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## Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr

### Bridgend County Borough Council



Swyddfeydd Dinesig, Stryd yr Angel, Pen-y-bont, CF31 4WB / Civic Offices, Angel Street, Bridgend, CF31 4WB

*Rydym yn croesawu gohebiaeth yn Gymraeg.  
Rhowch wybod i ni os mai Cymraeg yw eich  
dewis iaith.*

*We welcome correspondence in Welsh. Please  
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#### **Gwasanaethau Gweithredol a Phartneriaethol / Operational and Partnership Services**

Deialu uniongyrchol / Direct line /:  
Gofynnwch am / Ask for:

Ein cyf / Our ref:

Eich cyf / Your ref:

**Dyddiad/Date:** Date Not Specified

Dear Councillor,

#### **DEVELOPMENT CONTROL COMMITTEE**

A meeting of the Development Control Committee will be held in the Council Chamber, Civic Offices Angel Street Bridgend CF31 4WB on **Wednesday, 4 May 2016 at 2.00 pm.**

#### **AGENDA**

1. Apologies for Absence  
To receive apologies for absence from Members
2. Declarations of interest  
To receive declarations of personal and prejudicial interest (if any) from Members/Officers including those who are also Town and Community Councillors, in accordance with the provisions of the Members' Code of Conduct adopted by Council from 1 September 2008. Members having such dual roles should declare a personal interest in respect of their membership of such Town/Community Council contained in the Officer's report below
3. Public Speakers  
To advise Members of the names of the public speakers listed to speak at today's meeting.
4. Amendment Sheet 3 - 4  
That the Chairperson accepts the Development Control Committee Amendment Sheet as an urgent item in accordance with Part 4 (paragraph 4) of the Council Procedure Rules, in order to allow for Committee to consider necessary modifications to the Committee Report, so as to take account of any late representations and revisions that require to be accommodated.
5. Development Control Committee Guidance 5 - 8
6. P/16/128/FUL - Former Margam Surface Mine, Ffordd-Y-Gyfraith, Bridgend - Proposed alternative restoration and aftercare scheme in respect of the former Margam Surface Mine 9 - 54

Yours faithfully

**P A Jolley**

Corporate Director Operational and Partnership Services

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**Distribution:**

Councillors:

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PA Davies  
L Ellis  
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Councillors

DRW Lewis  
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JC Spanswick

Councillors

G Thomas  
M Thomas  
JH Tildesley MBE  
C Westwood  
R Williams  
M Winter

## **SPECIAL DEVELOPMENT CONTROL COMMITTEE – 4 MAY 2016**

### **Amendment Sheet**

<b>ITEM NO.</b>	<b>PAGE NO.</b>	<b>APP. NO.</b>
6	7	P/16/128/FUL

**The application was subject to a full site visit on the 4<sup>th</sup> May 2016.**

An objector who has requested to speak, a representative from Cefn Cribbwr & Pyle Community Councils, the local member for Cefn Cribbwr and the applicant were in attendance.

### **Amended Condition**

Remove 'Bye-way' from the wording of Condition 8.

### **Additional Condition**

(46) The site shall be subject to aftercare from the date of completion of restoration as approved in writing by the local planning authority and in accordance with the approved aftercare details.

### **Revised recommendation:**

(B) The Corporate Director Communities be given plenary Powers to issue a decision notice granting consent in respect of this proposal once the applicant has entered into the aforementioned Section 106 agreement and the Welsh Ministers indicate that the application is not to be called in and or the holding direction issued is lifted as follows:-

Additional comments received from an objector:-

*"I note that in the Planners Report to committee that 2/4/89/7389 – Extension to Opencast Parc Slip West OCCS – approved 7th March 1991. This is incorrect. West Glamorgan CC approved but Mid Glamorgan refused and it went to public inquiry in July 1991. The Public Inquiry Inspector, Mr Sheers, recommended approval partly because of the amazing restoration plans and said that there was two years restoration needed anyway so four more years opencast with two years restoration wouldn't impact on Kenfig Hill because there were trees between the proposed site and Kenfig Hill. In 1993 the Secretary of State for Wales gave consent for Parc Slip West. It did not operate until after privatisation at the end of 1994 when*

