

## **SECTION A – MATTERS FOR DECISION**

### **Planning Applications Recommended For Approval**

<b><u>APPLICATION NO:</u> P2012/1073</b>	<b><u>DATE:</u> 21/12/2012</b>
<b>PROPOSAL:</b>  A planning application at the site currently known as East Pit East Revised OCCS, Gwaun-cae-Gurwen, SA18 1UP for development comprising:  Matters of Outline with all matters reserved: leisure facilities to include: a 120-bedroom hotel (Use Class C1); 78 holiday lodges (Class C3) of 2, 3 and 4 bed-units; a campsite (Sui Generis) of 6.35ha. with facilities block of 210m <sup>2</sup> and Visitors Centre (Class D1) of 300m <sup>2</sup> ; dive centre with ancillary dive centre shop (Class D2) of 1630m <sup>2</sup> ; all to include appropriate parking provision, recreational open space, internal access routes, services and drainage provision; and associated works including access, footpaths, cycle routes and bridleways, landscaping and layout details;  Matters of Detail (as set out in the application at Annex 1: Mineral Extraction and Processing) the proposed north eastern extension to East Pit East Revised for the purposes of coal extraction along with the completion of coaling at the existing site and the retention of associated ancillary development and Gwaun-Cae-Gurwen Railhead together with the development of a Country Park and recreational lake.	
<b>LOCATION:</b>	East Pit East Revised OCCS, New Road, Gwaun Cae Gurwen, Neath SA18 1UP
<b>APPLICANT:</b>	The Lakes at Rhosaman Ltd
<b>TYPE:</b>	Minerals
<b>WARD:</b>	Gwaun-Cae-Gurwen

### **Background**

The site, which is the subject of the whole application, covers some 585 hectares of land and this lies broadly between Gwaun Cae Gurwen Tairgwaith and Lower Brynamman to the west and south, Upper Brynamman, Rhosamman and Cefn Brynbrain to the north and north east of the site respectively and Cwmllynfell to the east.

It is predominately used at the present time for operations associated with the East Pit East Revised (EPER) Open Cast Coal Site (OCCS) which covers some 400 hectares of the site. The remaining areas of land include previously restored opencast development to the west, which are now utilised for rough upland grazing, adjacent areas to the south, north and east also utilised for rough grazing and areas occupied formerly by the Gwaun Cae Gurwen washery and ancillaries which is, in part, now utilised as a rail pad to dispatch coal from EPER.

The general area of the site has a long history of coal mining development which has occurred for more than 250 years, the first pits having been sunk around 1835. Large scale deep underground mines were operated within the Maerdy Colliery from 1886, East Pit in 1910 and Steer Pit in 1924. All were nationalised in 1947, whilst Maerdy Colliery closed in 1948, Steer Pit in 1959 and East Pit in 1962.

Smaller opencast operations commenced in 1948 with the Penstack, Rhydwen and Gwaun Cae Gurwen sites all having completed coaling by the mid 1950's. The first major site was the Pengosto operations which was worked from 1967 to 1979. In 1980 the National Coal Board applied for a licence to work the "East Pit site", which was subsequently granted an authorisation to work coal by open cast methods essentially as an extension to the partially restored Pengosto site. In 1986 a planning application was submitted to the former West Glamorgan County Council for the development of the East Pit Extension Opencast Coal Site which was approved in the same year. This granted planning permission to extend coaling operations and a void in a general easterly direction. By this time, major overburden mounds were being created to the west and south of the advancing void. Coaling operations were to cease at the East Pit Extension site by 31 December 2001.

Also in 2001, an application was submitted to this Authority for a further extension to the East Pit Extension site. This was subsequently withdrawn in May 2003. In the interim a further application was submitted in 2002 under P.A. Ref. P2002/0917, called East Pit East Revised (EPER) for a revised extension to the coaling area and ancillary development. Following a call in procedure by the National Assembly for Wales, further consent was granted by the Welsh Ministers in December 2004 for opencast development. This is referred to as the "2004 consent" for the remainder of this report.

The 2004 consent granted a period of 7 years 6 months for coaling at the site from its commencement in May 2005. That period expired on 30<sup>th</sup> November 2012 although no substantial extraction of coal occurred until mid 2008. The operator had mothballed the site for some three years citing depressed coal

prices as a reason. Developed concurrently with the opencast development was the re-use of the rail pad that formed part of the Steer pit and former Gwaun Cae Gurwen washery which had closed in 1998. That has been utilised to transport up to 40% of the coal by rail from the immediate vicinity of the site and was the subject of separate planning permissions which have also expired.

The application, the subject of this report, was submitted in November 2012 although not validated until 21 December 2012. This application proposes a further extension to the EPER site also known as the 2004 consent. The proposal also incorporates a revised restoration to that proposed under the 2004 consent and now incorporates a lake. This application is referred to as the “Lakes application” for the remainder of this report.

Given that coaling continued at the EPER site and notwithstanding the submission of the Lakes application Members will recall after considering a report on the need for enforcement and associated legal advice, the Planning and Development Control Committee resolved on March 5<sup>th</sup> 2013 to seek a separate Section 73A application to regularise the ongoing mining activity as opposed to pursuing enforcement action. The Section 73A application proposed the regularisation of coaling undertaken since the end of November 2012 together with the continuation of coaling in accordance with the 2004 consent. That application was subsequently submitted in June 2013 in accordance with the agreed submission timescales and was reported to the Planning and Development Control Committee on 1<sup>st</sup> April 2014. The Committee accepted the principle of a continuation of coaling in accordance with the 2004 consent and made the following resolution (to grant further consent for the completion of coaling up until 30<sup>th</sup> November 2015) *“That in addition to the existing Section 106 Agreement, and the existing escrow account, upon signing of a Unilateral Obligation or agreement which is acceptable to the Local Planning Authority under Section 106 of the 1990 Act to secure a contribution of £150,000, to be paid immediately upon the grant of planning permission, for community benefits, and an increase in the rate of contribution into the Restoration and Rehabilitation Escrow Account held by the Council to £4 per tonne backdated with effect from 1<sup>st</sup> December 2012, that the application be approved subject to the Conditions contained in the circulated report”*.

Subsequent to that meeting, and before a completion of the proposed Agreement, legal opinion indicated that any S106 Obligation that fails to bind the freeholder to the Agreement should not be considered as a secure Agreement for the provisions required. In the interim the applicant for the Section 73A application (P2013/0530), Celtic Energy, have not brought forward a position whereby the freeholder, Pine Regeneration Ltd (a subsidiary

of Oak Regeneration) were prepared to enter into the agreement for that application. Accordingly, that planning permission has not been issued, and therefore at the present time the development now occurring at EPER O.C.C.S. and associated rail pad remains unlawful and without a valid planning permission.

In the interim, since 1<sup>st</sup> April 2014, progress has been made on outstanding criteria and issues within the Lakes application and information has been submitted to the extent that it is now considered that an adequate and suitably informed decision can be made on the application.

In contrast to the S73A application which only included land in relation to the EPER site granted under the 2004 consent, this application includes land to the west, south and east of that site including the rail pad, adjacent grazing and non operational land which collectively accounts for the whole site known as the Lakes application. The site is described in more detail below.

Members will recall that a site visit was undertaken on the 21<sup>st</sup> November 2013 to familiarise yourselves with the nature of the application site and the surrounding locality having regard to this application and the other outstanding applications proposed for the site at that time. The area proposed for the extension of the extraction area has been reduced since that date. However the principle of coal operations within the extension area remains the same.

### **Relevant Planning History:**

Pengosto Opencast Coal Site – operated on part of the site around 1968 to 1977

East Pit Opencast Coal Site – worked under an Authorisation granted in January 1981

2/2/81/0422/03 – Provision of storage facilities, loose boxes, food store and stock yard – (land adjacent to access road to East Pit) – Approved 15<sup>th</sup> December 1981

2/3/86/0201/03 – East Pit Extension – Approved 22<sup>nd</sup> October 1986

2/2/88/0528/03 – Stocking of coal and ancillary developments (at Gwaun Cae Gurwen stocking ground) – Approved 9<sup>th</sup> November 1988

P/01/0943 – Proposed extension to existing opencast coal site followed by restoration and aftercare management. East Pit East Opencast Site – Withdrawn 3<sup>rd</sup> May 2003

P2002/0078 – Use of rail loading facility for transport of coal from proposed East Pit East Opencast Coal Site – Approved 11<sup>th</sup> January 2005

P/02/0720 – Proposed restoration and aftercare scheme for East Pit Extension Opencast Coal under Conditions 22 and 23 of P.A. 2/2/86/0201

P/02/0917 – Extension of existing opencast site on-site washery, followed by restoration and aftercare management (revision of previous application No. 01/943). Called in by Welsh Assembly Government and approved under A-PP185-07-014 on 7<sup>th</sup> December 2004.

(This application will be referred to throughout this report as the 2004 consent.)

P/05/0139 – Scheme for the monitoring of fugitive dust and pm10's particulates under condition 30 of planning reference app 185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0140 – Scheme for the control of dust under condition 29 of planning reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0142 – Scheme for the control and monitoring of noise under Condition 26 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0143 – Scheme for the provision of a turning facility at Ochr y Waun, Cwmllynfell under Condition 19 of planning application reference A-PP185-07-14 – Approved 22<sup>nd</sup> September 2005

P/05/0145 – Revised scheme for the arrangements for the transportation of coal under Condition 18 of planning application reference A-PP185-07-14 – Approved with conditions 9<sup>th</sup> June 2005

P/05/0147 – Scheme for a detailed drainage and lagoon system under Condition 32 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0148 – Scheme for the monitoring, collation and assessment of groundwater levels to the north and east of the extraction area under Condition 35 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0149 – Scheme for the measurement and monitoring of blasting under Condition 39 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0151 – Scheme for a system of warning techniques and notices to be placed on site boundary to warn of blasting under Condition 42 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0153 – Scheme for the management of areas not to be disturbed by opencast operations under Condition 45 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0154 – Scheme for the setting up, operating and regular convening of a Site Liaison Committee under Condition 48 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0155 – Scheme for the setting up of a Technical Working Party under Condition 49 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0156 – Scheme for the landscaping treatment of side slopes, areas of fill, topsoil, subsoil and soil forming material dumps and overburden mounds under Condition 52 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0157 – Scheme for the proposed lighting of all areas, buildings, plant and machinery under Condition 53 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0159 – Scheme for the provision of the proposed suspended right of way under Condition 56 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P/05/0162 – Scheme for the implementation of a programme of archaeological work and written scheme of investigation under Condition 55 of planning application reference A-PP185-07-14 – Approved 17<sup>th</sup> May 2005

P2005/1406 – Engineering Operations associated with railway facilities at rail pad – Approved 24<sup>th</sup> October 2005

P/05/1877 – Request under Condition 51 of planning application reference A-PP185-07-14 to remove overburden from East Pit East Revised Opencast Site – Approved with conditions 12<sup>th</sup> January 2006

P/07/0813 – Proposed aftercare management scheme for restoration area as identified under s.106 agreement – East Pit Revised O.C.C.S (Clause 4.2.6) – Approved 20<sup>th</sup> August 2007

P/08/0106 – Application to allow HGV movements between 07.00 and 18.00 (Mondays to Fridays) during school holiday periods under Condition 21 of P.P.A – PP185-07/014 – Approved 3<sup>rd</sup> March 2008

P/09/0264 – Proposed amendment to approved scheme for coal transportation under Condition 1 of the previous planning consent P2005/0145 – Approved 8<sup>th</sup> May 2009

P/10/0480 – Proposed amendment to the specification of the turning facility at Ochr y Waun under Planning Application reference P2005/0143 – Withdrawn 16<sup>th</sup> November 2010

P/10/0591 – To amend landscaping treatment under Condition 52 of Previous Planning Consent A-PP185-07-14 for the application of bio-solids – Approved with conditions 12<sup>th</sup> July 2010

P/11/0250 – Proposed restoration and aftercare details under Condition 61 (Schedule B) and Condition 62 (Schedule C) of planning permission reference APP-185-07-14 – Not determined

P/11/0606 – Proposed scheme under Condition 36 of Planning Permission APP-185-07-14 for additional monitoring of groundwater levels and groundwater quality during restoration – Not determined

P2013/0530 – Planning Application pursuant to S73A of the Town and Country Planning Act (1990)(as amended) for the Variation of Condition 3 of Planning Permission A-PP185-07-14 to retrospectively enable the continuation of extraction of coal for three years from 30<sup>th</sup> November 2012 at East Pit East Revised Opencast Coal Site, Gwaun Cae Gurwen, SA18 1UP – Not determined

P2013/0802 – Variation of Condition 2 of Planning Application reference P2002/0078 to allow continued use of the rail loading facility for the transportation of coal from the East Pit East Revised Opencast Coal Site – Not determined

P2013/0803 – Proposed variation of Condition 2 of Planning Application reference P2005/1406 to allow continued use of the rail loading facility for the

transportation of coal from the East Pit East Revised Opencast Coal Site – Not determined

The former area of the Gwaun Cae Gurwen Washery and disposal point operated on land mainly to the south of New Road was worked under an established use up until 1998

### **Publicity and Responses:**

The application has been publicised on five occasions by posting site notices in all adjacent communities (51 separate locations) and advertised in the press.

The relevant dates were as follows;

Site Notices : 9<sup>th</sup> January 2013 ; 11<sup>th</sup> June 2013; 5<sup>th</sup> March 2014, 14<sup>th</sup> November 2014, 31<sup>st</sup> March 2015

Press Notices : 11<sup>th</sup> January 2013 ; 14<sup>th</sup> June 2013, 5<sup>th</sup> March 2014, 14<sup>th</sup> November 2014 and 31<sup>st</sup> March 2015.

To date, 27 letters of objection from the occupiers of 9 residential properties and from one organisation have been received which are summarised as follows:

1. The formation of the applicant company and the “Lakes of Rhosaman” is an indication that the restoration of the common is not going to happen.
2. The proposal for a “resort” could be set on the former Brynlllefrithe farm rather than on the common, however, this is a continuance to avoid restoration.
3. The proposal to build the “resort” is not on land that the applicant controls given the Common Rights attached to the property.
4. The digging of the coal and associated strata is responsible in putting carbon into the active environment and accelerate the cyclotherm process, by adding methane and other greenhouse gases.
5. Policy of deliberate dereliction of Ochr y Waun by the operator, the removal of a tree screen, the deposit of rubbish and ignoring notices from NPTCBC are examples of the insidious erosion of the environment undertaken by the mining company including the failure to cease mining.

6. The lack of restoration of Common Land and poor management of adjacent moor rush has done nothing to assist graziers and Celtic Energy does not manage their land appropriately.
7. Adverse effects of noise, dust and pollution, blasting and vibration which is causing damage to houses as blasting will only be 200 metres from properties.
8. The pollution is affecting the health of residents and poses a threat of chest conditions in the future.
9. Transporting coal through Cwmgors has resulted in damage to property with dust and vibration and the alternative route should be used.
10. The provision to regulate dust has been unworkable, unreliable and unacceptable. Tolerances had been exceeded and monitoring equipment had lay on the common for weeks.
11. There is no provision for monitoring PM 2.5.
12. There is no data relating to vibration which is generated as a consequence of this development and the cracks which are appearing on the common and in the houses.
13. There is no research on the effect of the opencast working with the attendant dust, vibration and noise, at 60m from residences. This does not mean it is not harmful to health.
14. The analysis of GP consultants by Dickson Dees found associations between living near an opencast site and health outcomes.
15. The detrimental effects found in the above study are likely to be accentuated in Cwmllynfell due to the proposed site being closer than 750 metres, the climate is more conducive to respiratory infections, similar to sites where the greatest adverse effects were found ie. Cwmllynfell has more rainfall, less frost, more wind than the areas studied.
16. The application should not be determined under delegated procedures as it is not minor development.
17. The water filled void and lake will create outward pressures into old workings potentially bursting out and affecting adjacent properties with slurry and rocks

18. The design of the lake would exclude weir structures and rely upon natural rock head. Given the rock head in the area is highly disturbed coal and shale how is that going to be capable of providing adequate erosion resistance, control of lake level and prevent the outlet creating its own channel.
19. A dam doesn't have to have a weir on it to be a dam, it merely has to be man made and retain water. The whole of the west side is a man-made tip, therefore it is a dam and the lake is a reservoir. It doesn't matter that the tip is not designed as a dam it is what it does i.e retains water that matters.
20. Water will not stand in the void to 175mAOD as claimed.
21. The lakes proposal is a reservoir within the meaning of the Reservoirs Act 1975 and section 4 makes it clear that there is a requirement for a Panel Engineer for classes of reservoir to design and oversee construction at a cost of approximately £75m. Whilst it does not say that the Lake is not a reservoir it clearly is and may be classed as a 'large raised reservoir'.
22. Enforcement of the Reservoirs Act is invested in Natural Resources Wales
23. The proposed lake sounds dangerous and that alone will deter inward investment.
24. The application is a sham. If approved and mining ceased the applicant could walk away claiming that the hotel and dive centre were impossible commercially because they could not fill the void to form the lake.
25. Does the Reservoirs Act (RA) apply to what is proposed as it should be noted that the first sentence of the RA says it does not apply to tips and lagoons from mines and quarries.
26. The Mines and Quarries (Tips) Act 1969 could be construed as applying and that has no reference to the use of suitably qualified engineers, merely an inspector. Legal advice should be sought.
27. The Reservoirs Act defines a large reservoir as one that stores more than 25,000m<sup>3</sup> of water above the level of the surrounding land. A lake with a surface area of 0.25ha standing 1m above the surrounding land qualifies.

28. The original consents required the land to be returned to its original state and the conditions are legally binding.
29. Given the track record of the company there is a fear that the site will not be restored and responsibility will be passed on to others.
30. The world market is flooded by cheap coal; if the price of coal collapses the mining company will not have the funds to restore the site. Is the Authority taking firm action to ensure that this doesn't happen at East Pit. The restoration of the existing area gives a baseline for future development and complies with the previous permission.
31. The discretion granted to the LPA over enforcement wasn't intended to cover outrageous flouting of consents, the actions of the applicant at the end of the consent period has given no assurance to the LPA that it is a reputable organisation.
32. There are inadequate resources to restore the site as predicted at the 2004 Public inquiry. The way forward is to cease increasing the size of the void and work with the community made up of a local consortium to restore the site.
33. Previous planning permission was given subject to a condition that the land be restored to its original topography this has been radically altered i.e steeper and higher which will impact on light.
34. The previous planning permission required the restoration be complete within 2 ½ years of the cessation of coaling. The new proposal does not meet this target.
35. The development will have an effect on the value of property, particularly if noise and explosions become unbearable and such impacts have an effect on the ability to enjoy the home and garden.
36. Extension of coal will result in an additional 6 years of excessive noise pollution as past experience has shown that previously imposed planning conditions have not been adhered to.
37. Noise levels have not been measured in all weather conditions and there has been a failure to investigate noise complaints.

38. Previous allegations of excessive noise levels have not been disproven despite the offer to prove such allegations are wrong by the installation of permanent equipment.
39. British Standards emphasise the importance of good community relations, although despite me living in a noise sensitive property I was excluded from the community consultation letter as I believe this is because I am a known complainant.
40. The activities at the lake which may include motor sports together with the diving activities would lead to unacceptable noise levels.
41. It is inappropriate to locate a development of this size and nature, including the extension of the open cast mining, on the edge of the National Park.
42. Noise and disturbance generated by the proposed activities, building service and traffic which will impact on the tranquillity of the Park.
43. The Head of Environmental Health and Trading Standards for Neath has expressed concerns over noise levels on Och y Waun.
44. Due to the court case which is taking place involving East Pit it is suggested that this application should not be determined and cease coal so that the previously agreed restoration works can take place.
45. With a court case pending is it wise to determine the application. Who has the lease of the site, who is the legal owner and do you have permission to continue to determine the movement of the lease from one body to another?
46. The creation of a lake to a depth of 400ft is a disaster waiting to happen.
47. Unconvinced that the water level can be attained, since it implies 135m of water standing in the opencast void, no more than 20-30m of water has been seen in the void.
48. The water filled void will have a rock wall which would constitute an earth/rock filled dam of casually tipped material, lacking any structural design, without either a waterproof core or stable upstream face which would be completely unstable and dangerous.

49. The risk of failure of such a structure would mean it would collapse in one direction into the void which would result in a major loss of life downstream.
50. There are no proposals put forward by the applicant to stabilise the fill and grout the strata so the void can be safely filled.
51. Recommends that a full engineering/ stability assessment is carried out.
52. There is believed to be no cases of a cut of 200m deep as close as 200m to property
53. The new requirements of MTAN 2 that a 500m buffer zone should apply to this site should outweigh the need for further extraction of coal by opencast methodology.
54. Damage to property and the proposed extension would be within 200m.
55. An explanation is required as to why the advice in respect of the 400/500m buffer zone in MTAN 2 is to be ignored.
56. National Planning Policy advises that development management decisions should give great weight to conserving and enhancing the natural beauty, wildlife and cultural heritage of these areas.
57. Increase in traffic would alter the character of the village.
58. Blasting is continuing without permission.
59. Significant visual impact from high points in the National Park
60. Increase in light pollution to the National Park.
61. Recognise the need for increased employment opportunities but this must be consistent with the statutory purposes of the Park.
62. A development of this scale could actually have a negative impact on the economic growth and regeneration if it makes the Park a less attractive place to visit.
63. The proposal is large and ambitious and if the finances are not forthcoming then an eyesore could be left.

64. Impact on and loss of common land.
65. Previous planning conditions should be met before a new application is considered.
66. The adverse environmental impact on the community and area of the extension outweighs the benefits to the community.
67. There will be a 10% reduction in coal transported by rail, despite the applicant claiming there would be no change. How will they transport the extra 10% ?
68. Due to a lack of response to issues previously raised a complaint of maladministration will be pursued.
69. The Authority should have acted quickly to reject this application as soon as it became clear that the applicant had not prepared the application so that it covered the requirements of the legislation.
70. The further information submitted by the applicant makes no reference to the Mines and Quarries (Tips) Act. This needs to be clarified.
71. The 2004 application was supposed to be the last and NPT should cease to impose unwanted developments on the village.
72. Common land is being worked without the consent of all commoners. What legal advice has been taken on this?
73. The Head of Environmental Health and Trading Standards for Neath has expressed concerns over noise levels on Ochr y Waun.
74. Celtic Energy agreed that they owe a duty of care to the local communities and the residents of Ochr y Waun. No consultation with residents has taken place.
75. The application is beyond what is reasonable, the time limits set by the Opencast Coal sites Acts 1958 and 1975 would seem reasonable.
76. There has been no development in the area due to the blight of the opencast.

77. It is inappropriate to locate a development of this size and nature, including the extension of the open cast mining on the edge of the National Park.
78. The proposal would have a negative impact on economic growth and regeneration if it makes the Park a less attractive place to visit.
79. There would be significant visual impact from high points within the Park which would impact on the enjoyment of the Park by visitors.
80. Increase in light pollution.
81. There is a duty on the operator to restore the land so that it blends in with its surroundings.
82. Mr Justice Hickenbottom indicated the failure of the opencast operators to restore the sites reflects poorly on the ability of Welsh local authorities to regulate activity, leaving voids 100m whose stability and safety are questioned. The new developments with the SFO and at Margam should, in the interests of prudent governance, encourage NPT to institute a moratorium on opencast mining.
83. The public meetings at Tairgwaith and Margam last month indicated that public demands NPT enforce restoration now and that the situation can only be resolved when Celtic and Oak leave the sites.
84. There was a consensus at the recent public meeting that if approved this could lead to another Aberfan or Dolgarrog Dam and restoration should begin forthwith.
85. Alternative proposals should be considered as is the case at Margam
86. I am appalled at reports that Celtic have laid off a large proportion of their workforce, when restoration is due. If this move is to pressurise the council it should be recognised as such.
87. We live within the 500 metre buffer zone which has resulted in a loss of amenity in terms of dust, dislodged materials from roofs, broken ornaments and can induce pain.
88. A number of paragraphs from the SFO court case are referred to and the objector requests that as a consequence of those paragraphs it would

seem to contravene principles of good governance for NPT to continue to deal with Celtic and Oak.

Two letters have been received from Bethan Jenkins AM, in relation to the originally submitted scheme and in relation to the scheme as amended. The letters are summarised as follows:

1. Having considered the revised application, nothing within it reverses my original opinion that the proposal should be rejected.
2. The applicant has failed to make a case for an exception to the buffer zone as laid out in MTAN2 and there are more recent and significant factors that the Council should weigh up when determining this application.
3. The Welsh Government in its recent decision on Varteg has raised the bar in requiring proof that the exceptional circumstances provide the best way forward when opencast is being proposed within 500 metres of settlements.
4. The Minister concluded that the application did not fulfil the definitions of 'most effective' and 'most sustainable'. A close consideration of what is meant by 'overriding significance' needs to be undertaken when weighing up claims of regeneration, employment and economic benefit for the surrounding area.
5. The claims that untapped tourism markets proffered in the original application do not meet any kind of evidence test and are contrary to the argument of 'overriding economic significance'.
6. The viability of the scheme needs to be closely looked at.
7. Coal operations across South Wales sell principally to two customers, TATA Steel and Aberthaw power station, The latter proposed to reduce the stations NOx emissions gradually over time but the investment required to achieve this would move it back into the red.
8. Welsh Government has provided a go-between the owner and the EC, if agreement cannot be reached, the station will be run-down.
9. The station also faces further challenges associated with transmission charges introduced to make electricity carried from remote locations. If removed, this would create an additional £10 million cost for Aberthaw.
10. Uncertainty for Aberthaw means uncertainty for its Welsh Suppliers. As such it is difficult to understand where the applicants would find the money to make good on their promises of regeneration. Details of contingency plans should be provided.
11. The greatest concern for the residents of Cwmllynfell is the creation of a lake.

12. A letter from James Penman makes no reference to the Mines and Quarries (Tips) Act. Since he asserts that the lake is not a reservoir, then neither is the site a tip under the meaning of this Act.
13. To avoid classification as a reservoir, the proposal is to rely on a natural rock head rather than a designed weir structure. Due to the unstable nature of the principle seam and the presence of a number of old workings how will such a barrier provide adequate erosion resistance.
14. In the absence of a weir how will water levels in the lake be controlled ?
15. Section 1 (1) of the Reservoirs Act states 'For the purposes of this act 'reservoir' means a reservoir for water....' Section 1(2) says 'The provision made by this act in relation to reservoirs shall, unless otherwise stated, extend to any place where water is artificially retained to form or enlarge a lake or loch...'
16. As the above defines the lake as a reservoir, there is a clear requirement under the Act for a panel engineer.
17. The cost (£75m) to construct the lake should be considered against the amount of coal extracted and expected price thereof.

One letter of objection has been received from Gwenda Thomas AM which is addressed to the Welsh Government but is copied to the Planning Authority and requests that the application be 'called in' for the following reasons:

1. East Pit is located on the border between Neath Port Talbot and Carmarthenshire and close to the border with Powys, the impacts will therefore be felt beyond the boundaries of NPT.
2. The development will impact upon the Brecon Beacons National Park which has a landscape of National importance
3. The development will impact upon the amenities of local residents.
4. The mine is a significant employer and the fate of a number of jobs is at stake.
5. The feasibility of restoration is a concern.
6. The previous consent was granted by the Planning Inspectorate rather than the Local Planning Authority and the Welsh Government have a moral responsibility for the development.
7. The proposed extension is within the 500 metre buffer zone recommended within MTAN 2.
8. The proposed lakes could constitute a novel planning issue. There are few reservoirs of this scale constructed in recent years and its failure would be significant.

Three letters of support have also been received from Unite the Union which are summarised as follows:

1. The majority of the 90 plus workforce at East Pit are members of Unite the Union and if the current application is not approved then most of them will be facing redundancy within a matter of weeks. This will create tremendous hardship for those men and their families at a time when alternative employment in the area simply does not exist on this scale or on these rates of pay.
2. The proposed development will result in saving the jobs of 120 men on site and at Onllwyn washery, in addition to the local contractors and the 96 firms who supply East Pit. In the current climate we can ill afford to lose these jobs.
3. It is understood that Members will have the difficult decision of weighing up all the pros and cons associated with this proposal and the proposed restoration to a country park.
4. It is also understood that if approved, this will be the final extension to this site, as coal reserves will be exhausted and a County Park will be delivered through money held by the Council which can be used should the company fail to carry out restoration. It appears that unless this scheme is approved achieving any form of restoration will be difficult. A pragmatic approach will therefore need to be taken to achieve what the public are seeking – an end to coal extraction and a sensible restoration of the site.
5. It is accepted that there will be inconvenience during the development however the bigger picture needs to be considered and the end will justify the means. The proposed restoration will be spectacular and will benefit the local community.

50 letters of support from employees of the site (26 of whom live in villages within the immediate vicinity of the site) have been received, together with 5 letters of support from local residents not employed in the site. 30 letters of support have also been received from companies who form part of the supply chain to East Pit. The letters are summarised as follows:

1. We have been dealing with this type of industry for over 30 years and have found them to be responsible and committed to upholding the environment and to work closely with local communities.
2. Celtic Energy are a progressive company who have an established commitment to their business and their supplier chain.
3. The continued operations will ensure the ongoing security of our own business and employees. The proposal will result in the generation of revenue to pay for the restoration of the site.
4. The proposal will secure jobs in the Heads of the Valley Corridor.

5. Celtic Energy is without doubt the leading supplier of naturally smokeless coal in the UK that has an important and growing demand in the domestic home heating market.
6. The volatile price of gas and oil has resulted in an upsurge in the interest and use of multi fuel home heating, the demand for which can be addressed by East Pit.
7. We are a small business who rely on loyal customers such as Celtic Energy. We urge approval of this application to ensure that our company is able to continue to provide employment to our locally employed and trained staff.
8. As residents within 500m of the site we are very interested in the restoration of the site and the creation of a lake and country park. The Black mountains area lacks any sort of planned place of interest.
9. This application appears to be the 'only show in town' and offers a guaranteed solution to the issues associated with the restoration of East Pit to leave behind a real legacy for the local community.
10. There has been surface mining in this area for over 50 years and this will bring mining in this area to an end once and for all.
11. The development will sustain well paid jobs in the area and support the local communities in terms of the wider economy.
12. Sites which have been restored by Celtic are left in a better state than prior to what they were like before the mining took place.
13. To maintain growth in the economy of South Wales it is considered essential to get approval for this development.
14. Having lived locally all of my life and wishing to settle and raise my own family in the area I appreciate the opportunities that this development would nurture within the community. It is an excellent opportunity to provide a pathway out of what is currently a deprived area and encourage and support economic growth.
15. Being an employee and living locally, I support the development as I am concerned about the future livelihood of those employed at the site and their families, in addition to the long term effect upon the local community should the application not be successful. There are very few job opportunities available to enable continued spending within the local shops within our communities.
16. As a small valley community it will be good to have somewhere that would bring in visitors and money to the area. There are so many advantages associated with the development.
17. This is a unique industry that has brought communities together in the past, in a way that no other industry could possibly do. It is appreciated that in the current climate fossil fuels are frowned upon but until the safety and security of other forms of energy are secured coal must be included as a major player in the energy mix for Wales.

18. It is acknowledged that the coal reserves are drying up in this area and an alternative form of income needs to be identified. Given time the proposed regeneration of this area will generate income and will attract future development to the area, which will be promoted as a tourist attraction in the heart of South Wales. Failure to approve the application will have a negative impact upon the community and economy of this part of South Wales.
19. We now need to embrace the opportunity to give something back to the community and create a new chapter in the valleys history.
20. The site has been diligently run ensuring that the highest standards have been maintained. This is reflected in the low levels of complaints received in regard to noise, dust and blast vibration.
21. The proposal will be beneficial to the area in that it would enhance the aesthetics of a drab and bare common whilst also providing much needed employment in a deprived area.
22. Having worked in this industry all of my life, men within my age bracket 61 and older, together with younger men who have young children depend on the last few years left at East Pit for our livelihoods. Large companies have relocated out of the valleys and we rely on the employment that remains and hopefully the decision the Council makes will be in our favour. (A letter is appended from Celtic Energy to the employee advising them of the likely redundancies which will be unavoidable should the planning application either be refused or if it is 'called in' by the Welsh Government.)

One letter of support from the Energy Company operating Aberthaw Power Station has also been received which is summarised as follows:

1. The power station consists of 3 x 518 MW coal fired turbo generator units and provides enough power for 1.5 million people or 40% of the electricity required for South Wales.
2. The power station was specifically designed and built to burn low volatile Welsh coal, using technology specific to Aberthaw. Welsh coal is therefore the preferred option over imported coal and is necessary for the long term future of Aberthaw power station as it offers a secure, reliable and competitively priced fuel source. The future of the Welsh coal mining industry and Aberthaw power station are therefore dependent upon this symbiotic relationship.
3. The power station has recently had a £250m programme of upgrading and investment to help secure its regulatory position under the Large Combustion Plant Directive.
4. Security of energy supply is being questioned nationally, due to heavy reliance upon gas as the primary source of fuel. Furthermore local

supplies reduce the carbon footprint created by imports from Russia, South Africa and Australia. It is hoped therefore that indigenous sources of coal can continue to supply the power station.

5. The proposed extension to East Pit is therefore an important development to allow Aberthaw to continue to support the local and wider economy in Wales, jobs and the generation of affordable electricity for the people of Wales.

One letter of support has been received from the operator, Celtic Energy, (who is not the applicant) which is summarised as follows:

1. The application seeks to provide a long term sustainable solution to the legacy restoration issues at East Pit which have been a source of concern locally for many years and whose roots can be traced back to the 1994 government privatisation of the UK coal industry.
2. The new restoration strategy would not restore the site to the previously approved original contours. It would, however, provide a mix of uses and landscapes including improved and rough grazing, tree planting and hedgerows together with a lake suitable for a range of leisure activities. The proposed design respects and protects the rights of commoners for grazing and the rights of the public to open access. The restoration proposal would restore and enhance the site creating an attractive, pleasant environment. The restored site would provide quality open spaces with leisure and employment opportunities for the community. The restoration would support biodiversity and encourage public access to the countryside.
3. The new restoration strategy would be fully funded and guaranteed by the provision of cash funds held by the Council sufficient to complete the restoration whatever happened to the owners in the future.
4. The proposal will deliver community benefits amounting to £475,000.
5. The restoration guarantee would bring the site in line with Nant Helen and Selar where sufficient funds have been secured to ensure restoration takes place.
6. This application offers the only realistic option to securing any sort of acceptable restoration at East Pit.
7. The other issue I want to highlight is the impact of a refusal (or a call in by the Welsh Government) on employment within Celtic Energy. Even

though a refusal could be appealed, any appeal or call in process would create uncertainty and a delay, which would make continuing operations at East Pit unviable in the meantime. We would therefore sadly have no choice but to make around 70 staff redundant almost immediately following the planning committee decision or any call in decision.

8. Since becoming the Chief Executive of Celtic Energy in 2013, I have tried to find pragmatic solutions to legacy restoration issues and am confident that this application represents the best possible compromise between what is achievable and what is publicly acceptable.

### **Statutory Consultees:**

**Ramblers Association:** Positive impact on rights of way with paths retained and only minor diversions proposed, although some adjustments to the proposed right of way network are put forward.

**Glamorgan Gwent Archaeological Trust:** Whilst acknowledging that the Environmental Statement concludes that the proposals will have a low adverse and neutral effect on archaeological resources, they recommend a programme of mitigation including topographic surveys of the mineral railway line and field boundary earthworks and the coring of deep peat deposit which will need to be a scheme of investigation for archaeological work and that such a requirement is conditioned.

**Network Rail:** Has no objections subject to mechanisms and requests for safe operations of the mineral railway line and level crossings.

**Office of Rail Regulation:** Has no comments to make on the application.

**Welsh Government (Department for Economy, Science and Transport) (Transport Division):** Has no concerns with respect of the application to redevelop the site once coal extraction is complete and that the Transport Assessment demonstrates that all adjacent functions operate within capacity, and that future traffic during peak periods would not be materially different to existing traffic volumes.

**HM Inspectorate of Mines (Health and Safety Executive):** Considers that the proposal does not appear to be covered by Government Circulars or any other statutory consultation procedures and therefore no comments are offered.

**HM Inspector of Quarries (Wales and Midlands):** Has no comments to make on the proposals.

**The Coal Authority:** Advises that the area is in a Coal Mining Development Referral Area and that there are coal mining features and hazards which need to be considered. The Coal Authority has considered the assessment undertaken in the Environmental Statement and agrees with the conclusion that investigative works along with any remedial measures that are subsequently proved to be necessary are undertaken to ensure the safety and stability of the proposed afteruse developments and that intrusive investigation works should be undertaken prior to development in order to establish coal mining legacy issues. They recommend a condition be adopted to secure such works and investigations are undertaken prior to the commencement of the development in accordance with Chapter 22 of the Environmental Statement.

Further comments have been received which encourages and continues to support the element of the planning application which is seeking to work coal in environmentally and socially acceptable ways to meet the market requirement. The extension to the existing surface mine will contribute to the Government's policy framework for a diverse and secure energy supply and incorporates the principles of sustainable development.

They have no particular comment on the phasing proposals or methods of working and consider that the applicant has undertaken appropriate geo technical assessments to support the application. It is suggested that conditions should be imposed to secure the progressive restoration to the highest possible standards and to secure the removal of plant and buildings upon the cessation of extraction.

They advise that all of the relevant economic, social and environmental considerations are required by MPPW and MTAN2. The MPA should also consider the need for UK energy security and the continued contribution that coal makes to energy generation, particularly in light of factors which have reduced energy supply from other sources at least temporarily.

It is further advised that it is essential that unnecessary sterilisation of coal resources and reserves through permanent development should be avoided. In principle, it is desirable to secure prior extraction where development occurs above coal resources. The active recognition of this will allow the sustainable development of an important resource in accordance with Government Policy. Surface mining frequently assists in the removal of coal mining legacy issues on sites such as this but the Coal Authority believes that the local benefits of mining go well beyond the removal of dereliction.

In respect of the mixed use development no further comments are made.

**National Grid:** No response, therefore no comment to make

**Western Distribution:** No response therefore no comment to make

**Wales and West Utilities:** No response therefore no comment to make

**Caegurwen and Penllerfedwen Commoners Association:** Object to the application as they have a legal agreement in place which states that at the end of coaling the whole of the site is to be reinstated back to Common and to agricultural standards.

**Glanaman Pedol and Twrch Graziers Association:** At the AGM held on the 16<sup>th</sup> April 2015 it was unanimously decided to support this application. The members have grazing rights on the Black Mountain which directly overlooks the proposed development. We feel that when finished and restored to the promised standard it will have a beneficial effect on our lives. As a community we have had to put up with the blight of open casting of the area for many decades. We feel that to turn down this application will condemn us to many more years viewing a derelict site on our doorstep.

**British Telecom:** No reply, therefore no comments to make.

**Mid and West Wales Fire and Rescue Service:** Advises that the developer should consider the need to provide adequate water supplies for fire fighting purposes and should contact the Local Authority Building Control Department which is the responsible authority when determining issues concerning means of warning and escape, internal fire spread, external fire spread, access and facilities for the Fire and Rescue service.

**Sustrans:** Advises that the additional information received by the applicant and dated January 2014 includes a pedestrian /cycling crossing over the A4068 and the widening to 2.5 metres of cycle/pedestrian routes within the site. These requirements along the provision of a site specific walking and cycling strategy should be addressed by means of conditions attached to any consent.

**CADW** – confirms that there are no scheduled ancient monuments, historic parks and gardens or historic landscapes affected by this proposal and therefore has no concerns.

**Design Commission for Wales:** The proposal was presented to the Commission on the 12<sup>th</sup> May 2012. Following our feedback the proposal was represented to the Commission on the 10<sup>th</sup> October 2012 and the comments

from the original meeting were included and/or addressed within the subsequently submitted Design and Access Statement.

**Public Health Wales:** Initially recommended that the Authority is satisfied that dust prevention measures are sufficient to prevent nuisance and exposure to PM10 at the most sensitive receptors and that planning conditions respect this requirement. A noise monitoring exercise is undertaken upon commencement of coal extraction to confirm the modelled scenario. As there is little or no information on the Environmental Management Systems, the Authority should be satisfied that this is suitably robust for site operations and off-site consequences.

In response to the additional information submitted by the applicant the following further comments have been received:

- The ES Addendum and updated technical reports confirm that, subject to the proposed mitigation and planning conditions, that the proposed development can be undertaken without any significant residual effect arising.
- Given the limited extent of the revised extraction area in comparison with the wider approved operations and there being no material change to the conclusions of the original ES which supported the grant of planning permission no objections are raised on human health grounds.

**Welsh Water:** Originally raised an objection on the grounds that the proposed development would overload the existing public sewerage system and the current water supply problems in the area. However, following consultation with the Applicant they have withdrawn their objection and advise that the issue of water supply can be addressed by the imposition of a suitably worded condition requiring the submission of a hydraulic modelling assessment to assess the impact of the proposed development on water supply. In respect of sewerage, as the applicant intends to use a private sewage treatment facility the regulation of which is administered by Natural Resources Wales no detailed comment is made.

**Natural Resources Wales:**

*Initial Representations*

NRW advised originally that there is no objection in principle, provided some possible impacts are avoided.

### Water Quality

In terms of the extraction and restoration phase of the development it is confirmed that the current surface water management regime will be retained for the lifetime of the mining activities and during the restoration scheme and if managed correctly there will be minimal risk to water quality provided the mitigation measures outlined in the ES are imposed the risk to groundwater and surface waters would be acceptable. With regards to the built development, the risk to pollution during the construction phase has been identified within the ES and NRW are satisfied that subject to the imposition of suitably worded conditions the risk of pollution to controlled waters will be minimised.

### Flood risk

It is advised that the small risk of flooding particularly around the site entrance would be actively managed by a pumping regime and once the site is restored there is considered to be no significant risk of flooding. The proposed lake as a means of attenuation together with the implementation of SUDs techniques are considered acceptable.

### Biodiversity and Nature Conservation

In respect of the restoration and extraction phase NRW advises that whilst there will be a loss of marshy grassland communities, the detailed mitigation and enhancement proposals identified in the ES satisfactorily addresses such losses. As sufficient mitigation will have been implemented prior to the built development taking place, they consider that no adverse impacts in terms of biodiversity and nature conservation will occur.

### Air Quality

No adverse comments are raised in respect of air quality and support the proposal to develop a detailed Dust Management Plan. This should be secured by a condition attached to any consent.

### Waste Management

Advises that if the current practices remain in place, there will be no impact on the local environment.

### Foul Drainage

Advises that sewage treatment works come with significant responsibilities and costs for ongoing maintenance and are subject to an Environmental Permit. There is no guarantee that a permit will be forthcoming even if planning permission is granted. Due to the likely volumes involved, it is unlikely that effluent would be allowed to discharge to ground. Their preference is to see connection to the main sewerage network, however in the absence of improvements to the sewer system any foul water generated by the

development to the two existing networks could result in an unacceptable risk to controlled waters. If the Authority considers that private sewage treatment works would be acceptable they suggest that a suitably worded condition is attached to any permission. We are pleased to note however from more recent correspondence from the agent that they are continuing to pursue investigations with Welsh Water to connect to the main sewer.

#### Contamination

Recommends that a land contamination investigation is completed to evaluate the potential for soil and ground water contamination for previous uses of the site, post backfilling and to undertake a risk assessment and remediation as deemed necessary.

#### Landscape and Visual

Confirms that the Landscape Visual Impact Assessment (LVIA) is consistent with current best practice. Advises that the density and extent of the woodland at the site should be reviewed but welcomes the linkages around the site and its surrounding areas which have been taken into account. Further consideration should be made to the potential for increased green infrastructure.

#### Common Land

As a large area of the site will be lost to development it is not entirely clear how much of the site will return to common land. Consideration should also be made to the potential loss of open land under the Countryside and Rights of Way Act (2000)

#### *Additional comments following receipt of Supplementary Information*

Supports the submission of a Site Biodiversity Action Plan as part of a detailed restoration scheme, the creation of Ecological Enhancement and Receptor Areas and a Habitat Connectivity Plan. In respect of the latter further clarification on the connectivity proposals are requested.

#### Large raised reservoir

Based upon additional submitted information we consider that the proposed water body that forms part of the proposed development would not constitute a large raised reservoir as defined in the relevant Acts/legislation.

#### Hydrology

Requests further information in respect of the length of time it will take to fill the void to the required water level and the base elevation and final depth of the lake together with schematic cross sections to assist in conceptualising the wider site setting.

In conclusion we have no objections to the development proposed subject to the imposition of appropriate conditions.

**Welsh Government - Natural Environment and Agriculture Team:** The revised scheme proposes 25 hectares of land being identified for agricultural after use but the revised strategy does not explain the reason behind this change to after use, although an earlier phase of restoration clearly indicates its use for agricultural purposes.

The strategy indicates that 15 of the 25 hectares will remain undisturbed by proposed re-contouring of the western overburden mound. There is a shortage of top soil within 10 hectares of the site however it is not essential to the delivery of an acceptable standard of agricultural after use bearing in mind the current condition of the land. There is no reason why the land cannot be used for agricultural after use although more detail will be required from the developer in this regard. This will include the submission of restoration and aftercare schemes for approval.

**Powys County Council (Highways):** No objection to the proposals as the submitted addendum to the Transport Assessment shows capacity exists within the network of roads within Powys. However, as it is unlikely that the built development will be started for at least 10 years it is recommended that any reserved matters application for the leisure facilities includes an updated traffic capacity assessment so that should circumstances have altered on the network in a manner not reflected by the current projections appropriate highway improvements could be sought.

**Carmarthenshire County Council:** Raises an objection to the proposal for the following reasons:

- The proposed extension to the extraction area is closer to Rhosaman and Cefnbrynbrain and is contrary to MTAN 2 which advocates that surface coal working should not be permitted within 500 metres of settlements except in exceptional circumstances which should be applied in this case.
- Paragraph 49 of MTAN 2 includes some of the factors that can be included in any consideration of exceptional circumstances. The only exception that might be considered applicable in this case revolves around whether the proposal is considered to be of overriding significance for regeneration, employment and economy in the local area. The uncertainty as to the deliverability of the proposed leisure use means that it is not of overriding significance.

