

PLANNING STATEMENT

**Section 73 Application at Ffos-y-Fran Land
Reclamation Scheme, Merthyr Tydfil CF48 4AE**

Merthyr (South Wales) Limited

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SLR 

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1.0 Introduction

1.1 Purpose of Report

This Planning Statement has been prepared by SLR Consulting Limited (SLR) on behalf of Merthyr (South Wales) Limited ('the Applicant') to support a Section 73 (S.73) application to vary Conditions 3 and 4 of Appeal ref. APP/U6925/A/10/2129921 at Ffos-y-Fran (Land Reclamation Scheme), Merthyr Tydfil, CF48 4AE.

1.1.1 Extant Planning Position

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 planning permission ref. A-PP 152-07-014. The description of development was as follows:

"Application by Miller Argent (South Wales) Limited for the Ffos-y-Fran Land Reclamation Scheme, incorporating the extraction of coal by open cast methods, and being the final phase of the East Merthyr Reclamation Scheme."

The above permission was subsequently varied under a S.73 planning application (application ref. P/08/0316) which sought consent for:

"[The] 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 S.73 application was originally refused by Merthyr Tydfil County Borough Council but the proposals were subsequently allowed at Appeal (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 as detailed above (permission ref. A-PP 152-07-014).

Whilst this current application relates to the variation of Conditions 3 and 4 of Appeal ref. APP/U6925/A/10/2129921, it has been agreed with Merthyr Tydfil County Borough Council that it would be appropriate to review the wider set of conditions within the Appeal Decision to ensure a clear consenting position is maintained at the site.

Further information regarding the extant consent for the site is provided within Section 3.0 of this Planning Statement, whilst a review of the planning conditions associated therein is provided within Section 7.0.

1.1.2 Current S.73 Application

The purpose of this S.73 application is to allow for an extension to the lifespan of the minerals extraction by a further 9 months. As such, the application seeks to vary the following conditions of Appeal ref. APP/U6925/A/10/2129921:

- **Condition 3** – *"All coal extraction from the development hereby permitted shall cease no later than 06 September 2022";* and
- **Condition 4** – *"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."*

Further information regarding the development proposals and the justification for the proposed amendments is provided within Section 4 of this report, whilst the content of the planning application submission is detailed within Section 1.3 below.

1.1.3 Need for the S.73

As laid out above, this S.73 application seeks to extend the life of the existing mine for a further 9 months beyond the timescales detailed within Conditions 3 and 4 of Appeal ref. APP/U6925/A/10/2129921. In terms of the need for extending the life of the existing consent, the three overriding purposes are as follows:

- 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.

Further information regarding the need for the S.73 application is laid out within Section 4.4 of this report.

1.1.4 Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

Given that the proposals will not alter the working practices or physical extent of the minerals extraction proposed, the S.73 application would not raise likely significant effects beyond those assessed within the original Environmental Impact Assessment (EIA). On this basis, SLR is of the opinion that the nature of this S.73 application (to simply amend the duration of the extant consent), would not normally warrant the undertaking of an EIA.

Nevertheless, following discussions with professional officers from Merthyr Tydfil County Borough Council, it has been agreed that the application submission would be supported by an Environmental Statement Addendum ('ESA'). This ESA seeks to consider the current S.73 development proposals in the context of the Environmental Statement ('ES') prepared in support of the original consent for the site (planning permission ref. A-PP 152-07-014). Essentially, the ESA seeks to confirm compliance with this original ES and the existing consenting position at the site, and that there have been no alterations in baseline conditions, policy, legislation, guidance or alike which would prevent the S.73 being approved from an EIA perspective.

It should be noted that the previous S.73 application in 2008, which forms the extant consent for the site, was not supported by either an ES or ESA. Further information relating to the ESA submitted in support of this application is provided within Section 6.0 of this Planning Statement.

1.2 The Applicant and Landownership

1.2.1 Merthyr (South Wales) Limited

Merthyr (South Wales) Limited is a private limited company and is responsible for the mining of Welsh Dry Steam Coal from the Ffos-y-Fran site. Located in Merthyr Tydfil, the company currently has 116 employees and 21 contractors at the Ffos-y-Fran site.

1.2.2 Landownership

Merthyr (South Wales) Limited operate the minerals site under a licence/lease from Geraint Morgan Legacy Limited (GMLL). Whilst GMLL is the majority landowner of the wider Ffos-y-Fran site, smaller parcels of land are within the ownership of Merthyr (South Wales) Limited, Biffa and Merthyr Tydfil County Borough Council. Finally, there are areas of land adjacent to the railway line which are under lease with Network Rail.

Full details of the landowners are provided within the Certificate which supports the application forms, and Article 10 Notice has been issued on all interested parties.

1.2.3 Common Land

A large proportion of the site is known to be Registered Common Land forming part of the Gelligaer & Merthyr Common (CL38). It is understood that common rights have been suspended for the duration of the reclamation scheme.

1.3 SLR Consulting Limited

Established in July 1994, SLR is a leading international environmental consultancy with an unrivalled reputation for providing expert, tailored services. With 81 offices across Europe, North America, Asia Pacific and Africa, SLR is one of a very small number of truly international specialists providing advice and support on a wide range of strategic and site-specific issues, to a diverse and growing base of business, regulatory and governmental clients. SLR specialises in the built environment, financial services, industry, infrastructure, mining & minerals, oil & gas and power sectors, delivering expert sustainability advice and project management support across these sectors.

SLR provides multidisciplinary advice, to both public and private sector clients, from in-house experts on a wide range of strategic and site specific environmental and sustainability issues. SLR is in excess of 2000 strong Worldwide, with approximately 850 employees in the UK business spread throughout 22 Offices.

SLR is also recognised by the Institute of Environmental Management and Assessment ('IEMA') as a recommended consultancy to review Environmental Statements ('ES') for Environmental Impact Assessments ('EIA'). Further information on SLR can be found on its website: www.slrconsulting.com

1.4 The Contents of the Planning Application

This S.73 planning application submission to Merthyr Borough Council comprises of the following technical information:

- Planning Application Forms and Certificates;
- Decision Notice ref. A-PP 152-07-014 (the 'original' permission);
- Appeal Decision ref. APP/U6925/A/10/2129921 (the 'Haulage S.73' permission) (as issued 6th May 2011);
- Application Drawings:
 - Planning Application Site Area (SLR drawing no. FLRS/PA1);
 - Site Location Plan (SLR drawing no. FLRS/PA2);
 - East Merthyr Land Reclamation Scheme Phases and Related Proposals (SLR drawing no. FLRS/PA3);
- Planning Statement (*this document*);
- Environmental Statement Addendum (Compliance Statement) (**Volume 1**);

- Technical Appendices (**Volume 2**); and
- Non-Technical Summary (**Volume 3**).

1.5 Assessment of the Proposal & Report Structure

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that regard be given to the Development Plan for the purpose of any determination to be made under the Planning Act; the determination must be made in accordance with the Plan unless material considerations indicate otherwise.

The Development Plan is relevant to the proposed amendments and therefore this Planning Statement seeks to demonstrate that the proposals accord with the provisions of the Plan and the eventual determination at the application stage can be a positive one.

This Planning Statement seeks to provide a background and overview of the application proposals and an assessment of compliance with regard to relevant planning policy in order to satisfy the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended). This document is structured as follows:

- Section 2 Site Location and Description;
- Section 3 Planning History;
- Section 4 Proposed Variation & Supporting Justification;
- Section 5 Planning Policy Context;
- Section 6 Environmental Considerations;
- Section 7 Review of Current Planning Conditions; and
- Section 8 Summary and Closure.

2.0 Site Location and Description

This section describes the site and the surrounding area and is intended to provide the reader with an understanding of its setting in the local area and how it presently looks. This section of the Planning Statement should be read in conjunction with the planning application drawings provided.

2.1 Site Location and Context

Ffos-y-Fran is a major opencast coaling operation located to the north east of Merthyr Tydfil, South Wales. The site lies entirely within the authoritative bounds of Merthyr Tydfil County Borough Council. The opencast mine is approximately 400 hectares (4 km²) in area and is located at OS grid reference SO07690728 at the centre of the site.

The A4060 runs to the west of the site, with the town of Merthyr Tydfil further adjacent. Within Merthyr Tydfil County Borough, there are villages and communities, such as Dowlais, Pen-y-Darren, Abercanaid and Pentrebach. The Merthyr Tydfil/Caerphilly Unitary Authority boundary (County Borough of Caerphilly) lies to the east of the site, with the Brecon Beacons National Park further north, approximately 10km away. To the south and around the site further afield, there is a scattering of common land – most notably Merthyr Common - agricultural land, non-agricultural land, urban land, unclassified road and villages. The unclassified common road referred to as the 'Bogey Road' runs through the site in an east-westerly direction.

Cwmbargoed Disposal Point - which handles the coal produced from the site - lies immediately to the east of the site. The Disposal Point, which operates independently under its own extant planning permissions, lies partly in the County Borough of Merthyr Tydfil but predominantly in the County Borough of Caerphilly.

Figure 1: Ffos-y-Fran and Wider Site Setting (Aerial Image)



2.2 Site Description and Existing Use

2.2.1 Site Description

The site principally consists of an opencast surface mine which has progressively worked from a southwest to northeast direction; with the current working face located on the eastern edge of the void and backfill of material taking place on the western edge of the void. There are also a number of other existing features within the site principally consisting of overburden mounds (OB1, OB2 and OB3). The altitude of the site ranges between from approximately 370m AoD in the south, rising to approximately 385m in the northwest.

The site can be considered to consist of two general sectors; the north of the 'Bogey Road', which contains the majority of the opencast and reclamation operations, and the south of the road on which further reclamation works will be carried out following its use primarily for the storage of overburden.

Under the Agricultural Land Classification, the majority of the land historically falls under Grade 5 (Grade 1 being the agricultural land of the highest quality), with the remaining under Grade 4, whilst most of the site is made up of non-agricultural land. However, it should be duly recognised that there is a significant area of the site which is currently utilised for the ongoing opencast surface mining operations.

There is an Education Centre on site, alongside an administration office upon entrance, a coal washing plant, and railway route from the washery at Cwmbargoed down part of the former Rhymney / Great Western Joint Line to the junction with the Rhymney mainline at Ystrad Mynach. Coal is shipped five or six days a week to a variety of customers within the UK including TATA Steel, British Steel, and Hope Cement (amongst others).

There are a variety of heavy duty operational vehicles on site such as mechanical excavators, dump trucks and attendant ancillary plant, alongside spare machinery parts (tires etc.) and storage. Coal is transported by lorry to the Cwmbargoed Rail Disposal Point, which lies to the east of the site.

2.2.2 Existing Use

The existing site is currently a working opencast mine for the mining of coal. The approximate extent of the mine is shown within Figure 2, whilst the associated overburden mounds, infrastructure and industrial elements of the site are also identified. This drawing is provided at scale within Appendix 1-1 of the ES.

Figure 2: Third Phase Maximum Void to End of Coaling (Plan Extract)



As identified above, the site has been progressively worked from a southwest to northeast direction; with the current working face located on the eastern edge of the void and backfill of material taking place on the western edge of the void. This working has been split across 25 'cuts' which provides a clear working practice across the site. The final cut at the site was undertaken in two stages, with cut 25B ongoing at present.

2.2.3 Ffos-y-Fran Land Reclamation Scheme

The Ffos-y-Fran Land Reclamation Scheme refers to the last part of the East Merthyr Reclamation scheme, which comprises of three phases of extraction and reclamation at the site. This final phase, which started in 2007 will restore derelict land after extracting an estimated 10 million tonnes of coal. This includes the removal of known shafts previously associated with iron ore and coal workings, removal and remediation of areas of landfill, and the restoration of the site to common land and grazing.

2.2.4 Welsh Dry Steam Coal

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. This is an unsustainable practice and results in an increase of Carbon footprint of such operations given the transit miles required (in comparison to extracting and utilising a locally sourced coal). 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 a 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.

2.3 Designations and Environmental Constraints

2.3.1 Ecology

The site does not encompass any areas of nature conservation interest or designations. However, the continued blasting at the site for coal may have an effect on wildlife and wildlife and landscape character.

There are no nationally protected sites within a 2km radius of the site. Cwm Glo a Glyndyrys Site of Special Scientific Interest (SSSI) (Wales) is approximately 3.3km away, whilst the closest boundary of the Cwm Taf Fechan Woodlands SSSI (Wales) is located approximately 2.8km to the north east of the site.

2.3.2 Heritage

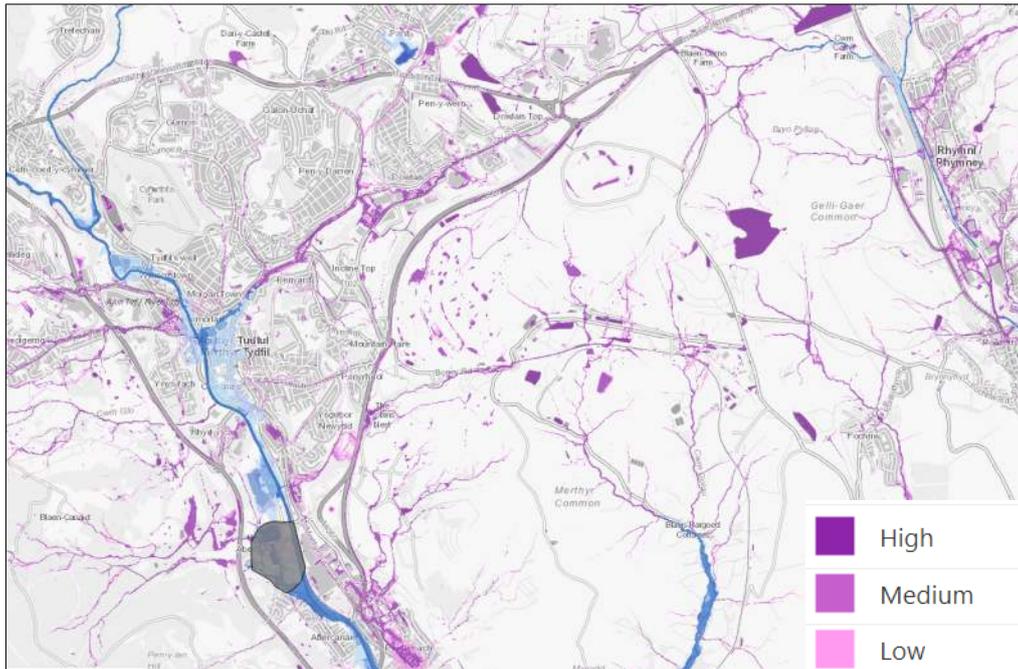
The Ffos-y-Fran Land Reclamation Scheme lies within a wider landscape containing surviving buried and standing features of cultural heritage interest, some of which are of national importance related to Prehistoric occupation and to the much later industrial exploitation of ironstone coal and water for the great industrial works of Merthyr and South Wales. These assets, which fall under the Merthyr Tydfil Landscape of Outstanding Historic Interest, further include ponds and drainage channels associated with the Dowlais Free Drainage System.

There are no Listed Buildings or Registered areas within the site itself, however there are a number of historic assets within 1km of the site, which include Grade II Listed Buildings, and the deserted Iron Mining Village of Sarn Howell Pond and Watercourses lying to the south.

2.3.3 Flood Risk & Hydrology

As seen on the Natural Resources Wales map extract below (Figure 3), small areas of Ffos-y-Fran have a Low-Medium flood risk from surface water and small watercourses, with a smaller number of areas with a High risk. Rainfall is currently intercepted by the northerly trending ditch which directs the run-off into culverting beneath the A4060 and into a tributary of the adjacent Nant Morlais watercourse. The proposed variation of conditions would not affect this current risk and is considered negligible.

Figure 3: Natural Resources Wales Extract – Flood Risk



A number of small watercourses and drains cross the site, including a section of the headwaters of the Bargoed Taf which enters the site in the north through a culvert beneath the Bogey Road, and leaves through a culvert under the railway line to the south.

There is currently appropriate surface drainage mechanism in place, in the form of a de-watering pump and attenuation ponds, which has been maintained throughout the minerals extraction and ongoing restoration of the site. This ensures that surface water within the minerals void is actively managed and appropriately discharged from the site.

2.3.4 Geology

Solid Strata

The site works strata of the South Wales Middle and Lower Coal Measures Formation, which comprise predominantly mudstones with subordinate coal seams, seat earths, sandstones and ironstones.

The overburden storage area is partly underlain by strata of the Llynfi Member sandstones and mudstones (of the Pennant Formation).

Coal Seams

The lowest coal seam worked at the site is the Lower Four Feet, and the highest is the Eighteen Inch (Blackpins). There are approximately 23 names coal seams identified within the sequence, and numerous discrete and/or discontinuous partings which may be encountered during ongoing excavations.

Structure

The strata dip in a general south-easterly direction at between 3 and 11 degrees. There are two named faults that interact with the site, namely the Penydarren Fault and the Dowlais Fault.

3.0 Planning History

The planning history associated with the Ffos-y-Fran site, as available via the Merthyr Tydfil County Borough Council online records, is provided within Table 1 below. The applicant will be providing a copy of electronic records to the Merthyr Tydfil Council Borough separate to this S.73 application, this is to ensure an accurate record of all approved documents / ongoing monitoring.

Table 1: Planning History

Application Ref.	Description of Development	Decision	Determination Date
52950161	Historic planning application which is not available online.	Approved	Unknown
52950423	Historic planning application which is not available online.	Approved	Unknown
P/98/0049	Temporary stockpile of excavated material from new A4060 construction (material to be used for landscaping of future works) Ffos-y-Fran Cwmbargoed DOWLAIS.	Temporary Approval	03/06/1998
P/98/0486	Variation of condition 1 of consent 52950161 to extend period of time for stocking and washing of coal beyond 31st December 1998 Cwmbargoed Distribution Centre CWMBARGOED.	Temporary Approval	11/03/1999
P/99/0287	Opencast coal mining operation with associated reclamation works. Ffosyfran CWMBARGOED.	Withdrawn	23/06/2003
P/97/0111	Variation of condition 2 of application 52950423 to extend time period for stocking of coal until 31st December 1998. Land Comprising Former Cwmbargoed Washery Site Cwmbargoed DOWLAIS CF48 4AE.	Approved	11/09/2003
APP 152-07-014	Land reclamation incorporating the extraction of coal by opencast method 400 Hectares (988 Acres) Of Land At Ffos-y-Fran East Of A4060(T) Slip Road.	Approved	11/04/2005
P/07/0133	Extend and refurbishment of existing mineral processing and preparation plant and provision of water storage tank and coal haulage vehicle workshop for use in connection with mineral extraction operations at Ffos-y-Fran land reclamation scheme Cwmbargoed Disposal Point Fochriw Road Cwmbargoed.	No Objection	4/09/2008
P/08/0182	Continue the use of Cwmbargoed Disposal Point with the provision of additional facilities for the duration of related operations at the Ffos Y Fran land reclamation scheme Cwmbargoed Disposal Point Glen View Terrace To Bridgend Road Fochriw.	No Objection	4/09/2008
P/08/0091	Continuation of use of Cwmbargoed Disposal Point for the duration of related operations at the Ffos-y-Fran land reclamation scheme and the provision of additional facilities (mineral processing and preparation plant, coal washing plant, coal haulage vehicle workshop, water storage tank, information and advertisement hoardings, coal stacking and	Approved	03/09/2008

Application Ref.	Description of Development	Decision	Determination Date
	preparation facilities and other ancillary works) Cwmbargoed Disposal Point Fochriw Road Cwmbargoed.		
P/08/0316	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 Ffos-y-Fran Land Reclamation Scheme Ffos-y-Fran Merthyr Tydfil.	Refused	23/12/2009
APP/U6925/A/10/2129921	(APPEAL OF REF P/08/0316) 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 Ffos-y-Fran Land Reclamation Scheme Ffos-y-Fran Merthyr Tydfil.	Appeal Allowed	06/05/2011
P/13/0130	Erect and operate a coal washing plant with ancillary buildings and infrastructure in association with the existing facilities Cwmbargoed Disposal Point Fochriw Road Cwmbargoed Merthyr Tydfil CF48 4AE.	No Objection	16/05/2013
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 Land at Ffos Y Fran Land Reclamation Scheme East Of Merthyr Tydfil CF48 4AE.	Approved	18/03/2016

3.1.1 Planning History Summary

The site and the surrounding area has a long history of ad hoc and piecemeal minerals extraction which led to a problematic landscape which posed a risk to human health.

