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3274/01 Letters Out/2025-07-07

If telephoning please ask for: Jon Stoddard

David Cross
Group Leader Development Control,
Merthyr Tydfil County Borough Council,
Unit 5 Triangle Business Park,
Pentrebach,
Merthyr Tydfil,
CF48 4TQ

Monday 7th July 2025

By e-mail to: david.cross@merthyr.gov.uk

Dear David,

RE: Ffos-y-Fran - Variation of conditions 4 (Duration and Restoration), 6 (Approved Plans) and 50 (Restoration Strategy) of planning permission APP/U6925/A/10/2129921 involving a revision to the restoration scheme.

We are in receipt of your letter dated 13th June 2025 that refers to the above planning application and the consultation responses that you have received to date. Your letter contains ten points and also refers to other consultee responses by the following parties:

- MTCBC Internal Memorandum: Dated 02/04/2025
- Natural Resources Wales: NRW Reference CAS-275294-H025
- Technical Note 001 – WSP dated 15th April 2025

Please see below our response to your letter of 13th June 2025 that is set out in two parts:-

Part 1 – On behalf of our client the Applicant Merthyr (South Wales) Ltd (MSW), we set out our response as follows to each of the ten points in your letter and then to the points raised in the Internal Memo from the County Ecologist.

Part 2 – MSW response to points raised in Natural Resources Wales

A separate response to the Technical Note 001 by consultants WSP (dated 15th April 2025) is currently being prepared by geotechnical specialists James Associates and will be forwarded to MTCBC under separate cover.



Office 1, Llys Clwyd Cwrt Y Dderwen, Ffordd Celyn, Ruthin, Denbighshire LL15 1NJ

email: rml@rmlconsult.com web: www.rmlconsult.com

Tel +44(0)1824 704366

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Part 1 – Response to MTCBC.

The planning application was validated on 19th February 2025 and included a statutory EIA that had been prepared over a number of months following the submission of a Scoping Report in July 2024. During that time, MSW have convened a number of Technical Working Group (TWG) meetings (3No.) that were well attended by the statutory consultees including MTCBC and NRW and hosted (by MSW) at Cwmbargoed Disposal Point. At the TWG meetings, there was opportunity for the parties to clarify any aspect of the planning application including the scope of the EIA that was in process, and the results of the ongoing work presented by the technical specialists at the meetings. It is therefore disappointing to receive the consultation response to aspects of the application and assessment that could have been raised and agreed at the TWG meetings, rather than now causing unnecessary delays in determination of the application. We also note the dates of the responses (April 2025), in that it would have been helpful if we had received these responses earlier in order to address any issues prior to the target determination date of mid-June 2025.

We are also disappointed to see that out of the ten points you raise in your letter, two relate to the funding of the restoration works and the ESCROW account. We do not believe these to be material planning considerations and have no bearing on planning policy or legislation and therefore are of no merit. We now respond to each of the ten points as follows:-

1. NRW Consultation Response (17th April 2025)

NRW are requesting additional information to be submitted to fully consider the merits of the proposal which MTCBC need to be provided to progress that application. NRW state that they have concerns about the application because inadequate information has been provided regarding land contamination, pollution prevention and European Protected Species (EPS). If these concerns had been raised at any of the TWG meetings, then perhaps these concerns could have been addressed much earlier, especially as some of the issues raised relate to seasonally constrained matters such as EPS. We are also concerned that some of the content in NRW's response appear to demonstrate a fundamental misunderstanding about the intent of the restoration proposals. It is also worthy of note that the site has been the subject of many reports and investigations over the past 30 years and a significant amount of data has already been collected, including previous environmental statements and public inquiries at which the hydrogeology and hydrology was debated at length by experts with the NRW (and its predecessors) before planning permission was eventually approved by the Planning Inspector. This included consideration of the hydrogeology of the site on restoration which we believe has not been fundamentally changed by the mining operations or our alternative proposals for restoration, as demonstrated by the rebound in the groundwater levels. In addition, a vast amount of data has also been gathered by MSW under the conditions of the existing planning consent regarding water quality both on and off-site all of which has been considered by our experts in preparation of our application. A full response to the points raised by NRW are set out on **Part 2** of this letter below.