- The apparent conflict between M9 of the UDP and MTAN 2 has been previously considered by the Margam Opencast Site Appeal (decision date 19-11-09) where the Inspector considered that the 200m buffer identified in the UDP pre dates MTAN 2 and does not provide an up to date reflection of national policy and the 500 metre buffer generally strikes the correct balance between protecting the amenity of people who live and work in the local community on the one side and society's need for coal on the other. The proposal conflicts with MTAN2.
- The noise assessment has now been revised and the additional information does not address our original concerns in that it assesses the movement to the north eastern screening mound during Phase 1 whereas the description of the development specifies this taking place during Phase 3 or 4. It also does not set out in sufficient detail how the assessments have been made and the assumptions made in terms of mitigation at each phase of development. A further noise assessment has now been submitted (30<sup>th</sup> March 2015) which addresses concerns in relation to noise and conditions are recommended to further protect the amenities of residents.
- The application is contrary to the advice contained in Paragraph 62 of Mineral Planning Policy Wales, in that it is not possible to conclude that it is environmentally acceptable. Therefore, the second test of providing local and community benefits which clearly outweigh the disbenefits must be applied. It is considered that the tangible benefits do not outweigh the disbenefits in this case.
- The further extension of the site will significantly extend the period of disturbance for the residents of Rhosaman and Cefnbrynbrain. The Inspector referred to above, considered that the cumulative effect of the opencast developments on the community was a powerful argument against further development.
- There are insufficient tangible benefits to the community and little weight should be afforded to them.
- The Council has considered the issue of UK need for coal. However, the close proximity of the site to Rhosaman, the policy perspective and the cumulative and uncertain amenity impacts are considered to outweigh need in this case.
- The visual impact assessment has been revised and the additional information appears acceptable.
- The justifications for an increase in road bourn element of the output appears reasonable.

**Brecon Beacons National Park:** Raises no objection and advises that the proposals are unlikely to have a direct effect on the Special Qualities of the National Park. Although there is potential for minor indirect effects from

lighting of the proposed built development, further scrutiny of the proposals would have to be undertaken at the detailed planning stage. The proposals are not expected to have a detrimental effect on the conservation and enhancement of the natural and cultural heritage of the Park. However, planning approval at the detailed design stage should be based on a guarantee that the sustainable and low impact design of built infrastructure and long term survival of planting proposals can be assured.

**Pontardawe Town Council :** Requests information in respect of the additional traffic through Pontardawe during the construction process together with the length of time it is envisaged together with confirmation as to whether the Town Council will be included in any community remuneration fund.

**Ystradgynlais Town Council:** Request that when considering the application MTAN requirements for a 500 metre buffer zone is fully taken into account.

**Cwmllynfell Community Council:** Raised the following initial comments:

- Raises a holding objection.
- The Council would not raise an objection to a limited extension of time for working within the perimeters of the site the subject of the 2004 planning permission subject to there being appropriate safeguards and a substantially increased contribution to the escrow account and subject also to there being approval of details with regard to restoration that comply with the conditions of the 2004 and in particular exclude the abandonment of a massive water filled void.
- A comprehensive assessment of the situation that prevails at the entire East Pit site so as to ensure that there is a correct restoration in accordance with planning permissions that have been granted previously with appropriate measures incorporated so as to reduce the deprivation in local communities by improving modes of transport and enhancing the area and attracting inward investment by the creation of employment opportunities.
- The above measures should not include the creation of a lake which would be a source of danger and the possible cause of flooding.

In addition to the above, the following further comments have been received:

- requests to be notified of when the application is going before committee and objects to the proposal on the following grounds:
- The proposal does not meet the requirements of MTAN 2 and does not comply with the conditions imposed in P2002/917

- The authority is urged to refuse the application and enforce the conditions attached to the S73 application.
- The Community Council is extremely concerned that working has been allowed to continue at East Pit since November 30<sup>th</sup> 2012 without the benefit of planning permission.
- If the applicants and owners are not prepared or unable to provide a bond to cover the entire cost of the approved restoration scheme that the County Council with the support of Welsh Government (including a financial guarantee) take immediate steps to stop the development and implement measures to restore the site in accordance with the 2004 planning permission.
- The Community Council wishes to remind the County Council that the communities are faced with a current deplorable situation whereby the East Pit site has been operating without planning permission for some 14 months and a proposal which indicates a restoration scheme which is tantamount to the result of their support for the applicants at the time of the public inquiry into P2002/917. The decision to grant planning permission following the inquiry was made by Welsh Government and is as culpable as the County Council if not more so.

**Quarter Bach Community Council** : Refers to the application as a way to avoid the costly restoration programme of the 2004 consent and refer to correspondence received from Oak Regeneration. The Council has concerns and issues with regard to the application and the cumulative effect of the development, consider it is a finely balanced case and would prefer the application to be considered by the Welsh Assembly.

**Gwaun Cae Gurwen Community Council**: They support Gwenda Thomas AM's correspondence to John Griffiths Assembly Member and Minister of Environment and Sustainable Development (8<sup>th</sup> January 2013) which states that

- The application should be the subject of a Ministerial Call-In given that the impacts of the proposal will extend outside Neath Port Talbot and into Powys and Carmarthenshire;
- there will be significant impact on Brecon Beacons National Park and likely to have significant impacts on landscape and particularly in relation to the proposals of the site;
- the controversy with regard to impacts of the extension on nearby communities;
- the mine is a significant employer and the fate of a number of jobs will be at stake in any decision and the feasibility of restoration and the fact that insufficient funds are in place for the work;

- given the last consent was granted by the Welsh Government it now has a degree of moral responsibility for the development;
- the extension and proposed development would be in conflict with the 500 metre exclusion zone in MTAN2;
- the construction of the manmade lake and the possible consequences of its failure should be the subject of expert advice that could be provided by the Welsh Inspectorate.

**Neath Port Talbot – Environmental Policy Unit:** The development will provide an opportunity to promote further walking and cycling subject to adequate signage and it is suggested that the S106 identifies funding to build further walking and cycling links in the neighbouring communities.

**Neath Port Talbot Rights of Way Officer:** Advises that positioning of the rights of way as part of the restoration is comprehensive, not only are the original routes to be installed virtually on their original alignment there is also significant gain of new paths. The proposals would appear to involve the diversion of 2 footpaths. The applicant would be responsible for the costs associated with such diversions together with additional paths proposed.

As approximately 30 watercourse crossing points are proposed a financial contribution for their maintenance would be required as a significant financial burden would be placed on the Authority.

Further clarification is required in respect of the location of fence lines, location of proposed access tracks for private access, whether or not animals are to be kept in the fields and what type and provision of disabled access. In addition, consideration should be given to the siting of Footpath 31 as there may be potential conflict with this path being positioned through the lake/lodge compound.

**Pollution Control Officer (Air):** No objection subject to the imposition of conditions

**Pollution Control Officer (Contaminated land):** No objection subject to conditions.

**Tourism Development Officer:** Advises that it is encouraging that the proposed on site activities (i.e. diving centre) appear to be substantial enough to help the site generate additional visitor demand so that the potential displacement of visitors away from existing accommodation providers within the County are minimised.

However, the Economic Case analyses the impact of displacement within the serviced accommodation sector and concludes that displacement is not of concern which is agreed. It is disappointing not to see any in depth analysis on the potential displacement of visitors. Unintentional displacement of visitors has been experienced previously in the Afan Valley by much larger developments. It is therefore recommended a phased approach to the development of the site so that the market/visitor demand is properly tested thus ensuring that demand is proven before all of the accommodation outlined in the proposal is constructed. The impact of the scale and construction of this development on the local population and the local environment needs key consideration. The development offers the potential for significant economic regeneration of the Upper Amman Valley. In addition, it is important that the proposed tourism development will take place after coal extraction has been completed.

**The Head of Engineering and Transport (Drainage):** No objection subject to the imposition of conditions in respect of surface water control facilities, ground water monitoring, site restoration, details of discharge rates.

**The Head of Engineering and Transport (Highways):** No objection subject to the imposition of conditions in respect of hours of operation, vehicle washing, a scheme for the transportation of coal produced at the site, drainage system for the access road, access to the railhead, details of access onto A4068, updated Transport Assessment, details of internal road layout and Travel Plan. In addition, it is further suggested that as part of a S106 Agreement a scheme for footway provision along the A4068 into the villages of Cwmllynfell and Cefn Brynbrain is provided.

**The Head of Business Strategy and Public Protection (Noise):** Raises no objection but advises that any approval should include a number of conditions including ones to secure the submission of Noise Action Plans and Blast Action Plans.

**Biodiversity Unit:** advises that in respect of the outline application and as acknowledged within the submitted ES they are unable to advise on the acceptability of potential ecological impacts due to the timescale (approximately 10 years) involved. However, if the Authority are minded to grant permission it is recommended that a number of conditions are imposed in respect of an updated Ecological Impact Assessment, detailed investigation of the hydrology and detailed design specification for the access road and associated engineering.

In relation to the extraction and restoration proposals they raise concerns about the loss of over 22ha of marshy grassland which would be contrary to Policy ENV5 of the UDP and the possible reduction in ecological connectivity due to the diverse range of species. A number of conditions are suggested which include a scheme for the retention, conservation and management of existing semi-natural habitats, specific ecological and management and monitoring plans, a scheme for the translocation of marshy grassland and marginal wetland vegetation; scheme for the translocation of ancient woodland, treatment and eradication of invasive species, mitigation strategy for the conservation of reptiles, ecological monitoring scheme, scheme for the establishment and implementation of a nature conservation steering committee, amended restoration and aftercare scheme; a scheme to encourage the establishment of lichen/bryophyte heath; scheme for species enhancement measures, provision of a nature conservation management plan for the aftercare

In addition to the above it is also recommended that as part of a S106 Agreement the Site Biodiversity Action Plan be provided prior completion of the aftercare period and the nature conservation steering committee is continued and expanded.

### **Description of site and surroundings**

The application site covers an area of some 585 hectares of land which is broadly composed of the following areas:

- The operational area of the EPER site, some 400 hectares, which includes the current extraction area (some 57 hectares) the western overburden mound (some 115 hectares), the southern overburden mound (some 70 hectares), an area for coal stocking (some 14 hectares) and an area of some 2 hectares on the southern edge of the western overburden mound for an on site coal barrel wash operation. The remaining areas are occupied by soil storage and water treatment areas, ancillary areas for a car park, offices and workshop, the main access road and undisturbed land.
- Restored agricultural land, composed of open common and some shelter belts to the west of EPER, covers an area of around 121 hectares and formed part of the Pengosto opencast, ancillary land for those operations and common grazing land that extends in a westerly and north westerly direction to the developed limits of the villages of Lower Brynamman and Gwaun cae Gurwen

- To the south of New Road, is an area formerly occupied in part by the GCG washery and now partly used as a rail pad facility for coal transportation land and railway sidings. The area as a whole covers some 10 hectares whilst the railpad facility within that area covers some 3 hectares inclusive of the rail pad, railway track, water treatment area and ancillary drainage and access track.
- Also to the south of New Road and north of Twyn yr Efail Place is an area of grazing land covering some 13 hectares.
- Former ancillary areas of the GCG washery to the north of New Road and to the west of the access road leading into the site composed of old tailing lagoon areas (restored) and concrete loading storage areas covering some 25 hectares.
- To the east of the current boundary and operational area of EPER, rough grazing land composed of two triangular areas, one to the north of Ochr Y Waun and extending to the edge of Gwilym Road and the county boundary with Carmarthenshire covering some 7 hectares and an area to the north of Pen Y Bryn Cwmllynfell covering some 6 hectares.

### **Description of the Proposal**

The submission has been submitted as a hybrid application which constitutes elements that seek full planning consent and elements where outline planning consent is sought.

Full planning consent is sought for:

- The regularisation of coaling which has taken place since 30<sup>th</sup> November 2012.
- The continuation of coal extraction in accordance with that permitted under the 2004 consent, which will be completed in mid 2016. This will result in the extraction of a total of 0.97 million tonnes of coal.
- An extension to the coal extraction area which will be located to the east and north east of the existing extraction area approved under the 2004 consent. This will result in the extraction of a further 550,000 tonnes of coal. Amounting to a total reserve to be extracted of 1.52 million tonnes.

- Ancillary development including coal washing and stocking, the transportation of coal from the site by roads and the utilisation of a rail pad to transport some of the coal.
- The restoration of the whole of the site and the associated treatment and aftercare management of the land to create a Country Park incorporating a lake into the restoration scheme, which will be fully covered by a restoration bond.

Outline planning consent is sought for

- An area of some 70 hectares which is predominately set around a recreational lake, for the accommodation of a 120 bedroom hotel, 78 holiday lodges, a campsite with ancillary visitor centre and shop, together with a dive centre, including all access arrangements from the public highway and internal access roads, services, drainage, footpaths, bridleways and cycle routes and landscaping.

### Environmental Impact Assessment

The application is accompanied by an Environmental Statement prepared in accordance with the Town and Country Planning (Wales and England) Regulations 1999. The Regulations set out procedures for an Environmental Impact Assessment which applies to certain developments and is a means of drawing together in a systematic way an assessment of the likely significant environmental effects of the development. The Environmental Statement accompanying the application is a series of documents which deals with a range of issues, but primarily deals with the following:

1. Introduction
2. Description of development
3. Alternatives
4. Geology
5. Landscape and Visual
6. Air Quality
7. Socio Economic and Health
8. Noise

9. Blasting
10. Traffic and Transport
11. Nature Conservation
12. Water Environment
13. Cultural Heritage
14. Cumulative Impacts.

Supplementary Environmental Information (SEI) has also been submitted to clarify issues raised both by officers and by consultees during the assessment of this application. The additional information is in respect of ecology, transportation, mineral extraction and restoration, economic benefits, geotechnical assessment, soil movement reports, flood risk and associated hydrology considerations, revised justification and delivery statement and noise. The additional information was the subject of further publicity under Regulation 19.

Detailed elements of the proposal are as follows:

**The Proposed Coal Extraction, Restoration and Aftercare and creation of Country Park (subject of the full application)**

The application when first submitted in November 2012 sought an extension of time to complete coaling within the approved coal extraction limits approved under the 2004 consent. It was anticipated at that time that some 0.97 million tonnes remained to be recovered in a remaining 16 hectare area of the coaling area approved under the 2004 consent. In addition a north easterly extension to the 2004 coal extraction limit was proposed to win some 630,000 tonnes of coal within an area of some 9.1 hectares. The whole period for coaling at the time of the application was anticipated to be 5.5 years with a further year to complete the restoration of the site.

Over two years has elapsed since that date and coaling has continued at the site within the coaling limits of the 2004 consent. Following a reassessment of the geology and geotechnical conditions of the proposed extension to the north east, the proposed extension to the coal extraction area has been reduced to 8.5 hectares and the recoverable amount of coal within the extension area has been reassessed to be 550,000 tonnes. Therefore it is calculated that the area of coal to be extracted in both the 2004 consented area (including that extracted since the submission of the application in November 2012) and the extension

area amounts to some 1.52 million tonnes of coal. This tonnage is proposed to be won during a period from now until “mid” 2018 at an extraction rate of approximately 300,000 tonnes per annum.

Additional information received in November 2014 details the sequence and phasing in a written and plan form, which includes the coaling proposal and timeline along with associated restoration of various parts of the opencast mine and remaining site complex during and after coaling has ceased.

The applicant states in the additional information that further consideration has been given to the nature of the phased extraction scheme based on responses received to the application, additional consideration of geotechnical matters and the implications of the timescale for determination of the application. This has resulted in minor revisions to the coal extraction phasing, the temporary storage of overburden in the western overburden mound pending the decision on the proposed coal extension development, proposals for the buttressing of the final eastern extent of the coaling void and other minor consequential revisions. The applicant has also indicated that five key objectives have influenced the redesign as follows:

- (i) the optimisation of the recovery of coal by an effective and efficient programme of extraction;
- (ii) the provision of a logical phased extraction and restoration scheme, which reduces the amenity impact of the development;
- (iii) the need to progressively create an acceptable landform appropriate for the proposed built development;
- (iv) the need to ensure stability in the vicinity of the Cwmllynfell Fault; and
- (v) provision for an enhanced restored landform with a range of landscape features and new habitats, together with increased opportunities for economic and social benefit and public access.

Collectively, these design principles will help to deliver a Country Park and ultimately a destination location for the area by means of the proposed landform.

In support of the revised phasing method the applicant states

*“Whilst the estimated coal take has been reduced, the delay in the application being determined in the anticipated time frame of 12-18 months has now also resulted in a net increase in the amount of material to be moved to facilitate the planning restoration. This net increase in the restoration task is due to material having to be tipped to the permitted 2004 restoration strategy profile*

*to allow continuing operations. It is important to note that this approach accords with Celtic Energy's undertaking to the Planning Committee in January 2013 that all operations would continue to accord with the "2004 permission", pending determination of the application.*

*Had permission been granted within the anticipated time period, the overburden material would have been able to have been accommodated into the proposed Lakes of Rhosaman restoration profile, and would not have needed to be re-handled as is now the case. To create the proposed restoration profile the scheme now requires the re-handling of approximately 2 million m<sup>3</sup> of material at an additional cost to the developer. This material will be incorporated into a modified backfill profile which includes the provision of a 'rock buttress' to ensure stability of the final North Eastern wall, again an added element that is slower to construct than a typical backfill profile."*

The redesign has been undertaken in order to address concerns relating to the proximity of the originally proposed extension area in relation to the Cwmllynfell fault, and the subsequent delay in a decision has led to uncertainty on behalf of the developer, with the consequence that the developer's ability to invest in the next stage of the development has inevitably had to be delayed. These delays are therefore reflected in the slightly increased time period to achieve full restoration of the site by the 31<sup>st</sup> March 2020. The developer has indicated that every effort will be made to reduce this timescale should circumstances allow.

For clarification, coal extraction is projected to finish by mid 2018 with the final coal stores being removed from the stocking ground by 30<sup>th</sup> September 2019.

The detailed phasing of the proposed coaling period and subsequent full restoration of the site is as follows:

Phase 1: November 2012 to March 2013 (40,000 tonnes of coal extracted from 2004 consented area)

The initial submission in November 2012 included a description of Phase 1 of the development.

This phase which has occurred from November 2012 until now included operations of coaling within the limits of the 2004 consent by utilising excavators, ancillary plant and machinery, dump trucks. Associated blasting of the strata above the coal and extraction has extended to a depth of

approximately 78 metres AOD within this area and phase. Some 40,000 tonnes of coal has been extracted in the two years from November 2012.

Due to the prevailing circumstances and the delay in the determination of the application a revision of the phasing for coaling, the additional coaling, associated progressive restoration of areas of the site and the final restoration phase have been modified and are proposed as follows:-

Phase 2: April 2013 through to March 2015 (440,000 tonnes of coal extracted from 2004 consented area) April 2015 to July 2015 (estimated 40,000 tonnes to be extracted to complete phase 2)

During this period, the operational void was extended eastwards to yield some 440,000 tonnes of saleable material (coal) and this extended area worked to a depth of 94 metres AOD. Access to the void continued using a main haul route within the void and its periphery to the north and west leading to the ancillary areas of the coal washery plant and coal stocking ground.

The later part of phase 2 has yet to commence. Material for the haul roads would be taken from the existing overburden mounds to create the upper section of the final restoration profile on the western edge of the proposed lake. In addition two areas of overburden surcharge would be created to retain material for the final restoration profiles and buttressing of the final void.

The slopes to be achieved on the western edge of the extraction void will be approximately 1:4 and will continue to be constructed to final restoration levels generally above 170 metres AOD.

Whilst this coaling is being undertaken along with all the ancillary operations for that purpose including coal transportation, restoration will be undertaken on an area of the former Gwaun Cae Gurwen washery and ancillary areas around the entrance to the rail head. In addition, the eastern and south eastern faces of the southern overburden mound will be re-contoured to final slope profiles. The plateaus of the southern and western overburden mounds will be stripped of existing “soils” and vegetation and re-graded to shed water, the “soils” subsequently replaced and supplemented with soil forming material to increase soil depths in accordance with specified techniques.

Phase 3: August 2015 – end of 2016 (450,000 tonnes of coal extracted from 2004 consented area)

It is anticipated this phase will occur towards the end of 2015 and throughout most of 2016. The extraction operation will complete the area permitted in

2004, and it is anticipated some 450,000 tonnes of coal can be won during the whole of Phase 3 where the base of the void would reach approximately 52 metres AOD. Internal haul roads to the coal washing and stocking areas would be positioned broadly at the same location as previous phases. The plans submitted indicate a breakdown of sub phases within phase 3 which give greater clarity to the relationship between extraction and progressive restoration of the site.

The initial stages of Phase 3 will include additional surcharging of the eastern edge of the western overburden mound with material which will need to be removed and placed into the void for profiling and buttressing.

Key elements of other movements of overburden and existing features include:

- \* tipping within the northern part of the site forming the northern shore of the future lake, and to create the outfall from the lake to Afon Aman;
- \* the placing of overburden within the south-western part of the void to create the graded landform;
- \* tipping within the south-eastern part of the void to store material for use within the buttress; and
- \* restoration and management of peripheral areas on the western, eastern and southern boundaries of the site.

During the latter stages of Phase 3 identified as Phase 3B the existing screen bund formed of soil and soil forming material that lies to the east and north east of the void will be reduced in depth while the north eastern edge of the bund will also be relocated closer to the site boundary to enable for extraction within the extension area. The design of this bund has been amended since the application was originally submitted as it now retains some 500 metres each of the northern and southern arms of the bund which were previously proposed to be removed. The retention of these arms will minimise soil handling whilst also reducing the impact upon neighbouring communities in terms of noise and dust at a time when extraction is also taking place.

Progressive restoration of the western side of the void, together with the profiles of the western and southern over burden mounds will continue to take place during this phase. The eastern extent of the proposed extraction will not bring the working area into closer proximity of Ochr y Waun than that previously permitted, nor will it impinge within 200m of any settlement within Carmarthenshire or Neath Port Talbot.

Phase 4: End of 2016, 2017 to mid 2018 (550,000 tonnes of coal extracted from the extended area)

This phase is to the east and north east of the existing extraction area and constitutes the final extraction phase of coaling operations which could extend from the end of 2016 through 2017 into mid 2018, when coaling will be complete. This is estimated to generate some 550,000 tonnes of coal over the period. Due to the conclusions of geotechnical information submitted and assessed as part of this application the area of the extension to the extraction area has moved 50 metres further from the Cwmllynfell fault.

During this phase, a large part of the southern lake shoreline and below water slopes will be formed by the tipping of excavated rock from the extension area into the southern section of the void. The gradient of the void will increase at greater depth below water level. Excavations at depth will follow the extent of the basal seam, the Big Vein.

During this phase, the two lake outfalls will be created, which will involve the reduction of some of the excavated faces to the south to create a valley through the area to connect to the existing watercourse and discharge point south of Cwmllynfell. This will involve excavations through undisturbed land to the east of the excavation limit.

To the north of the void tipped material and overburden will be removed from between the north eastern extent of the western overburden mound and the cycle track to the north and disused railway to reach original ground levels. The northern lake outfall will then be formed through this original ground to link with the Afon Aman at an existing discharge point near to the existing water treatment ponds.

Excess material generated in the restoration operations will be used in the restoration of the lake floor as space is formed during the extraction process.

#### Phase 5: Mid 2018 to 31<sup>st</sup> March 2020 (Final Restoration)

The phase will include the final elements of coaling and will also include the backfilling of excess rock and overburden into the void to create a buttress to the final void profile utilising some 4 million cubic metres of overburden, 2 million cubic metres being sourced from the surcharge area created on the eastern edge of the western overburden mound and the remainder coming from the final extraction phase. Final buttressing would also be undertaken on the eastern face to accord with geotechnical assessment requirements.

Tipping will also be undertaken at the southern and western edge of the void to create the final lake bed profile at this location and western lake shore by

creating shallow margins and a series of platforms in part for potential diving use.

Re-grading would take place on parts of the remainder of the site including the western end of the western overburden mound to create an extended ridge considered to be appropriate in landscape terms, the re-grading of the western end of the southern overburden mound and the complete restoration of all ancillary areas, coal stocking areas, the rail pad and the final areas of ancillary land offices, water treatment areas and any other infrastructure. That is described in more detail below.

### Restoration strategy and aftercare

The proposal involves the restoration and/or treatment and aftercare management of the whole site comprising of approximately 585 hectares of land which ultimately is proposed as a Country Park. However some 70 hectares of the site would be incorporated into the built development and ancillary uses around the lake should consent be granted for the outline application and the scheme implemented.

The site will be subject to some progressive restoration and treatment and has been set out into areas on a phasing plan submitted with the application. These areas are outlined above for each phase.

In general the vast majority of the overburden placed above original ground level during the development of the East Pit complex will remain where it is. Re-grading and re-contouring of parts of the southern and western overburden mounds will be undertaken generally reducing some of the gradients of the mounds to accommodate landscaping and to control surface water runoff. The western overburden will be re-graded to a max level of 258 metres AOD. Areas to the west of the current limit will also be re-graded and will be deposited with overburden to connect with an existing raised feature on the former Pengosto site to the west. This will involve raising the level over this area by some 15 metres to form an extended ridge. The southern overburden mound will remain at approximately 272 Metres AOD and re-graded to remove existing benches and other angular features to create a more natural landscape.

The strategy is significantly different to that proposed under the 2004 consent and incorporates a lake to be created in the final void of the mineral working. Following the backfilling of the void to an agreed specification and buttressing of the eastern face and final contours of the void, water would be allowed to accumulate to form a lake. This will be composed of some 47 hectares of open water (more than 2 metres deep with a maximum depth of around 100 metres)

and marginal zones less than 2 metres deep covering approximately 5 hectares would be created on the south, west and north west perimeter of the lake which will form areas that would be developed as wetland areas. The anticipated final water level is anticipated to be 175 metres AOD although it could rest between 170 and 175Metres AOD. Outfall points would be created at points north and south of the lake margin to take water that raises above 175 Metres to the Afon Aman to the north and a tributary of the Llynfell to the south east.

### Proposed Built Development (subject of Outline Application)

The full restoration of the site and subsequent aftercare management and treatment, of the land is proposed to provide a landform that could accommodate built development. Approval is sought within this hybrid application for outline planning permission within an area of approximately 70 hectares that surrounds the remaining void area and proposed lake and on restored and original land to the east, south, west and north west of the last coal extraction area of the mineral site. All matters of detail are reserved for subsequent approval.

The main features of this development are: -

- a 120 bedroom hotel and associated parking
- 78 holiday lodges
- A 115 pitch campsite and visitor centre
- A dive centre and ancillaries
- New access roads and ancillaries to link onto a new access point and roundabout on the A4068 near to the north west of Cwmllynfell.

The outline application area has been set out into 4 main character areas of development. The general components of these are as follows: -

#### Character Area A (Hotel and East Side Lodges)

The proposals put forward for Character Area A which covers an area of some 22.92 hectares involves the development of a 120 no. bed hotel complex and self catering holiday lodges, together with all associated landscaping, car parking and ancillary services. The proposed uses within the hotel complex include a bar, restaurant, conference facilities and meeting rooms, a swimming pool and a number of treatment rooms.

This area encompasses 48 self catering lodges, comprising 12 no. two bed, 33 no. three-bed and 3 no. four-bed lodge units set among a network of roads and landscaped areas.

Character Area B (Water Activity and Dive Centre and south Side Lodges)

Character Area B is located to the south and south west of the proposed lake and covers an area of some 13.47 hectares. This incorporates a water activity and dive centre and 30 self catering lodges made up of 3 no. two bed, 18 no. three bed and 9 no. four bed lodge units along with ancillary features, a road network and landscaping.

Character Area C (Campsite and Visitor Centre)

Character Area C is located generally to the northwest of the lake and involves the creation of a campsite extending to 14.27 hectares and capable of accommodating 115 no tent pitches, a facilities block and a visitor centre extending to 299.5 square metres. This will contain two family rooms, toilets, shower, laundry room, reception area and ancillary office space.

The submitted scale parameters are:

	<b>Height</b>		<b>Width</b>		<b>Length</b>	
	Min	Max	Min	Max	Min	Max
<b>Hotel</b>	26.99m (min & max)		155.08m (min & max)		14.57m (min & max)	
<b>Lodges</b>	5.25m	10.62m	5.60m	11.40m	8.20m	20.57m
<b>Water activity centre and dive centre</b>	7.6m	9.0m	7.20m	27.10m	16.0m	45.0m
<b>Visitor centre</b>	7.00m (min & max)		17.40m (min & max)		31.30m (min & max)	
<b>Facilities Block (Camp site)</b>	6.95m (min & max)		9.59m (min & max)		23.90m (min & max)	

## Character Area D (Main Access)

This includes land for the construction of access roads from the A4068 (Gwilym Road) Cwmllynfell to serve the hotel and holiday lodges and water activity centre to the south and the camp site and visitor centre to the north-west. Inclusive of land for a car park, landscaping and management to the site boundary, this area covers some 20.06 hectares of the outline application area.

Although all matters of detail are reserved for future consideration, the indicative proposals included in the submission are as follows: -

### 120 Room Hotel

The hotel is proposed to be built into a retained rock face at the south eastern side of the lake. The hotel is proposed to be 155 metres long, up to 22.5 metres wide and will extend to a height of 27 metres. Outline details indicate that the reception area would be at the “ground level” of the top face of a series of rock faces retained on the edge of the lake. A series of floors would descend from that level to the lake water level.

Incorporated into the hotel would be a restaurant area, boardroom, 6 meeting rooms and ancillary staff and office space which altogether would extend some 9.7 metres above the ground level.

Three further floors descending towards the lakeside will include bedrooms and ancillary accommodation space with the fourth floor located close to the lake incorporating a leisure centre, heated swimming pool, gymnasium, treatment rooms and ancillary areas. Access to a floating pontoon onto the lake would also be provided from this level.

Concrete and cedar shingles are suggested as external features with windows orientated to the south west overlooking the lake. The hotel roof would consist of a number of truncated pyramid like forms clad in cedar shingles.

A car park to service the hotel would be located to the east of the hotel leading directly to the top floor hotel reception area. 170 parking spaces are proposed, 10 reserved for disabled use, 10 motorcycle spaces, delivery space, 24 cycle bays and parking for 5 coaches. Foundation and formation levels will be dependant on the condition and compressive strength of the coal measures and may include the drilling and grouting of previously developed mine features.

## Holiday Lodges

The lodge development would extend from an area to the east of the hotel along a principle vehicular spine road to the southern and western shores of the lake. The 78 lodges will have 8 different holiday lodge types mainly composed of two storey buildings with one holiday lodge type (2 bedroom) being single storey. There will be 23 no. two bed units, 42 no. three bed units and 13 no. four bed units which will have approximate dimensions ranging from 8.2 to 20.5 metres in length, 5.6 to 11.4 metres in width and variable heights of approximately 5.2 to 10.6. It is proposed at this outline stage that the external materials would be composed of a mixture of weathered steel and cedar shingles, timber boarding and local stonewalls and potentially green roofs. Each lodge would have its own parking spaces and will be set in a planted woodland setting.

Foundation requirements will depend on whether the lodges are set on original ground, previously excavated material and on the assessment of any shallow mine workings.

## Campsite and Visitor Centre

This facility is to be located to the north west of the lake. The campsite is proposed over 6.35 hectares providing some 115 camping pitches and a camping facilities block and car parking. The facilities block will have showers, family rooms, laundry and ancillary facilities and a toilet block approximately 24 metres long and 9.5 metres wide with a linked reception area 17 metres long and 16.5 metres wide. A Café measuring 7 metres by 14 metres wide would also be provided. The proposed visitor centre will incorporate a gross floor area of 299.5 sq. metres which will include a reception area, office and changing room, café/kitchen, staff room. All buildings will have a ridge height of approximately 7 metres high.

The buildings are proposed to be located close to the access road serving the campsite area and at a level of around 176 metres AOD. They are proposed to be finished in cladding in the form of cedar shingles or similar.

Parking provision for the campsite will incorporate 46 spaces, (2 disabled), 2 motorcycle bays, a delivery vehicle space, and 20 cycle bays. All development is proposed to be set within a retained screen/mound to the north and integrated into woodland planting.

## Water Activity and Dive Centre

The water activities and dive centre are to be located on the south western shore of the lake. Collectively they will include a dive centre, incorporating a pool decompression plant, teaching rooms, changing facilities and a reception area and ancillaries, along with a café, terrace and retail space and associated parking.

The buildings would have a gross floor area of around 1430 sq. metres (dive centre) and 193 sq. metres (café, terrace and retail space). The dive centre would be some 45 metres long, 27 metres wide and a maximum height of 9.00 metres and constructed of timber beams and clad in timber weather boarding.

The dive centre would project out to the lake and have a jetty down to the water level. Associated parking would be created to the south of the buildings, providing 40 spaces (3 no. disabled), 2 motorcycle bays, 1 delivery vehicle zone and 8 cycle bays.

The dive centre would require specific foundations, given its location on backfilled re-graded material.

## Indicative Arrangements of Access and Services

A new access arrangement into the site is to be developed which includes a 40 metres diameter roundabout on the public highway immediately north west of Cwmllynfell and near Cefn Brynbrain. The indicative layout design shows a car park adjacent to the entrance to the site, a main access road measuring 7.3 metres in width extends from the roundabout in a westerly and then a southerly direction towards the hotel and lodges. This will have a tarmac surface and be flushed kerbed.

A single carriageway measuring 6 metres wide would extend off this main peripheral road towards the campsite facility and will follow a route between the former mineral railway line and the lake.

A single carriageway measuring 5.5 metres and 4.8 metres in width, would form the spine roads leading to the lodge areas and dive centre respectively. Various spur access tracks with a bound pavement but no kerbs would serve the adjacent lodge areas and vary in width from between 2.75 and 4.1 metres. Bridleway and footpath connections, 3.0 and 2.0 metres wide respectively will form a network of connections into the surrounding country park, adjacent public rights of way and existing highways linking onto Ochr Y Waun and Penybryn.

Integrated landscaping in the form of woodland/scrub, amenity landscaping, grassland and lakeside habitat and aquatic planting would be planted within the built development area of 70 hectares. This is proposed within the overall strategy of the landscaping of the application site as a whole.

### **Appraisal of the Proposed Development**

Section 38 of the Planning and Compulsory Purchase Act 2004 requires *“regard to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”* The Development plan in this case is the Neath Port Talbot Unitary Development Plan, while material considerations include but are not limited to, MPPW and MTAN2, other guidance documents, the planning history associated with this site and the need to secure a restored site for the benefit of the surrounding communities.

As explained above, this application is a hybrid application, the first part of which seeks full planning permission for the mineral development associated with the regularisation of and continuation of coaling since the end of November 2012 in addition to the extension of the extraction area and an alternative restoration scheme for the site. The second part seeks outline planning permission for the tourism led regeneration scheme. Given that these form two distinct parts to this overall application, the assessment of the application will be considered in two distinct stages. The first part will assess the acceptability of the proposed mineral development and associated restoration and after use (ie the subject of the full application). While the second part of this assessment will evaluate the appropriateness of the regeneration proposal following the cessation of coaling (ie the subject of the outline application). It will then conclude.

### **The Mineral Development**

#### **Policy Context for the Mineral Development**

##### National Policy

The Overarching National Policy Statement for Energy (EN-1) states that energy is vital to economic prosperity and social wellbeing and so it is important to ensure that the UK has secure and affordable energy.

It is recognised that the UK economy is currently reliant on fossil fuels, and they are likely to play a significant role for some time to come as most of our power stations are fuelled by coal and gas. However, the UK needs to wean itself off such a high carbon energy mix to reduce greenhouse gas emissions and to improve the security, availability and affordability of energy through diversification. This will inevitably lead to a period of transition and some fossil fuels will still be needed during the transition to a low carbon economy. Coal fired power stations add to the diversity and flexibility of supply but they will not be low carbon until such time as fossil fuel generation can operate effectively with Carbon Capture and Storage.

One Wales: One Planet, defines sustainable development in Wales as *“enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations in ways which promote social justice and equality of opportunity; and in ways which enhance the natural and cultural environment and respect its limits – using only our fair share of the earth’s resources and sustaining our cultural legacy. Sustainable development is the process by which we reach the goal of sustainability.*

*The Welsh Government’s vision for a sustainable Wales is one where Wales;*

- *Lives within its environmental limits, using only its fair share of the earth’s resources so that our ecological footprint is reduced to the global average availability of resources, and that we are resilient to the impacts of climate change;*
- *Has healthy, biologically diverse and productive ecosystems that are managed sustainably;*
- *Has a resilient and sustainable economy that is able to develop whilst stabilising, then reducing, its use of natural resources and reducing its contribution to climate change;*
- *Has communities which are safe, sustainable and attractive places for people to live and work, where people have access to services, and enjoy good health;*
- *Is a fair, just and bilingual nation, in which citizens of all ages and backgrounds are empowered to determine their own lives, shape their communities and achieve their full potential.”*

Within the lifetime of a generation the Welsh Government wants to see Wales using only its fair share of the earth’s resources, and where our ecological footprint is reduced to the global average availability of resources – 1.88 global hectares per person.

To achieve this we must reduce by at least two thirds the total resources we currently use to sustain our lifestyles. We must radically reduce by 80-90% our use of carbon based energy, resulting in a similar reduction in our greenhouse gas emissions. Therefore, there is a commitment to make annual 3% reductions in greenhouse gas emissions in areas of devolved competence; making all new buildings zero carbon and to move to producing as much energy from renewable resources as we consume by 2025. The Climate Change Act placed the UK target of reducing greenhouse gases by at least 80% by 2025 on the statute book.

Planning Policy Wales (PPW) (Edition 7 July 2014) makes it clear that the planning system has a fundamental role in delivering sustainable development in Wales. It must help in the process of balancing and integrating the competing objectives of sustainable development in order to meet current development needs whilst safeguarding those of the future. These principles are: -

- Living within environmental limits
- Tackling climate change
- Ensuring a strong, healthy and just society
- Achieve a sustainable economy
- Using sound science responsibly
- Applying the precautionary principle
- Applying the polluter pays principle

It also states in Para 7.1.3 that *“the planning system should support economic and employment growth alongside social and environmental considerations within the context of sustainable development.”*

Para. 7.6.1 also states that *“Local Planning Authorities should adopt a positive and constructive approach to applications for economic development. In determining applications for economic land uses authorities should take account of the likely benefits of the development based on robust evidence. In assessing these benefits, key factors include*

- *the numbers and types of jobs expected to be created or retained on the site;*
- *whether and how far the development will help redress economic disadvantage or support regeneration priorities, for example by enhancing employment opportunities or upgrading the environment;*
- *a consideration of the contribution to wider spatial strategies, for example for the growth or regeneration of certain areas.”*

Mineral Planning Policy Wales (MPPW) sets out the Welsh Government's land use planning policies for mineral extractions and related development. Paragraph 5 states: -

*“Mineral working is different from other forms of development in that:*

- *extraction can only take place where 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;*
- *wherever possible any mineral workings should avoid any adverse environmental or amenity impact; where this is not possible workings need to be carefully controlled and monitored so that any adverse effects on local communities and the environment are mitigated to acceptable limits;*
- *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”.*

MPPW states that the planning system has a fundamental role in providing a framework within which sound and consistent decisions on mineral development proposals can be taken. Authorities should seek through their planning decisions to take account of all the costs and benefits associated with mineral working in accordance with the principles of sustainable development. The main aims as they apply to mineral development are as follows:

- social progress that recognises the need for everyone: to provide for the benefits of increased prosperity through an adequate supply of minerals that society needs now and in the future, together with protecting and improving amenity
- effective protection of the environment: to protect things that are highly cherished for their intrinsic qualities, such as wildlife, landscapes and historic features; and to protect human health and safety by ensuring that environmental impacts caused by mineral extraction and transportation are within acceptable limits; and to secure, without compromise, restoration and aftercare to provide for appropriate and beneficial after-use
- prudent use of natural resources: to help conserve, non-renewable resources for future generations through efficient use, recycling and minimisation of waste; to protect renewable resources from serious harm or pollution; and to promote the use of appropriate alternative materials

- maintenance of high levels of economic growth: to ensure an adequate supply of minerals that are needed at prices that are reasonable; and to safeguard mineral resources for future generations.

It is likely that society needs, and will continue to need for the foreseeable future, a wide range of minerals. The essential role of Local Planning Authorities in relation to mineral working is to ensure that a proper balance is struck between this fundamental requirement, the need to ensure a prudent use of finite resources, and the protection of existing amenity and the environment.

MPPW states that the overriding objective is to provide a sustainable pattern of mineral extraction by adhering to five key principles that authorities must take into account in making decisions on planning applications. These are to:

- Provide mineral resources to meet society's needs and to safeguard resources from sterilisation;
- Protect areas of importance to natural or built heritage;
- Limit the environmental impact of mineral extraction;
- Achieve high standard of restoration and beneficial after use;
- Encourage efficient and appropriate use of minerals and the re-use and recycling of suitable materials.

Para 40 identifies the potential conflict that can occur between mineral sites and other land uses and as such requires the provision of a buffer zone between such uses. *“The maximum extent of the buffer zone would depend on a number of factors: the size, type and location of workings; the topography of the surrounding area; existing and anticipated levels of noise and dust; current and predicted vibration from blasting operations and availability of mitigation measures. Buffer zones will of necessity vary in size depending on the mineral being extracted and the nature of the operation, but must be clearly defined and indicated in Unitary Development Plans. This will ensure that there is unequivocal guidance on the proximity of mineral operations to sensitive land uses, and that the potential impact of existing and future mineral workings is recognised and planned for in the area around the mineral operations. Further guidance on the factors that should be taken into account when defining buffer zones for particular minerals will be provided in Technical Advice Notes.”*

It also acknowledges in para 41 that *“extensions to existing mineral workings are often more generally acceptable than new Greenfield sites.”*

The importance of securing satisfactory restoration is also acknowledged within MPPW. Para 48 states that *“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. This will be to the benefit of local communities and ensure that a valuable natural asset will be passed on to future generations.”*

The delivery of satisfactory restoration is however reliant upon having sufficient financial guarantees in place. The importance of such arrangements is outlined in paras 53 and 54 where it is stated that *“Operators and landowners should ensure that sufficient finance is set aside to enable them to meet restoration and aftercare obligations. The full cost of restoration does not need to be put on deposit at the outset, but it should build up commensurate with the programme of activity or extraction. For larger sites, progressive restoration should be achieved using a stream of funding required at various stages throughout the operation.”*

*“Sites left un-restored for a long period or delay in legitimate restoration is not acceptable. To address the uncertainty of local communities about the completion of restoration proposals and having regard to the polluter pays principle<sup>73</sup>, wherever it is reasonable to do so, authorities may require financial guarantees as a means of ensuring that sites will be restored properly and in a reasonable time period.”*

Paragraph 62 of MPPW specifies requirements that all opencast development proposals should meet, otherwise they should not be approved. These are:

- *“The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage;*
- *If this cannot be achieved, it should provide local or community benefits which clearly outweigh the dis-benefits of likely impacts to justify the grant of planning permission;*
- *In National Parks and Areas of Outstanding Natural Beauty (AONBs), proposals must also meet additional tests;*
- *Within or likely to affect Sites of Special Scientific Interest (SSSIs), National Nature Reserves (NNRs), Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites must meet additional tests;*
- *Land will be restored to a high standard and to a beneficial and suitable after use.”*

Ministerial Interim Minerals Planning Policy Statement (MIMPPS) 01/2009, Health Impact Assessment for Opencast Coal Sites was published in February 2009. This states that it is the policy of the Welsh Government that Health

Impact Assessment should be provided to accompany any application for opencast coal working and that if the Mineral Planning Authority decides that an applicant has failed to provide adequate information on health impacts, it may decide that it cannot process and proceed to determine the application without that information.

### National Guidance

MTAN (Wales) 2: Coal was published in January 2009 which sets out detailed advice on the mechanisms for delivering the policy for coal extraction through surface and underground working. This includes advice on providing coal resources to meet society's needs, the Local Development Plan, protecting areas of importance, reducing the impact of coal extraction, underground coal working and achieving high standards of restoration, aftercare and after use. Extensive advice on best practice is also provided as a means of assessing and controlling coal operations.

MTAN2 also reinforces the issue regarding buffer zones and states in para 32 *“MPPW sets out the concepts and policy on buffer zones in paragraph 40; a Buffer Zone is described as an area of protection around permitted and proposed mineral workings. They must be clearly defined and indicated in Unitary Development Plans (now LDPs). The MPA will show buffer zones on the Proposals Map, as 500m around permitted or proposed working, from the site boundary (or boundary for surface development for underground mining), unless there are exceptional circumstances as set out in paragraph 40 of MPPW or ...below.”*

Paras 49 to 50 identify the exceptional circumstances where coal working may be permitted within 500 metres of a settlement which could be considered *“Factors to be considered include:*

- where coal working provides the most effective solution to prevent risks to health and safety arising from previous mineral working;*
- to remediate land damaged by shallow coal workings or mine waste, where coal extraction appears to be the most sustainable option;*
- where topography, natural features such as woodland, or existing development, would significantly and demonstrably mitigate impacts;*
- where major roads or railways lie between the settlement and the proposed operational area and coal working would not result in appreciable cumulative and in-combination effects;*
- where the surface expression of underground working does not include the significant handling or storage of the mineral or waste;*
- when the proposal is of overriding significance for regeneration, employment and economy in the local area; or*

- *where extraction would be in advance of other, permanent, development which cannot reasonably be located elsewhere.*

*Where such exceptions justify surface working within 500m of a settlement, the area of working should be restricted to the area reasonably necessary for remediation. The MPA should seek the best balance between the scale, working-method and the timing of individual phases, the opportunities for early restoration and aftercare, and hours of working. Strong evidence of the necessity for remediation, including the evaluation of options, is required to justify working within 200 m of a settlement, and the social and environmental impacts on the affected settlement must be carefully weighed.”*

Paragraphs 52 and 53 also acknowledge that “*extensions to existing mineral workings are often more generally acceptable than new Greenfield sites. This needs to be balanced with the policy on buffer zones and take into account issues of cumulative and in combination effects.*”

*For surface coal workings, if the application for an extension is beyond the original site boundary or outside any operational boundary agreed by the MPA, the economic preference for extensions should be very carefully weighed against the social and environmental costs. Approval of an application does not carry any presumption in favour of any future extension, which would be determined on its merits and in relation to national planning policy, the development plan and any other material consideration.”*

Further reinforcing the position outlined within MPPW, MTAN2 also expands on the need for financial guarantees to be in place to ensure that sites are satisfactorily restored. Para 60 states that “*Financial guarantees provide reassurance that a site would be restored in the event of failure. They also help to establish and draw attention to the real cost of reclamation.*” The consequences of not having such guarantees in place are outlined within paragraph 61 which states that “*Restoration guarantees improve the certainty of site restoration for the regulator and the community. Although few in number in the UK, failures to restore sites have had significant cost implications for MPAs. This small but significant number of failures does have important local impacts.*” It goes on to describe the different types of guarantee, how LPAs can secure them that are available and the costs to the operator of having such guarantees in place.

