary)

Please Note: Your representation should cover succinctly all the information, evidence and supporting information necessary to support / justify the representation and the suggested modification, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage.

After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he / she identifies for the Examination.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the Examination?

Click here to enter text.	No, I do not wish to participate at the oral Examination	X	Yes, I wish to participate at the oral Examination
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8. If you wish to participate at the oral part of the Examination, please outline why you consider this to be necessary.

Please refer to attached cover letter.

Please Note: The Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the Examination.

Signature

Justin Gartland

Date

21.05.2019