2. Technical Note 001

The Technical Note has been prepared by WSP and the response of MSW's geotechnical expert James Associates is currently being prepared and will be forwarded under separate cover. Whilst we respect and note the opinion given by your consultant this appears to be based on a desk-top assessment of Ffos-y-Fran, made without the benefit of any site visit, technical discussions with the applicant or a knowledge of the vast amount of 'other' background and supporting information gathered over the last 30 years.



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As a result, we are concerned that whilst this opinion has been given in good faith, it has not taken account of all the available information, and through no fault of their own it raises questions about WSP's current level of understanding about the site on which their judgement is based in the Technical Note. For example, the following sentence raises serious concerns: -

"The documents do not provide confidence that the tips and slopes will remain stable and will not pose an ongoing risk to residents of Merthyr Tydfil".

We are not sure as to the context in which this statement is raised, without knowledge of all available information or the scope of services requested by MTCBC from the consultant. At the very least, this statement alone could cause considerable concern and alarm to decision makers, statutory environmental bodies, the residents of Merthyr Tydfil and indeed MSW, particularly in light of the sensitivity and public debate currently ongoing regarding coal tips in South Wales. Overburden mounds (OB) are distinctly different structures to coal tips in the Valleys which generally consist of washery discard, weak rock and seat earths containing high levels of moisture, loosely tipped onto unprepared and unconsolidated ground on the side of a hill or mountain, with no design, considerations for drainage, inspection regimes or maintenance (until recently).

In contrast, OB are designed engineered structures following site investigation work, signed off and inspected by a Geotechnical Specialist under the Quarries Regs 1999, in full knowledge of the rock and other materials contained within, which are placed in 4 – 5 metre layers transported directly from the mine and compacted by fully laden 160 tonne dump trucks and bulldozers, onto prepared ground with underdrainage as recommended. As an added benefit, the construction of the OB at Ffos-y-Fran were overseen by a resident full-time Geotechnical Specialist. In light of this information, there is considered to be no ongoing risk to the residents of Merthyr Tydfil, a fact which could be reinforced by a site visit due to the geographical location and topography of the site and surrounding area relative to the OBs.

These are all issues which would have been debated and considered elsewhere recently in the decisions of other Local Authorities in South Wales (and elsewhere) to approve similar proposals to incorporate OB into the final restored landscape. Such examples can be seen at East Pit, Margam, Selar and Nant Helen opencast sites, some of which include OB significantly larger than at Ffos-y-Fran. All of these mounds would have been constructed in a similar way as Ffos-y-Fran and contain similar materials. Full responses to the points raised by WSP will be undertaken by geotechnical advisors James Associates and forwarded to MTCBC under separate cover.

3. Internal Memorandum from the County Ecologist

The Internal Memorandum (IM) dated 2nd April 2025 opens with the general comment:

"It is worth noting however that a Net Benefit for Biodiversity (NBB) in comparison with baseline conditions could be achieved *whether or not* the overburden mounds are removed and used to infill the void".

This statement does not consider the wider environmental benefits of retaining the overburden mounds as set out in the Green Infrastructure Statement and Environmental Statement. It merely states that the two alternatives have the potential to contribute to a NBB status.



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Central Ecological Area (CEA)

As you will be aware the CEA falls outside the red line boundary of the S73 application and MSW have previously responded to this matter in a response to the scoping opinion letter dated 14th October 2024 that states: -

The Central Ecological Management Plan was prepared in 2009 by RPS Planning & Development on behalf of Miller Argent (the previous operator of the mine before it came into the ownership of Merthyr (South Wales) Ltd) to discharge condition 50 of planning permission APP/U6925/A/10/2129921. The ecological management plan was for the period 2009-2024. It is considered therefore that the period of long-term management has now ended, and therefore all obligations of the landowner regarding the SINC have been met. The SINC will be unaffected by the final restoration strategy and lies outside the red line boundary of the application site.