Technical Advice Note 23 Economic Development (February 2014): Provides guidance on planning economic development at a strategic level, working with neighbouring authorities and relevant stakeholders; identifying and assessing

economic development proposals and establishing an evidence base to help prepare economic development policies for LDP's, it also indicates that economic development should be given greater weight as a material planning consideration although this should not be at the expense of environmental and social impacts.

In addition to National Policy and Guidance a document was commissioned and published in April 2014 by the Welsh Government and is entitled 'Research into the failure to restore opencast coal sites in south Wales'. This research and accompanying report acknowledges that mineral sites were being left abandoned and restoration was not taking place as originally anticipated by the Local Planning Authorities and the communities around the sites. It therefore recommended the need to consider alternative solutions to deliver restoration of sites at risk of not being restored in accordance with planning conditions.

This is a research document rather than policy or specific guidance and no response in relation to how it will be taken forward has been given by the Minister Carl Sergeant. However as it is a publication which the Welsh Government has published and, given its clear relevance to the issues at EPER, it is a material consideration of some weight in the consideration of this application.

### **Local Policy**

#### **Neath Port Talbot Unitary Development Plan**

The Neath Port Talbot Unitary Development Plan (March 2008) sets out the policies and objectives for the County Borough and includes policies for the delivery of sustainable development and a better quality of life.

Part 1 Policy 20(A) states:

- A) Proposals for coal extraction will be favoured where they contribute to the County Borough's share of local, regional or national production subject to: -
  - (a) ensuring the impacts on the environment and local communities are acceptable; and
  - (b) securing appropriate, high quality and prompt restoration and aftercare to provide a beneficial after use.

Policy GC2 provides a framework for the consideration of proposals (including mineral workings) highlighting criteria and issues that should not be impacted upon in an unacceptable manner. Adequate details must also be submitted.

Policy ENV1 indicates that development in the countryside will not be permitted unless it complies with certain criteria. Policy ENV1(h) identifies the potential need for development to occur in the countryside is for the purposes of mineral extraction.

Policy ENV3 indicates that proposals that would create unacceptable impacts on the landscape will be resisted.

Policy ENV4 states that proposals affecting European sites would not be permitted unless it passes the 3 tests and that there is a presumption against proposals that would likely to damage or destroy SSSI's and disturbance to European species.

Policy ENV5 indicates that proposals that would unacceptably damage or destroy significant local habitats and species would not be permitted unless adequate mitigation measures are put forward.

Policy ENV12 indicates that proposals that would be prejudicial to or materially affect the quality or quantity of controlled waters, fresh water or sea water will not be permitted.

Policy ENV15 indicates that proposals that would be likely to have an unacceptable adverse effect on air quality or would expose people to an unacceptable level of air pollution would not be permitted.

Policy ENV23 – Requirement for archaeological evaluation.

Policy EN26 – Controls to prevent the impacts of lighting has to be demonstrated.

Policy ENV29 indicates that where proposals affect the environmental quality or amenity of the surrounding area through causing unacceptable levels of pollution, disturbance, noise or nuisance they will not be permitted.

Policy M8 set out criteria for the assessment of coal and other mineral development and indicates that such proposals will only be permitted if all relevant criteria have been satisfied and addressed and in accordance with other policies of the UDP.

Policy M9 identifies areas where opencast operations will not be permitted which includes a buffer zone of 200 metres around settlements, and sensitive buildings and operations and designated conservation areas and listed buildings.

Policy M10 highlights the policy of the Authority to seek appropriate financial guarantees for the restoration of coal mining operations and ensure adequate resources are available for other cases.

Policy GC2 and Policy M8 set out specific criteria for the assessment of mineral and coal developments respectively. The relevant criteria are considered and assessed below along with other National Policy guidelines and other material considerations.

## **Supplementary Planning Guidance**

### **Landscape**

National Planning Policy recommends that the Authority draw attention to their LANDMAP studies through supplementary planning guidance (SPG). This guidance fulfils that role, introducing the local landscape and relevant concepts together with the local Design Guidance document derived from the LANDMAP study.

## **Main Issues**

Having regard to the Policy context at both a national and local level, and particularly the detailed planning history at the site as stated above, the main issues to consider in the determination of the first part of this application relate to the following key topic areas: -

1. The Need for Coal
2. Landscape Character, Visual Impact and Visual Amenity
3. Impacts on Residential Amenity
4. Ecology and Biodiversity
5. Access and Transportation
6. Ground Contamination and Land Stability
7. Health Impacts
8. Water Environment
9. Cultural Heritage
10. Soils and agricultural Land
11. Public Rights of Way and Public Roads
12. Restoration and Aftercare

13.Socio-Economic benefits

14.Other Matters

Each of these is considered in turn below.

## **1. Need for the Coal**

One of the key principles of sustainable mineral extraction set out in MPPW is to provide mineral resources to meet society's needs. MTAN2 provides a policy background for the provision of coal resources to meet society's needs.

National energy policies, as set out in MPPW, seeks to ensure a secure, diverse and sustainable supply of energy at competitive prices and this objective takes into account the Government's concerns for the environment, health and safety and a fair deal for all consumers, as well as its commitment to all aspects of sustainable development. MPPW goes on to say that "While UK coal is available and the generators continue to choose it, UK coal contributes to energy diversity and supply."

The Overarching National Policy Statement for Energy (EN-1) states that energy is vital to economic prosperity and social wellbeing and so it is important to ensure that the UK has secure and affordable energy.

Fossil fuel power stations play a vital part in providing reliable electricity supplies and it should be recognised that they will play an important role in the UK's energy mix until sufficient transition is made to a low carbon economy. Coalfield power stations will still be needed for the foreseeable future. However there is an increasing emphasis within National Policy to develop renewable sources of energy but this is taking time.

In considering the appeal which led to the 2004 consent, the Inspector concluded that "there is a need for the East Pit coal, which carries considerable weight", and having regard to the above policy context this situation remains the same today.

To put this into context, the coal from this site accounted for approximately 31% of the total coal produced in Neath Port Talbot in 2012 and around 2% of the total UK indigenous production in the same year. Coal from East Pit is good quality anthracite and provides an important contribution in the overall mix of products that the operators supply. Anthracite coal is also low volatile and efficient in energy production terms. The need for the coal and the economic benefits were fundamental reasons for the granting of consent in 2004 along with maintaining a viable opencast coal industry.

However, it must be recognised that the extraction of coal was mothballed after an initial start in 2005 and influenced by coal prices at the time.

Coal prices will fluctuate over periods of time and current prices are currently at a very low point. However given the fluctuations in price this cannot be relied upon as a reason not to consider further extraction to fulfil a National need for coal. It is acknowledged that the extraction of indigenous coal has been declining, however coal still accounted for 42% of electricity supplied in 2012.

The coal produced at East Pit is also considered to be suitable for use in power stations, utilising carbon capture and storage techniques.

It was estimated that a total of 0.97 million tonnes of coal remained in place (in November 2012) as part of the previously approved 2004 consent. A further 550,000 tonnes is available within the extension area. This is a considerable amount of coal with a ready market available both within the domestic markets and at Aberthaw power station. Letters of support to confirm the need for this coal have been supplied by both markets which are reliant upon the high quality coal available at East Pit.

As stated by the Inspector when considering the 2004 consent, *“if these reserves are not worked now they would become effectively sterilised as it would not be economic to recover them once the site has been restored. Consequently, to meet the national need for coal, either other less attractive sites would have to be worked or more coal would have to be imported to meet demand.”* This statement still remains relevant today and as such the need for this mainly anthracite coal at East Pit carries considerable weight.

## **2. Landscape Character and Visual Impact**

Planning Policy Wales is clear that attention to landscape issues is a key part of planning sustainability. Planning policies and proposals should contribute to the protection of the natural environment and help to ensure the conservation of the historic environment and cultural heritage. Landscape and visual impact assessment is a particularly important part of the environmental impact assessment.

East Pit is located at the northern edge of the South Wales Character area and adjacent to the southern edge of the Brecon Beacons. The simple moorland landscape of the Brecon Beacons and Black Mountains descends to its southern

boundaries before merging into the more complex landscapes of the South Wales valleys.

A number of river valleys drain the elevated land forms of the Brecon Beacons to the north and permeate to the south.

The Landscape and Visual Impact Assessment (LVIA) has considered the full extent of the planning application boundary, the landscape context and the landscape aspects as defined above, along with the Zone of Theoretical Visibility (ZTV), defining areas where the development may be theoretically visible from. The ZTV has examined the landscape fabric, character and the effects on visual amenity as a result of the proposed development, and a number of viewpoints are used to assess the significance of potential landscapes and visual effects caused by the proposed development. These include viewpoints within the Brecon Beacons National Park, surrounding residential areas and public rights of way and public highways.

The Landscape and Visual Impact Assessment (LVIA) has been undertaken in accordance with the Guidelines for Landscape and Visual Impact Assessment (2<sup>nd</sup> edition). The methodology followed as part of this assessment together with the judgements made within the assessment are considered to be acceptable. The assessment considers the effect on:

- landscape fabric, caused by changes to the physical form of the landscape and its elements;
- landscape character, caused by changes in the key characteristics and qualities of the landscape as a result of the proposed development; and
- visual amenity, caused by changes in the appearance of the landscape as a result of the proposed development.

The landscape and visual sensitivity, the magnitude of change and the effects have been assessed, with 17 viewpoints identified for analysis. Views into the site extend up to 5 km away in some directions, most notably from the Brecon Beacons to the north. The National Park is considered to be a Designated Landscape and is of Outstanding Historic Interest. Closer views occur where intervening vegetation allows, several open direct views were identified from the edges of nearby settlements including Brynaman, Rhosaman, Cefn-bryn-brain, Cwmllynfell, Tairgwaith and Gwaun-Cae-Gurwen.

The baseline condition used in the assessment is that of the previously approved restoration strategy, against which changes caused by the proposed restoration can be assessed. The methodology used within the ES to assess landscape and visual effects is based on the recommendations in Guidelines for

Visual Impact Assessment published by the Landscape Institute and the Institute of Environmental Management and Assessment (2002).

The Countryside Council for Wales LANDMAP information system methodology provides context for detailed studies that underlie landscape and visual impact assessment.

The assessment indicates that the following are key characteristics of the pre-industrial landscape that is present in the baseline condition:

- The landform comprises 'outliers' from the upland to the south.
- Common land, open, 'moorland' type vegetation.
- Separation of the urban communities, not least between Tairgwaith and Cwmllynfell.
- Watershed between the Amman and Twrch valleys.

The currently proposed restoration scheme adds two further significant elements:

- The large lake
- Native woodland (particularly to the steep slopes of the overburden mounds)

The proposed restoration scheme will retain the existing western and southern overburden mounds in situ however their current engineered appearance will be amended through re-profiling to provide a more natural appearance more in keeping with the existing upland areas which surround the site. In order to achieve this, it is proposed to re-profile the western overburden mound albeit the overall height will remain the same at 258m AOD. This mound currently has a very geometric appearance and it is necessary to soften its appearance by re-grading the sides to give a more naturalistic form. It is however acknowledged that the western mound will retain a flat top particularly when viewed from the north.

The overburden mounds will be planted with upland moorland type vegetation on the upper slopes, while the lower slopes will be planted with native woodland. This is commensurate with the character of the surrounding upland areas and as such will visually and ecologically link the site with the existing upland areas to the south. The flat lying previously restored area of land to the west currently contrasts with the natural topography of the surrounding area beyond the sites boundaries. The proposed restoration scheme seeks to address this anomaly by re-profiling the overburden mound and creating a western

extension of the mound which will have the appearance of a spur. This aims to create an upland mountain type habitat stretching across from the overburden mound to the west. Such a habitat will in turn reinforce the separation of the communities to the north and south by increasing the definition of the valleys. The area to the west of the re-profiled overburden mound will also be re-configured with structured planting to subdivide the area and as such be more representative of the areas of traditional pasture land nearby. The combination of the re-profiling of the overburden and the proposed planting will result in the creation of a more appropriate and naturalistic landform which will appear as an outlier of the upland to the south and will integrate more naturally into the surrounding landscape.

The current proposal also seeks to retain the void area as a lake and the area of settlement lagoons as a wetland habitat. The retention of the large flat areas required for these water bodies reduces the space available for accommodating the overburden material. The size of the lake has reduced and the lakeside environment has increased since the application was first submitted. This has resulted in a more naturalistic relationship between the eastern edge of the western overburden mound and the lakeside.

The southern overburden mound will also be re-profiled and planted with moorland planting on the upper slopes with native planting on the lower parts of the slopes to mirror those naturally occurring within the surrounding area.

In terms of landscape character, the Landscape Assessment and Decision Making Process (LANDMAP) has been used as the method of assessing effects on the landscape of the study area. LANDMAP is derived from a nationally agreed methodology devised by the then Country Council for Wales (NRW) and introduced a holistic approach to landscape protection and management, recognising the value of landscapes that are not necessarily subject to statutory designations. The LANDMAP study for the Neath Port Talbot County Borough area has, in accordance with the recommendations of PPW, been adopted as a supplementary planning guidance document entitled 'Landscape'.

Within LANDMAP, East Pit is described as being located in the northwest of the County Borough. Given the historic mineral workings associated with the site the area is described within the LANDMAP landscape character assessment' as follows *"The area is generally a detractor within the landscape, its character being linked to the immensity of landform and continuity of boundary treatment, which provides only minimal sense of place."*

In order to assess the impact a development has upon landscape character it is necessary to group together Landscape Character Areas (LCAs) to form a Landscape Character Types (LCTs). This assessment confirms that the site is located within the ‘Upland’ Landscape Character type, the key features of which are:

- A number of protected habitats including SSSIs and BAP habitats;
- Linear ex-mining settlements running along the roads; and
- A number of recreation features and links to the Brecon Beacons National Park.

The impact upon landscape character should incorporate an assessment of natural factors, cultural social factors and aesthetic and perceptual factors. All of these assessments have been undertaken as part of the ES which concludes that “ *the landscape within the site is of limited value, however areas of existing restoration and parts of the site which could be successfully integrated with the proposed site development will be retained in order to minimise disturbance and preserve areas with vegetative cover which would take time to recover if disturbed.*

*However overall the landscape is of low landscape value, and offers a significant opportunity to enhance the quality of both the site and perceived status of the surrounding area.”*

Given that the historical mining activities at the site cannot be disputed, it is impossible to argue with the above characterisation of the existing landscape. It is also accepted that without suitable restoration of the site as described above, this landscape character will continue to be the case potentially for generations to come. The current proposal will however result in the completion of coaling at the site and its restoration, which will positively impact upon the overall landscape character of the site and its immediate surroundings.

The following paragraphs assess the impact from the viewpoints immediately adjacent to the site during the operational phase of development and in the longer term following full restoration.

It is acknowledged that a temporary screen mound will be created around the extension area as well as areas being set aside for the temporary storage of soils and an extension of the extraction area.

The operational activities and temporary storage bunds will not be visually prominent when viewed from the northeast (Rhosaman and Cwmgarw Road each of which have a high to medium sensitivity to change) as they will be

partially screened by the intervening landform. Over time the screening around the perimeter of the void which is composed of soil forming material, will reduce in scale to facilitate the restoration of the site. Whilst this will expose views of the extraction area (during its restoration) to the surrounding area, it will also result in the reinstatement of more longer distant views across the site, which is considered to be beneficial in the longer term. It is however acknowledged that these long distant views will be reduced when compared to the baseline scenario due to the retention of the re-profiled western overburden mound and the associated planting.

When viewed from the cycle track at Cefn-bryn-brain, (sensitivity is high for residents and medium for recreation users) all operations will be hidden from view and as such there will be no consequential change to the landscape when compared against the baseline. In the longer term following full restoration the difference between the approved restoration and that currently proposed is negligible.

From the east, the viewpoint at Bryn Cwmllynfell represents one of the more direct and open views towards the site. Given the existence of residential properties at this location its sensitivity to change is considered to be high. However given the existence of an intervening landform, views into the site will be minimal. It is acknowledged that the soil forming material on the eastern perimeter of the void will be removed to facilitate restoration, however this was the case in relation to the approved restoration strategy for the site. In terms of the impact in the longer term, it is acknowledged that the proposed scheme will reveal less of the more distant views of the Brecon Beacons.

From the south of the site near Cwmnanthir Terrace, Tairgwaith, which is one of the closest communities to the site, while the extraction area will not be seen from this area, the plant associated with the operations will be seen and will be visible for a longer period of time when compared to the baseline. The impact in relation to this view following restoration mainly relates to the western overburden mound which will remain in place albeit in a re-profiled form. Nevertheless it is fair to say that the impact will be substantial compared to the previously approved scheme, although the combined re-profiling and planting will result in a beneficial impact given that it will assimilate better into the surrounding landscape.

Views from the south west are represented via a view point from the public right of way near Caenewydd. This viewpoint is considered to have a medium sensitivity to change. The operational area of the site is, and will continue to be hidden from view, and as such there are no changes compared to the baseline in terms of the continued operation of the site. In the longer term the retention

of the re-profiled and planted western overburden mound will result in a change to the skyline, although this is not considered to be significant.

From the north, viewpoints were taken from two locations within Upper Brynamman, from the western approach to the village and from the rugby ground. The sensitivity will be low for those using the sports facilities, medium for road users and high for residents. The operational area is and will continue to be hidden from view. In the longer term it is acknowledged that the approved restoration would have resulted in a significant reduction in the height of the western overburden mound when compared to that currently proposed. However it is acknowledged that the proposed works to the western overburden mound will ensure that the site is more akin to the low lying hills and valleys seen within the adjacent landscape. The previously approved and arguably the original landscape character within the site was in stark contrast to the surrounding upland character. The currently proposed restoration strategy would be in keeping with its surroundings but due to the reduction in the area of skyline as a consequence of the retention of the re-profiled overburden mounds, it would give rise to a moderate to substantial impact compared to the baseline. However this will not necessarily be negative when the planting and re-profiling is completed.

The assessment concludes that the impact during the operational phases of development are not significantly different to that which is currently experienced as a result of the 2004 consent. In the longer term the impact upon landscape change is likely to give rise to some major to moderate effects when considered against the baseline of the approved restoration strategy. This will however vary over time with the impact diminishing as the amended restoration scheme progresses towards full completion resulting in a beneficial impact following the restoration of 585 hectares of land delivering a mix of 63% grassland, 28% woodland and 9% water features across the site as a whole.

In terms of long distance views, it is appropriate at this stage to consider the impact of the development when viewed from the National Park. Given its designation, the sensitivity of the landscape to change is identified as being high. There are both direct and oblique views into the site from various parts of the National Park, with many being elevated above the site.

From these views, the re-profiled and planted overburden mound will appear against the backdrop of the ridge of Myndd Uchaf and will read as a continuation of the vegetation pattern seen elsewhere in the adjacent valleys. It is acknowledged that the retention of the overburden mound will change the

overall view from the Park when considered against the baseline, however for the reasons specified above this change is considered to be moderate.

It is also important to consider short term impacts upon the National Park during the operational phase, namely in relation to the movement of vehicles and the lighting associated with the site. An objective of the National park is to minimise noise and light pollution and thus contribute towards the sense of tranquillity and remoteness which is a key special quality of the Park. The National Park Authority was consulted on this application and appointed their own independent consultants to assess the landscape impact of the proposed development upon the National Park. This assessment concludes that the development will not have a direct effect on the special qualities of the National Park, although there is the potential for minor indirect effects from future lighting of the proposed built development. As a consequence, the National Park have raised no objection to this development, subject to detailed design consideration at the reserved matters stage, on the grounds that the impact upon the special qualities of the National Park are seen as minimal and not significant enough to outweigh the benefits of the scheme.

Notwithstanding all of the above, the crucial and most important aspect regarding the effect on landscape and visual amenity is the additional timescale now proposed to complete and extend coaling activities and to restore the site. Under the original 2004 consent, coaling should have ceased in November 2012 and restoration should now be taking place. Members will be aware from other reports which have been placed before them in relation to potential enforcement and a section 73a application that there was a three year delay in the commencement of coaling associated with the 2004 consent and as such the coal reserves which have been granted consent for extraction still remain partly in situ. The period required to extract this coal together with that located within the extension area will extend coaling by a further five and a half years from November 2012 up to mid 2018. Whilst it is acknowledged that progressive restoration will take place during this coaling period, final restoration will not be complete until 31<sup>st</sup> March 2020, some 5 years after that first envisaged within the 2004 consent. This dictates that the physical impacts on the landscape and the associated visual impact upon various receptors will be experienced for an extended period of time. Accordingly, it is necessary to consider whether this extended period of time in itself and the resulting delay in site restoration in an amended form, would be sufficient grounds to withhold consent.

This issue was considered by the Inspector in the appeal associated with the 2004 consent where he acknowledged that parts of the site would be visible from surrounding communities to the east and north-east and as such there

would be some harm to visual amenity for residents within those communities. But he concluded by saying that ‘taken as a whole, other visual impacts would not be significantly different from those experienced during previous operations...’ He also acknowledged that the site is clearly visible from the high ground to the north within the National Park. He went on to say that ‘these man-made structures are not easily discernible when grassed and the proposed extension scheme would not significantly change this. Whilst harmful to the landscape, the degree of harm would be quite limited, even allowing for the fact that Mynydd Du is an area popular for walking and is likely to be designated as access land under the Countryside and Rights of Way Act 2000.’ He also acknowledged that given the remoteness of the site from the elevated parts of the Park the effect on the quality of the landscape would be slight. Overall he concluded on the issue of landscape and visual impact as follows; ‘Overall, I conclude that the impact of the proposed development on the landscape and visual amenity would not be significantly different from that of the existing site and previous site operations. Whilst causing limited harm to local amenity and long distance views from the National Park, I consider the most significant factor would be the delay of some 7½ years in restoring the site and replacing the present unnatural landforms with a more natural profile and character....’ Whilst he acknowledged the impact upon landscape quality as a consequence of additional coaling over a further prolonged period it was not of sufficient concern to warrant refusal of the appeal. He acknowledged that it was a finely balanced judgement and said... ‘the need for the coal and the economic benefits would outweigh the harm to the environment and the amenity of the local communities.’

It would appear that the degree of impact assessed under the 2004 consent, is similar to that considered under this application. However the manmade structures ie the overburden mounds will be retained as part of the proposed restoration but re-engineered and planted to a more natural form. Furthermore the extension of the extraction area will be restored to form a lake which will therefore introduce a controlled body of water which will be located a distance of between 240 to 250m away from the nearest settlements. While the overall conclusions on such matters are considered at the end of this report, where all of the relevant factors are weighed up as part of the ‘planning balance’, purely in respect of landscape, both in terms of the impact upon its character and the visual impact, it is concluded that the additional 5 years sought by this application, whilst perpetuating the mining operations for a further period, is not considered to be so significant in this case to warrant a refusal.

Therefore it is considered that the proposed development would enhance the landscape character of the application site and its immediate surroundings in the long term, whilst also ensuring that the landscape impact upon various

receptors is acceptable. As a result it is not considered to be in conflict with Policies ENV1, GC2(a), M8(a)(ii) and ENV of the UDP.

### **3. Impacts on Residential Amenity**

#### **a) Buffer Zones and the principle of development within 500m of communities.**

The buffer zone identified within the Development Plan for the area – the UDP – is set out within Policy M9 which provides that

*“Proposals for opencast coal operations (i.e. the extraction or storage of minerals or overburden) will not be permitted within the following areas or sites:*

- 1)
  - i) *a buffer zone of 200 metres from a Settlement Limit;*
  - ii) *a landscape, park or garden identified by Cadw as being of Special Historic Interest, or designated as a Country Park;*
  - iii) *land designated as of national or international importance in terms of ecology or geology (i.e. SSSIs or SACs);*
  - iv) *a Scheduled Ancient Monument or Conservation Area*
- 2) *A buffer zone of 200 metres from a “sensitive building” which is not in the ownership or control of the applicants*
- 3) *A listed building*

In the ‘notes’ section of supporting text a “sensitive building” is defined as a *“house, hospital, school or other building occupied by one or more persons on a regular basis”*

Existing water treatment facilities and soil storage areas currently exist partially within the 200 metre buffer zone, particularly on the eastern limits near Ochr y Waun in Cwmllynfell and on the northern fringe of the site near Rhosaman. However, operations and activities associated with the storage and recovery of soils and the operation of water treatment areas do not conflict with this policy which relates specifically to the extraction or storage of minerals or of overburden. The retention of soils/subsoils and the operation of water treatment areas would be necessary in these areas until soils are required for restoration or water treatment areas are no longer required for surface water controls.

The proposed extraction area will be located approximately 215 metres from the closest residential property at Ochr-y-waun, which is at the edge of the settlement of Cwmllynfell, 210m from the closest properties within the settlement of Rhosaman, and 330m from Penlan Bungalow which is within the settlement of Cefn Bryn Brain. Accordingly, the proposal does not encroach within the 200m buffer zone from any sensitive buildings.

Furthermore the application site is not within a landscape park or garden as identified by CADW as being of Special Historic Interest, nor is it a country park. Furthermore the site is not protected by a national or international ecological designation, nor are there any Scheduled Ancient Monuments or Conservation Areas within the application site.

As such the continued and extended working of the site is in accordance with Policy M9 of the UDP.

It is pertinent to note that MTAN2, which post-dates the UDP, is, at least to some degree, in conflict with Policy M9. MTAN2 indicates in paragraph 29 that, in relation to Local Development Plan preparation and, in particular in defining areas where coal working will not be acceptable, *“MPAs should take into account that coal working will generally not be acceptable within 500 metres of settlements, or within International or National Designations of environmental or cultural importance.*

However, paragraph 49 in MTAN2 goes on to say:

“Exceptionally, having considered the evidence put forward with a surface or underground coal working application coal working may be permitted within 500 metres of settlements. Factors to be considered include:

- Where coal working provides the most effective solution to prevent risks to health and safety arising from previous mineral working
- To remediate land damaged by shallow coal workings or mine waste, where coal extraction appears to be the most sustainable option
- Where topography, natural features such as woodland, or existing development, would significantly and demonstrably mitigate impacts
- Where major roads or railways lie between the settlement and the proposed operational area and coal working would not result in appreciable cumulative and in-combination effects
- Where the surface expression of underground working does not include the significant handling or storage of the mineral or waste

- When the proposal is of overriding significance for regeneration, employment and economy in the local area; or
- Where extraction would be in advance of other, permanent, development which cannot reasonably be located elsewhere”.

Paragraph 50 of MTAN 2 explains that *“where such exceptions justify surface working within 500m of a settlement, the area of working should be restricted to the area reasonably necessary for remediation”*.

In light of the degree of conflict between Policy M9 and MTAN 2, and given that coal working is currently taking place and is proposed to continue to do so within the buffer zone of 500 metres from the edge of settlements, the following issues need to be considered:

- (a) Are there exceptional circumstances in this instance which justify surface working within 500m of a settlement, such that the proposal is in compliance with MTAN 2;
- (b) If not, does the fact that the workings are within the 500m buffer zone set out in MTAN 2 justify a refusal of permission, given that the proposal is in compliance with the 200m buffer zone established with the Development Plan (ie Policy M9)

Paragraph 49, specifies seven separate factors which are to be considered when concluding whether there are exceptional circumstances justifying surface coal working within 500m of settlements. It is to be noted that this is not an exhaustive list of circumstances in which there will be exceptional circumstances, but it is necessary to start by considering whether any of the factors apply to this application. Of the factors listed, the only one that of relevance is

*“where the proposal is of overriding significance for regeneration, employment and economy in the local area”*.

None of the other factors are relevant to this case given the nature and location of the development and the surrounding topography, woodland and existing development.

It is considered that the proposal is of overriding significance for the regeneration, employment and economy in the local area.

Firstly, in relation to employment in the local area it must be acknowledged that the site generates employment both directly and indirectly for 115 personnel, many of whom live in the villages and communities immediately

surrounding the application site. This is the only major employer in this area and, whilst it is acknowledged that the site will in time cease to operate as a working mine and will be restored, the continuation of coaling both within the previously approved extraction area and the extended extraction area together with the associated restoration will extend that period of employment for those working on site to the benefit of businesses directly and indirectly reliant upon the continued working of the mine.

Secondly, in relation to the economy of the local area unemployment within this area is currently higher than the average recorded data for the remainder of the county borough, which is in itself higher than average levels recorded within the surrounding region and within Wales as a whole. The employment provided by this mine is well paid and highly skilled and cannot be replicated elsewhere within the immediate area. It must also be acknowledged that the deprivation statistics for the area clearly indicate that Gwaun Cae Gurwen and Tairgwaith are within the top 30% deprived areas as defined within the Welsh Index of Multiple Deprivation (WIMD). The positive impact of the continued operation of the mine upon the local economy cannot therefore be dismissed easily.

Thirdly, and most importantly, is the impact the proposal will have on regeneration in the local area, in particular the regeneration of the application site. The outline element of this development proposes a tourism led regeneration strategy which in the longer term is anticipated to result in inward investment together with job creation for the local communities. Whilst this issue is dealt with in the second part of this report, where the built development is assessed, it is acknowledged that the built environment cannot be delivered in the manner proposed in the absence of a restored site as proposed under this application.

Of particular importance, however, is the fact that the proposal will enable the restoration of the site to be secured. The previously approved restoration strategy proposed to remove the material from the western and southern overburden mounds by back-filling the void and returning the land back to common. The current proposal aims to re-profile and plant the overburden mounds in-addition to the creation of a diverse habitat which is more in keeping with that which is evident in the surrounding area as assessed under the landscape section of this report. Furthermore the proposed after-use will result in the creation of a country park which will itself include a diverse range of potential uses but which will not preclude areas of grazing land. Such an after-use is covered under the full part of this application.

The key consideration in relation to the restoration of the site – and the central justification for their being exceptional circumstances which justifies the working within 500m of settlements - is that the current proposal provides a high degree of security that the site will be fully restored. For the reasons expanded on in detail below, there is a real risk that if the permission is not granted the site will not be restored or that the restoration costs will fall on the public purse.

As Members are well aware, this site in addition to others within South Wales was formerly owned and operated by Celtic Energy. However the ownership of the site was transferred to a separate company registered within the British Virgin Islands known as Oak Regeneration in 2011. As a result whilst Celtic Energy are currently operating this site, it is owned by Oak Regeneration and one of their subsidiary companies known as 'Pine'. Both Celtic and Oak Regeneration, since the transfer of ownership took place, have consistently indicated that they have insufficient funds available to undertake restoration of the site in accordance with the previously approved plans, and conditions attached to the 2004 consent. They have also indicated that spending an estimated sum of more than £100 million to effectively muck shift the overburden mounds into the void area and return the land to common land without any long term benefit to the wider communities is not sustainable either economically or environmentally.

A sum of £3,684,290.23 (as of January 2015) is currently deposited with the Council in the form of an escrow account. This is wholly insufficient to implement the previously approved restoration strategy. Moreover whilst both companies have indicated that they have insufficient funds to complete the restoration of the site, Oak Regeneration have confirmed in meetings where potential enforcement action has been discussed in relation to both this site and their site in Margam, that should the Council pursue enforcement action against them to secure restoration of the sites within their ownership, they will have no other option but to fold the companies. This would potentially leave the site in an un-restored and unmanaged state. Celtic although not the owner of the site has indicated both in meetings with the LPA and in public meetings that they have insufficient funds available to secure restoration of the site in the absence of a further extension. Financial records associated with the company indicating the provisions associated with the site and the cash available to cover those provisions have been discussed, and it is clearly evident that the cash held by the operator together with the money held within the escrow account is wholly insufficient to cover the cost of restoration.

Restoring the site to its original restoration strategy within the 2004 consent would cost £70 million according to the applicant, or around £100 million according to the Council's calculations (difference down to rates applied). Given that it is estimated that there is less than £3.7 million in the escrow this amounts to only 5.3% of the finance available to restore the site using the applicants figure, and 3.7% of the finance required to restore the site according to the Council's figure.

Members will also be aware that coaling has ceased at the Margam OCCS and the void is currently filling with water. There is at least a risk that a similar situation could occur at East Pit should the extension and/or an amended deliverable restoration scheme not be approved.

The risks of mineral companies being unable to comply with restoration conditions attached to extant permissions – and the potential need to permit the extraction of more coal so as to generate sufficient income to cover the restoration costs - was acknowledged in the recent research published by the Welsh Government.

The fall in the economic climate associated with the mineral industry has resulted in many mineral companies across the UK going into administration leaving behind un-restored sites. This has been especially prolific in Scotland following the demise of Scottish Coal where 20 opencast coal sites are awaiting restoration but have inadequate financial provision in place to restore the sites in accordance with the conditions agreed in the planning permissions. As a consequence of the above the Welsh Government commissioned research into the potential implications for mineral sites in Wales. This document was published in April 2014 and is entitled 'Research into the failure to restore opencast coal sites in south Wales'. Both East Pit and Margam feature within this research document.

This document reviews the status of a number of sites across Wales, the appropriateness of the bond arrangements for each site and necessary changes to practices in the future to secure the restoration of such sites. The report suggests consideration of the following options when dealing with un-restored sites or sites at risk which are as follows:

*“If it is anticipated that an operator might fail to restore a site or if there is no or an inadequate bond and enforcement fails, there are few if any remedies to enable the planning permission conditions to be met. There are however, a few mitigation measures which can be examined, as outlined below:*

- *It may be appropriate to revise planning permission, to permit the extraction of more coal, or even other minerals to meet some special or local need, so generating additional income to the operator with the extended earthworks making some contribution to the progressive restoration of the existing site. These other minerals might include topsoil, clay or bulk fill material. However, unless the planning extension / variation is very large (thus generating significant revenues for the operator), it may not make a significant contribution to resolution of the initial restoration shortfall, but extend the life of a large operation. However, it could enable a limited bond arrangement to be put in place in respect of the extension to the original planning permission;*
- *A new planning permission for revised after-uses for the site, so generating enhanced residual land values. Such enhanced land values are unlikely to arise unless the proposed uses include significant amounts of built development, and this in itself is likely to reduce the extent and cost of surface restoration and aftercare;*
- *Major reconfiguration of the 'form' of restoration for the site. Usually, the dominant cost component of restoring an opencast site is the bulk earthmoving needed to replace the excavated overburden back into the void, usually to create a landform somewhat similar to the 'natural state' of the site. This cost can be reduced significantly by partially refilling the void, and reducing and softening the shape of the overburden mounds. The acceptability of such a change obviously depends on the extent and effectiveness of any revised restoration, and the quality of the final surface treatment, aftercare and re-vegetation. The costs of void filling and surface finishes will of course be further reduced if parts of the void are retained as water features;”*

The research document covers a number of issues and sites across the country and draws from practices being implemented internationally. The document concludes by making a number of recommendations one of which reads as follows:

*“For sites at risk of not being restored in accordance with planning conditions, other measures may need to be considered. These may involve major re-design of site restoration, or change of after-use as a means of generating greater residual site value. For sites at risk a review should be undertaken of restoration and aftercare proposals to test whether potentially alternative solutions could be employed if necessary to deliver restoration at less cost. In Scotland, (where similar issues with restoration have emerged) a recently established body called the Scottish Mines Restoration Trust might be effective in brokering compromise solutions. A similar body could be considered in Wales (potentially as part of the Centre of Excellence).”*

The provision of a bond by the applicant was confirmed upon first submission of this application. Discussions have subsequently taken place resulting in the appointment of the Coal Authority as an independent expert to calculate the bond together with how it can work effectively in conjunction with the progressive restoration of the site. This has resulted in the need for a figure of £23,000,000 to be deposited by the applicant as a financial guarantee for the site. This issue is addressed in further detail later in this report.

As stated earlier in this report, there is a very real risk that without the extension of coaling within the 500 metre buffer zone, insufficient funds will be available to pay for the restoration of the site as proposed, and enforcement action would fail to remedy the situation (at least without the cost being borne by the public purse). It is therefore contended that this scheme with the accompanying amended restoration proposal is essential not only to address the long term health and safety of the site and its surroundings, but also to enable the creation of an appropriate platform to allow for the delivery of the proposed after uses including the ambitious regeneration scheme.

It is therefore considered that the proposal is of overriding significance for regeneration, employment and economy in the local area. As such, there are exceptional circumstances justifying the working of coal within 500m of a settlement. It follows that the proposal is in accordance with MTAN 2

Even if it is concluded that the factors outlined above did not amount to exceptional circumstances for the purposes of paragraph 49 of MTAN 2, it is nevertheless considered that any breach of MTAN 2 would not justify a refusal in the context of this case.

It must be remembered that section 38(6) of the Planning and Compulsory Purchase Act 2004 states that *“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.”* Policy M9 of the UDP is the relevant development plan policy. Whilst Paragraph 49 of MTAN 2, which post-dates Policy M9, is a weighty material consideration, it does not (and cannot) automatically ‘trump’ development plan policy. Rather consideration must be given as to whether, in the context of the particular application, breach of the 500m buffer zone in MTAN 2 justifies the refusal of an application, notwithstanding its compliance with the UDP policy.

In this regard it is also important to reflect on the rationale behind the need to retain a 500 metre buffer zone, which is to strike the balance between

protecting residential amenity, on one hand and society's need for coal, on the other. However, as this is applied at a national level and without reference to local circumstances, it is (necessarily) somewhat of an arbitrary measure. Accordingly, in order to assess the importance of establishing 500 meter buffer in this case, it is important to consider in some detail the likely impact on residential amenity arising from the proposed development.

It must be acknowledged that the proposed operational area which is the subject of this application whilst being an extension of that previously approved does not extend closer to nearby settlements than is generally currently the case. (The 2004 consented area is approx 200 metres away from Ochr y Waun and no part of the operational area in this application is within 200m of a nearby settlement) The impact upon the amenities of residents is assessed in greater detail below and, together with the need to secure restoration of the site, is considered to be critical to the determination of this application, especially given that the impact of working within the buffer zone is already being experienced and is assessed as being acceptable, having regard to nuisance. Regard must also be had to the fact that MTAN2 under paragraphs 52 to 53 makes reference to the preference to extend existing sites rather than to commence mining on new sites. This is an existing site, the extension of which as stated above will not progress closer to settlements than is currently the case. Such matters will be considered in the following sections. For the reasons expanded on below, in the circumstances of this case it is considered that, although the development is within 500m of the closest settlement, the impacts on residential amenity are not unacceptable.

b) Dust and Air Quality

There are 2 elements to consider in terms of dust: nuisance due to deposition of dust particles in the surrounding communities; and health risks associated with the smaller PM<sub>10</sub> particles suspended in the air.

Opencast operations can generate dust from a number of activities, primarily from excavation and the tipping of overburden, soil stripping, handling and blasting, associated vehicle movements, the processing of coal along with windblow over coal stocks material and disturbed surfaces. An Air Quality Assessment undertaken within the Environmental Statement has taken account of existing monitoring results, the mitigation measures undertaken and the review of the potential level of impacts anticipated from the proposed coaling period and the restoration task.

## Fugitive or Nuisance Dust

The potential impact of the operations on the local amenity from fugitive dust were considered by the Inspector in the 2004 Inquiry. Whilst the current application seeks a further extension of the area of coaling, the separation distance between the operational area and the local community will not decrease from the 200m previously approved by the Inspector in 2004. At that time the Inspector concluded that whilst some dust nuisance would inevitably occur (particularly in certain weather conditions) the effect would be generally quite limited and the effect on amenity would not be significant. The conclusions were based on appropriate measures being adopted to mitigate and limit levels below the general accepted guidelines at the time of 200mg / m<sup>2</sup> / day. The 'unofficial' standard was considered to be a level of dust deposition that would generate complaints. That standard remains unchanged.

The site has been the subject of a dust suppression and monitoring scheme since work commenced, with dust suppression techniques currently being adopted including the use of a water spraying bowser, keeping extraction areas and haul routes damp during dry weather and other management techniques, together with the sheeting of lorries to limit the effect of transported coal from the site.

Dust can also be a source of complaint as a visual impact on surfaces. There are no UK Statutory Standards recommended for dust deposition rates, however, MTAN2 suggests that for high-contrast dust such as coal, conditions should be set at a maximum of 80mg/m<sup>2</sup>/day (as a weekly average) or as a combination of 100% AAC (actual area coverage) across a single 45° sector over a 7 day period or the dust effect or discolouration is greater than 25% for a single sector within the same period. It is unclear if the limit of 80mg/m<sup>2</sup>/day relates to all dust or just the coal component.

Operations for coal extraction, processing and stocking at this site will also be regulated by an Environmental Permit. The assessment undertaken for nuisance dust has considered the impact on receptors located within 500 metres of the site and taking into consideration the monitoring undertaken on a number of stations around the periphery of the site.

Monitoring has been undertaken since the site recommenced in 2008 and for the most part all stations, of which there are 19 (including council operated deposit gauges), have been largely below the 80mg/m<sup>2</sup>/day limit set out in MTAN2. There had been exceptions over the last five years which were short lived or could be accounted to some incidental factors, e.g. building / engineering work, etc. not related to the site. However, in the middle of 2013

the deposit gauge at Ochr y Waun, which is approximately 136 metres away from the site boundary, showed an increase in deposition rates which ranged from 90mg/m<sup>2</sup>/day to 259mg/m<sup>2</sup>/day over a period from April to September. Further exceedences were found towards the end of October and November up to 190mg/m<sup>2</sup>/day. At the time it was reasonable to assume that weather conditions may have contributed to the overall range of results during that period whereupon a dry relatively hot summer could have contributed to elevated levels in the middle of 2013. Soon after this period the dust levels returned back to levels which were well within the acceptable limits with average readings of 41mg/m<sup>2</sup>/day. At that time additional mitigation measures were implemented which included fence mounted dust suppression which discharges a mist vertically along the site boundary at Ochr y Waun. Whilst this mitigation cannot be identified as the remedy for the previously recorded high levels, it is evident that following its introduction, dust levels from the site at this location fell and have remained consistently low. From April 2014 to the current date average readings of around 50mg are being recorded, and in many locations the figure is even lower than 50mg. In particular the dust levels at Ochr y Waun, which is the closest residential area to the current extraction area, were recorded in December 2014 as being at approximately 20mg, which is well within the defined limits.

Despite currently low levels of dust being emitted from the site, a risk based approach to dust management is recommended which identifies Ochr y waun, as being the area which is at highest risk from fugitive dust. The ES therefore recommends that during periods when the operations are closest to this area, the management and monitoring regime must be closely supervised and water sprays etc used in the event that these works are required during a period of prolonged dry weather.

The number of complaints about dust has been limited from the site. There have been five recorded complaints between November 2012 to the present day, the last of which was received on the 1<sup>st</sup> October 2013. As stated above, in response to these complaints and due to concerns regarding readings received at that time, additional dust suppression measures were introduced, which on the face of it appear to be working successfully.

In concluding on such matters, it is recognised that nuisance dust can affect environmental amenity and sometimes provide plumes of dust, the soiling of surfaces and effect on personal comfort, etc. Having regard to the risk based approach followed within the ES together with the monitoring undertaken since operations recommenced, it is considered that the general impacts in respect of nuisance dust remain acceptable. It is nevertheless appropriate, having regard to the periods of elevated results, to adopt a precautionary stance to mitigate

against any immeasurable impact on the amenities of residents. Accordingly, a condition is recommended requiring the submission of a dust management plan and implementation of dust suppression measures to further protect the amenities of neighbouring residents. Subject to this condition the impacts are considered to remain acceptable.

### Fine Particulates

Air Quality Regulations prescribe National Air Quality Strategy (NAQS) objectives to be achieved for a range of pollutants. The Environmental Statement submitted with the application has, using recognised Air Quality Assessments, undertaken a risk assessment for PM10s. PM<sub>10</sub> monitoring has been undertaken on site using a BAM-1020 monitor located at Ochr y Waun. The 2008 Ambient Air Quality Directive (2008/50/EC) sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health such as particulate matter (PM10). The 2008 directive replaced nearly all the previous EU air quality legislation and was made law in Wales through the Air Quality Standards Regulations 2010. The air quality standards relevant to particulates are as follows:

- PM<sub>10</sub> (annual average): 40µg/m<sup>3</sup>; and
- PM<sub>10</sub> (24 hour average): 50µg/m<sup>3</sup>, 35 exceedences permitted per year.

The average for the monitor up to April 2013 shows that the PM10 average concentration was 12.22 µg/m<sup>3</sup>. Measurements continue to be taken in relation to PM10 levels and the most recent results indicate a continued drop in those levels to 10.76 µg/m<sup>3</sup> in August 2014, 14.13 µg/m<sup>3</sup> in September 2014 and 8.85 µg/m<sup>3</sup> in October 2014. The rolling 12 month average is currently at 10.6 µg/m<sup>3</sup>. These levels are no more than 26.5% of the annual permissible average of 40 µg/m<sup>3</sup> and are consistent or lower than the results generally found at other PM10 monitoring locations associated with opencast development in the Neath Port Talbot area.

The less commonly measured PM2.5 applies to particles with a diameter less than 2.5 µm<sup>1</sup>. Epidemiological evidence of association between long term exposure to PM2.5 and a reduction in life expectancy was found by the COEMAP Committee. Acute exposure to particulate air pollution is linked in several studies with cardiovascular death, myocardial infarction, ventricular fibrillation, increased risk of sudden cardiac death (Dockery 2001, Peters 2001).

Whilst it has been suggested that these smaller particles would be a better measure of health risk from dust, the Government's Expert Panel on Air Quality Standards has considered this and concluded that there would be no benefit in moving to such a standard and that the PM10 standard offers a better level of protection.

Moreover, the Airborne Particles Expert Group also concludes that most of the particulate matter emitted from mines and quarries was in the coarse range, > 2.5 µm. This is confirmed by the particle analysis carried out as part of the Newcastle Study which found that the majority of particles attributed to opencast mining fell within the 5-8 µm size range.

The Environmental Statement concludes that on the basis of this risk assessment the likelihood of the 24 hour or annual average air quality standard for PM<sub>10</sub> to be exceeded is predicted to be negligible.

It is recognised that finer particles are deposited more slowly, although concentrations decrease rapidly from the source due to dispersion and dilution. The concerns of residents' regarding nuisance dust and particulates and the potential to endanger health is understandable. As is stated above, some elevated levels of nuisance dust have been recorded at Ochr y Waun but only over a restricted period of time, with the vast majority of recordings during the operation of the site being well within accepted levels. As a result, and as identified above, the operator proposes to implement additional mitigation measures and monitoring in accordance with modern techniques and advanced methods in a site specific manner. This can be secured by condition.

In conclusion, it is inevitable that emissions will be released into the atmosphere from the operations at the site. However, taking account of all the provisions that can be put into place, it is considered that adequate measures will be available to prevent an overbearing and unacceptable level of nuisance dust being generated and impacting on the amenities of local residents, and that particulates are very unlikely to be introduced into the atmosphere to the extent that Air Quality standards would be breached. Consequently it is considered the proposal does not conflict with Policies GC2 (c), M8(b)(i), ENV15 and ENV29 of the Unitary Development Plan.