Opencast coal extraction at the application site was originally consented through historic permissions for Phases 1 and 2 and under planning permission ref. APP 152-07-014 for Phases 3 was permitted. This scheme, along with other consents on adjoining land, was known as the 'Land Reclamation Scheme'; with permission ref. APP 152-07-014 forming Phase III of the wider scheme and otherwise being described as the "...final phase of the east Merthyr Reclamation Scheme". This consent essentially sought to restore the land through progressive minerals extraction.

Planning permission for ref. APP 152-07-014 was granted on the 7th February 2005 after being referred to the National Assembly for Wales, and was approved based on reasons given from the Chair of Planning Decision Committee (2) 2005/2, and subject to the comments on conditions. These reasons are detailed below as follows:

"The scheme would bring substantial benefits both in terms of the restoration of a large area of derelict

land at no cost to the public purse and in economic terms...The scheme would remove large areas of unsightly surface dereliction as well as unsafe features of both surface and underground dereliction from former mining use."

"There would also be economic benefits both locally and on the wider stage. Local benefits would be in the provision of some 200 well paid jobs and the various payments of money towards a community fund, the Welsh Development Agency grant repayment, Council rates and several other matters. The value of these local economic benefits is estimated to be of the order of £130M. Wider benefits would include providing coal suitable for Aberthaw Power Station, on the efficiency and reliability of which a large proportion of the economic activity of South Wales depends. These economic benefits are a strong argument in favour of the proposals."

There were concerns raised within the report which were balanced against the benefits, and these were:

"...the effects of dust and air pollution on the health of people living near to the site. Whilst there would be some deterioration in air quality as a result of the opencast operations, it would be slight and the air quality in Merthyr Tydfil would still be good and well within nationally accepted standards. It is possible that this slight change might affect the health of a small number of people who are already seriously ill and therefore more vulnerable. However, its general effect on the health of the community as a whole would not be significant."

"Dust, noise and blasting from operations on the site would have the potential to be detrimental to the living conditions of nearby residents. However, extensive measures would be taken to minimise the creation and spread of dust and to minimise the transmission of noise and the effects of blasting operations. These would be subject to detailed control by means of planning conditions, which would include limiting working hours. On all of these matters I conclude the effects would not be significant or unacceptable."

"I conclude that surface and groundwater resources would be adequately safeguarded both in terms of quantity and quality. The scheme would have a moderate effect on the historic landscape but would safeguard all features of high archaeological value. It would have a short-term impact on visual amenity but in the longer-term would be beneficial in providing a more attractive landscape. Despite the need to move a number of great crested newts under licensed control, the effect on nature conservation would be acceptable, and traffic effects would be negligible. It is significant that there are no objections to the scheme from any statutory consultees with responsibilities for safeguarding the various matters likely to be affected."

It was concluded that the application was acceptable and in accordance with the development plan and national policies. It was noted that the benefits would outweigh the objections and concerns as the latter would be significantly controlled via planning conditions.

Subsequent to the above, Application ref. P/08/0316 (granted permission under Appeal ref. APP/U6925/A/10/2129921) was submitted to vary condition 37 on APP 152-07-014, which read as follows:

"No coal shall be transported from the site except to the Cwmbargoed Disposal Point for onward transmission by rail."

The application secured a variation in the wording to allow for transmission by road in addition to rail. Condition 37 was subsequently amended to allow for this variation, specifically 37(2). Therefore, whilst a number of conditions have been discharged and/or varied within the previous original permission, this Appeal Decision provided the updated conditions which now govern the site and thus this application refers to the variation of

Conditions 3 and 4 within Appeal ref. APP/U6925/A/10/2129921.

Appeal ref. APP/U6925/A/10/2129921 therefore represents the extant planning permission for the site and the site operates in accordance with the conditions contained therein. A copy of the decision for Appeal ref. APP/U6925/A/10/2129921 is provided within Appendix 1 to this Planning Statement.

3.1.2 Discharged Conditions and Monitoring

Formally Discharged Conditions

Table 2 notes the conditions which were required to be formally discharged and notes the date they were discharged. It should be noted that whilst these conditions are taken from Appeal ref. APP/U6925/A/10/2129921, these are 'repeat' conditions from those contained within the original consent for the site (Decision ref. APP 152-07-014). As such, the majority of these conditions were discharged prior to the Appeal being determined in 2011 but did not necessitate 're-discharge'.

Table 2: Discharged Conditions of Appeal ref. APP/U6925/A/10/2129921

Conditions Under Application ref. APP/U6925/A/10/2129921		Date of Discharge	Comments
2	Written notification of the date of the proposed start of the development hereby permitted shall be submitted to the Local Planning Authority not less than 56 days beforehand.	16 th February 2007	Ref. AND.030225/AE and included within Appendix 2
14	The development hereby permitted shall not take place other than wholly in accordance with the dust suppression and air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 14 of permission APP 152-07-014 and based on the measures set out in the 2003 Environmental Statement referred to in condition 6 of that permission.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2
15	The dust suppression measures to be employed shall use the Best Available Technology Not Entailing Excessive Cost for the monitoring and control of dust which may arise directly or indirectly as a result of site activities. In particular: <ul style="list-style-type: none"> • A sufficient number of spraying units shall be provided and maintained in efficient working order so as to ensure that haul routes and other areas traversed by vehicles are kept damp during dry weather. • All spraying vehicles shall have an adequate water supply at all times. • There shall be regular and effective maintenance of haul roads. • The exhausts and through-body exhaust systems of all vehicles and other plant shall be fitted so as to prevent exhaust gases being emitted downwards. • Effective dust collection systems shall be fitted to all blast hole drilling machines before such machines are operated. • Prior to all blasting, all arisings from blast hole drilling shall be bagged and disposed of safely. • The tipping or removal of overburden shall cease temporarily or 	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2

Conditions Under Application ref. APP/U6925/A/10/2129921		Date of Discharge	Comments
	<p>be relocated within the overburden storage area whenever the Local Planning Authority considers that wind strength and direction may result in a significant dust nuisance, and notifies the site operator accordingly.</p> <ul style="list-style-type: none"> • The construction of all baffle mounds shall cease temporarily or be relocated whenever the Local Planning Authority considers that the wind strength and direction may result in significant dust nuisance and notifies the site operator accordingly. • The site operator shall provide and maintain a sufficient number of vapour masts so as to ensure that an effective vapour screen can be produced at any point in the site. • All baffle bunds shall be sealed and seeded as soon as practicable after they have been constructed in such a way as to minimise wind blown material from adversely affecting nearby dwellings. 		
16	The development hereby permitted shall be monitored in accordance with the air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 16 of permission APP 152-07-014.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2
17(2)	The development hereby permitted shall be monitored by the site operator in accordance with the scheme approved by the Local Planning Authority in accordance with condition 17(b) of permission APP 152-07-014.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2
25	The development hereby permitted shall not be carried out other than wholly in accordance with the type of vibration monitoring station required by condition 25 of permission APP 152-07-014; all vibration monitoring stations shall be retained in the locations approved in writing by the Local Planning Authority; and all monitoring data shall be made available for inspection by the Local Planning Authority on request.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2
37(7)	Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be in force a Traffic Regulation Order in respect of that length of this road determined appropriate by the Merthyr Tydfil County Borough Council; and if at any time that Order ceases to have effect all transportation by road of such coal shall cease until a replacement order comes into force or unless the Local Planning Authority gives written consent to any variation.	1 st May 2012	Ref. AND/080316/JR01 and included within Appendix 2

Conditions Under Application ref. APP/U6925/A/10/2129921		Date of Discharge	Comments
37(8)	Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be submitted to the Local Planning Authority for their approval in writing details of signage to be erected at the exit from that land informing the drivers of vehicles transporting such coal of the need to observe the requirements of the TRO and to advise them of the route which they should follow to the A465(T) Heads of the Valleys Road; the approved signage shall be erected before any coal from the development hereby permitted is transported by road from the disposal point; and all such signage shall thereafter be retained until the transportation of all such coal ceases.	1 st May 2012	Ref. AND/080316/JR01 and included within Appendix 2
42	Before the development hereby permitted starts an Environmental Management Plan [EMP] shall be submitted for the written approval of the Local Planning Authority for each phase of the development, as required by condition 42 of permission APP 152-07-014; and the EMP shall be implemented in accordance with the approved scheme, save as otherwise provided for by other conditions of this permission.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2
53	The development hereby permitted shall not be carried out other than wholly in accordance with the phased aftercare schemes to be approved by the Local Planning Authority in accordance with condition 53 of permission APP 152-07-014.	18 th March 2016	Ref. AND.030225/JR7 and included within Appendix 2
58	Once the development hereby permitted starts the site operator shall continue to organise the site liaison committee established in accordance with condition 58 of permission APP 152-07-014.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2
59	Once the development hereby permitted starts the site operator shall continue to employ an environmental liaison officer approved in writing by the Local Planning Authority who shall oversee all soil stripping/storage, the restoration scheme, habitat re-creation and landscaping works, as required by condition 59 of permission APP 152-07-014.	27 th March 2007	Ref. AND.030225/JR7 and included within Appendix 2

No other conditions required to be discharged and it is considered therefore that the applicant has fulfilled their responsibility in this respect.

Ongoing Monitoring

Since the Appeal Decision, a number of conditions required ongoing monitoring on the following elements:

- Condition 14 – Air Quality Dust Control;
- Condition 16 – Air Quality Monitoring;
- Condition 17 (2) – Noise Monitoring;
- Condition 25 – Vibration Monitoring;

- Condition 42 – Ecology: Environmental Management Plan; and
- Condition 44 – Groundwater Monitoring.

These conditions were repeated within the latter Appeal Decision which forms the extant consent for the site.

These monitoring requirements have been complied with, with full records of the monitoring that has been conducted at the site available at the Authority's request. Albeit, as detailed above, the applicant is compiling a compendium of all information approved by way of Condition or Monitoring undertaken at the site. This is separate to this S.73 application submission and is being prepared at the request of the planning authority.

On this basis, should this current S.73 application be approved, it will be necessary for the established monitoring requirements contained within the above conditions would continue to be undertaken until the site was fully restored.

4.0 Proposed Variation & Supporting Justification

4.1 Planning Permission Ref. APP 152-07-014

As detailed above, this application was the original permission for opencast coaling at the site and is known as the 'Land Restoration Scheme' for the Ffos-y-Fran site. This submission was supported by an Environmental Impact Assessment, including an appropriate Environmental Statement ('the original ES'), Technical Appendices and associated Non-Technical Summary.

4.2 Planning Permission Ref. APP/U6925/A/10/2129921

In July 2008, a S.73 planning application was submitted for the variation of Condition 37 of planning permission ref. A-PP 152-07-014 to allow the limited dispatch of up to 100,000 tonnes of coal per annum by road via Cwmbargoed Disposal Point (application ref. P/08/0316). However, the proposal was subsequently amended in July 2009 to reduce the tonnage to a maximum of 50,000 tonnes of coal per year from the Ffos-y-Fran Land Restoration Scheme (FLRS) by road from Cwmbargoed Disposal Point. This application was refused planning permission by Merthyr Tydfil County Borough Council on 23rd December 2009 but was subsequently taken to Appeal¹.

Prior to submission, the S.73 haulage application submission was taken through an EIA Screening Request and Merthyr Tydfil County Borough Council adopted a Screening Opinion that whilst the application fell within the criteria for EIA, it was considered that there would not be any 'likely significant effects'. As such, no ES or associated EIA documents were prepared in support of the application. Indeed, this matter was considered further at the Public Inquiry (held between 8th – 11th February 2011), whereby it was re-confirmed by the Planning Inspectorate that an EIA was not required to support the S.73 haulage application.

Consequently, on 6th May 2011, the proposed variation was allowed at appeal for the "*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)*" (Appeal ref. APP/U6925/A/10/2129921).

4.3 Proposed Variation

The Appeal Decision, as issued, included a set of 'new' planning conditions by which the site operates. These conditions included two duration of works conditions of relevance to this current S.73 application which coordinate the duration of extraction (Condition 3) and subsequent restoration of the site (Condition 4). This S.73 application seeks to vary these conditions (as outlined in Section 1.1 of this report) to allow for coal mining operations to continue for a further 9 months beyond the 6th of September 2022, and to therefore subsequently extend the final restoration of the land by a further 9 months beyond the 6th of December 2024.

As detailed above, the purpose of this S.73 application is to seek to vary Conditions 3 and 4 of the Appeal Decision for the extension to the lifespan of the mineral's extraction, and subsequently extend the timescales for final restoration of the land, by a further 9 months. As such, the existing conditions of Appeal ref. APP/U6925/A/10/2129921 are as follows:

¹ Please note that the above consent is hereafter referred to as the 'S.73 haulage application' to prevent confusion with the current S.73 application submission.

- **Condition 3** – “All coal extraction from the development hereby permitted shall cease no later than 06 September 2022”; and
- **Condition 4** – “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.”

Further information regarding the proposed variation to these conditions and the justification for the proposed amendments is provided below in section 4.4.

4.3.1 Proposed Cessation of Coal Extraction

As detailed above, the S.73 application seeks to extend the life of the consented minerals extraction by a further 9 months. As such, it is proposed to re-word Condition 3 as follows:

*“All coal extraction from the development hereby permitted shall cease no later than **06 June 2023**.”*

Reason: To co-ordinate the duration of the development hereby permitted with the end dates permitted under this application.”

4.3.2 Proposed Restoration Timescales

Given the proposed extension to the life of the consented minerals extraction, this will have a subsequent effect on the timescales for restoration of the site. As such, it is proposed to re-word Condition 4 as follows:

*“Final restoration of the land shall be complete no later than **06 September 2025** and aftercare shall be undertaken for the period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme.*

Reason: To co-ordinate the duration of the development hereby permitted with the end dates permitted under this application.”

4.4 Grounds for Variation

In terms of the need for extending the life of the existing consent, this is threefold:

- 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.

Further explanation of these grounds for variation are provided below.

4.4.1 Coronavirus

During the Coronavirus pandemic, the number of workers on site was reduced for the health & safety of staff by introducing working practices that ensured social distancing and cleaning protocols that could be effectively managed (i.e. single shift operation). This has been a common practice across the UK in all industries, especially

those which operate in shift patterns and involved 'shared' equipment (such as HGVs or machinery).

As a result, a reduced tonnage of coal was mined during 2020, 2021 and part of 2022. The exact repercussions are not known but, with approximately three quarters of the usual number of miners on site operating a single shift, this reduced the extraction rate at the mine by in excess of 120,000 tonnes per annum whilst restrictions were in place. Table 3 below provides details of the production and sales tonnages for the duration of the Coronavirus restrictions and for the 3 years prior.

Given the reduction in extraction rates over the period that Coronavirus restrictions have been in place, the minerals extraction rate at the site has been detrimentally affected. It is estimated that there is approximately 240,000 tonnes of Coal (205,000 of ROM and 35,000 of Barrel Wash) remaining within the remainder of 'Cut 25B'; the last cut within the confines of the previously consented extraction area.

Whilst this remaining quantum falls below the historic extraction rates undertaken at the site, which equate to approximately 40,000 – 50,000 tonnes per month, the proposed 9 month extension to the life of the mine would allow for a contingency associated with any further Coronavirus lock-down, unexpected drops in extraction rate and for a progressively slowed extraction rate as restoration activities become more prominent. This should give the Council confidence that no further extension of time to the existing consent would be required or requested in future.

The reduction of productivity due to the Coronavirus pandemic should, therefore, be of merit when considering the planning benefits of the S.73 application seeking to vary Conditions 3 and 4. The proposed variations would allow for the full extraction of the estimated 10.8 million tonnes of Dry Steam Coal at Ffos-y-Fran allowed under the extant consent, which is a valuable and finite resource which is required by the steel industry. Indeed, every effort should be made to prevent sterilisation of a minerals resource which would not otherwise be worked once operations have ceased.

A Coronavirus (Covid-19) Statement prepared by the management of Merthyr (South Wales) Limited has been prepared (signed by their Director) and is provided within Appendix 3 to this Planning Statement.

In addition to the above, it should be duly recognised that any reduction in tonnages extracted from the site would impact upon payments (per tonne) made to the Community Fund managed by Merthyr Tydfil County Borough Council, the monies paid into the restoration fund (Escrow) and monies paid to the Coal Authority. Overall, the unforeseen circumstances that led to the above should be considered to form grounds for an exceptional case.

Table 3: Production and Sales Rates – Coronavirus

Year	ROM Production (tonnes)	Barrel wash Production (tonnes)	Grand Total Production (ROM + Barrel Wash) (tonnes)	Sales (tonnes)	Net Reduction in Sales Compared to 2019 (tonnes)	Net Reduction in Sales Compared to 2019 (%)	Shift Pattern
2017	752,580	42,158	794,738	671,653	N/A	N/A	Double Shift
2018	772,521	30,465	802,986	654,144	N/A	N/A	Double Shift
2019	744,274	44,805	789,079	678,564	N/A	N/A	Double Shift
2020	640,752	36,063	676,815	575,551	-103,013	-15%	Single Shift
2021	626,739	30,031	656,770	546,310	-132,254	-19%	Single Shift
2022 (*6 months) (Jan to end June)	290,904	19,317	310,221	260,398	-78,884	-23%	Single Shift

4.4.2 Tata Steel UK Ltd.

Under the *Written Statement: Coal Policy Statement* (March 2021), Welsh Ministers stated that the extension of existing coaling operations in Wales are not intended. However, it was accepted that coal licenses and variations to existing licenses may be needed in wholly exceptional circumstances. This is supported by policy EcW11 of the LDP, as well as the exceptional circumstances identified within both PPW and MTAN2.

Under the *Written Statement: The Steel Industry in Wales* (October 2019), it is stated that the Welsh Government has an “...ongoing commitment to fight to secure a sustainable future for the steel industry and to keep steel production and steel jobs [here] in Wales” and that, following the “...considerable concern” of the proposed (now executed) closure of the Orb Electrical Steels (part of Tata Steel’s Cogent Power Inc.) site in Newport, the government’s engagement with Tata Steel to understand the potential next steps for the steel industry has and continues to be highly important. The written statement emphasised that “*Steel is a strategically important industry that sits at the foundation of many supply chains*” that is currently facing a variety of challenges, one of which being the increasing need for imported coal.

The Port Talbot steelworks is Tata Steel’s only steelworks in the UK, making primary steel which is then either further processed at its downstream plants in Wales and England, or sold as hot rolled coil to customers, mainly in the UK. Tata Steel has assessed the merits of using UK-produced coal when it meets the relevant quality, price and delivery requirements, and identified a number of benefits. Emissions of CO₂ and other pollutants associated with the transportation of coal from other parts of the globe can be avoided. The transport emissions for each tonne of UK coal delivered to Port Talbot are typically five times lower than coal imported from abroad. It is also advantageous from a logistical perspective for steel producers to have access to local supplies of raw materials as it enables them to hold less stock and provides more flexibility with regard to scheduling. Finally, when local raw materials are used, there is a benefit to UK plc and the local economy in terms of job creation and revenue.

