

Mr Stephen Tillman
Director
Miller Argent (South Wales) Limited
Cwmbargoed DP
Fochriw Road
Merthyr Tydfil
CF48 4AE

Eich cyf . Your ref:

Ein cyf . Our ref: : A-PP152-07-014

Dyddiad . Date. 11 April 2005

Dear Mr Tillman

**TOWN AND COUNTRY PLANNING ACT 1990:SECTION 77
APPLICATION BY MILLER ARGENT (SOUTH WALES) LIMITED
FOR THE FFOS-Y-FRAN LAND RECLAMATION SCHEME, INCORPORATING
THE EXTRACTION OF COAL BY OPENCAST METHODS, AND BEING THE
FINAL PHASE OF THE EAST MERTHYR RECLAMATION SCHEME**

1. Following the meeting of Planning Decision Committee (2) 2005/2 on 3 February 2005 to consider the above application a letter dated 7 February 2005, from Carwyn Jones AM Chair of that Committee, was sent to you indicating that following consideration of the report of the Inspector Clive Nield BSc, CEng, MICE, MCIWEM who held a local inquiry into the application, the Planning Decision Committee was minded for the reasons given in the letter to allow, subject to conditions, the application subject to the submission of a completed planning obligation under Section 106 of the above mentioned Act, to include provisions for a financial guarantee to ensure the restoration of the site in the event of the failure of the developer, the taking on of liabilities associated with waste tips on the site and the establishment of a local liaison committee. A copy of that letter is enclosed at Annex A to this letter which also includes a reproduction of the Inspector's conclusions set

Parc Cathays
Caerdydd
CF10 3NQ

Cathays Park
Cardiff
CF10 3NQ

out in that report. A copy of the Inspector's report was previously enclosed with the letter of 7 February 2005.

2. The letter of 7 February 2005 indicated that on receipt of a satisfactorily completed planning obligation, a grant of planning permission implementing the Planning Decision Committee's decision would issue. At its meeting on 3 February 2005 the Planning Decision Committee agreed that the question of whether any agreement subsequently submitted met the requirements set out in that letter, and any administrative matters relating to the precise wording of conditions to be imposed and the issue of the planning permission could be dealt with by officials.

3. Your letter of 22 February 2005 to the Assembly's Planning Division enclosed a copy of a proposed draft Section 106 Agreement. Following correspondence between you and officials of the Assembly's Planning Division about matters of detail in relation to the draft agreement, and conditions to be attached to a grant of planning permission, a copy of a signed agreement dated 30 March 2005 between Miller Argent (South Wales) Limited and Miller Argent Nominee (No. 1) Limited and Merthyr Tydfil County Borough Council was submitted to the Assembly's Planning Division on 31 March 2005. I am satisfied that this agreement provides a satisfactory completed planning obligation for the purposes of securing the benefits referred to in paragraph 14 of the letter of 7 February 2005 taken account of by the Planning Decision Committee as benefits favouring the grant of planning permission.

4. As indicated at paragraphs 12 and 13 of the letter of 7 February 2005, subject to amendments to suggested condition 34 and 60 in the Annex to the Inspector's report, the Planning Decision Committee agreed with the Inspector that the conditions listed in the Annex to his report would provide adequate and necessary controls over working methods aiming at minimising and mitigating impacts on the environment and local amenity. The conditions as agreed by the Planning Decision Committee are to be imposed subject to the amendments set out in paragraph 5 below.

5. In your letter of 22 February 2005, enclosing a copy of the proposed draft Section 106 Agreement, you referred to your assumption that proposed planning condition relating to the liaison committee (58) and restoration guarantee (60) would be removed to avoid any duplication in any forthcoming consent. With regard to those matters I can confirm the position as that set out in our letter to you of 8 March 2005. I consider that condition 58 should be retained as the provision in Schedule 2 of the Agreement differs from the condition approved by the Planning Decision Committee particularly in that the condition requires that the developer shall establish a liaison committee. As regards condition 60 I consider that this could be removed as its requirements would be met by the provision in Schedule 2 of the Agreement.

FORMAL DECISION

6. For the reasons given in the letter of 7 February 2005 from the Chair of Planning Decision Committee (2) 2005/2, and subject to the comments on conditions indicated above, I hereby grant planning permission, implementing the decision of the Planning Decision Committee set out in that letter, in respect of planning application Ref. 030225 dated 30 April 2003 for the Ffos-y-fran Land Reclamation Scheme, incorporating the extraction of coal by opencast methods, and being the final phase

of the East Merthyr Reclamation Scheme on land situated at Ffos-y-fran, East Merthyr, subject to the conditions at Annex B to this letter.

7. This letter, a copy of which has been sent to the Head of Planning Merthyr Tydfil County Borough Council, does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

R O Evans

Head of Branch 1, Planning Division

Enc: Leaflets "H" and "HC"

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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Summary

The Planning Decision Committee is minded, for the reasons given below, to allow, subject to conditions, the above application subject to the submission of a completed planning obligation under section 106 of the above mentioned Act, to include provisions for a financial guarantee to ensure the restoration of the site in the event of the failure of the developer, the taking on of liabilities associated with waste tips on the site and the establishment of a local liaison committee.

1.Consideration has been given to the report of the Inspector Clive Nield BSc, CEng, MICE, MCIWEM who held a local inquiry into the application by Miller Argent (South Wales) Limited for the Ffos-y-fran land reclamation scheme, incorporating the

Parc Cathays
Caerdydd
CF10 3NQ

Cathays Park
Cardiff
CF10 3NQ

Ffôn • Tel:
GTN:
Ffacs • Fax:
Ebost • Email:

extraction of coal by opencast methods, and being the final phase of the East Merthyr Reclamation scheme.

2. On 1 December 2003 the National Assembly for Wales directed under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act) that the application be referred to it rather than be determined by the local planning authority. On 1 February 2005 the Assembly resolved that a committee, to be known as Planning Decision Committee (2)2005/2 be established, in accordance with Standing Order 17 to discharge the functions of the Assembly under Section 77 of the 1990 Act, in respect of the application by Miller Argent (South Wales) Limited. Accordingly, the Planning Decision Committee has considered the application and has resolved under Standing Order 17.16 to adopt this letter.

3. The Inspector's conclusions are set out at paragraphs 296-356 of his report, a copy of which is enclosed, and those paragraphs are reproduced as an Annex to this letter. The Inspector recommended that the application be approved, subject to planning conditions.

4. Following the submission of the Inspector's report to the Assembly the Assembly's Planning Division sought further information from you and Merthyr Tydfil County Borough Council (the Council) on technical matters of detail in relation to the diversion and improvement of Bogey Road, a suggested condition relating to the provision of a parent company financial guarantee and the legal Agreement between Miller Argent (South Wales) Limited and the Council. These matters are dealt with below.

5. Subject to the comments below the Planning Decision Committee agree with the Inspector's conclusions and accept his recommendation.

6. The Planning Decision Committee agree with the Inspector that the proposal would provide both environmental and economic benefits which would include the restoration of a large area of derelict land in accordance with the development plan at no public expense. They agree with him that there would be the benefit of the provision of about 200 jobs and other local benefits together with the wider benefit of providing suitable coal for Aberthaw Power Station which is important to economic activity in South Wales. With regard to the provision of local benefits referred to by the Inspector the Planning Decision Committee consider that the proposed educational visitor/education centre, and the community benefit fund to be established by the Council, while desirable, cannot be regarded as necessary to make the development acceptable in land use planning terms, and therefore cannot be taken into account as factors weighing in favour of the development. Nevertheless, the Planning Decision Committee consider that the other factors identified by the Inspector are substantial benefits strongly favouring the proposal.