Matters relating to Health Impacts are assessed in further detail later in this report.

c) Noise

Mineral developments of all kinds have the potential to have significant impacts on the amenities of the nearest residents to the site and can have an effect on the quality of life. Operational noise from site workings can have different impacts depending on the nature, location and timing of the activity. These, along with the potential effects of traffic movements, must be taken into consideration.

In assessing the noise impacts arising from the development, the 2004 appeal Inspector concluded that “noise levels generated by site operations would be unlikely to cause significant harm to the living conditions of nearby residents”. It is nevertheless necessary to consider the impacts having regard to more recent guidance (including MTAN2) and monitoring since operations resumed, and having regard to the fact that this application is not only a continuation of coaling but also an extension of coaling both in terms of the extraction area and time.

In particular, Paragraph 168 of MTAN 2 notes that environmental noise caused by traffic and industry is the source of an increasing number of complaints from the public and that noise can have a significant impact on the quality of life to the extent of harming wellbeing and health.

The additional/amended noise data which has been submitted in further support of the Environmental Statement has updated background noise levels at six receptor locations and also specifies projected noise levels during each phase (as amended) of the development to establish the potential impact that could be experienced by residents within the nearest noise sensitive areas.

The potential increases are based on plant and machinery activity and haulage movements during normal mining operations and specific activities on the boundary such as soil stripping / bund formation and water treatment areas.

Paragraph 173 of MTAN 2 requires that Mineral Planning Authorities (MPAs) establish a noise limit at sensitive locations of background [LA<sub>90</sub>] plus 10dB (A)L Aeq or 55dB(A)L Aeq LAeq 1 hr (free field), whichever is the lesser, during normal working hours (07.00-19.00 hrs Monday to Friday excluding Bank Holidays). For all other times MTAN 2 states that operational noise should not exceed 42dB (A)L Aeq (free field) at sensitive locations.

Paragraph 174 of MTAN 2 recommends a slightly higher limit in association with short term activities which are unlikely to achieve the above mentioned limits, for example soil stripping, construction and removal of baffle mounds

etc. These activities can secure long term environmental improvements but may also result in short term increases in noise levels. As a result limits associated with such activities are increased to 67dB (A)L Aeq 1 hr (free field) for periods of up to 8 weeks in a year between the hours of 10.00 and 16.00 hours Monday to Friday excluding Bank Holidays.

At the time of the Inquiry in relation to the most recent planning permission, the Inspector took into account the recommended noise limits as suggested at that time within MPG11 (now superseded by MTAN2) but also acknowledged agreement between all parties in the inquiry that the main operations to be undertaken on the site would not extend up to the maximum for normal operations as specified in the guidance at that time ie 55dB(A)Leq. As a result and to minimise impact upon the residents located within noise sensitive areas, a condition was imposed which restricted noise levels associated with normal operations to 50dB(A)Leq. He also acknowledged that some operations including the construction of soil embankments which were essential to screen the site would generate higher levels of noise but would be short in duration. The Inspector considered that the longer term benefits of the short term operations justified an increase in noise levels especially given that such noise levels were still well within the 70 dB(A)Leq recommended within the guidance at that time (this has now reduced to 67 dB(A)Leq in MTAN 2) As a consequence of the above the Inspector imposed the following conditions to the 2004 consent to control noise emissions from the site:

“27. During the hours of work specified in condition 22, except for operations such as the construction and removal of soil/screening mounds and water treatment areas and for periods that may be previously approved in writing by the Local Planning Authority the free field noise levels attributable to operations involving the use of plant, machinery or other equipment on the development site as measured at the boundary of the curtilage of any residential or noise sensitive property shall not exceed 50dB(A)Leq 1 hour. Outside these hours, where maintenance, water pumping, servicing and environmental monitoring takes place, noise levels measured at the boundary of the curtilage of any residential or noise sensitive property shall not exceed 42dB(A)Leq 1 hour.

Reason: In the interest of the amenity of the area.

28. Except at such locations and for such periods as may be approved in writing by the Local Planning Authority, the free field noise levels attributable to the construction and removal of baffle mounds, topsoil/subsoil mounds and water treatment areas, as measured at the

boundary of the curtilage of any residential or noise sensitive property, shall not exceed 60dB(A)Leq over 15 minutes.

Reason: In the interest of the amenity of the area.”

The related conditions for the hours of working which are referred to are as follows:

“22. Except in an emergency or when otherwise approved in writing by the Local Planning Authority, operations, other than water pumping, servicing, environmental monitoring or maintenance of plant, shall only be carried out at the site between the following times: 06.00 hours to 22.00 hours Monday to Friday, and 06.00 hours to 13.00 hours Saturdays. The term “emergency means any circumstances in which the operator has a reasonable cause for apprehending injury to persons or serious damage to property of the environment.

Reason: In the interest of amenity.

24. Notwithstanding the provision of condition 22, operations involving the formation or subsequent removal of baffle mounds and soil mounds and the stripping and replacement of soils shall not be carried out except between the following times: 08.00 hours to 18.00 hours Mondays to Fridays, and 08.00 hours to 13.00 hours Saturdays.

Reason: In the interest of amenity.

25. Notwithstanding the provisions of condition 22, operations involving the on-site washery and operations relating to reclamation of the site and the haulage of overburden onto the western overburden mound and its spreading and removal shall not be carried out except between the following times: 07.00 to 19.00 hours Mondays to Fridays and 07.00 to 13.00 hours on Saturdays. No such operations shall be carried out on Sundays, Bank or Public Holidays.

Reason: In the interest of amenity.

37. Except in the case of emergency for health and safety reasons or with the written consent of the Local Planning Authority, blasting shall only be carried out between the following times: 10.00 to 12.00 and 14.00 to 16.00 hours on Mondays to Fridays, and 10.00 to 12.00 hours on Saturdays. Blasting shall not be carried out on Sundays, Bank or Public Holidays.

Reason: To protect the amenities of local residents.”

It is acknowledged that there has been an amendment in the guidance whereby MPG11 has been superseded by MTAN2 but the main difference in terms of the control of noise relates to the fact that the upper noise limits have been reduced from 70 to 67dB(A) Leq.

Projected noise levels for all operations at the identified locations of Tairgwaith Workingmens' Club, Morryston Place, Caenewydd, Glan yr Helig, 38 Ochr y Waun and 62 Pen y Bryn show compliance to the 50dB(A) Leq limits imposed by the Inspector. In fact, the current submission indicates that the noise levels generated from the site under the currently proposed scheme are likely to be less than those predicted under the 2004 consent.

Whilst the predicted noise levels comply with the conditions stipulated by the Inspector in relation to the previous 2004 consent, full assessment in relation to the guidance contained within MTAN 2 is also necessary. This has been undertaken in relation to each of the phases which remain to be carried out.

### **Phase 2**

The predicted noise levels fall within the MTAN2 recommended levels at all locations at all operational hours.

### **Phase 3**

The predicted noise levels fall within the MTAN2 recommended levels at all locations at all operational hours.

### **Phase 3A**

The predicted noise levels fall within the MTAN2 recommended levels at all locations at all operational hours.

### **Phase 3B**

Normal operations during this phase are all compliant with the MTAN 2 recommended levels. However the eastern bund will be relocated during this phase of the development and it is anticipated that these operations will breach the 10dB(A) above background levels at Ochr y Waun only, where the levels will be 49dB(A) which is 12dB(A) above background levels ie an exceedence of 2dB(A). The applicant has indicated that these operations will be restricted to between the hours of 08.00 and 18.00 and will not be undertaken for more than eight weeks. MTAN 2 takes account of the fact that some operations including the construction and dismantling of bunds will result in increased noise levels. As a result it indicates that for these operations, noise levels can

be permitted to reach up to 67dB (A). However these should be restricted to the hours of 10.00 and 16.00 hours. Whilst it is acknowledged that the eight week period for such works is proposed, the operator has indicated that due to the size of the bund (which is already in place but will be relocated during phase 3B) the works will have to extend over a longer period of time than that recommended within MTAN2 ie it is proposed to extend the hours to between 08.00 to 18.00. Given that the maximum predicted noise levels for such activities are 49dB(A) during phase 3B which is 18 dB(A) lower than the maximum threshold permitted under MTAN2, it is considered that this slight exceedence maybe permitted. However this should be restricted to be within the hours of 08.00 to 18.00 and the operator will be required to give prior notification to residents in advance of this work taking place. Such restrictions can be secured by condition.

#### **Phase 4**

The predicted noise levels fall within the MTAN2 recommended levels at all locations at all operational hours.

#### **Phase 5**

This is the final restoration phase of the development, during which time the buttress within the void will be created, the void will be partially filled with excess rock and the remainder of the site will be restored through further re-profiling of the over burden mounds and the implementation of extensive planting schemes. During this phase noise levels are predicted to exceed background noise levels at four of the six noise monitoring areas as follows:

- Area B, Morryston Place, Tairgwaith - The background levels are 39 dB(A) and the predicted levels are 50dB(A), resulting in an exceedence of MTAN2 by 1dB(A)
- Area C, Gorsto Road, Gwaun Cae Gurwen - The background levels are 38 dB(A) and the predicted levels are 54dB(A), resulting in an exceedence of MTAN2 by 6dB(A)
- Area E, Ochr y Waun, Cwmllynfell - The background levels are 37 dB(A) and the predicted levels are 52dB(A), resulting in an exceedence of MTAN2 by 5dB(A)
- Area F, Penybryn Cwmllynfell The background levels are 36 dB(A) and the predicted levels are 50dB(A), resulting in an exceedence of MTAN2 by 4dB(A)

It is therefore acknowledged that during the final phase of development the predicted noise levels at four of the six noise monitoring locations will exceed

10dB(A) above background levels. However these breaches will be short term. At Areas B and C the noise levels are attributed to soil operations at the railhead which will last for less than a week. While at areas E and F the predicted levels are attributed to the restoration of the southern outfall with soils being removed from the bund area to facilitate such restoration. These works are predicted to last only 5 weeks. Given the temporary nature of the predicted noise levels and the fact they will take place more than a year after the elevated noise levels predicted during phase 3B, they should be assessed against the limit of 67dB(A) as specified for short term operations within MTAN2. The daily hours for such operations are proposed to be between 07.00 to 19.00 which extend beyond 10.00 to 16.00, however they remain to be short term in duration and are associated with operations which are critical to the delivery of an acceptable restoration for the site. It has been confirmed that the operations cannot be undertaken in accordance with the time periods recommended within MTAN2 however it is considered reasonable to secure operating hours consistent to those proposed under phase 3B ie between 08.00 and 18.00. This can be secured by condition as can notification to residents prior to these works taking place advising them of the potential for increased noise levels.

Paragraph 169 of MTAN 2 indicates that where coal extraction and related operations occur close to noise sensitive development, particularly residential, and noise impacts cannot adequately be controlled or mitigated to the levels set out within the guidance, the second test of MPPW should be considered. This test considers that the development should provide local or community benefits which clearly outweigh the dis-benefits of likely impacts to justify the grant of planning permission.

The crucial analysis required in this regard would be to consider the second test of MPPW, and whether the restricted exceedences referred to above are justified. The overall and local benefits from the development must be weighed against the loss of amenity from noise. The existing operations which are already taking place at approximately 200m away from nearby residential properties are recording levels of upto 48.1 dB(A)Leq which was recorded at Ochr y waun. Lower levels have been recorded at other locations around the perimeter of the site. Levels currently monitored at Ochr y Waun are only slightly lower to those which are projected to be the worst case scenario within the ES. Furthermore the noise levels in a worse case scenario situation will be very short lived as described above.

It must also be acknowledged that whilst we have received a total of 80 complaints between the period of December 2012 to December 2014, only 3 of the complaints relate to noise. All of the complaints were investigated and

noise levels were found to be within the defined limits and as such were considered acceptable.

It is accepted that noise at any level can be an annoyance to certain individuals. The temporary exceedences as referred to above, having regard to the limits specified within MTAN2 (The projections are largely in accord with the conditions of the 2004 consent) need to be balanced and considered against the overall community and local benefits from the development.

It is therefore necessary to consider if the temporary exceedences to complete coaling of the identified reserve and as a consequence implement the essential restoration of the site can be justified.

The applicants are proposing additional mitigation measures to ensure the noise levels are minimised as much as possible. Furthermore it is proposed to prepare and implement a Noise Action Management Plan (NAMP) to ensure that noise is effectively managed at all times and in all operational areas. The NAMP will include a reporting procedure to ensure that any complaints received by the operator and/or the LPAs (both NPT and Carmarthen) are dealt with promptly and efficiently. Such a plan can be secured by condition.

The Head of Business Strategy and Public Protection, has considered the revised noise assessment submitted on the 30<sup>th</sup> March 2015 and confirms that the applicant now proposes that new noise limits in line with MTAN2 requirements be imposed to the vast majority of coaling and restoration operations proposed in this development. These new noise limits are lower than the noise limits contained in the 2004 permission and the applicant has provided robust predictions that these noise levels can be achieved. MTAN 2 also provides an exemption period where higher noise levels can be generated for temporary operations. The applicant has indicated that due to the nature of the extraction and restoration phasing they will need to use this exemption on several occasions during the development and there are no objections to the use of this exemption, however it must be used for planned exceptional works and not as an excuse for breaching noise limits during normal operations. Conditions are recommended to limit noise levels and to secure prior notification to the Council prior to the commencement of works which will lead to the exceptional increased noise levels referred to.

The controls suggested by the Head of Business Strategy and Public protection can be secured by condition as can the requirement to submit a Noise and/or Vibration assessment upon request. This assessment would need to be undertaken by an Independent suitably qualified consultant and the resulting

report submitted to the LPA. Such an assessment will further increase the controls in place relating to noise and vibration from the site.

For these reasons the Head of Business Strategy and Public Protection raises no objection to the development having regard to projected noise levels and the impact upon amenity.

On a finely balanced assessment of all factors and having particular regard to the benefits considered elsewhere within this report, it is considered that noise impacts can be controlled and mitigated to the extent that, although not in accordance with all the criteria of MTAN 2, the restricted number of exceedences are likely to be acceptable given their short duration and the fact that they are only slightly elevated above the limits within MTAN 2. It is therefore considered that the development complies with Policies GC2(c), M8(b)(i) and ENV29 of the Unitary Development Plan.

d) Blasting

As is normally the case in major opencast developments there is virtually always a need to carry out blasting to loosen and fragment harder strata to aid the mechanical excavation of the overburden. Blasting can cause ground vibration, air over pressure, noise and dust however these are generally lower for opencast sites than hard rock quarries and can be further reduced by blast design. It is recognised that the major proportion of the remaining excavation area requires blasting, although it is only undertaken when required because of cost implications.

Blasting effects can be experienced at locations outside the site boundary and these events will depend on a number of factors which include the location of a blast, atmospheric conditions, and the nature of the strata.

The frequencies and levels associated with ground vibration that are likely to cause any damage to structures is above 20 mm/sec peak particle velocity (ppv) at a frequency of 15 hertz, or above 50 mm/sec at 40 hertz and above. It is recognised that blasting vibration is perceived at much lower levels by people and also people react differently to any perceived ground vibration. The main fear is damage to property, although para 160 of MTAN 2 confirms that vibration levels rarely approach the levels that would induce hairline cracks. All blasting events are likely to be perceptible and the level of complaint can relate to the level of concern each individual may have with more sensitive people becoming aware of vibration as low as 0.5mm/sec. However the human body is not capable of accurately quantifying the magnitude hence imperceptibility is not generally a reasonable requirement.

MTAN 2 contains guidance on maximum vibration limits that should normally be achieved. It is suggested in MTAN 2 that a maximum level of ground vibration at vibration sensitive buildings should not exceed a ppv of 6 mm/sec in 90% of the blasts measured over any 3 month period, and a review of blasting if 3 standard deviations above this limit is exceeded.

This guidance, although at the time contained within MPPG11, was accepted by the Planning Inspector when dealing with the 2004 consent and Condition 38 was imposed to secure a maximum ground vibration in relation to any vibration sensitive building of no more than 6 mm/sec ppv for any blast, or 4 mm/sec for 95% of the blasts over any 20 week period. At such low levels of ground vibration there is no potential for damage to occur to residential type structures.

Condition 41 also required that every effort should be made to reduce the effects of air blast over pressure arising from blasting and that such effort shall have regard to blast design, methods of mitigation and weather conditions.

Air over pressure is a pressure wave in the atmosphere produced by the detonation of explosives consisting of both audible and inaudible energy. This phenomenon is usually measured in decibels. Techniques developed to reduce air over pressure (e.g. down the hole initiation) and the consideration of atmospheric conditions can reduce the incidence or level of effect.

An assessment has been undertaken to consider the potential impacts of blasting at the site and predictions made on the nature, design and type of blast events that would be required to maintain vibration within the limits recommended within MTAN2.

MTAN 2 states that for 90% of the blasts for any given rolling three month period should be 6 mm/sec or less and that no blast should exceed the same level.

Condition 38 of the 2004 consent has a lower limit for 90% of the blasts to be 4 mm/sec or less over a 20 week period. Whilst the relative period is longer, this limit is 2 mm/sec less than the limits recommended in MTAN 2. The operator has assessed the requirements to comply with this level of vibration and is confident that they can be achieved, as demonstrated by historical and current data associated with this site.

With regard to air over pressure, it is now customary to have a limit of 125 db linear with 90% of the blasts over any 12 month period being 120db or less.

These limits are set out within MTAN 2 and can be secured by the imposition of a condition.

Blasting, vibration and other impacts which are considered to be air over pressure are the reason for the majority of complaints received between December 2012 and December 2014. The concerns cite potential impacts on amenity, structural integrity and fabric of properties, loss of broadband connection, impacts on health and back conditions and bone fractures.

A total of 78 blasting complaints (out of a total of 80 complaints associated with the site) have been received between December 2012 and December 2014 the vast majority, over 83%, from three individual properties within Ochr y Waun. Others have been from Samuel Road, Gynol Road, Gwilym Road, Railway Tce and Cefn Bryn Brain. Monitoring at the three locations has shown consistently that vibration levels are well within the guidance limits stipulated within MTAN2 in addition to the even stricter limits set out within condition 38 of the previous 2004 consent.

The most significant location for monitoring blasts given its proximity to the site boundary is at 38 Ochr y Waun. During the period of 12<sup>th</sup> May 2014 to 29<sup>th</sup> December 2014 there were 374 blast events, 5 of those blasts were missed and 19 didn't trigger a vibration at 0.5 mm/sec. 341 blasts recorded a vibration of 2.5 mm/sec or less with 244 of those events less than 1.5 mm/sec. 6 were between 2.5 and 3.0 mm/sec with 3 events above 3 mm/sec. Therefore all recorded blasts are less than 4mm/sec.

Notwithstanding the level of complaint received, the level of vibration recorded, whilst clearly perceptible, is significantly lower than the limits previously set out in the planning conditions previously imposed. Furthermore those limits are lower than those specified as being acceptable within MTAN 2.

Nevertheless and in order to further protect the amenities of residents living close to the site, a condition can be imposed to secure the submission of a Blast Monitoring and Management Action Plan. This plan will cover a number of areas including publicity, monitoring of blasts and implementation of actions to reduce the effect of blasts on the surrounding communities, and most significantly, the appointment of an independent and suitably qualified consultant to monitor and assess the impact of blasting. Conditions can also be imposed to restrict the vibration levels from the site to ensure full compliance with MTAN2 and the hours during which blasting can take place can also be restricted. Appropriate hours are considered to be between 10.00 and 12.00 and 14.00 to 16.00 Mondays to Fridays and 10.00 to 12.00 on Saturdays. All of the aforementioned conditions will ensure that whilst blasts from the site will

be perceptible, they will not be unacceptable and will not result in structural damage to properties within the surrounding communities.

Given the number of complaints regarding blasting at the site it is necessary to give weight, where relevant, to the nature and type of complaint that relates to these events. On the basis of previous and existing monitoring, blasting events have been within recognised limits and advice and, whilst it is also recognised that such impacts can have variable effects on different individuals, the residual effects outside the site of blasting do not provide sufficient grounds to warrant the refusal of this application.

Whilst it is possible that complaints will still be received regarding blasting, on the basis of the above, the extension and continued development of this site is not considered to be in conflict with Policies GC2 (c) and M8(b)(i) of the Unitary Development Plan.

e) Lighting

The previous operations have been the subject of a scheme to regulate and control lighting, as much as is practicable and reasonable, given Health and Safety requirements. Poorly designed lighting can have an adverse effect on the locality and amenity of the area.

Lighting has not been a source of concern or complaint in the past and the continuation of operations both within the previously approved extraction area and within the proposed extension area will not result in the creation of any unacceptable impacts on the locality. It is acknowledged that the Brecon Beacons National Park is located close to the site and dark night skies are recognised as a key contributor to the sense of tranquillity and remoteness which is often cited as a key special quality of the park – the National Park was designated as an International Dark Sky Reserve in 2012. The National Park have raised no objection to this application although they have indicated that detailed consideration needs to be given to lighting, amongst other things at the reserved matters stage associated with the built development element of this application. It is therefore acknowledged that existing and proposed lighting associated with the mineral activities on the site will not have an unacceptable impact in terms of light pollution.

**Conclusion on impacts on residential amenity**

Having regard to all of the above potential impacts upon surrounding communities, whilst it is acknowledged that the development will extend into the 500 metre buffer zone as specified within MTAN 2 and that the proposal

will extend further the long-term cumulative effects of the opencast mine on local residents, it is concluded that the proposed development will not result in an unacceptable impact upon the amenities of residents within the surrounding communities. The rationale for buffer zones is to protect the amenities of residents within nearby communities. This report has assessed in detail the potential impacts upon those communities in terms of dust, noise and the effects of blasting and all impacts are found to be acceptable, despite the development encroaching into the buffer zone.

Furthermore the extension of the extraction area into the buffer zone will contribute towards the funding of the full restoration of the site and the creation of a country park together with the provision of a platform for the delivery of future regeneration opportunities at a later date. Its continued operation and restoration will retain well paid employment opportunities for those employed at the site in an area where there are restricted alternative employment choices. Furthermore the longer term regeneration objectives could result in significant employment opportunities for the local communities in terms of direct and indirect spend associated with the tourism destination which could be created as a consequence of this proposal. More importantly it will facilitate the delivery of full restoration of the site albeit in an amended form which accords with advice contained within recently published research commissioned by the Welsh Government entitled 'Research into the failure to restore opencast coal sites in south Wales'. The future of this site should planning permission not be granted cannot be ignored. As stated above there are wholly insufficient funds available for restoration of the site in accordance with the previously approved planning permission. This proposal through the additional extraction and the amended restoration has been confirmed as being deliverable by the applicant. Should this scheme not go ahead, there is a real possibility that the site will remain un-restored and as a consequence could result in the creation of a health and safety hazard to surrounding communities both in the short term and in the longer term due to the potential for this significant void to fill with water in an uncontrolled way. Such a scenario is not in the interests of the amenities of the local communities and is a real problem nationwide as identified within the research document referred to above.

For these reasons, it is considered that there are exceptional circumstances justifying surface working within 500m of a settlement, such that the proposal is in compliance with MTAN2. The proposal therefore complies with the overall objectives of MPPW, MTAN2, the more recently published research document into open cast coal sites in addition to policies GC2 and M9 of the Neath Port Talbot Unitary Development Plan.

#### **4. Ecology and Biodiversity**

The Environmental Statement includes the results of an Ecological Impact Assessment in respect of the proposed extraction of coal and the alternative restoration. The proposed extension area includes a section of the existing soil screening bund which will be removed under the sites existing planning permission to facilitate the previously approved restoration of the site. In addition there is also semi natural vegetation between the proposed extraction area and the application boundary which will experience a level of disturbance as a consequence of this proposal. A wider area of ground disturbance and vegetation clearance is also proposed to enable restoration of the overburden areas. The submitted documents acknowledge that the previously approved planning permission has already allowed for the extensive clearance works to allow for the original extraction operations and the associated restoration of those areas. As a result the submission argues that the continuation of that extraction area into areas which have already been disturbed, together with the implementation of a less extensive restoration scheme will not adversely affect interests of nature conservation over and above that which have and would be experienced if the site was developed in accordance with the 2004 consent.

Taking account of national, regional and local planning policy, along with the baseline surveys and extended phase one habitat surveys, an assessment has been undertaken of the potential impacts and measures of avoidance, reduction or mitigation.

The site itself is not the subject of any statutorily, ecological site designations although two statutory designated sites occur within 2 kilometres of the site. Tairgwaith SSSI is approximately 0.7 km to the south of the site boundary and access point with New Road and is of national importance as a grassland site. Cwmtwrch SSSI approximately 1.5 km to the site boundary is designated for its geological features.

There are non-statutory designated sites within or in the immediate locality, and local habitats treated as being of county importance would relate to those listed in the Local Biodiversity Action Plan (LBAP). However, a Potential Site of Importance for Nature Conservation (pSINC) is referenced as Tairgwaith Common and is potentially up to county-level ecological value.

Ancient semi-natural woodland is found on the south eastern corner of the site and some of this has been removed as part of the previously approved scheme although the Environmental Statement considers this to be of site-level ecological importance given the nature of ground flora and other surveys.

The majority of the application site comprises of grassland habitats on current overburden mounds, although some have developed rushes and vegetation cover and is broadly comparable to lichen and bryophyte heath.

Interspersed on the site are areas of grassland resources of molinia and juncus, and less extensive areas of carex rostrata, along with semi-natural purple moor grass and rush pasture vegetation. The remaining parts of the site include the operating void and ancillary operations of haulage, site compound water treatment areas and a coal stocking area.

Section 40(1) of Natural Environment and Rural Communities Act 2006 (NERC) places a duty on every public authority, in exercising its functions, to “have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”. TAN5 sets out the manner in which planning authorities should comply with this duty.

In addition, National Policy within PPW includes the following:

Paragraph 5.2.8 of Planning Policy Wales states: The planning system has an important part to play in meeting biodiversity objectives by promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable.

Paragraph 5.2.9 of Planning Policy Wales states: Trees, woodlands and hedgerows are of great importance, both as wildlife habitats and in terms of their contributions to landscape character and beauty. They also play a role in tackling climate change by trapping carbon and can provide a sustainable energy source. Local Planning Authorities should seek to protect trees, groups of trees and areas of woodland where they have natural heritage value or contribute to the character or amenity of a particular locality.

Paragraph 5.5.1 of PPW states: Biodiversity and landscape considerations must be taken into account in determining individual applications, and contributing to the implementation of specific projects. The effect of development proposals on the wildlife or landscape of any area can be a material consideration. In such circumstances, and in the interest of achieving sustainable development, it is important to balance conservation objectives with the wider economic needs of businesses and communities.

Paragraph 5.5.2 of PPW states: When considering any development proposal (including on land allocated for development in a development plan) local planning authorities should consider environmental impact, so as to avoid,

wherever possible, adverse effects on the environment. Where other material considerations outweigh the potential adverse environmental effects, authorities should seek to minimise those effects and should, where possible, where practicable, enhance features of conservation importance.

The continued working and extension of the extraction area of East Pit would result in minor losses of these habitat resources, however, the vast majority of the habitat has been removed under the previously permitted extraction area. Whilst the Council's ecologist is concerned at the loss of the remaining marshy grassland and potential effect on undeveloped land and water courses, it should be noted that the principle associated with the loss of the majority of this habitat has already been agreed following the approval of the 2004 consents. The area proposed to be removed as part of the proposed extension is considered to be a combination of amenity grassland and marshy grassland including species poor rush pasture. Whilst it is acknowledged that this area of land will be restored with replacement habitats, concern is expressed that its delivery will take up to 10 years.

Nevertheless the council's ecologist acknowledges that the proposed restoration scheme will result in the provision of different habitats and will support a different suite of species to the previous proposals. The site was historically an area of open common land probably comparable in nature to surrounding commons, such as that found at Gwyrhyd. The reduced provision of such habitat may impact upon the recovery of such populations within this locality. However the restoration scheme proposes to include a greater degree of diversity of habitats that will support a greater variety and diversity of species through the creation of additional woodland, hedgerows, seed crops, wetlands and more traditional farmland type landscapes. This will in turn provide habitats for other species of conservation concern.

As a consequence of the above whilst there are concerns regarding the loss of former and existing habitat, the restoration strategy will result in the creation of a more varied habitat which will be to the benefit of the diversity of ecology on this site. The delivery of such habitats is however reliant upon the imposition of a number of conditions to secure appropriate mitigation and protection, which can be imposed should planning permission be granted.

### **European Protected Species**

#### a) Bats

Bats are a European Protected Species. Survey results in 2012 indicate the presence of common pipistrelle, soprano pipistrelle, myotis bats and brown

long eared bat in the area although none of the records are related to the site itself.

The survey confirmed up to seven species although only low numbers are recorded using the area for foraging and/or commuting. No roosts have been confirmed or are considered likely to be present at the current time.

The area is assessed as being of Parish-level importance for bats, principally due to its extent and the range of foraging opportunities that are present, rather than being representative of a resource that would be fundamentally linked to the Favourable Conservation Status for any of the species recorded.

The Council's ecologist, however, does recommend that prior to the demolition of any buildings on the site, these are checked for bats under required procedures. NRW raises no concerns regarding the impact of the development upon bats associated with this site.

b) Otters

The presence of otters has been confirmed within the site although beyond the proposed extension area. There was no evidence of the existence of holts or resting places on the site and as such the usage of the site is assessed as being mainly seasonal foraging to exploit the presence of amphibians on site during the spring months. The frequency of otters visiting the area is considered to be part of a wider otter territory. Due to the relative rarity and protected status of otter, the site is considered to be of parish-level importance although unlikely to provide a territory for otters in its own right. Both the Council's ecologist and NRW recommend pre-commencement checks of any works in the vicinity of water lagoons and treatment areas where otters are recorded.

c) Brown Hare

Brown hare was observed during surveys undertaken in 1994 and 1996 but there has been no activity recorded in the recent past as demonstrated in the more recent surveys. Whilst there is potential for Brown Hare to occasionally use habitats within the site the survey information suggests there is no regular use of the habitat and is therefore not of critical importance.

d) Reptiles

Surveys undertaken in 2012 confirm the presence of common lizard within the site. A Reptile Mitigation strategy is proposed as part of the ES and will

include measures undertaken to safeguard and possibly enhance the site's common lizard population.

e) Invertebrates

Of the 132 species recorded from within the site, two species – small heath and wall butterflies have been identified as being of priority for conservation in the UK (Section 42). Notwithstanding this, overall the habitats contained in the site are unlikely to be of critical importance for any invertebrate species or group in a local, regional or national context, such that any impacts caused by the continued and extended coaling and amended restoration would be acceptable in the wider context of this development.

f) Badger

A low level of badger activity has been recorded within the site although no setts have been recorded and therefore the site is not considered to be critical or an important habitat resource. However, the Council's ecologist has confirmed that a pre-commencement check for badgers is undertaken prior to any vegetation clearance or other works within the site. If any setts are discovered a license may be required from the Welsh Government to continue with the works.

g) Breeding Birds

The survey confirmed the presence of 35 species of birds breeding within the Breeding Bird Survey (BBS) study area, including 4 Species of Conservation Concern within the proposed extension area.

The 2012 survey generally showed a comparable assemblage of breeding birds to the 1994 survey results, although no evidence of barn owl was recorded in 2012 and this species was recorded foraging over the site in 1994. In contrast, non-breeding short-eared owl and hen harrier have been recorded in 2012, as has the successful breeding of lapwing.

It is intended to carry out works to avoid vegetation removal during nesting season and creating suitable habitats to replicate current habitats. Furthermore suitable habitat for the birds to use during the winter period would be created

The site as a whole contains a number of BAP and other species. However, none of these evaluated are greater than of local importance.

With regard to Policy ENV4, no designated sites will be directly or indirectly affected and works can be programmed to avoid species protected under UK legislation. There are no impacts that could result in significant disturbance or decrease to the favourable conservation status of any European protected species.

Whilst there is a loss of UK BAP habitat at a significant site level, it is proposed to submit an ecological monitoring and management plan with the aim of securing suitable conditions for the development of micro habitats within the overall restoration strategy, thereby mitigating some of the effects on the limited areas of UK BAP and LBAP habitats.

Taking account of the overall impacts on ecology and biodiversity, it is considered that there is sufficient scope to impose suitably worded conditions to ensure that the continued working, extension of the extraction area and ultimate implementation of the restoration strategy would not be in conflict with Policies ENV5, M8(a)(iii) or GC2(b) of the UP or any other relevant legislation or statute.

## **5. Access and Transportation**

It is recognised that large volumes of heavy goods vehicles along highway routes can have a significant impact on the living conditions of residents and highway safety and it is necessary to establish if the transportation of any mineral can be undertaken in an environmentally satisfactory and safe manner from any working site.

The application is accompanied by a Transport Assessment (TA) which has provided a review of the suitability of the highway network and its capacity since the 2004 consent.

It should also be noted that the 2004 consent was the subject of a Coal Transportation scheme under condition 18. The scheme identified the amount of coal that was anticipated to be transported by rail from the adjacent Gwaun Cae Gurwen rail pad, the routes to be adopted by HGV lorries and the controls to be adopted for such movements.

It is intended to continue to transport coal from the site at an approximate output rate of 300,000 tonnes per annum. Whilst the Coal Transportation scheme planned to take 50% of this output to the Gwaun Cae Gurwen rail pad, because of rail freight constraints and other regulatory controls along the railway line, the average since coaling started has been around 41% on a

rolling 20 week period, but not less than 39.9%. This factor is discussed further below.

Taking the issues of the access point, access routes and level of coal transportation in turn, along with the results of the TA, the following have been considered:-

(a) Access onto New Road at Tairgwaith

The access point has been designed to accommodate safe passage of entry and exit to the site. Taking account of the level of movements from both coal haulage vehicles and other associated traffic and local highway conditions at this point of New Road, there are no concerns with regard to highway safety or amenity issues.

(b) Proposed Access Routes for Coal Transportation

As defined in the previous application for the site, coal transporting vehicles would turn right at the access point as they emerge from the site, follow New Road in a westerly direction to the A4069 near Cwmgors Rugby Club, turn left towards the A474 and left again towards Pontardawe where they would join the A4067 to the south of Pontardawe and onwards to Onllwyn DP or other markets.

The TA has assessed the impact on highway safety and conditions along the route based on the anticipated movement of an average of 50 hgv lorries per day and some 186 light vehicle movements. The TA has assessed the predicted increase in traffic over the projected life of the site and the impact on highway capacity and delay and road safety. The TA concludes that the development would not lead to an adverse effect on highway capacity or road safety having taken account of accident records in the last five years. These are limited to a car overshooting the New Road / Brynamman Road A4069 junction, a hgv losing control and entering a ditch along New Road, the driver having suffered a coughing fit at the time, and “slight accident” in Pontardawe involving a hgv.

It is recognised that there are local schools along this route and the previous consents have restricted hgvs entering and leaving the site to avoid school travelling times. These hours have been reconsidered and, in the event of any consent, these would be modified to take account of after school clubs.

There is no reason why such controls cannot be effective in the future.

(c) Coal Transportation Scheme

MPPW encourages the use of rail or waterways rather than road when it is economically feasible to do so.

The 2004 consent was conditional on a rail pad facility becoming operational prior to coaling under condition 65, and that a Coal Transportation scheme was approved by the Local Planning Authority under condition 18.

Under the Coal Transportation scheme the developer had an intention to maximise transportation of coal by rail within operating constraints. The scheme was approved subject to a minimum of 50% of coal being diverted to the rail pad for onward transportation. It has become evident during the operational period of the EPER site that there are constraints outside the control of the developer which have restricted the scope and extent of rail movements for coal transportation. These include rail freight problems, railway line tonnage constraints and main line capacity and timetables. As a consequence of the aforementioned the operating company has on average achieved around 41% transportation by rail and there does not appear to be a prospect of increasing this level over the remaining period of coaling. Whilst this is a lower level than was previously required under the 2004 consent, it is consistent with the level of vehicle movements currently being achieved in relation to the operation of the site. As a result there will be no increase in vehicular traffic on the highway network as a consequence of this development over and above that which is currently the case. Furthermore, subject to certain controls being in place to restrict the hours associated with coal transportation, to ensure the appropriate sheeting of lorries and to continue to maintain a minimum of 40% transportation via rail, it is considered that the highway network is capable of continuing to accommodate the proposed number of vehicle movements without impacting upon either highway or pedestrian safety.

It is acknowledged that the continuation of coaling both in the previously approved area and within the proposed extension area will extend the period of time that coal transportation vehicles will be using the highway network. However all transportation impacts from the development which include highway safety, noise impacts, emissions and the residual impacts on the living conditions of residents and businesses, pose no overriding reason to withhold consent. The Head of Engineering and Transport (Highways) has raised no objection to the proposal subject to conditions and Network Rail has also raised no concerns or objections to the continued operation of this site as proposed.

As a consequence of the above, there is no justifiable reason to withhold the grant of planning permission on highway grounds and therefore there is no conflict with Policies GC2(g) and M8(b)(iii) of the Unitary Development Plan.

## **6. Ground Contamination and Land Stability**

It is recognised that instability from surface workings can affect land and land use beyond the site boundary. When excavation and tipping is undertaken there is always some risk of slope failure. The current workings are subject to regulatory controls that seek to secure a safe operation at the site as the coaling void extends to the eastern and north eastern boundaries of the excavation and the progressive backfilling within the void.

The primary responsibility for safety and stability of a surface mineral working falls to the operator as defined in the Quarries Regulations 1999 as “the person in overall control of the working of the quarry” and such workings are monitored by HM Inspector of Mines.

Periodic geotechnical analysis and assessments are undertaken at the site with respect to the current mining programme and methods of working. Whilst some instability occurred in the backfill and tipping areas of previous phases of the East Pit site, there have been no such occurrences during the operation of the EPER. The previously approved scheme retained some distance away from the Cwmllynfell fault and was supported by geotechnical data to demonstrate that the fault would not be encroached upon. However the proposed extension to the extraction area will bring the excavations closer to the fault. It should however be noted that since its original submission, the north eastern extent of the proposed extension area has been reduced to ensure that a satisfactory distance is maintained between the excavation area and the fault. As a consequence further geotechnical analysis was undertaken by the applicant to fully assess the impact the development would have upon site stability both during and post operations.

Given the critical nature of site safety and stability having regard to the Cwmllynfell fault, an independent expert was appointed by the council to assess the robustness of the assessment and modelling undertaken by the applicant and in turn to advise the authority on the consequential impacts of coaling within this area.

The appointed consultants have confirmed that they are satisfied with the assessments that have been undertaken to identify the correct position of the Cwmllynfell fault and as a consequence its relationship to the extraction area,

in addition to the geological profile of the seams within the vicinity of the fault, rock joints and other structural features.

In order to secure site stability, given that public access will be available to the site following its restoration, the eastern high wall of the void area needs to secure a ‘Factor of Safety’ of 1.5. The originally submitted scheme did not achieve such levels. In order to address this concern, the mine design including method of extraction was amended, which in turn has resulted in a reduction in the amount of coal which can be extracted. The restoration scheme associated with the re-profiled final void area has also been amended to include a buttress along the eastern high wall. The material forming the buttress will consist of suitable competent material to ensure that there is not a potential loss of integrity. Three dimensional and two dimensional modelling has been undertaken to assess the stability of the eastern high wall in a number of scenarios as follows:

### 3 Dimensional Modelling

Description	Factor of safety	Displacement in the Highwall
Highwall – no buttress	1.12	less than 4cm
Highwall with buttress	3.35	less than 1cm

### 2 Dimensional Modelling

Description	Factor of safety	Displacement in the Highwall
Highwall – no buttress (dry)	0.97	less than 1.5cm
Highwall - no buttress (groundwater)	0.76	less than 6cm
Highwall – buttress (dry)	2.93	Less than 0.9cm
Highwall – buttress (groundwater)	3.01	Less than 3cm
Highwall – pressure from flooded excavation only *	3.56	Less than 0.8cm

\* The flooded hydrostatic pressure will improve the stability

The buttress for the high wall can only be engineered following completion of coaling and the above modelling confirms that there will be a reduction in the factor of safety during this period as highlighted within the table above. The site will be operational during this time and conditions can be imposed to ensure that the operator has a Ground Control Management Plan in place at all

times (during and post operations). This plan will include measures to monitor and inspect the slope together with proposed mitigation measures if needed. Should any movement of the highwall of more than 1cm be identified, there will be a requirement to immediately cease work and construct the buttress along the eastern high wall. Once buttressed, the high wall will achieve an acceptable factor of safety to ensure long term stability, again as highlighted within the tables above. Whilst the aforementioned conditions will assess and address stability of the wall going forward, given the critical nature of stability, it is recommended that the services of the independent expert are retained at the expense of the operator during the coaling and restoration period. That advisor will undertake regular reviews, assess the detailed technical design of the buttress and any further mitigation if in the unlikely event that it is considered necessary. This can be secured by way of a legal agreement. The retention of this independent advice will reinforce the importance of site stability as part of the assessment of this application.

As a consequence of the above it is evident that the re-designed mine design together with the amended restoration plans associated with the Eastern high wall will ensure that acceptable factors of safety are achieved thus ensuring long term stability of the site.

It is therefore considered that there cannot be any justifiable objections or concerns regarding land stability or ground contamination and the continued and extended operations for coaling together with the amended restoration of the site would not be in conflict with Policies GC2(e), GC2(f) and M8(a)(vi) of the Unitary Development Plan.

## **7. Health Impact Assessment**

In accordance with the Ministerial Interim Minerals Planning Policy Statement (MIMPPS) January 2009, a Health Impact Assessment (HIA) has been submitted to accompany the application.

The HIA considers the potential health impacts of the continued coaling of the site in accordance with the 2004 consent in addition to the additional coaling within the extension area and the amended restoration of the site, taking account the views of the community, their health status and wider socio-economic profile that influences health.

The scope of the Assessment has taken account of the advice within the provisions in MTAN2 and Appendix H of the same guidance and the requirements of PPW (5<sup>th</sup> edition).

Paragraph 121 of MTAN2 states in part:

“A planning application for coal working that may have significant effects on human health should be accompanied by HIA as part of the EIA. This does not in itself mean that such developments have unique, significant, or necessarily negative health impacts. It does recognise, however, that to meet expressed concerns, not only should the technical evidence be rigorously assessed, but also the local community should be properly informed and involved and people’s views heard about the application.”

Paragraph 122 goes on to say;

“HIA should assess the potential direct and indirect effect on the health of a population and the distribution of those effects within that population; it is a flexible but systematic way of considering the possible impacts of developments on people’s health. The public seeks a certain level of scrutiny to provide assurance that the potential risks to health have been considered and can be adequately controlled. HIA will provide this scrutiny.”

The World Health Organisation (WHO) defines health as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

Wales Health Impact Assessment Support Unit (WHIASU) has identified “environment, income, employment, education, the organisation of transport, the design and condition of houses, crime, and the social and physical condition of local neighbourhoods as the factors contributing to good and poor health. Whilst these factors are often called the wider “determinants of health” (WHIASU 2004), this does not exclude the role of other influences such as:

- Lifestyle – which embraces those issues over which an individual has some control in relation to health, and
- Biomedical – which relates to all aspects of health, physical and mental conditions that may be developed within the human body as a result of genetic make-up.

A comprehensive community engagement programme has been implemented prior to the submission of this application. This involved a number of exhibitions and stakeholder workshops where the communities had an opportunity to discuss the proposals and any applicable HIA concerns. The issues raised at these events related to the proximity of the coal extraction area

to residential properties, noise, dust, air quality and blasting, and the potential for natural gases to build up within the proposed water body.

The HIA included as part of the Environmental Statement sets out the community profile of the area in terms of health, employment, socio-economic factors and income and employment and takes account of the negative and positive outcomes that may be derived from the development.

### Economic Benefit and Employment

The HIA identifies the level of output of coal and benefits associated to the coal being produced as the most sustainable option compared to imported coal, the provision of some 115 well paid jobs with gross weekly salaries of approximately £570 which compares favourably to the Borough and Welsh averages. It is considered in the HIA that the proposal would generate slight/moderate benefits to the health of the community as it would result in continued employment in an area of relatively high levels of deprivation and unemployment.

### Particulates

Paragraph 142 of MTAN2 acknowledges that the potential health impacts of particulate matter from opencast sites are often raised as a health concern by local communities.

Particulate matter ranges in size and can be categorised according to: Nuisance Dust, PM10 and PM 2.5. Excessive emissions of dust can affect amenity and personal comfort and is therefore considered to be a matter which could cause stress and indirectly affect health.

In relation to the previous EPER decision, the Inspector reached the following conclusions in relation to air quality and dust (paragraph 307)

“dust nuisance will not significantly affect amenity; and whilst there will be a slight increase in risk to health due to dust, that risk will be so low as not to warrant refusing the proposal on health grounds”

Properties at Ochr y Waun are closest to the extraction area and the management and monitoring regime must be closely supervised and water sprays etc. are required. The Dust Management Action Plan sets out these requirements along with additional mitigation measures. PM10 monitoring and deposited dust monitoring is undertaken near the properties at the western

end of Ochr y Waun, and this should be retained throughout the extension and restorations phases.

Alleged impacts on health from historical and existing opencast operations in the locality have been expressed over a number of years. However, the Newcastle University study in the late 1990's concluded that there is "little evidence" ... for associations between (people) living near an opencast site and an increased prevalence of respiratory illness, asthma severity, or daily diary symptoms", adding that for children in communities experiencing surface coal mining, "past and present respiratory health was similar, even though there were more GP consultations for respiratory conditions in opencast communities during the core study period".

In commenting on the Newcastle Study, the Committee on the medical Effects of Air Pollutants (COMEAP), agreed with the findings of the report adding that "from what is known of the long term effects of coal mining on the health of coal miners, it is most unlikely that opencast sites would have any long term effects on the health of local communities".

In 2000, COMEAP reported inter alia that air pollution can aggravate, but does not appear to cause, asthma, adding that lifestyle can be a significant contributory factor. COMEAP also suggested avoiding busy roads and the pollution that traffic can generate would help asthma sufferers.

The baseline PM10 prediction for the site indicates that levels are well below the Air Quality Standard at  $<15 \mu\text{g}/\text{m}^3$  and monitoring data relating to existing site operations confirms that these predictions are robust.

Further consideration is required when relevant receptors (houses, schools, etc) are within 200m of the site boundary. This is the case in relation to the properties on Ochr y Waun Road. However, it is considered in the HIA that it would be highly unlikely that this standard would be breached at this location even without mitigation in place.