The continued mining of Ffos-y-Fran would therefore support the steel industry at a domestic level and provide an alternative to Tata Steel needing to utilise an overseas supply. As the mine is currently established / operational and carries the correct type of Dry Steam Coal, it is an asset for such industries reliant upon this mineral. Indeed, as outlined within section 2.2.4 above, Dry Steam Coal is unique in its characteristics and is a key product in the steel manufacturing process; without such coal, the steelworks process becomes unsustainable and, potentially, non-viable.

As such, the proposed S.73 application allowing for previously consented minerals extraction to continue for a further 9 months would ensure a security of supply and provide a more sustainable source of coal to the domestic steel industry as it would reduce the reliance on overseas imports sourced from potential suppliers in Venezuela and Australia now that imports from Russia are suspended. This will ensure that the overall carbon footprint for the coal powered steel industry would be significantly reduced which further accords with the Environment (Wales) Act 2016. Additionally, as the production of this coal is essential for domestic steel, the variation of condition would fall under “*wholly exceptional circumstances*” as detailed within the *Written Statement: Coal Policy Statement (October 2019)* as it will continue to support the steel industry which are now more reliant on domestic sources than overseas sources. As such, the proposals should be considered entirely policy compliant in this respect.

4.4.3 Subsequent Planning Application

As the Council is fully aware, there are insufficient funds within the Escrow and restoration fund to allow for the full and successful implementation of the current restoration strategy for the site. Furthermore, it has been demonstrated that there will be a continued demand for coal from the Ffos-y-Fran site beyond the current lifespan and tonnages allowed for within the extraction area as currently consented. On this basis, a subsequent

application is currently being prepared for an extension to the coal mining activities at the site, including an alternate restoration strategy and proposed afteruse of the site beyond the life of the mine. The principle is to meet the ongoing requirements for coal, whilst ensuring a suitable restoration strategy can be achieved and to bring forward an afteruse which will be of social and economic benefit to the local population.

Given its scale and complexity, it is necessary to undertake a full suite of new and extended environmental surveys and assessments to support any subsequent planning application. As such, this application will take until Quarter 2 of 2023 to prepare and submit to Merthyr Tydfil County Borough Council for consideration. On this basis, it is necessary to ensure that the current mine remains operational in this intervening period and ensure that there is no cessation in supply of coal to the steel industry or potential loss of employment at the site. This is especially important in the current economic climate, including the impending cost of living crisis.

The mine should be recognised as being essential to securing social and economic growth within Merthyr Tydfil County Borough Council authority area and the regional South Wales economy. Its security of operations should provide reassurance to the local community. Should the forthcoming application for an extension, restoration and afteruse not be granted permission, it will ensure that current employees have a further 9 months to weather the cost of living crisis and look for alternative means of employment, whilst also allowing the operators of the mine to look at other investment possibilities.

4.4.4 Other Markets

The Welsh Dry Steam Coal sourced from Ffos-y-Fran is also utilised by a variety of smaller markets, including steam locomotives, traction engines, steam-powered boats and steam raising boilers. Furthermore, Welsh Dry Steam Coal is also sold to the domestic market for heating and use within stoves in homes, canal boats and alike. As the coal is semi-smokeless, it is suited for most steam powered engines and domestic use.

Steam trains are an integral part of the UK heritage and are the principal attraction for 13 million visitors a year. Direct earnings are £130 million annually and the railways generate some £400 million for the national economy. An important source of employment, particularly in rural areas, there are a total of 158 operational heritage railways in the UK, which in total run over 562 miles. Heritage railways operate 460 stations across the UK, the same number as Northern Rail.

Following the refusal for a coal mine near Newcastle in 2021, the Heritage Railway Association (HRA) has stated that Welsh supplies (namely Ffos-y-Fran) will only last until 2022, with English supplies having ran out in 2021.

As a result, heritage steam engines will have to be reliant on foreign imports which are more costly and generate a larger carbon footprint. The coal imported from abroad is recognised by steam enthusiasts as being less clean in nature, producing unnecessary smoke.

Whilst these are not the primary market for the coal extracted from Ffos-y-Fran, it is still relevant to identify the various demands for Welsh Dry Steam Coal which are located within the UK.

4.5 Assessment of Development Proposals

It has been established within Section 4.4. that there has been a significant impact on the extraction rates of the site through the Coronavirus pandemic and this has had a knock on effect in finalising the cessation of the site. Additionally, there is still a clear need for the material extracted from site to be used within the UK for steel manufacturing and other secondary uses (steam engines etc.) which without this locally sourced material, imports from overseas would be required. This could see imports from Australia and Venezuela which would have a secondary impact on the carbon footprint of the users within the UK. It is noted that reduction in carbon emissions is a key priority within national legislation as a way to combat climate change.

Furthermore, the extension of time would provide reassurances to the employees of the mine who will be relying on their roles at site to help weather the current cost of living crisis and give them more time to look for additional employment if needed.

Finally, it is considered that the additional time to finish extraction and restoration will enable a more sustainable and modernised restoration scheme to be submitted to Merthyr Tydfil County Borough Council for review. It is proposed that this restoration scheme would be informed by local community requirements and provide an alternative form of rural income generation for the local area.

As such it is considered that the above need has been sufficiently demonstrated and supports the proposal to extend the duration of extraction and restoration by a further 9 months past what is currently permitted within Conditions 3 and 4 of APP/U6925/A/10/2129921.

As outlined above, the original consent for the site was granted under planning permission ref. APP 152-07-014 and was supported by an appropriate ES. However, this was subsequently varied by way of appeal ref. APP/U6925/A/10/2129921 which was determined by way of a standard S.73 application and not supported by an ES, nor any form of ES Addendum, Compliance Statement or alike as it was considered to not fall within the scope of an EIA application.

Therefore, whilst this current application seeks to vary Conditions contained within the extant consent (Appeal ref. APP/U6925/A/10/2129921), it is noted that the original ES is dated May 2003, thus a suitable compliance review of this original ES (submitted under planning permission ref. APP 152-07-014), has been undertaken to ensure that the original conclusions are still sound. The findings of the compliance review are presented within the ESA submitted in support of this application.

5.0 Planning Policy Context

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that regard be given to the Development Plan for the purpose of any determination to be made under the Planning Act; the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The following documents represent the extant planning policy context for the application site and development proposals:

- Well-being of Future Generations (Wales) Act 2015;
- Environment (Wales) Act 2016;
- Planning Policy Wales 2021 (Edition 11);
- Minerals Technical Advice Note (MTAN) Wales 2: Coal; and
- Merthyr Tydfil Replacement Local Development Plan (LDP) 2016 - 2031

5.1 Future Generations Act

The Well-being of Future Generations (Wales) Act 2015 (the 'Future Generations Act') came into force on 29th April 2015 and requires "...public bodies to do things in the pursuit of the economic, social, environmental and cultural well-being of Wales in a way that accords with the sustainable development principle".

Part 2 of the Act seeks to define sustainable development and how public bodies should set objectives that contribute to achieving Well-Being goals and sustainable development principles. The well-being goals include:

- 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; and
- A globally responsive Wales.

Again, the requirements of the Future Generations Act 2015 has been duly considered in the preparation of this application and the associated ESA.

5.2 Environment (Wales) Act 2016

The Environment (Wales) Act came into force on 21st March 2016 and its purpose is (amongst others) to promote the sustainable management of natural resources and to provide targets for reducing emissions of greenhouse cases.

Part 1 of the Act specifically deals with the 'sustainable management of natural resources'. As defined in Regulation 2, natural resources include (but is not limited to):

- Animals, plants and other organisms;
- Air, water and soil;

- Minerals;
- Geological features and processes;
- Physiographical features; and
- Climatic features and processes.

Regulation 3(2) identifies that the objective is to maintain and enhance the resilience of the ecosystems and the benefits they provide and, in so doing:

- (a) Meet the needs of the present generations of people without compromising the ability of future generations to meet their needs; and
- (b) Contribute to the achievement of the well-being goals in Section 4 of the Well-being of Future Generations (Wales) Act 2015.

Part 2 of the Act relates to 'climate change'. Regulations 29-32 set a number of emissions targets and carbon budgets for Wales up to 2050 which should be incorporated into policy and decision making process.

The requirements of the Environment (Wales) Act 2016 has been duly considered in the preparation of this application and the associated ESA.

5.3 Planning Policy Wales

Planning Policy Wales ('PPW') sets out national policies to support the growth and development of Wales through planning. The following policies are of relevance to the proposed variation of Conditions 3 and 4.

With regard to 'achieving the Right Development in the Right Place', the Key Planning Principles outlined within PPW relate to:

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

Indeed, PPW identifies at paragraph 2.12 that the *"planning system is a very important policy, decision making and delivery mechanism. It should seek to maximise delivery of outcomes against all aspects of well-being/sustainable development, thus seeking to maximise contributions towards all of the goals of the Well-being of Future Generations Act. This can be achieved by adopting a placemaking approach"*.

Paragraph 2.8 states:

"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."

This is of relevance to the proposed extension of time for restoration. To enable the development of the site to be of environmental importance, the variation of Condition 4 is required to allow for a succinct plan for the restoration of Ffos-y-Fran post-cessation of coaling.

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, Figure 8: Objectives of Good Design Access Ensuring ease of access for all Promoting sustainable means of travel Sustaining or enhancing local character. Promoting: legible development / a successful relationship between public and private space / quality, choice and variety / innovative design Achieving efficient use and protection of natural resources / enhancing biodiversity / designing for change Ensuring attractive, safe public spaces / security through natural surveillance Character Movement Environmental Sustainability Community Safety Good Design Appraising Context 27 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 (Character) 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.”*

The ES Addendum (Compliance Statement) submitted in support of this S.73 application notes that there are no additional health and environmental impacts that the proposed condition variations would have upon human health and environmental impacts.

Paragraph 3.31 (Climate Change, Decarbonisation and the Sustainable Management of Natural Resources) states 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 stepping stones and ensure progress is made towards the decadal targets.”*

Paragraph 3.33 continues by stating 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”.*

The proposed variation would not detrimentally affect the targets set out in the Act identified above, as the closure of the mine will be set by 06 June 2023. Therefore, the proposed variation should be considered as being relatively insignificant in the lifespan of the overarching minerals consent; especially given that there are no extensions or alterations proposed to the mine itself or its working practices.

Paragraph 3.37 states:

“The health and well-being of people and places and the need to address the climate emergency and its consequences provide added impetus for proactive action through the planning system. Consideration of these principles will affect strategic choices, both locational ones and those aimed at improving the quality of the built and natural environment.”

The variation will aim to support this policy and climate change goals by reducing the carbon footprint of the consumers of the coal from Ffos-y-Fran as it would prevent the need to import coal from overseas sources from Australia and Venezuela. Additionally, the circumstances mentioned in Section 4 support that this submission is considering both the social, economic and sustainable effects, and effectively finding a balance – Ffos-y-Fran will not be worked indefinitely and, as such, the proposed extension of time is both reasonable and inclusive of different factors.

Paragraph 5.14.1 identifies that *“Society needs, and will continue to need for the foreseeable future, a wide range*

of minerals. Minerals are the principal constituents of most construction products, many pharmaceutical, chemical, agricultural, automotive, metallurgical, electronics, aerospace, plastics ceramic and paper products. Construction related minerals and mineral products are particularly important in Wales and are essential for housing and infrastructure, such as schools, roads, railways, airports and flood defences and a steady and adequate supply of materials is necessary."

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:*

- 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;*
- 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;*
- 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*
- 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 5.14.4 states that for *"planning purposes mineral extraction and related development includes all minerals and substances in, on or under land extracted either by underground or surface working⁷⁶. Mineral working is different from other forms of development in that:*

- extraction can only take place where the mineral is found to occur;*
- it is transitional and cannot be regarded as a permanent land use even though operations may occur over a long period of time; and*
- when operations cease land needs to be reclaimed to a high standard and to a beneficial and sustainable after-use so as to avoid dereliction and to bring discernible benefits to communities and/or wildlife."*

Indeed, Paragraph 5.14.5 continues by identifying that *"Although there are large resources of useful minerals in Wales, it is important to ensure that they are not wasted and that they are used efficiently and for the purpose(s) specified..."*

Paragraph 5.14.6 clearly details that *"In some exceptional cases, planning permission may have been granted because of UK or regional need for the mineral in areas which would not normally be suitable for mineral extraction because of environmental or policy objections. If this is the case, it is essential that the mineral is not exploited for a lower grade purpose than that originally intended. Where it is an exception to normal policy to allow mineral extraction at a particular location in order to fulfil a specific need, appropriate conditions and/or time limits should be considered carefully to ensure that the mineral extraction for the intended end-use is adequately controlled"*.

Paragraph 5.14.32 details 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, exceptionally, 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”.

This has been assessed against the Minerals Technical Advice Note 2 (MTAN 2) and will be covered in further detail in Section 5.3 below. However, it is considered that this site is important to continue to supply vital Dry Steam Coal to the domestic steel industry and is in accordance with the sentiments of this section.

When considering the reduction of the impacts of mineral extraction and related operations, Paragraph 5.14.42 states that *“Mineral workings should not cause unacceptable adverse environmental or amenity impact. Where this is not possible working needs to be carefully controlled and monitored so that any adverse effects on local communities and the environment are mitigated to acceptable limits. Any effects on local communities and the environment must be minimised to an acceptable standard”.*

Paragraph 5.14.50 (*Restoration and Aftercare*) states the following:

“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.”

With regard to the proposals to extend the life of the minerals extraction at the site, Paragraphs 5.14.47-5.14.48 identify 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 [emphasis added]. 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.*

The presence of an existing quarry should be a material consideration when considering a proposal for an extension. There may be benefits to extending a site in terms of shared infrastructure, for instance, as opposed to working a new greenfield site”.

The proposed variation of Conditions 3 and 4 will allow the site to continue extracting the remaining reserves in this section of the site for another 9 months and the restoration of the site to be delayed for another 9 months than originally planned. Whilst there currently is a restoration plan for the site, the applicant is keen to improve and vary this restoration plan so that full restoration of the site is achievable. Therefore, one of the benefits of extending the time for extraction and restoration of the site is to allow time for the applicant to submit a planning application for an improved and revised restoration scheme. Should the future application be refused the applicant understands that they will need to comply with the requirements of restoration of this part of site as originally permitted.

5.4 Minerals Technical Advice Note (MTAN) 2: Coal

The MTAN 2 (January 2009) sets out jurisdictions regarding the sustainable and workable management of coal at a national level. The following sections are of relevance to note and are supported by the proposed variation.

The Local Development Plan

“22. Where relevant, MPAs should set out their strategy for the sustainable management of the coal resource in their Local Development Plan (LDP), directing coal working away from sensitive locations and ensuring that any environmental or community impacts can be mitigated.”

The proposed variation will be in line with the management of coal set out in the LDP (see below). Further, it is considered the proposal allows for the site to continue to be worked until cessation and restoration in a

sustainable way. The extension of time for extraction will ensure that no remaining reserves are sterilised through restoration and will ensure a sustainable source of coal to domestic consumers who would otherwise have to rely on overseas importation.

Monitoring

“101. Monitoring is required to provide information on aspects of the coal working site before it starts, during its lifetime and after its completion for restoration and aftercare. It will ensure compliance with appropriate environmental standards and facilitate an effective response to complaints.”

The proposed variation of conditions will not negatively impact or alter compliance with environmental standards or response involvement and the established monitoring of the site will continue until the use ceases.

Visual Impact

“188. A description of potential landscape and visual impacts of the alternative options and designs, including the likely changes to the landscape following restoration, should be provided by the applicant in the ES. The rationale for the recommended option needs to be clearly explained. Visual impact should be a factor in the phasing and layout of the development, and in the restoration strategy. Both positive and negative landscape and visual impacts should be given due consideration, in a structured and systematic approach. Vegetation is an important factor in the landscape and its effect needs to be analysed in the landscape model in the ES.”

There is an ESA which supports the S.73 application and considers the landscape and visual impacts and it is concluded that the extension of time for the extraction and restoration of the site would not alter the findings within the original Environment Statement.

Afteruse

“282. In reinstating land following opencast working the opportunity exists to improve the local environment, enhance landscape and biodiversity and make provision for public access and recreation. Although the choice of afteruse is made by the applicant in consultation with the landowner, the MPA and consultees have influence. In recompense for the disturbance caused by opencast mining the MPA should seek to ensure that, so far as reasonably practicable, environmental opportunities are identified and taken.”

The opportunity to restore the site also supports environmental enhancement of biodiversity and the landscape will be at the forefront of reclamation plans. The proposed variation will not have an effect on the positive impacts that can be brought to the site following afteruse (common land and grazing).

5.5 Merthyr Tydfil Replacement Local Development Plan (LDP) 2016 – 2031

The Planning and Compulsory Purchase Act 2004 requires the Council to monitor and review its Local Development Plan (LDP). Up-to-date LDPs are an essential part of the plan-led planning system under national policy set out by Welsh Government.

Following consideration of a Review Report in April 2016 on the previous adopted LDP 2006 – 2021, the Council commenced work on its First Replacement Local Development Plan 2016 – 2031 in August 2016 on approval of the Delivery Agreement.

The Replacement LDP 2016 – 2031 underwent Examination in Public in 2019 and was adopted by Council on 29th

Whilst mineral workings are not considered previously developed land as they are 'temporary in nature', the extension of time for the operations on site and the restoration will ensure that the rural economy of this area continues to have a positive income stream. Additionally, the afteruse of the site, as currently permitted, will allow for the land to be used for grazing and access for recreational purposes (i.e. walking).

Policy CW1: The Historic Environment states:

"The integrity of our historic environment assets will be conserved and enhanced.

Development proposals will only be permitted where it can be demonstrated they would preserve or enhance the architectural quality, character or the historic or cultural importance of our designated historic environment assets.

Development affecting undesignated historic environment assets including, Locally Listed Buildings or structures, Landscapes of Outstanding Historic Interest in Wales, Urban Character Areas and Archaeologically Sensitive Areas should have regard to their special character and archaeological importance."

The proposed site lies within the Merthyr Tydfil Landscape of Outstanding Historic Interest in Wales. The proposed variation of conditions will not impact on the historic environment beyond that identified within the original ES for minerals site.

Policy EnW1: Nature Conservation and Ecosystem Resilience states the following:

"Development proposals will be required to promote the resilience of ecosystems. In particular, proposals will be required to maintain and enhance biodiversity interests unless it can be demonstrated that:

- 1. The need for the development clearly outweighs the biodiversity value of the site; and*
- 2. The impacts of the development can be satisfactorily mitigated and acceptably managed through future management regimes."*

There are no on site or nearby ecology constraints and as such the proposal is not considered to alter the findings of the original ES.

Policy EnW4: Environmental Protection states:

"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 either:

- Pollution of land, surface water, ground water and the air;*
- Land contamination;*
- Hazardous substances;*
- Land stability;*
- Noise, vibration, dust, odour nuisance and light pollution; or*
- Any other identified risk to public health and safety."*

The ESA notes that the proposal would not alter the findings within the original Environment Statement with regards to pollution, contamination and risk to human health.

