**VIVEK J KOTECHA** ACA

5 May 2021

Ms Elizabeth Humphrey
The Planning Inspectorate,
Room 3/J Kite Wing,
Temple Quay House,
2 The Square,
Bristol,
BS1 6PN

**Case Reference: APP/H0900/V/21/3271069**

Dear Ms Humphrey,

I am writing, as an interested party, to object to West Cumbria Mining Ltd's application to develop a mine at Woodhouse Colliery.

From an examination of the companies involved I conclude that the proposed mine will not provide sustainable long-term economic benefits to Cumbria. I reach this conclusion based on two key findings:

A. A lot of the profit made from the mine may leak out of the UK to tax havens.

B. The current owner may sell their interest in the mine quickly, and future owners may renegade on any promises made.

In addition, there is a noticeable asymmetry in costs and rewards for this mine. The costs (tax credits and incentives, infrastructure provided, site and environmental) are more certain and will be borne solely by the UK's government and society.

However, the benefits (tax from increased economic activity, jobs provided) needed to cover these costs are less certain, and will not solely benefit the UK's government and society.

Given this asymmetry and the structure and nature of the companies involved in the proposal, I find significant cause for concern that this application, if successful, will not deliver consistent or significant long-term benefits for Cumbria or the UK.

Sincerely yours,

Vivek J Kotecha ACA

# This mine will not provide sustainable long-term economic benefits to Cumbria

An examination of the companies connected to the proposed coal mine

## Introduction

This representation examines the companies connected to the proposed coal mine in West Cumbria. Based on their corporate structure it aims to explain how the benefits from the mine may leak out of Cumbria and the UK, and thus reduce the overall benefits of hosting the mine.

## Key findings

Based on the current structure of the companies involved, the following concerns have been identified:

A. A lot of the profit made from the mine may leak out of the UK to tax havens.
B. The current owner may sell their interest in the mine quickly, and future owners may renegade on any promises made.

## Companies examined

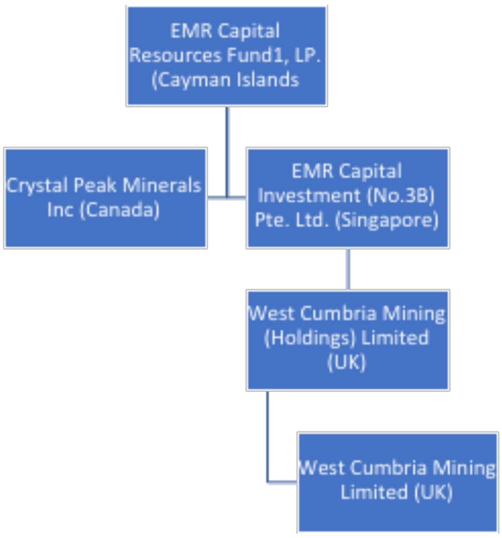
The companies examined were either directly involved in exploring, developing, or financing the mine. They were all connected to the mine's main sponsor EMR Capital, a resource-focused private equity group, with a history of investing in mining assets.[1]

| Company name | Role / connection | Country | Latest accounts examined |
|---|---|---|---|
| West Cumbria Mining Limited | Company responsible for developing the mine | UK | Year ended 30th June 2019 |

[1] For more information: https://www.emrcapital.com/en-us (Accessed: 29th April 2021)

| Company name | Role / connection | Country | Latest accounts examined |
|---|---|---|---|
| West Cumbria Mining (Holdings) Limited | Holding company (owns 100%) of West Cumbria Mining Limited | UK | Year ended 30th June 2019 |
| EMR Capital Investment (No.3B) Pte. Ltd. | Holds investment (owns over 80%) in West Cumbria Mining (Holdings) Limited | Singapore | Year ended 31 December 2018 |
| EMR Capital Resources Fund 1, LP. | Ultimate holding company of EMR Capital Investment (No.3B) Pte. Ltd. | Cayman Islands | N/a |

**Figure 1: A simplified organisation chart of the companies examined**[2]




[2] This is based upon information available in the latest accounts and the Orbis database (as at 26th April 2021). Please note that some shareholders and intermediate parent/holding companies have been removed from the organisation chart to maintain simplicity. A line represents an ownership link between companies, which is not always direct and not necessarily full ownership or control.

