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COMMITTEE	Planning and Regulatory
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Application No.
P/22/0237

Date
1st September 2022

Determining Authority
MTCBC

Proposed Development

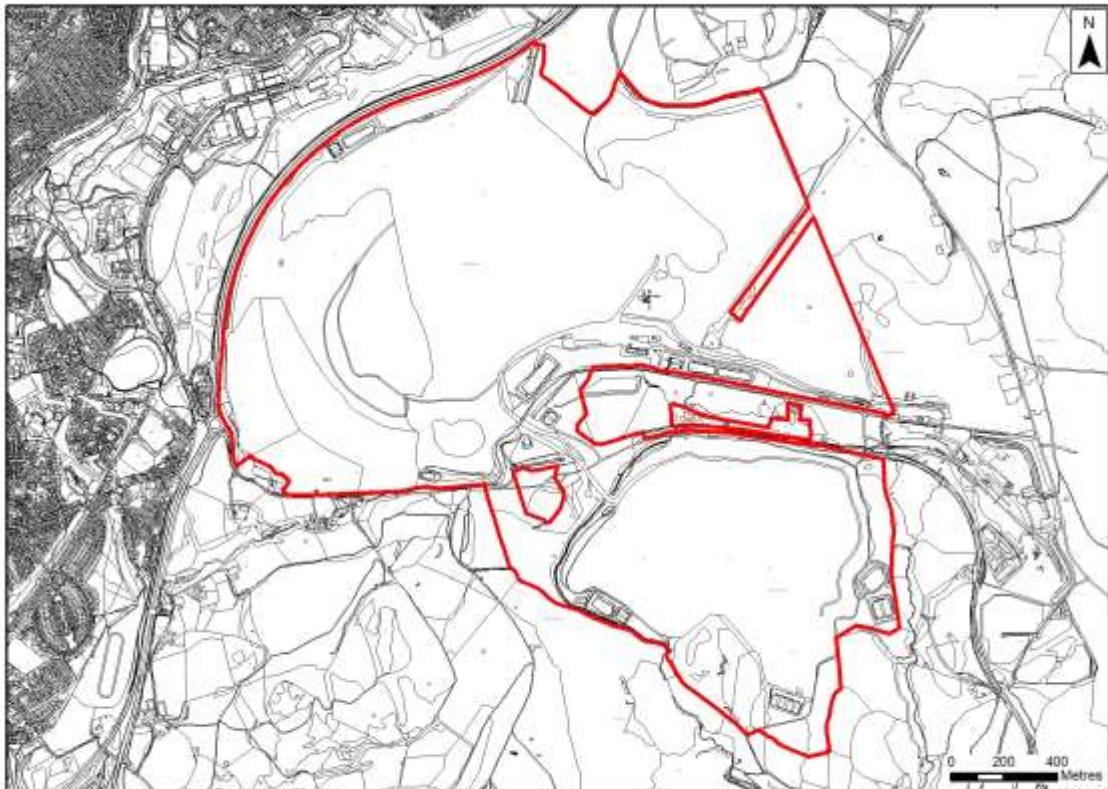
Location

Name & Address of Applicant/Agent

Variation of conditions 3 (Coal Extraction) and 4 (Final Restoration) of planning permission APP/U6925/A/10/2129921 to extend the life of the existing mine until 31st March 2024

Ffos Y Fran Land Reclamation Scheme
East Of A4060 Slip Road
Merthyr Tydfil

Mr David Lewis
c/o Mr Edward Bright
SLR Consulting Limited
3rd Floor
Brew House
Jacob Street



P/22/0237

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APPLICATION SITE

The Ffosyfran Land Reclamation Site (FLRS) amounts to approximately 400 hectares of land occupying high ground to the east of Merthyr Tydfil, approximately 1.5km east of the town centre. The FLRS is bounded to the north-west by the A4060 Trunk Road and to the north by the Trecatti Landfill Site. The eastern boundary of the site coincides with the administrative boundary between Merthyr Tydfil CBC and Caerphilly CBC and the Nant Garawd. The road leading from the Bogey Road to Bryn Caerau and Garth Fawr forms the southern boundary. The Bogey Road and the Cwmbargoed to Treharris Mineral Railway run in a general east west direction through the site.

The majority of Phase 1, comprising of approximately 115 hectares of land situated on the south-western side of the working area has already been restored to its final profile as part of the progressive restoration of the site. Aftercare work has been carried out in these areas, comprising largely of grass seeding and the construction of drainage grips and drainage channels. The remainder of the site is largely operational opencast void, processing area and three overburden mounds (OB1, OB2 and OB3).

The site lies inside the Registered Merthyr Tydfil Landscape of Outstanding Historic Interest. There is also a Scheduled Ancient Monument (SAM), the site of an Iron Age settlement, within the site boundary but excluded from the development area. Sarn Howell Pond, which is also a SAM has been excluded from the site but is surrounded by it. A substantial proportion of the site forms part of Gelligaer & Merthyr Common although common rights have been suspended for the duration of the FLRS. The site covers approximately 8% of the 3,000 hectares of the common.

PROPOSED DEVELOPMENT

Planning permission for the operational surface coal mine at Ffos-y-Fran was originally granted by the National Assembly for Wales on 11th April 2005 under Appeal ref. A-PP 152-07-014. The permission was subsequently varied under a Section 73 planning application (ref. P/08/0316) which sought consent for "Variation of condition 37 of planning permission A-PP 152-07-014 to permit the limited dispatch by road of up to 5% of the annual output of coal from the Ffos-y-Fran land reclamation scheme or a maximum of 50,000 tonnes of coal per annum (whichever is the lesser) via Cwmbargoed Disposal Point."

The Section 73 application was allowed at Appeal (ref. APP/U6925/A/10/2129921). The Appeal Decision was issued on the 11th of March 2011 (subsequently reissued 6th May 2011) and contained a comprehensive list of updated conditions for the continued operation of the mine, thereby superseding the original planning permission for the site granted in 2005.

This is a further Section 73 application that seeks the variation of Conditions 3 and 4 of Appeal ref. APP/U6925/A/10/2129921. Condition 3 states that "All coal extraction from the development hereby permitted shall cease no later than 06 September 2022"; and

Condition 4 states that “Final restoration of the land shall be completed no later than 06 December 2024 and aftercare shall be undertaken for a period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme.”