7. The Planning Decision Committee have weighed these benefits against the potential environmental disadvantages of the development. The Planning Decision Committee see no reason to disagree with the Inspector's conclusion that the general effect on the health of the community would not be significant and that, with the imposition of appropriate conditions, the effect on the living conditions of nearby residents from dust, noise and blasting would not be unacceptable. They also accept

his assessment that surface and groundwater resources would be adequately protected. While the Planning Decision Committee accept that the scheme would have a moderate effect on the historic landscape they agree with the Inspector that all features of high archaeological value would be protected. The Planning Decision Committee also agree with the Inspector that in the long term a more attractive landscape would be provided. They also accept that traffic effects would be negligible. The Planning Decision Committee agree with the Inspector that taken as a whole the development would not cause unacceptable harm to nature conservation and that the protection of Great Crested Newts which have been identified on the site should be assured by a condition requiring the necessary granting of a licence under the Habitat Regulations 1994 before any site clearance works take place.

8. The Planning Decision Committee agree with the Inspector that the scheme would be in accordance with the development plan and overall they consider that the substantial benefits associated with the scheme far outweigh the objections.

9. The Wales Spatial Plan was not considered at the inquiry. As regards South East Wales the strategy involves regeneration along the Heads of the Valleys corridor and the strengthening of the valleys by making them desirable places to live, work and visit and the provision of distinctive communities set in an attractive environment. The Planning Decision Committee take the view that evidence presented to the inquiry indicates that the scheme would not be out of accord with the strategy of the Spatial Plan.

10. The Planning Decision Committee have taken the environmental information, as defined for the purposes of the relevant Environmental Assessment Regulations, into consideration in reaching their decision on this application.

11. The Planning Decision Committee have reached their decision taking account of all correspondence received after the inquiry had closed and they are satisfied that the correspondence raised no new evidence or new matter of fact which would materially affect their decision.

12. The Planning Decision Committee have carefully considered the question of the conditions to be attached to a grant of planning permission having regard to the conditions discussed at the inquiry, the comments of the Inspector and the advice contained in Welsh Office Circular 35/95. Subject to the amendments referred to below the Planning Decision Committee agree with the Inspector that the conditions listed in the Annex to his report would provide adequate and necessary controls over working methods aiming at minimising and mitigating impacts on the environment and local amenity and should be imposed.

13. The Planning Decision Committee consider that suggested condition 34 in the Annex to the Inspector's report should be amended to incorporate reference to revised improvements to Bogey Road. The works relating to these improvements described in the planning application differ from those shown in the application under Section 247 of the Town and Country Planning Act 1990 for the stopping -up, diversion and improvement of Bogey Road details of which were submitted to the inquiry. Having considered the responses submitted by you and the Council to the consultation on this matter, referred to at paragraph 4 above, the Planning Decision

Committee have concluded that the revisions are not substantial and would have no additional traffic impact compared with the original works. In consequence they consider that the revised improvement works should be included as part of the scheme for associated highway engineering works to be agreed with the Council under condition 34. The Planning Decision Committee, again having considered the response submitted to consultation referred to in paragraph 4 above, also consider that suggested condition 60 in the Annex to the Inspector's report should be amended to avoid it having a restrictive effect should the development be carried out other than by your company.

14. The Inspector's report noted that your company and the Council have concluded a legal Agreement that makes certain matters legally binding on your company if the scheme is implemented. These are a royalty payment into a Community Fund controlled by the Council, a £15M financial guarantee to ensure the restoration of the site should the company fail, your company to take on all future liability associated with the three waste tips and the establishment a local liaison committee. A joint statement setting out these items was submitted to the inquiry as document A12. As indicated above the Planning Decision Committee do not consider that the provision of a community benefit fund is a matter to be taken into account in determining the application. However they have taken account of the other items identified in Document A12 as benefits favouring the grant of planning permission.

15. Having had regard to the consultation, referred to at paragraph 4 above, the Planning Decision Committee have noted that the legal Agreement concluded between your company and the Council, is a commercial agreement and not one made under Section 106 of the 1990 Act. In the view of the Planning Decision Committee, planning obligations which are to be taken into account in granting planning permission must be secured in accordance with Section 106 of the 1990 Act. In consequence the Planning Decision Committee consider that the grant of planning permission in this case should be subject to the submission of a completed Section 106 obligation which should include the items, referred to in paragraph 14 above, taken into account by the Planning Decision Committee as benefits favouring the grant of planning permission. In the opinion of the Planning Decision Committee it is a matter for the applicant company and the Council to consider whether they wish to secure any additional benefits and the means by which this should be achieved.

FORMAL DECISION

16. Your company is accordingly invited to conclude a planning obligation in respect of the matters referred to in paragraph 15 above and to submit it to the National Assembly Planning Division not later than 3 months from the date of this letter. On receipt of a satisfactorily completed planning obligation, a grant of planning permission implementing the Planning Decision Committee's decision set out at the

beginning of this letter will issue.

17. A copy of this letter has been sent to the Head of Planning Merthyr Tydfil County Borough Council.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written over the printed name.

Carwyn Jones AM

Chair, Planning Decision Committee (2)2005/2

Conclusions

[The numbers in square brackets indicate the relevant paragraphs of the report.]

296. At the time of the call-in the National Assembly for Wales advised that it particularly wished to be informed about the impact on surface and groundwater resources, the relevant national policies in Planning Policy Wales and Minerals Planning Policy Wales, and policies in the adopted Merthyr Tydfil Local Plan. These policies cover a wide range of matters, and consequently consideration of compliance of the proposed development with the policies has involved attention to the same wide range. Many local residents and their representatives have submitted evidence and views both at the inquiry and in writing and, whilst many matters have been raised, there is no doubt that their main concerns are in relation to impacts on health and living conditions.

297. I have taken all of these factors into account and have dealt with them to a greater or lesser degree, as appropriate. In my view, the main considerations in this application are the benefits of the scheme in terms of land restoration, the provision of coal and economic benefits to the local community, the effects on air quality and health and on the wider aspects of the living conditions of nearby residents, the effects on the water environment, and the effects on archaeological remains and the historic landscape. I shall start by summarising the policy framework and the development plan provisions for the scheme.

Policy Framework

298. It is a requirement of the Town and Country Planning Act 1990 (as amended) that, where an adopted or approved development plan contains relevant policies, an application for planning permission shall be determined in accordance with the plan, unless material considerations indicate otherwise. In this case, the development plan comprises the Mid Glamorgan (Merthyr Tydfil County Borough) Replacement Structure Plan 1991-2006, adopted in August 1996, and the Merthyr Tydfil Borough Local Plan 1996-2006, adopted in May 1999. [45, 49]

299. The Structure Plan provides strategic development plan policies, including specific minerals policies, which aim to avoid unacceptable environmental and amenity effects. Policy EV13 is of particular relevance as it seeks to clear all major dereliction in the County within the planned period and recognises land reclamation as a key step in the regeneration process. It explains that the Mid Glamorgan Regeneration Programme, which includes the East Merthyr Land Reclamation Scheme, has been expanded to include not only dangerous dereliction but also landscape improvement of derelict areas. [16, 45-48]

300. The Local Plan also aims "*to ensure that the majority of the Land Reclamation Scheme is completed within the plan period*" and promotes a pragmatic means of treating the derelict land by financing it through opencast coal extraction in co-operation with a private coal company. Supporting text in the Local Plan explains the successful history of this means in enabling Phases I and II of the East Merthyr Land Reclamation Scheme to be carried out. In addition, Policies GR1 and GR2 make specific provision for Phase III, which is in the Priority Reclamation Programme, to be restored to beneficial use by means of coal extraction. The Phase III scheme, which included the extraction of some 5M tonnes of opencast coal, gained deemed planning permission in 1988 (at the same time as Phase II) but did not proceed because of land acquisition problems. [19, 49, 50, 64, 65]