This is consistent with the findings of the 2004 Inspectors report for the East Pit East Revised which states at paragraph 99:

"taking into account both of these factors, modelling of air quality indicates that by 2010 PM10 levels in all of the local communities would be comfortably below the latest target level of  $20 \mu\text{g}/\text{m}^3$ , even allowing for a "worst case" projected opencast contribution of between  $2-4 \mu\text{g}/\text{m}^3$ . To put this into context, PM10 concentrations in central Cardiff

averaged 21  $\mu\text{g}/\text{m}^3$  in 2002 and are predicted to fall to 19  $\mu\text{g}/\text{m}^3$  by 2010.”

Impacts on the employees are also not considered likely to have any significant impacts on health.

In respect to PM2.5's the HIA includes the following:

The less commonly measured PM2.5 applies to particles with a diameter less than 2.5  $\mu\text{m}$ <sup>18</sup>. Epidemiological evidence of association between long term exposure to PM2.5 and a reduction in life expectancy was found by the COEMAP Committee. Acute exposure to particulate air pollution is linked in several studies with cardiovascular death, myocardial infarction, ventricular fibrillation, increased risk of sudden cardiac death (Dockery 2001, Peters 2001).

Whilst it has been suggested that these smaller particles would be a better measure of health risk from dust, the Government's Expert Panel on Air Quality Standards has considered this and concluded that there would be no benefit in moving to such a standard and that the PM10 standard offers a better level of protection.

Moreover, the Airborne Particles Expert Group also concludes that most of the particulate matter emitted from mines and quarries was in the coarse range,  $>2.5 \mu\text{m}$ . This is confirmed by the particle analysis carried out as part of the Newcastle Study which found that the majority of particles attributed to opencast mining fell within the 5-8  $\mu\text{m}$  size range.

A separate assessment of PM2.5 has therefore not been conducted and this approach is consistent with the decision on the Ffos-y-Fran Land Reclamation Scheme, whereby it was noted subsequently that the Inspector's focus on PM10 was sufficient to also consider the effects of PM2.5 levels.

With regard to vulnerable groups, such as elderly, children and those with pre existing conditions, the HIA concludes that whilst these are more likely to be more vulnerable to the effects of PM10's and exposure to particle pollution the sensitivity of this area as a receptor is low/moderate with the subsequent impacts considered to be neutral / slight on the basis that air quality objectives will be met.

Noise

Noise can have an impact on the quality of life and hence can be responsible for direct and indirect effects on health.

Whilst there have been a limited number of complaints regarding noise levels from the site, the HIA concludes:

“In terms of the noise assessment for this application, noise levels were assessed against the existing noise conditions as required by the 2004 planning permission. The assessment considered the potential for operational noise to give rise to impacts at the closest noise-sensitive receptors to the proposed extraction area.

The assessment concludes that without mitigation, noise levels generated by normal operations would exceed limits at Ochr y Waun during operations. The mitigation measures proposed to on-site plant will result in noise levels being reduced such that levels will meet the limits imposed by the planning Inspector when granting the 2004 consent.

Since the HIA was conducted, further background noise data and noise projections have been submitted which indicate that noise levels are likely to be less than those projected under the 2004 consent.

On this basis it is concluded that the proposal for the continuation of coaling in accordance with the 2004 consent together with extraction of additional coaling within the proposed extension area and the amended restoration scheme will not generate noise levels which would cause direct damage to health. The Noise Management Action Plan includes measures for monitoring and complaints procedures and will also require appropriate mitigation should acceptable noise levels be breached.

### Blasting

The HIA recognises that blasting has been of much local concern and complaint; and that this is associated with natural anxiety in relation to the use of explosives and effect on property. The HIA confirms that whilst there are a number of complaints, operations comply with current guidance limits and are operated within all relevant legislation.

### Amenity of Open space

Through the duration of coaling and restoration, public rights of way will continue to be suspended resulting in slight adverse impacts to the communities in relation to access to open space. In the long term, their

reinstatement will address these severance issues. Furthermore the creation of a country park will enhance biodiversity and public access within the site and through to the wider area in the longer term. The restoration of the site will therefore have a beneficial impact upon local amenity in the long term.

### Visual Amenity – Light Pollution

Any light pollution as a consequence of operational development will be restricted to the winter. In terms of residential amenity, the issue of intrusive light, which is the intrusion of over bright or poorly directed lights onto neighbouring properties is considered relevant as it can affect a residents right to enjoy their own property. Epidemiological evidence also points to a link between exposure to artificial night light and health problems such as depression, insomnia and breast cancer. As a consequence this proposal will ensure that best practice is followed in relation to the use of artificial light whereby lighting is directed into the site and is subdued or kept below ground level so that residential amenity is not impaired. Outside operational hours, all lighting not required for safety or security will be switched off.

The conclusions of the HIA indicate that there is the potential for neutral/slight adverse effects in the short to medium term but these effects have been addressed through mitigation measures to acceptable levels. These mitigating measures together with the implementation of a site wide restoration strategy will result in a beneficial effect on local amenity and health in the longer term.

It must be recognised that the well being of the local population must be given due regard within the determination of this application. It is considered an appropriate level of assessment has been undertaken in respect of health issues.

The continuation and extension of coaling at this site will perpetuate the impacts on the local community for a further period of time. Nevertheless, based on the HIA and other components of the EIA there are no factors that would make the proposal unacceptable. The Air Quality and Environmental Health officers of the Authority do not raise concerns on the relative impact of the development and any consequential impacts on health. The Abertawe Bro Morgannwg University Health Board also confirms that subject to appropriate implementation of mitigation measures and monitoring of dust, particulates, noise and appropriate environmental management systems, there is limited potential risk to public health from activities at the site and risk to health appears limited to potential from nuisance.

Having regard to the HIA and health assessment and the need to give full and proper consideration of these issues in accordance with guidance, subject to the

mitigation and monitoring contained within the proposals, it is considered that there are no grounds that relate to health that would warrant a refusal and therefore the proposed continuation of and extension of coaling together with the amended restoration strategy is not in conflict with Policies GC(2) or M8(b)(iii) of the Unitary Development Plan.

## **8. Water Environment**

The application site straddles the upper catchment divide between the Afon Aman to the west and the Afon Twrch to the east. The catchments consist of three main water courses, the Nant Llynfell which flows to the east towards the Afon Twrch, and the Nant Hir and Afon Aman which form the Afan Aman catchment to the west and north respectively.

### Hydrology and Hydrogeology

Mineral workings, by their very nature, have the potential to affect the water environment and it was necessary to establish before the existing workings were undertaken if the development could be undertaken without significant effect or any consequential impacts could be mitigated. The Environmental Statement submitted with this application includes an assessment on the existing hydrological and hydrogeological conditions of the site and associated surface water controls, the groundwater regime and subsequent impacts following restoration. The assessments have been based on baseline conditions, taking account of the mining history, aquifer characteristics, recharge mechanisms, groundwater levels and flow, water abstraction use and groundwater quality. Existing borehole monitoring has also provided data for the assessment.

The nature of the strata and deposits of the area are characterised as having low permeability values and as such are generally classed as minor aquifers. Furthermore there are no Source Protection Zones within 1 km of the site boundary.

There are historic mine workings in the vicinity of the site which can be split into seven separate groups, of which four have been linked by mining activities and are considered to be interconnected due to the development of the Pengosto and East Pit Surface mines. The remaining three groups are believed to be unconnected, two of which are to the east and separated from the site by the Cwmllynfell fault (which acts as a barrier to the flow of groundwater) while the remaining group is remote from the site and only worked the red seam which is stratigraphically above the seams encountered across the East Pit site. As a result these three groups are hydraulically remote. The Cwmteg

fault was worked out during the progressive easterly advance of the working void. No noticeable impact was recorded on the hydrogeological regime when this occurred.

Recharge characteristics have been assessed having regard to rainfall data held by NRW and as a consequence of daily rainfall monitoring at the site itself. Recharge to the Coal measures bedrock is inhibited by the steep topography of the land to the south; the presence of surface boulder clay over a large proportion of the southern, central and western areas of the site, together with the existence of peat deposits on the valley floor of the Amman valley to the immediate north east of the site. This results in an average groundwater recharge of 16% of the annual average rainfall. Groundwater inflow rates into the void from the coal measures bedrock to the south are calculated to be 210m<sup>3</sup>/hour (60 l/sec) while flows from the west are 50m<sup>3</sup>/hour (13 l/sec).

Borehole readings from a number of locations around the site have highlighted that in locations to the east of the Cwmllynfell fault which acts as a barrier to groundwater drawdown into the void, water levels are on average at an elevation of 175m AOD. This elevation is therefore representative of the recharge levels which would be achieved within the lake following cessation of pumping.

Therefore having regard to the above, once coal extraction and re-profiling of the void is completed, dewatering of the void will stop and the water levels within the void will be allowed to re-bound. Given the available data it is estimated that water levels will rise to between 170m and 175m AOD over a period of 5 to 6 years.

Maximum lake levels will be controlled by two outfall points set at 175 m AOD that will drain by gravity to the Afon Aman catchment to the north and the Nant llynfell catchment to the east. Should unknown groundwater drainage pathways exist, these could potentially become flooded as the groundwater re-bounds resulting in the emergence of groundwater discharges at the surface. This scenario would also take place under the previously approved consent.

As stated above it is acknowledged that 4 of the 7 groups of historic mine workings are hydraulically interlinked. Following the cessation of coaling, whilst it is acknowledged that the void will fill with water to an elevation of between 170 and 175m AOD, there is also the potential for lateral transmission of that water into the groundwater pathways and the historic mine workings. As a consequence a full assessment of this has been undertaken to identify the impact of such flows.

The Pengosto site intersected the Big Vein workings associated with the Group A historical mine workings. As a result there will be some linkage between the Pengosto site and the Bounce and brass vein levels. Based upon the geometry of the Pengosto excavation there is a 'low point' which is located along the western side of the site at 165m AOD where, following periods of high rainfall, overspill is likely to occur. Should drainage through the Big vein workings which lie to the south of the overspill point be impeded then there is the potential for groundwater emergence at the surface within the Pengosto area of the site. This would be identified through continuous monitoring and in the unlikely event of an occurrence, mitigation measures will be put in place.

It should also be noted that a minor seepage is evident from the location of an old adit on land approximately 200m to the north west of the above mentioned overspill area. The old adit which accesses abandoned workings in the Big Vein seam is at a level of approximately 155m AOD. A minor discharge from this area flows northwards via a small channel and eventually into the River Amman. Whilst flooding is covered in more detail later in this report, NRW have raised no concerns regarding the potential for discharge at the above mentioned points, as appropriate mitigation can be engineered.

#### Surface and Ground water flows, including water quality

Currently site drainage through water treatment areas enters existing water courses in the east, south and north of the site. There have been no discernible problems associated with the site when the major development of the East Pit complex started operations and affected the surface water flows over the area. Without the incorporation of mitigation measures the proposed surface mine extension and restoration at the application site has the potential to impact on surface water and ground water flow regimes.

The proposed extension to the void equates to a relatively small change to the footprint when compared to historic surface mine voids at the application site, and will not result in a deepening of, or significant increase in the overall size of the surface mine void compared to current conditions. Given the extent of historic mining activity within the application site, it is unlikely that the proposal will significantly alter the current groundwater flow regime. As a consequence of this together with the regulation of abstraction and transfer of ground and surface water by NRW at the site, it is considered that the likelihood of the proposed surface mine extension significantly altering the ground water regime is low and as such the impact is considered to be negligible.

The geological maps for the area indicate the existence of Glacial Boulder Clay above which there is a layer of peat. This will ensure that there is a negligible likelihood of the drawdown cone from the surface mine influencing surface water levels within the surrounding water courses, nor will it impact upon groundwater or surface water abstractions to the north, north east and east of the proposed extension or upon shallow ground water levels on the valley floors of the water courses. However given the proximity of the extraction area in the south eastern corner of the site to a small tributary of the Nant Llynfell it will be necessary to divert a small stretch of that tributary to a new channel around the edge of the extraction area. This is the only mitigation considered to be necessary to ensure that surface and ground water flows and levels are maintained.

Turning to water quality, the overall groundwater quality across much of south and central Wales is classified as poor due to the long history of mining and industrial activities in the area. The ground water in the vicinity of East Pit is good in terms of existing and proposed (2015) quantitative quality but poor in terms of existing and proposed (2015) chemical quality. The area is targeted to meet the requirements of the Water Framework Directive and achieve 'good' chemical quality by 2027. In terms of surface water quality, there are currently 4 water treatment areas within the site which allow suspended solids to settle before the water is discharged into the water course. Surface water quality in both the Afon Aman and the Afon Llynfell as recorded and monitored by NRW is good. Monitors have also been set up at 10 different locations around the site and this data is collected by the operator of the site and it currently confirms that surface water quality around the site is also good, although it is acknowledged that the data from two monitors indicate elevated levels of both sodium and sulphate which are as a consequence of inflows from historic deep historic mining to the south of the site.

In order to reduce the potential risk of water quality pollution, a number of mitigation measures have been incorporated into the proposed development mainly involving a series of water treatment areas incorporating swales and settlement lagoons which have in principle been successful in relation to the current site. These will be controlled and managed in accordance with Environmental Permit authorisations.

Notwithstanding the above, whilst NRW are satisfied with the overall monitoring and mitigation recommended as part of this application they recommend a number of conditions to protect the quality and quantity of ground water and surface water. The most notable of which will secure a surface water and ground water monitoring programme to ensure that both the flows and the quality is monitored and mitigated if necessary. Such a

programme will ensure that surface water and ground water regimes will be provided with an improved level of protection than under the current approved restoration scheme for the application site.

### Flooding

A Flood Risk Assessment (FCA) and a Probable Maximum Flood (PMF) assessment has been undertaken to identify all flood risks associated with the site and detailing the proposed surface water management required to ensure that there is no third party detriment as a consequence of the proposed development. The FCA confirms that the site is not at risk from fluvial or tidal flooding nor is it at risk from sewers or drains; the existing groundwater flood risk is currently being controlled and; without mitigation there is the potential for the revised landform and lake to increase surface water run off to water courses to the south and east of the site and subsequently increase flood risk downstream of the site.

During the extraction phase appropriate mitigation is proposed to address this risk in the form of pumping, while the in situ undisturbed stata will continue to act as hydraulic barriers between the surface void and known sections of historic flooded workings. This will be continually monitored and should unexpected ground water inflows take place, a risk assessment and appropriate mitigation will be undertaken to enable safe operations to continue.

During the restoration phase, peak discharge rates from the site will be naturally attenuated so that they do not exceed the runoff rates previously approved within the 2004 consent. This is achieved by the formation of the two outflow points from the restored lake which will allow for the natural runoff of water from the lake into the surrounding watercourses. Conveyance swales will then convey the discharges to the two watercourses. Additional conveyance swales are also proposed across the restored site to intercept overland flows and convey them to either the lake or the outfalls. These measures will ensure that flood risk will be appropriately managed.

NRW have accepted the conclusions of the FCA and are satisfied with the proposed mitigation measures. They conclude in their response that once the site has been restored, there is considered to be no significant flood risk at the site.

In addition to the above, the status of the lake has been queried by third parties who have sought clarification on whether the proposed lake is classified as a large raised reservoir as defined within the Reservoir Act 1975. Advice on this matter was sought from NRW who following the submission of further

information regarding site levels have confirmed that the lake would not be classified as a large raised reservoir. This has been further supported by an independent panel engineer (a large raised reservoir requires design by a qualified panel engineer) who also advises that this is not a large raised reservoir.

Having regard to all of the above, the current environmental monitoring and the future controls and mechanism proposed following coaling and restoration are considered satisfactory and the water environment can be adequately protected to an extent that there cannot be any reasonable grounds to withhold planning permission to complete coaling with regard to the water environment and therefore is not in conflict with Policies GC2(d), M8(a)(i) and ENV12 of the Unitary Development Plan.

## **9. Cultural Heritage and Archaeology**

A cultural heritage assessment was previously undertaken as part of the 2004 consent covering the limits of the site. This concluded that there would be no 'very significant' impacts as a result of the development that was proposed at that time. The current assessment takes this into account including the mitigation measures undertaken which form part of the baseline.

There are no designated historic assets (Listed Buildings, Scheduled Monuments, Historic Parks and Gardens or Historic Landscapes) within the site.

There are listed buildings including three within Brynamman to the north of the site boundary and one at Gwaun Cae Gurwen 100 m west of the site boundary. No grade I or II listed buildings lie within the zone of theoretical visibility of the development. Within the site there are seven recorded undesignated historic assets and these have been removed by extraction operations or recorded as part of mitigation works under the 2004 consent. These included a building on the Llangwg Title map, coal tips shown on the 2<sup>nd</sup> edition of the OS map, a tramway from Mynydd Uchaf to Swansea Vale Railway and the Bryn Llefrith enclosure and farmstead.

The Black Mountain & Mynydd Myddfai landscape of Outstanding Historic Interest lies 4.2km to the north, with prehistoric and medieval monuments flanking the boundary of the landscape along the ridge of the Y Mynydd Du. There is a separate group of four scheduled ancient monuments 3.7 km north east of the extension comprising a prehistoric stone circle, standing stone and round cairn at Llorfa, and a deserted post medieval settlement.

There will be no direct impacts upon these assets however the restored landform will result in changes to the wider landscape setting of a number of assets ie indirect impacts, however these impacts are assessed as being low and adverse ie a large adverse impact on assets of low or unknown significance.

In light of these conclusions, CADW have raised no objections to the development proceeding have regard to the fact that there will be no direct impact upon scheduled ancient monuments, historic parks and gardens and the historic landscape all of which are beyond the site boundaries. This position is also supported by the Brecon Beacons National Park who also raise no objection to the impact of the development upon the setting of the historic landscape of the National Park.

Glamorgan Gwent Archaeological Trust (GGAT) also accept the conclusions of the report including the need for mitigation to assess and record the archaeological heritage within the site. This mitigation will include Rapid Topographic survey accompanied with photographic and textual descriptions of the mineral railway and field boundary earthworks surviving within the mine extension area where no previous mining has been carried out. Coring/test pitting of peat deposits in the south east corner of the site to determine its palaeo-environmental potential prior to stripping. GGAT have requested that the mitigation to be undertaken is carried out in accordance with professional standards and as such recommend a condition be imposed to secure a full programme of archaeological works. This will ensure that that any archaeological features which may be encountered are properly investigated and recorded, the results of which must be published.

The continued operations of coaling at the site are not likely to have an adverse effect on the cultural heritage resources and therefore is not in conflict with Policies GC2(a) and M8(a)(v) of the Unitary Development Plan.

## **10. Soils and Agricultural Land**

The total area of the application site is 585 Hectares and the extension area covers an area of 9.1 hectares. The vast majority of the site is operational land and is either active in respect of mining operations or is laid down to overburden mounds, soil mounds, water treatment areas or ancillary areas such as site compounds, etc. There is however an area of agricultural land within the extension area which is within Agricultural Land Classification grades 4 and 5 and as such is considered to be poor quality.

The previously proposed after use of the site was to be split 300 hectares of open common grazings, 90 hectares of enclosed fields including 6 hectares of

woodland. The currently proposed afteruses are in the form of a country park (515 hectares) and leisure uses as proposed under the outline element of this application (70 hectares). A 'Country Park' use and agricultural use are not mutually exclusive and the applicant proposes that the land will be primarily agricultural; managed using agri-environment stewardship principles with managed access. As a result the land, excluding that proposed for development will be registered as agricultural land.

The majority of soils for the application site are already stripped and are stored in existing well established soil mounds for future use. This amounts to a total of approximately 207,000 cubic metres of top soil, some 13,000 cubic metres of sub soil and 1.1 million cubic metres of soil forming material is recorded, much of the latter being within the overburden mounds. The exception is in relation to the soils within the eastern extension. The soils in this area largely consist of disturbed areas of clay/shale/coaly shale/ silts or thin areas of organic clay loam over boulder clay. The volume of recoverable soil is 12,075m<sup>3</sup>.

Soils to the north of the extension area are a disturbed mixture of clay or shale with some soils. With exception to the small pockets of soil this is not suitable for soil forming material. To the south of the extension area there is an organic clay loam with a topsoil thickness of 180mm only and boulder clay below. An assessment has been undertaken of the soils within the existing soil storage mounds and it suggests that this soil is broadly suitable for restoration use in grassland however low levels of organic material and high levels of magnesium will need to be addressed.

The soil forming material (SFM) mounds comprising of overburden have similar limitations to the top soil in chemical composition and will be suitable for use in grassland restoration below a topsoil layer or for use in woodland restoration. The proposed restoration will generally use this material to create a suitable 1.2 metre depth of 'soils' within the woodland areas in the operational site. The ground conditions for each area will be assessed prior to planting/seeding to determine the final species to be used. An assessment of the 'soil' layer for nutrient deficiency and amelioration requirements will also be made.

Concern has been expressed by the Sustainability and Environmental Evidence Division of Welsh Government with regard to the fact that the soil forming material required for restoration is currently within the overburden mounds which are now proposed to be retained as part of this application. However this proposal also involves the re-profiling of the overburden mounds which will itself require significant movement of material within the western overburden mound in particular. Such operations will recover the material required to form

the necessary soils and thus secure suitable depths of soil of 290mm for areas of grassland and 110mm on woodland areas across the site.

Concerns have been expressed regarding the storage of soils to be stripped from the extension area given the limited area of land available for such operations. However as specified above, the vast majority of soils have already been stripped and stored within the site area. The unstripped soils within the extension area will be directly placed along the restored lakeshore area thus reducing double handling of soils in the future.

As a consequence of the above, whilst it is acknowledged that the area of land returned for agricultural purposes is less than that previously approved under the 2004 consent, it can be argued that the use of the site as a country park which itself will allow for areas of grazing will be more beneficial to the surrounding communities. Whilst it is acknowledged that the proposal will require the extinguishment of common grazing rights over the site, this is a matter which would be considered under separate legislation outside of the planning process. Furthermore it is considered that there are sufficient soils within the site to secure the above proposed after use to allow for the creation of the diverse habitat proposed under this application.

## **11. Public Rights of Way and Public Roads**

It is recorded that a number of footpaths remain under suspension orders, some of which date back to the Pengosto site on the northern edge of the site in particular.

There will be a need for the continued suspension of all footpaths until the site is restored. The site constitutes a significant mining site and it is necessary to maintain all necessary restrictions for the use of most of the public footpaths until such time that it is safe and suitable for their future use. The proposed positioning of the rights of way as part of the restoration of the site is comprehensive. Not only are most of the original routes to be reinstated virtually on their original alignments, there is also a significant gain of new paths in addition to bridleways, the details of which in addition to the details associated with crossing points over water courses etc will form part of a more detailed plan associated with the design, routing and management of rights of way, which can be secured by way of a condition seeking the submission of a detailed restoration scheme for the site. Any footpaths which cannot be replaced in their original alignment including that which formally extended across the area proposed for the lake will require formal diversion. This process falls outside the remit of the current planning application.

As part of the consultation exercise, a request has been made to secure an additional footpath to the top of the western overburden mound, thus maximising the benefit of the extensive views from this part of the site. The applicant has confirmed that they agree in principle to this additional path which can be secured as part of the detailed restoration scheme, plans of which would be required by condition.

Having regard to the above, whilst it is acknowledged that the suspension of the footpath network within the application site will be extended for a longer period than that originally proposed, the current restoration proposals will ensure that a comprehensive network of footpaths and bridleways will be reinstated and enhanced to the benefit of the enjoyment of the surrounding communities as both commuter and recreational routes in the future.

## **12. Restoration and Aftercare**

As noted above, the 2004 consent proposed the backfilling of the void area with the material stored in the two overburden mounds. This would not have resulted in the complete removal of the overburden mounds to effectively create a level site but a reduction in the overall heights of the overburden mound to create 311 hectares of upland common land, 83 hectares of enclosed agricultural land in three separate units (the main area would relate to the previous farmstead of Bryn Llefrith on the south eastern portion of the site), and approximately 6 hectares of woodland interspersed within the enclosed agricultural land areas. This compares with the proposed restoration of 585 ha made up of 349 ha grassland 159 ha woodland and 77 ha water.

The current proposal is for the retention of the two overburden mounds in situ albeit in a more natural rather than engineered form. The overburden mounds will be re-contoured and planted on the lower levels with woodland. A western spur will extend from the western overburden mound to elongate the mound and create a ridge between the communities to the north and south, replicating the upland areas to the south of the site. The void area will be partially filled with material and re-profiled to enable its future use as a lake. The restoration and natural topography surrounding the lake will create a sheltered and enclosing landform. The retained overburden mounds and uplands of Mynydd Uchaf will create rising ground to the south and west at a height of circa 250-350m AOD. To the east retained rockfaces will form the eastern side of the lake rising to 180-190m AOD before falling towards the application boundary between 170-190m AOD over a distance of 120 to 200m.

Whilst it is acknowledged that the restoration proposals will not result in the reinstatement of upland common and agricultural land as previously approved,

it will result in the provision of a site which will provide a range of uses for the surrounding communities, ie grazing, recreational and potentially tourism led employment uses, in addition to creating a diverse range of habitats which are more varied than that which was originally approved on the site.

Notwithstanding the above, coal developments must meet the restoration and aftercare requirements of MPPW and ensure that land is restored to sustainable and beneficial after use. After use and reclamation methods should be addressed and set out in a reclamation scheme and should be agreed at the time that planning permission is granted. Achieving a high standard of restoration, aftercare and after use is one of the key principles of sustainable mineral extraction set out in MPPW. MTAN 2 provides further advice and guidance on the standards required of reclamation proposals and after use. Schemes should seek to maintain or enhance the environment for the benefits of local communities and the long term quality of the land for the intended use.

Ecological interests and the enhancement of biodiversity is one of the main objectives when restoring mineral sites. Paragraph 282 of MTAN 2 identifies that when reinstating land following opencast working, the opportunity exists to improve the local environment, enhance landscape and biodiversity and make provision for public access.

As stated earlier in this report, the proposal will result in the reinstatement of areas of grazing/agricultural land. The general strategy of backfilling and utilisation of resources appear to be achievable utilising the techniques and distribution of materials proposed, and the scheme remains acceptable in the context of this application. Furthermore the scheme will achieve the objectives of both MPPW and MTAN2 in so far as it will deliver a beneficial and accessible mix of uses for the surrounding communities in addition to creating a diverse range of habitats to the benefit of the ecology of the site and its surroundings.

More importantly the restoration strategy for the site is deliverable. The originally approved restoration strategy as defined within the 2004 consent was estimated to cost between £70 million (Celtic's estimate) and £100 million (Council's estimate). However as of January 2015 there was only £3.7 million within the restoration fund held by the Council. This is only sufficient to cover between 3.7% to 5.3% of the restoration costs of the site. Both Celtic and Oak have confirmed that there are insufficient funds available to secure the delivery of the previously approved restoration scheme. However Celtic have indicated that the additional coaling proposed under this application together with the money held within the escrow account is sufficient to pay for the restoration scheme which is proposed under this current application. It is not financially

reliant upon the delivery of the proposed tourism led regeneration development which will be assessed later in this report.

As stated above the estimated costs of restoration for the originally approved restoration scheme varied significantly between Celtic and the Council. As a consequence and to ensure that there are no shortfalls in the future, the Council has appointed an independent expert to calculate the restoration and aftercare costs associated with this proposal. This cost including contingencies is calculated to be £23,000,000. The applicant has indicated that should consent be granted to allow for the continuation of coaling in the previously approved application area, together with the extraction of additional coal within the extension area, the restoration of the site is affordable and as a result can be delivered. Provision of an additional bond to cover such restoration costs is addressed later in this report.

It is important at this point to consider the consequences for the site and its surroundings should planning permission not be granted. As stated above, both Celtic and Oak Regeneration have confirmed that there are insufficient funds available to complete the previously approved restoration scheme.

The refusal or alternatively the non determination of this application within the short term is likely to result in the withdrawal of the operator and their workforce from the site. Given that the owner of the site (Oak Regeneration) has already confirmed that they do not have the funds to restore the site, there is a strong likelihood that the site will remain un-restored. As a result the overburden mounds will remain in place in their current engineered form and without any planting to soften their appearance, and the current void will not be partially filled and redesigned to form a controlled body of water as is currently proposed. Instead the void as it currently stands will remain the same size and depth and following the cessation of pumping it will gradually fill with water.

Reports have previously been presented to the Planning Committee in relation to enforcement options available to the Council. Those reports identified the circumstances when it is considered appropriate to take enforcement action. Extracts from which are as follows:

PPW para 3.8.1 states *“An effective development management process requires local planning authorities to be prepared to take enforcement action in appropriate circumstances. The decisive issue for the authority is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest”* This is reinforced within TAN 9 which states *“Whilst the fact that enforcement*

*action is discretionary and should be used as a last resort and only when it is expedient to do so, this position should not be taken as condoning the wilful breach of planning controls”.*

*Should enforcement action be identified as a way forward “of significant concern in this respect, is the fact that the restoration and aftercare conditions pursuant to the 2004 planning permission are no longer applicable in relation to works carried out since 30<sup>th</sup> November 2012, and can only be enforced in relation to work undertaken prior to that date. In addition the restoration and aftercare conditions could not in practice be complied with because those conditions only apply to the void as it existed on 30<sup>th</sup> November. The conditions do not apply to the void area unlawfully created since that date, and it would not be possible to fill part of a void nor in any event would it be acceptable in environmental terms. As a consequence this would require the Local Planning Authority to serve an enforcement notice in relation to the unauthorised development carried out after 30th November 2012.”*

As stated previously it has been confirmed by Oak that should an enforcement notice be served, they would place the companies into voluntary liquidation. Upon liquidation, the liquidator can disclaim property by submitting a prescribed form of Notice to the Land Registry. In that case, the freehold transfers to the Crown, however the Crown itself can decide to disclaim property at any time.

Given the liabilities that will come with ownership it is likely that this will be the case. As a result the land will have no owner and therefore no-one will be responsible for its security and safety in the short term and its restoration in the long term. The cost of any remedial action associated with such an event would have to be picked up by the public purse within which there are insufficient funds. As a consequence of the complexities associated with enforcement action and the high potential that it will not be successful in securing restoration of the site, there is a high risk that this site could not be remediated even if enforcement action was pursued.

The currently proposed restoration scheme will secure the re-profiling of the northern, and western banks of the lake to create a gradual slope into the lake and thus enable for its beneficial afteruse. It also includes controlled outfalls into the watercourses to the north and south, while groundwater in the remainder of the site will also be managed in the longer term to ensure that there is no risk of flooding both within the site and to the surrounding area. If the site is not restored, this mitigation is unlikely to be delivered and the void and historical mine workings referred to earlier within this report could fill with water in an uncontrolled manner. The potential consequences to the

surrounding communities cannot be fully assessed at this stage, however there is a risk that the un-restored site could result in long term flooding to the surrounding area, in addition to the retention of a visual intrusion in the heart of the surrounding communities.

It can be argued that the operator, when they applied for the 2004 consent, and the Landowner, when they purchased the land, ought to have considered and made provision for the costs of restoration and aftercare. There is, understandably, a body of opinion that the Council should take action to enforce the restoration and aftercare condition attached to the 2004 consents. It could also be argued that both the Council and the communities which surround this site are being pressured to accept an extension to the coal workings, due to the potential consequences associated with non restoration of the site. However the Council must consider the practical realities of the situation. As stated above, there is a very real risk that if enforcement action were taken against the operator and/or landowner, this action would fail. It is likely that the considerable costs of any restoration and aftercare would therefore have to come from public funds

Whilst it is accepted that the Council, prior to the submission of this application was working to secure the implementation of the originally approved restoration scheme, it is now clear that this is unachievable. The current application presents an alternative solution which will result in an acceptable restoration of the site, without creating any unacceptable impacts. Moreover the alternative restoration of this site can be delivered and will secure a safe and secure environment together with beneficial after uses for the surrounding community.

#### Restoration and Aftercare Bonds and Financial Guarantees

Paragraphs 53 and 54 of MPPW state:

*“Properly worded and relevant planning conditions should be able to secure the restoration, aftercare and after use of mineral sites. Operators and landowners should ensure that sufficient finance is set aside to enable them to meet restoration and aftercare obligations. The full cost of restoration does not need to be put on deposit at the outset, but it should build up commensurate with the programme of activity of extraction. For larger sites, progressive restoration should be achieved using a stream of funding required at various stages throughout the operation. Operators are encouraged, as a reasonable alternative, to participate in established mutual funding or guarantee schemes which safeguard against possible financial failure.*

*Sites left un-restored for a long period or delay in legitimate restoration is not acceptable. To address the uncertainty of local communities about the completion of restoration proposals and having regard to the polluter pays principle, wherever it is reasonable to do so, authorities may require financial guarantees as a means of ensuring that sites will be restored properly and in a reasonable time period. An authority may require financial guarantees by way of a Section 106 planning obligation / agreement, as part of the approval of planning permission to ensure that restoration will be fully achieved”.*

Policy M10 of the UDP states:

*“Where a planning permission is granted for coal mining, the Authority will require a deposit of a financial bond or other agreed means of financial security capable of securing satisfactory landscaping restoration and aftercare.*

*In all other cases where the Authority is minded to grant planning permission for mineral development, the Authority will, where appropriate, seek to ensure, by agreement or other means, that adequate resources are available to secure compliance with landscaping, restoration and aftercare requirements.”*

The West Glamorgan County Council Act 1987 enables the Authority to attach a planning condition to any coal mining permission requiring the deposition of a financial bond to secure restoration and aftercare to any operator other than British Coal Corporation (and their successors but this could not apply until the expiration of 10 years following privatisation of the coal industry).

Paragraph 66 of the MTAN2 states:

*“The private sector successors to British Coal Corporation acquired certain long-term leases over coal reserves, along with the mining assets which they purchased. The provisions in the Local Acts (which included the West Glamorgan County Council Act 1987) did not apply to British Coal, nor did they apply to the successor companies for a period of ten years; a period which has now expired”.*

As referred to earlier in this report the S106 Agreement attached to the 2004 consent required the establishment of an Escrow Account into which funds were paid by the operator to pay towards restoration of the site. This fund secured £2 for every tonne of coal exported from the site. To date that fund has a value of approximately £3.7 million.

It was acknowledged at the time of determination of the 2004 consent by the Planning Inspector that the fund would be insufficient to cover the costs of restoration and he specified (para. 327) that “... **The setting up of a fund for restoration work would be of significant benefit** even though its value would represent only a small percentage of the anticipated cost of restoration work”.

As a result it was recognised at the time that the fund would not provide a full guarantee should the operator fail to restore the site under the obligations of the restoration conditions attached to the consent.

The amended restoration scheme as proposed within the current application will cost £23,000,000. This is based on detailed calculations carried out by an independent expert who works for the Coal Authority and was appointed by the council. The calculations split the site into 8 distinct phases which are based on the detailed mine design plans proposed for the site. It also takes into account reliable survey data, and digital terrain models arriving at a detailed quantifiable materials balance and quantifiable task based rates on plant. For assurances there is also a built in risk evaluated contingency figure.

Given the experience in relation to this and other sites in the past, the full costs of this restoration must be secured in relation to the current application. Neither the council nor the surrounding communities want to be in the position in two to three years time that if consent is granted, the operator extracts all the coal from within the extension area and then abandons the site with insufficient funds available to restore. To ensure that this does not happen a bond to cover the whole cost of restoration and aftercare will be required. This can be secured by a S106 legal agreement.

Paragraph 60 of MTAN2 states:

*“60. Financial guarantees provide reassurance that a site would be restored in the event of failure. They also help to establish and draw attention to the real cost of reclamation. MPPW considers financial guarantees in paragraphs 53 and 54. The applicant should thoroughly understand, and make financial provision for, responsibilities under the reclamation conditions and agreements. MPPW states wherever it is reasonable to do so, authorities may require financial guarantees. Operators are encouraged, as a reasonable alternative, to participate in established mutual funding or guarantee schemes which safeguard against possible financial failure.”*

Paragraphs 62 and 63 also state:

*“62. The additional costs of certain types of guarantee are modest relative to total restoration costs and to the turnover of operators. Operators should demonstrate to the satisfaction of the MPA that they are covered by a bond or an established and properly funded industry guarantee scheme, which would adequately finance a programme of restoration and aftercare in the case of default by the operator. Progressive restoration will require a stream of funding to be available at key stages.”*

*“63. Applicants should demonstrate what the likely financial and material budgets for restoration, aftercare and afteruse will be, and how they propose to make provision for such work during the operational life of the site. A number of different types are in use, such as cash deposit accounts, bonds and mutual funds, escrow accounts and mutual guarantee schemes. In all cases, operators should ensure that sufficient finance is available to enable them to meet fully restoration and aftercare conditions. This is important to avoid future dereliction and the possibility that the costs of reclamation of mineral sites might have to be borne by other public or private sources. The MPA should satisfy itself that the estimates are not unreasonable, and are index-linked, and to that end may wish to make use of an external specialist valuer. Annualised restoration costs will take into account the life of the operation.”*

As stated above the detailed bond calculation is based on a detailed task orientated programme, which is fully quantified and costed. Furthermore progressive restoration has also been programmed to achieve annual targets, which will be monitored by task achievement. If these tasks are not achieved the operator is penalised financially, thus further incentivising them to remain within the strict timeframes identified within the bond.

In order to ensure that a robust position is maintained throughout the operations as suggested in paragraph 63 above, monitoring of this restoration is proposed to be via an annual review which will detail resources and timing, measured against actual performance. Quarterly reports will also be required which will illustrate progress on site. Should the site lag behind, there will be financial penalties imposed upon the operator.

As stated earlier in this report the bond has been calculated independently by the Coal Authority who have specific expertise in this area of work. The bond is calculated to be £22,420,000 and an additional £580,000 contingency, bringing the total to £23,000,000. This will be secured through phased payments via a S106 agreement. In addition to securing the aforementioned funds, the S106 agreement will also secure an annual review of the fund together with the payment of a further £7,615,000 which will be paid by the

end of the first annual review. The latter is sufficient to make the site safe in a worst case scenario and secure the site should operations cease prematurely.

The operation of the fund is quite complex but in simple terms will rely on the operator making regular payments over the first three years which have been calculated to be sufficient to cover the cost of the work and at the same time undertaking restoration of the areas of the site that are no longer required for operational development purposes. This restoration will be undertaken in accordance with the restoration strategy together with fully detailed and costed work plans/tasks. The bond is designed to incorporate objective setting tasks to be achieved on an annual basis, led by immediate progressive restoration from day 1. This work will be reviewed annually as is the case with all restoration schemes and associated bonds. However it will be a more thorough and detailed approach when compared to other bonds we have in place, as it will require the implementation of a more complex continuous monitoring exercise, creating an annual review on cost implications such as fuel price (which will be fixed at 58p per litre, with the requirement for additional payments to the bond figure should the fuel cost rise above 58p per litre) and site logistics such as continuous monitoring of bulkage factors etc. Also included in the bond are rehabilitation costs, aftercare costs for a period of 20 years, professional fees and site supervision costs, thus ensuring that all potential costs are fully covered.

If the phases of restoration have not been completed both quantitatively and qualitatively in accordance with the agreed tasks, then the operator will not have the funds refunded to them (at annual reviews) as is usually the case. As a result the Council and the Community will have the comfort that the areas of the site that have already been coaled and are no longer necessary for operations will be restored and funds will be also be set aside for the areas that are yet to be coaled. This is unlike the bonds which have been secured for the site in the past.

As a consequence of the above, the restoration scheme sought by this consent would represent an acceptable scheme to mitigate the long-term impacts of the development, and the financial guarantees offered are significantly in excess of those which the 2004 appeal inspector considered to be acceptable. In this respect, and having regard to the fact that the restoration of the site is physically achievable, it is considered that refusal of this application on such grounds is unjustified.

### 13. Socio Economic Benefits

Socio economic considerations are a requirement within the national policy framework and the Welsh Government acknowledges the social, economic and environmental dimensions of sustainable development and the following benefits are identified:

#### Employment

It is indicated in the application that some 115 people are, and could continue to be, employed at the site. These jobs would continue until 2018 when coaling will be complete. The development would also provide extended employment for operatives at the site to undertake restoration in accordance with the previously agreed restoration strategy. This is projected to take up until 2020.

Almost 72% of the total number of employees live within Neath Port Talbot and Carmarthenshire, 31% and 41% respectively, and a high proportion within 10 km of the site. The development will also provide coal supplies to the Onllwyn washery that employs some 72 people.

The operations at the site also result in additional spend on services amounting to £18.1m per annum in addition to the potential to create up to 182 indirect. This is supported by the 27 letters received to date from businesses which supply and are reliant upon the continued operation of the site.

Paragraph 62 of MPPW states that if any development cannot be made environmentally acceptable the development should provide local and community benefits which clearly outweigh the disbenefits of the likely impacts to justify the grant of permission.

The retention of employment within the coal industry would serve to provide economic benefits in accordance with PPW and TAN23 – Economic Development (February 2014) and appropriate weight must be given to the employment and service requirements of the site in any decision.

## **14. Other Matters**

### Common Land

The vast majority of the site is located on Common Land known as the Gwaun Cae Gurwen and Penllerfedwen Common Land (ref: CL25A). It is understood that the applicants have agreements with the landowners to occupy the land. Any other issues in respect of working on Common would be a matter dealt with, if necessary, under the Common Land Act 2006 which is regulated by the Welsh Ministers.

Whilst it is acknowledged that the previously approved scheme proposed to reinstate the common in addition to areas of wetland and woodland, an alternative restoration scheme is now proposed. The proposed after use of the site is as a country park. The proposal will also retain the southern and western overburden mounds albeit with redesigned profiles together with a leisure based development around a lake. The remainder of the land within the country park will be restored to a mixture of grassland and woodland habitats and small water features. In the long term the area will be maintained by grazing and woodland management operations, and as such the rights to graze on the site and rights of public access to the site will be available following its restoration.

As a consequence of the above the proposed development will not reinstate the area of common that was available prior to the extraction of coal at the site, although grazing rights over some of the land will be re-instated. Whilst this is of clear concern to third parties including those with common land rights, this is a matter to be addressed outside of the planning application process. Planning permission is only one form of consent and should it be granted it does not allow the development to go ahead without the other appropriate consents being in place. One such consent is Common land Consent which is governed under separate legislation and is not material to the determination of this application.

### Cumulative Impacts

It is acknowledged that major coaling operations in the form of opencast developments have been taking place in the locality since 1967 although smaller opencast developments preceded these more major developments. The site has included, in successive consents from East Pit to East Pit Extension and East Pit East Revised (EPER), the retention of the void, the overburden mounds and their enlargement and extension in parts and other ancillary activities. Cumulatively, but not exclusively, these operations are the main and

dominant mineral operations that have occurred in the locality for the last 30 years or so.

The ES accepts that the continuation of coaling beyond the period of time originally proposed under the 2004 consent together with the creation of the amended landform will create negative cumulative effects. However the development will continue to make an important contribution to the local, regional and national economy. The Planning Inspector when dealing with the 2004 consent acknowledged the long term cumulative impact and he stated *“This long term cumulative effect has been described as ‘death by a thousand cuts’, and several local residents have said that the community has had enough. This is a powerful argument and, in my view, is the main argument against the proposed development. Even if the current proposal were allowed, the strength of this argument would increase in respect of any proposals for further opencast work in this area.”* Whilst it is acknowledged that this development will further increase the cumulative impact of the development, it must be acknowledged that in the absence of this development, the site will remain un-restored, the consequences of which are argued to be greater than the cumulative impacts referred to above.

Furthermore this is the only application within the series of applications which have preceded it, to guarantee through the provision of a bond, the delivery of a fully funded and suitable restoration scheme for the site. This scheme will not only safeguard the health and safety of communities which surround the site in the medium to long term but will also result in the creation of a country park which can be enjoyed by existing and future generations within the surrounding communities. The country park will also provide a development platform for the proposed tourism led regeneration aspirations of the site which will be assessed within the second part of this report.

The issue of cumulative effects has been considered within this report and whilst there will be negative impacts, these will be outweighed by the beneficial impacts associated with this development.

## **Built Development Assessment**

The following section of this report deals with an assessment of the proposed built development which has been submitted in outline form.

### National Policy Context

Planning Policy Wales (Edition 7, July 2014).

Technical Advice Note 5: Nature Conservation and Planning (2009)

Technical Advice Note 11: Noise (1997)

Technical Advice Note 12: Design (2014)

Technical Advice Note 13: Tourism (1997)

Technical Advice Note 15: Development and Flood Risk (2004)

Technical Advice Note 16: Sport, Recreation and Open Space (2009)

Technical Advice Note 18: Transport (2007)

Technical Advice Note 23: Economic Development (2014)

**Planning Policy Wales (2014)** identifies creating a thriving and diverse local economy where agricultural related activities are complimented by sustainable tourism and other forms of employment in a working countryside is a key priority for rural areas (paragraph 4.6.3). The proposed after use incorporates a number of tourism related developments which will contribute to the local economy and build on the local area's links to the National Park. The benefits associated with these elements will be addressed later in this report.

Paragraph 4.7.8 identifies that development in the countryside should be located within and adjoining those settlements where it can be best accommodated in terms of infrastructure, access, habitat and landscape conservation. All new development should respect the character of the surrounding area and should be of an appropriate scale.

In promoting sustainability through good design (paragraph 4.11), design is taken to mean the relationship between all elements of the natural and built environment. To create sustainable development, design must go beyond aesthetics and include the social, environmental and economic aspects of the development, including its construction, operation and management and its relationship to its surroundings.

Paragraph 7.1.3 states:

*'The planning system should support economic and employment growth alongside social and environmental considerations within the context of*

*sustainable development. To this end, the planning system, including planning policies, should aim to ensure that the growth of output and employment in Wales as a whole is not constrained by a shortage of land for economic uses. Local planning authorities should aim to facilitate the provision of sufficient land required by the market, except where there are good reasons to the contrary. In addition, wherever possible local planning authorities should seek to guide and control economic development to facilitate regeneration and promote social and environmental sustainability. In so doing, they should aim to:*

- *co-ordinate development with infrastructure provision;*
- *support national, regional, and local economic policies and strategies;*
- *align jobs and services with housing, wherever possible, so as to reduce the need for travel, especially by car;*
- *promote the re-use of previously developed, vacant and underused land; and*
- *deliver physical regeneration and employment opportunities to disadvantaged communities'*

In applying these and other considerations, local planning authorities should aim to steer economic development to the most appropriate locations, rather than prevent or discourage development.