The application seeks to allow for an extension to the lifespan of the mineral extraction and restoration with coal extraction to cease by 31 March 2024 and final restoration to be completed by 30 June 2026. This would allow for the remaining 240,000 tonnes of coal to be extracted. The primary market being TATA Steel at Port Talbot, but the coal is also utilised by a variety of smaller markets including steam locomotives (Heritage Railways) and steam engines/boilers as well as domestic heating within homes.

When the application was originally submitted, the applicant sought to extend coal extraction to 6 June 2023 with final restoration to be completed by 6 September 2025. However, in April 2023 the applicant’s agent wrote to the Council to request the revised timings set out above. Whilst it is a matter for the Council to decide whether to accept any changes to an application once submitted, and the Council has embarked on a consultation to allow the views of interested parties on the changes to be submitted, the Council is minded to assess the proposal as now formulated by the applicant. The substance of the application is unchanged save as regards the periods of time during which the applicant proposes that activities should continue at the site. Any relevant matters raised in the consultation (which is continuing as at the time of writing) will be reported orally as an update to this report.

In terms of the justification for extending the life of the existing consent, the applicant initially submitted three grounds for variation of the conditions:

- To allow for full extraction of the consented area (impacted by the working practices required by the COVID19 Pandemic)
- To allow for continued provision of coal to the Steel Industry in Port Talbot [TATA Steel] (to address security of energy supply arising from global market disruption and reduce the need to import coal from overseas)
- To allow for the preparation of a subsequent new planning application to address a 3-year extension to coaling operations at the site to assist the above security of energy supply issues affecting the steel industry in south Wales and put a revised final site restoration plan in place.

However, the applicant has subsequently advised on 3 April 2023 that a new application for an extension of coaling operations is not now proposed, and so the third bullet point listed above is no longer a ground for consideration. The applicant cites geotechnical issues, the cost of extraction and the price for steam coal as the reasons for this change.

Instead, the applicant is proposing to submit a hybrid application in Autumn 2023 seeking permission for an alternate restoration landform and subsequent after uses. A proposal for a subsequent application, which is at present no more than embryonic and lacks any detail, carries no weight in any event as even once finalised it would

have to be determined on its own merits and the LPA could not prejudge the outcome.

In support of this application, the following suite of documents has been submitted:

- Planning Statement;
- Addendum Letter
- Environmental Statement Addendum (Compliance Statement) (Volume 1);
- Technical Appendices (Volume 2); and
- Non-Technical Summary (Volume 3).

This application is not accompanied by an Environmental Statement (ES) prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. The Authority has therefore produced a screening opinion as required under the Regulations and has concluded that an Environmental Statement is not required in this case. The application is subject to a request from one of the objectors to Welsh Government (WG) for a 'Screening Direction.' A 'Screening Direction' is yet to be made by WG but that does not prevent the Council from considering the application. The application is subject to a 'holding direction' from Welsh Government, which prevents the LPA from granting planning permission without prior authorisation from Welsh Ministers. This is intended to enable further consideration to be given to whether or not the application should be referred to the Welsh Ministers for their determination in the event that the Committee are minded to grant permission. It does not prevent the Committee from considering the application in itself or making the decision to refuse planning permission.

As the application seeks to vary conditions attached to a planning permission for a development that was EIA development, the Authority has considered the contents of the Environmental Statement previously submitted in respect of the primary permission in 2005 (Appeal Ref: A-PP 152-07-014) as well as the Environmental Statement Addendum (Compliance Statement) submitted by the applicant.

PLANNING HISTORY

P/16/0012 Discharge of condition 53 (restoration and aftercare plan for phase 1) of planning permission app/152-07-014 so that the development can be carried out in accordance with condition 53 of planning permission APP/U6925/A/10/2129921 relating to a land reclamation scheme incorporating the extraction of coal by open cast methods

Discharge of Conditions Approved – 18 March 2016

P/08/0316 Variation of condition 37 of planning permission APP 152-07-014 to permit the limited dispatch by road of up to 5% of the annual output of coal from the Ffos-Y-Fran land reclamation scheme or a maximum of 50,000 tonnes of coal per annum (whichever is the lesser) via Cwmbargoed Disposal Point

Granted on Appeal – 6th May 2011 (Appeal Ref: APP/U6925/A/10/2129921)

P/03/0225 Land reclamation incorporating the extraction of coal by opencast Methods.

Granted Planning Permission by the National Assembly for Wales – 11 April 2005 (Appeal Ref: A-PP 152-07-014)

P/99/0287 Opencast coal mining operation with associated reclamation works

Application Withdrawn – 23 June 2003

CONSULTATION

Internal Consultees

- | | | |
|--------------------------------------|---|---|
| Head of Engineering and Highways | - | No objection |
| Planning Division's Ecologist | - | The conclusion of the Ecology chapter of the Environmental Statement Addendum is a reasonable one, i.e., the nine-month extension of activities is unlikely to alter the potential impacts of the scheme on ecology as set out in the original ES chapter. Raised some questions as to details of implementation which are monitoring issues. |
| Landscape Architect | - | No comments |
| Environmental Health Manager | - | No objections |
| Head of Corporate Property & Estates | - | No comments |
| Planning Policy Officer | - | Determining whether or not the proposals meet the test of wholly exceptional circumstances will be the key consideration for this application alongside the environmental acceptability test contained in MTAN2. |
| Rights of Way | - | Confirmed that there are a number of claimed rights of way across the site which are progressing through the legal process. |
| Community Regeneration | - | No comments |
| Legal Section | - | No comments |

External Consultees

Bedlinog Community Council	-	No comments
Glamorgan-Gwent Archaeological Trust	-	No objections
Cadw	-	The impact of the mine on the above designated historic assets and their settings was considered in the determination of the original planning applications for this development. The extension of the working period of the mine will not increase this impact.
Welsh Government Dept for Economy & Infrastructure (Trunk Roads)	-	Does not issue a direction in respect of this application.
Caerphilly County Borough Council	-	No objections
The Coal Authority	-	No objections
Natural Resources Wales	-	We have concerns with the application as submitted because inadequate information has been provided in support of the proposal. To overcome these concerns, there should be an updated biodiversity data search and a review to confirm whether the conditions of the Great Crested Newt (GCN) licence have been met.
Chief Fire Officer	-	No comments

PUBLICITY

In accordance with the Town & Country Planning (Development Management Procedure) (Wales) Order 2012 and the Town & Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, this application was publicised by means of displaying 25 site notices along the main roads and within the nearby residential areas on the 21st September 2022 and subsequently on 27th October 2022. Additionally, a notice was placed in the publicity section of the Merthyr Express on 28th September 2022 and subsequently on 10th November 2022.