# A lot of the profit made from the mine may leak out of the UK to tax havens.

One of the main benefits of the mine is the economic activity that it will generate through employment and the export of its product. These benefits need to outweigh the costs of hosting the mine. These costs may be due to unexpected damage, environmental, and the value of any infrastructure and support provided by local or national government. One way that society will benefit from the increase in economic activity is through taxation on the profits made and employees' wages. These monetary benefits will then be needed to help mitigate any (monetary and non-monetary) costs arising from hosting the mine.

However, when examining the structure of West Cumbria Mining Ltd (WCM) and its parent companies, there is concern that their structure would minimise their tax payable in the UK, to the benefit of foreign governments, who benefit without having to pay for any of the costs of hosting the mine.

So this analysis has been done by considering the following comparator: is it likely that WCM would contribute more tax back to society if it had a completely UK-based corporate structure? Regardless of where their parent companies are based, both WCM and its comparator would contribute the same amount via national insurance and VAT, but they could greatly differ when it comes to tax on profits or on sale of the company/mine.

One method through which the corporation tax payable in the UK will differ is loan repayments. To cover WCM's costs before the mine is operational, the parent companies have provided capital in the form of equity (shares) and loans. For example, West Cumbria Mining (Holdings) Limited borrowed £7.4m (in 2019) from its intermediate parent company (Singapore-based EMR Capital Investment (No.3B) Pte. Ltd). This loan had a quarterly interest rate of 9%, which rose to 12% in October 2019, and in 2019 it had an interest charge of £388,815.[3]

These quarterly interest charges will reduce the UK profit made from the mine and so its tax bill too. The benefits of this will flow to the Singapore-based company which may pay tax (see below) on the interest income received, but this will not benefit the UK government. In general, it is common for companies to use high interest loans (with rates often above the cost of bank loans) to shift profits out of high tax countries to low-tax/tax havens. With the comparator, if this parent company was UK-based then there would be no loss to society, as the interest received would be taxed in the UK parent instead.

So far West Cumbria Mining (Holdings) Limited has losses of over £9.5m, which it can use to reduce the tax paid on its future profits if the mine opens.[4] This is legitimate but it does mean that as interest repayments and dividends flow through to its Singapore-based intermediate parent company, the UK loses out on some of the benefits (in this case taxes) of its economic activity, to the benefit of other countries. These tax credits are one of the 'hidden costs' of hosting the mine, as alternative businesses would unlikely generate such large losses for many years before becoming profitable. Yet again, with the domestic comparator, this would not be the case, as the gains would be taxed in the UK parent company.

---

[3] See Notes 4 and 12 of the Annual Report of West Cumbria Mining (Holdings) Limited for the year ended 30 June 2019.

[4] See Note 5 of the Annual Report of West Cumbria Mining (Holdings) Limited for the year ended 30 June 2019.

Having WCM's intermediate parent company based in Singapore may provide some tax advantages due to the existence of a tax agreement with the UK.[5] This agreement allows for a reduction in the tax payable on dividends, royalties, profits, and interest received by Singaporean companies (under certain conditions). In addition, when its shares in WCM are sold it expects the profit (capital gain) made to be "not subject to tax" due to its situation.[6] These gains can then flow through to the Cayman Islands-based parent company (EMR Capital Resources Fund 1, LP), where certain exempted limited partnerships (LPs) can benefit from not paying tax on income or capital gains. Yet again this likely represents a loss of benefit from the economic activity generated by the mine, compared to the comparator with UK-based parent companies that would be subject to only UK taxation.

Overall, there is likely to be a (potentially signifiant) loss of tax for UK society due to the location and structure of WCM and its parent companies, relative to a UK-based comparator. This reduces the benefits available from the mine, without a corresponding reduction in the costs borne from hosting it.