In respect of transport, PPW aims to extend choice in transport and secure accessibility in a way which supports sustainable development. Paragraph 8.7.1 states:

*'When determining a planning application for development that has transport implications, local planning authorities should take into account:*

- *the impacts of the proposed development on travel demand;*
- *the level and nature of public transport provision;*
- *accessibility by a range of different transport modes;*
- *the willingness of a developer to promote travel by public transport, walking or cycling, or to provide infrastructure or measures to manage traffic, to overcome transport objections to the proposed development (payment for such measures will not, however, justify granting planning permission to a development for which it would not otherwise be granted);*
- *the environmental impact of both transport infrastructure and the traffic generated (with a particular emphasis on minimising the causes of climate change associated with transport); and*

- *the effects on the safety and convenience of other users of the transport network.*

PPW identifies that *‘tourism is vital to the economic prosperity and job creation in many parts of Wales. It is a significant and growing source of employment and investment, based on the country’s cultural and environmental diversity. Tourism can be a catalyst for environmental protection, regeneration and improvement in both rural and urban areas.’*(Paragraph 11.1.1). *The objectives for tourism are:*

- *To encourage sustainable tourism in Wales, promoting local prosperity and supporting community well-being and involvement, while protecting and giving value to natural heritage and culture; and*
- *To manage the tourism sector in ways which minimise environmental impact’* (paragraph 11.1.2)

Paragraph 11.1.3 identifies that *‘sport and recreation contribute to our quality of life. The Assembly Government supports the development of sport and recreation, and the wide range of leisure pursuits which encourage physical activity.’*

Paragraph 11.1.7 states that *‘in rural areas, tourism-related development is an essential element in providing for a healthy, diverse, local and national economy. It can contribute to the provision and maintenance of facilities for local communities. Here too development should be sympathetic in nature and scale to the local environment and to the needs of visitors and the local community.’*

Paragraph 11.1.9 identifies that development for tourism, sport leisure uses should, where appropriate, be located on previously developed land.

Paragraph 11.1.10 states that *‘the planning system should ensure that adequate land and water resources are allocated for formal and informal sport and recreation, taking full account of the need for recreational space and current levels of provision and deficiencies, and the impact of developments related to sport and recreation on the locality and local communities. The role of surface and water bodies in flood risk management also needs to be recognised.’*

In determining planning applications for tourism developments, local planning authorities are asked to consider the impact of proposals on the environment and local community. PPW identifies that they may seek to reduce the impact of development using arrangements for traffic and visitor management (paragraph 11.3.1)

**Technical Advice Note 5: Nature Conservation and Planning (2009)** provides supplementary advice to the policies set out in PPW in respect of nature conservation issues. It sets out the criteria against which a development will be judged having regard to the relative significance of international, national and local nature conservation designations. Paragraph 4.3.4 states that:

*‘the information submitted with the planning application should be proportional to the likelihood of effects of nature conservation interests and to their potential significance.’*

Paragraph 6.2.1 advises that the presence of protected species is a material consideration when a local planning authority is considering a development proposal that, if carried out, would be likely to result in disturbance or harm to the species or its habitats.

**Technical Advice Note 6: Planning for Sustainable Rural Communities (July 2010)** provides practical guidance on the role of the planning system in supporting delivery of sustainable rural communities in particular to local authorities in rural economies and agriculture. Paragraph 2.1.1 acknowledges that the planning system must respond to the challenges posed by climate change, for example by accommodating the need for renewable energy generation.

Paragraph 2.2.1 states that ‘new development can help to generate wealth to support local services ensuring that communities are sustainable in the long term’. A key question for local authorities when determining applications is whether the proposed development enhances or decreases the sustainability of communities.

Paragraph 3.1.2 confirms that planning authorities should support diversification of the rural economy as a way to provide local employment opportunities. Paragraph 3.7.2 recognises that many economic activities can be sustainably located on farms.

**Technical Advice Note 11: Noise (1997)** identifies the need to ensure that noise generating developments do not cause unacceptable levels of disturbance.

**Technical Advice Note 12: Design (2014)** calls for a holistic approach to design in order to contribute to the objectives of sustainable development. In doing so, good design should balance the protection of the environment with prudent use of resources and economic growth. It calls for an interactive

approach involving a proactive planning system with consideration given to such issues as landscape setting, layout, density, scale and appearance.

**Technical Advice Note 13: Tourism (1997)** identifies that *‘tourism comprises a range of different, but interdependent activities and operations which overlap with sport, entertainment, the arts and other recreation and leisure activities.’* (paragraph 4)

The TAN acknowledges that tourism makes a major contribution to the Welsh economy, provides employment in a wide variety of occupations and can bring benefits to local economies and communities in both urban and rural locations.

It provides advice in relation to hotel, holiday caravans, including chalet/lodge/cabin accommodation and also advises that land-use implications specifically in relation to highways and access should be given due regard during the determination of planning applications.

Special consideration should also be afforded to the screening of proposed sites so as not to be visually intrusive. (paragraph 13).

Finally, the TAN also provides advice on ‘seasonal’ and holiday occupancy conditions which can be implemented on any such planning application for tourist accommodation.

**Technical Advice Note 15: Development and Flood Risk (2004)** sets out the responsibilities and requirements of the various parties in the development process and seeks to ensure that flood risk, surface water and foul water drainage arrangements are properly considered during the planning process.

**Technical Advice Note 18: Transport (2007)** sets out Welsh Governments approach to land-use planning and transportation in accordance with PPW and the Welsh Transport Strategy which:

*‘aim to secure the provision of transport infrastructure and services, which improve accessibility, build a stronger economy, improve road, safety and foster more sustainable communities’* (paragraph 2.2).

It further advises in Paragraph 2.3 that the *‘integration of land-use planning and development of transport infrastructure has a key role to play in addressing the environmental aspects of sustainable development.’*

*‘Tourism proposals, particularly in rural areas, should demonstrate access by choice of modes or avoid locking in the requirement for travel by car’*

(paragraph 3.15). It is, however, acknowledged that tourism makes a significant contribution to the rural economy and should be balanced against lack of public transport (paragraph 3.15).

**Technical Advice Note 23: Economic Development (2014):** provides guidance on planning economic development at a strategic level; working with neighbouring authorities and relevant stakeholders; identifying and assessing economic benefits of development proposals and establishing an evidence base to help prepare economic development policies for LDPs.

### Local Planning Policy

The Adopted Development Plan comprises the Neath Port Talbot Unitary Development Plan, within which the following Policies are of relevance: -

Policy ENV1	Development in the Countryside
Policy ENV3	Impacts on the Landscape
Policy ENV5	Nature Conservation
Policy ENV11	Proposals in areas of flood risk
Policy ENV14	Unstable land
Policy ENV15	Air quality
Policy ENV16	Contaminated land
Policy ENV17	Design
Policy ENV29	Environmental quality and amenity
Policy EC3	Employment within the countryside
Policy EC7	Criteria for consideration of proposals for tourism facilities and other attractions
Policy GC1	New buildings/structures and changes of use
Policy GC2	Engineering works and operations
Policy IE3	Main sewage treatment
Policy IE4	Private sewage treatment facilities
Policy T1	Location, layout and accessibility of new proposals
Policy T12	Footpaths, cycle ways and bridleways
Policy R02	New sport and recreational facilities
Policy R04	Access to the countryside and coast
Policy R05	Water based recreation

Unitary Development Plan Policy ENV1 is relevant with regard to development being located in the countryside and seeks to protect the countryside, but which also acknowledges that certain development, by its very nature, can be accommodated there.

With regard to tourism facilities and attractions, it should be noted that Policy EC7 is particularly relevant. Policy EC7 provides that

“New or extended tourism facilities and attractions including hotels and other visitor accommodation will be permitted provided:-

a) the development is not located in the countryside unless it can be shown that it is directly related to an appropriate countryside, leisure or recreational activity and would not conflict with Policy ENV2;

b) the design scale and siting of the new development does not create unacceptable harm to the character or appearance of the settlement, its setting or the surrounding landscape;

c) no unacceptable impacts on the amenities of nearby residents or other land users, highway safety or traffic generation would be created;

d) the proposal would not create unacceptable harm to biodiversity, or result in the unavoidable loss of agricultural land of grades 1, 2 and 3a; and

e) it could not be accommodated within a local settlement.

The justification to the Policy emphasises that “the Authority is committed to the encouragement of tourism and an improvement in tourist facilities, maximising the economic and employment benefits, promoting geographical and seasonal spread and encouraging the development of non-traditional destinations, while safeguarding the environment, and the interests of local communities”

The justification further states that: -

*“Provision of tourist facilities provides a means of strengthening and adding variety to the economy, creating employment opportunities, and enhancing conditions for both the local community and visitors. Where proposals for tourist accommodation are approved in the countryside, conditions will be imposed to ensure that they are used only for tourism purposes and not residential use”.*

These policies are supported by Planning Policy Wales 2014 which acknowledges that, “In rural areas, tourist development is an essential element in providing for a healthy, diverse, local and national economy”.

It further states that: -

“The Assembly Governments objectives for tourism are: - to encourage sustainable tourism in Wales, maximising its economic and employment benefits, promoting tourism in all seasons, and encouraging its development in non-traditional destinations, while safeguarding the environment, and the interests of local communities”.

Technical Advice Note (Wales) 13 relates specifically to tourism and, in particular, where it relates to seasonal and holiday occupancy states:-

“The planning system can respond to changes in tourism without compromising policies to safeguard the countryside and, in exceptional cases, holiday occupancy conditions can reconcile these two objectives”.

It goes on to state: -

“Such permissions may be granted with a condition specifying use as holiday accommodation only. A holiday occupancy condition would seem more appropriate than a seasonal occupancy condition where there is a need to reduce pressure on local services. Authorities should continue to use seasonal occupancy conditions to prevent the permanent residential use of accommodation which, by the character of its construction or design, is unsuitable for continuous occupation especially in the winter months. Seasonal occupancy conditions may also be appropriate to protect the local environment, for example where the site is near a habitat which requires protection at particular times of the year”.

### Supplementary Planning Guidance

In addition to the Unitary Development Plan, the following approved Supplementary Planning Guidance is of relevance: -

- Biodiversity
- Developer Contributions
- Landscape
- Open Space

## **Principle of Development in the countryside**

Within the generally permissive and positive tourism policy context detailed above, where it is located in the countryside, it must be “directly related to an appropriate countryside, leisure or recreational activity and would not conflict with Policy ENV2” (Policy EC7(a)).

Policy ENV2 is a policy which applies to green wedges and has no application in the context of this proposal.

At this stage, the site is currently in use as a minerals site and therefore, would not technically comply with criteria within Policy EC7. Nevertheless, this application is in two parts, and for the proposed built development to be possible (or indeed appropriate), the site will be restored through the development of a Country Park and recreational lake, the latter of which is a site-specific necessity for the proposed international dive centre which can only be met in a countryside location (which is a requirement of Policy RO2(B)). Finally, its location on the edge of a National Park dictates that the accommodation will complement the adjacent destination of the Park. As a result it is considered that the proposal will be directly related to an appropriate countryside, leisure and recreational facilities.

In addition to the above, and notwithstanding the aforementioned, the positive benefits of introducing a new tourism use, including the associated facilities, as part of a wider strategic aspiration for the future regeneration of East Pit are clear, as is the fact that the development is positively encouraged by the justification to Policy EC7.

Accordingly, taken as a whole it is considered that the proposed built development would become “directly related to an appropriate countryside, leisure and recreational activity”, and would therefore accord with the principle of policy EC7. As a result the potential benefits associated with the tourism proposal are considered to be such that there are no objections to the principle of introducing this tourism use in the countryside, subject to a detailed assessment of its impacts.

Policy EC7(e) requires consideration of whether the tourism facilities could be accommodated within a settlement. Given the location of the site at the heart of four communities, on a currently active mineral site which is to be restored under this proposal, it is considered that the proposal will occupy a sustainable location which despite being located within the countryside, is also readily accessible to the surrounding communities which will benefit both socially and economically from the proposed development.

Notwithstanding the above, should this application be successful the occupation of the proposed holiday lodges would need to be strictly controlled by means of condition to enforce the use of each unit to ensure they are utilised for holiday accommodation only and are not used as permanent residential accommodation. In view of the advice contained within TAN 13, whilst the accommodation needs to be controlled to ensure that it is not used as permanent accommodation, it is not appropriate to impose seasonal restrictions given there are no existing habitats which are particularly at risk at certain times of year and need extended time periods to regenerate. Similarly the recreational activities proposed by this application to justify the erection of the holiday units are very much all year round, and the tourism industry nationally, now functions 365 days a year rather than for a restricted number of months in any year.

### **Landscape and Visual Impact**

The application is accompanied by a Landscape and Visual Assessment (LVIA), which includes the use of LANDMAP methodology to identify and assess the significance of the likely impacts of the proposed development upon the surrounding area including residential amenity, adjacent footpath networks and Landscapes of Special Historic or other designated landscape areas.

With regards to the latter areas it is noted that the application site is not located within any nationally designated landscape area, however the most important Landscape Designation with respect to the proposed built development is the Brecon Beacons National Park which is located approximately 300 metres to the north of the nearest part of the proposed development site together with the Black Mountains.

The landscape baseline represents a study of the existing and developing landscape, against which changes caused by the proposed development can be assessed. For the purposes of the LVIA the actual baseline against which the proposed built aspects are to be assessed will be the completed restoration landform, as without this being completed the proposed built development can not proceed.

The submitted Zone of Theoretical Visibility (ZTV) identifies areas from where the majority, moderate and small parts of the site will be visible. Ten viewpoints are indicated (Drawing 23-1), four of which are within 1km of the site, and nine within 4km with the remainder falling between 3 and 7 kms. These viewpoints are as follows:

Viewpoint A	Rhosamman
Viewpoint B	Beacons Way on the summit of Moel Gornach , The Black Mountain, Brecon Beacons National Park
Viewpoint C	A4068 Cwmgarw Road
Viewpoint D	Public Right of Way north east of the farmstead at Waun Gron within the Brecon Beacons national Park
Viewpoint F	Public right of way east of farmstead at Dorwen within Brecon Beacons National Park
Viewpoint G	Bryn Cwmllynfell near Pencoetgae-bach
Viewpoint H	Public Right of way on Mynydd y Drum
Viewpoint I	Penlle'rfedwen
Viewpoint P	Foel Deg ar Bedol
Viewpoint Q	A4069 Mountain Road, National Park

The pattern of visibility is located to the north and east. Distant views from elevated locations within the National Park (viewpoints Q and B) allow a line of sight down towards the proposed lake allowing views of the proposed waterside built development. Viewpoints in close proximity (i.e Rhosaman, Cwmgarw Road and Bryn Cwmllynfell) are not necessarily those with the most open or clear views as there is intervening topography and vegetation within lower lying areas. Long distance views are possible from elevated positions in the north/northeast within the National Park and Mynydd y Drum.

The magnitude of change is categorised as substantial, moderate, slight or negligible and is defined using the methodology section of the LVIA. There are very few remaining 'natural' characteristics within the application site. However, the proposed restoration scheme aims to replicate the adjacent natural landscape characteristics. The LVIA identifies that in the short term the construction phase of the development will have an adverse effect, however the long term change created by the built development would be neutral as the advanced planting and significant woodland planting would assist in screening the lodge and camping elements of the proposal as well as being designed to accommodate changing landforms. The proposed hotel would be an exception to this, given its position built out of and down the retained rock faces on the east side of the lake. The diving centre will also have an effect on the natural characteristics as it will have an important relationship with the lake surface.

The aesthetic attributes of the application site will change significantly due to the restoration scheme. However, the subsequent construction of the buildings will only constitute a relatively small element (1%) of the scheme. Notwithstanding that the submitted scheme is in outline, the roofs of the hotel would be visible across the development site and towards Cwmllynfell and, subject to matters of detailed design, have the potential to form a landmark

building in the local landscape. The submitted photomontages indicate that the tall multi floored main structure of the hotel will extend down the retained rock faces towards the water level and will be screened directly north and east by the restoration landform. Thus, only views from around the camp site area and cycle way and receptors at longer distant locations within the Brecon Beacons will be able to see the main bulk of the hotel.

The truncated roofs of the camp site reception building will be visible from the northern edge of the lake and out towards the adjacent north east landscape. More distant views will be possible from the north from the elevated ground of the National Park, where the buildings will form a small part of the overall landscape.

The forms and lines of the built environment will be in contrast to the natural lines of the landform restoration and planting. When taking into account the level of change that will be associated with the proposed restoration scheme the magnitude of landscape change resulting from the proposed development has been assessed as high as a consequence of built development being added to an undeveloped restored valley landscape. Given the more limited extent of visibility associated with built aspects outside the site, the magnitude of change for Landscape Character Areas identified in the ES is considered to be slight to moderate.

The potential visual effects of the proposed development on the restored site and how this is viewed from the surrounding landscape, and in particular from the identified viewpoints is assessed below:

In respect of viewpoints which are close to the site boundary, Viewpoint A (Rhosamman) due to the combination of proximity and elevation means that this viewpoint represents one of the clearest views of the site from the north. The sensitivity of the residential receptors at this viewpoint is considered to be high. As this illustrates the potential view of the camping element of the proposal located in the north eastern part of the site, the proposed screening together with the seasonal nature of such a facility means that the magnitude of change would be slight. Another close viewpoint (Viewpoint C- Cwmgarw Road) offers unrestricted views of the site from the north-east. The proposals will lead to the introduction of the dive centre and lodges on the southern/western shores of the lake. The hotel will be mostly screened by intervening landform and associated planting. Proposed woodland planting around the lake shore will result in more restricted views of these buildings over the medium to long term. Consequently, it is assessed that the magnitude of change is moderate.

Viewpoint G (Bryn Cwmllynfell) represents one of the more direct and open views towards the site from the east. To reflect the sensitive nature of the residential receptors the sensitivity of this viewpoint to the type of development proposed is assessed as high. With regards to the proposed hotel, this would be seen above the intervening landform. However, once established the woodland/structural planting will aid to screen a large proportion of the building and also the adjacent lodges, and set it generally within a landscaped context. Lighting within the development will potentially highlight its presence outside daylight hours, however this is likely to be offset by the adjacent settlements and land uses. To reflect the seasonal variation of screen vegetation and potential effects of lighting the magnitude of change is considered to be substantial.

In respect of distant views, Viewpoint B (Beacons Way) due to its elevated position allows a direct and open line of sight; the scale of the proposed development dictates that it would be a large component of the view. To reflect the status of the National Park and the recreational value of Beacon Way, the sensitivity receptors at this point are considered to be high. With regard to the proposed development these will be seen towards the eastern (left) end of the site as illustrated by the visualisation. Some aspects of the development such as the lodges and camping facility may become screened by woodland planting over time, while the hotel and dive centre will remain visible due to their lakeside setting. It is also important to consider the night time effect of the proposal in terms of the lighting which could potentially be emphasised by reflection on the lakes surface. When taking into consideration the site context, which includes several settlements and floodlit facilities the magnitude of change is assessed as being slight.

A comparable view is illustrated by Viewpoint Q which represents views from the A4069 Mountain Road as it heads south towards Brynamman. As it is within the National Park its sensitivity is deemed to be high. The submitted visualisation shows that the proposed development will be seen towards the eastern end of the site. Whilst the camping and lodges will become screened overtime, the dive centre and hotel will remain visible due to its lakeside setting. The impact of the development is off set by the site's context; with floodlit developments including the Rugby Club at Bryn Cwmllynfell (east of the site), trotting track, Mynydd y Bettws Wind Farm (west of the site) and a series of small settlements also being viewed. Taking all of these factors into consideration, the magnitude of change is assessed to be slight.

It is likely that significant effects to the restored site, are likely to occur as a result to the proposed built aspects of the development. These effects will relate to the change in nature of the restored site i.e from a naturalistic restored

landform to a settled valley type character. Across the study area and the landscape character assessments concerned, the nature of perceived effects will vary. The effects on 8 of the 9 character areas identified range from none to moderate, with one area (Amman and Lougher Lowland Hills and Valleys) experiencing a major/moderate overall effect on its character. These effects will be localised and would occur to a small area close to the northern limit of the application area close to Rhosaman.

The level of visual effects and magnitude of change arising from the proposed built development is likely to be limited and from 7 Viewpoints (E,J,K,L,M,N and O) no views of the development will be experienced. The level of effect to the north of the study area is generally elevated by the sensitivity of the landscape. This is principally due to the presence of the National Park designation and the inherent scenic quality of some views.

The LVIA demonstrates that the potential visual effects of the proposals are to an extent restricted by the topography, with only elevated locations within the National Park providing longer distance views. However, due to the scale of the landscape when viewed from these locations it is considered that the proposals would not represent an unacceptably dominant feature within the landscape, especially when compared with the Mynydd y Bettws wind farm.

The nature of landscape effects outside the site and its adjacent landscape are different. Where visible, the built development is viewed within the context of the existing valley settlements, and follows a line along the restored valley through the eastern end of the application site. As the proposal follows the character of the Afon Aman and Twrch Valleys its effect is considered as neutral as it follows the characteristics of the existing landscape. The level of visual effect of the viewpoints will vary greatly, and in the case of Viewpoint G this is assessed as **major** with Viewpoint P likely to experience significant **major/moderate**.

In terms of indirect effects the proposed built aspects of the development will potentially cause indirect 'perceived' effects on the character of the surrounding landscape, as it may increase the extent of 'urban massing', although this will be off set by the settlements of Cwmllynfell, Cefn-bryn-brain and Rhosaman and their associated infrastructure. The presence of lighting will mean that the night time effects associated with lit elements of the proposed built development will be reduced, as they are likely to be read as a continuation of the existing urban form.

The ES assesses the potential impact of the built development on the National Park and concludes that as the site does not fall within the Park this aspect of

the proposal will not give rise to direct landscape impacts. However, there may be indirect perceived impacts upon its character. As referred to earlier in this report, the National Park has been consulted on the application and as confirmed previously raised no objection to the built development subject to the implementation of satisfactory design principles at the detailed design stage to safeguard the special qualities of the Park.

Both National and local planning policy and guidance in the form of Planning Policy Wales 2014, TAN 12: Design and Policies ENV3, ENV17 and ENV19, advocate quality design which is contextual and respects the landscape and features of importance that are either built or natural.

Whilst the submitted layout is indicative only, having been reserved for subsequent consideration, the scale parameters are fixed as part of the outline application and therefore provide a degree of certainty in respect of the impact on the landscape and character of the area. The illustrative layout indicates the siting of lodges and camping pitches permeated by areas of green open space and set within a newly planted woodland which assist in screening the proposal from public vantage points. Consequently, it is considered that the scale and siting of the proposal will not adversely impact upon the character of this countryside location. The Hotel represents the largest built aspect of the proposal with a lakeside façade that will be seen from elevated locations to the north/northwest, however it is proposed to construct this on a platform within a void, thus hiding a large portion of the building from some locations. It is considered that the scale and siting of this element of the proposal will not unacceptably impact upon the character of this countryside location.

In conclusion, the potential impact upon landscape change is likely to give rise to minor/moderate effects. This is attributable to the fact that the restored landform will in itself be a newly created landscape feature that will have been created in part to accommodate the proposed built development, which represents approximately 0.6% of the valley area formed by the overburden mounds and restored working void. Accordingly, while it is accepted that the development will materially change the character of the site, given the relatively local nature of such impacts it is concluded that any harm arising from the development in landscape terms would not unacceptably undermine the character of the countryside or be so severe that it outweighs the economic benefits attributed to such development as a strategic tourism destination.

Therefore, it is considered that this element of the proposal would not be unacceptable in landscape and visual terms to warrant refusal of the application on these grounds and as such is not considered to be in conflict with Policies ENV1, GC1, GC2 and EC7 of the Unitary Development Plan. In particular, it

would not create unacceptable harm to the character or appearance of the settlement, its setting or the surrounding landscape and is in accordance with Policy EC7(b).

### **Residential Amenity (including noise)**

Residential dwellings are located to the east on Ochr-y-Waun Road, Heol y Coedcae and Pen y Bryn which partially flank the east and south eastern boundaries of the site. The settlements of Rhosaman and Cefn-bryn-brain stand to the north and north east respectively with the nearest residential property some 38 metres from the site boundary to the north. The roundabout which will serve the development is proposed to be located on Gwilym Road which is on the north east boundary of the site with the nearest dwelling some 60 metres away. While the application is in outline only it is considered that the indicative site layout which accompanies the application demonstrates that sufficient separation distances between existing dwellings and the various elements of the proposed built development can be achieved. Consequently, it is not considered that there would be any unacceptable effects in terms of the overlooking of private space or distances allowable between habitable room windows, nor is there an unacceptable impact in terms of overbearing or overshadowing.

While the introduction of the new uses, associated facilities and infrastructure would result in an increase in vehicular activity in close proximity to existing dwellings it is considered that on balance and having regard to the potential benefits which would be generated by the development, the proposal would not result in an unacceptable loss of residential amenity to warrant refusal of the application on these grounds.

Noise issues relating to the potential impact during the operation of the development and the impact of existing noise sources on the development has been assessed in the Environmental Statement.

In terms of existing noise sources, the ES concludes that noise from the A4069 and the A474 are unlikely to have a significant impact on the proposed development with a separation distance of approximately 2 and 3km respectively. The A4068 is approximately 200m from any proposed noise sensitive property at its closest approach. This separation distance results in a reduction of 21.5dB from the measured noise levels of this road. The proposed development falls into noise exposure Category A of Annex A *“Noise need not be considered as a determining factor in granting planning permission, although the noise level at the high end of the category should not be regarded*

*as desirable.*” In view of the above it is considered that noise from existing sources does not pose a material constraint to development of the site.

In order to protect the amenity of nearby residents, on completion of mining operations, a background noise survey is required to be undertaken to determine the prevailing noise levels at the existing noise sensitive receptors. The noise impact of both road traffic and fixed plant associated with the development should be determined and, where appropriate mitigation measures proposed. These requirements can be satisfactorily addressed by the imposition of suitably worded conditions.

In view of the foregoing, it is considered that the proposal would not lead to unacceptable levels of noise to warrant refusal of the application on these grounds and accords with Policy ENV29 of the Unitary Development Plan. Nor would it be contrary to Policy EC7(c).

### **Ecology and biodiversity, including protected species.**

Technical Advice Note 5: Nature Conservation and Planning states that; Biodiversity conservation and enhancement is an integral part of planning for sustainable development. The planning system has an important part to play in nature conservation. The use and development of land can pose threats to the conservation of natural features and wildlife. Past changes have contributed to the loss of integrity of habitat networks through land-take, fragmentation, severance, disturbance, hydrological changes and other adverse impacts.

But development can also present significant opportunities to enhance wildlife habitats and the enjoyment and understanding of the natural heritage. The planning system needs to be watchful of the cumulative effects of a series of small, perhaps occasional, apparently insignificant losses from the natural world, which can combine to seriously deplete the natural heritage, including essential hydrological and ecological systems; small scale opportunities for habitat creation and enhancement can be significant and can build into major contributions over time.

In addition it states; the development control process is a critical stage in delivering the protection and enhancement of nature conservation required by PPW. The following can help to achieve these objectives:

- adopting the five-point approach to decision-making - information, avoidance, mitigation, compensation and new benefits;
- ensuring that planning applications are submitted with adequate information, using early negotiation, checklists, requiring ecological surveys and appropriate consultation
- securing necessary measures to protect, enhance, mitigate and compensate through planning conditions and obligations;
- carrying out effective planning enforcement;
- identifying ways to build nature conservation into the design of new development.

TAN 5 confirms that through the use of conditions, the delivery of a number of positive benefits to biodiversity beyond those of simply avoiding adverse effects are possible, including;

- The submission and agreement of a landscape scheme so that greater attention can be given to issues such as species composition;
- The maintenance of landscape planting for a five-year period, or longer, where the need for this can be justified;
- Habitat enhancement;
- The restoration and aftercare of a site where a positive approach to restoration and after-use required by conditions can produce significant biodiversity benefits in terms of habitat creation and enhancement.

This section of the ES advises that it should be read in conjunction with the ecological chapter in respect of the mineral development (Chapter 14) which provides details of the ecological baseline surveys and evaluation of ecological receptors that are also relevant to the proposed built development.

As the potential exists for the 2012 ecological baseline to change due to the lead in time for the submission of the reserved matters applications and changes to legislation it is recommended that the ecological surveys are updated prior to the subsequent reserved matters applications being submitted.

The majority of development proposed will take place within part of the site which will be heavily disturbed due to the coal extraction and subsequent restoration which is proposed. Whilst elements of the proposed development would be located in areas with current habitat value i.e marshy grassland, a precautionary approach has been adopted on the basis that all such habitats would be removed or mitigated for prior to built development taking place to enable creation of the landform upon which the built development will be sited. While a small area of marshy grassland and associated features may continue

to be present into the development phase, it is considered that sufficient mitigation as indicated earlier in this report will have been implemented prior to any development taking place so as to not require any additional habitat mitigation.

### Potential Impacts to European Protected Species

#### a) Bats

No bat roosts have been confirmed within the site, however due to the potential for roosting value to change over time, update surveys will need to be undertaken to inform any subsequent reserved matters applications. The development proposals will result in the loss of approximately 70 ha habitat that could be used as a foraging resource in the event of no post restoration development taking place. In the context of the surrounding landscape and roosting opportunities, it is considered that the restored site will represent a higher value habitat resource for bats than is currently present.

In terms of mitigation, it is proposed to include within the detailed development layout a lighting scheme designed to minimise any potential impacts to bats, a range of landscape-scale habitat enhancements that will benefit local bat populations and appropriate artificial roosting opportunities in the detailed design of the development.

#### b) Otter

While it is acknowledged that the built development proposals will introduce additional human activity they are generally in areas of the site which are currently not of value to the otter, or are used for occasional commuting within a wider area. This could potentially discourage otters from using current commuting routes, although the creation of a lake and associated marginal habitats extending beyond the proposed development area will provide a significantly greater habitat resource for otter and reduce the likelihood that animals will need to commute in the vicinity of the development area. Based on the scale and location of wider habitat creation that will represent an overall increase in site habitats suitable for use by otters.

### Potential Impacts to other Species

#### a) Common Lizard

The potential impacts to reptiles are most likely to have taken place during the operational and restoration phases of current site operations when the removal

of established vegetation will largely have taken place to achieve the platform for development. As such the potential for additional impacts to occur in respect of reptile habitats will be re assessed as part of the detailed design stage.

b) Invertebrates

The potential impacts to invertebrates are most likely to occur during the site restoration phase when works to remove vegetation would be required resulting in the loss of habitats. Impacts will be largely mitigated through the implementation of site level enhancements in areas currently of low invertebrate value or potential. Substantial areas of alternative habitats for the assemblage of invertebrates occurring within the site form a key element of the restoration.

c) Breeding birds

The ES identifies that 69ha of potential breeding and foraging resource may be lost due to the proposed built development, however it is intended to time works to avoid vegetation removal during the nesting season together with the provision of suitable nesting habitats in nature conservation led restoration.

No specific mitigation for the loss of habitats is proposed. Upon completion of site restoration works and prior to the submission of a reserved matters application an updated Phase 1 Survey of the site will be undertaken. This will identify areas of habitat that remain unaffected by previous restoration activities or the presence of ecological features that may have established in the intervening period since the 2012 baseline, the results of which will inform the detailed design of the development so as to maximise retention of the existing habitats. In addition, any remaining marshy grassland habitat which cannot be retained either in its entirety or partially as a consequence of the built development will be subject to translocation.

The Authority's Ecologist recommends that in order to inform the design and construction of the access road a condition should be imposed to any consent requiring an investigation of the hydrology and other conditions of the Marshy Grassland Receptor Site.

NRW raise no objection to the proposal on the basis that sufficient mitigation will have been implemented prior to any development taking place. However, as the proposal represents an opportunity for developing recreational angling facilities at the site it is recommended that new watercourses, lakes and canals are constructed and maintained in such a way as to promote fish habitat.

In respect of Policy ENV4, no impacts upon statutory designated sites have been identified. Having regard to the above, it is considered that there are no significant impacts on ecology and biodiversity, although the requirement for updated surveys and assessments is required to confirm this remains the case prior to the preparation of a detailed development design and the submission of any subsequent reserved matters applications.

The development is therefore considered to accord with Policy ENV5 of the Unitary Development Plan, as well as EC7(d).

### **Access and Transportation**

A Transport Assessment (TA) accompanies the application which considers the capacity of the highway network and its suitability to accommodate the proposed development.

Taking the issues of access point, vehicular access routes and traffic generation in conjunction with the results of the Transport Assessment, the following matters have been considered:-

#### **(a) Access onto Gwilym Road, Cwmllynfell**

To facilitate safe access and egress to the development it is proposed to construct a new vehicular access in the form of a roundabout off the A4068 Gwilym Road to the east of the site. The junction will connect with the existing highway immediately to the north of Cwmllynfell, which is subject to a 30 mph speed restriction. The design retains the existing footway flanking the A4068 on its eastern edge and introduces a new footway on the western edge and makes provision for a new footway on the western side linking the site with a bus shelter. Taking into consideration the predicted number of vehicular movements per day (approximately 1,147 two way) there are no concerns with regards to highway and pedestrian safety at the proposed point of access.

#### **(b) Proposed Access Routes**

The proposed TA has assessed the impact of the development on the operation of key junctions on the local highway network which includes the following:

- proposed access junction;
- A474/B4069 Brynamman Road priority junction;
- B4069/B4068 mini roundabout; and

- Pontardawe cross (Swansea Road/James Street /High Street signal junction)

In addition, the TA has assessed the predicted increase in traffic and the impact on highway capacity and road safety. The TA concludes that the development would not lead to an adverse effect on highway capacity or road safety having regard to accident records over a five year period. Relevant to the access proposals 5 incidents occurred on the A4068 in close proximity to the site access. All of the incidents are related to adverse weather conditions. There is no obvious cause to any of these incidents, other than poor driver behaviour.

In response to comments raised by Powys County Council an Addendum to the TA has been submitted which confirms that capacity exists within the highway network within this neighbouring authority. However, as the development is unlikely to commence for some time it is considered appropriate that a suitably worded condition is attached to the consent requiring the submission of an updated traffic capacity assessment so that should circumstances have altered in a manner not reflected by the current projections they can be appropriately assessed.

#### Impact on Public Transport

The scheme proposals do not seek to amend any areas of the existing planning consent which will affect public transport provision. It is anticipated that by virtue of the nature of the development an increase in people using the local bus services would occur, as a consequence and in accordance with national and local sustainability principles the development would have a positive impact on the operation and capacity of the local bus network.

#### Impact on Pedestrians and Cyclists

The proposals are likely to increase the level of pedestrian movement in proximity of the proposed access junction. There is no cycle provision as such within proximity of the access arrangements in Cwmllynfell. The nearest designated cycle route is the National Route 43, located approximately 5km to the south east linking Gurnos with Swansea. The detailed design of the site layout will ensure that the proposals will seek to promote alternative means of transport with the opportunity to create a physical link between the park and cycle route. The applicant identifies that a crossing route over the A4068 can be provided, and the internal 'footway' can accommodate both pedestrians and cyclists.

There have been no recorded incidents of road traffic accidents involving pedestrians within proximity of the proposed access during a five year period prior to the submission of the application. The proposals do not seek to make any amendments to the existing pedestrian footway infrastructure other than the addition of footways on the western side of Gwilym Road associated with the proposed access arrangements.

Having regard to the above, the Head of Engineering and Transport is satisfied that the proposal offers no adverse impact on highway and pedestrian safety provided suitable conditions are imposed relating to the technical details concerning the new access and internal road layout and revised Transport Assessment and as part of a Section 106 Agreement details of a scheme for improved footway provision along the A4068 into the villages of Cwmllynfell and Cefn Brynbain.

It is thus concluded that the proposed development, subject to the additional highway works, will have no unacceptable impact on the local highway network. Consequently, the proposal accords with Policies T1, EC7 (c) and GC2 of the Unitary Development Plan.

### **Pollution (Air and Ground)**

In terms of the proposed impact of the development on air quality, the primary pollutants associated with road transport are NO<sub>x</sub> and PM<sub>10</sub>. The road links with the potential to carry vehicles associated with the proposed development are New Road (current access to the site), A4069 –Brynamman Road and A474 – Graig Road. However, the site after use will be accessed via a new entrance on the eastern side of the site. The road links with the potential to carry the highest number of vehicles associated with the future operation include the access onto A4068- Gwilym/Cwymgarw Road; north to A4069 Brynamman Road (north of Brynamman) and South to A4067. It is estimated that a total of 1147 vehicles will be using the new site access each day. The results show that the number of days where the concentration of PM<sub>10</sub> (24 hour average) exceeds 50ug/m<sup>3</sup> is 0.0 for all scenarios, all changes are imperceptible, even at 4m from the centre of the road. Consequently, it is concluded that no mitigation measures are required.

The Environmental Statement has been assessed by the Pollution Control Officer (Air) who has concluded that it is unlikely that there will be a significant problem with pollutants such as NO<sub>2</sub> and PM<sub>10</sub> arising from the developments. The Applicant has carried out a Design Manual for Road and Bridges Assessment of the pollution arising from traffic and the two receptor points chosen near the site entrance show a minimal impact.

It is therefore considered that the proposed development would be acceptable in terms of air pollution.

The Authority's Land Contamination Officer and NRW have raised no objections to the proposal subject to the imposition of conditions in respect of remediation strategy, submission of verification report, long term monitoring and maintenance plan and unexpected contamination and is therefore not in conflict with Policies ENV15 and ENV16 of the Unitary Development Plan.

### **Land Stability and Coal Mining Issues**

The main geotechnical aspects of the proposed built development relate to the stability of the final restoration profile together with the potential for settlement with regards to backfill material on groundwater inundation that may impact on the stability of any proposed structures. In order to demonstrate the ability of the entire proposed restoration profile to accommodate the proposed development a Stability Analysis has been carried out, together with further detailed assessment and modelling. This analysis confirms that the restoration profile will achieve an acceptable factor of safety to enable for the future uses proposed. This issue was addressed in more detail earlier in this report.

The Coal Authority has reviewed the proposals and confirm that the application site falls within the Coal Mining Referral Area, therefore within the application site there are coal mining features and hazards which need to be considered in relation to the determination of the application.

The Coal Authority has viewed the Environmental Statement submitted in support of the application and advised that their records indicate that past mining activity has taken place, this together with the presence of backfill materials from the ongoing opencast operations poses a risk to stability for any proposed buildings. Whilst it is acknowledged that the coal mining legacy potentially poses a risk to the proposed development appropriate mitigation measures are proposed to sufficiently address this risk. These measures have been assessed by the Coal Authority who are satisfied that the proposals meet the requirements of Planning Policy Wales (2014) in demonstrating that the application site is or can be made, safe and stable for the proposed built development.

It is considered that in view of the above, the issue of stability, in particular in relation to the development of the hotel, can be satisfactorily addressed by the imposition of a suitably worded condition to accompany any reserved matters application requiring intrusive geological investigation works prior to the commencement of development together with any remedial work which may

be required to ensure the stability of the existing rock face and ground slope. It is considered that the proposal does not conflict with Policies ENV14 and GC2.

### **Flooding, Water Supply and Land Drainage**

The majority of the development falls within Zone A as defined in the development advice maps referred to under TAN 15 Development and Flood Risk (July 2014). However, some areas at the site boundary are located within Zones B and C2. The submitted FCA notes that although parts of the site's extremities are located within these Zones, the proposed development will be directed away from these areas.

The Flood Consequences Assessment which accompanies the application proposes a surface water management plan for the site and the proposed lake will be used as storage prior to discharging into the River Amman and a tributary to the Nant Llynfell. NRW have confirmed that the use of suitably sized outflow channels which will be cut into the bedrock as a means of attenuation is acceptable means of ensuring that surface water run off from the site will be at Greenfield rate and can be satisfactorily addressed by a suitably worded condition attached to any consent.

A network of conveyance swales will also be formed to intercept overland flow and convey to the lake directly to the Nant Hir and Garnant catchments. While surface water and land drainage is to be dealt with via a sustainable Urban Drainage System (SUDS). These methods of drainage are supported by both national and local planning policy.

The proposal intends to utilise a private sewerage system as detailed within the ES and includes two waste water treatment plants to treat the waste from the development; one treating the hotel, lodges and water activity/dive centre and another treating the proposed campsite only. Due to the outline nature of the application no details of the design and location of these waste water treatment plants have been provided, nor has any further information in relation to a potential connection to the foul drainage network been submitted. These issues can however be considered further at the reserved matters stage should outline planning permission be granted.

Planning Policy Wales 2014 and Welsh Office Circular 10/99 - 'Planning requirements in respect of the use of non-mains sewerage incorporating septic tanks in new development' requires the Local Planning Authority to satisfy themselves:

*‘ on the suitability on non-mains sewerage facilities on the basis of a) any information provided by the developer ,b) comments provided by other appropriate bodies and c) their considerations, that the sewerage proposals for the development are suitable, and that significant environmental and amenity problems which justify refusal of planning permission are likely to arise.’*

Originally Welsh Water advised that they were unable to establish a point of adequacy on either of the sewerage networks in the locality and as a consequence a Hydraulic Modelling Assessment would be required. A review of the known local constraints to the Garnwallt and Ystradgynlais catchment areas, and with no known improvements proposed to the local network the provision of treatment plants to serve the development was considered to be the most financially viable option at the time of submission of the application.

Welsh Water has subsequently withdrawn their original objection to the development. NRW advises that sewage treatment works comes with significant responsibilities and costs for ongoing maintenance and are subject to an Environmental Permit and emphasise that there is no guarantee that consent will be forthcoming even if planning permission is granted. Due to the likely volumes involved, it is unlikely that effluent would be allowed to discharge to ground. Their preference is to see connection to the main sewerage network, however in the absence of improvements to the sewer system any foul water generated by the development to the two existing networks could result in an unacceptable risk to controlled waters. If the Authority considers that private sewage treatment works would be acceptable they suggest that a suitably worded condition is attached to any permission. The suggested condition put forward by NRW takes into consideration the likely time period i.e 10 years until implementation when the prevailing situation at the reserved matters stage can be appropriately considered taking into account any upgrade to the existing network which may have taken place. Notwithstanding the appropriateness or otherwise of a private treatment facility, the applicant has confirmed that they are having further discussions with Welsh Water to connect to the public sewerage system.

In respect of water supply, Welsh Water has raised no objection subject to the imposition of a suitably worded condition requiring the submission of a hydraulic modelling assessment to identify whether any infrastructure works are required.

On the basis that no overriding objections have been raised by either Natural Resources Wales or Welsh Water it is considered that whilst it would be more beneficial to secure connection to the public sewerage system, any proposed non-mains sewerage facility can be appropriately designed, maintained and

regulated so as to ensure that there is no harm to the environment or public health, and through the imposition of suitable conditions their requirements can be fully accommodated. It is considered that the proposal is not in conflict with Policies ENV11, IE3 and IE4 of the Unitary Development Plan.

### **Cultural Heritage and Archaeology**

The ES addresses the potential effects on the historic environment that may arise as a consequence of the built development. As the built development would occupy the restored land form of East Pit, it is not anticipated that any direct impacts on archaeological remains associated with construction activities will occur.

The area of study for this assessment comprises the ZTV referred to above. The potential effect of the development on the historic environment has been assessed in relation to local, regional, national and international levels of significance.

The historic development of the landscape within which East Pit lies is described fully in the ES. The ZTV for the built development indicates that it may be visible from the southern limit of the Black Mountain and Mynydd Myddfai Landscape of Outstanding Historic Interest which lies 4.2 km to the north, and from a single scheduled monument BR333 (Dorwen Standing Stone). More extensive groups of associated Bronze Age scheduled monuments at Llorfa to the north east of the site and Bancbryn to the south west as identified by Cadw, would not be affected.

No listed buildings, historic parks and gardens, or world heritage sites would be affected by the development. The nearest listed buildings are located at Brynamman approximately 2km to the west, and listed remains of Henllys Vale Colliery 2.5km to the east/north east. The ZTV confirms that there would be no intervisibility between these assets and the development.

The ZTV indicates that there would be restricted visibility of the development from within the nearest registered historic landscape known as Black Mountain and Mynydd Myddfai located some 4.2km to the north. The essential components of the landscape include Bronze Age ritual sites, abandoned medieval and earlier settlement sites, industrial remains and the A4069 road linking the Amman Valley with limestone working sites and the Tywi valley. The ZTV suggest that indirect visual impacts would be confined to views of the development from the area around the A4069 and the Beacons Way. Viewpoints from Beacons Way and the A4069 at the southern limit of the registered landscape have been considered as part of the Landscape and Visual

Assessment. Due to the softened wooded landscape between the settlements of Brynamman and Cwmllynfell providing clearer definition of the separation of these settlements and views southwards towards Bancbryn the proposed development would have a slight impact. Such a change would not compromise the heritage value of the designated landscape.

The ZTV indicates that the development would be visible from one scheduled ancient monument (BR388 Dorwen Standing Stone) which is located some 3.2 km away, however due to the screening vegetation and intervening topography it is considered that there would be no unacceptable impacts on this asset.

The conclusions of the ES is that the built development would have a neutral effect on the historical environment, a view endorsed by CADW and Glamorgan Gwent Archaeological Trust who have both raised no objection to the proposal. The proposal is therefore not in conflict with Policies GC2(a) and ENV22 of the Unitary Development Plan.

### **Socio Economic Benefits**

Social and economic benefits of a proposal underpin both national and local planning policies for sustainable development. The scope of the assessment includes potential impacts and effects arising during construction and operation of the built development. The following benefits have been identified:

#### Local Employment

It is estimated that approximately 100 local jobs will be generated during the construction phase over a 10 year period. In terms of tourism and leisure jobs, the socio-economic impact assessment within the ES and the supporting document 'The Economic Case for Tourism uses at East Pit' which accompanies the application identifies that the proposed built development will involve the creation of approximately 150 jobs with a further 50 jobs in the surrounding area.

#### Tourism

##### *Tourist accommodation*

The assessment identifies that none of the existing visitor accommodation in the area provides facilities which can attract and host conferences or event business, consequently the proposed hotel would provide such a facility to nearby attractions. In addition, whilst it is also identified that there is currently an under provision of serviced accommodation in the area the proposal would

complement existing provision rather than displace it. Although there are no estimates of demand for such a new facility in the area, it is acknowledged that there are no similar facilities in the area and thus the conference, spa and hotel facilities will be a new destination in its own right. Since the submission of the original socio economic assessment the applicant has provided updated information in respect of growth rates. The applicant identified that there will be an increase in accommodation demand (visitor numbers in serviced accommodation) of 44% in the five years from 2005 to 2010 (ie an increase from 52,000 to 75,000) which is an average of 7.33 % a year resulting in annual percentage growth in 2012 of 8.22%.