301. The current proposal is slightly different from that scheme in that it would provide for the extraction of twice as much coal and has different site boundaries to the south and east. However, the coal extraction area would be within the same area of designated derelict land, the whole site would be within the same wider areas of designated derelict land, and the proposal would be in accord with the treatments and after-uses specified in the Plan. In comparison with the previously approved scheme, it would also reclaim a larger area of dereliction and deal with archaeological and ecological issues more sensitively. I conclude that the proposal would be in accord with the Local Plan aims and provisions for Phase III of the East Merthyr Land Reclamation Scheme as expressed in Policies GR1 and GR2. [22, 64, 163]
302. Local Plan Policy GR1 and other policies specify criteria that the proposal would have to satisfy, for example in regard to effects on amenity and the natural and built environment and to restoration and aftercare provisions. Policies of particular note are NH1 (Development in the Countryside), NH5 (Sites of Importance for Nature Conservation, etc.), NH7 (Water Environment), BH3 (Archaeology and Ancient Monuments) and BH4 (Listed Buildings and Structures). These matters are addressed in the paragraphs below. [51-53, 56, 68, 216-218]
303. Planning Policy Wales provides general advice on planning policy, including its fundamental role in delivering sustainable development, and it describes the principles that underpin planning policy. These include putting people and their quality of life at the centre of decision making, showing respect for environmental matters, using the precautionary principle where risks are uncertain, using scientific knowledge to aid decision making, and taking account of all costs and benefits. Minerals Planning Policy Wales is the Assembly's primary minerals policy document and sets out 5 key principles for sustainable minerals development. These aim to provide mineral resources to meet society's needs and avoid sterilisation of resources, to protect areas of importance to the natural and built heritage, to limit the environmental impact, to achieve high standard restoration and aftercare, and to encourage efficient and appropriate use of the minerals. [33-40]
304. With particular regard to coal, the Government's central energy policy is described as ensuring a secure, diverse and sustainable supply of energy at competitive prices. The requirements specified for opencast coal development may be summarised as follows: environmentally acceptable and with no lasting environmental damage; if this is not achievable, then local and community benefits to clearly outweigh the disbenefits; and a high standard of restoration to beneficial and suitable after-use. Together with the development plan policies, these principles provide the structure for consideration of the current proposal. [41]

Benefits

305. There would be a variety of benefits from the scheme, the main ones being the restoration of a large area of derelict land, the extraction of a valuable coal resource and several financial benefits to the local community. It has been a longstanding aim of the Council and its predecessors to rid Merthyr Tydfil of its worst areas of dereliction. 317 hectares (79%) of the application site area is designated as derelict land in the Local Plan, and this would be progressively restored as the coal reserves were worked and the void backfilled. The quality of restoration would be high, and it would be subject to detailed approval by the Council, thus satisfying the relevant development plan and national policy criteria in this regard. [16, 29, 30, 38, 40, 41, 71, 86, 161-163, 171, 186]

306. The dereliction includes 48 known shafts and 39 known adits from former iron ore and coal workings, and there are likely to be more that are not yet known, as well as extensive, unsightly spoil tips on the hillside. Although the last known related human death was over 50 years ago, there is a risk of ground subsidence and collapse, and some 20 sheep were drowned in a recent incident. These demonstrate the potential risks and add to the undoubted substantial visual benefits of removing the surface dereliction from a prominent hillside overlooking Merthyr Tydfil. Of course, this would not be fully realised until the end of the proposed operating period (between 13-17 years), during which elements of the opencast operations would themselves be visible. However, the final restoration would significantly improve the appearance of the land and improve the attractions of the town to tourism and inward investment. [23, 31, 72, 73, 75, 161, 186, 187, 191, 192, 211, 261, 266, 279]
307. It has been suggested that adequate restoration could be achieved with considerably less work, possibly just by modest surface improvements. However, these would have to be financed from the public purse and would not address the below-ground dereliction, which would continue to give rise to risks of accidents in the future. In this context, the existence of the 3 former landfill waste sites should not be overlooked. These lie partially within the proposed main excavation area, and that part would be excavated and either used as hardcore on the site roads or removed to suitable licensed waste tips. The remaining part would be sealed and capped to modern standards. [26, 74, 76, 78, 192]
308. The tips were used by the Council during the 1970s and 1980s and contain non-inert waste, contrary to the terms of the lease. It is accepted that the liability for rectifying this lies with the Council, and cost estimates range from £6.8M to £19.5M. If the scheme were to go ahead, this liability would be removed from the Council and taken over by Miller Argent. Some local residents allege that this was a major factor in the Council's decision to support the scheme and that it also strongly influenced many local people not to oppose it, as they were concerned about the possibility that, as ratepayers, they would incur substantial additional bills in order to meet the liability. I do not know whether these claims are correct or not. However, even if they were, the saving of substantial costs to the Council is a material consideration, and it is entirely appropriate that it should be taken into account. The total saving to the public purse for the restoration of the derelict land and the partial removal and partial rectification of the 3 former landfill tips is estimated to be some £43M. This would be a very substantial benefit resulting from the proposed development. [74, 77, 86, 223, 243, 255, 262]
309. There would be many other economic benefits to the local community. Firstly, the opencast operations would generate some 200 well-paid jobs over a period of between 13-17 years, worth about £67M. Although some local residents were sceptical, there is no reason to doubt that most of these would be filled by local people and would bring significant benefits to the local economy, where there would be an additional indirect benefit. Merthyr Tydfil is a deprived area with one of the highest rates of unemployment in the UK and one of the lowest average household incomes, and such jobs would be welcomed. It has been suggested that the presence of an opencast coal operation would deter other potential employers from investing in the town. However, there is no evidence to support this proposition. It has also been argued that Merthyr Tydfil would fall behind the rest of South Wales in attracting tourism. However, the current widespread areas of dereliction are a major deterrent at present, and the improvement of the appearance of the hillside above the town would have long-term benefits in attracting tourism in due course. I conclude that the proposed scheme would bring significant economic benefits to the local community. [87, 88, 175, 176, 194, 256, 261, 268, 279]

310. Miller Argent would also accept liability for paying back monies originally loaned by the Welsh Development Agency (WDA) to initiate Phases I and II, thus enabling the WDA to recycle the money and invest in other projects in Wales. It would also contribute some £0.6M towards the cost of diverting and upgrading a length of water main that crosses the site, part of a wider scheme planned by Dŵr Cymru Welsh Water. Approximately £1M per annum would be paid in rates in respect of the coal extraction, plant and buildings, and a community benefit fund would be established (run by the Council) with funding from coal royalties of between £6.4M and £10.8M depending on the prevailing coal prices. In addition, Miller Argent propose to develop a visitor/education centre at the Cwmbargoed Disposal Site to explain the scheme and archaeological and ecological features to schoolchildren and other visitors. [86, 89, 90]
311. The total value of benefits to the local economy (and the Council) is estimated to be about £130M. Whilst there has been speculation about the profit that might be achieved by the developer, no factual evidence has been put forward to show that these local benefits would be unreasonable. The value of the benefits accruing to the local economy would be substantial and are a significant factor in favour of allowing the proposal. [91]
312. The other benefit, of course, is in the extraction of the coal itself. Some 10.8M tonnes would be extracted at a rate of between 750,000 and 1,000,000 tonnes per annum. It is planned that its market would be Aberthaw Power Station, which is shortly to be expanded (with increased demand for coal) and improved by the addition of flue gas desulphurisation (FGD) plant that will ensure its emissions meet the latest environmental standards. At present Aberthaw has difficulty obtaining coal that meets the particular specification that it needs, and it relies on imported coal for some 50% of its supplies. The coal from Ffos-y-fran is of ideal quality for Aberthaw, and it would have a ready market there to either meet the increased requirements or replace imported coal without putting at risk the existing market for coal from the Tower Colliery or other South Wales sources. The high quality, low volatile coal from Ffos-y-fran would be blended with existing South Wales supplies of anthracite and would contribute towards the preservation of the coal industry in the area. The owners of the power station have written in support of the proposed scheme. [22, 31, 79, 82, 83, 178, 181, 182, 184, 221]
313. Some objectors have argued that the burning of coal produces greenhouse gases that contribute towards climate change and that more emphasis should be given to developing renewable sources of energy. No one disputes that principle. However, in practice, there is no prospect of renewable sources of energy replacing the use of coal in the foreseeable future, particularly in view of anticipated increases in demand. The projected increased future reliance on imported oil and gas is also causing security of supply to become a matter of some concern. Minerals Planning Policy Wales describes the objectives of the Government's energy policy as ensuring a secure, diverse and sustainable supply of energy at competitive prices, and it recognises that coal contributes to these aims. The 2003 Energy White Paper recognises the enormous coal reserves in South Wales and the technology that now exists to use it in a more environmentally friendly way, including FGD. [81, 178, 181, 182, 193, 219, 220]
314. Aberthaw Power Station is a major source of electricity for a large area of South Wales and will continue to be so for many years. Coal from Ffos-y-fran would make an important contribution to its security, efficiency and sustainability. In this respect, its winning and working as part of the current proposal would be a significant benefit to the general economy of South Wales. It may also be added that the use of rail transport to move the coal from