Policy EnW5: Landscape Protection states that:

“Development proposals will be permitted where it can be satisfactorily demonstrated that:

- a) It would not cause unacceptable harm to the character and quality of the landscape setting of the County Borough;*
- b) Development within Special Landscape Areas are sensitive to their special characteristics;*
- c) Development respects the local distinctiveness and historic character of the landscape;*
- d) Development will safeguard local landscape character and landscape features, including views, which make a significant contribution to the character, history and setting of the locality;*
- e) Development secures the enhancement of the character, appearance and quality of the landscape, through restoration, management or enhancement where possible;*
- f) There is no satisfactory alternative and the benefits associated with the development can be demonstrated to outweigh the harm; and*
- g) Where damage to local landscape character cannot be avoided appropriate mitigation has been secured.”*

There is an ESA which supports the S.73 application and considers the landscape and visual impacts and it is concluded that the extension of time for the extraction and restoration of the site would not alter the findings within the original Environment Statement.

Policy EcW11: Minerals Development states:

“Proposals for mineral extraction and associated development will be allowed where:

- There is a proven national, regional or local need for the mineral which cannot be met from existing sources or from secondary or recycled material;*
- In the case of coal resources, there are wholly exceptional circumstances clearly demonstrated that justify its extraction;*
- The potential for minerals to be transported by means other than road has been adequately assessed;*
- They include acceptable proposals for progressive and final restoration, aftercare and beneficial after-use;*
- They satisfy the other relevant policies of the Plan; and*
- They maximise opportunities to re-use and recycle mineral waste.”*

Within the explanatory text to Policy EcW11 details that *“The demand for coal is difficult to predict and unexpected proposals for coal extraction may come forward over the plan period. National policy advises the use of coal for energy generation should not be permitted but recognises there are other specific non-energy uses for coal resources that may justify extraction in wholly exceptional circumstances”* (Paragraph 6.7.107).

“The primary coal resources safeguarded in the County Borough have other specific non-energy uses... that may justify its extraction. If, in wholly exceptional circumstances, 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... There may also be some public safety benefit in coal extraction in wholly exceptional circumstances where, for example, historic coal mining has created land instability. Planning Policy Wales states that new proposals for opencast, deep-mine development or colliery spoil disposal should not be permitted. Should wholly exceptional 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 6.7.108).

The reasons given in Section 4.3 of this document provide relevant grounds for exceptional circumstances that justify continued extraction and reflect the above policy. It is considered the impact of the Coronavirus pandemic would fall under wholly exceptional circumstances in terms of requiring an extension of time for extraction. Similarly, the need for the coal from this site for the ongoing TATA Steel Operations is another wholly exceptional circumstance as it would reduce the carbon footprint of the country but also provide security to TATA for the supply of coal to ensure their operations are not significantly impacted for the next 9 months. This is particular importance as another option for coal importation would be from Russia, which due to the current war in Ukraine importation from Russia is unpredictable. Finally, the use of this coal supports niche tourism markets within the UK for steam engines which has an additional positive impact on the economy and local communities.

This further emphasises how the continued use of coal for steel industry works is not in line with specified energy use, or that relating to the governments aims to decarbonise the UK by stopping domestic coal use. This variation submission, therefore, should be considered as exceptional given the reasonings provided within Section 4.3 of this report, and in line with the using of coal under the relevant nature that would support a “...*specific non-energy use*”.

6.0 Environmental Considerations

This section summarises the process of the supporting ESA and the findings and any additional mitigation or monitoring recommended.

6.1 Environment Statement Addendum

As noted within this Planning Statement, the proposals to vary Conditions 3 and 4 would not normally require the preparation and submission of an ES or alike. However, following discussions with professional officers from Merthyr Tydfil County Borough Council, it has been agreed that the application submission would be supported by an ESA which undertakes a 'compliance review' of the proposed variations to Conditions 3 and 4 in the context of the original ES.

On this basis, the work undertaken has been limited to a compliance review and to assess whether the proposed additional 9 month working period (and subsequent restoration period) would alter the findings and requirements as outlined within the original ES.

In accordance with the EIA Regulations (Wales) 2017, which have come into force since the original application was determined, each Chapter has also duly considered a number of new topics which have been introduced these are:

- Infrastructure;
- Waste;
- Population and human health;
- Climate and carbon balance; and
- Risk of major accidents and/or disasters)

These considerations are contained within each ESA Chapter in a section entitled 'Other Environmental Issues', whilst a summary of these considerations is contained within Chapter 22 of the ESA.

The Technical Appendices to the ESA Chapters are provided within **Volume 2** of the ESA and have been limited to information which has not been previously submitted in support of either the original planning permission or subsequent Haulage S.73 permission. This is predominantly related to additional compliance and monitoring data which has been collected during the operational life of the mine. These Technical Appendices should be read in conjunction with the main report provided within **Volume 1**.

The Non-Technical Summary (NTS) is provided within **Volume 3** of the ESA. The NTS provides a brief summary of the proposed development, the technical assessments and the likely effects on the environment in non-technical language.

6.2 Environment Statement Addendum Findings

The following Environmental Considerations were covered within the ESA:

- Utilities;
- Footpath, Bridleway and Common Land;
- Traffic and Transport;
- Soils;

- Hydrology;
- Geology;
- Hydrogeology;
- Geotechnical;
- Archaeology and Heritage;
- Ecology;
- Landscape and Visual Impact;
- Noise;
- Waste;
- Air Quality;
- Blasting; and
- Socio-Economic

The findings within each Environmental Considerations above noted that the proposed extension of time of the extraction and restoration of the site would not alter the findings and the measures set out within the original Environment Statement. It was concluded that the extension of time frame would not cause a significant adverse impact on the environmental constraints of the site and local area.

6.3 Proposed Mitigation

No additional mitigation is proposed for this application, and it is noted that existing and established mitigation will continue in accordance with the requirements set out within the original Environment Statement and subsequent information provided in pursuant to discharging conditions.

7.0 Review of Current Planning Conditions

Table 4 below shows the current conditions under application ref. APP/U6925/A/10/2129921, any information being submitted to discharge or update the Condition (if applicable), and the proposed revised wording of the conditions as proposed under this S.73 submission (if applicable).

Table 4: Review of Current Planning Conditions

Conditions Under Application ref. APP/U6925/A/10/2129921	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
Commencement of Development		
1. The development hereby permitted shall start not later than the expiration of 2 years from the date of this decision.	N/A	It is suggested this is removed as it is no longer required as the site has been operational for some time.
2. Written notification of the date of the proposed start of the development hereby permitted shall be submitted to the Local Planning Authority not less than 56 days beforehand.	Discharged 16 th February 2007.	It is suggested this is removed as it is no longer required as the site has been operational for some time
Duration of Works		
3. All coal extraction from the development hereby permitted shall cease no later than 06 September 2022.	Section 73 (this document).	All coal extraction from the development hereby permitted shall cease no later than 06 June 2023 .
4. 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.	Section 73 (this document).	Final restoration of the land shall be completed no later than 06 September 2025 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.
5. Any building, plant, machinery, hard standing or other works associated with the coal extraction hereby permitted (or any discrete phase thereof) shall be removed from the land within 42 days of the completion	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
of restoration, and the affected areas shall be reinstated in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority; and that scheme shall be submitted no later than 56 days prior to the cessation of coal extraction (or any discrete phase thereof).		
Approved Plans and Documents		
6. The development hereby permitted shall not be carried out other than wholly in accordance with the details shown on the submitted drawings; with the details approved pursuant to condition 6 of permission APP 152-07-014; and in accordance with the 2003 Environmental Statement and supporting documents, unless the Local Planning Authority gives written consent to any variation.	N/A	The development hereby permitted shall not be carried out other than wholly in accordance with the details shown in the submitted drawings of this application; and with the details approved pursuant to condition 6 of permission APP 152-07-017; and in accordance with the 2003 Environmental Statement and supporting documents, unless the Local Planning Authority gives written consent to any variation.
Availability for Inspection of Approved Plans and Documents		
7(1) From the start of the development hereby permitted until the completion of the restoration and aftercare of the land, a copy of this planning permission, together with all relevant plans and documents already approved and any other plans and documents subsequently approved in accordance with this permission, shall be permanently kept and made available for public inspection during normal working hours at both any site office and at the offices on the Cwmbargoed Disposal Point.	N/A	N/A – to be retained
7(2) Before the development hereby permitted starts there shall be submitted to the Local Planning	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
<p>Authority for their approval in writing a compendium of all plans and other documents approved pursuant to conditions imposed on permission APP 152-07-014; and the approved compendium shall be made available for public inspection in accordance with condition 7(1) above.</p>		
<p>Method of Working</p>		
<p>8. The development hereby permitted shall not be carried out other than wholly in accordance with the Method of Working Statement approved by the Local Planning Authority pursuant to condition 8 of permission APP 152-07-014.</p>	<p>N/A</p>	<p>N/A – to be retained</p>
<p>Areas of Excavation for Coal Extraction</p>		
<p>9. The surface areas of coal extraction hereby permitted shall not extend beyond the orange pecked lines indicated on Plan FLRS/PA1 and as required by condition 9 of permission APP 152-07-014.</p>	<p>N/A</p>	<p>The surface areas of coal extraction hereby permitted shall not extend beyond the orange pecked lines indicated on Plan FLRS/PA1 (dated August 2022) and as required by condition 9 of permission APP 152-07-014.</p>
<p>Depth of Working</p>		
<p>10. No coal extraction hereby permitted shall take place below the Lower 4 Feet (basal) seam in the principal extraction area, below the Hafod seam in the northeast coal extraction area, or below 10 metres (below existing ground level) in the southwest and southeast coal extraction areas, as indicated on Plan FLRS/PA1 and as required by condition 10 of permission APP 152-07-014.</p>	<p>N/A</p>	<p>No coal extraction hereby permitted shall take place below the Lower 4 Feet (basal) seam in the principal extraction area, below the Hafod seam in the northeast coal extraction area, or below 10 metres (below existing ground level) in the southwest and southeast coal extraction areas, as required by condition 10 of permission APP 152-07-014.</p>

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
Direction of Working		
11. The direction of opencast working hereby permitted shall be from south to north, as indicated on Plans FLRS/ES3/1-4, and as required by condition 11 of permission APP 152-07-014.	N/A	The direction of opencast working hereby permitted shall be from south to north, as indicated on Plan FLRS/PA3 and as required by condition 11 of permission APP 152-07-014.
Overburden Mounds		
12. The northern overburden mound of the development hereby permitted shall not exceed 475m AOD; the southern overburden mound shall not exceed 410m AOD; and the eastern overburden mound shall not exceed 465m AOD.	N/A	N/A – to be retained
Hours and Days of Operation		
13(1). Except in emergencies (i.e. circumstances in which the site operator has reasonable cause for preventing injury to persons or serious damage to property) in order to maintain the safe operation of the site (notification of which shall be given to the Local Planning Authority in writing as soon as is practically possible) or unless the Local Planning Authority has agreed otherwise in writing, no operations (i.e. any physical works including the starting/warming/revving of any internal combustion engine, motor vehicle or other machinery) other than water pumping or servicing to water pumps or environmental monitoring, shall be carried out on the site, except between the following times:- • Normal site operations (other than those activities specified below)	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
<p>Monday – Friday: 0700 - 2300 hrs Saturday: 0700 - 1700 hrs</p> <ul style="list-style-type: none"> On-site coal haulage <p>Monday – Friday: 0700 - 1900 hrs Saturday: 0700 - 1300 hrs</p> <ul style="list-style-type: none"> Blasting: <p>Monday – Friday: 1000 - 1300 hrs and 1400 - 1600 hrs Saturday: 1000 - 1300 hrs</p> <ul style="list-style-type: none"> Removal of existing waste tips (Deleted) Formation and removal of baffle mounds, and the stripping and replacement of soil within a 300 metre radius of any dwelling: <p>Monday – Friday: 0800 - 1900 hrs Saturday: 0800 - 1300 hrs.</p>		
<p>13(2). No work shall be undertaken on site in connection with the development hereby permitted on Sundays or Public/Bank Holidays, except in the case of emergencies as specified in the first paragraph of condition 13(1).</p>	<p>N/A</p>	<p>N/A – to be retained</p>
<p>Dust Control</p>		
<p>14. The development hereby permitted shall not take place other than wholly in accordance with the dust suppression and air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 14 of permission APP 152-07-014 and based on the measures set out in the 2003 Environmental Statement referred to in condition 6 of that permission.</p>	<p>Discharged 27th March 2007.</p>	<p>The development shall be carried out in full accordance with the submitted and approved details under ref: AND/030225/JR7 unless otherwise agreed in writing by the Local Planning Authority.</p>

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
<p>15. The dust suppression measures to be employed shall use the Best Available Technology Not Entailing Excessive Cost for the monitoring and control of dust which may arise directly or indirectly as a result of site activities. In particular:</p> <ul style="list-style-type: none"> • A sufficient number of spraying units shall be provided and maintained in efficient working order so as to ensure that haul routes and other areas traversed by vehicles are kept damp during dry weather. • All spraying vehicles shall have an adequate water supply at all times. • There shall be regular and effective maintenance of haul roads. • The exhausts and through-body exhaust systems of all vehicles and other plant shall be fitted so as to prevent exhaust gases being emitted downwards. • Effective dust collection systems shall be fitted to all blast hole drilling machines before such machines are operated. • Prior to all blasting, all arisings from blast hole drilling shall be bagged and disposed of safely. • The tipping or removal of overburden shall cease temporarily or be relocated within the overburden storage area whenever the Local Planning Authority considers that wind strength and direction may result in a significant dust nuisance, and notifies the site operator accordingly. • The construction of all baffle mounds shall cease temporarily or be relocated whenever the Local Planning Authority considers that the wind strength and direction may result in significant dust nuisance and notifies the site operator accordingly. 	<p>Discharged 27th March 2007.</p>	<p>The development shall be carried out in full accordance with the submitted and approved details under ref: AND/030225/JR7 unless otherwise agreed in writing by the Local Planning Authority.</p>

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
<ul style="list-style-type: none"> The site operator shall provide and maintain a sufficient number of vapour masts so as to ensure that an effective vapour screen can be produced at any point in the site. All baffle bunds shall be sealed and seeded as soon as practicable after they have been constructed in such a way as to minimise wind blown material from adversely affecting nearby dwellings. 		
Air Quality		
16. The development hereby permitted shall be monitored in accordance with the air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 16 of permission APP 152-07-014.	Discharged 27 th March 2007.	N/A – to be retained
Noise		
17(1) With the exception of those activities indicated in conditions 18 and 22 below, any noise arising from the development hereby permitted shall not exceed the following dBLAeq, 1hr by reference to the following specific noise monitoring locations.	N/A	With the exception of those activities indicated in conditions 18 and 22 below, any noise arising from the development hereby permitted shall not exceed the following dBLAeq, 1hr by reference to the following specific noise monitoring locations as shown in plan FLRS/ES14 (dated August 2022).
17(2) The development hereby permitted shall be monitored by the site operator in accordance with the scheme approved by the Local Planning Authority in accordance with condition 17(b) of permission APP 152-07-014.	Discharged 27 th March 2007.	N/A – to be retained
18. During baffle mound construction	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
and removal, soil stripping and removal of soil heaps, noise levels shall not exceed a daytime noise level of 70 dBLAeq, 1hr over periods not exceeding eight weeks in any one year.		
19. Efficient silencing equipment shall be fitted to and used by all vehicles and other plant and machinery on site and shall be efficiently maintained in accordance with the manufacturer's recommendations.	N/A	N/A – to be retained
20. All haul roads in direct line of sight and within 500 metres of any dwelling shall be adequately screened, where practicable, to attenuate noise levels.	N/A	N/A – to be retained
21. Equipment operating on a 24-hour basis, such as pumps, shall be placed in acoustic enclosures and positioned away from noise sensitive locations where practicable.	N/A	N/A – to be retained
22. The rating level of noise emitted from such pump enclosures shall not exceed the existing background noise level by more than an amount to be agreed in writing by the Local Planning authority before the development hereby permitted starts.	N/A	N/A – to be retained
Blasting		
23. All blasting required for the development hereby permitted shall be designed so that the ground vibration measured as peak particle velocity (PPV) shall not exceed 8mm per second at any residential or similarly sensitive property; and the design limit shall ensure that the ground vibration for at least 95% of all	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
blasts in any 20 week period shall not exceed a PPV of 6mm per second.		
24. Blasting shall be limited to four blasts a day between the hours of 1000 to 1300 and 1400 to 1600 hours (two blasts per time window) and no blasting shall be carried out on Sundays or Bank/Public Holidays, nor in the hours of darkness.	N/A	N/A – to be retained
25. The development hereby permitted shall not be carried out other than wholly in accordance with the type of vibration monitoring station required by condition 25 of permission APP 152-07-014; all vibration monitoring stations shall be retained in the locations approved in writing by the Local Planning Authority; and all monitoring data shall be made available for inspection by the Local Planning Authority on request.	Discharged 27 th March 2007.	N/A – to be retained
26. No blasting shall be carried out within the 300m blast exclusion zone indicated on Dwg No MMAG/BLAST/01 as required by condition 26 of permission APP 152-07-014.	N/A	N/A – to be retained
27. The level of vibration at the boundary of the adjoining railway land shall not exceed a maximum peak particle velocity of 12mm per second.	N/A	N/A – to be retained
Highways		
28. There shall be no vehicle access in connection with the development hereby permitted to or from the public highway other than at points X & Y	N/A	There shall be no vehicle access in connection with the development hereby permitted to or from the public highway other than at points X