In response to this publicity exercise, 27 responses have been received, which includes 26 objections and 1 letter of support. The concerns raised can be summarised as follows:

- Any extension will be counter to Welsh Government Policy on fossil fuels and climate change targets
- No need for the coal
- Reduction in production during Covid is not an adequate excuse to continue operations
- Noise, dust, blasting, health impacts & general disturbance for 15 years already
- Biodiversity
- Flooding
- Concerns regarding the completion of restoration
- The owners are excavating outside the permitted area
- Issues with the developer
- Grievances ignored by the Council
- Devaluation

The letter of support can be summarised as follows:

Welsh steam coal is vital to Tata steel works and the Heritage railway movement across the UK. If coal has to be imported from Poland, Columbia, Australia, Kazakstan etc this will increase the carbon footprint. The Heritage railways in the UK including a significant number in Wales attract a large number of tourists and create jobs.

On 11th April 2023, a further period of consultation commenced, inviting responses by no later than 25th April 2023, with regard to the applicant's proposed changes to the time periods within Conditions 3 and 4. This included letters to all of those who initially made representations on the application and the display of 25 site notices. Any relevant matters arising from that further consultation will be reported orally as an update to this report.

LEGISLATIVE & POLICY CONTEXT

Legislation

Section 73 of the Town & Country Planning Act 1990 allows planning permission to be sought for development without complying with some or all of the conditions of a previous planning permission. Where such an application is made, the local planning authority is to consider *“only the question of the conditions subject to which planning permission should be granted”* (see section 73(2) TCPA 1990). However, the local planning authority retains the ability to refuse the application and may do so where it considers that any planning permission should be subject to the original conditions without any change. If the local planning authority considers different conditions should be applied, it may grant planning permission subject to those different conditions. Whatever the decision on the section 73 application, the previous planning permission (and its conditions) remains in place. If a section 73 application is granted it results in a fresh planning permission. Because of this, as with any other decision whether to grant planning permission, the local planning authority has to consider the application having regard to the local development plan and all other

material considerations, and the application should be determined in accordance with the local development plan unless material considerations indicate otherwise.

A planning permission granted on an application under section 73 TCPA 1990 can include permission under section 73A TCPA 1990 for development that has already been carried out without planning permission or without complying with planning conditions, certainly where some part of the development remains to be completed (see *Lawson Builders v SSCLG* [2015] EWCA 122). That provision is applicable in the present case, where the full restoration of the site as part of the authorised FLRS remains to be completed and at least part of the extended period for coal extraction sought in the application has already expired (and any coal extraction after 6 September 2022 would not have been in accordance with the requirements of the 2011 Permission). It would therefore be open to the Council, if it considered it appropriate to do so, to grant planning permission which retrospectively authorised coal extraction already undertaken since 6 September 2022.

The Well-being of Future Generations (Wales) Act 2015 (WFG) imposes a duty on public bodies to carry out 'sustainable development' in accordance with the 'sustainable development principle'.

"Sustainable development" means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.

'Sustainable development principle' means that Local Authorities must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

In order to achieve this principle, the Act introduces five ways of working to support decision making which ensures public bodies take account of:

- Long-term thinking – balancing the need to take action to address current issues with the need to meet long term needs of Wales.
- An integrated approach – considering how a body's objectives may impact upon the social, economic, environmental and cultural well-being and considering how an individual body's objectives impact upon other public bodies' objectives.
- Engagement – involving the people and communities with an interest in the wellbeing objectives, engaging them in finding sustainable solutions.
- Collaboration – acting collaboratively with other bodies, or different parts of a body acting together in a co-productive way, to assist in the achievement of the body's objectives.
- Preventative action – deploying resources to undertake action now in order to prevent problems occurring or getting worse.

Well-being goals identified in the Act are:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

The Environment (Wales) Act 2016 has been designed to complement the WFG Act by applying the principles of sustainable development to the management of natural resources in Wales.

The “sustainable management of natural resources” means— (a) using natural resources in a way and at a rate that promotes achievement of sustainable development and the well-being goals, (b) taking other action that promotes achievement of that objective, and (c) not taking action that hinders achievement of that objective.

The Environment Act also imposes a duty to require all public authorities, when carrying out their functions in Wales, to seek to “maintain and enhance biodiversity” where it is within the proper exercise of their functions. In doing so, public authorities must also seek to “promote the resilience of ecosystems.”

Section 6 in Part 2 of the Mid Glamorgan County Council Act 1987 states that planning permission for development which consists of or includes the winning and working of coal, or other operations in, on, over or under land for or in connection with such winning and working of coal, may be granted by the local planning authority subject to the requirement that the applicant or any other person who carries out the development shall provide, to the satisfaction of the Local Planning Authority, security for the performance of any conditions relating to landscaping or the preservation, restoration or reinstatement of the land, including any restoration condition or aftercare condition. The security for the performance of any conditions may be provided by a Bond or such other means as may be approved by the Local Planning Authority.

The requirement for a Bond did not apply to the National Coal Board and did not apply to the successor company, Celtic Energy Limited, for a period of 10 years beginning with the date of privatisation. The exemption has long since expired. The powers in Section 6 would not be available in the case of planning permissions granted after any other enactment which provides means to secure the performance of restoration or related conditions has come into force in the (former) county of Mid Glamorgan. However, there has been no such successor legislation and the Act therefore still applies.

National planning policy

The Future Wales – the National Plan 2040

The plan seeks to provide a strategy for addressing key national priorities through the planning system. The plan covers big issues including the economy, housing and environment. It shows where nationally significant developments like energy, transport, water and waste projects should take place. It shows where growth should happen, what infrastructure and services are needed and how Wales can help fight climate change. It tries to make the best use of resources, create accessible healthy communities and protect our environment. The plan is in line with the Well Being of Future Generations (Wales) Act 2015.

Planning Policy Wales (PPW), Edition 11, February 2021:

The following Key Planning Principles set out in PPW11:

- Growing our economy in a sustainable manner
- Making best use of resources
- Facilitating accessible and healthy environments
- Creating & sustaining communities
- Maximising environmental protection and limiting environmental impact

Paragraph 2.8 states that planning policies, proposals and decisions must seek to promote sustainable development and support the well-being of people and communities across Wales. This will include seeking to maximise the social, economic, environmental and cultural benefits, while considering potential impacts when assessing proposals and policies in line with the Act's Sustainable Development Principle."