Ffos-y-fran to Aberthaw is a strong argument in favour of the scheme on grounds of sustainability. [83, 156, 178, 268]

Air Quality and Health

315. The likely effects on air quality and the associated risks to health are the matters of most concern to many of the local resident objectors who appeared at the inquiry. The applicant's estimates of effects on air quality have been prepared in 2 ways: firstly by computer modelling; and secondly, by comparison with data collected for another opencast coal site. The air quality parameters of concern are fine particulate matter (essentially dust) and nitrogen dioxide (emitted from plant engines). [92, 167, 230, 263, 270, 274]
316. The modelling has been based on the layout of the site and its surroundings, the various proposed stages of operation and the types of plant and equipment that would be used for each operation. Conservative assumptions have been made throughout, and the results of the worst-case scenario have been presented. These show predictions of a peak PM₁₀ (i.e. fine particles smaller than 10 microns in diameter) rate of 24 µg/m³ for a short period of time in the first few months and a maximum annual mean concentration of 22 µg/m³ for nitrogen dioxide. These predictions would be well within the statutory air quality objectives set for Wales, which are the achievement of an annual mean for PM₁₀ of 40 µg/m³ by the end of 2005 and an annual mean of 20 µg/m³ (and a daily mean of 50 µg/m³ not to be exceeded more than 7 times per year) by 2010 and the achievement of an annual mean of 40 µg/m³ for nitrogen dioxide. When one takes into account the conservative assumptions made in arriving at these predictions and that, for most of the time, dust and engine emission levels would be considerably less, the results provide considerable assurance of the limited degree of air pollution that would be likely to occur. [93-96, 99, 229, 230]
317. Comparison has also been made with the results of the Newcastle Study carried out in Northeast England comparing dust levels and health in communities close to and away from opencast coal mining sites. That study found average PM₁₀ concentrations between 2.1 and 2.5 µg/m³ higher in opencast mining communities than in other similar communities. The assessment carried out for Ffos-y-fran made an allowance of 4 µg/m³ for fugitive emissions, almost double that found in the Newcastle Study. Bearing in mind those communities were downwind of the prevailing wind direction (at Ffos-y-fran it would be the opposite) and that rainfall at Merthyr Tydfil is 70% higher than in the study area, 4 µg/m³ represents another very conservative assumption fed into the model. [97, 98]
318. Suggested conditions include provision for ensuring that industry best practice would be used to minimise dust and engine emissions. These measures would include the maintenance and spraying of haul roads, dust collection systems for blasting operations, vapour masts, controls on mound construction work in windy weather, and early seeding of mounds, storage and restoration areas. In terms of the use of best practice measures and the achievement of air quality standards, I conclude that the proposal would accord with national and development plan policies. Whilst a slight reduction in air quality would be likely to occur, air quality would still be good and would be maintained well within the national standards. [93, 100, 169, 230]
319. Some objectors have drawn attention to the inclusion of a 500 metre buffer zone around opencast sites proposed in the latest draft of Scottish Planning Policy 16, Opencast Coal, and suggest that Wales should follow suit. In fact, MPPW already advocates the use of buffer zones around mineral workings to avoid conflict with residential areas but advises that their

size will depend on the nature of the particular operation. In the circumstances at Ffos-y-ffran, where reclamation objectives for that particular area of land are also involved, the assessment of the possible impacts themselves is an acceptable approach, as relying on broad-brush guideline distances would take no account of the particular local circumstances. [40, 231, 239, 275]

320. Possible implications for the health of the local community as a result of deterioration in air quality have been assessed both by reference to the national air quality standards and by extrapolation of the results of epidemiological studies. Nitrogen dioxide is an irritant to the human respiratory system and can lead to measurable reductions in lung performance in people with asthma and increase the susceptibility of children to respiratory infections. However, the national standards are set at concentrations of air pollutants that can be breathed on a regular basis without significant adverse effects. Although some objectors have made alarming claims about emissions from the large plant that would be used on the opencast site, both the Applicant's expert and the independent experts representing the Local Health Board advise that at these levels nitrogen dioxide would not raise any concern over impacts on health. Consequently, it is concluded that the nitrogen dioxide emissions, predicted to be well below the standard, would be unlikely to cause any significant adverse effects on the health of local residents. [101, 102, 206, 231, 248]
321. Fine dust particles are reported to be one of the pollutants causing the greatest public health impacts in the UK. The effects include premature death through both respiratory and cardiovascular disease and increased hospital admissions and exacerbated symptoms in people with heart and lung disease. Assessment has been carried out in terms of PM_{10} levels although it is the even finer $PM_{2.5}$ particles that are able to penetrate to the deepest regions of the lungs that are the most harmful. However, measurement of PM_{10} includes the finer $PM_{2.5}$ particles, and so is an acceptable means of judging their significance. [103, 104, 200, 237]
322. Whilst predicted PM_{10} levels would fall well within the national standards and so would be generally acceptable in terms of negligible effects on health, it has been argued that any deterioration in air quality would be harmful to the most vulnerable members of the community. The people of Merthyr Tydfil have one of the poorest levels of health in Wales, so this is a matter of particular concern. The findings of the Newcastle Study, which were fully accepted by the Department of Health's Committee on Medical Effects of Air Pollution (COMEAP), were that there was little evidence of association between living near an opencast site and any increased prevalence of respiratory illness, asthma severity or daily symptoms, although children in some of the opencast communities had more GP consultations on respiratory matters. These findings confirmed those of a 1995 study for the Department of Health, which found that there was no convincing evidence that air pollution would cause asthma in people who would not otherwise develop it but that it could exacerbate the symptoms of those already suffering from asthma. [103, 105, 106, 109, 201, 240, 264]
323. Some objectors have referred to other studies, which do not have the same standing and authority as the Newcastle Study, and to criticisms of the Newcastle Study by Dr Van Steenis, a Pembrokeshire GP. These studies and Dr Van Steenis' comments were not held in any regard by the experts who appeared at the inquiry, either on behalf of the applicant company or the independent Local Health Board. Accordingly, I give little weight to them. Objectors also referred to the 1997 report of a study carried out in West Glamorgan into the Acute Effects of Air Pollution on the Respiratory Health of Children (known as the Glynneath Report and carried out in an area containing opencast sites) and argued that that

supported their concerns. However, the Government's COMEAP committee has considered that report and concluded that it did not support any assertion that asthma was more common in areas close to an opencast site than in areas further away. The author of that report, Dr Temple, was one of the representatives of the Local Health Board at the inquiry and confirmed that conclusion. [108, 195, 204, 205, 233-236, 238, 253, 258]

324. The Local Health Board has also carried out a statistical analysis (based on World Health Organisation coefficients) to assess the possible impact of the predicted air quality in terms of effects on the life expectancy of people who are already sick and near the end of their lifespan and in terms of effects on hospital admissions for elderly people with chronic pulmonary obstructive disease or asthma. The overall conclusions of the Local Health Board are that the predicted levels of dust from the proposed scheme would be unlikely to have any noticeable individual adverse health effect but that impacts could be noticeable at the severest end of the spectrum, particularly for ill elderly people. [107, 202, 203, 206, 251]

325. It is pertinent that the small increases in particulate matter likely to be generated at Ffos-y-fran would be less than normal day-to-day variations that occur in any case because of changes in the weather. Miller Argent's expert states that any possible effects on the health of local people would be minimal and far smaller than could be detected by any feasible epidemiological study. Other interested parties have also drawn attention to the lack of attributable effects of opencast working on the health of employees themselves, who one would expect to be exposed to far higher levels of air pollution and dust than residents of nearby communities. This reinforces the general conclusion that effects on the health of most of the community would be negligible. Whilst there is some possibility that the slight deterioration in air quality might affect the health of a small number of people who are already seriously ill, this would be no different than that occurring as a result of normal variations. Therefore, I conclude that its general effect on the health of the community would not be significant. [106, 173, 201, 240, 252]