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
shown on Dwg No FLRS/PA1; and there shall be none for coal lorries associated with the development hereby permitted other than at point Z on the plan attached to the section 106 obligation which accompanies this permission.		& Y shown on Dwg No FLRS/PA1 (dated August 2022); and there shall be none for coal lorries associated with the development hereby permitted other than at point Z on the plan attached to the section 106 obligation which accompanies this permission.
29. Other than at crossing point X there shall be no movement of lorries or plant from the development hereby permitted to/from the Cwmbargoed Disposal Point on the public highway unless otherwise agreed in writing by the Local Planning Authority.	N/A	N/A – to be retained
30. The use of access point Y by vehicles and other plant shall be restricted solely to the entry and exit of plant and support vehicles associated with the development hereby permitted.	N/A	N/A – to be retained
31. The development hereby permitted shall not take place other than wholly in accordance with the engineering details of access for points X and Y required by permission APP 152-07-014.	N/A	N/A – to be retained
32. The surface of the highway crossing at point X shall be retained in good condition for a distance and width of not less than 100 x 6 m in accordance with the details approved by the Local Planning Authority in accordance with condition 32 of permission APP 152-07-014; and the access at point Y shall be similarly retained in good condition for a distance and width of not less than 50 x 6m.	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
33. All vehicles using access points X and Y in connection with the development hereby permitted shall pass through the wheel cleaning facilities provided in accordance with condition 33 of permission Ref APP 152-07-014; and the vehicle cleaning facility at point Z on the Cwmbargoed Disposal Point shall be retained in good working order for the duration of the transportation of coal from the development.	N/A	N/A – to be retained
34. (Deleted)	Deleted	Deleted
Parking Provision		
35. Employee parking for the development hereby permitted shall be in accordance with the requirements of condition 35 of permission APP 152-07-014; and such parking provision shall be retained for the duration of the development.	N/A	N/A – to be retained
Transportation of Coal		
36. All vehicles entering the highway from the development hereby permitted shall do so in a clean condition; and all vehicles transporting coal from the land reclamation scheme entering the Bogey Road from the Cwmbargoed Disposal Point shall first have their wheels and undersides cleaned on site in the existing vehicle cleaning facility on that land.	N/A	N/A – to be retained
37(1). Except as permitted by condition 37(2) all coal from the development hereby permitted shall be taken to the Cwmbargoed Disposal	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
Point for onward transmission by rail.		
37(2). No more than 50,000 tonnes of coal a year from the development hereby permitted shall be transported from the Cwmbargoed Disposal Point by road.	N/A	N/A – to be retained
37(3). All vehicles transporting coal from the development hereby permitted shall leave the Cwmbargoed Disposal Point at point Z shown on the plan attached to the section 106 obligation which accompanies this permission; and all vehicles arriving at the Cwmbargoed Disposal Point to transport such coal shall also use this same access.	N/A	N/A – to be retained
37(4). No more than 20 vehicles transporting coal from the development hereby permitted shall leave the Cwmbargoed Disposal Point each day; and no more than 5 such lorries shall leave this disposal point in any one hour.	N/A	N/A – to be retained
37(5). All vehicles transporting coal from the development hereby permitted from the Cwmbargoed Disposal Point shall have their loads covered in accordance with details to be first approved in writing by the Local Planning Authority.	N/A	N/A – to be retained
37(6). All vehicles transporting coal from the development hereby permitted from the Cwmbargoed Disposal Point shall have their wheels and undersides cleaned before leaving this land in accordance with details to be first approved in writing by the Local Planning Authority; and the approved means of vehicle cleaning shall thereafter be retained in good	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
working condition until the transportation of all such coal ceases.		
37(7). Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be in force a Traffic Regulation Order in respect of that length of this road determined appropriate by the Merthyr Tydfil County Borough Council; and if at any time that Order ceases to have effect all transportation by road of such coal shall cease until a replacement order comes into force or unless the Local Planning Authority gives written consent to any variation.	Discharged 1 st May 2012.	The development hereby permitted shall be carried out in strict accordance with the submitted and approved details of the Traffic Regulation Order unless otherwise agreed in writing by the Local Planning Authority.
37(8). Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be submitted to the Local Planning Authority for their approval in writing details of signage to be erected at the exit from that land informing the drivers of vehicles transporting such coal of the need to observe the requirements of the TRO and to advise them of the route which they should follow to the A465(T) Heads of the Valleys Road; the approved signage shall be erected before any coal from the development hereby permitted is transported by road from the disposal point; and all such signage shall thereafter be retained until the transportation of all such coal ceases.	Discharged 1 st May 2012.	N/A – to be retained
Importation of Materials		
38. No waste material (statutorily controlled or otherwise) or minerals for blending purposes shall be	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
imported either to the land reclamation scheme hereby permitted or the Cwmbargoed Disposal Point except with the prior written approval of the Local Planning Authority.		
Preparation and Storage of Materials		
39. No materials, including minerals excavated from the development hereby permitted shall be stocked on the land other than within the designated areas shown on the plans approved under permission APP 152-07-014, other than those necessary for enabling works.	N/A	N/A – to be retained
Plant and Machinery		
40. All cranes and other jibbed machines used in connection with the development hereby permitted shall be so positioned that the jib or any suspended load shall not swing over railway land, or within 3 metres of the nearest rail track if the boundary of the railway land is closer than 3m from the permitted scheme.	N/A	N/A – to be retained
41. All cranes, machinery and construction plant used in connection with the development hereby permitted shall be so positioned and used to prevent the accidental entry onto railway land of such plant, or loads attached thereto, in the event of failure.	N/A	N/A – to be retained
Environmental Management Plan		
42. Before the development hereby permitted starts an Environmental Management Plan [EMP] shall be	Discharged 27 th March 2007.	The development hereby approved shall be carried out in strict accordance with the details

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
submitted for the written approval of the Local Planning Authority for each phase of the development, as required by condition 42 of permission APP 152-07-014; and the EMP shall be implemented in accordance with the approved scheme, save as otherwise provided for by other conditions of this permission.		submitted and approved pursuant to this condition on 27 th March 2007 ref: AND/030225/JR7 unless otherwise agreed in writing by the Local Planning Authority.
Groundwater Monitoring and Protection		
43 (Deleted).	Deleted	Deleted
44. Once the development hereby permitted starts the groundwater monitoring scheme approved by the Local Planning Authority in accordance with condition 44 of permission APP 152-07-014 shall continue for the duration of the development.	N/A	N/A – to be retained
45. If during the course of the development hereby permitted any contamination of a nature not previously identified is encountered, representative samples shall be tested by the site operator to determine the nature and extent of any such contamination in order to evaluate the risk it might present to controlled waters; if the contamination could materially affect controlled waters at/below the site and cannot be dealt with by measures set out in the Method Statement, then no further operations shall be carried out in the affected area until the site operator has submitted to the Local Planning Authority for their written approval an addendum to the Method Statement or unless the Local Planning Authority give written consent for any variation; and this addendum shall specify how this contamination must be dealt with	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
and what measures must be implemented before operations continue.		
Construction Phase Works		
46. The development hereby permitted shall not be carried out other than wholly in accordance with the Method Statement approved by the Local Planning Authority in accordance with condition 46 of permission APP 152-07-014.	N/A	N/A – to be retained
Foul and Surface Water Drainage		
47. The development hereby permitted shall not be carried out other than wholly in accordance with the scheme for the disposal of foul sewage approved by the Local Planning Authority in accordance with condition 47 of permission APP 152-07-014	N/A	N/A – to be retained
48. The development hereby permitted shall not be carried out other than wholly in accordance with the detailed plans for a comprehensive drainage and lagoon system to intercept and treat surface water from the land reclamation site approved by the Local Planning Authority in accordance with condition 48 of permission APP 152-07-014.	N/A	N/A – to be retained
Site Illumination		
49. The development hereby permitted shall not be carried out other than wholly in accordance with the scheme of illumination approved	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
<p>by the Local Planning Authority in accordance with condition 49 of permission APP 152-07-014; the approved lighting scheme shall be retained in good working condition for the duration of the development; and shall then be removed upon its completion.</p>		
<p>Land Restoration</p>		
<p>50. (Deleted)</p>	<p>Deleted</p>	<p>Deleted</p>
<p>51. The development hereby permitted shall not be carried out other than wholly in accordance with the strategy for progressive restoration and management approved by the Local Planning Authority in accordance with condition 51 of permission APP 152-07-014.</p>	<p>N/A</p>	<p>N/A – to be retained</p>
<p>52. In the event of a cessation of the extraction of coal prior to the completion of the approved restoration and management strategy, and which constitutes a permanent cessation within the terms of paragraph 3 of Schedule 9 of the Town and Country Planning Act 1990, within 6 months of the cessation of such extraction there shall be submitted to the Local Planning Authority for their approval in writing a scheme for the restoration of the land which shall include details of reclamation and aftercare; and the approved scheme shall be implemented within 3 years of such approval (excluding any aftercare measures) unless the Local Planning Authority gives written consent to any variation.</p>	<p>N/A</p>	<p>N/A – to be retained</p>

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
Aftercare		
53. The development hereby permitted shall not be carried out other than wholly in accordance with the phased aftercare schemes to be approved by the Local Planning Authority in accordance with condition 53 of permission APP 152-07-014.	N/A	N/A – to be retained
Agricultural Water Supplies		
54. The site operator shall ensure that any flow of water used for agricultural purposes that is adversely affected by the development hereby permitted is reinstated in a satisfactory manner, including the provision of alternative supplies during the course of such remedial operations.	N/A	N/A – to be retained
Archaeology		
55. The development hereby permitted shall not be carried out other than wholly in accordance with the phased Programme of Archaeological Work approved by the Local Planning Authority in accordance with condition 55 of permission APP 152-07-014.	N/A	N/A – to be retained
56. For the duration of the development hereby permitted the site operator shall retain the services of an archaeologist approved by the Local Planning Authority who shall undertake a watching brief over recognised archaeological features throughout the excavation and restoration period of the land reclamation scheme.	N/A	N/A – to be retained

Conditions Under Application ref. APP/U6925/A/10/2129921)	Information Submitted to Discharge/update Condition (if applicable)	Recommendation / Revised Wording (if applicable)
Protected Habitats and Species		
57. The development hereby permitted shall not be carried out other than wholly in accordance with the requirements of Schedules 2 and 5 of the Conservation of Habitats and Species Regulations 2010 in respect of any protected habitats or species on the land reclamation site, as required by condition 57 of permission APP 152-07-014 but as may be modified by the 2010 Regulations.	N/A	N/A – to be retained
Liaison Committee		
58. Once the development hereby permitted starts the site operator shall continue to organise the site liaison committee established in accordance with condition 58 of permission APP 152-07-014.	Discharged 27 th March 2007.	The development hereby approved shall be carried out in strict accordance with the details submitted and approved pursuant to this condition on 27 th March 2007 ref: AND/030225/JR7 unless otherwise agreed in writing by the Local Planning Authority.
Environmental Liaison Officer		
59. Once the development hereby permitted starts the site operator shall continue to employ an environmental liaison officer approved in writing by the Local Planning Authority who shall oversee all soil stripping/storage, the restoration scheme, habitat re-creation and landscaping works, as required by condition 59 of permission APP 152-07-014.	Discharged 27 th March 2007.	The development hereby approved shall be carried out in strict accordance with the details submitted and approved pursuant to this condition on 27 th March 2007 ref: AND/030225/JR7 unless otherwise agreed in writing by the Local Planning Authority.

8.0 Summary and Closure

8.1 Summary

SLR Consulting Limited has been instructed by Merthyr (South Wales) Limited to prepare a S.73 planning application submission to Merthyr Tydfil County Borough Council for the:

“Variation of Conditions 3 and 4 of planning permission APP/U6925/A/10/2129921 to allow for coal mining operations to continue beyond the 6th of September 2022, and to extend the final restoration of the land beyond the 6th of December, at the Ffos-y-Fran Land Reclamation Scheme, Merthyr Tydfil, CF48 3HG.”

The proposed development is in line with both national and local planning policy and aims to ensure the final restoration is of value to the surround landscape, community and visitors alike, whilst also aiming to ensure the mining of coal has been considered viable and necessary reflective of reasoning and exceptions explored in this S.73.

The ESA has concluded that the proposal would not alter the findings of the original Environment Statement and its mitigation. Additionally, it is noted that no further mitigation is proposed to support this S.73 application as there are no additional significant adverse impacts predicted as a result of this proposal to extend the duration of extraction and restoration.

The applicant has also demonstrated that a number of conditions have been lawfully discharged and that the monitoring requirements (through various conditions) have been undertaken and records kept in full. It is considered that should this application is permitted then the monitoring requirements would continue until the extraction ceases and the restoration (where necessary) is complete.

8.2 Closure

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act, the development proposals are in line with the development plan and we trust that this planning statement and the supporting drawings are sufficient to allow a positive determination of the application.

Should you have any queries regarding the content of this Planning Statement or the wider S.73 application submission, please do not hesitate to contact Edward Bright (Technical Director) directly via the following contact details:

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Technical Director - Planning

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APPENDIX 1

Current Permission – Appeal Decision (APP/U6925/A/10/2129921)



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 08-11/02/11
Ymweliad â safle a wnaed ar 10/02/11

gan Ian Osborne YH BA DipTP MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 06/05/11

Appeal Decision

Inquiry held on 08-11/02/11
Site visit made on 10/02/11

by Ian Osborne JP BA DipTP MRTPI
an Inspector appointed by the Welsh Ministers
Date: 06/05/11

Appeal Ref: APP/U6925/A/10/2129921

Land at Ffos-y-Fran Land Reclamation Scheme, East of Merthyr Tydfil, CF48 4AE

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission for the variation of Condition 37 imposed on planning permission APP 152-07-014 dated 11/04/05 so as to permit the limited despatch by road of up to 5% of the annual output of coal from the site, or a maximum of 50,000 tonnes of coal per annum (whichever is the lesser) via the Cwmbargoed Disposal Point.
- The appeal is made by Miller Argent (South Wales) Limited against the decision of the Merthyr Tydfil County Borough Council.
- The application Ref P/08/0316 dated 14/07/09 was refused by notice dated 23/12/09.
- Condition 37 of the 2005 permission states:
No coal shall be transported from the site except to the Cwmbargoed Disposal Point for onward transmission by rail.
- The reason given for this condition is:
To define the means of coal transportation, to ensure onward transmission by rail, in the interests of highway safety, residential amenity and sustainability.
- The 2005 permission was granted by the Planning Decisions Committee of the National Assembly for Wales and is for the Ffos-y-Fran Land Reclamation Scheme, incorporating the extraction of coal by opencast methods, being the final phase of the East Merthyr Reclamation Scheme

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 and supersedes that issued on 11 March 2011.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions as set out in the Formal Decision below.

Introduction

1. The Council's decision notice states that permission is refused for the movement by road of up to 100,000 tonnes of coal from the site, but with no time period specified. However it is clear that the revised application dated 14/07/09 was for the movement by road from the Cwmbargoed Disposal Point [CDP] of no more than 5% of the annual output of coal from the land reclamation site [LRS] or a maximum of 50,000 tonnes whichever is the lesser. Given that regular monitoring of tonnages would be much easier to undertake than of percentages of annual output, I have therefore determined this appeal on the basis that the proposal is to move a maximum of 50,000 tonnes of

coal a year from the LRS by road from the CDP. At the inquiry both the Appellants and the Council agreed to this clarification of the proposal.

2. Also at the inquiry the Appellants confirmed that their application was made under section 73 of the Act for planning permission for the development of land without complying with condition 37 subject to which the 2005 permission was granted, but subject to a suitable replacement condition. A possible replacement condition was discussed at the inquiry. In addition, since if I allowed this appeal a new permission would be granted, all the other conditions imposed on the 2005 permission were discussed, as was the need for a new section 106 obligation equivalent to that which accompanied the 2005 permission, together with the terms of the new obligation offered with the appeal application.
3. I understand the disappointment of many local residents that permission was granted for the LRS by the National Assembly in 2005 albeit followed by protracted litigation. I also appreciate that they currently have concerns about the way in which the LRS is being operated. Nevertheless, as I indicated at the inquiry, I can neither review that permission nor consider whether its conditions are being properly observed. My responsibility extends only to the determination of the application for the variation of condition 37, though strictly that application can only be for the removal of this condition and its replacement by the condition which I have attached to this permission. At the same time, whilst I have altered the wording of many of the other 58 conditions imposed on the 2005 permission, I am only able either to update them so as to reflect the present situation or to make their wording clearer, rather than to consider either their substance or compliance with them.
4. On 20/08/10 the Planning Decisions Branch [PDB] of the Assembly Government indicated that the appeal proposal falls within the prescribed limits for development requiring an Environmental Impact Assessment [EIA]. The PDB noted though that the Council had already undertaken a screening opinion in respect of the appeal application and had concluded that, as the proposal would not have significant adverse environmental effects, an EIA was not required. Nevertheless, the PDB considered the issue afresh but agreed with the Council's view that the proposal is unlikely to have significant environmental effects in terms of its nature, size and location. Accordingly the PDB considered that an EIA is not required and that the appeal may therefore proceed.
5. However, at the inquiry both the Council and local residents contended that, if this appeal were to be allowed, in the light of the judgement in *R oao Louisa Baker v Bath and East Somerset Council [2009] EWHC 595 (Admin) – [Baker]* - an EIA covering both the LRS and the CDP, together with the proposed change to condition 37, would be required before permission could lawfully be granted. The power to determine whether an EIA was needed for this appeal rests with Welsh Ministers (delegated to the PDB in this case) and not with me. It is clear from the evidence submitted at the inquiry that the PDB took the *Baker* judgement into account in coming to their view that an EIA was not needed. Even though I have allowed this appeal, I do not consider that it is necessary therefore for me to determine whether a fresh EIA is required. However, had it been necessary for me to do so, having considered all the evidence submitted at the inquiry and in writing, including the recent permissions at the Cwmbargoed Disposal Point by both the Methyr Tydfil and Caerphilly County Borough Councils, I would have agreed with the view of the PDB that a new EIA is not required in this appeal.

6. Because sufficient information was not available at the inquiry about the availability of freight facilities grants in Wales, I invited the Appellants to submit further information in writing within a week of the close of the inquiry. They have done so and I have therefore taken it into account even though the Council made no response within the prescribed timescale. I have also taken into account a late written representation from a local resident who attended the inquiry but who felt unable to give her evidence then, together with the Appellants' written response to them.

Conditions 37 and 6

7. Condition 37 was first suggested by the Council at the time of the call-in inquiry in 2004 which resulted in the 2005 permission Ref APP 152-07-014. The draft condition was not challenged by the Applicants at that inquiry (now the Appellants) nor did they seek its judicial review when permission was granted. At the present inquiry they explain that in 2004 their firm intention was that all coal from the LRS would go by rail to the Aberthaw Power Station [APS]. They also accept that this was the basis on which the Environmental Statement [ES] for that called-in application had been produced.
8. In my view this condition requires no more than that all coal from the LRS must go to the CDP – which takes place by lorry - and thence be transported by rail. There is no minimum or maximum distance specified by which it must or may travel by rail. Currently all coal from the LRS leaves the CPD by rail, though some weeks about 1,000 tonnes of it is taken only as far as Barry Docks, and most weeks a further 1,000 tonnes or so is taken to the Port Talbot Steelworks [PTS] rather than all of it being taken to the APS. However, as condition 37 does not specify the end destination of this rail-borne coal, I consider that taking some of it by rail to Barry Docks, or to the PTS or to, for example, the Drax Power Station in Yorkshire, has been in accordance with this condition.
9. I have specifically considered the reason given for this condition. This reason has three elements: highway safety, residential amenity and sustainability. Only the last of these is given by the Council in their decision notice (as corrected) but it is clear to me from the evidence at the inquiry that, unless adequately controlled, the proposal would result in harm to highway safety because of the use of the Bogey Road by LRS coal lorries from and to the CPD. I have therefore made highway safety part of the first main issue in this appeal. As condition 37 is specifically concerned with the transportation of coal from the CPD, I consider that in this context the reference to 'sustainability' can properly be applied as meaning sustainable transport.
10. The Council now also contend that condition 6 of the 2005 permission requires that all coal from the LRS must go to the APS by rail, since this condition states that '*The development ...shall be carried out ... in accordance with the submitted Environmental Statement ... unless subsequently amended with the written approval of the Planning Authority*'. No such written variation has ever been approved by the Council. However, it is not a matter for me to determine whether there has been any breach of condition 6, nor would it be right for me to come to a conclusion about whether the new condition 37 in the permission which I have granted is overridden by condition 6 from the 2005 permission, and which I have repeated. Such a determination would need to be made either in response to an application for a lawful development certificate under section 191 or 192 of the amended Act, as appropriate, or on appeal against the refusal of such a certificate or against any enforcement notice issued by the Council.

Main issues

11. From the above I consider that the main issues in this case are: first, the effect of the proposed movement of up to 50,000 tonnes of LRS coal a year by road from the CDP, in the light of both local and national policies and advice relating to sustainable transport, and also on highway safety on the Bogey Road; and second, whether there is sufficient justification for the proposed movement of such coal by road, either in terms of local need for dry steam coal [DSC] or for on-site geological reasons, to outweigh any harm on the first main issue.