MSW maintain their position on this matter. Should MTCBC wish to discuss the matter of the CEA separately, we would invite them to do so outside the remit of this application.

Bats

The IM requires more information about the presence of bats in the buildings and for a Preliminary Roost Assessment (PRA) to be undertaken of the buildings to be removed. The IM refers to page 48 of the ECIA that states

“None of the trees within the surveyed area were of suitable size or suitability for bat roosting potential. The main buildings on site, comprising the coal washing plant, workshops, and offices, were considered unlikely to support roosting bats due to the materials used in their construction and generally open aspect.”

The report was authored by a licenced bat ecologist and therefore we maintain our position on this matter and do not consider further survey work is required or would result in any change to our current position. Please note that the document referred to in the IM does not form part of the planning application and was issued to the County Ecologist for information.

Ponds

More detail on the proposed works to the ponds are currently being prepared and can be found in Appendix A to this letter and will form part of a specification for landscape and ecology.

Monitoring

The ES makes several recommendations for monitoring of various environmental elements in each chapter. May we suggest that the County Ecologist reviews the relevant ES Chapter 11 Ecology for proposed monitoring measures. A monitoring schedule for all environmental elements could be prepared as a condition to the approval of the application.

OB3

It is the intention of MSW to submit a planning application for a permanent motocross track on OB3. Should the application not come forward or is refused, then the area would be returned to upland grassland suitable for nesting Lapwing as shown on the proposed Restoration & Aftercare plan (Figure 4.1 of the ES).

Ecological Reports

The IM requests various ecological reports to be made available. The ES Chapter 11 Ecology includes survey information, and an Ecological Impact Assessment (ECIA) has also been previously provided to the County Ecologist.



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Pre-Determination Documents

The IM requests that the following documents should be provided pre-determination: -

- A long-term habitat, maintenance and monitoring plan (termed a Restoration + Aftercare Management Plan within the supporting documentation)
- Construction Environmental Management Plan (CEMP)
- Precautionary Working Method Statement (PWMS) for all relevant habitats and species

Long Term Management Plan

MTCBC request that a long-term management plan to cover a minimum period of 30 years is prepared and should include a funding mechanism for the management that would anticipate rising costs over time.

This would need to be prepared in consultation and agreement with the Gelligaer and Merthyr Commoners Association (GMCA) and could take a significant amount of time to prepare and agree with the various interested parties. For this reason, and to allow for the progressive restoration of the site to continue unheeded, may we suggest that all the documents above could be a condition of the planning consent with suitable timescales put in place for each.

MSW would be willing to prepare a five-year management plan, in line with previous schemes which required a five-year aftercare plan, but not a minimum period of 30 years as this time period may be outside the control of MSW and ultimately be the responsibility of the GMCA.

4. Noise

You refer to the Scoping Opinion issued by the LPA on 4th October 2024 and request an assessment of the likely differences between the consented scheme and the alternative restoration proposals noise levels. We have previously responded to this subject of noise in our letter to you dated 14/10/2024 item 9. In essence noise, was considered to be an important environmental factor during the operational phase only when the mine was active. The ES refers to noise in several locations and specifically under the heading Noise in Chapter 15 Human Health covering paragraphs 15.6.5 – 15.6.13. Please confirm if this, in your opinion, adequately addresses issues surrounding potential noise nuisance during restoration operations. MSW consider the issue of noise nuisance highly unlikely, particularly given that the plant to be used in restoration is significantly smaller and less in both quantity and volume than during mining operations (which used PC3000 excavators & Cat 777 dump trucks) and given the extremely low numbers of noise complaints received in the last 5 years of mining. MSW would be happy to accept the current levels of noise permitted by Condition 17 of the Appeal decision dated 06/05/11 which incidentally permits increased noise levels during removal of soil mounds.