326. Some local residents have expressed particular concern about possible health effects on children attending schools near the site. Whilst those concerns are genuine and sincerely held, they are not supported by any factual evidence. The accepted evidence indicates that risks to children's health would be negligible. It has been argued that the precautionary principle should be applied. However, this is not justified as there is ample evidence that predicted air quality levels would be well within the range that occurs regularly in the UK and better than occurs in many other towns. [201, 228, 239, 252, 260, 265, 277, 282]

327. There is a strongly held fear on the part of a small number of local residents that they, or their loved ones, would be at serious risk if the scheme were to go ahead. That fear is to be respected and can be a material consideration, whether or not it is supported by scientific evidence. Nevertheless, it does not lead me to change the conclusions I have reached above. [109, 265]

328. Balancing these real and perceived risks to health, the Local Health Board advises that the proposal would result in some benefits to health. Merthyr Tydfil is a deprived area, and there is an acknowledged relationship between poverty and ill health. By bringing jobs and other economic benefits into the local community the scheme would make a contribution towards improvements in general health and wellbeing. In the long-term the improved appearance and state of the land would also have a positive effect on wellbeing. [109, 199]

Other Effects on Residential Amenity

329. The other matters of potential for significant effects on the living conditions of local residents are noise and blasting disturbance. A range of noise mitigation measures would be employed in accordance with good practice, including baffle mounds, controls on hours of work and on particular activities carried out at certain times, routing of site roads, and the use of acoustic enclosures for pumps. Taking these into account, a noise prediction model has been used to assess the worst case situation for each group of nearby houses and each operational regime. This shows that noise levels (as measured at the nearest sensitive properties) would be contained within the limits advised in the applicable national guidance. Account has been taken of existing levels of background noise, and the assessment indicates that for most locations and for most of the time the predicted increases in noise levels would be barely perceptible. [110-113, 241]
330. The Council's Environmental Health Officer originally objected to the applicant's proposal for work to continue until 2300 hours each weekday, as quieter noise levels would be unlikely to be achieved in the evenings in accordance with national guidance. However, Miller Argent subsequently reconsidered its proposed working practices and is now confident that the lower noise levels would be met. This has allayed the Council's environmental health reservations and could be ensured by an appropriate planning condition. I consider this to be an acceptable approach. [114, 115, 165]
331. Turning to blasting, each operation would be designed to reduce ground vibration to a minimum and would be subject to planning conditions that specified maximum levels of ground vibration well below those likely to cause significant nuisance or damage to property. Unlike rock quarries, blasting at an opencast coal site is used merely to loosen the material rather than to fragment and dislodge it. A blast witnessed at another opencast site during the site visit illustrated the limited impact that blasting operations would be likely to have at Ffos-y-fran. I consider that such operations would not significantly affect the amenity of nearby residents. [116, 117]
332. Concerns have also been raised about the presence of hazardous waste within the 3 former landfill waste tips and the possibility of smells being released. However, site investigations indicate that, apart from a few "hotspots", about 95% of the deposited waste is inert ash, shale, and demolition material (which would be used for the site roads) and that most of the rest is degradable domestic waste, which would be removed to the Trecatti waste disposal site nearby. About 1% would be expected to be classed as hazardous waste for separate removal to an appropriate licensed disposal site. These operations would take about 6 months and would be carried out in accordance with the latest good practice and regulatory requirements. The Environment Agency has raised no objections, and I do not consider these proposals would raise any meaningful risk to either the environment or the health or amenity of local residents. [76-78, 231, 259, 266, 272]

Water Environment

333. The National Assembly for Wales has particularly asked to be informed of the effects on surface and groundwater resources. Dealing first with groundwater, most of the excavation would be well above the groundwater reservoirs, and it would only be necessary to dewater the main excavation at its northern end near Dowlais Top over a short period of time near the end of the scheme. At its deepest the floor of the excavation in that area would be 50 metres below the piezometric water surface, and the excavation would have to be dewatered by pumping. This would affect the level of groundwater in the immediate surrounding area but it

would be expected that natural levels would quickly recover when coaling operations have been completed and that part of the void below the water level has been backfilled. [141, 142]

334. There are no known water extraction locations within the area likely to be affected, and it is unlikely that there would be any impact on water supply or the maintenance of water resources. It is also unlikely that the temporary disturbance of the groundwater equilibrium would give rise to any water quality problems. However, groundwater levels and quality would be monitored throughout the scheme, and an artificial recharge or water treatment scheme would be installed if any untoward impact was detected. [143, 144]

335. Turning to surface water, many of the existing ditches and watercourses on the site would be lost and replaced during the operational period by a new flow-collector system, which would contain adequate capacity for surface water drainage, and a network of ponds, flood attenuation lagoons and water treatment areas to reduce peak flood flows from the site and provide control over water quality. Discharges would be subject to consents granted and monitored by the Environment Agency. More natural arrangements would be reinstated as part of the land restoration scheme, and where possible parts of the Dowlais Free Drainage System would be retained. [145, 146]

336. These proposals and impact assessments have not been subject to dispute or to any objection or criticism by the Environment Agency. In my view, the proposed scheme would not have any adverse effects on the quantity or quality of groundwater or surface water resources and would meet the aims of the relevant national and development plan policies in this respect. [140, 217]

Archaeology and the Historic Landscape

337. Although much of the application site is derelict and covered by modern tips and fly-tipping, it contains numerous historical remains including early industrial ironstone and coal crop and patch workings, deep coal and iron mining, and the management of water by the Dowlais Free Drainage System (DFDS). These represent a small element of the once vast industrial landscape around the east side of Merthyr Tydfil. The DFDS is an 18th and early 19th century complex of water collection ditches, canalised natural streams, tunnels and surface reservoirs, built to collect ground and surface water and to deliver it to the Dowlais Iron Works. The mining related features include spoil heaps, shafts, adits, pithead structures and coal tips, and there are also the remnants of tramways and railways on the hill slopes. [14, 119-121]

338. Within the central corridor of the site, Sarn Howell Pond, an element of the DFDS, is a Scheduled Ancient Monument, and a wooden aqueduct over a deep railway cutting is a Listed Structure. In the southern part of the site there are features of a probable Prehistoric settlement, possibly of Iron Age date, and the Ffos-y-fran Deserted Iron Mining Village, another Scheduled Ancient Monument, lies immediately to the south west of the site. All of these would be safeguarded from the proposed works, which have been designed to avoid affecting all of the features of high archaeological value, including most of the DFDS elements. In addition, mitigation measures would include further documentation of the site's features and the eventual re-establishment of much of the affected areas of the DFDS. [56, 119-123]

339. Although some objectors have raised concerns, it is significant that CADW, the Glamorgan Gwent Archaeological Trust and the Countryside Council for Wales do not object to the proposals. Initial reservations expressed by CADW have been resolved by minor changes to the proposals. Some 71% of the site lies within the registered Landscape of Outstanding

Historic Interest of Merthyr Tydfil, which covers a large area of the town and its surroundings. However, this apparent conflict was accepted in the Local Plan, which still designated the land for restoration with coal recovery, and has not caused the statutory consultees to object to the scheme. They acknowledge the wider landscape benefits and the aims of the Local Plan. [67, 124, 127, 212, 218]

340. Planning Policy Wales advises that the historic landscape should be considered in determining planning applications. In line with this guidance, considerable modifications have been made to the earlier Phase III proposals for reclamation of the land in order to minimise and mitigate effects. Planning policy at all levels also seeks preservation of nationally important remains, and this would be achieved by the scheme. I conclude that the proposed scheme would be generally in accord with policy and that it would have a moderate effect on the historic landscape but only minor effects on features of high archaeological value. Appreciation of the DFDS has already been much enhanced by investigations carried out for the scheme, and the Countryside Council for Wales has expressed the view that the mitigation strategy would pay considerable dividends in terms of education and the interpretation of Merthyr's rich historic legacy. [125, 127, 128, 212]