*the management buy out bought it along with the other South Wales opencast sites and began operating it in 1995.*

*Had the government not given consent then restoration would have taken place up to Bedford Road. The operating company, Shand, had paid a bond to British Coal Opencast Executive for the restoration which then ended at Law Street.*

*Hence, the government has direct responsibility for some at least of the restoration. It consented to Park Slip West – along with West Glamorgan – and then privatisation took away the guarantee of restoration. The presumption for opencast mining has led us to where we are today. So it is not unreasonable to request that the government take on it's share of responsibility for getting the restoration promised here.”*

On the 3<sup>rd</sup> May 2016, the Neath Port Talbot Planning Committee were minded to approve planning permission subject to a Section 106 agreement and the lifting of the holding direction from Welsh Government.

**MARK SHEPHARD  
CORPORATE DIRECTOR COMMUNITIES  
4 MAY 2016**

## Development Control Committee Guidance

I submit for your consideration the following report on Planning Applications and other Development Control matters based upon the information presently submitted to the Department. Should any additional information be submitted between the date of this report and 4.00pm on the day prior to the date of the meeting, relevant to the consideration of an item on the report, that additional information will be made available at the meeting.

For Members' assistance I have provided details on standard conditions on time limits, standard notes (attached to all consents for planning permission) and the reasons to justify site inspections.

### STANDARD CONDITIONS

On some applications for planning permission reference is made in the recommendation to the permission granted being subject to standard conditions. These standard conditions set time limits in which the proposed development should be commenced, and are imposed by the Planning Act 1990. Members may find the following explanation helpful:-

#### Time-limits on full permission

Grants of planning permission (apart from outline permissions) must, under section 91 of the Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. The section specifies a period of five years from the date of the permission. Where planning permission is granted without a condition limiting the duration of the planning permission, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the grant of permission.

#### Time-limits on outline permissions

Grants of outline planning permission must, under section 92 of the Act, be made subject to conditions imposing two types time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. The periods specified in the section are three years from the grant of outline permission for the submission of applications for approval of reserved matters, and either five years from the grant of permission, or two years from the final approval of the last of the reserved matters, whichever is the longer, for starting the development.

#### Variation from standard time-limits

If the authority consider it appropriate on planning grounds they may use longer or shorter periods than those specified in the Act, but must give their reasons for so doing.

### STANDARD NOTES

- a. Please note that this consent is specific to the plans and particulars approved as part of the application. Any departure from the approved plans will constitute unauthorised development and may be liable to enforcement action. You (or any subsequent developer) should advise the Council of any actual or proposed variations from the approved plans immediately so that you can be advised how to best resolve the matter.

In addition, any conditions that the Council has imposed on this consent will be listed above and should be read carefully. It is your (or any subsequent developer's) responsibility to ensure that the terms of all conditions are met in full at the appropriate time (as outlined in the specific condition).

The commencement of development without firstly meeting in full the terms of any conditions that require the submission of details prior to the commencement of development will constitute unauthorised development. This will necessitate the submission of a further application to retain the unauthorised development and may render you liable to enforcement action.

Failure on the part of the developer to observe the requirements of any other conditions could result in the Council pursuing formal enforcement action in the form of a Breach of Condition Notice.

- b. The enclosed notes which set out the rights of applicants who are aggrieved by the Council's decision.
- c. This planning permission does not convey any approval or consent required by Building Regulations or any other legislation or covenant nor permits you to build on, over or under your neighbour's land (trespass is a civil matter).

To determine whether your building work requires Building Regulation approval, or for other services provided by the Council's Building Control Section, you should contact that Section on 01656 643408 or at:- <http://www.bridgend.gov.uk/buildingcontrol>