First main issue

Sustainable transport

12. It is clear from the Appellants' own evidence that, other things being equal, in general the movement of coal by rail results in only about one quarter of the carbon dioxide emissions to the atmosphere compared with transport by road. Even when the circumstances of this particular proposal are taken into account, movement of all the LRS coal from the CDP by rail to the APS would result in only about 74% of the carbon dioxide emissions compared with 90% of the output of the LRS going by rail to the APS, 5% going by rail to the PTS, and 5% being distributed by road from the CDP.
13. If the present arrangement were continued whereby 90% goes by rail to the APS, 5% goes by rail to the PTS and 5% goes by rail to Barry Docks and thence to further destinations by road, then movement of all coal by rail from the CDP to the APS would result in only about 68% of the emissions of carbon dioxide of this proposed combination of rail and road movement. In terms of carbon dioxide emissions therefore, the proposal would be marginally less harmful than the present lawful arrangement, though materially more harmful than the all-rail arrangement intended in 2004.
14. Policy MIN1 of the 1996 adopted *Mid Glamorgan (Merthyr Tydfil County Borough) Replacement Structure Plan 1991-2006* indicates that proposals for mineral extraction and associated development will only be permitted where, amongst other things, measures can be taken to reduce damage or disturbance to the environment to acceptable levels. I consider that, since the appeal application is for the development of land without complying with condition 37 subject to which the 2005 planning permission was granted, this policy is clearly applicable in this case. I also consider that in this context 'environment' includes the atmosphere.
15. In my view, whilst the proposed variation of condition 37 would result in a material increase in carbon dioxide emissions compared with an all-rail arrangement to the APS, nevertheless, since no more than 50,000 tonnes a year would be moved by road from the CDP, this would reduce damage to the environment compared with the present lawful operation involving the movement of this amount of LRS coal to Barry Docks and then from there by road to various destinations. The proposal would thus not be out-of-accordance with this structure plan policy. This would probably be true irrespective of the particular destination/s for up to 50,000 of LRS coal moved direct from the CDP by road.
16. Policy GR1 of the 1999 adopted *Merthyr Tydfil Borough Local Plan* is specifically concerned with derelict and unsightly land rather than with mineral extraction. However, since the development concerned in this appeal is the permitted Ffos-y-Fran LRS as a whole, I consider that Policy GR1 is potentially applicable. This policy makes provision for the reclamation of derelict or unsightly land subject to 5 criteria. Whilst

none of these is itself clearly relevant in this appeal, nevertheless I consider that the objectives of this policy include the desirability of land reclamation taking place in an environmentally responsible manner. I note that the appeal site, or at least most of it, is identified under sites DL13 and DL14 on the local plan Proposals Map as being suitable for land reclamation, but also for coal recovery. Whilst the conventional meaning of the latter term relates to the recovery of coal from existing tips, rather than virgin coal from the ground, nevertheless, bearing in mind that the description of the LRS permitted in 2005 specifically incorporates the extraction of coal by opencast methods, I consider that Policy GR1 is partially relevant in this case. On the evidence before me, therefore, since the proposed variation of condition 37 would result in only a very minor change to this very large permitted LRS, I do not consider that the appeal proposal would be out of accordance with the objectives of Policy GR1 of the local plan.

17. The most relevant and up-to-date national advice on the control of coal extraction is *Minerals Technical Advice Note 2 : Coal* [MINTAN2] issued in January 2009. Of particular relevance in this appeal is Appendix O on best practice for transport. This states that proposals based on rail transport should be more favourably considered (than those based on road transport) - *my parenthesis*. The advice continues by stating that proposals not based on rail transport should be accompanied by an explanation as to why this is not possible. It also indicates that where rail transport is available, consideration should be given to limiting the amount of output despatched by road.
18. National planning policy on the winning and working of minerals is set out in *Minerals Planning Policy : Wales* [MPPW] issued in December 2000. This indicates in paragraph 42 that the National Assembly wishes to see (minerals) freight carried by rail or waterway rather than by road wherever this is economically feasible, and specifically refers to freight facility grants being available for infrastructure improvements to encourage the removal of freight from road to rail transportation. This paragraph of MPPW refers to *TAN 18: Transport* [TAN 18] issued in 1998 but since then a new TAN 18 has been issued in March 2007, though I do not consider that this later advice fundamentally changes the pro-rail preference in MPPW. The movement of coal from the CDP by waterway is not feasible.
19. Freight facilities grants are still available from the Assembly Government to provide or upgrade private rail facilities where capital expenditure is involved, and are likely to remain available for some time at least. The Council contend that the Appellants have not sufficiently investigated the possibility of the existing rail siding which serves the Aberthaw Cement Works [ACW] being modernised and upgraded in a similar way that the PTS have recently upgraded their facilities. Although the Appellants do not appear to have considered this possibility prior to the inquiry, and indeed at first seemed to dispute the existence of such a connection to this cement works, nevertheless, they now accept that such a rail link to the Vale of Glamorgan line exists, though they point out that the facility is rather old and has not been used for some years.
20. The movement of coal by rail from the CDP is clearly only economically feasible where customers have the ability to receive coal by this means. Whilst the ACW may yet invest in facilities to re-use their existing rail siding, as may other present or future large customers, nevertheless the position remains that there is likely to be a substantial number of smaller customers for DSC from the LRS for whom it will never be economic to install rail facilities. I consider therefore that the movement by road of

up to 50,000 tonnes of coal a year from the CDP would not materially conflict with national policy or technical advice.

Highway safety

21. The Bogey Road, which runs between the A4060(T) at the Mountain Hare roundabout and the minor north/south road at its eastern end, is narrow, winding and steep in places. It is not suitable therefore along the whole of its 3 kms or so for two-way lorry traffic in my view. There is a vehicular access from this road to the CPD near its eastern end, which is within Caerphilly County Borough, and another to the disused AJ Williams coal depot slightly further west within Merthyr Tydfil County Borough. This road also serves some 10 or so dwellings at its western end at Incline Side.
22. The north/south minor road in Caerphilly County Borough, which is called Mountain Road to the north of the T-junction with the Bogey Road, and Fochrhiw Road to the south of it, connects with the former A465 some 3 kms to the north of this junction. From the T-junction of this minor road with this former trunk road the latter connects with the junctions of the present A465(T) Heads of the Valleys Road, both at Dowlais Top to the west and at Rhymney Bridge to the east. There is a separate vehicular access to the CPD from Fochrhiw Road for light vehicles south of the junction with the Bogey Road.
23. This road divides the LRS more or less into two, and for most of its length does not come within the 2005 permitted area. However, about a third of the way along it from the west, its former route over a narrow railway bridge has been bypassed as part of the LRS by a diversion to avoid this old bridge. A short length of this diversion is formed by a standard-width, two-way carriageway on a new bridge, beneath which there is an on-site haul road between the two main parts of the LRS. This short length of the Bogey Road is within the LRS permitted area. Lorry access direct into the CPD from the LRS is a substantial distance further east along this road over a traffic light-controlled crossing of this highway which is operated and kept clean by the Appellants.
24. Were either laden or empty LRS coal lorries to be permitted to use the Bogey Road, in my view they would be a danger to other road users because of the narrowness of much of the length of this highway, together with its steepness and lack of forward visibility in places. The narrowness of the carriageway is not only a hazard in itself but also causes the overrunning of soft verges which often brings loose material onto the carriageway, thereby resulting in a slippery surface.
25. I consider therefore that the only satisfactory means of avoiding such highway danger being caused by the appeal proposal is for LRS coal lorries to be prohibited from using most, if not the whole, of the length of the Bogey Road. Without such a means of prohibiting lorries used for carrying LRS coal from the CDP from using this road, the proposal would thus cause material harm to highway safety. If the use of this road were suitably restricted though, LRS coal lorries would then be confined to using the route northwards to the Heads of the Valleys Road. I deal with this matter in detail below in relation to planning conditions and obligations.

Conclusion

26. I conclude therefore on the first main issue that the proposed movement of up to 50,000 tonnes of LRS coal a year by road from the CDP would not cause material harm to the objectives of sustainable transport, either in terms of local or of national

policies and advice relating to such transport. However, without suitable safeguards the proposal would result in danger to highway safety on the Bogey Road.

27. In the light of this conclusion I consider that it would have been justified to allow the appeal without the need to assess the second main issue. Nevertheless, in case a different conclusion were subsequently to be reached on this first issue, I have also considered the second main issue which I identified at the inquiry.

Second main issue

Local need

28. The aim of helping satisfy a local need for DSC featured large in the Appellants' reasons for making the application in July 2009. At that time they pointed out that, as Tower colliery at Hirwaun had recently ceased production, there was an unmet need from local customers for domestic use for similar coal to that which had been mined there. They now accept however that the immediately local market for such coal is unlikely to be more than about 5,000 tonnes a year. Instead they contend that the local market for domestic coal should include the whole of South Wales, together with some places further away, and also that there is a demand for DSC from the recreational steam railway and other steam engine markets, both from within Wales and from further afield.
29. The Council requested details of these two principal markets for DSC before determining the application. However, apart from general letters of support from their coal factors based in England, and also some from mainly South Wales coal merchants and the local Brecon Mountain Railway, I consider that the Appellants' evidence on this matter is sketchy at best.
30. I conclude therefore that there is no demonstrable local need for up to 50,000 tonnes a year of DSC even if the whole of Wales is taken to mean the local area. I accept that the supply of DSC to consumers both in Wales and England may save imports of such coal from other countries. Nevertheless, whilst this could possibly be a material consideration in the context of the whole United Kingdom economy, as the evidence in this appeal is so tentative, it would be unwise for me to attach more than minimal weight to this import-saving, macro-economic argument.

On-site geological conditions

31. This topic was only raised by the Appellants as a possible major consideration rather late in the day, and even then was not given much prominence by them until quite recently. I do not consider therefore that any criticism can fairly be made of the Council in not making specific reference to it in their reasons for refusal, nor in their statement of case for this appeal, nor in not giving it detailed coverage in their evidence for the inquiry. Further, it was hardly mentioned at all in the statement of common ground prior to the inquiry. None of this however absolves me from giving this matter close attention.
32. Whilst the Appellants were aware as far back as 2004, or even earlier, that some of the coal seams which they wished to work contained a high proportion of sulphur – up to 5% - they hoped that by blending they would be able to sell all the coal from the LRS to the APS. In the event the flue gas desulphurisation method which this power station finally adopted resulted in the Appellants being unable to blend out their most sulphurous seams so as to achieve a weighted average of no more than 1.15% sulphur content, and which had become the maximum level acceptable to the power

station. The unacceptability of high sulphur coal in the blend for the power station only became clear towards the end of 2007. This high sulphur coal from various seams constitutes about 10% of the total annual output of the LRS, that is, some 100,000 tonnes.

33. The Appellants have now identified an outlet for some 50,000 tonnes a year of this high sulphur coal at the PSW, which is now sent there by rail. They have also attempted to sell such coal to the ACW but the absence of modern rail facilities there means that this works cannot at present be supplied by this means. However, it is really a matter for the cement works to decide whether to do so, rather than expect the Appellants to have to take on this task. In addition, they have experimented with sending one trainload of such coal to the Drax power station where evidently it is chemically acceptable. I was not told why this experiment has not been repeated but, on the other hand, neither the Council nor local residents were able to cast any credible doubt on the seriousness or good intentions of this failed experiment.
34. The position remains therefore that there are about 50,000 tonnes a year of high sulphur DSC for which there is not an identified outlet served by rail. I have considered the Council's contention that, since the Appellants receive a higher price per tonne for coal delivered by road than for coal delivered in bulk by rail, there is little or no incentive for them to find a rail-served bulk outlet for any of this coal. However, in the absence of clear evidence from the Council or their supporters that such outlets exist in practice, I attach little weight to this micro-economic point.
35. I conclude therefore on this matter that, because of on-site geological conditions, it is not possible to dispose of the whole output of the LRS at the APS as was intended in 2005, largely because of the particular flue gas desulphurisation method adopted by the power station. About half of this high sulphur coal is sent to PSW by rail but the other half needs to be sent to most, if not all, of the other present or potential customers by road. In my view it would be less environmentally harmful in terms of carbon dioxide emissions to do so by road direct from the CPD, irrespective of the location of those customers, rather than indirectly but lawfully from Barry Docks as at present.
36. I have considered the matter of the degradation of this relatively soft DSC each time it is mechanically handled but, as this is within the Appellants' control to improve, if not eradicate, by using different handling techniques, I attach little weight to their argument in this respect. However, I note that if this coal is handled fewer times, as would be the case if it leaves the CDP by road, there would probably be marginally less waste of this important mineral resource. I have also considered the view of some local objectors that this high sulphur coal should either be left in the ground or at least put back into the void as progressive restoration proceeds. This too would be a waste of an important mineral resource in my view and is not, therefore, an acceptable solution to the problem of dealing with the quite small amount of such coal obtained from the LRS.

Conclusion

37. Overall I conclude on this issue that, whilst there is insufficient justification for the proposed movement of high sulphur coal by road on the grounds of local need – however that term may reasonably be applied – there is sufficient justification for on-site geological reasons to outweigh any harm on the first main issue which may in the event be held to exist.

Conditions and obligations

38. In addition to a revised condition 37, I have also considered the continuing applicability of all the other conditions imposed on the 2005 permission. In the interests of consistency I have retained the numbers of the conditions on that permission, though in some cases a condition is now indicated as being deleted, since it is not relevant to the permission which I have granted. Since reasons were given individually for all the conditions imposed in 2005, or for small groups of them, I have also set out reasons in this way, though this would not be normal practice in cases where an Inspector makes the decision. All the new conditions and their reasons are set out in the attached Schedule.
39. I have considered all the conditions discussed at the inquiry in the light of the advice in Welsh Office Circular 35/95 on *The Use of Conditions in Planning Permissions* which is still in force. In particular I have paid attention to the 6 tests for conditions set out in paragraph 14 of that advice and to the recommended wording of conditions.
40. In dealing with many of the conditions where their substance is carried forward from the 2005 permission, but which need to be updated to reflect the current situation, I have cross-referred to the 2005 conditions those which I have imposed. However, this means that the permission which I have granted is not wholly comprehensible within its own covers. It is necessary therefore before this permission is implemented for a document to be compiled by the Appellants setting out the way in which all such conditions have been complied with or have been discharged. This compendium will need to be agreed with the Council and I have, therefore, imposed condition 7(2) accordingly.
41. The new condition 37 needs to repeat the present restriction on the movement of all coal from the LRS initially to the CDP. I have therefore imposed condition 37(1). Further, in order properly to regulate the permitted movement of coal by road from the CDP, new condition 37(2) needs to restrict the amount of LRS coal which can be taken away by lorry; 37(3) needs to specify the vehicular access point to the CDP which may be used; 37(4) needs to limit the maximum number of laden coal lorries which may leave the CDP each day, together with the maximum number which may leave in any one hour; 37(5) needs to require that the loads on such lorries are adequately sheeted; 37(6) needs to require that the wheels and undersides of such lorries are cleaned before they enter the public highway; and 37(7) needs to specify that before any movement of LRS coal by road from the CDP starts there shall be in force a Traffic Regulation Order [TRO] along most of the length of the Bogey Road. Although the CDP is outside the permitted LRS, nevertheless, since the CDP land is under the control of the Appellants for planning purposes, I consider that the conditions which I have imposed can properly be applied to this land.
42. I consider that condition 37(2) is needed in order to prohibit more than 50,000 tonnes a year of LRS coal being moved from the CDP, since more than this amount would begin to undermine the sustainable transport credentials of the LRS. Condition 37(3) is required in order to ensure that only a safe access is used by lorries coming to collect or take away LRS coal. Condition 37(4) is necessary for the protection of highway safety by prohibiting too many LRS coal lorries leaving the CDP on any day or during any part of a day. Condition 37(5) is needed both for the protection of highway safety by seeking to prevent the spillage of loads onto the highway, but also for the protection of amenity to prevent dust being blown off laden lorries. And condition 37(6) is needed for the protection of highway safety by seeking to prevent loose material being carried onto the highway by LRS coal lorries.

43. Turning to condition 37(7), I have paid particular attention to the routes which LRS coal lorries ought to be able to use to and from the CDP. The Appellants offer a section 106 obligation which would specify which roads in the locality could be used by such lorries but which would expressly prohibit use of the Bogey Road to the west of the direct access point to the CDP. Since the drivers of such lorries would be under the control of the haulage operators contracted to the Appellants, the latter contend that such restrictions could be applied and would be effective.
44. However, as paragraph 5 of Appendix O to MINTAN2 makes clear, neither planning conditions nor obligations are an appropriate means of controlling the right of passage over public roads. The appropriate mechanism is an Order made under section 1 of the Road Traffic Regulation Act 1984 restricting all traffic above a specified axle weight. This means though that if such an order were made in respect of most of the Bogey Road, all vehicles above the specified axle weight traffic would be prohibited, unless they were lawfully calling at sites or premises along the controlled length.
45. Apparently there used to be a weight restriction on this road but this has been made ineffective by the recent diversion which avoids vehicles passing over the old railway bridge. There was also a physical width restriction on that bridge in order to protect its parapets, though whether that restriction was the subject of the TRO is not clear. In my view a physical width restriction is generally more effective than a weight restriction, since the latter is more difficult to enforce. However, it will be a matter for the Council as the local highway authority to decide the method of restriction and also the precise length of the Bogey Road to which the TRO should apply. Condition 37(7) therefore requires the TRO to be in place before LRS coal lorries can come to and go from the CDP. This Order would also substantially reduce the existing number of heavy lorries which use this road, to the benefit of the residential amenity of residents of Incline Side.
46. Whilst paragraph 5 of Appendix O indicates that planning conditions can require access to be angled such that vehicles are prevented from turning in a particular direction where regulations are in force to reinforce that direction, nevertheless as there are no details before me of any such physical works, I consider that an appropriate TRO would be sufficient in this particular case. On the other hand in order to remind drivers of LRS coal lorries leaving the CDP about the direction they should take, I have imposed a requirement for suitable signage as condition 37(8).
47. The legal agreement between the Appellants and the Council relating to the payment of community benefit money is not affected by the appeal proposal and, in any case, is outside planning legislation. However the section 106 obligation which accompanied the 2005 permission and which provides a bond to cover the cost of the restoration of the site should the Appellants be unable or refuse to do so is potentially a relevant consideration in this appeal. I have though also taken into account the existence of section 6 of the Mid Glamorgan County Council Act 1987. This makes provision for a local planning authority to require a satisfactory '*... landscaping ... preservation, restoration ... reinstatement ... or aftercare*' bond from private operators of coal extraction sites before a permission is started or, as the case may be, continues, in order to secure the performance of any relevant conditions subject to which planning permission is granted. Such bonds are generally known simply as restoration bonds.
48. Paragraph 20 of Appendix B to Welsh Office Circular 13/97 on *Planning Obligations* and which is also still in force, indicates that if there is a choice between imposing conditions and entering into a planning obligation, the imposition of a condition which satisfies the policy tests in Circular 35/95 is preferable because it enables a developer

to appeal to the Secretary of State (now Welsh Ministers). Whilst no such appeal could be made against any condition which I imposed, nevertheless, the principle remains that in general a condition is to be preferred to an obligation. Paragraph 65 of MINTAN2 recognises the existence of the Mid Glamorgan Act and paragraph 66 indicates that the 10-year derogation for the successors of the British Coal Corporation (which in my view included the Opencast Executive) has now expired. The Council confirm that section 6 of this local Act is applicable in this case.