5. Surface Water Drainage

The planning application to vary conditions did not specifically consider and comment on the area referred to as Phase 1 on the western flank of the site that we had assumed was complete. An assessment of the proposed surface water drainage was undertaken by Waterco, which did include flood risks in Phase 1, and is reported in Appendix 10A of the ES and includes a Flood Consequence Assessment and Drainage Strategy. The recent matter raised by MTCBC regarding the Phase 1 drainage proposals not being totally implemented is now being considered as a separate matter by our consultants and should not affect the determination of the planning application to vary conditions.



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This is being progressed by MSW with MTCBC engineers as a separate matter to the planning application, in particular, the projected flow rates through the Nant Morlais culverts under the A4060 during intense storm events (i.e. 1 in 100-year storm + 40% for climate change).

6. Proposed Drainage and Culverts

Construction details of drainage and culverts are being prepared for each works package as each phase comes forward and this is currently ongoing and being managed by MSW, in consultation with MTCBC engineers and planning officers. Drainage calculations have been modelled using 2D Tuflow model, ReFH2 rainfall assessment and Mannings formula approach to size the proposed drainage ditches. Micro Drainage is better suited to designing formal drainage systems (i.e. piped systems, as opposed to ditches).

The proposed contour drains and drainage ditches have been included in the model and the surface water catchments modelled with direct surface water flows (rainfall) having minimal impact on the levels of water contained in the lake during intense storm events. In addition, because of this, no impact is anticipated within the downstream watercourses compared with the existing situation. Full details and the results are reported in ES Appendix 10A – FCA and Drainage Strategy and ES Appendix 10C – Hydraulic Modelling Summary Note prepared by Waterco.

7. NBB Biodiversity Benefits Table

MTCBC have requested that a table should be prepared that compares land uses proposed in the alternative restoration scheme with the approved scheme that would assist in identifying Net Biodiversity Benefits (NBB). This table can be prepared and inserted into the Green Infrastructure Statement (GInfS) and re-issued.

8. Notable Differences

You state in the first paragraph that the current application has been put forward as an alternative to the original strategy, which would include a number of notable differences, particularly the retention of a body of water and the retention of OB2 and OB3. For clarity, the retention of a body of water is an incorrect description and misleading. It infers that the water is contained by a dam or other structure that is used to retain the waterbody. Previous debates about whether the waterbody is classified as a reservoir, have been concluded by a Panel Engineer who adjudged that the waterbody is not a reservoir. Fundamentally, the water which forms the lake is simply exposed groundwater revealed by excavation of overburden and coal from the main void. Had the void been filled in with overburden above the level of around 280 metres AOD, that groundwater would still have been there except it would have existed in the voids and pores between the rocks forming the backfill.

The ES paragraphs 1.7.3 – 1.7.6 were intended to put the Ffos-y-Fran restoration in context with other restoration proposals in South Wales.

The remaining points you raise in item 9 of your letter refer to the ESCROW account and various funding issues that we do not consider appropriate to comment on any further as we believe the focus of this letter should be to address the consultation responses relating to planning matters only. MSW have responded separately to matters relating to funding and the ESCROW account.

9. Costings to deliver the revised restoration scheme

Detailed costings to deliver the alternative restoration scheme and the subject of the S73 Application are currently being prepared by MSW and will be submitted to MTCBC in due course.

10. Extension of Time

You have requested an extension of time for determination of the application until end of October 2025 to allow for further information to be provided by MSW (and its experts) and clarification of the proposals. Whilst this is disappointing given the delays highlighted, MSW are agreeable to the extension of time but would appreciate further timely discussions as to exactly what, if any, outstanding information or clarifications are required before determination, and/or could be reasonably agreed as potential conditions to any planning consent being granted.

Part 2 – MSW response to NRW

NRW have responded to MTCBC in a letter dated 17th April 2025 stating they have concerns regarding land contamination, pollution prevention and European protected species. The alternative restoration put forward in the S73 planning application has significant less environmental risk to all these factors than the approved scheme. Please be reminded that the advantages of the alternative scheme over the approved scheme are clearly set out in Chapter 19 of the Environmental Statement and summarised in table 19.1. Please also be reminded that NRW have been in attendance at all the Technical Working Group (TWG) meetings and therefore have had chance to request further information or clarification of matters on several occasions.