# The current owner may sell their interest in the mine quickly, and future owners may renegade on any promises made.

The investment in WCM is being done primarily through a private equity (PE) fund run by EMR Capital. The presence of a PE owner has an impact on the length of time that an investment will be held, and the likely behaviour of the following owner. It is common for PE firms to sell their investments on to other PE firms, who often load the purchased company with more debt and pay for this by cutting costs. In  the case of the mine this could particularly affect employee wages and standards, which reduces the purported benefits of the mine.[7]

PE funds raise money from investors (combined with a small amount of their own funds) and aim to grow the investment through the purchase and then sale of a company/ies. The usual time frame for PE funds to make a return is 10 years after closing the fund to new investors, and this usually means 3-5 years after the fund has bought a company. For example, EMR Capital sold its stake in the Martabe mine (Indonesia) in December 2018, after investing in 2017.[8] Given their relatively short periods of ownership, PE funds are not known for their strength in operational management, but more for having a relentless focus on financial performance (cutting costs, improving revenues, and an aggressive use of debt).[9]

---

[5] See the Avoidance of Double Taxation Agreement: https://www.gov.uk/government/publications/singapore-tax-treaties (Accessed: 29th April 2021)

[6] See Note 2 of the Financial Statements of EMR Capital Investments (No.3b) PTE. Ltd. for the year ended 31 December 2018.

[7] For an example of how serial PE ownership can overwhelm a company with debt and thus affect its ability to operate effectively, please read this case study of Four Seasons care home group: https://foundationaleconomycom.files.wordpress.com/2017/01/wheredoesthemoneygo.pdf (Accessed: 29th April 2021)

[8] For more information please see: https://www.agincourtresources.com/en/annual-reports/ (Accessed: 29th April 2021)

[9] For an introduction to how private equity differs from other investors, please see this article from the Harvard Business Review: https://hbr.org/2007/09/the-strategic-secret-of-private-equity (Accessed: 29th April 2021)

**Signs that EMR may sell early**

There are some indications that EMR Capital may sell their interest in WCM early in the coming years. Firstly the fund that is invested in WCM (EMR Capital Resources Fund 1, LP) raised a total of $430m of funding from 54 investors in two offerings (2013 and 2015).[10] If this fund follows the standard time frame of 10 years, then they would be looking to return investors' money in 2023/25.

The likelihood that 2023 may be the planned exit data is further compounded by the use of share based payments by West Cumbria Mining (Holdings) Limited. Share based payments are used when a company provides its own shares (or the right to buy shares) to employees or suppliers, in return for their services or goods. It is often used to incentivise management to meet their targets, as they then benefit from an increase in the company's value and hence share price.

West Cumbria Mining (Holdings) Limited has over 44.5m share options granted to current and former employees, directors, and other entities. Over 91% of these options have a (vesting) condition that the holder is only entitled to the shares in West Cumbria Mining (Holdings) Limited if a "significant liquidity event" occurs. This is defined as "an asset sale, public listing or sale of the holding company". In addition, the share options are due to expire on 16 August 2023.[11] Together this suggests that some of the compensation due to the relevant employees and directors of West Cumbria Mining (Holdings) Limited, is currently conditional on the company (and associated mine) being sold by August 2023. This would tie in with the 10 years date for the PE fund, and implies that a quick sale may be intended once the mine is operational.

There may also be pressure on EMR Capital Resources Fund 1, LP to realise a return. Another of its investments in Canadian miner, Crystal Peaks Inc., had to undergo a corporate restructure in 2020 due to an ability to raise the necessary funds.[12] The investment in WCM represents around 20% of the $339m total gross asset value of the fund, so it is a significant part of the overall fund's expected returns.[13]

**Implications of an early sale**

Unlike other forms of private ownership, Private Equity owners tend to be more focused on making their investment return upon sale of the business, as opposed to gradually each year out of profits. In order to make a profit the PE owners must be able to convince the next purchasers that the company is worth more than before, i.e. that it will generate increased cashflows and profits over time.