Paragraph 3.7 identifies that developments should seek to maximise energy efficiency and the efficient use of other resources (including land), maximise sustainable movement, minimise the use of non-renewable resources, encourage decarbonisation and prevent the generation of waste and pollution. An integrated and flexible approach to design, including early decisions regarding location, density, layout, built form, the choice of materials, the adaptability of buildings and site treatment will be an appropriate way of contributing to resilient development.

Paragraph 3.24 states that where significant effects on human health are likely to arise as a result of development plans or individual development proposals, environmental impacts should be considered in full knowledge of the likely consequences for health.

Paragraph 3.30 states that in 2019 the Welsh Government declared a climate emergency in order to coordinate action nationally and locally to help combat the threats of climate change. The planning system plays a key role in tackling the climate emergency through the decarbonisation of the energy system and the sustainable management of natural resources. The transition to a low carbon economy not only brings opportunities for clean growth and quality jobs, but also has

wider benefits of enhanced places to live and work, with clean air and water and improved health outcomes.

Paragraph 3.31 confirms that the Environment (Wales) Act 2016 sets a legal target of reducing greenhouse gas emissions in Wales by at least 80% in 2050. The Act also requires a series of interim targets (for 2020, 2030 and 2040) and carbon budgets. The budgets set a limit on the total amount of greenhouse gas emissions in Wales over a 5-year period to serve as steppingstones and ensure progress is made towards the decadal targets.

Paragraph 3.32 confirms that in May 2019 the Climate Change Committee published its recommendation for the UK to set a net zero target for 2050. It recommended Wales set a 95% target as our fair contribution to the UK effort. The Welsh Government accepted this recommendation but is seeking to go beyond 95% to reach net zero.

Paragraph 3.33 states that climate change is a global challenge, with impacts felt at the local level presenting a significant risk to people, property, infrastructure and natural resources. We need to plan for these impacts, reducing the vulnerability of our natural resources and build an environment which can adapt to climate change. The planning system plays a significant role in managing this risk. Development allowed today will be around for decades to come. The most important decision the planning system makes is to ensure the right developments are built in the right places.

Paragraph 5.10.1 states that the demand for energy minerals has been largely based on power generation. The Welsh Government has set climate change targets for the reduction of greenhouse gas emissions and promoting decarbonisation. At the UK level coal powered generation is being phased out. This means moving away from the extraction of fossil fuel for use in energy generation. In the planning energy hierarchy, the extraction of minerals for the purpose of generating energy is undesirable as it is the most carbon intensive form of production. The purpose of this hierarchy is to encourage preferred generation proposals to come forward and to discourage proposals supported by the extraction of fossil fuels.

Paragraph 5.10.13 confirms that it is part of UK and Welsh Government energy policy to remove coal from energy generation. Current UK Government plans seek to phase out coal fired generation by 2025 and in Wales demanding targets to limit carbon emissions are enshrined in the Environment Act. Continued demand for local coal is uncertain, both in terms of the increased use of imports and challenging abatement requirements.

Paragraph 5.10.14 states that proposals for opencast, deep-mine development or colliery spoil disposal should not be permitted. Should, in wholly exceptional circumstances, proposals be put forward they would clearly need to demonstrate why they are needed in the context of climate change emissions reductions targets and for reasons of national energy security.

Paragraph 5.10.15 states that in wholly exceptional circumstances, there may be some public safety benefit in coal extraction where, for example, historic coal mining has created land instability.

Paragraph 5.14.2 continues by stating that the “role of the planning authority in relation to mineral extraction is to balance the fundamental requirement to ensure the adequate supply of minerals with the protection of amenity and the environment.

The key principles are to:

- a. provide positively for the safeguarding and working of mineral resources to meet society’s needs now and in the future, encouraging the efficient and appropriate use of high-quality materials;
- b. protect environmental and cultural characteristic of places, including those highly cherished for their intrinsic qualities, such as wildlife, landscapes, ancient woodlands and historic features, and to protect human health and safety and general well-being;
- c. reduce the impact of mineral extraction and related operations during the period of working by ensuring that impacts on relevant environmental qualities caused by mineral extraction and transportation, for example air quality and soundscape, are within acceptable limits; and
- d. achieving, without compromise, a high standard of restoration and aftercare so as to avoid dereliction and to bring discernible benefits to communities, heritage and/or wildlife, including beneficial after uses or opportunities for enhancement of biodiversity and the historic environment.

Paragraph 5.14.32 states that coal has predominantly been used for energy production, however coal has other specific uses. These include use for industrial purposes in the steel industry, in speciality carbon markets, in the making of concrete and for domestic use. Coking coal, for example, which is largely imported is used in coke manufacture for the steel industry and directly in blast furnaces. Whilst the use of coal for energy generation should not be permitted, if exceptional planning applications come forward for industrial uses for coal then each case would need to be considered individually and the policies contained in MTAN 2: Coal applied, including the test outlined in paragraph 45 of MTAN 2.

Paragraph 5.14.47 states that extensions to existing mineral working, whether they be time, lateral or depth extensions should be considered in the same manner as applications for new sites. Each application will need to consider the impact on the site as a whole and the wider surroundings and will need to be considered on its own merits.

Paragraph 5.14.50 states that unless new mineral extraction provides satisfactory and suitable restoration, planning permission should be refused. Planning conditions should ensure that land affected by mineral extraction is restored to a high standard suitable for its agreed after-use at the earliest opportunity, and work begun within six months of cessation of working wherever this is practicable, except where progressive restoration has already commenced. Restoration and aftercare should provide the means to at least maintain, and preferably enhance, the long-term quality of land and landscapes taken for mineral extraction.

Paragraph 5.14.56 states that planning conditions should be able to secure the restoration, aftercare and after-use of mineral sites. Operators and landowners should ensure that sufficient finance is set aside to enable them to meet restoration and aftercare obligations. The full cost of restoration does not need to be put on deposit at the outset, but it should build up commensurate with the programme of activity or extraction. Over long periods of operation ownership can change, and financial surety should be encouraged to ensure that there is adequate finance to complete restoration and aftercare requirements. For coal sites, the objective is to ensure that the full restoration costs are commensurate with the stage of the development as set out in the Coal Authority's Best Practice guidance note. For larger sites, irrespective of the mineral type, progressive restoration should be achieved using a stream of funding required at various stages throughout the operation. Operators are encouraged, as a reasonable alternative, to participate in established mutual funding or guarantee schemes which safeguard against possible financial failure.