We will now respond to the individual points raised by NRW as follows: -

Land Contamination

Geotechnical Engineering

NRW state that the extension of the originally permitted mine working has brought the eastern sidewall boundary closer to the active Trecatti Landfill site. The eastern sidewalls remain a significant distance away from Trecatti Landfill and have been designed to parameters specified by a geotechnical specialist. We therefore consider the risks to the short- and long-term stability of Trecatti to be negligible, as was concluded by James Associates report “Land Reclamation Extension” dated February 2020 that concluded: -

“Using the derived Mohr-Coulumb parameter values and adopting the proposed slope geometry and limit of excavation at surface should lead to stable excavation slopes being achieved which will maintain the structural integrity of the A4046 highway and the Biffa Landfill site located to the north east of the proposed extension”.

Hydrogeology

Pit Lake

A temporary reduction in pit lake levels is required for engineering works to stabilise the backfill on the western side of the void. This was not included in the ES as at the time of preparation it was not considered a requirement. The operation would be very similar in nature to the dewatering undertaken when the mine was operational to maintain low levels of water within the base of the void. MSW will prepare a similar dewatering plan to include an abstraction rate, pumping duration, monitoring of groundwater levels and discharge points.



Office 1, Llys Clwyd Cwrt Y Dderwen, Ffordd Celyn, Ruthin, Denbighshire LL15 1NJ

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Dowlais Free Drainage System

NRW state that the ongoing maintenance of the pit lake level and groundwater modelling of the site relies heavily on the Dowlais Free Drainage System (DFDS) and that a risk assessment of the DFDS failing and a blow-out occurring should be undertaken. While the history of the site is well documented and researched, the full extent and condition of the DFDS is not known with complete accuracy or detail, as is the case with similar old workings and drainage networks the length and breadth of the South Wales coalfield. It is worth remembering that the previous ES relating to the currently accepted planning application explicitly assumes that the DFDS controls groundwater levels in the site area and will continue to do so post-closure, as reflected by the rebound of groundwater to similar pre-mining levels. As such the assumptions put forward in the current ES with respect to the DFDS do not present a departure from what has previously been accepted and agreed by other experts and NRW (and its predecessors). In addition, the flow of groundwater is also controlled by the fact that over 95 million m³ of backfill has been placed as part of Ffos-y-Fran, in addition to the backfill on the other side of the A4060 at the former Great White Tip and Incline Top sites. It seems that the most appropriate approach would be to propose a suitable monitoring regime that could be shared and agreed between the interested parties.

Hydrographs

Hydrographs are presented in Appendix 2 of the technical hydrogeological report. These also include observed / vs simulated levels. Table 8 in the technical report provides a summary of all known piezometers, as well as the date of the first and last readings. Depths and screened lithology are not provided but can be included if required.

Calibration of groundwater levels

NRW require clarification regarding the calibration of groundwater levels with the piezometer data. They refer to section 8.5.6 of the ES and reference ‘a one year period where there is no pit void to generate an initial distribution of groundwater heads’.

Paragraph 8.5.6 describes how the predictive groundwater model has been structured and used for the assessment. Impact is calculated by comparing output from a model in which the restoration scheme is implemented, and another that is not. “The one-year period where there is no pit void” does not represent the baseline condition.

The calibration approach, and justification for use of observed data, are discussed in detail in Section 4.3.1 of the Technical Hydrogeological report in ES Appendix 8A.

Post Restoration Aftercare Phase

NRW require further detail regarding the ongoing monitoring of the site. As stated above, it seems that the most appropriate approach would be to propose a suitable monitoring regime detailed in an Environmental Management Plan (EMP) that could be shared and agreed between the interested parties. This could be prepared and agreed prior to determining the application or a condition to be discharged prior to the post restoration phase commencing. It is worth noting that the site has operated for around 17 years with no major issues arising, during which time a significant volume of monitoring data has already been collected and analysed.