In terms of the potential for displacement of existing facilities, the Updated Economic Case concludes that the demand for tourism facilities and attractions in the Neath Port Talbot area is focused on the main valley corridors and centres of population. It is also recognised that of the five valleys, the Amman Valley, including Tairgwaith, has the fewest tourism facilities with the nearby Trotting Club being the nearest attraction. Therefore, it is unlikely that the proposal will displace existing main attractions such as Afan Forest Park or Aberavon Beach, but will complement them.

The Council commissioned Parsons Brinkerhoff to examine the projected growth identified above and concluded that based on their calculations the annual average growth is just under 7.5 % per annum. While they acknowledge that serviced accommodation grew substantially between 2011 and 2012, long run growth in excess of 8% per annum has been achieved by including two years of very high growth ie. 2005-2006 and 2006-2007. The average over the most recent 5 years is calculated to be just over 3% growth per annum. They do however acknowledge that there is recent evidence which confirms that there is a 'bounce back' in terms of growth in the area which assists in supporting the Applicants relatively high growth projections.

#### *Dive Centre and Water Based Activity Centre*

As there is only one other deep water training facility in the country, located in Scotland , the proposal aims to meet an identified need for, and increase accessibility to, such a facility. It is indicated that the facility is likely to employ up to 20 people and attract at least 150,000 users per year.

The assessment identifies that this facility will employ approximately 20 people in a variety of roles and will attract around 150,000 divers a year.

The key socio economic impacts derived from the proposed built development and identified above would generate employment opportunities in an area

which suffers from higher than average unemployment, this together with the predicted increase in visitors to the local tourism economy is assessed as having a moderate/large significance of effect.

### **Conclusions on the Built Development**

It is considered that the proposed development would significantly benefit the wider area which accords with the overarching objectives and key principles within the Wales Spatial Plan and Planning Policy Wales, together with the aspirations of Policy 9 of the Unitary Development Plan.

### **Responses to Representations in relation to the application as a whole**

Both parts of the report associated with the mineral and the built development, identify and address the impacts of the proposal in detail, and as such many of the issues raised within the objection letters have been addressed. The majority of the responses received which have been addressed within the report are associated with the following key issues;

- The site will not be restored to a common and as such will impact upon the commoners rights.
- The impact upon residents in terms of noise, dust and vibration.
- The structural suitability of the proposed lake.
- Water will not rise to the proposed levels.
- Concern that the site will not be restored at all.
- Impact upon the National Park.
- The development will take place within the 500 metre buffer zone as recommended within MTAN2.
- Reduction in coal transportation by rail;

Additional issues raised are addressed as follows:

- The development will impact upon property values – This is not a material planning consideration and as such cannot be taken into account in the determination of this application.
- The application cannot be considered while the court case is ongoing, who has the lease? who is the legal owner? How can the lease be transferred from one to another and why has coaling been allowed to continue while the court case was ongoing? – There are a number of issues here to deal with. Firstly, the court case has now concluded and has confirmed that the transfer of the land ownership from Celtic Energy to ‘Oak Regeneration’ and its subsidiary ‘Pine’ was a legal transfer. As a

consequence Oak Regeneration and Pine are the owners of the site and Celtic Energy are the mineral licenseholders. Turning to the second issue it is accepted that the site has been operating without consent since the previous consent expired in November 2012, nevertheless a number of reports have been presented to the Planning Committee to advise them on options going forward. Following these reports the Committee resolved in November 2014 to grant consent for the continuation of coaling in accordance with the 2004 consent. Whilst that consent was not issued (due to legal issues associated with the S106 agreement) the principle of the continuation of coaling was accepted. It would therefore be unreasonable for the Council to serve an enforcement notice associated with the site. The operators are however complying with the plans, schemes and conditions on the 2004 consent.

- The Authority should have acted quickly as it became clear that the applicant had not prepared the application so that it covered the requirements of the legislation. – Unfortunately this is a very detailed and complex application and relies upon advice from a number of statutory bodies in addition to third parties including residents. Upon receipt of advice the LPA has consistently requested additional information from the applicant and that information has been the subject of further consultation. It would be unreasonable for the LPA to refuse an application on the basis of insufficient information without first giving the applicant the opportunity to submit the details to address the outstanding issues.
- The further information submitted by the applicant makes no reference to the Mines and Quarries (Tips) Act – All of the relevant issues regarding site stability having regard to the above legislation has been considered by both the applicant and the LPA. To assist this process the LPA appointed an independent geotechnical consultant who had specialist knowledge in this area. The assessments undertaken demonstrate that the site will be safe both operationally and in the longer term.
- The 2004 consent was the last and NPT should cease to impose unwanted development on the village – It is clearly the case that given the existence of a coal resource at this location, the applicants have taken the opportunity to apply for planning permission for further coaling on the site. The LPA cannot refuse to entertain such an application in this case and as such must consider all of the impacts both negative and beneficial before determination. The Inspector when dealing with the 2004 consent confirmed that the proposal at that time was finely

balanced ‘but the need for the coal and the economic benefits would outweigh the harm to the environment and the amenity of the local communities.’ The grant of that consent did not close the door to the submission of further applications.

It is also clear that whilst the coal resource continues to exist beyond the north eastern boundary of the site this area is occupied by an existing community and as such the resource at this location is sterilised and will not be capable of being worked in the future. As a result it is likely that this application will be the last extension of coaling at this location.

- Celtic Energy have agreed that they owe a duty of care to residents within Ochr y Waun. No consultation has taken place with residents – Extensive consultation with all communities took place by the applicant’s agents in advance of the submission of this application, which included numerous workshops in the communities. Furthermore, the LPA has also undertaken extensive consultation in the form of press notices and site notices in 51 different locations to ensure that the application was appropriately advertised in accordance with statutory requirements.
- There has been no development in the area due to the blight of the opencast – It is inaccurate to suggest that the lack of major development in this area is as a consequence of the existence of the open cast. There are open cast developments throughout the country which do not impact upon developments within surrounding communities. Regeneration is a complex matter and is reliant upon available finance, sites and a skilled workforce to name but a few. Whilst it is acknowledged that the site is considered to be within a deprived area as confirmed by a number of publically available statistics presented within the ES, it must also be noted that the employment generated by this site is providing above average wages which in turn are positively impacting upon other businesses and services within the surrounding area. This is reinforced in the 27 letters of support which have been submitted by businesses which form part of the supply chain together with the 50 letters of support from employees of the site and the 5 residents within the community who are not employed in the site, all of whom have acknowledged the beneficial impact the development is having on the local economy.
- Mr Justice Hickenbottom indicated the failure of the opencast operators to restore the sites reflects poorly on the ability of welsh local authorities to regulate activity, leaving voids 100m deep, the stability and safety of which are questioned. The new developments with the SFO and at

Margam should, in the interests of prudent governance, encourage NPT to institute a moratorium on opencast mining – All valid planning application must be considered having regard to their individual merits and must be determined by the Local Planning Authority unless they are ‘called in’ or alternatively they are ‘finally disposed of’. At the time of writing this report, neither of these scenarios has presented itself and as such the LPA must continue to determine the application.

- The public meetings at Tairgwaith and Margam last month indicated that public demands NPT enforce restoration now and that the situation can only be resolved when Celtic and Oak leave the sites. - Whilst this was the case in relation to the Margam meeting, it is fair to say that the meeting at Tairgwaith was more mixed in terms of the way forward for East Pit.
- There was a consensus at the recent public meeting that if approved this could lead to another Aberfan or Dolgarrog Dam and restoration should begin forthwith. – This is not considered to be an accurate reflection of the meeting. Whilst it is acknowledged that it was raised as a concern by a resident. It was not a consensus of opinion from all of those present. Nevertheless as indicated earlier in this report the stability issues of the site have been thoroughly assessed and the proposal will achieve acceptable factors of safety.
- Alternative proposals should be considered as is the case at Margam – Alternative proposals are being considered at Margam on the basis that there isn’t a submitted planning application on the Margam site for consideration.
- I am appalled at reports that Celtic have laid off a large proportion of their workforce, when restoration is due. If this move is to pressurise the council it should be recognised as such. – The employment status of the workforce is a material planning consideration and has been addressed earlier within the report.

In addition to the above, letters have been received from Gwenda Thomas AM and Bethan Jenkins AM. The letters from both AMs are collectively summarised as follows:

- Request that the application be called in by the Welsh Government as the development will have impacts beyond the boundaries of NPT.

- Raise concern in relation to the impact upon the communities albeit acknowledging the positive impact upon the economy; concern about the buffer zone.
- Concerned about the stability of the proposed lake.
- Concerned about the impact upon the National Park.
- The lack of restoration of the site is unacceptable.
- There is a lack of evidence to demonstrate untapped tourism markets.
- There is a lack of customers for the coal proposed to be extracted, specifically in relation to Aberthaw.

Most of these issues have been addressed within the report. In relation to the latter concern, The operators of Aberthaw Power Station RWE Generation, have written in to support the application, confirming that they retain a need for the coal from East Pit as the power station was specifically designed to burn welsh coal and needs security of supply. Such supplies will also avoid/reduce the importation of coal from overseas, the transport of which over long distances is unsustainable. They have also confirmed that significant investment has taken place in relation to the power station to reduce emissions from the site in accordance with the Large Combustion Plant Directive and the continued supply of coal from East Pit will allow Aberthaw to continue to support the local and wider economy in Wales.

The Welsh Government has been requested by a number of parties to ‘call in’ the application. The welsh Government are in regular contact with the LPA to establish the current position relating to its assessment. A copy of the report has been forwarded to them for their consideration, but until the LPA receive either a holding Direction or a Call in from the Welsh Government the responsibility for determining the application is retained at the local level. Notwithstanding the concerns raised in relation to the location of the site on the boundaries with three Councils, ALL of the issues associated with this application in relation to ALL of the communities have been assessed in detail as part of this application.

As stated above, whilst we have received a number of objections to this application we have also received a number of letters of support. 5 letters of support have been received from residents living within the immediate surrounding area who are not employed in the site and they confirm that the proposed development contributes towards the local economy and will result in the delivery of a restoration scheme which will also have long term economic benefits for the local communities in terms of tourism potential. 50 letters of support have been received from employees of the site over half of which also live within the local communities. They also reiterate the aforementioned in

relation to the beneficial impacts associated with their continued employment and their ability to spend within the local area to the benefit of other local businesses. They also support the fact that the site will be restored under this proposal.

A number of Town and Community Councils in the area have objected to the development on the following grounds: Traffic impact; buffer zone requirements under MTAN2; there would be no objection if the operator putting safeguards in place to protect the local communities and ensuring sufficient funds are in place within the escrow to secure restoration of the site; restoration of the site should not include the proposed lake; concerned that working has been allowed to continue without consent; the application is a means to avoid expensive restoration of the site; it is a finely balanced case and should therefore be a responsibility of the Welsh Government to determine; and agrees with the reasons put forward by Gwenda Thomas AM in her letter to the Welsh Government requesting the application be called in by the Welsh Government – All of these issues have been addressed either within the appraisal or within the responses to the representations above.

A letter of objection has also been received from Carmarthenshire Council which is summarised and addressed as follows;

- The proposed extension is within the 500m buffer zone as recommended within MTAN 2 and can only be justified having regard to regeneration, employment and economic considerations – This issue has been addressed within the report where a clear case has been demonstrated that the site will retain well paid jobs within a deprived area; will result in the restoration of the site to enable for the provision of beneficial afteruses together with a development platform for a tourism led regeneration scheme, and more importantly; the buffer zone requirement is aimed at safeguarding the amenities of residents within communities close to open cast sites. The appraisal demonstrates that there will not be an unacceptable impact upon those communities and as such it can be argued that the objective of buffer zones as recommended within MTAN 2 will be achieved.
- The noise assessment has not been revised to account for the submission of an amended phasing plan as inconsistencies remain between phase 1 and 4. –This issue has been addressed following the receipt of an amended and additional noise report in March 2015. The report provides updated background noise levels for each of the six noise receptor areas for each of the phases of development. They have also assessed the predicted noise levels having regard to MTAN2 whereby the 10dB (A)

above background levels or 55 dB (A) whichever is the lower, between 7.00 and 19.00 or 10dB (A) above background levels or 42 dB (A) which ever is lower at all other times during the operation of the site are assessed. It is evident that there are no breaches of these levels within the communities of Carmarthenshire. The limited breaches which will occur are within Neath Port Talbot, they are very minor and for a very short duration. Carmarthenshire have confirmed that they are now satisfied with the amended noise data and they no longer raise an objection on noise grounds subject to the imposition of appropriate conditions.

- The application needs to demonstrate that it meets the first test as set out within paragraph 62 of MPPW which requires the local and community benefits to outweigh the dis-benefits of the development – The benefits of the application relate to the completion of coaling at the site and the provision of an affordable and therefore deliverable restoration strategy. This is unlikely to be achieved if reliance is placed upon compliance with the 2004 consent given that the operator and site owners have confirmed that there are insufficient funds available to restore the site in accordance with the previously approved planning permission. Moreover and as stated within the report, in the short term the site will result in the provision of a country park which will also incorporate areas of grazing which will appeal to a wider number of people within the local community. In the long term a development platform will be created to accommodate a tourism led regeneration development which will result in alternative longer term employment in an area where unemployment levels are higher than the national average. It is considered that these are sufficiently robust benefits for the local community which outweigh the impacts of this proposal. Furthermore, whilst this is not a material planning consideration, the operator has also offered a total of £475,000 as a community fund for the local communities surrounding the site.
- The extension of coaling activities in terms of timescales will prolong the impact upon the local communities. This was an issue considered by the Inspector in the last appeal and a compelling argument needs to be made to justify further disturbance over a longer period of time – It is acknowledged that the Inspector in the last appeal expressed concern in relation to prolonged period of activities at the site and the impact upon local communities. He explained that the strength of this argument would increase in respect of any further proposals for future opencast work. However a pragmatic approach must be taken with regard to the assessment of this application given that it is likely to be the only realistic solution to delivering restoration of the site. When the 2004

consent was considered and determined by the Planning Inspectorate, the Coal industry was not in decline and had not at the time collapsed in other parts of the country. Unfortunately the economic climate has changed since 2004 and sites are being abandoned to the long term detriment of the communities within which they are located. This resulted in the Welsh Government commissioning research into the potential extent of sites which have been or could be abandoned in the future and solutions to ensure that restoration is delivered. The research clearly indicates that LPAs must take a pragmatic approach to considering alternative solutions which may result in additional coaling. In this particular case, additional coaling is proposed as the proceeds from the sale of that coal will pay for the necessary restoration. Furthermore, whilst it is acknowledged that the coaling will extend the operations at this location, the proposed restoration of the site will be delivered in a shorter time period than that associated with the originally approved restoration of the site. The reduced engineering operations associated with restoration, will also result in less of an impact upon surrounding communities. As a consequence whilst the proposal will prolong activities at the site when compared to the 2004, it is considered that they are necessary to ensure acceptable restoration to the long term benefit of communities located around its perimeter.

- Whilst it is acknowledged that the proposal will result in socio economic benefits and the delivery of a country park, all the other benefits will be to the benefit of the developer rather than the communities. It is uncertain whether the tourism led regeneration will be delivered and as such the benefits associated with that element of the scheme cannot be relied upon – As part of detailed calculations and negotiations associated with the bond, the operator has confirmed that in order to cover the restoration costs associated with the revised restoration of the site it will be necessary to rely on the following: Use of the existing funds within the escrow account, investment of profits associated with the additional coaling into the new restoration fund and the investment of a further £6 million from Celtic Energy. Notwithstanding this, it remains the case that without the proposed extension, the site is likely to remain un-restored, to the detriment of the health, safety and socio economics of the surrounding communities.

It could be argued that the proposal is cheaper to deliver and therefore reduces the liability associated with restoration costs to the operator, hence to the benefit of the operator. However it is clear from the recent court case that the ownership of the land has been successfully transferred from Celtic to Oak and as such it is Oak who are liable for

restoration of this site, not Celtic. On this basis, if the operator has confirmed that all profits plus additional money will be spent on restoring the site they will be financially disadvantaged from this proposal as opposed to benefitting from it.

It is acknowledged that in contrast to restoration of the site the tourism led regeneration scheme cannot be secured by way of a legal agreement. Nevertheless an argument has been made for untapped demand for tourism accommodation and for the creation of a tourism destination in close proximity to the Park. All regeneration schemes are reliant upon a number of factors one of which is the availability of a suitable site. This is being delivered as part of this proposal. Furthermore a charitable organisation known as the Land Trust are actively involved in similar sites across the country and have been successful in both restoring former coal fields in addition to securing regeneration schemes to the benefit of the communities which surround the sites. The Land Trust are a partner within this development and may well be responsible for the future management of the site in conjunction with the local community and other interested parties. Their involvement reinforces the deliverability and socio economic benefits associated with this proposal.

- Concern that the argument associated with the need for coal does not outweigh the impact upon Rhosaman. - As stated earlier within this report, the operators of Aberthaw power station have written to confirm the need for a continued supply from this site. Furthermore the impacts associated with noise, dust, vibration and prolonged disruption have been assessed in detail and it is considered that it isn't only the argument associated with need that should be considered when assessing impact upon the local communities, it is also the argument associated with securing restoration of the site which has been explained in some detail above.

## **Conclusion**

The proposed development incorporates a complex set of issues to consider having regard to National and Local Policy and Guidance, short term impacts upon the local communities, and critically, the long term impact upon the communities.

The long term restoration of this site is one of the main objectives of this application. It is clear from extensive discussions with both the operator and the landowner that there are insufficient funds available to secure the restoration of the site in accordance with that approved under the 2004 consent. Furthermore the funds that are available are likely to be insufficient to even make the site safe, should the operator and landowner abandon the site. As explained earlier in this report, whilst the Council has the potential to take enforcement action against the owner of the site should the site be abandoned, this is unlikely to result in a successful outcome, and the site would in all likelihood remain un-restored. There is however a deliverable solution put forward in the form of this application.

It is acknowledged that it will require additional coaling to take place within the 500 metres of the closest residential properties. However, for the reasons outlined above it is considered that there are exceptional circumstances justifying such workings. Accordingly, the proposal is in compliance with MTAN2.

Furthermore the impacts of coaling within this buffer zone have been assessed within detail in this report and it is considered that the amenities of residents will be sufficiently safeguarded.

As such, even if there were no ‘exceptional circumstances’ the fact that MTAN2 stipulates that coal working “will generally not be acceptable within 500m of settlements”, would not justify the refusal of this application in this instance. This is because the proposal is in compliance with the buffer zones of 200m required by UDP Policy M9, and given that it would not give rise to unacceptable impacts on residential amenities, there is no basis in this case for departing from the Development Plan by requiring a larger buffer zone to be applied.

The proposal also accords with the pragmatic recommendations within the research document published by the Welsh Government entitled ‘Research into the failure to restore opencast coal sites in south Wales’, which identifies sites which are at risk of not being restored and also seeks to identify ways of restoring abandoned sites. This document has been published post MTAN2 and

post the economic crash in the coal industry, and as such is a material consideration.

It is also acknowledged that it will result in the creation of a restored landscape which differs significantly from that which was in place before coaling commenced and which was originally proposed under the 2004 consent. Whilst it is different, it is also considered to be acceptable as it will introduce a landscape which will sit comfortably within its surroundings. It will also provide a diverse range of habitats to enhance the ecological richness of the area, and it will enable for the use of the site by the wider community as a country park. This wider use will still enable grazing rights to be retained on the site whilst also allowing accessibility of this large site via the reinstatement and introduction of new footpaths and bridleways. As a result the application will provide wide ranging benefits for the communities situated around its perimeter.

Furthermore the continuation of employment at the site will secure well paid employment for a longer period of time for the 115 employees at the site, while also providing continued indirect employment for companies reliant upon the site. The socio economic benefits of the site cannot therefore be ignored.

As a result whilst it is acknowledged that the site will extend the long-term cumulative effects of the opencast mining on the local community over a longer period of time, this is a necessity to secure the provision of a safe and restored site by 2020. This restored landscape will also create a platform for the tourism led regeneration scheme proposed as part of this application, which will in turn lead to employment opportunities within this deprived area where unemployment levels are higher than average.

It is acknowledged that the proposal has generated some level of public concern but it has also given rise to support. PPW Paragraph 3.1.8 states that while the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own a reasonable ground for refusing or granting planning permission. It goes on to say it is for the local planning authority to decide whether, upon the facts of the particular case, the perceived fears are of such limited weight that a refusal of planning permission on those grounds would be unreasonable. Having assessed the proposal within the context and criteria of the relevant national and local policies it is considered that a refusal of planning permission on the grounds of objection received would be unreasonable.

Taking into consideration all the evidence and assessment undertaken, it is concluded that the proposal is environmentally acceptable subject to conditions and a Legal Agreement. All potentially negative aspects of the proposed development have been considered. It is considered that these carry insufficient weight, either individually or collectively to outweigh the acceptability of the proposal.

This recommendation has been made in accordance with article 24 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and article 3 of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999 (EIA Regulations), and has taken into consideration the Environmental Information and the Supplementary Environmental (as defined in the EIA Regulations), and the comments, observations and representations provided by members of the public have been taken into consideration in this recommendation. In addition, all the relevant European directives, legislation and regulations have been taken into account.

Having regard to Policies ENV1, ENV3, ENV5, ENV11, ENV14, ENV15, ENV16, ENV17, ENV29, EC3, EC7, GC1, GC2, IE3, IE4, T1, R02, R04, R05 and T1 of Neath Port Talbot Unitary Development Plan 2008, Planning Policy Wales (Edition 7, 2014), Minerals Technical Advice Note 2: Coal, Technical Advice Note 5: Nature Conservation and Planning (2009), Technical Advice Note 6: Planning for Sustainable Rural Communities (July 2010), Technical Advice Note 11: Noise (1997), Technical Advice Note 12: Design (2014), Technical Advice Note 13: Tourism (1997), Technical Advice Note 15: Development and Flood Risk (2004), Technical Advice Note 16: Sport, Recreation and Open Space (2009), Technical Advice Note 18: Transport (2007) Technical Advice Note 23: Economic Development (2014) and the Research document published by the Welsh Government entitled 'Research into the failure to restore opencast coal sites in south Wales', it is considered that the applicant has satisfactorily justified the need for the development and that any harm associated with the development would be outweighed by the public benefit. The proposed development would secure the restoration of a significant open cast coal site which may otherwise be left un-restored and will in turn contribute towards the aspirations and key principles for socio-economic growth in the region as set out within the Wales Spatial Plan, acting as a contributor to the local economy through the provision of a strategic tourist destination.

Paragraph 19 of Welsh Government Circular 07/2012 - The Town and Country Planning (Notification) (Wales) Direction 2012, requires Local Planning Authorities to refer applications for the winning and working of minerals to the

Welsh Government if the application is contrary to the Development Plan in force. As assessed above, it is considered that this application is in accordance with the policies within the Neath Port Talbot Unitary Development Plan and as such it is not proposed to refer this application to the Welsh Government.

## **RECOMMENDATION**

Approval subject to the following conditions and upon the signing of a S106 agreement to secure the following Heads of Terms:

1. Provision of a Bond to the total of £23,000,000 to secure restoration and aftercare of the site, plus an additional £7,615,000 to be paid at the end of the first annual review.
2. Appointment at the expense of the operator of an independent restoration and aftercare monitoring officer who will be responsible for monitoring restoration in accordance with the detailed tasks outlined within the Bond report prepared by the Coal Authority.
3. Appointment at the expense of the operator of an independent geotechnical expert who will monitor the stability of the Eastern High Wall throughout the duration of the operations until restoration is complete.
4. Provision of commuted sums (sums to be agreed) for the repair and maintenance of additional footbridges on the reinstated public rights of way proposed throughout the site.
5. Provision of a footway along the A4068 from the site entrance into the villages of Cwmllynfell and Cefn-Bryn-Brain.
6. Provision of a community fund amounting to £475,000 as specified within Appendix A of this report.

## **CONDITIONS**

### CONDITIONS ASSOCIATED WITH THE MINERAL DEVELOPMENT

#### Duration of the Development

(1) Extraction of coal shall not occur at the site after 30th September 2018. In the event of coal extraction ceasing permanently before this date the Local Planning Authority shall be notified in writing of the date of cessation within 7 days of its occurrence.

#### Reason

To ensure that coal extraction is completed within an acceptable timeframe.

(2) All coal washing activities shall cease and all coal stocks shall be removed from the site by no later than 30th September 2019.

#### Reason

To protect the character and appearance of the site and to limit development to a reasonable timescale for the washing of coal and stocking of coal.

(3) The phased restoration of the site shall be undertaken in accordance with the sequence of restoration areas set out under Drg LAR-B-09/K (Oct 2014) and shall be completed in accordance with the following timescales and dates:

Phase 2:...31st March 2016

Phase 3A, 3B and 4:...31st March 2017

Phase 5:...31st March 2020

#### Reason

To protect the character and appearance of the site and the surrounding area and the living conditions of nearby residents and to ensure progressive restoration is undertaken.

(4) Notwithstanding any progressive restoration already undertaken at the site during the coaling period in accordance with the programme set out under Condition 3, final and full restoration of the site shall commence immediately after the completion of coaling. It shall be completed in its entirety in accordance with the restoration schemes or any other conditions as they apply to the restoration of the site or as may be subsequently amended by any condition or approval under this permission. Such works shall be completed in

full by 31st March 2020 or within 18 months of the date of the cessation of coaling as notified to the Local Planning Authority under Condition 1 whichever is the sooner.

#### Reason

To protect the character and appearance of the site and ensure that the site is fully restored in a reasonable timescale.

#### General Operational

(5) The minerals development, reclamation, subsequent restoration and the aftercare (creation of a Country Park) shall be carried out in accordance with the following documents and plans or as otherwise modified by other conditions of this permission or schemes and details subsequently approved by the Local Planning Authority under this permission: -

Drgs. LAR/B/01F, 02G, 03G, 03A-G, 03B-G, 04G, 05G, 06G, 07G, 08G, 09I, 09K

#### Reason

To retain adequate control of the development hereby approved.

(6) Within 7 days of the date of this permission a copy of this permission including all plans and documents hereby approved, shall be available at the site offices for inspection by the Local Planning Authority during normal working hours at the site specified under this permission. These documents and any other plans and documents subsequently approved in accordance with this permission shall remain available at the site until restoration is completed.

#### Reason

To enable the Local Planning Authority to monitor compliance with the conditions of the planning permission and that operators of the site and any relevant officer of the Local Planning Authority has access to such approvals on the site.

(7) Overburden from the proposed mining operations shall only be placed above the proposed restoration contour levels set out under Drgs. LAR/B/91 within the surcharge areas set out under Drgs. LAR/B/06G and LAR/B/07G and LAR/B/08G and to those levels set out under the plans for the surcharge areas. Soil storage mounds to facilitate restoration are not covered by this condition..

Reason

In the interest of the amenities of the area.

(8) Within 3 months of the date of this permission and at intervals of 6 months thereafter, details in the form of a land survey and contour plan or a series of plans, sectional details and calculations, shall be provided to the Local Planning Authority for its information, indicating the contours to AOD levels of the site and surcharge mound, the extent and volume of the extraction void and the topsoil, subsoil and soil forming mounds at each such interval. The plans, at a scale of 1:2500, shall show on all occasions the levels of all of the site on the date of the survey and the levels to be achieved under the proposed final restoration levels set out under Drg. LAR/B/09I or any subsequently approved detail under this consent. This provision shall be required until the site is fully restored.

Reason

In order that the Authority can monitor the progress of tipping and any progressive restoration within the site.

(9) The location of the proposed on-site washery shall remain within the area located on and be constructed in accordance with the dimensions and layout as set out on Plan LAR/B/10 and Drg. Ref. 14929 Barrel Washing Plan unless an acceptable alternative location is submitted to and approved in writing by the Local Planning Authority in advance of its siting.

Reason

To protect the amenities of the area.

(10) Notwithstanding the provisions of Parts 19, 20 and 21 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending or re-enacting that Order), with the exception of those detailed in the application hereby approved, no fixed plant or machinery, buildings, structures, erections and waste deposits above the height of 5m shall be erected, extended, installed or replaced at the site complex or on ancillary mining land without the prior approval of the Local Planning Authority.

Reason

In the interest of the amenities of the area and to retain adequate control over the visual impact of the development.

(11)The external walls and roofs of the buildings and the external surfaces of structures on the site shall be dark green in colour. The colour shall thereafter be maintained until the buildings and structures are removed from the site.

Reason

To protect the character and appearance of the site and the surrounding area.

(12) All existing fences and hedges around the perimeter of the site shall be retained in a stock-proof condition throughout the period of working, restoration and aftercare unless otherwise modified in accordance with any further detail approved under this permission.

Reason

In the interest of safety.

(13) Water treatment areas shall be individually fenced so as to prohibit stock or unauthorised personnel from entering and the fencing shall be maintained until such time as the Local Planning Authority has agreed in writing to their removal.

Reason

In the interest of safety.

(14)The only coal to be prepared, treated and stocked at the site shall be that extracted from the site, and no other mineral or other material shall be imported into the site for preparation, treatment, stocking or deposition other than that required for the purposes of restoration in accordance with a scheme which shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason

To avoid any ambiguity or confusion as to the development hereby permitted and in particular to prevent development on a scale of a nature not envisaged at the time the application to which this permission relates was considered unless the Local Planning Authority has given its prior approval.

(15) At no time shall any coal extraction be undertaken on the site except within the area defined as the coal extraction limits identified on Drg. LAR/B/06G and at no time shall coal extraction be undertaken below the Big Vein seam.

Reason

To protect the character and appearance of the site and the surrounding area and the living conditions of nearby residents.

(16) Coal stocking shall not occur at the site except in the area identified as the coal stocking ground on the approved drawings set out under Condition 5. Coal stocks shall not exceed 6 metres in height above ground level at any time.

Reason

In the interest of amenities.

(17)The transportation, temporary stocking and loading of coal and associated ancillary locomotive movements for operations at the Gwaun Cae Gurwen Rail Pad shall be restricted to the area identified on Drg. LAR/B/13.

Reason

To identify the operational limits of the Gwaun Cae Gurwen Rail Pad.

(18)The use of the Gwaun Cae Gurwen Rail Pad as identified on Drg. LAR/B/13 shall be solely for the stocking and loading of coal derived and transported from the East Pit/Lakes Rhosamman site approved under this permission and shall be for a temporary period only and shall cease no later than 12 months after the completion of coaling at the East Pit Lakes of Rhosamman site or 30th September 2019 whichever is the sooner.

Reason

To prevent development on a scale not considered when the application was first considered and to ensure that the railhead is limited to a time for its designated use under this permission.

(19) Within 3 months of the date of this permission a scheme shall be submitted in writing for the written approval of the Local Planning Authority for the retention and continuation of the pumping of accumulated water from the void during coaling, following the completion of coaling, during any suspended period of coaling greater than two weeks and during the final restoration phase of the site.

The scheme shall be implemented as approved.

## Reason

To maintain adequate conditions within the void for backfilling of overburden and its restoration.

(20) Within 18 months of the date of this permission the building and property known as 43 Ochr Y Waun shall be dismantled and demolished and all resultant materials shall be removed from the site and the surface graded and grass seeded in accordance with a specification to be submitted to and agreed in writing with the Local Planning Authority.

## Reason

In the interest of the local amenity of the area and in accordance with the restoration strategy set out under approved Drg. LAR/B/09I.

## Hours of Working

(21) Except in an emergency which shall be notified in writing to the Local Planning Authority within 72 hours of such an event, or unless otherwise approved in writing by the Local Planning Authority, operations, other than water pumping servicing, environmental monitoring or maintenance of plant, shall not be carried out at the site except between the following times: 06:00 hours to 22:00 hours Monday to Friday and 06:00 hours to 13:00 hours Saturdays.

## Reason

In the interests of amenity.

(22) Notwithstanding the provisions of Condition 21 operations involving the formation or subsequent removal of baffle mounds, soil mounds, the reconstruction of the soil forming bund, the stripping and replacement of soils and the maintenance, removal or restoration of water treatment areas, shall not be carried out except between the following times: 08:00 hours to 18:00 hours Monday to Friday and 08:00 hours to 13:00 hours Saturdays.

## Reason

In the interests of amenity.

(23) Notwithstanding the provisions of Condition 21, operations involving the on-site washery shall not be carried out except between the following times: 07:00 hours to 19:00 hours Mondays to Fridays and 07:00 hours to 13:00 hours on Saturdays

Reason

In the interests of amenity.

(24) Notwithstanding the provisions of condition 21, temporary operations associated with final restoration works and the Phase 3B screen bund relocation, which are the subject of the temporary noise limit set out in conditions 27 and 28, shall only be undertaken between 08.00 -18.00 Mondays to Fridays, and 08.00 to 13.00 on Saturdays.

Reason

In the interests of amenity.

(25) Operations at the Gwan Cae Gurwen Rail Pad shall not occur except between 07:00 hours and 19:00 hours Mondays to Fridays and 07:00 and 12:00 hours on Saturdays. No such operations shall occur on Sundays, Bank or Public Holidays.

Reason

In the interests of amenity.

Noise

(26) Within 3 months from the date of this permission, a Noise Monitoring and Management Action Plan (NMMAP) shall be submitted in writing for the written approval of the Local Planning Authority for the control, suppression and monitoring of noise generated directly or indirectly as the result of any operations on the opencast and railhead site including restoration works. The scheme shall include the following:

a) noise modelling procedures and methodologies which must include the provision that on the request of the Local Planning Authority that an independent suitably qualified Acoustic Consultant is employed for noise assessment and monitoring and a report provided to the Local Planning Authority which shall include;

- noise monitoring locations;

- frequency of measurement;

- presentation of results;

b) procedures to be adopted if noise limits go above the maximum noise levels set out under conditions 27, 28 and 29 of this permission;

c) procedures and methods to reduce noise emissions from the site to the lowest possible level; and measures to ensure that efficient silencing equipment is fitted to and used by all vehicles and machinery on the site'

d) measures to notify local residents of proposed operations which are likely to result in increased noise levels (above those specified within condition 27) prior to the operations taking place (Phase 5)

e) procedures for the review of the NMMAP if noise levels, despite adopting mitigation measures previously approved continue to exceed the levels specified within conditions 29, 30 and 31. The review of the NMMAP shall identify the reasons why noise levels are exceeding permitted noise levels and propose further mitigation to address these exceedances.

The NMMAP shall be implemented as approved.

#### Reason

To provide for the suppression, control and monitoring of noise from the development where it is anticipated that preventative measures are likely to be required in the interest of the amenity of the surrounding area.

(27) Notwithstanding the hours specified in conditions 20 to 25, during the hours of 07.00 to 19.00 Monday to Friday (08.00 to 18.00 for phase 3b) and 07.00 to 13.00 hours on Saturdays, (08.00 to 13.00 for phase 3b) the noise levels arising from the development of phases 2, 3, 3a, 3b and 4 shall not exceed the following levels at the specified locations as measured in dB LAeq (1 hour) freefield:

Tairgwaith Workingmens club	47
Morrison place, Tairgwaith	49
Gorsto Road, Gwaun Cae Gurwen	48
Glanrhyd, Rhosaman	49
Ochr y Waun, Cwmllynfell	47
Penybryn, Cwmllynfell	46

Reason

In the interests of residential amenity

(28) Notwithstanding the hours specified in conditions 20 to 25 during the hours of 08.00 to 18.00 Monday to Friday and 08.00 to 13.00 hours on Saturdays, the noise levels arising from the development of phase 5 shall not exceed the following levels at the specified locations as measured in dB LAeq (1 hour) freefield:

Tairgwaith Workingmens club	47
Morrison place, Tairgwaith	50
Gorsto Road, Gwaun Cae Gurwen	54
Glanrhyd, Rhosaman	49
Ochr y Waun, Cwmllynfell	52
Penybryn, Cwmllynfell	50

Reason

In the interests of residential amenity.

(29) Outside the hours 07.00 to 19.00 Mondays to Fridays (08.00 to 18.00 in phase 3b and 5) and 07.00 to 13.00 hours on Saturdays (08.00 to 13.00 in Phase 3b and 5), the noise levels arising from the development shall not exceed 42 dB LAeq (1 hour) freefield at any noise sensitive property.

Reason:

In the interests of residential amenity

(30) All vehicles, plant and machinery operated within the site shall, at all times, be fitted with and use silencers and acoustic covers in accordance with the manufacturers recommendations. Save for the purposes of maintenance, no machinery shall be operated with the acoustic covers open or removed.

Reason

In the interests of residential amenity.

(31) Mobile plant and vehicles shall be fitted with ambient related, broadband or low-tone reversing warning devices.

#### Reason

To protect the living conditions of nearby residents.

#### Blasting

(32) Within 3 months of the date of this permission a Blast Monitoring and Management Action Plan (BMMAP) shall be submitted in writing for the written approval of the Local Planning Authority. All blasting operations and monitoring activities shall be carried out in accordance with the approved BMMAP for the duration of coal operations at the site. The scheme shall include but not necessarily be limited to, the following provisions: -

(i) A one-off publicity exercise to notify residents of the new permission and associated blast operations and monitoring regime;

(ii) The provision of visual and audible warnings which shall be implemented prior to any blast, including the provision of signs on or adjacent to the National Cycle Route;

(iii) The actions to be undertaken to reduce the impact of any blast in terms of vibration, dust emission, noise and air over pressure;

(iv) The monitoring locations and the methodology for monitoring blasting operations, including the submission of blasting results to the Local Planning Authority;

(v) The action to be undertaken in respect of any blasting complaint received by the Local Planning Authority and developer/operator;

(vi) Procedures for the review of the BMMAP if vibration and air over pressure levels, despite adopting the mitigation measures previously approved, continue to exceed the levels specified in conditions 33 and 36. The review of the BMMAP shall identify the reasons why vibration and air over pressure are exceeding the permitted levels and propose mitigation measures to address these exceedances;

(vii) On the request of the Local Planning Authority that an independent suitably qualified consultant for the monitoring of blasting effects is employed for blast assessment monitoring and a report outlining the results of that assessment is provided to the Local Planning Authority.

## Reason

To minimise the blasing impact of the development on the amenity of the local area.

(33) Except in the case of any emergency, blasting within the site shall only take place between 10:00 hours to 12:00 hours and 13:00 hours to 16:00 hours Monday to Fridays and 10:00 hours to 12:00 hours on Saturdays. If blasting takes place outside these hours, in the case of an emergency, full written details of the circumstances and time of blasting shall be submitted to the Local Planning Authority within three days after the occurrence. No blasting shall take place during the hours of darkness, or on Sundays, Bank or National Holidays.

## Reason

To protect the living conditions of nearby residents.\_

(34) No blasting shall take place as part of the development hereby permitted which results in a peak particle velocity (ppv) in any plane which exceeds 6.0mm per second at any residential or similar vibration sensitive property and 95% of blasts shall not exceed 4mm per second in any 20 week period at any of these blast sensitive properties. Where the ppv on any blast exceeds 4.0mm per second at any of these blast sensitive properties details of the blast results shall be submitted to the Local Planning Authority within 24 hours and, within one week of any blast where the ppv exceeds 4.0mm per second at any of these blast sensitive properties, details of the reason(s) for the exceedance and any additional mitigation measure(s) to be implemented to ensure compliance with the condition shall be submitted to the Local Planning Authority for their written approval. All future blasting on site shall be carried out utilising the approved mitigation measures(s).

## Reason

To minimise the blasting impact of the development on the amenity of the local area.

(35) Blasting shall only take place within the defined limit of excavation identified on Drg. LAR/B/06G.

## Reason

To protect the living conditions of nearby residents.

(36) All practicable steps shall be undertaken by careful design of blasting operation to limit air overpressure and in normal circumstances shall not exceed 120dB linear in 95% of the blasts measured in any twelve month period and no individual blast shall exceed 125dB, measured at the nearest noise sensitive property. Procedures included in the approved BMMAP shall be applied where these limits are exceeded.

Reason

In the interest of the amenity of the area.

Dust and Air Quality

(37) Within 3 months of the date of this permission a Dust and Air Quality Monitoring and Management Action Plan (DAQMMAP) shall be submitted to the Local Planning Authority for its written approval. The DAQMMAP shall include, but not necessarily be limited to, the provisions in the submitted Draft Dust Management Action Plan submitted and incorporated into the ES Volume 18 (February 2014), and the following: -

(a) Measures to minimise the generation of dust and reduce its impact on nearby dust sensitive receptors;

(b) The use of water bowsers, sprays and vapour masts to dampen overburden mounds, haul roads, coal stockpiles and other operational areas of the site;

(c) The sweeping of access and haul roads, where necessary;

(d) The location of haul roads as far from sensitive receptors such as residential properties as is practicable;

(e) The minimisation of drop heights during loading and unloading of overburden, soils, subsoils, soil forming material and coal;

(f) Limiting on-site vehicle speeds;

(g) Provisions for the temporary suspension of mineral processing, mineral extraction, soil movements or vehicle movements during periods of unfavourably dry or windy weather conditions;

(h) Details of the mechanisms to be employed to monitor dust and airborne particulates (PM10's) including the monitoring locations, which shall include fixed monitoring locations throughout the development, and additional monitoring locations which may be required to reflect the most intense operational areas at different times of the development, and the mechanism to

record the dust and PM10 monitoring data, including its submission to the Local Planning Authority;

(i) Details of the mechanism for dealing with any complaints received either directly from members of the public or via the Local Planning Authorities of the area;

(j) Procedures for the review of the DAQMMap if dust levels continue to exceed the limits set out in MTAN 2 and air quality associated with this site, the air quality standards which could lead to justifiable complaints despite adopting the mitigation measures previously approved and continue to exceed the levels specified. The review of the DAQMMap shall specify the reasons why dust or air quality is exceeding the limits and must propose further mitigation to address these exceedences.

Work shall not commence in the additional extraction area (identified on plan LAR/B/03B-G) until such time as the DAQMMap has been submitted to and approved in writing by the Local Planning Authority, and the DAQMMap shall thereafter be implemented in accordance with the approved details.

Reason

To ensure that emissions to air associated with the operation of the development are monitored and minimised.

Floodlighting

(38) All floodlighting shall be angled downwards and suitably shielded to ensure that it does not result in glare or dazzle to the surrounding land, adjacent public highways and properties. The floodlighting shall be implemented in accordance with a scheme which shall be submitted to and agreed in writing with the Local Planning Authority. The floodlighting shall be erected and operated in accordance with the approved scheme and maintained for the life of the coaling and restoration periods of the development.

Reason

In the interest of the amenity of the area and to protect the special qualities of the adjacent National Park.

Topsoil, Subsoils and Soil Forming Materials

(39) Unless modified or approved by other conditions of this consent, the stripping, handling replacement and management of soils, subsoils and any associated soil forming material shall be carried out in accordance with the document Lakes of Rhosamman Soil Movement (Revised) - October 2014 received on 7th November 2014.

#### Reason

To ensure adequate management, conservation and utilisation of soil resources and the restoration of the site in the interest of the amenity of the area.

(40) All areas of excavation, overburden, proposed storage mounds, haulage and temporary access roads, hardstandings, water treatment and lagoon sites, drainage channels and any other areas likely to be disturbed by any subsequent operations shall be stripped of topsoil, subsoil and any soil forming material which shall be stored in separate mounds or used in the progressive restoration of the site. The topsoil and sub soil mounds shall be stored seperately without overlapping and shall be sited, constructed and managed to prevent contamination by any other material, liquid or compound.

#### Reason

To ensure adequate management, conservation and utilisation of soil resources for the restoration of the stie.

(41) Unless modified or approved by other conditions or schemes of this permission all natural topsoil found within any soil mound previously identified as subsoil or soil-forming material shall be separated from the mound and treated separately in the restoration. Where such material is contaminated by Japanese Knotweed, this shall be controlled by a course of treatment, the details of which shall be submitted to, and approved in writing by, the Local Planning Authority prior to the placement of the contaminated material.

#### Reason

To ensure adequate management conservation and utilisation of soil resources for the restoration of the site.

(42) All soil stripping operations and soil replacement operations shall be with a truck and shovel. The only equipment permitted on areas of unstripped soils/replaced shall be 360 degree tracked vehicles involved in the soil loading/spreading operations. Vehicles to be used in transporting and discharge of recovered soils shall only be those that discharge their load at the rear extremity of the vehicles. Any alternative methods shall be approved in

writing by the Local Planning Authority prior to commencement of any such method.

Reason

To protect the character and appearance of the site and the surrounding area.

(43) All turf, topsoil, subsoil and or soil forming material shall be retained for restoration of the site and shall not be removed or sold from the site.

Reason

To protect the character and appearance of the site and the surrounding area.

(44) All storage mounds of topsoil, subsoil and soil-forming material, and their margins shall be seeded to grass within the first growing season, and in any event within 6 months of their construction, maintained to encourage a dense grass sward to develop and shall not be allowed to over winter without grass cover. All vegetation growing on soil storage bunds and their margins within the site shall be maintained by cutting at least once during the growing season. All noxious weed growth shall be controlled by cutting or herbicide spraying to prevent weed seed contamination of the soil resource on site or on surrounding land.

Reason

To protect the character and appearance of the site and the surrounding area.

(45) Notwithstanding the requirements of condition 42, other than those essential for site access, only those vehicles involved in loading soils shall be permitted on unstripped areas, and then restricted only to operations to recover the soils. Vehicles used in transporting soils shall only travel over areas of ground that have previously been stripped of topsoil and subsoil.

Reason

To protect the character and appearance of the site and the surrounding area.

(46) The Local Planning Authority shall be given a minimum of 72 hours written notice prior to the commencement of any phase of soil stripping and soil replacement operations, including the dismantling of soil mounds.

Reason

To aid in the monitoring of site activities.

(47) Unless modified or approved under other Conditions of this permission the restoration of those areas of the site for agricultural use shall conform to the following requirements:

- All plant, machinery, buildings, fixed equipment, roads and areas of hardstanding, including site compounds, shall be removed unless any feature forms part of the approved restoration plan.
- When they cease to be required for pollution control purposes, settlement ponds shall be emptied of contents, their floors and sides broken up and the voids filled with suitable material to the approved levels prior to the spreading of soils.
- Following the construction of the final landform (and where it does not conflict with nature conservation outcomes) the resultant base material shall be comprehensively ripped to a minimum depth of 0.3m before any soil material is spread. All stones and boulders greater than 300mm in length in any direction, and other foreign material arising from the ripping operations shall be removed and disposed of. Special attention shall be given to areas of excessive compaction such as haul/access roads where deeper ripping may be necessary.
- Original ground beneath soil and other material bunds shall be loosened to a minimum depth of 0.3m.
- Any topsoils, subsoil and soil forming material set aside for use for agricultural restoration shall be spread uniformly and in the correct sequence in accordance with the approved restoration scheme. Any soil compaction caused by soil placement operations shall be removed by a loosening or cultivation method.

Reason

To ensure adequate management, conservation and utilisation of soil resources for the restoration of the site, in the interests of amenity.