Paragraph 5.14.57 states that sites left unrestored for a long period or delay in legitimate restoration is not acceptable. To address the uncertainty of local communities about the completion of restoration proposals and having regard to the polluter pays principle, wherever it is reasonable to do so, authorities may require financial guarantees as a means of ensuring that sites will be restored properly and in a reasonable time period. An authority may require financial guarantees by way of a Section 106 planning obligation/agreement as part of the approval of planning permission to ensure that restoration will be fully achieved. Some authorities have local legislation to enable them to impose this provision by way of a condition attached to the planning permission. Mineral planning authorities should have regard to the need to avoid imposing costs that are larger or longer than strictly required to meet best standards.

MTAN2 – Coal (January 2009)

MTAN2 sets out how impacts should be assessed and what mitigation measures should be adopted and seeks to identify the environmental and social costs of coal operations so that they are properly met by the operator. Responsible stewardship of natural resources and the environment requires coal working to respect ecological limits and to protect critical natural capital. In considering the effects of coal extraction, MPAs (Mineral Planning Authorities) should take into account the level of activity that a particular locality and its community can sustain, as well as the potential benefits from coal working. The effects include potential impacts on people and the environment. Potential benefits include job opportunities, the value to the economy, land stabilisation and the scope for landscape and amenity improvements.

Paragraph 45 states that the appropriate test to coal extraction operations is:

- The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage.

- If this cannot be achieved, it should provide local or community benefits which clearly outweigh the disbenefits of likely impacts to justify the grant of planning permission.

Natural Resource Policy

The Natural Resource Policy identifies three national priorities for the management of our natural resources have emerged, namely:

- Delivering nature-based solutions;
- Increasing renewable energy and resource efficiency; and,
- Taking a place-based approach.

These priorities have been designed to work together to help us to tackle challenges and realise opportunities that our natural resources provide.

Coal policy statement: The Welsh Government's policy objective to avoid the continued extraction and consumption of fossil fuels (22 March 2021)

It is the Welsh Government's policy objective to avoid the continued extraction and consumption of fossil fuels. Coal is a non-renewable energy source. All proposals for the extraction of coal, including any secondary coal products produced during mining operations, which are destined for energy markets, must clearly demonstrate why they are needed in the context of climate change emission reduction targets. Energy markets include, but are not limited to, the domestic consumption of coal products and electricity generation.

Welsh Ministers therefore do not intend to authorise new Coal Authority mining operation licences or variations to existing licences. However, in wholly exceptional circumstances, Welsh Government would consider the further extraction of coal. Each proposal would be considered on its individual merits, but must clearly demonstrate:

- a) Why the extraction is required to support industrial non-energy generating uses for coal.
- b) Why the extraction is needed in the context of decarbonisation and climate change emission reductions targets, or to ensure the safe winding-down of mining operations or site remediation.
- c) How the extraction contributes to Welsh prosperity and our role as a globally responsible Wales.

Decisions will be made on the specific circumstances of each case based on its climate impact, with the presumption being against extraction.

It is UK policy to remove coal from energy generation. Wales supports this aim in delivering our emissions targets and Planning Policy Wales already places fossil fuels at the bottom of the energy hierarchy. The use of coal for generation of power in Wales will not be permitted, given there are a range of other low carbon energy technologies. The use of coal for any thermal purpose is also to be avoided.

Technical Advice Notes:

TAN 5: Nature Conservation and Planning, September 2009
TAN 11: Noise, October 1997
TAN 18: Transport, March 2007
TAN 23: Economic Development, February 2014
TAN 24: The Historic Environment, May 2017
MTAN2: Coal, January 2009

Local planning policy

Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) 2016-2031:

- Policy SW4 - Settlement Boundaries
- Policy SW9 - Planning Obligations
- Policy SW11 - Sustainable Design and Placemaking
- Policy CW1 - Historic Environment
- Policy EnW1 - Nature Conservation and Ecosystem Resilience
- Policy EnW3 - Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves and Priority Habitats and Species.
- Policy EnW4 - Environmental Protection
- Policy EnW5 - Landscape Protection
- Policy EcW1 - Provision of Employment Land
- Policy EcW8 - Renewable Energy
- Policy EcW10 - Sustainably Supplying Minerals
- Policy EcW11 - Minerals Development
- Policy EcW13 - Minerals Safeguarding

Supplementary Planning Guidance (SPG):

- SPG2: Planning Obligations
- SPG 5: Nature and Development

PLANNING CONSIDERATIONS

Principle of Development

The FLRS was established by the grant of planning permission in April 2005. The 2011 appeal decision did not revisit the principle of development and the time limits imposed by the Inspector (in Conditions 3 and 4) reflected the time periods set out in the initial 2005 permission (with the only difference being that the Inspector imposed specific dates rather than periods running from the “commencement of development”). The Inspector did not allow the development to continue beyond the time periods already established by the 2005 permission. Nothing in this application allows for additional coaling or excavation that hasn’t already been approved in terms of the location or nature of the working, but it does seek to extend the time

period when the authorised activities can take place. The application, as recently changed, is for the extension of the time period allowed to complete the extraction of coal by 31 March 2024 and the restoration of the site by 30 June 2026.

However, paragraph 5.14.47 of PPW11 states that extensions to existing mineral working, whether they be time, lateral or depth extensions should be considered in the same manner as applications for new sites. Each application will need to consider the impact on the site as a whole and the wider surroundings and will need to be considered on its own merits.

PPW11 states that it is part of UK and Welsh Government Energy Policy to remove coal from energy generation in order to meet climate change and carbon reduction targets. Currently the plan is to phase out coal fired generation of electricity by 2025. It is therefore Welsh Government Policy that proposals for opencast, deep mine development or colliery spoil disposal should not be permitted except in 'wholly exceptional circumstances' where it can be clearly demonstrated why they are needed in the context of climate change emission reduction targets and/or for reasons of national energy security.

The Coal Policy Statement also states that despite the presumption against coal extraction, in wholly exceptional circumstances, Welsh Government would consider the further extraction of coal for non-energy uses. Each proposal must be considered on its individual merits, but must clearly demonstrate:

- Why the extraction is required to support industrial non-energy generating uses for coal.
- Why the extraction is needed in the context of decarbonisation and climate change emission reductions targets, or to ensure the safe winding-down of mining operations or site remediation.
- How the extraction contributes to Welsh prosperity and our role as a globally responsible Wales.