49. Whilst it is the case that section 6 of this Act also applied in 2005, nevertheless the National Assembly chose at that time to accept the section 106 obligation made under the 1990 planning legislation. I acknowledge that MINTAN2 postdates the 2005 permission. Nevertheless, in the interests of consistency I consider that the planning obligation now offered by the Appellants, as revised, signed and dated at the inquiry, is an acceptable means of dealing with the provision of a restoration bond. Covenant 3.1 of this obligation deals with this bond.
50. In addition, covenant 3.2 deals with the keeping and making available for inspection of records relating to the dispatch (thus) of coal by road from the site. In my view, since all coal from the LRS must still go first to the CDP, the site for the purposes of this obligation can only mean the CDP, notwithstanding the definition in part 1 of the obligation, and also because the CPD is under the control of the Appellants for planning purposes. Its boundary is defined on the plan attached to the obligation and the access for LRS coal lorries is clearly marked on this plan as point Z. I appreciate that point Z is within Caerphilly County Borough but as this is an existing, well laid-out access, I do not consider that a separate planning permission is required from that Council for the use of this access by LRS coal lorries. Although this plan also shows the proposed routes to and from the CDP that would have been used by such lorries if there had been a routeing agreement, instead of a TRO being made for most of the Bogey Road, nevertheless I do not consider that this extra routeing information invalidates either the obligation plan or the obligation itself.
51. Covenant 3.3 indemnifies the Council in respect of its costs arising from the formulation and promotion of any TRO deemed necessary or desirable in respect of roads in the vicinity of the site within their area. Since it would not be necessary in my view for the TRO to cover the short length of the Bogey Road in Caerphilly County Borough, the terms of this covenant will be sufficient. Further, as the expenditure of money will be necessary by the Council in making this order, it is appropriate that this matter be dealt with under this obligation rather than by a planning condition. It is partly because of the length of time that the bringing into force of this order is likely to take that I have specified – in condition 1 - that the development which I have permitted will have up to two years before it must start.
52. At the inquiry the Council confirmed that they are content with the terms of the submitted section 106 obligation and I have no reason to believe therefore that they will not readily seek to promote the necessary TRO for the Bogey Road and to bring it into force. I conclude therefore that it is both necessary for and relevant to the development which I have permitted.

Adjacent coal depot and proposed heat from waste plant

53. I have had regard to the planning status of the disused AJ Williams coal depot and the extent to which this might be a fallback position which the Appellants could rely on if this appeal had been dismissed. In my view the planning status of this site is by no means clear cut and could only be settled by an application made under either section

191 or 192 of the 1990 Act, as amended. However, as the Appellants do not seriously seek to rely on the movement of coal by rail to this yard in accordance with condition 37 of the 2005 permission, or for example by conveyor (though this would probably need a separate permission) and then by road from this former coal depot, I would not have regarded it as a fallback position of substantial weight had I otherwise been minded to dismiss this appeal.

54. As for the proposed Covanta heat from waste plant at Brig-y-Cwm, this would be on a site to the south of the disused coal depot beyond the existing railway line, but it would also use part of the coal depot during the construction phase. However, I understand that this proposal is shortly to be considered by the Infrastructure Planning Commission, and it would thus be unwise of me to predict the outcome. This proposed development is thus also of little weight as a material consideration in the determination of the present appeal.

Other sustainability matters

55. I have had regard to the contentions of both the Council and local residents that the appeal proposal should be assessed in terms of whether it would constitute sustainable development as such, and whether the word 'sustainability' in the reason for condition 37 should be construed accordingly. In my view, however, the proper test in this case is whether the proposed movement of LRS coal by road direct from the CDP would constitute sustainable transport. Nevertheless, even when assessed in the light of the wider sustainability objectives of both the LRS as a whole and of national policy, I do not consider that those objectives will be materially compromised by the minor alteration of the means of movement of LRS coal from the CDP which I have allowed.

56. I have also considered the view of local residents that the burning of coal for domestic purposes should not be encouraged, and that it is unacceptable for the APS to continue to burn coal in the absence of carbon capture. However, as neither of these matters is before me for determination, they have not affected my decision.

Overall conclusion

57. Taking into account all the evidence presented at the inquiry and in writing, I conclude therefore that, with suitable planning conditions and accompanied by a new section 106 obligation, the proposed movement of up to 50,000 tonnes a year of LRS coal by road from the CDP would be environmentally acceptable and would be a proportionate response to the on-site geological conditions with which the Appellants must be able to deal in an economic manner.

Formal Decision

58. For the above reasons I hereby allow this appeal and grant planning permission for the Ffos-y-Fran Land Reclamation Scheme, east of Merthyr Tydfil, incorporating the extraction of coal by opencast methods, and being the final phase of the East Merthyr Reclamation Scheme in accordance with application Ref P/08/0316 dated 14/07/09 without complying with condition 37 subject to which planning permission Ref APP 152-07-014 was granted on 11/04/05 by the Planning Decisions Committee of the National Assembly for Wales, but subject to the conditions in the attached Schedule.

Ian Osborne

Inspector

Schedule of Conditions

Commencement of development

1. The development hereby permitted shall start not later than the expiration of 2 years from the date of this decision.

Reason

To comply with Section 91 of the Town and Country Planning Act 1990 and to prevent any protracted delay in the implementation of this permission.

2. Written notification of the date of the proposed start of the development hereby permitted shall be submitted to the Local Planning Authority not less than 56 days beforehand.

Reason

In the interests of clarity as to which permission is being implemented.

Duration of works

3. All coal extraction from the development hereby permitted shall cease no later than 06 September 2022.
4. 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.
5. Any building, plant, machinery, hard standing or other works associated with the coal extraction hereby permitted (or any discrete phase thereof) shall be removed from the land within 42 days of the completion of restoration, and the affected areas shall be reinstated in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority; and that scheme shall be submitted no later than 56 days prior to the cessation of coal extraction (or any discrete phase thereof).

Reason

To co-ordinate the duration of the development hereby permitted with the end dates permitted under APP 152-07-014.

Approved plans and documents

6. The development hereby permitted shall not be carried out other than wholly in accordance with the details shown on the submitted drawings; with the details approved pursuant to condition 6 of permission APP 152-07-014; and in accordance with the 2003 Environmental Statement and supporting documents, unless the Local Planning Authority gives written consent to any variation.

Reason

For the avoidance of doubt as to the extent and nature of the development hereby permitted.

Availability for inspection of approved plans and documents

7(1) From the start of the development hereby permitted until the completion of the restoration and aftercare of the land, a copy of this planning permission, together with all relevant plans and documents already approved and any other plans and documents subsequently approved in accordance with this permission, shall be permanently kept and made available for public inspection during normal working hours at both any site office and at the offices on the Cwmbargoed Disposal Point.

7(2) Before the development hereby permitted starts there shall be submitted to the Local Planning Authority for their approval in writing a compendium of all plans and other documents approved pursuant to conditions imposed on permission APP 152-07-014; and the approved compendium shall be made available for public inspection in accordance with condition 7(1) above.

Reason

To ensure that the site operator, the Local Planning Authority and members of the public have access to the relevant documents on site, and to avoid ambiguity as to the nature and extent of this permission.

Method of working

8. The development hereby permitted shall not be carried out other than wholly in accordance with the Method of Working Statement approved by the Local Planning Authority pursuant to condition 8 of permission APP 152-07-014.

Reason

To ensure satisfactory implementation, completion and restoration of the permitted land reclamation scheme.

Areas of excavation for coal extraction

9. The surface areas of coal extraction hereby permitted shall not extend beyond the orange pecked lines indicated on Plan FLRS/PA1 and as required by condition 9 of permission APP 152-07-014.

Reason

To define and limit the surface area of the permitted coal extraction, and to protect residential amenity.

Depth of working

10. No coal extraction hereby permitted shall take place below the Lower 4 Feet (basal) seam in the principal extraction area, below the Hafod seam in the northeast coal extraction area, or below 10 metres (below existing ground level) in the southwest and southeast coal extraction areas, as indicated on Plan FLRS/PA1 and as required by condition 10 of permission APP 152-07-014.

Reason

To define the vertical extent of the permitted coal extraction, to limit the environmental effect of the development, to protect the hydrogeology of the site and to protect residential amenity.

Direction of working

11. The direction of opencast working hereby permitted shall be from south to north, as indicated on Plans FLRS/ES3/1-4, and as required by condition 11 of permission APP 152-07-014.

Reason

To minimise the potential impact on residential amenity and to achieve early reclamation of those areas of the site closest to residential areas.

Overburden mounds

12. The northern overburden mound of the development hereby permitted shall not exceed 475m AOD; the southern overburden mound shall not exceed 410m AOD; and the eastern overburden mound shall not exceed 465m AOD.

Reason

For the protection of visual amenity.

Hours and days of operation

13(1). Except in emergencies (i.e. circumstances in which the site operator has reasonable cause for preventing injury to persons or serious damage to property) in order to maintain the safe operation of the site (notification of which shall be given to the Local Planning Authority in writing as soon as is practically possible) or unless the Local Planning Authority has agreed otherwise in writing, no operations (i.e. any physical works including the starting/warming/revving of any internal combustion engine, motor vehicle or other machinery) other than water pumping or servicing to water pumps or environmental monitoring, shall be carried out on the site, except between the following times: -

- Normal site operations (other than those activities specified below)

Monday – Friday:	0700 - 2300 hrs
Saturday:	0700 - 1700 hrs

- On-site coal haulage

Monday – Friday:	0700 - 1900 hrs
Saturday:	0700 - 1300 hrs

- Blasting:

Monday - Friday	1000 - 1300 hrs and 1400 - 1600 hrs
Saturday	1000 - 1300 hrs

- Removal of existing waste tips

(Deleted)

- Formation and removal of baffle mounds, and the stripping and replacement of soil within a 300 metre radius of any dwelling

Monday - Friday	0800 - 1900 hrs
Saturday	0800 - 1300 hrs

13(2). No work shall be undertaken on site in connection with the development hereby permitted on Sundays or Public/Bank Holidays, except in the case of emergencies as specified in the first paragraph of condition 13(1).

Reason

For the protection of residential amenity.

Dust control

14. The development hereby permitted shall not take place other than wholly in accordance with the dust suppression and air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 14 of permission APP 152-07-014 and based on the measures set out in the 2003 Environmental Statement referred to in condition 6 of that permission.
15. The dust suppression measures to be employed shall use the Best Available Technology Not Entailing Excessive Cost for the monitoring and control of dust which may arise directly or indirectly as a result of site activities. In particular:
- A sufficient number of spraying units shall be provided and maintained in efficient working order so as to ensure that haul routes and other areas traversed by vehicles are kept damp during dry weather.
 - All spraying vehicles shall have an adequate water supply at all times.
 - There shall be regular and effective maintenance of haul roads.
 - The exhausts and through-body exhaust systems of all vehicles and other plant shall be fitted so as to prevent exhaust gases being emitted downwards.
 - Effective dust collection systems shall be fitted to all blast hole drilling machines before such machines are operated.
 - Prior to all blasting, all arisings from blast hole drilling shall be bagged and disposed of safely.
 - The tipping or removal of overburden shall cease temporarily or be relocated within the overburden storage area whenever the Local Planning Authority considers that wind strength and direction may result in a significant dust nuisance, and notifies the site operator accordingly.
 - The construction of all baffle mounds shall cease temporarily or be relocated whenever the Local Planning Authority considers that the wind strength and direction may result in significant dust nuisance and notifies the site operator accordingly.
 - The site operator shall provide and maintain a sufficient number of vapour masts so as to ensure that an effective vapour screen can be produced at any point in the site.
 - All baffle bunds shall be sealed and seeded as soon as practicable after they have been constructed in such a way as to minimise wind blown material from adversely affecting nearby dwellings.

Reason

To protect the amenity of local residents from the potential effects of dust arising from the permitted development.

Air quality

16. The development hereby permitted shall be monitored in accordance with the air quality monitoring scheme approved by the Local Planning Authority in accordance with condition 16 of permission APP 152-07-014.

Reason

To protect the amenities of local residents from the potential adverse effects of dust arising from the permitted development.

Noise

17(1) With the exception of those activities indicated in conditions 18 and 22 below, any noise arising from the development hereby permitted shall not exceed the following *dBLAeq, 1hr* by reference to the following specific noise monitoring locations.

Ref No.	Location	0700-1900 hrs	1900-2300 hrs
1	Blaen Dowlais	55	42
2	Japonica Drive	54	42
3	Mount View	55	42
4	Incline Side	55	42

17(2) The development hereby permitted shall be monitored by the site operator in accordance with the scheme approved by the Local Planning Authority in accordance with condition 17(b) of permission APP 152-07-014.

18. During baffle mound construction and removal, soil stripping and removal of soil heaps, noise levels shall not exceed a daytime noise level of *70 dBLAeq, 1hr* over periods not exceeding eight weeks in any one year.

19. Efficient silencing equipment shall be fitted to and used by all vehicles and other plant and machinery on site and shall be efficiently maintained in accordance with the manufacturer's recommendations.

20. All haul roads in direct line of sight and within 500 metres of any dwelling shall be adequately screened, where practicable, to attenuate noise levels.

21. Equipment operating on a 24-hour basis, such as pumps, shall be placed in acoustic enclosures and positioned away from noise sensitive locations where practicable.

22. The rating level of noise emitted from such pump enclosures shall not exceed the existing background noise level by more than an amount to be agreed in writing by the Local Planning authority before the development hereby permitted starts.

Reason

To protect the residential amenity of neighbours.

Blasting

23. All blasting required for the development hereby permitted shall be designed so that the ground vibration measured as peak particle velocity (PPV) shall not exceed 8mm per second at any residential or similarly sensitive property; and the design limit shall ensure that the ground vibration for at least 95% of all blasts in any 20 week period shall not exceed a PPV of 6mm per second.
24. Blasting shall be limited to four blasts a day between the hours of 1000 to 1300 and 1400 to 1600 hours (two blasts per time window) and no blasting shall be carried out on Sundays or Bank/Public Holidays, nor in the hours of darkness.
25. The development hereby permitted shall not be carried out other than wholly in accordance with the type of vibration monitoring station required by condition 25 of permission APP 152-07-014; all vibration monitoring stations shall be retained in the locations approved in writing by the Local Planning Authority; and all monitoring data shall be made available for inspection by the Local Planning Authority on request.
26. No blasting shall be carried out within the 300m blast exclusion zone indicated on Dwg No MMAG/BLAST/01 as required by condition 26 of permission APP 152-07-014.

Reason

To protect the amenity of the local environment, including of neighbours.

27. The level of vibration at the boundary of the adjoining railway land shall not exceed a maximum peak particle velocity of 12mm per second.

Reason

To maintain the integrity of the adjoining railway line.

Highways

28. There shall be no vehicle access in connection with the development hereby permitted to or from the public highway other than at points X & Y shown on Dwg No FLRS/PA1; and there shall be none for coal lorries associated with the development hereby permitted other than at point Z on the plan attached to the section 106 obligation which accompanies this permission.
29. Other than at crossing point X there shall be no movement of lorries or plant from the development hereby permitted to/from the Cwmbargoed Disposal Point on the public highway unless otherwise agreed in writing by the Local Planning Authority.
30. The use of access point Y by vehicles and other plant shall be restricted solely to the entry and exit of plant and support vehicles associated with the development hereby permitted.
31. The development hereby permitted shall not take place other than wholly in accordance with the engineering details of access for points X and Y required by permission APP 152-07-014.
32. The surface of the highway crossing at point X shall be retained in good condition for a distance and width of not less than 100 x 6 m in accordance with the details approved by the Local Planning Authority in accordance with condition 32 of permission APP 152-07-014; and the access at point Y shall be similarly retained in good condition for a distance and width of not less than 50 x 6m.

33. All vehicles using access points X and Y in connection with the development hereby permitted shall pass through the wheel cleaning facilities provided in accordance with condition 33 of permission Ref APP 152-07-014; and the vehicle cleaning facility at point Z on the Cwmbargoed Disposal Point shall be retained in good working order for the duration of the transportation of coal from the development.

Reason

For the protection of highway safety and of residential amenity.

34. (Deleted)

Parking provision

35. Employee parking for the development hereby permitted shall be in accordance with the requirements of condition 35 of permission APP 152-07-014; and such parking provision shall be retained for the duration of the development.

Reason

For the protection of highway safety.

Transportation of coal

36. All vehicles entering the highway from the development hereby permitted shall do so in a clean condition; and all vehicles transporting coal from the land reclamation scheme entering the Bogey Road from the Cwmbargoed Disposal Point shall first have their wheels and undersides cleaned on site in the existing vehicle cleaning facility on that land.

Reason

To avoid the deposit of loose material on the highway.

- 37(1). Except as permitted by condition 37(2) all coal from the development hereby permitted shall be taken to the Cwmbargoed Disposal Point for onward transmission by rail.
- 37(2). No more than 50,000 tonnes of coal a year from the development hereby permitted shall be transported from the Cwmbargoed Disposal Point by road.
- 37(3). All vehicles transporting coal from the development hereby permitted shall leave the Cwmbargoed Disposal Point at point Z shown on the plan attached to the section 106 obligation which accompanies this permission; and all vehicles arriving at the Cwmbargoed Disposal Point to transport such coal shall also use this same access.
- 37(4). No more than 20 vehicles transporting coal from the development hereby permitted shall leave the Cwmbargoed Disposal Point each day; and no more than 5 such lorries shall leave this disposal point in any one hour.
- 37(5). All vehicles transporting coal from the development hereby permitted from the Cwmbargoed Disposal Point shall have their loads covered in accordance with details to be first approved in writing by the Local Planning Authority.
- 37(6). All vehicles transporting coal from the development hereby permitted from the Cwmbargoed Disposal Point shall have their wheels and undersides cleaned before leaving this land in accordance with details to be first approved in writing by the

Local Planning Authority; and the approved means of vehicle cleaning shall thereafter be retained in good working condition until the transportation of all such coal ceases.

37(7). Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be in force a Traffic Regulation Order in respect of that length of this road determined appropriate by the Merthyr Tydfil County Borough Council; and if at any time that Order ceases to have effect all transportation by road of such coal shall cease until a replacement order comes into force or unless the Local Planning Authority gives written consent to any variation.

37(8). Before any coal from the development hereby permitted is transported by road from the Cwmbargoed Disposal Point, there shall be submitted to the Local Planning Authority for their approval in writing details of signage to be erected at the exit from that land informing the drivers of vehicles transporting such coal of the need to observe the requirements of the TRO and to advise them of the route which they should follow to the A465(T) Heads of the Valleys Road; the approved signage shall be erected before any coal from the development hereby permitted is transported by road from the disposal point; and all such signage shall thereafter be retained until the transportation of all such coal ceases.

Reason

To define the means of coal transportation from the land reclamation site via the disposal point, and in the interests of the achievement of sustainable transport and for the protection of highway safety and residential amenity.

Importation of materials

38. No waste material (statutorily controlled or otherwise) or minerals for blending purposes shall be imported either to the land reclamation scheme hereby permitted or the Cwmbargoed Disposal Point except with the prior written approval of the Local Planning Authority.

Reason

To define the scope of this permission and in order to prevent development on a scale or of a nature not presently envisaged and not considered acceptable for planning purposes, particularly in terms of amenity but allowing for the continuation of lawful activities at the existing rail siding within both the permitted land reclamation scheme and the disposal point.

Preparation and storage of materials

39. No materials, including minerals excavated from the development hereby permitted shall be stocked on the land other than within the designated areas shown on the plans approved under permission APP 152-07-014, other than those necessary for enabling works.

Reason

For the protection of amenity.

Plant and machinery

40. All cranes and other jibbed machines used in connection with the development hereby permitted shall be so positioned that the jib or any suspended load shall not swing

over railway land, or within 3 metres of the nearest rail track if the boundary of the railway land is closer than 3m from the permitted scheme.

41. All cranes, machinery and construction plant used in connection with the development hereby permitted shall be so positioned and used to prevent the accidental entry onto railway land of such plant, or loads attached thereto, in the event of failure.

Reason

For the protection of the safety of rail traffic.

Environmental management plan

42. Before the development hereby permitted starts an Environmental Management Plan [EMP] shall be submitted for the written approval of the Local Planning Authority for each phase of the development, as required by condition 42 of permission APP 152-07-014; and the EMP shall be implemented in accordance with the approved scheme, save as otherwise provided for by other conditions of this permission.