Typically the increased value comes from either external factors (such as a growing demand for the product) or internal factors (through business growth or acquisition). However, with a mine these factors are more limited. There is a fixed limit on how much coal the mine can extract and

---

[10] This is based on the latest accessible Form D filed with the SEC by EMR Capital Resources Fund 1, LP. Available here: https://www.sec.gov/Archives/edgar/data/1594341/000159434115000001/xslFormDX01/primary_doc.xml (Accessed: 29th April 2021)

[11] See Note 15 of the Annual Report of West Cumbria Mining (Holdings) Limited for the year ended 30 June 2019. It should be noted that in the prior year's accounts the share options vested on 28 August 2022, and so their vesting date is likely being rolled forward due to delays in the mine's schedule.

[12] For more information please see: https://crystalpeakminerals.com/wp-content/uploads/2020/10/CPM-Announces-Corporate-Restructuring.pdf (Accessed: 29th April 2021)

[13] This is based upon a fair value of $66m for the equity in West Cumbria Mining (Holdings) Limited at 31 December 2018 as per Note 5 of the Financial Statements of EMR Capital Investments (No.3b) PTE. Ltd. for the year ended 31 December 2018. The gross asset value is from the Form ADV filed by EMR Capital Management Limited on 31 March 2021. Available at: https://reports.adviserinfo.sec.gov/reports/ADV/290297/PDF/290297.pdf (Accessed: 29th April 2021).

sell (and this is unlikely to change drastically), and there are limited opportunities for economies of scale via merging with other mines.

So a new owner (usually another PE fund) will have to find other ways to make a return on the higher price paid for the WCM and pay off the increased debt used to buy it. They may be attracted by the lower risk of an already operational mine, but in order to increase cash flows to service the higher debt, they will have to reduce costs (because they are unlikely to be able to sell much more coal in a year, or overall). This focus on cost cutting is common for PE operators in industries where income is not growing enough to pay their aggressive debt levels, such as the care home industry.[14] It's likely that one of the first costs to be targeted will be employees wages and working standards (as they are large and more flexible) and any remedial site work that isn't directly related to the mining operation.

The key point being that under pressure to pay off increased debt (used to purchase the company) and make a profit, the next owners of the mine are likely to want to cut costs and could easily renegade on promises made by the current owners. This could substantially reduce the benefits of the mine.

# Conclusion

When assessing the proposed mine there is a noticeable asymmetry between its costs and benefits. The costs (tax credits and incentives, infrastructure provided, site and environmental) are more certain and will be borne solely by the UK's government and society.

However, the benefits (tax from increased economic activity, jobs provided) needed to cover these costs are less certain, and will not solely benefit the UK's government and society. The potential for tax leakage out of the UK is high, given WCM's corporate structure, and with around 86% of the PE fund's beneficial owners being US-based/taxed, the benefits of this mine will shift outside of UK society and be not to its long-term benefit.[15]

There is also uncertainty around whether the subsequent owner(s) of the mine will honour all commitments (employment and otherwise) made by the current owners of WCM. Looking at the history and mechanics of PE-funded sales and purchases of companies, there is a high risk that the current benefits of the mine (especially employment) will be cut back, and any avoidable obligations will be shirked. This change could happen quite soon based upon a review of WCM's accounts.

Overall, a review of the companies connected with the proposed mine suggests that there is significant cause for concern that they will not deliver consistent or significant long-term benefits for Cumbria or the UK. When compared with the certain costs of the mine for Cumbria and the UK, this makes the proposal unappealing.

---

[14] For example see this study on the care home industry: (Kotecha, 2019) https://chpi.org.uk/papers/reports/plugging-the-leaks-in-the-uk-care-home-industry/

[15] Form ADV filed by EMR Capital Management Limited on 31 March 2021 states that approximately 14% of EMR Capital Resources Fund 1, LP is beneficially owned by non-United States persons. Available at: https://reports.adviserinfo.sec.gov/reports/ADV/290297/PDF/290297.pdf (Accessed: 29th April 2021).