Pollution Prevention

NRW raise a number of points relating specifically to:

- Post Restoration Monitoring
- Baseline Year
- Site Drainage



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Post Restoration Monitoring Plan

The need for post restoration monitoring has been identified in ES Chapter 18 Environmental Management Plan and also within individual chapters of the ES. There is also a recommendation for a Construction Environmental Management Plan (CEMP) (also in ES Chapter 18) that would be prepared and implemented during the restoration phase. NRW have suggested that this could be secured through condition on any planning permission granted.

Baseline Year

The baseline year for the purposes of undertaking the EIA for the alternative restoration scheme has been discussed with NRW during the preparation of the restoration proposals and at TWG. It has been previously agreed that the baseline year should be 2023 when the operational phase of coal extraction ceased and significant changes to environmental factors on site came to an end. Refer to ES Chapter 3 and paragraphs 3.1.2 and 3.1.3. Where appropriate, historical data has been used to further inform the baseline conditions.

Site Drainage

Site drainage and surface water has been assessed in ES Chapter 10 and appendices 10A, and 10C.

Water Framework Directive (WFD) Assessment

NRW have made several comments on ES Appendix 10B WFD Assessment prepared by consultants Waterco relating to :-

- Insufficient information on impact to flows, water quality and biology as a result of change to the surface water catchment
- Insufficient information on the impact of the poor groundwater quality of the void and runoff and how this will impact surface water quality
- No details of how the restoration programme would achieve reduced contaminants
- No consideration to the in-combination impacts of reduced flow and poor water quality

The findings of the WFD assessment are that following the cessation of mining and the restoration of the site to urban common will improve water quality and subsequent biology and the mechanisms have been detailed in the WFD. Water quality and runoff will be improved compared to the baseline scenario. The restoration would have negligible impact on the rainwater catchment i.e. the areas draining to the quarry void will be near identical before and after restoration.

The quarry void water level is groundwater influenced, with direct surface water flows (rainfall) having minimal impact, and run off reporting the pit is expected to remain broadly similar to present baseline conditions. As a result of this, no impact is anticipated within the downstream watercourses. Monitoring data is available to quantify the rise and fall in the quarry void. This is already discussed in the ES and Appendices. Monitoring measures are proposed in each of the ES Chapters where considered appropriate.

Should any further clarifications or information be required, may we suggest a meeting with NRW, and the EIA consultant team involved with the water environment as there seems to be recurring issues that we would have hoped to be concluded. It seems that there remains some fundamental misunderstanding of what effects the alternative scheme would have in comparison to implementation of the approved scheme. This also applies to European Protected Species (EPS).

European Protected Species (EPS)

NRW have advised MTCBC that a Conservation Plan for GCN should be submitted prior to the determination of the application and that this should include: -

- An assessment of impacts of the development
- Submission of further details concerning GCN mitigation and compensation
- Submission of the principles of a long-term site management plan

MSW accept the need to prepare a Conservation Plan for GCN but would suggest that MTCBC could consider this as a condition of planning consent as the EIA has already considered the potential impact of the alternative restoration proposals. Furthermore, although NRW welcome the fact that ponds with positive eDNA samples will be retained and protected, there is no acknowledgement that the approved scheme would result in a far greater impact than the alternative if implemented as currently consented. Please also note that currently MSW currently have no plans to undertake any further presence absence surveys of the ponds unless consent of the alternative scheme is granted. Please also be reminded that any future survey work that is may be requires is seasonal and a major constraint to any other programme dependencies.

NRW have requested that long term management plans be prepared that include land outside the planning application boundary and further afield in Cwm Golau. While there may be merit in requesting this, any land outside the ownership of MSW cannot be included in any wider management plans on land they have no control of.

We hope that you find the contents of this letter fair and reasonable and clearly explain the position of MSW on these issues. We would also hope that we can continue to work together and negotiate a reasonable solution to determining the application in the near future. In the interests of delivering a sustainable restoration strategy and maintaining the good progress so far, MSW would be willing to meet face to face with MTCBC and NRW to agree a way forward that is acceptable to all parties.

Yours sincerely,

Jon Stoddard

Jon Stoddard
Principal Landscape Architect
RICHARDS, MOOREHEAD AND LAING



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