Reason

For the protection of the environment.

Groundwater monitoring and protection

43 (Deleted)

44. Once the development hereby permitted starts the groundwater monitoring scheme approved by the Local Planning Authority in accordance with condition 44 of permission APP 152-07-014 shall continue for the duration of the development.

Reason

To prevent pollution of the water environment.

45. If during the course of the development hereby permitted any contamination of a nature not previously identified is encountered, representative samples shall be tested by the site operator to determine the nature and extent of any such contamination in order to evaluate the risk it might present to controlled waters; if the contamination could materially affect controlled waters at/below the site and cannot be dealt with by measures set out in the Method Statement, then no further operations shall be carried out in the affected area until the site operator has submitted to the Local Planning Authority for their written approval an addendum to the Method Statement or unless the Local Planning Authority give written consent for any variation; and this addendum shall specify how this contamination must be dealt with and what measures must be implemented before operations continue.

Reason

To ensure that the development complies with the details approved under permission APP 152-07-014 for the protection of controlled waters.

Construction phase works

46. The development hereby permitted shall not be carried out other than wholly in accordance with the Method Statement approved by the Local Planning Authority in accordance with condition 46 of permission APP 152-07-014.

Reason

For the protection of amenity

Foul and surface water drainage

47. The development hereby permitted shall not be carried out other than wholly in accordance with the scheme for the disposal of foul sewage approved by the Local Planning Authority in accordance with condition 47 of permission APP 152-07-014.
48. The development hereby permitted shall not be carried out other than wholly in accordance with the detailed plans for a comprehensive drainage and lagoon system to intercept and treat surface water from the land reclamation site approved by the Local Planning Authority in accordance with condition 48 of permission APP 152-07-014.

Reason

To prevent pollution of the water environment.

Site illumination

49. The development hereby permitted shall not be carried out other than wholly in accordance with the scheme of illumination approved by the Local Planning Authority in accordance with condition 49 of permission APP 152-07-014; the approved lighting scheme shall be retained in good working condition for the duration of the development; and shall then be removed upon its completion.

Reason

To minimise undue glare and distraction in the interests of residential amenity and highway safety.

Land restoration

50. (Deleted)
51. The development hereby permitted shall not be carried out other than wholly in accordance with the strategy for progressive restoration and management approved by the Local Planning Authority in accordance with condition 51 of permission APP 152-07-014.
52. In the event of a cessation of the extraction of coal prior to the completion of the approved restoration and management strategy, and which constitutes a permanent cessation within the terms of paragraph 3 of Schedule 9 of the Town and Country Planning Act 1990, within 6 months of the cessation of such extraction there shall be submitted to the Local Planning Authority for their approval in writing a scheme for the restoration of the land which shall include details of reclamation and aftercare; and the approved scheme shall be implemented within 3 years of such approval (excluding any aftercare measures) unless the Local Planning Authority gives written consent to any variation.

Reason

To ensure that the land is restored to a condition capable of beneficial use in the event of the early cessation of coal extraction, and for the protection of visual amenity.

Aftercare

53. The development hereby permitted shall not be carried out other than wholly in accordance with the phased aftercare schemes to be approved by the Local Planning Authority in accordance with condition 53 of permission APP 152-07-014.

Reason

To comply with the requirements of Schedule 5 of the Town and Country Planning Act 1990 and to ensure that the reclaimed land is correctly husbanded to bring it to the standard required for agricultural, amenity, and conservation use.

Agricultural water supplies

54. The site operator shall ensure that any flow of water used for agricultural purposes that is adversely affected by the development hereby permitted is reinstated in a satisfactory manner, including the provision of alternative supplies during the course of such remedial operations.

Reason

To ensure that agricultural use can be maintained.

Archaeology

55. The development hereby permitted shall not be carried out other than wholly in accordance with the phased Programme of Archaeological Work approved by the Local Planning Authority in accordance with condition 55 of permission APP 152-07-014.

56. For the duration of the development hereby permitted the site operator shall retain the services of an archaeologist approved by the Local Planning Authority who shall undertake a watching brief over recognised archaeological features throughout the excavation and restoration period of the land reclamation scheme.

Reason

To protect or record the archaeological features on the site.

Protected habitats and species

57. The development hereby permitted shall not be carried out other than wholly in accordance with the requirements of Schedules 2 and 5 of the Conservation of Habitats and Species Regulations 2010 in respect of any protected habitats or species on the land reclamation site, as required by condition 57 of permission APP 152-07-014 but as may be modified by the 2010 Regulations.

Reason

To safeguard any protected habitats or species within or around the permitted land reclamation scheme.

Liaison committee

58. Once the development hereby permitted starts the site operator shall continue to organise the site liaison committee established in accordance with condition 58 of permission APP 152-07-014.

Reason

To ensure that the local community has an understanding of the work being carried out on the land reclamation and opencast coal site, and that the site operator and any contractor are aware of local community concerns.

Environmental liaison officer

59. Once the development hereby permitted starts the site operator shall continue to employ an environmental liaison officer approved in writing by the Local Planning Authority who shall oversee all soil stripping/storage, the restoration scheme, habitat re-creation and landscaping works, as required by condition 59 of permission APP 152-07-014.

Reason

To ensure that the site is reclaimed in an acceptable manner and to a condition capable of beneficial afteruse, in the interests of the protection of residential and visual amenity, and for general public benefit.

Abbreviations used in the above Decision

ACW	Aberthaw Cement Works
APS	Aberthaw Power Station
CDP	Cwmbargoed Disposal Point
DSC	Dry Steam Coal
EIA	Environmental Impact Assessment
ES	Environmental Statement
LRS	Land Reclamation Scheme
MINTAN2	Minerals Technical Advice Note 2 (on coal)
MPPW	Minerals Planning Policy Wales
PDB	Planning Decisions Branch
PTS	Port Talbot Steelworks
TAN 18	Technical Advice Note 18 : Transport
TRO	Traffic Regulation Order

Persons who appeared at the inquiry

For the Appellants

Mr Rhodri Price Lewis QC

instructed by Mr Christopher Bowes of
DLA Piper UK LLP, Manchester

He called

Mr Stephen Tillman BSc(Hons) MSc CEng

Director of Appellant Company

Mrs Charlotte Brewin BSc MSc(Dist) AMIEMA

Principal Consultant, RPS Planning and
Development, Cardiff

Mr William Ryan BA(Hons) BTP MRTPI

Principal Planner, SLR Consulting, Cardiff

For the Council

Miss Mary Cook

of Counsel, instructed by Mr Gareth Chapman,
Chief Executive, Merthyr Tydfil CBC

She called

Mr Norman Davies BSC(Econ) DipTP MRTPI

Town Planning Manager, Merthyr Tydfil CBC

For Mrs Elizabeth Condron and other local residents

Dr Paul Stookes PhD MSc LLB

Solicitor-Advocate, Richard Buxton
Environmental & Public Law, Cambridge

Interested persons

Mrs Alyson Austin

Local resident, Bradley Gardens,
Mountain Hare, Merthyr Tydfil

Mr Royston Stanley Thomas

Local resident, Incline Side, Mountain Hare,
Merthyr Tydfil

Mr Terry Evans

Local resident, Mount View, Mountain Hare,
Merthyr Tydfil

Mr Anthony Chaplin

Merthyr Initiative Group, Andrews Close,
Heolgerrig, Merthyr Tydfil

Mr Leon Stanfield

Resident, Cyfarthfa Gardens, Cefn Coed-y-
Cwmmer, Merthyr Tydfil

Documents

- Doc 1 Notification of the inquiry sent out by the Council
- Doc 2 Letter received in response to that notification
- Doc 3 Statement of Common Ground, including plans submitted with appeal application
- Doc 4.1 Proof of evidence of Mr Norman Davies
- Doc 4.2 Appendices to Mr Davies' proof, with list of contents, and including plans and a compact disc.
- Doc 5.1 Proof of evidence of Mr Stephen Tillman
- Doc 5.2 Appendices to Mr Tillman's proof, with list of contents, and including plans and photographs
- Doc 6.1 Proof of evidence of Mrs Charlotte Brewin
- Doc 6.2 Appendices to Mrs Brewin's proof, with list of contents
- Doc 7.1 Proof of evidence of Mr William Ryan
- Doc 7.2 Appendices to Mr Ryan's proof, with list of contents
- Doc 8 Copy of section 106 unilateral undertaking made by the Appellants, including appendices
- Docs 9.1-3 List of persons represented by Dr Paul Stookes, written representation by Mrs M H Dunn including appendices and photographs, and response by Appellants
- Doc 10 List of Inquiry Core Documents. Documents bound separately
- Doc 11 Letters of support from potential customers for high sulphur coal submitted by Appellants
- Doc 12.1-5 Copies of planning permissions relating to the Cwmbargoed Disposal Point
- Doc 13 Copy of email relating to proposed Brig-y-Cwm heat from waste plant
- Doc 14 Copy of 2003 planning application for land reclamation scheme and opencast coal extraction
- Doc 15 Copy of Environmental Statement which accompanied the 2003 application
- Doc 16 Bundle of correspondence relating to 2003 Environmental Statement for proposed land reclamation and opencast scheme
- Doc 17 Bundle of correspondence relating to possible need for a fresh Environmental Statement if this appeal allowed
- Doc 18 Copy of Guidance for Applicants for Freight Facility Grants in Wales and related correspondence
- Doc 19 Copy of section 6 of the Mid Glamorgan County Council Act 1987
- Doc 20 Copy of Environmental Management in Organizations : the IEMA Handbook
- Doc 21 Copy of letter from the Chief Planner at the Department for Communities and Local Government in England to Chief Planning Officers in England relating to Environmental Impact Assessment following the *Baker* judgement
- Doc 22 Copy of EEC Council Directive dated 27 June 1985 on the assessment of the effects of certain public and private projects on the environment
- Doc 23 Copy of judgement in *R oao Elizabeth Condron and Merthyr Tydfil County Borough Council and others [2009] EWHC 1621 (Admin)*
- Doc 24 Copy of judgement in *R oao Lousis Baker v Bath and East Somerset Council and others [2009] EWHC 595 (Admin)*
- Doc 25 Copy of judgement in *R oao Elizabeth Condron and Merthyr Tydfil County Borough Council and others [2010] EWCA Civ 534*

Plans

- Plan A Site plan and vehicular access points approved under permission Ref APP 152-07-014
- Plan B Blast exclusion zone plan approved under permission Ref APP 152-07-014
- Plans C.1-4 Phasing and restoration plans approved under permission Ref APP 152-07-014
- Plan D Plan attached to section 106 unilateral undertaking now made by the Appellants
- Plan E Appeal application site boundary and location plan. Appendix B to Mr Tillman's proof
- Plan F Deep and opencast coal mines in South Wales. Appendix C to Mr Tillman's proof
- Plan G Site location plan of proposed Tower opencast coal scheme

Photographs

- Photo 1 Aerial photo of south east part of land reclamation and opencast site, together with the Cwmbargoed Disposal Point, the AJ Williams coal depot and the site for proposed Coventa heat from waste plant, undated but recent, submitted by the Council
- Photos 2.1-2.3 Aerial photos of Aberthaw Cement Works showing existing rail connection, dated 2001, submitted by the Council

APPENDIX 2

Discharge of Condition Notices

Miller Argent (South Wales) Ltd
Miller House
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Tŷ Keir Hardie
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F.a.o: James Poyner

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Ffacs : (01685) 375095

Tel : (01685) 726233
Fax : (01685) 375095

Dyddiad/Date :

16th February 2007

Ein Cyf/Our Ref.: AND6/030225/AE
Eich Cyf/Your Ref.: JTP/185

Llinell Uniongyrchol/Direct Line : (01685) 726200
Gofynnwch am/Please Ask For : Mr A N Davies
e-bost/e-mail: norman.davies@merthyr.gov.uk

Dear Mr Poyner

FFOS-Y-FRAN (CONDITION 2)

Thank you for your letter dated 14th February, the contents of which are noted.

Yours sincerely

A N DAVIES
HEAD OF TOWN PLANNING

A handwritten signature in black ink, appearing to read 'A N Davies', written over the printed name and title.



cc:- G W Chapman, Deputy Chief Executive
Geraint Morgan, Legal Division

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29 Gelliwasted Road
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27 MAR 2007

For the attention of R J Leek

Ffon : (01685) 726233

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Ffacs : (01685)375095

Fax : (01685) 375095

Dyddiad/Date : 26th March 2007

Ein Cyf/Our Ref.: AND/030225/JR7
Eich Cyf/Your Ref.:

Llinell Uniongyrchol/Direct Line : (01685) 726200
Gofynnwch am/Please Ask For : Mr A N Davies
e-bost/e-mail: norman.davies@merthyr.gov.uk

Dear Sir

RE: PLANNING CONSENT 030225 – DISCHARGE OF PLANNING CONDITIONS 8, 14, 15, 16, 17, 25, 34, 42, 58 AND 59

I refer to our constructive meeting held on Friday, 23rd March 2007, also attended by your clients, Miller Argent, represented by Messrs Poyner, Tillman and Mason.

The meeting concentrated largely, though not exclusively, upon the remaining conditions precontents.

Having considered the raft of documentation submitted between the end of 2006 and March 2007 and, in light of the internal and external consultations undertaken, I confirm the following conditions are hereby discharged:- Nos 8, 14, 15, 16, 17, 25, 34, 42, 58 and 59.

You will recall that I stated none of the consultees offered adverse comments with regard to the above. However, the Regional Planning Advisor for WAG Department of Environment and Countryside offered specific comment on three items of the AirQuality, Noise and Vibration Strategy (Jan 2007) which you agreed to address (Condition 14 – 17 and 25).

With regard to Conditions 33 and 34, it is acknowledged these conditions were previously discharged, but this further confirmation letter takes into account the subsequent revisions suggested by the Head of Engineering.

With regard to Condition 58, the Constitution, which includes all necessary details of the composition of the Liaison Committee, is acceptable. You agreed to inform me of the agreed schedule of Liaison Committee meeting dates in due course.

As for Condition 59, you agreed to confirm the details, (including CV), of the successful candidate.

Yours faithfully


A N DAVIES
HEAD OF TOWN PLANNING

GARY THOMAS M.C.I.H.
Director of Customer Services
Cyfarwyddwr Gwasanaethau Cwsmeriaid
J Jones – Head of Town Planning/Pennaeth Cynllunio Trefol

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL
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Fax : (01685) 375095

-7 MAY 2012

Dyddiad/Date : 1st May 2012

Ein Cyf/Our Ref.: **AND/080316/JR01**
Eich Cyf/Your Ref.: **P/MA/MTCBC/FLRS/RJL**

Llinell Uniongyrchol/Direct Line : **(01685) 726201**
Gofynnwch am/Please Ask For : **Miss J Jones**
e-bost/e-mail: **judith.jones@merthyr.gov.uk**

Dear Mr Leek

RE: FLRS – PERMISSION APP/U6925/A/10/2129921

I refer to your letters of 5th July, 8th August (in response to my e-mail of 22nd July) and 10th October 2011, regarding the submission of schemes, information and other relevant details to discharge the following conditions attached to the Inspector's decision letter of 11th March, as corrected on 6th May 2011.

I confirm that the Traffic Regulation Order (TRO) report was presented to and accepted by the Council's Appeals Committee on 5th April 2012.

I have considered the submitted schemes and details which you submitted from last July and have liaised with colleagues in the Environmental Health, Highways and Legal Sections of the Council, as a result of which I confirm the following.

1. Conditions 2, 22, 37(5), 37(6) and 42 are discharged.
2. Condition 1. This condition may not yet be discharged. However, it will be automatically discharged if development starts on or before 5th May 2013.
3. Condition 7(1). This condition is discharged as the dedicated desk top computer (which allows for the public inspection of the relevant plans and documents already approved and subsequently approved in accordance with this permission) is in place at the site offices at Cwmbargoed Disposal Point. The facility must be available at all times during normal working hours.
4. Condition 7(2). This condition is discharged by virtue of the fact that the electronic compendium of all plans and other documents approved pursuant to conditions imposed on permission App 152-07-014 in 2005 and App/U6925/A/10/2129921 in 2011 are available for public inspection in accordance with condition 7(1) above.

The compendium, referred to as "The Ffôs-y-Fran Compendium of Planning Documents" is available for public inspection during normal working hours at the site

offices at Cwmbargoed Disposal Point, as required by this condition. Also, you indicated a further copy would be submitted to the Town Planning Division offices.

5. Condition 37(7). You will be aware that the TRO must be in force before any coal is transported by road from Cwmbargoed Disposal Point once the TRO is in force this condition will be discharged automatically.
6. Condition 37(8). The details submitted by email attachment dated 27th April 2012 are considered acceptable. Once the signage is erected in accordance with these approved details the condition will be discharged.

Yours sincerely



J JONES
HEAD OF TOWN PLANNING

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CF37 2BN

25 APR 2007

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Dyddiad/Date : 23rd April 2007

Ein Cyf/Our Ref.: AND/030225/JR12
Eich Cyf/Your Ref.:

Llinell Uniongyrchol/Direct Line : (01685) 726200
Gofynnwch am/Please Ask For : Mr A N Davies
e-bost/e-mail: norman.davies@merthyr.gov.uk

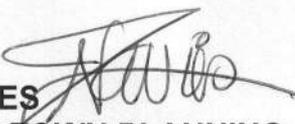
Dear Mr Leek

RE: PLANNING CONSENT 030225 – (CONDITION NO. 48)

Further to our recent meeting regarding the issue of "conditions precedent" with regard to the above, I confirm the Head of Engineering is now satisfied with the submitted scheme.

Accordingly, Condition 48 is hereby discharged.

Yours sincerely


A N DAVIES
HEAD OF TOWN PLANNING

APPENDIX 3

Coronavirus (Covid-19) Statement

MERTHYR (SOUTH WALES) LIMITED.

Ffos-y-fran Land Reclamation Scheme - Impact of COVID-19 on Production levels

As a result of the increasing levels of COVID-19 sweeping across the UK the Government announced a national lockdown in March 2020. Significant changes had to be made to production operations on Site taking the welfare of all employees into consideration, to ensure that work could continue to be carried out safely. Working patterns changed immediately from a double to a single shift operation to reduce the risks of cross contamination between machine operators, who were allocated a single machine wherever possible, and a strict cleaning regime was introduced across the site. Staggered start and finish times were implemented and transport arrangements to and from the mine were reviewed to meet social distancing requirements.

Although these measures allowed work to continue throughout the pandemic, this impacted both production time and operational efficiencies. Volumes of coal were significantly reduced which resulted in the Company losing virtually all of the Heritage steam coal market along with other orders recently secured with an additional steel making customer, other than Tata. Following a review, approximately 17% of the workforce were furloughed and working from home was encouraged where practicable. Initially, during the April – July 2020 period, volumes reduced by approximately 23% for production and 29% sales, compared to the corresponding period in 2019.

Through careful internal planning and management of the Covid-19 situation during this time, the Company retained the ability to respond to future increases in customer demand. However, the opportunity to re-introduce the double shift did not present itself due to the emergence of new strains of the virus and subsequent Government lockdowns, legislation and guidance. As a result, working patterns have continued as a single shift operation throughout the pandemic, reducing operational efficiencies and keeping production levels artificially low. As a result of these delays, it is not possible to recover the remaining coal in the void before the expected date for the cessation of coaling operations. Therefore, it will be necessary to extend the duration of operations beyond this date to ensure the full reserve can be realised.

Signed, on behalf of Merthyr (South Wales) Limited,



Mr David Lewis

(Director)

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