Policy EcW11 of the LDP specifically relates to minerals development and in the case of coal resources, reflects the national policy of clearly demonstrating wholly exceptional circumstances justifying extraction. Policy EcW11 also requires that there are acceptable proposals for progressive and final restoration, aftercare, and beneficial after-use, and that the proposals satisfy the other relevant policies of the LDP. Other LDP policies of relevance include Policy EnW5 on landscape protection and EnW4 on environmental protection. The changes in policy are clearly a material change in circumstances since the 2005 decision.

Test of wholly exceptional circumstances

The applicant claims that since the closure of Tower Colliery, Ffos-y-Fran represents the only current source of Welsh Dry Steam Coal within the country. Dry Steam Coal has unique characteristics which are ideal for use in Steel Manufacturing. TATA Steel (a British company) relies heavily on this coal for their ongoing Steel Manufacturing. Therefore, without the continued provision of the coal from the Ffos-y-Fran site, users of Dry Steam Coal (such as TATA Steel) would need to import suitable coal products from Russia, Venezuela or Australia. Consideration should

also be given to the security of supply given the geo-political situation and the sustainability of supply from such regions. Whilst there is a longer-term aspiration for Carbon Neutrality within the UK, industries such as Steel Manufacturing are in a period of transition and require security of supply in the short term. As such, the ability to continue extracting Dry Steam Coal from Ffos-y-Fran should be considered of National significance/importance.

The applicant claims that importing suitable coals from Russia, Venezuela or Australia for use at TATA Steel is an unsustainable practice and results in an increase of the carbon footprint of such operations given the transit miles required (in comparison to extracting and utilising a locally sourced coal). The applicant claims that the carbon footprint of imported coal is five times greater than indigenous coal but has not supported that claim with any evidence. The current system of national carbon budgets does not account for the carbon effects of producing or transporting imported materials to the UK. Nor is there any information provided on the end use of coal that is not imported to the UK or on what its carbon effects are if exported and used elsewhere.

It is also claimed that the impact of working practices required during the COVID19 pandemic adversely affected output at the site and delayed the completion of the excavation of coal beyond the end date for extraction of 6 September 2022. It is not considered that these arguments carry any significant weight when it comes to clearly demonstrating wholly exceptional circumstances, for the following reasons.

Whilst working practices may have been affected by the COVID19 pandemic between 2020 and early 2022, which may have reduced the expected rates of coal extraction, it remains the case that the principle of development at the site is only established for the time periods covered by the existing planning permissions. As paragraph 5.14.47 of PPW makes clear, any time extension for mineral extraction at an existing site needs to be considered in the same way as applications for extraction at new sites and on its own merits. There is therefore no expectation in national policy that existing minerals sites will or should be fully worked out, if doing so would take them beyond the extent of their existing permissions. The COVID19 pandemic may help to explain why the rate of working was, for a time, lower than originally envisaged but it does not provide a justification for extending the period of extraction. Many businesses were impacted by the restrictions required to address the COVID19 pandemic and it is not considered that any reduced output at the site should carry much if any weight as a wholly exceptional circumstance to justify extraction beyond the periods originally approved.

The original permission of 2004 stated in condition 3, that all coal extraction shall cease within 15 years and 3 months from commencement of development. Condition 4 of the 2004 permission stated that final restoration shall be completed within 17.5 years from the commencement of development, and aftercare shall be undertaken for a period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme. The 2011 permission amended conditions 3 and 4 by inserting set dates for cessation of coaling and aftercare provision. It has been known since the 2011 permission imposing a set date, that the end date for the extraction of coal from FLRS was 6 September 2022. The applicant has been aware for well over a decade that coal extraction was required to cease by September 2022

and was in no position to offer continuation of supply beyond that date (whether to TATA Steel or to any other end user). There has been no evidence provided to show that such end users have been unable to make alternative supply arrangements well in advance in order to ensure continuity of supply. Continuation of extraction for a limited period up to 31 March 2024 cannot therefore be considered to be required to support a non-energy generating use. It may be commercially beneficial in the short term for the applicant to sell and its customers to buy coal extracted from the site but that is different to being required. There is no suggestion that TATA Steel or any other end user will close or cease operations purely because there would be no supply of suitable coal from FLRS for an additional period.

Whilst the applicant claims that TATA Steel is the main market there are other smaller markets for the coal including Heritage Railways, steam engines/boilers and the domestic heating market. No justification has been submitted in terms of why continued extraction is required for these end uses.

The applicant has claimed that the carbon footprint of transporting coal from FLRS to Port Talbot is 5 times less than transporting it from Venezuela or Australia. However, that statement has not been supported by any definitive evidence. On that basis, it cannot be concluded that the extraction is needed in the context of decarbonisation and climate change emission reductions targets. There is also no indication that the development is required to ensure the safe winding-down of mining operations or site remediation.

The applicant has also failed to demonstrate how the extraction contributes to Welsh prosperity and our role as a globally responsible Wales. The applicant has claimed there would be benefits to the local economy, employment, supply chain and community benefit but has not quantified the benefits. There may be benefits to TATA Steel in the short term, but these have not been substantiated. There would be benefits to the applicant in terms of sales of coal and the generation of profits. However, one of the substantial benefits of the original planning permission was the restoration of a large area of derelict land at no cost to the public purse.

The applicant asserts that there are insufficient funds in the Restoration Fund held by the Council, together with funds set aside by the Company, to allow for the full implementation of the current restoration strategy. However, (a) in the first place it is, and always has been, the applicant's primary responsibility as the operator of the site with the benefit of the 2005 and later 2011 planning permissions, to comply with all of the conditions of the permissions, including the requirements in relation to restoration and aftercare, and (b) in the second place there are no proposals submitted as part of the application to either amend the strategy or to make a further financial contribution to the Restoration Fund. The applicant has known for many years that the final restoration of the site would be required, and it was the applicant's responsibility, during the productive periods of coal extraction, to make the necessary financial provision to meet its restoration obligations. No weight should be given to any claims that the applicant is not now in a position to do so, especially in the absence of any transparent and 'open book' disclosure of the applicant's financial resources. Even if it were to be demonstrated that there is a genuine shortfall in funding, this would leave a very real risk of one of the substantial benefits of the original scheme not being delivered. This will not contribute to Welsh

Prosperity as the disbenefit may well outweigh the potential benefits. It is noted that the applicant has recently indicated that a hybrid application will be submitted in Autumn 2023 to include an alternative landform, which is described as a 'landscaping scheme' and (unspecified) after uses. This provides little confidence as to the extent of the proposals. Nor can the Council give any weight at the present time to such a possibility which, if submitted, would need to be assessed on its own merits.