Other Environmental and Amenity Effects

341. Several other impacts warrant consideration. The first is the effect on nature conservation. There are no statutory nature conservation sites or local nature reserves within the site. A designated Site of Importance for Nature Conservation (SINC) lies immediately to the east of the site, within the administrative boundaries of Caerphilly CBC, and that Council originally expressed concern about risks of the proposed scheme affecting that area, particularly as a result of movement of surface or groundwater. However, that concern has been allayed, and Caerphilly CBC has withdrawn its objections. [130, 147, 208]
342. Preparatory work for the draft Merthyr Tydfil Unitary Development Plan has identified a further 59 possible sites for consideration as potential future SINC, and some of these areas are within the application site. One objector has argued that they should be afforded the same sort of protection as the Caerphilly SINC. However, the Council reports that it would not envisage supporting the designation of any of the potential SINC areas within the current application site and, accordingly, that the findings of the UDP preparatory work should be given little weight. That approach would be in line with national policy guidance on preparatory work for emerging draft plans. [131, 170, 213]
343. The likely effects of the proposal on species and habitats found on the site were assessed in the Environmental Impact Assessment as ranging from "negligible" to "moderate", and the Countryside Council for Wales and the Environment Agency have not raised any objections to the proposal. Great Crested Newts, a protected species, have been identified on the site, and a licence under the Habitat Regulations 1994 would be needed for a "derogation" in order to carry out measures to protect them. Although some objectors have expressed concern about the risks involved in moving newts, the Countryside Council for Wales is satisfied that the favourable conservation status of the species would not be affected, and I consider that the other required tests for "derogation" would be met. In July 2004 the Welsh Assembly Government issued guidance to all planning authorities in Wales that, where protected species occur on a development site, their protection should be assured by a planning condition requiring the necessary granting of a license under the 1994 Regulations before any site clearance works take place. The standard wording prescribed in that guidance has been included in the set of recommended conditions. [132-136, 215, 250]

344. Taken as a whole, I conclude that the proposed development would not cause unacceptable harm to nature conservation and would be in accord with the relevant development plan and national planning policies. [137, 138, 214, 217]
345. The second matter would be that of impact on the landscape and visual amenity. A large part of the site is urban common with public rights of access and several public rights of way. These would be suspended during the course of the operations. However, Miller Argent has the rights to the coal and the right to exclude the public to allow its recovery. The Company has reached agreement with the registered commoners, who would still have access to the remaining 92% of the common. I consider that the impact on the common would be acceptable. [54, 149, 153, 154]
346. The visual impact of the scheme would arise from the site's prominent location, the scale and duration of the scheme, the features created, activities associated with the operations, and the ultimate changes due to restoration. Activities would be clearly visible from viewpoints on elevated ground in the surrounding area, particularly from the north and west, and for the duration of the scheme impacts would generally be detrimental. However, one must bear in mind that one of the main purposes of the scheme, in fact THE main purpose so far as the Council is concerned, is to remove the present dereliction and restore the land to beneficial use. The restoration would aim to re-establish a natural landform and features and a mix of beneficial uses. In my view, the long-term effect on the landscape character and visual amenity would be a substantial benefit to people who live near the site and to the wider community of Merthyr Tydfil. Moreover, it would align with both development plan and national policies. [150-152, 197, 216, 249, 267, 269]
347. The impact of traffic generated by the proposal would be negligible. Some objectors have argued that fuel deliveries would cause increased risks on nearby roads. However, the number of vehicles that would move in and out of the site each day, including fuel deliveries, would be small and would have little effect on the safe flow of traffic on local roads. Current traffic flows are well within design capacity for the road network. All coal would be removed from the Cwmbargoed Disposal Point and be delivered directly to the Aberthaw Power Station by train. The overburden material would be moved between the main excavation area and the various storage areas entirely within the site. To facilitate this a crossing would be constructed underneath the Bogey Road, which would be improved and realigned as part of the construction process. [25, 155-159, 254]
348. Finally, it has been suggested that the value of nearby houses would be affected by their proximity to an opencast coal site. However, any such effects would be temporary. Moreover, in the longer-term, such properties would benefit from the visual improvements to the landscape that the restoration measures would achieve. Consequently, I find no force in this submission. [242, 275, 279]

Conditions

349. A total of 72 suggested conditions were put forward in the Statement of Common Ground, and these were discussed at some length in the public inquiry. Various alterations, additions and deletions were agreed by the main parties, and these are reflected in the Annex of conditions attached to this report. All of these conditions meet the tests prescribed in Welsh Office Circular 35/95, The Use of Conditions in Planning Permissions. They would provide adequate and necessary controls over working methods aimed at minimising and mitigating impacts on the environment and local amenity should the National Assembly resolve to grant permission. [287-296]

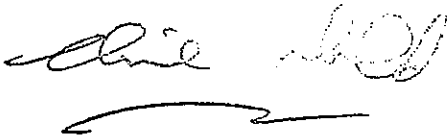
Overall Conclusion

350. In reaching my conclusions I have taken into account the requirements of Section 54A of the 1990 Act and the various relevant development plan and national policies. I have also taken into account the Environmental Statement, which was prepared in accordance with the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999. The scheme includes provision for mitigation measures both in terms of avoiding certain features or areas of land and by means of the proposed use of a wide range of planning conditions to control the way it would be carried out.
351. 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 former has been a longstanding aim of the Council (and its predecessors) for many years, and the development plan makes specific provision for the restoration of this area of land funded by opencast coal extraction. 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. These are strong arguments in favour of granting planning permission.
352. 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. On the wider stage, the benefits would be in 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 proposal.
353. A number of matters are balanced against the benefits. The first is that of 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.
354. 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 that effects would not be significant or unacceptable.
355. 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.

356. Overall, I conclude that the scheme would be in accordance with development plan and national policy and that the benefits would far outweigh the objections. Suitable planning conditions would minimise and mitigate any detrimental impacts. For the above reasons and having regard to all matters raised, I conclude that planning permission should be granted for the proposed development.

Recommendation

357. I recommend that planning permission be granted subject to the conditions detailed in the attached Annex.



Clive Nield

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 77
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**

**PLANNING CONDITIONS ATTACHED TO PLANNING PERMISSION OF 11 APRIL 2005 IN
RESPECT OF PLANNING APPLICATION REF. 030225 DATED 30 APRIL 2003**

COMMENCEMENT OF WORKS

1. The development to which this permission relates shall commence not later than the expiration of 5 years beginning with the date of this permission.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990 and prevent any protracted delay in the start of works.

2. Written notification of the date of commencement of development shall be submitted to the Planning Authority 56 days BEFORE commencement.

REASON

In the interests of visual and residential amenity.

DURATION OF WORKS

3. All coal extraction shall cease within 15 years 3 months from commencement of development.
4. Final restoration shall be completed within 17.5 years from commencement of development, and aftercare shall be undertaken for a period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme.
5. Any building, plant, machinery, hardstanding or other works associated with the coal extraction (or any discrete phase thereof) shall be removed off site within 42 days of 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 Planning Authority. The

scheme shall be submitted no later than 56 days prior to cessation of mineral extraction, (or any discrete phase thereof).

REASON

To minimise the duration of the development hereby approved to protect residential amenity.

APPROVED PLANS/DOCUMENTS

6. The development to which this permission relates shall be carried out in accordance with the details shown on the submitted drawings and in accordance with the submitted Environmental Statement and supporting documents, unless subsequently amended with the written approval of the Planning Authority.

REASON

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

INSPECTION OF APPROVED PLANS/DOCUMENTS

7. From the commencement of development to completion, a copy of this planning permission, including all documents hereby approved and any other documents subsequently approved in accordance with this permission, shall be permanently maintained and available for inspection at the site office/offices.

REASON

To ensure the operators of the site and any other appropriate officers have ready access to the relevant documents on site as required, to avoid ambiguity as to the nature and extent of this permission.

METHOD OF WORKING

8. No development shall commence until a Method of Working Statement has been submitted to and approved in writing by the Planning Authority. Any works undertaken shall be fully in accordance with the approved scheme, which shall include the siting, design and external appearance of all surface structures, details of fencing, and the working method and treatment of overburden, soil and soil-forming material storage areas, and all other embankments, bunds and mounds.