- d. Developers are advised to contact the statutory undertakers as to whether any of their apparatus would be affected by the development
- e. Attention is drawn to the provisions of the party wall etc. act 1996
- f. Attention is drawn to the provisions of the Wildlife and Countryside Act 1981 and in particular to the need to not disturb nesting bird and protected species and their habitats.
- g. If your proposal relates to residential development requiring street naming you need to contact 01656 643136
- h. If you are participating in the DIY House Builders and Converters scheme the resultant VAT reclaim will be dealt with at the Chester VAT office (tel: 01244 684221)
- i. Developers are advised to contact the Environment and Energy helpline (tel: 0800 585794) and/or the energy efficiency advice centre (tel: 0800 512012) for advice on the efficient use of resources. Developers are also referred to Welsh Government Practice Guidance: Renewable and Low Carbon Energy in Buildings (July 2012):-  
<http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/energyinbuildings/?lang=en>
- j. Where appropriate, in order to make the development accessible for all those who might use the facility, the scheme must conform to the provisions of the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005. Your attention is also drawn to the Code of Practice relating to the Disability Discrimination Act 1995 Part iii (Rights of Access to Goods, Facilities and Services)
- k. If your development lies within a coal mining area, you should take account of any coal mining related hazards to stability in your proposals. Developers must also seek permission from the Coal Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 7626848 or [www.coal.gov.uk](http://www.coal.gov.uk)
- l. If your development lies within a limestone area you should take account of any limestone hazards to stability in your proposals. You are advised to engage a Consultant Engineer prior to commencing development in order to certify that proper site investigations have been carried out at the site sufficient to establish the ground precautions in relation to the proposed development and what precautions should be adopted in the design and construction of the proposed building(s) in order to minimise any damage which might arise as a result of the ground conditions.
- m. The Local Planning Authority will only consider minor amendments to approved development by the submission of an application under section 96A of the Town and Country Planning Act 1990. The following amendments will require a fresh application:-
  - re-siting of building(s) nearer any existing building or more than 250mm in any other direction;
  - increase in the volume of a building;
  - increase in the height of a building;
  - changes to the site area;
  - changes which conflict with a condition;
  - additional or repositioned windows / doors / openings within 21m of an existing building;
  - changes which alter the nature or description of the development;
  - new works or elements not part of the original scheme;
  - new works or elements not considered by an environmental statement submitted with the application.

- n. The developer shall notify the Planning Department on 01656 643155 / 643157 of the date of commencement of development or complete and return the Commencement Card (enclosed with this Notice).
- o. The presence of any significant unsuspected contamination, which becomes evident during the development of the site, should be brought to the attention of the Public Protection section of the Legal and Regulatory Services directorate. Developers may wish to refer to 'Land Contamination: A Guide for Developers' on the Public Protection Web Page.
- p. Any builder's debris/rubble must be disposed of in an authorised manner in accordance with the Duty of Care under the Waste Regulations.

## **THE SITE INSPECTION PROTOCOL**

The Site Inspection Protocol is as follows:-

### **Purpose**

#### **Fact Finding**

Development Control Committee site visits are not meetings where decisions are made and neither are they public meetings. They are essentially fact finding exercises, held for the benefit of Members, where a proposed development may be difficult to visualise from the plans and supporting material. They may be necessary for careful consideration of relationships to adjoining property or the general vicinity of the proposal due to its scale or effect on a listed building or conservation area.

### **Request for a Site Visit**

#### **Ward Member request for Site Visit**

Site visits can be costly and cause delays so it is important that they are only held where necessary normally on the day prior to Committee and where there is a material planning objection.

Site visits, whether Site Panel or Committee, are held pursuant to:-

1. a decision of the Chair of the Development Control Committee (or in his/her absence the Vice Chair) or
2. a request received within the prescribed consultation period from a local Ward Member or another Member consulted because the application significantly affects the other ward, and where a material planning objection has been received by the Development Department from a statutory consultee or local resident.

A request for a site visit made by the local Ward Member, or another Member in response to being consulted on the proposed development, must be submitted in writing, or electronically, within 21 days of the date they were notified of the application and shall clearly indicate the planning reasons for the visit.

Site visits can not be undertaken for inappropriate reasons (see below).

The Development Control Committee can also decide to convene a Site Panel or Committee Site Visit.

### **Inappropriate Site Visit**

Examples where a site visit would not normally be appropriate include where:-

- purely policy matters or issues of principle are an issue
- to consider boundary or neighbour disputes
- issues of competition
- loss of property values
- any other issues which are not material planning considerations
- where Councillors have already visited the site within the last 12 months, except in exceptional circumstances

### **Format and Conduct at the Site Visit**

#### **Attendance**

Members of the Development Control Committee, the local Ward Member and the relevant Town or Community Council will be notified in advance of any visit. The applicant and/or the applicant's agent will also be informed as will the first person registering an intent to speak at Committee but it will be made clear that representations cannot be made during the course of the visit.