It is therefore considered that the 'wholly exceptional circumstances' test has not been met and the proposal is contrary to Policy Ecw11 of the LDP as well as national policy set out in PPW11 and the Coal Policy Statement.

MTAN2 Test

The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage or if this cannot be achieved, it should provide local or community benefits which clearly outweigh the disbenefits of likely impacts to justify the grant of planning permission.

Landscape and visual impacts

The Inspectors report supporting the 2005 Appeal decision acknowledges that activities would be clearly visible from viewpoints on elevated ground in the surrounding area, particularly from the north and west and for the duration of the scheme these impacts would generally be detrimental. However, the Inspector considered that the main purpose of the scheme was to remove dereliction and restore the land to a beneficial use. Therefore, the conclusion was that the long-term effect would be a substantial benefit. This conclusion was accepted by the Welsh Ministers in their decision letter.

Chapter 16 of the Environmental Statement Addendum concludes that the size, scale and geographical extent of the site are largely unchanged since the original Environmental Statement as is the level of visual impact. The only difference would be the extension of the impacts for an additional period, which is not significant given the duration of the operations at this site. Restoration of the site would still provide a substantial benefit in visual terms, even though there is now some risk that it will not be completed if it were to be demonstrated that there are insufficient funds to do so. Since the applicant has recently stated that it does not see an economic case for continued coal extraction beyond March 2024 and has made no proposals to devote more funds to restoration of the site, delaying the final restoration for an additional period is unlikely to assist in securing the achievement of that restoration. No evidence has been presented to show that the final restoration cannot be achieved by the original date of 6 December 2024.

Historic Environment

The Inspectors Report supporting the 2005 Appeal decision concluded that the proposed scheme would be generally in accord with policy and that it would have a moderate effect on the historic landscape but only minor effects on the features of

high archaeological value. The Welsh Ministers agreed with the Inspectors conclusions.

Chapter 14 of the Environmental Statement Addendum concludes that there have been no changes to the baseline assessed in the original Environmental Statement. CADW has advised that the impact of the mine on the designated historic assets and their settings was considered in the determination of the original planning application for this development. The extension of the working period will not increase the impact. GGAT have also raised no objections.

Traffic & Transport

The Inspectors Report supporting the 2005 Appeal decision considered that the impact of traffic generated by the proposal would be negligible as at that juncture it was proposed that all coal would be removed from site by rail via the Cwmbargoed Disposal Point. The Welsh Ministers accepted that traffic impacts would be negligible.

A subsequent Appeal decision in 2011 allowed for up to 50,000 tonnes of coal to be removed by road as it would not cause material harm to the objectives of sustainable transport, provided suitable safeguards were provided on the Bogey Road. Chapter 8 of the Environmental Statement Addendum concludes that no additional traffic impacts are expected as a result of the time extension to operations. The Head of Engineering & Highways & the Trunk Roads Agency have no objections.

Hydrology and Hydrogeology

The Inspectors Report supporting the Appeal Decision in 2005 concluded that the proposals and impact assessments for groundwater and surface water were not subject to dispute by the Environment Agency (now Natural Resources Wales) and that the scheme would not have any adverse effects on the quantity or quality of groundwater or surface water resources. The Welsh Ministers accepted the assessment that surface and groundwaters would be adequately protected. Chapter 10 (Hydrology) & Chapter 12 (Hydrogeology) of the Environmental Statement Addendum conclude that there are no additional effects arising from the extension to coaling operations and no change to the assessments made in the original Environmental Statement. There is no reason to dispute that this is a reasonable conclusion.

Impact on Ecology and Biodiversity

The Inspectors Report supporting the 2005 Appeal decision concluded that taken as a whole, the proposed development would not cause unacceptable harm to nature conservation. The Welsh Ministers agreed that taken as a whole, the development would not cause unacceptable harm to nature conservation and that the protection of Great Crested Newts should be assured by condition requiring the necessary granting of a licence under the provisions of the Habitat Regs before any clearance work takes place. Chapter 15 of the Environmental Statement Addendum concludes that there are no impacts of the additional extension of time for extraction and restoration on ecology as the working area is already disturbed. The restoration

would also provide for biodiversity enhancement. The Council Ecologist considers that the conclusion of the Environmental Statement Addendum is a reasonable one. The Ecologist and NRW have raised a concern in relation to compliance with the Great Crested Newt species licence. However, these issues are considered to be more related to compliance with the species licence issued by NRW rather than the planning permission.

Amenity Impacts – noise, air quality, blasting & health

LDP Policy EnW4 states that development proposals will be required to demonstrate they will not result in an unacceptable impact on people, residential amenity, property and / or the natural environment from noise, vibration, dust, odour nuisance and light pollution; or any other identified risk to public health and safety. Where impacts are identified the Council will require applicants to demonstrate that appropriate measures have been incorporated to reduce, or minimise the impact identified to the lowest possible acceptable level. Planning conditions may be imposed or legal obligation entered into, to secure any necessary mitigation and monitoring processes.

The Inspectors Report supporting the 2005 Appeal decision concluded the following:

Air Quality & Health

Balancing the real and perceived risks to health, the Local Health Board advised that the proposal would result in some benefits to health. Merthyr Tydfil is a deprived area, and there is an acknowledged relationship between poverty and ill-health. By bringing jobs and other economic benefits into the local community the scheme would make a contribution towards improving general health and wellbeing. In the long-term the improved appearance and state of the land would also have a positive effect on wellbeing.

Noise

Noise levels at the nearest noise sensitive properties would be contained within the limits advised in the applicable national guidance and that for most locations and for most of the time the predicted increase in noise levels would be barely perceptible.

Blasting

Unlike rock quarries, blasting at opencast coal sites is used merely to loosen material rather than to fragment and dislodge it. A blast witnessed at another opencast site during the site visit illustrated the limited impact blasting operations would be likely to have.

The Welsh Ministers saw no reason to disagree with the Inspector that the effect on the general health of the Community would not be significant and that with the imposition of appropriate conditions, the effect on the living conditions of nearby residents from dust, noise and blasting would not be unacceptable. It should be noted that the condition imposed in relation to blast vibration limits is reflective of the current best practice guidance contained in MTAN2.

Chapters 17 (Noise), 19 (Air Quality) and 20 (Blasting) of the Environmental Statement Addendum conclude that the assessments made in the original

Environmental Statement remain valid and due to working locations, should remain within the specified limits. There is no reason to dispute that this is a reasonable conclusion.