REASON

To ensure satisfactory implementation and completion/restoration of the scheme.

AREAS OF EXCAVATION FOR COAL EXTRACTION

9. The surface areas of coal extraction shall not extend beyond the orange pecked lines as indicated on Plan FLRS/PA1 (Planning Application Site Area).

REASON

To define and limit the surface area of the consented development, to protect residential amenity and other acknowledged interests.

DEPTH OF WORKING

10. No coal extraction shall take place below the Lower 4 Feet (basal) seam for 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).

REASON

To define the vertical extent of this consent, to limit the effect of the approved development, to protect the hydrogeology and to protect residential amenity.

DIRECTION OF WORKING

11. The direction of working shall be south to north, as indicated on Plans FLRS/ES3/1 - 4.

REASON

The direction of working, south to north, lessens the potential impact upon residential amenity and results in earlier reclamation for those residential areas closest to the development.

HEIGHT OF OVERBURDEN MOUNDS

12. The northern overburden mound shall not exceed 475m AOD.
The southern overburden mound shall not exceed 410m AOD.
The eastern overburden mound shall not exceed 465m AOD.

REASON

To ensure that the visual impact of the overburden mounds is not greater than assessed, in the interests of visual amenity.

HOURS OF OPERATION

13. Except in emergencies (i.e. circumstances in which the 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 Planning Authority as soon as is practically possible) or unless the 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 at the site, except between the following times:-

- Hours of operation (other than those activities specified below):

Monday – Friday 0700 – 2300 hrs.

Saturday 0700 – 1700 hrs

- Hours of coal haulage:

Monday – Friday 0700 – 1900 hrs.

Saturday 0700 – 1300 hrs.

- “Time Windows” within which blasting is permitted:

Monday – Friday 1000 – 1300 hrs, 1400 – 1600 hrs.

Saturday 1000 – 1300 hrs.

- Hours for removal of Existing Waste Tips:

Monday – Friday 0800 – 1900 hrs.

Saturday 0800 – 1300 hrs.

- Hours for the formation and removal of baffle mounds and the stripping and replacement of soils within a 300 metre radius of any residential dwelling:

Monday – Friday 0800 – 1900 hrs.

Saturday 0800 – 1300 hrs.

No work shall be undertaken on Sundays or Public/Bank Holidays.

REASON

To protect residential amenity.

DUST

14. No development shall take place until a detailed scheme and programme of measures to suppress dust and a programme of air quality monitoring have been submitted to and approved in writing by the Planning Authority. The mitigation measures shall be based upon those set out in the Environmental Statement accompanying the application. Such mitigation/suppression measures shall be implemented in accordance with the approved scheme.
15. To assist and mitigate any potential effects of dust nuisance, adequate dust suppression measures are to be employed using Best Available Technology Not Entailing Excessive Cost (BATNEEC) for the monitoring and control of dust which may arise directly or indirectly as a result of site activities.

The approved scheme shall ensure that:

- A sufficient number of spraying units are 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.
- Spraying vehicles have an adequate water supply at all times.
- There is regular and effective maintenance of haul roads.
- The exhausts and through-body exhaust systems of plant vehicles are such as to prevent exhaust gases being emitted downwards.
- Effective dust collection systems are fitted to all blast hole drilling machines before such machines are operated.
- Prior to blasting, all arisings from blast hole drilling are bagged and disposed of safely.
- Tipping or removal of overburden is to temporarily cease or be relocated within the overburden storage area when the Planning Authority considers that wind strength and direction may result in a significant dust nuisance.
- Construction of baffle mounds is to temporarily cease or be relocated when the Planning Authority considers that the wind strength and direction may result in significant dust nuisance.

- A sufficient number of vapour masts are to be provided and maintained where necessary, so as to ensure that an effective vapour can be produced at any point in the site.
- Baffle bunds are to be sealed and seeded as soon as practicable after they have been constructed in order to minimise wind blown material affecting adjoining properties.

REASON

To protect the amenities of residents from the potential effects of dust arising from the development approved.

AIR QUALITY

16. An air quality monitoring scheme shall be undertaken as approved in writing by the Planning Authority. This shall include:
- Baseline monitoring to establish background levels of dust and particulates which must be carried out prior to commencement of operations.
 - Dust monitoring to be carried out at suitably agreed locations within the community using dust deposition gauges or sticky pads to identify nuisance dust.
 - A weather station shall be set up and operated for the duration of the project at Cwmbargoed DP to measure (a) rainfall; (b) wind speed; (c) wind direction and (d) temperature. Such information to be made available to the Planning Authority on request.
 - PM₁₀ and PM_{2.5} monitoring to be undertaken using a methodology agreed in writing by the Planning Authority. Such monitoring to be carried out prior to commencement of works and continue for a minimum period of 12 months after coal winning commences. If it is established such monitoring is not required as a result of site activities after such a period, the monitoring shall then cease, subject to the written agreement of the Planning Authority.

REASON

To protect the amenities of residents from the potential effects of dust arising from the development approved.

NOISE

17. (a) With the exception of those activities cited in conditions 18 and 22 below, noise arising from operations shall NOT exceed the following $\text{dBL}_{\text{Aeq, 1hr}}$ 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

- (b) A scheme for monitoring noise levels shall be submitted to and approved in writing by the Planning Authority prior to commencement of works. The monitoring shall be undertaken in accordance with the approved scheme.
18. During Baffle Mound construction and removal, soil stripping and removal of soil heaps, noise levels shall not exceed a daytime noise level of $70 \text{ dBL}_{\text{Aeq, 1hr}}$ over periods not exceeding eight weeks in one year.
19. Efficient silencing equipment shall be fitted to and used by all vehicles 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 residential 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 $0 \text{ dBL}_{\text{Aeq, 1hr}}$ at the nearest noise sensitive locations.

REASON

To protect residential amenity.

BLASTING

23. At all times, blasting shall be designed so that the ground vibration measured as peak particle velocity (PPV) shall not exceed 8mm per second at any residential or similar sensitive property. However, 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). Blasting shall not be carried out on Sundays, Bank/Public Holidays, nor in the hours of darkness.
25. Vibration monitoring stations are to be placed at locations to be approved in writing by the Planning Authority. All monitoring data is to be made available to the Planning Authority on request.
26. No blasting shall be carried out within the 300m Blast Exclusion Zone indicated upon Drawing No. MMAG/BLAST/01.

REASON

To protect the amenities of the local environment, including residential amenity.

27. The level of vibration at the railway boundary shall not exceed a maximum peak particle velocity of 12mm/sec.

REASON

To maintain the integrity of the railway infrastructure.

HIGHWAYS

28. There shall be no vehicle access to or from the public highway for the approved works other than at the designated access points "X" & "Y" indicated on the submitted Plan FLRS/PA1.
29. Other than at the indicated crossing point there shall be no movement of plant on the public highway without the express consent of the Planning Authority. Access point "X" shall only be used for crossing the highway and no vehicles shall be permitted to turn onto the highway at this point.

30. Use of access point "Y" shall be confined solely to the entry and exit of plant and support vehicles and shall not be used for general access of personnel or other vehicles.
31. No development shall commence until a scheme has been submitted to and approved in writing by the Planning Authority indicating full engineering details of access points "X" and "Y" and details of traffic controls of access point "X". The access works shall be completed in accordance with the approved scheme before other development commences.
32. The internal road leading off access point "X", together with the access point to Cwmbargoed Disposal Point opposite access point "X", shall be surfaced to a standard approved in writing by the Planning Authority before coal extraction commences, for a distance and width of not less than 100 x 6.0 metres. The same shall also be applied to access point "Y" but for a distance and width of not less than 50 x 6.0 metres.
33. A scheme for facilities for wheel cleansing shall be submitted to and approved in writing by the Planning Authority before any construction works commence on site. The facilities shall be provided in accordance with the approved scheme before the main earthworks commence.
34. A scheme for all associated highway engineering works required shall be submitted to and approved in writing by the Planning Authority prior to commencement of such works. The scheme to be submitted shall include details of the road diversion and improvement works to the Bogey Road.