(48) All soils or soil forming materials shall be stripped, conserved and re-spread in accordance with the appropriate technique as set out in the Soils Strategy unless modified or approved by other schemes or conditions of this consent. The following rules shall apply:

- (a) The soils shall be in a dry and friable condition before any attempt is made to move them.

- (b) No wheeled dumped trucks shall be allowed across laid soils.
- (c) The final topsoil, subsoil and soil forming material surface shall be stripped, placed and levelled by the excavator and dump truck technique as described in Sheet 4 of MAFF Good Practice Guide for Handling Soils.
- (d) Ripping or other soil loosening operation within the loose laid soils shall only be carried out with the prior approval of the Local Planning Authority.
- (e) Stone removal from topsoil, or subsoil used as topsoil substitute, shall be carried out to achieve an acceptable seedbed.
- (f) The final surface shall only be traversed by agricultural machinery suitably adapted to reduce ground pressure.

#### Reason

To ensure appropriate handling of soil resources, in the interests of amenity.

(49) No soils shall be replaced on any areas restored to finished ground profiles until the levels achieved, in the form of a written statement and plan, have been submitted to, and agreed by the Local Planning Authority.

#### Reason

To ensure adequate restoration, in the interests of amenity.

#### Transportation and Access

(50) The only access to be utilised during the coaling, coal transportation and restoration phases of the development shall be those access points shown on Plan LAR/A/03A by vehicles gaining access to or from the site, and no other access or access point shall be used without the prior written approval of the Local Planning Authority.

#### Reason

In the interest of highway safety and the amenity of the area.

(51) Before entering onto the public highway the wheels, undersides and bodies of all vehicles travelling from the site shall be cleaned, and their loads shall be secured and fully covered by sheeting and in such a condition as to avoid the deposit of material on the public highway.

#### Reason

In the interest of highway safety and the amenity of the area.

(52) Within 3 months of the date of this permission, a Coal Transportation Plan (CTP) shall be submitted in writing to the Local Planning Authority. The CTP shall include, inter alia, the proposals within the application and Minerals Transport Assessment (Volume 7) and shall have appropriate regard to the Council's expectations listed at informative 5. Work shall not commence in the additional extraction area (identified on plan LAR/B03B-G) until such time as the CTP has been submitted to the Local Planning Authority for its written approval, and the CTP shall thereafter be implemented in accordance with the approved details and until all coal extracted from the site has been removed from the opencast site and coal stocking ground.

Reason

To provide satisfactory arrangements for the transportation of coal and to protect the amenities of the area.

(53) A minimum of 40% of the coal extracted at the site shall be transferred to the Gwaun Cae Gurwen railpad as identified on Drg. LAR/B/13 for onward transportation by rail and no coal shall leave the railpad by any other means. Within one month of a request being made in writing by the Local Planning Authority, the operator shall provide in writing the quarterly data for all coal transportation and in addition for any period as so may be requested by the Local Planning Authority.

Reason

To provide satisfactory arrangements for the transportation of coal in accordance with the submitted Transportation Assessment, and to protect the amenities of the area.

(54) The drainage system for the access road shall be maintained in such a condition as to prevent any slurry or water run-off from entering onto the public highway.

Reason

In the interest of highway safety and the amenities of the area.

(55) With the exception of those Heavy Goods Vehicles (HGVs) associated with movements to and from the Gwaun Cae Gurwen railhead, HGVs with the capability of carrying coal or other minerals shall not enter or leave the site, except between the following times:

07.00 hours to 08.00 hours, 09.00 hours to 15.00 hours, and 15.45 hours to 16.30 hours on Mondays to Fridays, 07.00 to 13.00 hours on Saturdays.

No movements of HGVs shall occur on Sundays, Bank or Public Holidays.

#### Reason

In the interest of highway safety by restricting HGV vehicles along New Road and the A474 during the time children are likely to be entering or leaving school and in the interest of the amenity of residents.

#### Water Environment

(56) Any facilities for the storage of oils, fuels or chemicals shall be provided with secondary containment that is impermeable to both the oil, fuel or chemical and water, for example a bund, details of which shall be submitted to the Local Planning Authority for approval. The minimum volume of the secondary containment should be at least equivalent to the capacity of the tank plus 10%. If there is more than one tank in the secondary containment the capacity of the containment should be at least the capacity of the largest tank plus 10% or 25% of the total tank capacity, whichever is greatest. All fill points, vents, gauges and sight gauge must be located within the secondary containment. The secondary containment shall have no opening used to drain the system. Associated above ground pipework should be protected from accidental damage. Below ground pipework should have no mechanical joints, except at inspection hatches and either leak detection equipment installed or regular leak checks. All fill points and tank vent pipe outlets should be detailed to discharge downwards into the bund.

#### Reason

To ensure protection of controlled water from hazardous substances.

(57) All surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained, prior to discharge into any watercourse. Roof water shall not pass through the interceptor.

#### Reason

To prevent pollution of watercourses.

(58) Within 3 months of the date of permission an expanded surface water and groundwater monitoring programme as proposed in Section 15.152 of the submitted Environmental Statement (ref: 407.03894.00003), and including a scheme for the environmental monitoring of local watercourses, shall be

submitted in writing for the written approval of the Local Planning Authority. The programme should be in line with the measures detailed in Chp 18, Section 18.78 of the ES and Section 2.16 of the Hydrological Impact Appraisal (Volume 4, Part B, Appendix 15/8 of the ES). The scheme shall be supported by detailed information including location of features, method and frequency of monitoring, proposals for the control of such impacts and any mitigation identified as being required, and contingency plans if derogation is noted, and the monitoring programme shall encompass both the operational and post operational phase of the development .

The scheme shall be implemented as approved and any changes to the scheme will require the prior written approval of the Local Planning Authority.

#### Reason

To prevent pollution of the water. Protection of the water environment is a material planning consideration and development proposals should ensure the development does not harm the water environment.

(59) The existing water treatment areas which discharge into the Nant Hir watercourse shall be retained and maintained until they are no longer required for the treatment of polluted surface water. The reinstatement and restoration of the water treatment area shall only commence after the written agreement of the Local Planning Authority has been given that it is no longer required for the treatment of polluted water..

#### Reason

To ensure adequate attenuation of surface water flows out during the coaling and restoration phase.

(60) The discharge rates of surface or pumped water into the Nant Llynfell, Nant Hir and Afon Aman shall not exceed natural greenfield run off rates.

#### Reason

To ensure that flooding does not occur downstream.

(61) Within 3 months of the date of this permission a detailed maintenance programme for all water treatments areas on site shall be submitted in writing for the written approval of the Local Planning Authority. The scheme shall include as a minimum, full details of the frequency and method by which they will be maintained, pollution prevention measures to be deployed during periods of maintenance and the need to keep accurate records of when such maintenance has been carried out, coupled with a requirement to keep a record

of the frequency and duration of all consented discharges of storm water (to include rainfall records on a daily basis).

The scheme shall be implemented as approved.

Reason

To prevent pollution of the water environment. Protection of the water environment is a material planning consideration and development proposals should ensure the development does not harm the water environment.

(62) Within 3 months of the date of this permission a scheme for the identification and monitoring of abandoned minewater discharges within and adjacent to the site shall be submitted in writing for the written approval of the Local Planning Authority. The scheme shall include proposals for the control of such impacts and any mitigation identified as being required. The scheme shall be implemented as approved.

Reason

To prevent pollution of the water.

(63) Within 6 months of the date of this permission a scheme for the protection and conservation of soil at the site, in order to prevent pollution of the water environment shall be submitted in writing for the written approval of the Local Planning Authority. The scheme shall include the pollution prevention techniques to be deployed during any restoration phase and shall be implemented as approved.

Reason

To prevent destruction of soil structure and the polluting effects of soil erosion on the water environment. Protection of the water environment is a material planning consideration and development proposals should ensure the development does not harm the water environment.

(64) Within 3 months of the date of this permission a fully detailed Method Statement (MS) detailing all proposed pollution prevention measures to be employed on site shall be submitted in writing for the written approval of the Local Planning Authority. The MS should be in line with the measures proposed in the ES (ref: 407.03894.00003), and shall identify as a minimum:

(a) Storage facilities and emergency containment for all fuels, oils, chemicals and any other polluting substances

(b) Construction compounds, car parks, offices etc

(c) Details of surface water drainage arrangements to be installed to intercept and treat contaminated surface water run-off

(d) Details of maintenance of site access/coal haulage roads to ensure no polluting discharge

(e) Measures for dealing with any contaminated material (demolition waste or excavated waste)

(f) Details of emergency contacts, eg. Natural Resources Wales hotline 0800 807 060

(g) a maintenance programme including details of current and future ownership for the facilities to be provided.

(h) Details of communication of the approved Method Statement to all contractors and sub-contractors.

The Method Statement shall be implemented as approved and subsequently maintained in accordance with the timing and phasing arrangements to be set out in the MS, or any other details as may be subsequently approved in writing by the Local Planning Authority, with any deficiencies rectified immediately.

Reason

To ensure protection of the water environment and prevent pollution.

(65) Within 12 months of the date of this permission details of the proposed lake outfalls and the new stream bed connections into the tributary of the Nant Llynfell and into the River Amman existing watercourses, which shall not consist of any form of weir structure in the outflow inverts, shall be submitted for the written approval of the Local Planning Authority. The outfalls from the proposed lake shall be constructed in naturally occurring bedrock (excluding limestone and similar calciferous rock) and not in any form of made up ground or backfill. The outfall and bed construction details shall be implemented as approved as part of the site restoration scheme.

Reason

To ensure no man made structures are constructed that would create an impounding of water.

(66) Throughout the period of coal working, restoration and aftercare, the developer shall protect and support any ditch, watercourse, or culvert passing through the site, or satisfactorily divert it, and shall not impair the flow or render less effective drainage onto and from adjoining land.

#### Reason

To ensure that conditions on the site are maintained for effective restoration and aftercare and that the operations do not affect adjacent land.

(67) The developer shall ensure that any flow of water used for agricultural purposes that is adversely affected by the development is reinstated including the provision of alternative supplies during the course of operations.

#### Reason

In the interest of agricultural management.

#### Ecology

(68) Within 3 months of the date of this permission a scheme shall be submitted in writing for the written approval of the Local Planning Authority for an Ecological Monitoring and Management Scheme (EMMS) . The scheme shall include, inter alia:

(a) Measures for the retention (where possible), conservation (including measures to minimise any impacts) and management of existing semi-natural habitats as identified in the Supplementary Ecological Information Report SLR Ref: 407.03894.00003/SEI - May 2013 (SEIR) which include all areas of marshy grassland, lichen and bryophytes that lie within the site boundary.

(b) Methods and techniques for the translocation of marshy grassland and marginal wetland vegetation as proposed in the (SEIR)(May 2013). The suitability of the receptor area and associated translocation methodologies shall be evaluated and justified.

(c) Methods and techniques for the translocation of the Ancient Woodland area identified and proposed in the SEIR (May 2013).

(d) A mitigation and monitoring strategy for the conservation of reptiles as proposed in the SEIR(May 2013).

(e) The monitoring of all translocation and mitigation methods undertaken including an assessment of the establishment of habitats and species - specific features including those set out for restoration and species - specific mitigation measures and any remedial measures as required.

(f) Measures that will consider all species that need compliance with other Regulations and Acts as they relate to Nature Conservation, which must include checks and action in relation to bats, barn owl, otter and badger and any other relevant species identified in the SEIR ( May 2013)

(g) Annual monitoring of badger foraging within the operational and non-operational areas of the site as proposed in the SEIR (May 2013), and the consideration of mitigation measures should they be required.

#### Reason

In the interest of ecological protection and nature conservation.

(69) Within 6 months of the date of this permission a scheme shall be submitted in writing for the written approval of the Local Planning Authority for:

(a) The setting up and operation of a Nature Conservation Steering Committee.

(b) A Site Biodiversity Action Plan including the provision for the management and enhancement of all biodiversity objectives as set out in the application , the species enhancement measures set out in chapter 14 of the Environmental Statement, including the cSINC at Tairgwaith, and the Ecological Enhancement Areas A, B and C as set out in the application.

The scheme shall be implemented as approved.

#### Reason

To apply and operate biodiversity and ecological enhancement objectives.

#### Cultural Heritage

(70) Access to the site shall be afforded at all reasonable times to officials of the Royal Commission on Ancient and Historical Monuments in Wales, the Glamorgan-Gwent Archaeological Trust and to any archaeologist nominated by the Local Planning Authority, and such personnel shall be allowed to investigate features, building and ruins on site, prior to and during initial site operations in accordance with the Confederation of British Industry, Archeological Investigations Code of Practice for Mineral Operations. When excavation is underway the operator shall inform the Local Planning Authority of any features of archaeological or historic interest which may be discovered, and afford the bodies named above reasonable opportunity for an inspection, recording and, where appropriate, removal from the site of such features of interest.

## Reason

To preserve and record features of archaeological interest.

(71) Within 3 months from the date of this permission, a programme of archaeological work, in accordance with a written scheme of investigation, shall be submitted in writing for the written approval of the Local Planning Authority. The agreed programme of archaeological works shall be undertaken in full accordance with the approved programme.

## Reason

To identify and record any features of archaeological interest discovered during works in order to mitigate the impact of the works on the archaeological resource.

## Reclamation, Restoration and Aftercare

(72) Unless modified by other conditions and schemes under this permission, the restoration and reclamation of the site shall be undertaken in accordance with the principles set out on Drg. LAR-B-09I dated October 2014 and the approved plans detailed in condition 5.

## Reason

To identify the general restoration proposals for the scheme.

(73) Within 3 months of the date of this permission a detailed reclamation, restoration and aftercare scheme shall be submitted to the Local Planning Authority for its approval for the areas identified as Phase 2 under Drg. LAR-B-09/K Restoration Phasing Scheme dated October 2014 to bring the land to the required uses under approved Drg. LAR/B-09I, which shall have appropriate regard to the Council's expectations listed at informative 6.

## Reason

To secure adequate reclamation, restoration and aftercare scheme of Phase 2 areas within the required timescale.

(74) Within 14 months of the date of this permission a detailed reclamation, restoration and aftercare scheme shall be submitted to the Local Planning Authority for its approval for the areas identified for Phases 3A, 3B, 4 and 5 as indicated on Drg. LAR-B-09/K Restoration Phasing Scheme dated October 2014 to bring the land to the required uses under approved Drg. LAR/B-09I, which shall have appropriate regard to the Council's expectations listed at informative 4.

## Reason

To secure adequate reclamation, restoration and aftercare of Phases 3A, 3B, 4 and 5 areas within the required timescale.

(75) Each phase shall be subject to aftercare from the date of completion of restoration within that phase as approved in writing by the Local Planning Authority, and in accordance with the approved aftercare details.

## Reason

To ensure adequate treatment and management of the land to an appropriate timescale as agreed in the S.106 Agreement.

(76) Within 6 months of the date of this approval and every 12 months thereafter the site operator shall arrange a formal review and meeting to consider the restoration and aftercare operations which have taken place on the site during the previous year, and also the programme of management for the following year. The parties invited to this review shall include the site operator, the owners of the land, and other occupiers, the Local Planning Authority, Natural Resources Wales and the nominated Agricultural Officer from the Welsh Government and any other parties as may be deemed appropriate. At least one month before the date of each annual review, the site operator shall provide the Local Planning Authority with a record of the management and operations carried out on the site during the period covered by the review and details of the company, person or persons that will undertake the aftercare and management of the site during the periods identified.

## Reason

To ensure adequate restoration and aftercare of the land

(77) Unless specifically required for the purposes of aftercare or as approved in writing by the Local Planning Authority, all plant, machinery, hardstandings, ancillary workshops, buildings or other works associated with the development (or any phase thereof) shall be removed off site within 3 months of completion of the restoration of the site.

## Reason

To protect the character and appearance of the site and the environment of the surrounding area.

(78) Notwithstanding condition 1, in the event of coaling ceasing prior to 30th September 2018 the Local Planning Authority shall be notified of the date of cessation (“cessation date”) in writing within 7 days of such an occurrence and within 7 months of the cessation date a revised scheme for the restoration of the site including a programme of works shall be submitted to the Local Planning Authority for its written approval. The revised scheme shall be implemented as approved and in accordance with all other associated conditions of this permission.

#### Reason

To protect the character and appearance of the site and environment.

(79) Within 1 month of the date of this permission a scheme shall be submitted in writing for the written approval of the Local Planning Authority for the setting up and operation of a Technical Working Party (TWP) which shall include, inter alia, details of representatives, the cycle and frequency of meetings, the normal venues of meetings, the nature and type of issues to be discussed and confirmation of the operator as secretariat for the TWP. The TWP shall thereafter operate within the terms of the approved details.

#### Reason

To assist in the control of and assessment of monitoring of environmental effects of the development.

(80) Within 1 month from the date of this permission, a scheme shall be submitted in writing for the written approval of the Local Planning Authority for the continued operation of the Site Liaison Committee for the mining and railhead development which shall have appropriate regard to the Council’s expectations listed at informative 7. The scheme shall thereafter be implemented as approved.

#### Reason

To assist in the control of and assessment of monitoring of the environmental effects of the development.

#### Land Stability

(81) Within 6 months of the date of this permission a scheme shall be submitted in writing for the written approval of the Local Planning Authority to include details of the monitoring of ground movements and stability of the land immediately to the east of the final eastern face of the void and associated

benches, and any remedial measures that may be necessary during coaling operations.

Reason

To provide adequate measurements of any ground movements and associated consideration of the mining methods for coal mining and restoration.

(82) Six months prior to the cessation of coaling or 31 March 2018 or prior to the completion of the design associated with the final configuration of the void, whichever is the sooner, the design of the final proposed buttress to be placed against the eastern high wall which shall include a minimum factor of safety of 1.5 and shall be supported by additional geotechnical analysis of the slope, shall be submitted to the local planning authority for written approval. The buttress shall be constructed in accordance with the agreed scheme and in accordance with an agreed programme of works.

Reason.

To ensure adequate provisions are made for the backfilling and buttressing of the void.

(83) If signs of instability at the crest or the highwall of more than 1centimetre is evident and demonstrated within the monitoring to be undertaken as part of the scheme as approved under condition 81, immediate buttressing of the highwall in accordance with the details contained in condition 82 shall be implemented in accordance with a redesigned highwall in accordance with a scheme approved by the Local Planning Authority.

Reason

To ensure adequate buttressing of the final void

(84) Within 6 months of the date of this consent, details of the improved access and the provision for the creation of a continuous pedestrian footway and cycleway link to the proposed Country Park, including the provision of a roundabout and tactile crossing points at the junction with the A4068 (Cwmgors Road), shall be submitted to and approved in writing by the Local Planning Authority for its written approval. The scheme shall be implemented prior to the beneficial use of the Country Park commencing.

Reason: In the interests of highway safety

## CONDITIONS ASSOCIATED WITH THE BUILT DEVELOPMENT

(85) The hotel (Use Class C1), holiday lodges (Use Class C3), dive centre and ancillary dive centre shop (Use Class D2), camping area (Sui Generis), facilities block and visitor centre (Use Class D1) and associated works (hereinafter referred to as the 'after uses') are approved in outline.

Reason

The application was made for outline planning permission.

(86) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of the final completion of restoration of the site or before the 31st March 2023 whichever is the sooner.

Reason:

To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

(87) The built development hereby permitted shall be begun either before the expiration of five years from the date of final completion of restoration of the site, or before the expiration of 3 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

(88) Plans and particulars of the reserved matters as referred to in Condition 85 above relating to layout, scale and appearance of any buildings to be erected, the means of access to the site and the landscaping of the site, shall be submitted to and approved in writing by the local planning authority and shall be carried out as approved.

Reason:

The application was made for outline planning permission.

(89) The development hereby permitted shall be carried out in accordance with the principles and mitigation measures as set out within the Environmental Statement and the Environmental Statement Addendum unless provided for in any other conditions attached to this permission.

Reason:

The proposed development is the subject of an Environmental Impact Assessment and due regard must be had to the the principal impacts of the development in the preparation of detailed design and the operation of the site. Any material alteration to the proposal may have an impact which has not been assessed by the process.

(90) The reserved matters shall include a detailed masterplan for each after use in accordance with the key principles outlined within the submitted ES (ref: 407.03894.00003) and drawing no's: LAR/C/01A, LAR/C/02A, LAR/C/03A, LAR/C/04, LAR/C/05A, LAR/C/06, LAR/C/09A, LAR/C/10, LAR/C/11, LAR/C/12, LAR/C/13, LAR/C/14, LAR/C/15, LAR/C/16, LAR/C/17, LAR/C/18, LAR/C/19, LAR/C/20, LAR/C/21, LAR/C/22 and LAR/C/23.

Reason

To ensure good design and amenity.

(91) Prior to the submission of any application for the approval of reserved matters, the applicant shall submit to the Local Planning Authority a plan subdividing the overall site area into phased development areas together with strategic infrastructure phases and any temporary works, including any temporary car parking, to substantially accord with the Design and Access Statement and the parameters of development submitted to and approved as part of this application. This phasing shall include the timing of delivery of the development and of all land uses within the site, landscaping and open space. The development shall be carried out in accordance with these approved details.

Reason:

To allow for the sub-division of the overall site into coherent areas of land and the submission of reserved matters pursuant to each development area.

(92) Notwithstanding the requirements of condition 91 an update/progress statement to the Design and Access Statement (Ref: ) shall be submitted with any Reserved Matters submission for approval, which shall include (Identify areas to be covered)

Reason:

To ensure that the Design and Access Statement is updated in accordance with the comprehensive development of the site and in accordance with the requirements of TAN 12

(93) Notwithstanding the Town and Country Planning Use Classes Order 1987 (or any Order revoking or reenacting that order) the holiday lodges/accommodation hereby permitted shall be used for holiday accommodation only and shall not be occupied as a person's sole or main place of residence. Occupation of any unit of holiday accommodation hereby approved shall be restricted to a maximum of twenty six weeks within a twelve month period for any individual.

Reason:

To ensure that the accommodation is utilised for holiday accommodation only.

(94) From the date of first occupation of any holiday unit, an up-to-date register shall be kept for each unit of holiday accommodation hereby permitted and be made available for inspection by the local planning authority upon request. The register shall contain details of the names of all the occupiers of the accommodation, their main home addresses and their date of arrival and departure from the accommodation.

Reason:

In order to ensure that the accommodation is utilised for tourist holiday accommodation only.

(95) The development hereby approved shall be restricted to those parameters as set out within the application drawings and/or Design and Access Statement hereby approved or as amended under details submitted under condition 92.

Reason:

To comply with the requirements of the Town and Country Planning (Development Management Procedure)(Wales) Order 2012 (as amended), and in the interests of clarity.

(96) In support of the submission of the first of the reserved matters for each phase of development, a scheme detailing the phasing approach for the development reflecting the car parking requirements on site for that phase shall be submitted to and approved in writing by the Local planning Authority prior to any works commencing on that particular phase of the development. The details as approved shall be implemented prior to beneficial use.

Reason:

In the interests of highway and pedestrian safety.

(97) As part of the first reserved matters application for each phase of development as agreed under Condition 91 details of the existing and proposed ground levels and finished floor level of the development shall be submitted to, and approved in writing by, the local planning authority. The development shall be completed in accordance with the approved levels.

Reason:

In the interest of the amenities of the area and visual amenity

(98) As part of the first reserved matters application, a detailed site investigation report to establish if any ground precautions are necessary in relation to the proposed development and the precautions that should be adopted in the design and construction of the proposed development in order to minimise any damage which might arise as a result of ground conditions, including coal mining legacy issues on the site shall be submitted to and approved in writing by the Local Planning Authority

In the event that the site investigations confirm the need for remedial works to treat any mine entries and/or any areas of shallow mine workings/opencast backfill, and/or any other mitigation measures (i.e. foundation precautions, gas protection etc.) to ensure the safety and stability of the proposed development, these works shall be undertaken as approved prior to the commencement of development of the after uses.

Reason:

To ensure ground stability prior to the erection of any permanent structure.

(99) Prior to development within each phase of the site, details of all site engineering works required to structurally support the building and associated infrastructure proposed within that phase of the development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The works shall be undertaken in accordance with the approved details.

Reason:

To ensure ground stability prior to the erection of any permanent structure.

(100) In accordance with the Mining Risk Assessment and notwithstanding condition 81, no built development shall be commenced until a scheme detailing the measures necessary for the purposes of monitoring ground stability, including any disused mine adits, has been submitted to and approved in writing by the Local Planning Authority.

Any such scheme shall detail the measures for monitoring ground stability and detail any necessary mitigation to ensure the safe implementation of any subsequent built development. All measures specified in the above scheme shall be undertaken as approved in accordance with a timescale as to be agreed in writing with the Local Planning Authority,

Reason:

To ensure the safety of the built development with regard to ground stability

(101) Prior to the construction of any of the proposed buildings, details of the foundations proposed for that building shall be submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with the approved details.

Reason:

To ensure the stability of any permanent structure.

(102) Prior to the commencement of work on site for each phase of development as agreed under Condition 91, a detailed method statement (MS) detailing all proposed pollution prevention measures to be employed on site during the construction phase of the development shall be submitted to and approved in writing by the Local Planning Authority. This MS should be in line with the measures proposed in Chapter 30 and Table 30/1 & section 30.24 of the submitted ES (ref: 407.03894.00003). As a minimum, the Method Statement should identify:

- storage facilities and emergency containment for all fuels, oils, chemicals and any other polluting substances;
- construction compounds, car parks, offices etc;
- details of maintenance of site access/coal haulage roads to ensure no polluting discharge;
- measures for dealing with any contaminated material (demolition waste or excavated waste);
- details of emergency contacts

The scheme shall be implemented as approved throughout the construction period.

Reason:

To prevent pollution and protect controlled waters.

(103)The development hereby permitted shall not be commenced until such time as a scheme to treat and remove suspended solids from surface water run-off during construction works has been submitted to, and approved in writing by the local planning authority. The scheme shall be implemented as approved.

Reason

To protect the water environment

(104) No development approved by this permission shall commence until a scheme for the improvement and/or extension of the existing sewerage system has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved. No occupation/use of the facilities approved by this permission shall occur until the scheme for improvement and/or extension of the existing sewage system has been completed for that particular facility.

Reasons:

The sewage treatment works to the north of the site (Garnswllt)is currently hydraulically overloaded and the sewage treatment works to the south east of the site is currently effected by flooding issues

(105)The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul water has been submitted to, and approved in writing by the local planning authority. The scheme shall be implemented as approved.

Reason:

To ensure an acceptable means of foul water disposal from the site and to prevent the risk of pollution to controlled waters.

(106) No development shall be commenced until a detailed drainage plan for both surface water and foul drainage has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason:

(107) As part of the first reserved matters application, a hydraulic modelling assessment of the effect of the proposed development on the existing water supply network shall be submitted to and approved in writing by the Local Planning Authority. No beneficial use or occupation of any buildings hereby approved shall take place until such time as any necessary infrastructure works required by the hydraulic modelling assessment have been completed to enable that part of the development to operate with a sufficient water supply.

Reason:

To protect the integrity of the existing water supply system

(108) No development approved by this permission shall be occupied until details of a sustainable drainage system (SUDS) for surface water drainage, as proposed in the submitted ES accompanying the application, has been submitted to and approved in writing by the Local Planning Authority. The sustainable drainage system shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Reasons:

To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal and to prevent pollution of controlled waters.

(109) As part of the first reserved matters application for each phase of development as agreed under condition 91, a Waste Management Plan for the control, management, storage and disposal of any waste material generated by the development for that particular phase shall be submitted to and approved in writing by the Local Planning Authority. All waste will be treated in accordance with the agreed waste plan for that phase.

The Plan shall be implemented as approved.

Reason

To ensure the appropriate disposal of any waste arising from the development in terms of protection of the environment and to ensure the sustainability principles are adopted during development.

(110) Prior to the commencement of work for each phase of development as agreed under Condition 91, details of boundary treatments including their siting, design and materials shall be submitted for each of the following:

- Each after use permitted in outline;
- The lake feature, especially with regard to the eastern boundary of the lake;
- The wider site boundary;
- The Gwaun Cae Gurwen Railhead;
- Any point within the site with vertical drops in excess of 2m.

Shall be submitted to and approved in writing by the Local Planning Authority.

The boundary treatments within each phase shall be carried out in accordance with the details as approved before the use of the associated land within that phase is commenced or buildings occupied.

Reason

In the interests of health and safety and visual amenity.

(111) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any order revoking and re-enacting that Order), and the details required under condition 110, no fences, gates or walls shall be erected without the prior grant of planning permission.

Reason

In the interests of visual amenity.

(112) In support of the first reserved matters for each phase of development as agreed under Condition 91 and notwithstanding the details required under condition 110, details of all external materials, finishes and permanent and temporary means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The development of that phase shall be carried out in accordance with the details as approved.

Reason

In the interests of visual amenity.

(113) In support of the first reserved matters for each phase of development as agreed under Condition 91, a Construction Environmental Management Plan shall be submitted to, and approved in writing by the local planning authority. The CEMP shall detail how any potential pollution will be managed and minimised. and shall include consideration/details of:

- The Management Structure for the development, including details of responsibilities;
- An Environmental Risk Register;
- Contact details, including an out of hours emergency contact, and how these will be publicised to members of the public;
- Details of proposed normal working hours and intended start up and close down times;
- Outline of any construction works which may require construction activities outside of normal working hours;
- Equipment and plant to be used on site;
- Details of any fine silt mobilised during the proposed works;
- Vehicular access points and routes throughout the site, including the details of turning circles within the development site and Wheel washing facilities;
- Details and location of proposed site accommodation for the period of the development;
- Construction Travel Plans;
- Location of secure storage facilities for all liquids/materials stored or used on site during construction;
- Lighting requirements during the completion of works;
- Monitoring and management of construction noise and dust management; and
- Construction Waste

The CEMP shall be adhered to throughout the construction period.

Reason: In the interests of highway safety and public amenity

(114) Following permanent cessation of mineral operations at the site including restoration works, a background noise survey shall be undertaken at the existing noise sensitive receptors and noise limits set accordingly. The methodology and scope of the assessment shall be agreed in writing with the Local Planning Authority prior to undertaking the assessment. The report shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any construction of the proposed after uses. The Assessment and any mitigation measures shall be undertaken and implemented in accordance with the approved details.

Reason :

In the interests of residential amenity.

(115) Prior to first use (by members of the public) of the proposed after uses, written approval should be sought from the relevant authority confirming that adequate provision is made for water supplies for fire fighting purposes on the site.

Reason: To ensure site safety

(116) As part of the first reserved matters application an updated Traffic Capacity Assessment which shall be based upon the latest available traffic figures and revised to include any new or proposed development shall be submitted to and approved in writing by the Local Planning Authority. Any recommendations contained within the Traffic Capacity Assessment shall be implemented as approved prior to first beneficial use of any part of the development.

Reason: In the interests of highway safety

(117) As part of the first reserved matters for each phase of development, a scheme for the internal road layout shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of proposed gradients, construction, lighting, drainage and the provision of shared 2.5m wide walker/cyclist routes. These access routes shall be implemented as approved prior to first beneficial use of that phase of development commencing.

Reason: To improve the accessibility of the site for cyclists.

(118) Prior to the commencement of development of the proposed after uses, a site specific Walking and Cycling Strategy which shall include an implementation programme, shall be submitted to and approved in writing by the Local Planning Authority. The Walking and Cycling Strategy shall be implemented in accordance with the approved details.

Reason: To improve the accessibility of the site for cyclists.

(119) As part of the first reserved matters application a Travel Plan associated with the proposed after uses (not including the Country Park), shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include reduction targets of vehicles accessing the site and a monitoring regime. Full monitoring shall take place in the 1st, 3rd and 5th year with an interim report in the 2nd and 4th year and shall be submitted for the written approval of the Local Planning Authority. After five years of operating the first travel , a further travel plan shall be submitted for approval in writing by the Local Planning Authority to reduce the use by staff/visitors of the car and meet the agreed targets set out in the first travel plan. The assessment of these travel plans shall continue every five years and a new plan shall be submitted every time for approval in writing by the Local Planning Authority.

Reason:

In the interests of highway safety and sustainability.

(120) Any aggregate (other than virgin quarry stone) or recycled aggregate material required to be imported during the construction of the proposed after uses shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, verification sampling of the material received at the development site is required to verify that the imported aggregate is free from contamination and shall be undertaken in accordance with a scheme agreed with in writing by the Local Planning Authority.

Reason: To ensure that the safety of future occupiers is not prejudiced.

(121) Any topsoil (natural or manufactured) or subsoil to be imported as part of the proposed after use development shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, verification sampling of the material received at the development site is required to verify that the imported soil is free from contamination and shall be undertaken in accordance with a scheme that shall be first agreed in writing by the Local Planning Authority.

Reason:

To ensure that the safety of future occupiers is not prejudiced.

(122) No development shall take place within each phase of the development until details of both hard and soft landscape works for that particular phase of development have been submitted to and approved in writing by the local planning authority. These details shall include:

- i) A statement setting out the design objectives and how these will be delivered;
- ii) earthworks showing existing and proposed finished levels or contours;
- iii) means of enclosure and retaining structures;
- iv) other vehicle and pedestrian access and circulation areas;
- v) hard surfacing materials;
- vi) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, etc.), and
- vi) water features.

Soft landscape works shall include planting plans; written specifications (including

cultivation and other operations associated with plant and grass establishment);  
schedules of plants noting species, plant supply sizes and proposed

numbers/densities where appropriate; an implementation programme (including phasing of work where relevant).

Reason:

In the interests of visual amenity and to accord with Section 197 of the Town and Country Planning Act 1990.

(123) All planting, seeding or turfing comprised in the approved reserved matters applications shall be carried out in the first planting and seeding seasons following the occupation of the associated buildings or the completion of the relevant phase of development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason

In the interests of visual amenity and to accord with S197 of the Town and Country Planning Act 1990.

(124) As part of the first reserved matters application for each phase of development as agreed under Condition 91 a Landscape Management and Maintenance Plan (LMMP) including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas, shall be submitted to and approved in writing by the local planning authority. The approved management plan shall be implemented prior to the occupation of the relevant phase.

Reason

In the interest of visual amenity and to accord with Section 197 of the Town and Country Planning Act 1990.

(125) No equipment, plant or materials shall be brought onto the site for the purpose of development until full details of the following have been submitted to and approved by the Local Planning Authority, in accordance with the current British Standard for trees in relation to construction:

- An Arboricultural Method Statement (AMS), setting out the methodology that will be used to prevent loss of or damage to retained trees. It shall include details of on-site monitoring of tree protection and tree condition that shall be carried out throughout the development and for at least two years after its completion.

- A Tree Protection Plan (TPP) in the form of a scaled drawing showing the finalised layout and the tree and landscaping protection methods detailed in the AMS that can be shown graphically.

Unless written consent is obtained from the Local Planning Authority, the development shall be carried out in full conformity with the approved AMS and TPP.

Reason :

To enable the Local Planning Authority to assess: the effects of the proposals on existing trees and landscape; the measures for their protection; to monitor compliance and to make good losses.

(126)As part of the first reserved matters application for each phase of development as agreed under Condition 91, an updated Ecological Impact Assessment shall be submitted to and approved in writing by the Local Planning Authority. The assessment should include, but is not limited to the following:

- Updated extended Phase 1 habitat survey, including assessment of Biodiversity Action Plan habitats and an assessment of any losses and gains
- Details of ecological impacts
- Details of any required mitigation and compensatory measures along with biodiversity enhancement proposals
- Badger Survey
- Bat Survey
- Otter Survey
- Bird Surveys
- Reptile Survey
- Mitigation Strategy including but not limited to reptile mitigation, bat friendly lighting
- Biodiversity enhancement measures

The assessment shall be implemented as approved.

Reason: To protect the ecology of the site

(127) As part of the first reserved matters application for the appropriate phase of development as agreed under Condition 91, a detailed investigation of the hydrology and other conditions and connectivity of Ecological and Enhancement Receptor Area C (Marshy Grassland Receptor Site) shall be undertaken to inform the design of the access road and minimise any damage to the retained marshy grassland. The methodology and subsequent results of this investigation shall be submitted to and approved in writing by the Local Planning Authority.

Reason:

In the interests of ecology.

(128) As part of the first reserved matters application for the appropriate phase of development as agreed under Condition 91, a detailed design specification which shall include design measures to avoid or minimise damage to surrounding habitats for the access road shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use.

Reason:

In the interests of ecology.

(129) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

Reason:

To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.

(130) As part of the first reserved matters application for each phase of development as agreed under Condition 91, a scheme to assess the nature and extent of any contamination on the site, and confirmation of whether or not it originates on the site shall be submitted to and agreed in writing with the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons in accordance with the following document:- Land Contamination: A Guide for Developers (WLGA, WAG & EAW, July 2006). And shall be submitted as a written report which shall include:

(i) A desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The desk study shall establish a 'conceptual site model' (CSM) identifying all plausible pollutant linkages to be assessed.

(ii) a survey of the extent, scale and nature of contamination;

(iii) an assessment of the potential risks to:

- human health,
- ground waters and surface waters
- adjoining land,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- ecological systems,
- archaeological sites and ancient monuments;

(iv) an appraisal of remedial options, and proposal of the preferred remedial option(s).

#### Reason

To ensure that information provided for the assessment of the risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems is sufficient to enable a proper assessment.

(131) Prior to commencement of work on each phase of development as agreed in regard of Condition 91, a remediation scheme to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, buildings, other property and the natural and historical environment shall be prepared and submitted to and agreed in writing with the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives, remediation criteria and site management procedures. The measures proposed within the remediation scheme shall be implemented in accordance with an agreed programme of works.

## Reason

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

(132) No occupation of any part of the development within each of the relevant phases shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy for that phase has been carried out in accordance with Condition 131 and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

## Reason

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

(133) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, work on site shall cease immediately and shall be reported in writing to the Local Planning Authority. A Desk Study, Site Investigation, Risk Assessment and where necessary a Remediation Strategy must be undertaken in accordance with the following document:- Land Contamination: A Guide for Developers (WLGA, WAG & EAW, July 2006). This document shall be submitted to and agreed in writing with the Local Planning Authority. Prior to occupation of the development, a verification report which demonstrates the effectiveness of the agreed remediation, shall be submitted to and agreed in writing with the Local Planning Authority.

## Reason

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters,

property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off site receptors.

(134)None of the holiday homes or leisure facilities hereby permitted shall be occupied or used until facilities for the storage and collection of waste and recyclable materials from the site have been provided in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority, and such facilities shall be retained for the duration of the occupation or use of the site.

Reason

In the interest of highway safety

**NOTES TO DEVELOPER:**

(1) It is recommended that vegetation clearance should avoid the bird breeding season 1st March to 31st July inclusive in accordance with the Wildlife and Countryside Act 1981 (as amended).

(2) Prior to first use (by members of the public) of the proposed after uses, written approval should be sought from the relevant authority confirming that adequate provision is made for water supplies for fire fighting purposes on the site.

(3) The conditions numbered 1 to 84 apply only to the extraction of minerals which is approved under this permission

(4) The conditions numbered 85 to 134 apply only to the development for which outline permission is granted under this permission.

(5) The Coal Transportation Plan (CTP) required under condition 52of this permission shall include, but not necessarily be limited to, the proposals within the application and Minerals Transport Assessment (Volume 7), and the following:

(a) Details of the public highway routes to be utilised by heavy goods vehicles leaving the site for the purpose of transporting coal;

(b) The measures to be undertaken to inform and remind hauliers of the transport routes, the restriction on the hours and days allowed for the entry and exit of all HGV under this permission, the prevention of convoys of lorries travelling from the site, the use of toolbox talks and signs and literature and a sign erected at the exit to the opencast to advise lorry drivers of hgv vehicle routes;

(c) Confirmation of the percentages of coal to be carried by rail and road, and any implications thereof, having regard to the requirements of condition 53 that a minimum of 40% of the coal extracted at the site must be transferred to the Gwaun Cae Gurwen railpad as identified on Drg. LAR/B/13 for onward transportation by rail.

(d) Details of the maximum number of loaded HGV lorries to depart from the site on (i) any weekday Monday to Friday, and (ii) on Saturdays, for the transportation of coal by road to other destinations other than the Gwaun Cae Gurwen railhead

(e) The arrangement and provisions to retain the visibility splays, signs and road markings at the access points to the opencast site and Gwaun Cae Gurwen Rail Pad.

(f) The submission of monthly and quarterly data for all coal transportation and provision to make such information available at the request of the Local Planning Authority.

(6) The detailed reclamation, restoration and aftercare scheme required under conditions 73 and 74 of this permission shall include, but not necessarily be limited to, the following:

(a) The nature or intended after use of the area.

(b) The removal of road bases concrete or brickwork and any temporary river crossings.

(c) Details of the re-spreading of overburden, subsoil and topsoil including depths and placement.

(d) The ripping of any compacted layers of final cover to ensure adequate drainage and aeration.

(e) The machinery to be used in soil, subsoil or soil forming re-spreading operations and the method of replacement.

(f) The final proposed levels of the reclaimed land, as a contour plan or a series of plans, at 2 metre intervals and at a Scale of 1/2500 showing that the land is graded to prevent ponding of, or erosion by, surface water and to conform with the surrounding land and proposed restoration contours set out in Drg. LAR-B-09I.

(g) The drainage of the reclaimed land (including the formation of suitably graded contours to promote natural drainage), the installation of artificial drainage where necessary, their position, construction and design (including

longitudinal and transverse sections) of all ditches,swales, and watercourses where all such features shall be designed to achieve maximum ecological diversification as set out in the application and restoration strategy

(h) The position and specification and construction details of existing and proposed fencing, hedge on bank constructions, gates, walls, cattle ditches and water supplies ,field layouts

(i) Water features including watercourses,,wetlands, reed beds, lake margins and their detailed construction to be designed to maximise ecological diversification

(j) The distribution of woodlands and nature conservation features.

(k) Provision of and position of any footpaths and bridleways to be created, reinstated or linked with existing Public Rights of Way, including the surfacing of such routes and the construction of footbridges,stiles ,kissing gates and culverts where necessary.

In respect of aftercare, the details shall include the steps that are to be undertaken and the period during which they are to be taken together with the following:

(a) the designated areas of the intended after uses for the whole site:

(b) the timing and pattern of vegetation, shrub and woodland planting establishment including methods to promote natural regeneration, details of those species to be planted, grass seeding mixtures,nurse swards and application rates, stock types and sizes, spacing, method and position of planting along with source of such plants with appropriate health checks:

(c) cultivation practices for the preparation of soils, subsoils or soil forming material.

(d) boundary/hedgerow construction details.

(e) fertiliser, lime application or other applications and weed control based on soil and chemical analysis and ecological impact.

(f) drainage proposals including the timing of its installation, maintenance and temporary drainage measures including any ponds and wetlands.

(g) grassland, wetland and heathland establishment and management, including class of grazing stock, livestock, stocking density and mowing practices and invasive plant and species control measures.

(h) the provisions and specifications for the establishment of woodland its management and any remediation measures necessary for this and other habitat types.

(i) watering facilities and the provision of supplies.

(j) the full assessment of the potential of those areas to be restored to nature conservation and the relationship with local biodiversity objectives including the Management of Ecological Enhancement Area B.

(k) the creation, management and maintenance of any paths, tracks or roads

(l) any other agricultural, silvicultural or conservation treatment relevant to the area.

(m) the fencing of the area

(n) details of monitoring, reporting and trigger points for remediation works.

(7) The scheme for the continued operation of the Site Liaison Committee required under condition 80 of this permission shall include, but not necessarily be limited to:

- the terms of reference for the Liaison Committee and its constitution,
- membership including representatives from local Councils, residents, and officer representatives, the cycle and frequency of meetings, the normal venues of the meetings, and confirmation of the operator being the secretariat for the committee.
- Details of the time periods for programmed meetings, which shall ensure that the the Site Liaison Committee convene at regular intervals and that there shall be no extended time gap between those undertaken under application reference P2002/0917 (Appeal Ref A-PP185-07-014) and those to be approved under this condition.

(8) The term “emergency” in any of the conditions that relates to this consent shall mean any circumstances in which the operator has a reasonable cause for apprehending injury to persons or serious damage to property or the environment.

(9) Where any species listed under Schedules 2 or 5 of the Conservation of Habitats and Species Regulations 2010 that are found to be present on the site during the course of the development, no works of site clearance, demolition or construction shall take place unless a licence to disturb any such species has been granted, in accordance with the aforementioned Regulations, and a copy has been provided to the Local Planning Authority.

**Community Benefits**

The Section 106 Agreement attached to the 2004 consent identified a section of the former tailing lagoon site of the former Gwaun Cae Gurwen washery as a “donation area”. That was potentially earmarked for community use. The site is located adjacent to the access road into EPER and formed part of the “boot area” of the former washery and disposal point north of New Road.

Subsequent to the signing of the Section 106 Agreement in 2004 and the commencement of operations at the EPER site, assessment was undertaken of its condition by Council engineers and potential liabilities were found to be significant in terms of future maintenance and structures, e.g. culverts. The donation area was not pursued and has since been sold to another limited company, Pine Regeneration, who acquired most of the land in relation to the site in 2010.

In the most recently considered S73A application for the continuation of coaling at the site in accordance with the 2004 consent, Celtic Energy offered to make a contribution of £150,000 to be paid immediately upon the grant of planning permission, with the administration of the fund to be agreed by the Council and Celtic Energy Ltd. This fund was to be evenly distributed between the three communities of Cwmllynfell, Tairgwaith/Lower Brynamman and Gwaun Cae Gurwen. They also stated in the same letter that they would consider any approach from Carmarthenshire County Council in respect of the possibility of a community benefit fund for their local community. This effectively committed the payment of £200,000 for the four communities surrounding the site. Whilst the consent associated with the S73A application was not issued, Celtic has confirmed that this offer is still available. They have consulted with those communities who have requested that this money is made available direct to those communities with governance arrangements being administered by the operator.

In addition they have also indicated that they will pay £0.50 for each tonne of coal extracted from within the extension area which will be paid into a community fund. This is identical to that which is currently in place at the Selar Open Cast Coal Site in Cwmgwrach. Given that there is expected to be 550,000 tonnes of coal within the extension area, the community fund figure is expected to be £275,000. This will be paid to the Council who will administer the fund on behalf of the communities affected. The fund will be split into five annual payments of £55,000, the first of which will be paid within one month of the date of this consent, with subsequent payments being made on the anniversary of the first payment for a further four years.

It should be noted however, that the community benefit payment is not put forward as mitigation. As it is not necessary to make the development acceptable in planning terms, as a matter of law it cannot be taken into consideration in the determination of this planning application.