Financial Guarantee for Restoration & Aftercare

One of the key principles of national planning policy is achieving, without compromise, a high standard of restoration and aftercare so as to avoid dereliction and to bring discernible benefits to communities, heritage and/or wildlife, including beneficial after uses or opportunities for enhancement of biodiversity and the historic environment. Unless new mineral extraction provides satisfactory and suitable restoration, planning permission should be refused.

As set out above, PPW11 states that planning conditions should be able to secure the restoration, aftercare and after-use of mineral sites. However, there is a responsibility on operators and landowners to ensure that sufficient finance is set aside to enable them to meet restoration and aftercare obligations. Operators are encouraged, as a reasonable alternative, to participate in established mutual funding or guarantee schemes which safeguard against possible financial failure.

The Mid Glamorgan County Council Act 1987 allows the LPA to require security for the performance of any conditions relating to landscaping or the preservation, restoration or reinstatement of the land, including any restoration condition or aftercare condition on coal extraction sites. The security for the performance of any conditions may be provided by a Bond or such other means as may be approved by the Local Planning Authority.

The current financial security is in the form of an Escrow Account, which has built up over the course of the development to £15 million. It is accepted that this is not sufficient to fund the full restoration cost and as set out in PPW11 there is an expectation on the operator/landowner to ensure sufficient finance is set aside to meet their restoration/aftercare obligations. It appears that there is some suggestion in the application the developer has not done so in this case, but no substantiated or transparent financial case has been presented to support such a claim.

PPW11 goes on to state that to address the uncertainty of local communities about the completion of restoration proposals and having regard to the polluter pays principle, wherever it is reasonable to do so, authorities may require financial guarantees as a means of ensuring that sites will be restored properly and in a reasonable time period. An authority may require financial guarantees by way of a Section 106 planning obligation/agreement as part of the approval of planning permission to ensure that restoration will be fully achieved. Some authorities have local legislation (Mid Glamorgan County Council Act 1987) to enable them to impose this provision by way of a condition attached to the planning permission. Such local legislation applies in this case.

Under the provisions of the Mid Glamorgan County Council Act 1987, the LPA can require further security for the performance of restoration/aftercare conditions, although this must be a reasonable figure commensurate with the permission being sought rather than related to the full cost of restoration. The applicant has therefore

been requested to provide a viability assessment for the extraction of the remaining coal as a basis for discussion as to the Heads of Terms for an additional financial guarantee secured by a Section 106 Agreement. The applicant has indicated that they have no plans to supplement the Restoration Guarantee Bond as part of the application. The only offer is a royalty contribution of £1 per tonne into a Community Fund. When the application was submitted in September 2022 the applicant estimated that there was some 240,000 tonnes of coal remaining. Since then, it has become clear from The Coal Authority records that coal extraction has continued through the remainder of 2022 and the early months of 2023. The applicant has recently stated that over the period from 7 September 2022 to 31 March 2023, some 199,307 tonnes of coal have been produced which implies that the residual amount of coal remaining is in the region of 40,000 tonnes.

Therefore, based on the uncertainty over the applicant's proposals to secure the completion of the restoration, it cannot be concluded that the proposal is environmentally acceptable or can be made so by planning conditions or obligations, so that there is no lasting environmental damage. This is contrary to the requirements of Policies EnW5 and EcW11 of the LDP. The second test in paragraph 45 of MTAN 2 must therefore be applied, in that the proposal should provide local or community benefits which clearly outweigh the disbenefits of likely impacts to justify the grant of planning permission. Whilst the applicant has indicated that the Community Benefit fund would continue, this is a relatively small amount over a short period and could not be considered to outweigh the disbenefits outlined above. The proposal therefore fails the test set out in MTAN2.

CONCLUSIONS

Although this application seeks an extension of the time to complete a project previously permitted, National Planning Policy requires that it should be considered in the same manner as applications for new sites. Each application will need to consider the impact on the site as a whole and the wider surroundings and will need to be considered on its own merits. However, the presumption is against extraction except in 'wholly exceptional circumstances,' which must be clearly demonstrated. In this case, the applicant has failed to clearly demonstrate that 'wholly exceptional circumstances' apply and on that basis, the proposal does not comply with policy EcW11 of the Local Development Plan and national policy.

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the decision must be in accordance with the Development Plan unless material considerations indicate otherwise. There are no material considerations that are considered to outweigh the policy conflict.

Policy EcW11 of the Merthyr Tydfil Replacement Local Development Plan 2016-2031 requires that, in the case of coal resources, wholly exceptional circumstances must clearly demonstrate that extraction is justified. The presumption in national policy is against extraction and the applicant has failed to clearly demonstrate 'wholly exceptional circumstances' which would justify an approval in this case. It has not been clearly demonstrated that extraction is required to support industrial non-energy generating uses for coal; extraction is needed in the context of decarbonisation and climate change emission reductions targets, or to ensure the

safe winding-down of mining operations or site remediation; or that the extraction contributes to Welsh prosperity and a globally responsible Wales.

In addition, the proposals are not environmentally acceptable as they do not include acceptable proposals for final restoration, aftercare and beneficial after-use which prevent lasting environmental damage, contrary to Policies EnW5 and EcW11. The applicants have claimed that the approved restoration and aftercare scheme, which they have not changed, is not now achievable and there are no proposals put forward to supplement the restoration guarantee fund or to otherwise provide security that the required restoration will be delivered either on time or in full. No local or community benefits are proposed which clearly outweigh the disbenefits of lasting environmental damage.

Accordingly, the development is unacceptable, and the following recommendation is made:

RECOMMENDATION: **BE REFUSED** for the following **REASONS:**

1. The proposed development fails to clearly demonstrate that the extraction of coal is required to support industrial non-energy generating uses; that extraction is required in the context of decarbonisation and climate change emission reduction; to ensure the safe winding-down of mining operations or site remediation; or that the extraction contributes to Welsh prosperity and a globally responsible Wales. The proposed development therefore, fails to meet the test of 'wholly exceptional circumstances,' contrary to Planning Policy Wales 11, the Coal Policy Statement and Policy EcW11 of the Merthyr Tydfil County Borough Council Replacement Local Development Plan 2016-2031.
2. The proposed development fails to provide an adequate contribution towards the restoration, aftercare and after-use of the site, to the detriment of the surrounding environment, contrary to the requirements of Policies EnW5 and EcW11 of the Merthyr Tydfil County Borough Council Replacement Local Development Plan 2016-2031. Therefore, no local or community benefits would be provided that clearly outweigh the disbenefits of the lasting environmental harm of the development.