### **Officer Advice**

The Chair will invite the Planning Officer to briefly outline the proposals and point out the key issues raised by the application and of any vantage points from which the site should be viewed. Members may ask questions and seek clarification and Officers will respond. The applicant or agent will be invited by the Chairman to clarify aspects of the development.

The local Ward Member(s), one objector who has registered a request to speak at Committee (whether a local resident or Town/Community Council representative) and a Town/Community Council representative will be allowed to clarify any points of objection, both only in respect of any features of the site, or its locality, which are relevant to the determination of the planning application.

Any statement or discussion concerning the principles and policies applicable to the development or to the merits of the proposal will not be allowed.

### **Code of Conduct**

Although site visits are not part of the formal Committee consideration of the application, the Code of Conduct still applies to site visits and Councillors should have regard to the guidance on declarations of personal interests.

### **Record Keeping**

A file record will be kept of those attending the site visit.

### **Site Visit Summary**

In summary site visits are: -

- a fact finding exercise.
- not part of the formal Committee meeting and therefore public rights of attendance do not apply.
- to enable Officers to point out relevant features.
- to enable questions to be asked on site for clarification. However, discussions on the application will only take place at the subsequent Committee.

### **Frequently Used Planning Acronyms**

AONB	Area Of Outstanding Natural Beauty	PINS	Planning Inspectorate
APN	Agricultural Prior Notification	PPW	Planning Policy Wales
BREEM	Building Research Establishment Environmental Assessment Method	S.106	Section 106 Agreement
CA	Conservation Area	SA	Sustainability Appraisal
CAC	Conservation Area Consent	SAC	Special Area of Conservation
CIL	Community Infrastructure Levy	SEA	Strategic Environmental Assessment
DAS	Design and Access Statement	SINC	Sites of Importance for Nature Conservation
DPN	Demolition Prior Notification	SPG	Supplementary Planning Guidance
EIA	Environmental Impact Assessment	SSSI	Site of Special Scientific Interest
ES	Environmental Statement	TAN	Technical Advice Note
FCA	Flood Consequences Assessment	TIA	Transport Impact Assessment
GPDO	General Permitted Development Order	TPN	Telecommunications Prior Notification
LB	Listed Building	TPO	Tree Preservation Order
LBC	Listed Building Consent	UCO	Use Classes Order
LDP	Local Development Plan	UDP	Unitary Development Plan
LPA	Local Planning Authority		