REASON

In the interests of highway safety and residential amenity.

PARKING

35. A scheme for parking all employee vehicles shall be submitted to and approved in writing by the Planning Authority before any construction works commence on site. Parking shall be provided in accordance with the approved scheme on implementation of the development.

REASON

In the interests of highway safety.

TRANSPORTATION OF COAL

36. All vehicles shall enter the highway from the site in a clean condition.

REASON

To ensure that vehicles entering the highway from the site do not deposit deleterious material on the highway which could prejudice highway safety.

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

REASON

To define the means of coal transportation, to ensure onward transmission by rail, in the interests of highway safety, residential amenity and sustainability.

IMPORTATION OF MATERIALS

38. No waste material (controlled or otherwise) or minerals for blending purposes shall be imported to the site, except with the advance written approval of the Planning Authority.

REASON

To clearly define the extent of this permission in order to prevent development on a scale or of a nature not envisaged and not considered acceptable for planning purposes, particularly amenity, at the time that the planning application was determined, but allowing for the continuation of current authorized activities at the existing rail siding within the application site.

PREPARATION/STORAGE OF MATERIALS

39. No materials, including minerals excavated from the site, shall be stocked on site other than within the designated areas on the approved plans, other than those necessary for enabling works.

REASON

To protect residential amenity.

PLANT AND MACHINERY

40. Cranes and jibbed machines, used in connection with the works, must be so positioned that the jib or any suspended load does not swing over railway property, or within 3 metres of the nearest rail if the boundary is closer than 3 metres.

41. All cranes, machinery and constructional plant must be so positioned and used to prevent the accidental entry onto railway property of such plant, or loads attached thereto, in the event of failure.

REASON

For the safety of rail traffic.

ENVIRONMENTAL MANAGEMENT PLAN

42. Prior to the commencement of each phase of development, an Environmental Management Plan (EMP) shall be submitted for the written approval of the Planning Authority for each phase of the development. The EMP shall be implemented in accordance with the approved scheme, save as otherwise specified in specific conditions.

REASON

To protect the environment.

GROUNDWATER

43. Prior to the commencement of work on the former landfill sites, a site investigation report shall be provided to the Planning Authority detailing the potential for ground/groundwater contamination at the three former landfill sites within the development boundary. This shall include an assessment of risk to the aquatic environment together with appropriate site specific values for the re-use of material on site and a methodology for the screening of unsuitable materials.

REASON

To prevent pollution of the aquatic environment.

44. Details of a groundwater monitoring scheme shall be submitted to and approved in writing by the Planning Authority prior to development commencing. This shall include the location, number and depth of monitoring wells as well as the frequency of monitoring of groundwater levels and quality, together with determinants for analysis, to cover the periods prior to, during and after excavation and restoration.

REASON

To protect groundwater resources.

45. If during the development any contamination of a nature not previously identified is encountered, representative samples shall be tested to determine the nature and extent of the 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 methods outlined in the Method Statement, then no further development in the relevant area (unless otherwise approved in writing by the Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Planning Authority for, an addendum to the Method Statement. This addendum to the Method Statement must detail how this unsuspected contamination shall be dealt with and shall be implemented prior to continuation of development.

REASON

To ensure that the development complies with approved details in the interests of protection of Controlled Waters.

CONSTRUCTION PHASE WORKS

46. No development approved by this permission shall commence until a detailed Method Statement(s) describing the works to be undertaken and details of any necessary pollution prevention measures during the construction phase, has been submitted to and approved in writing by the Planning Authority. The Method Statement(s) must identify as a minimum:

- all fuels, oils and chemical storage facilities.
- details of surface water drainage arrangements to be installed to intercept and treat contaminated surface water run-off.
- details of measures to ensure there is no polluting discharge from haul roads and disturbed areas; and
- details of the nature, type and quantity of materials to be imported on-site.

REASON

To prevent pollution of the aquatic environment.

FOUL AND SURFACE WATER DRAINAGE

47. Development shall not commence until a scheme for disposal of foul sewage has been submitted to and approved in writing by the Planning Authority. The scheme shall be implemented as approved.
48. No development approved by this permission shall commence until detailed plans for a comprehensive drainage and lagoon system to intercept and treat surface water run-off from the area have been submitted to and approved in writing by the Planning Authority. The system shall be installed in accordance with the approved scheme.

REASON

To prevent pollution of the water environment.

ILLUMINATION

49. Before development commences a scheme shall be submitted to and approved in writing by the Planning Authority indicating the position, design, type and hours of operation of all illumination facilities to be employed at the site and the measures to be incorporated to minimise glare and nuisance. The lighting scheme as approved shall be implemented for the duration of the development and removed upon completion of the development.

REASON

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

RESTORATION

50. No development shall commence until a Restoration Strategy for the restoration and management of the site has been approved by the Planning Authority. Such a scheme shall detail the sequence and phasing of backfilling and reclamation showing clearly their relationship to the working scheme and shall include appropriate landscape mitigation and restoration, taking into account the historic landscape character, features of ecological interest and intended after-use of the land.

REASON

To protect and conserve the heritage and biodiversity value of the site.

51. The site shall be reclaimed (progressively) in accordance with the Restoration Strategy.

52. In the event of a cessation of winning and working of coal prior to the achievement of the completion of the approved Restoration Strategy, which in the opinion of the Planning Authority constitutes a permanent cessation within the terms of paragraph 3 of Schedule 9 of the Town and Country Planning Act 1990, a scheme for approval shall be submitted in writing to the Planning Authority within 6 months of the cessation of winning and working and shall include details of reclamation and aftercare. The approved scheme shall be fully implemented within 3 years (excluding any aftercare) of the written approval, unless otherwise approved in writing by the Planning Authority.

REASON

To enable the Planning Authority to adequately control the development and to ensure that the land is restored to a condition capable of beneficial use and in the interests of amenity.

AFTERCARE

53. An aftercare scheme for each phase of the restoration, requiring that such steps as may be necessary to bring each phase of the land reclaimed to the required standard for use for agriculture, amenity and conservation, shall be submitted for the written approval of the Planning Authority not later than 6 months prior to the completion of restoration (including soil spreading) of each phase.

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 and to bring the land to the standard required for agricultural, amenity, and conservation use.

AGRICULTURAL WATER SUPPLIES

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

REASON

To ensure that agricultural use is maintained.

ARCHAEOLOGY

55. No development shall take place until a “Programme of Archaeological Work” has been submitted to and approved in writing by the Planning Authority. The programme shall be implemented as approved.
56. The applicants shall retain an archaeologist approved by the Planning Authority, who shall undertake a “Watching Brief” of recognised archaeological features throughout the excavation and restoration period.

REASON

To protect or record the archaeological features on site, in accordance with the provisions of the 1979 Ancient Monuments and Archaeological Areas Act, and Welsh Office Circular 60/96 (“Planning and the Historic Environment - Archaeology”).

PROTECTED SPECIES

57. Where any species listed under Schedules 2 or 4 of the Conservation (Natural Habitats, etc.) Regulations 1994 is present on the site in respect of which this permission is hereby granted, no works of site clearance, demolition or construction shall take place in pursuance of this permission unless a licence to disturb any such species has been granted in accordance with the aforementioned Regulations and a copy thereof has been produced to the local planning authority.

REASON

To safeguard the protected species within and around the application site.

LIAISON COMMITTEE

58. Before development commences, the developer shall establish a Liaison Committee, the composition of which shall be approved in writing by the Planning Authority. The purpose of the Liaison Committee shall be to ensure that the local community has an understanding of the work being carried out and that the developer and contractor are aware of local community concerns.

REASON

To ensure all stakeholders are properly represented, to protect residential amenity.

ENVIRONMENTAL LIAISON OFFICER

59. Prior to commencement of works on site, an Environmental Liaison Officer shall be appointed to oversee soil stripping/storage, the restoration scheme, habitat recreation

and landscape works. The role, functions, experience and professional requirements of the Environmental Liaison Officer shall be approved in writing by the Planning Authority beforehand.

REASON

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