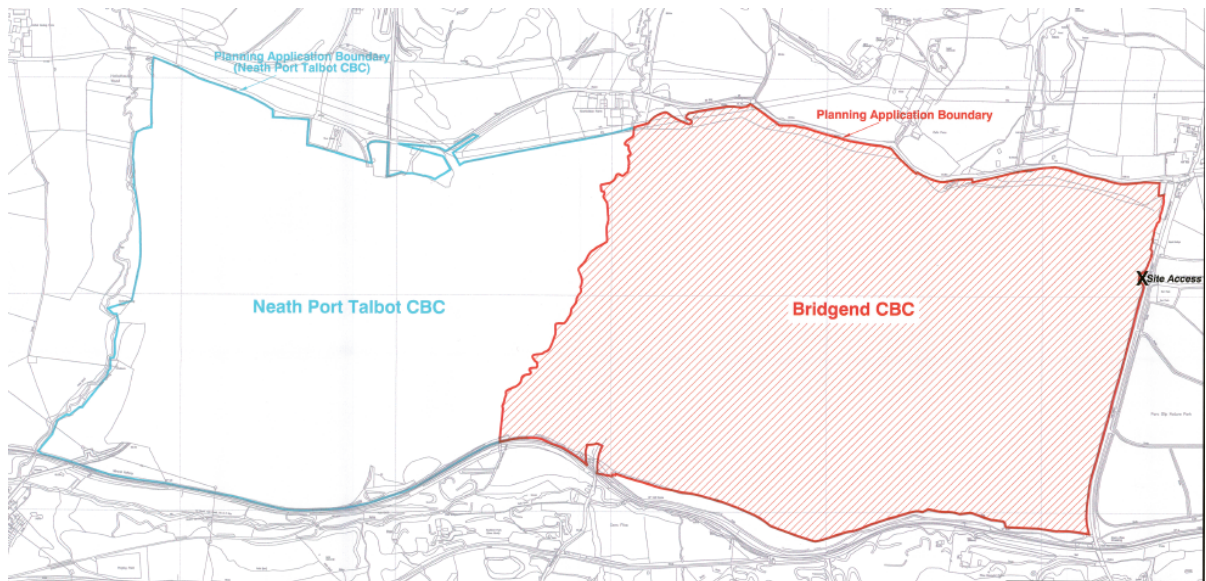
**REFERENCE:** P/16/128/FUL

**APPLICANT:** CELTIC ENERGY LIMITED

**LOCATION:** FORMER MARGAM SURFACE MINE, FFORD-Y-GYFRAITH BRIDGEND

**PROPOSAL:** PROPOSED ALTERNATIVE RESTORATION AND AFTERCARE SCHEME IN RESPECT OF THE FORMER MARGAM SURFACE MINE

**RECOMMENDATION:** APPROVAL SUBJECT TO SECTION 106



## Background:

This application and the corresponding application made to Neath Port Talbot County Borough Council is subject to a call-in request to Welsh Government. Welsh Government must now decide whether the determination should be made by the Welsh Ministers or by the local authorities. In the meantime a Holding Direction has been issued, preventing approval of the scheme until formal notification is received. As such if members are minded to approve the application delegated authority is sought to issue the decision once the Welsh Ministers' have decided whether the application is to be called in.

The Margam Opencast Coal Site straddles the boundary between Neath Port Talbot and Bridgend. The area within Neath Port Talbot lies on the western side of the site and contains the opencast void which is currently filling with water and the major part of the overburden surcharge mound. The western part of the site within Bridgend contains the main overburden mound, soil storage areas, water treatment areas, workshops/office area and the site access.

Planning permission for the current Margam Opencast Coal Site was granted by Neath Port Talbot County Borough Council in March 2001 for a temporary period of 5 years (Ref: P98/0541) . A similar application was approved by Bridgend County Borough Council also in March 2001 (Ref: P/98/377/MIN).

A number of subsequent applications to extend the time period for the completion of coaling were approved with the latest expiring on 11<sup>th</sup> October 2008.

Within two months of cessation of coaling the operators were required to commence backfilling of the void (Condition 4 of planning permission P/06/1478/RLX). They were also required to submit a restoration and aftercare scheme. The filling of the void did not commence as required and no restoration has been undertaken since the cessation of coaling in October 2008. The restoration and aftercare schemes have also not been submitted.

At the time the infilling of the void was due to commence and the restoration and aftercare schemes were due to be submitted the operators were pursuing an Appeal against the refusal of planning permission for a further extension of the extraction area. Neath Port Talbot County Borough Council refused the application on 29<sup>th</sup> January 2008 (Ref: P2007/0663) and Bridgend County Borough Council refused a similar application on 18<sup>th</sup> January 2008 (Ref: P/07/569/MIN).

A Public Inquiry was held in February 2009 and the Appeal was dismissed in November 2009. A Legal Challenge to the Appeal decision was dismissed by the High Court in July 2010 and again by the Court of Appeal in October 2011. In accordance with best practice guidance, neither Neath Port Talbot County Borough Council nor Bridgend County Borough Council pursued enforcement action whilst the appeal process was ongoing.

During the appeals process the operator transferred ownership of the site to an offshore company registered in the British Virgin Islands – Beech Regeneration Inc, a subsidiary of Oak Regeneration. Following this transaction, the site operator did not discuss any matters associated with the site with officers of either Authority. At the same time, it was unclear who was representing the new owners of the site given they were registered offshore. After some time, a legal firm confirmed that they were representing Oak Regeneration and a subsidiary company 'Beech' who were responsible for the Margam OCCS. The ownership transfer has been the subject of an investigation by the Serious Fraud Office who subsequently brought a case

before the Courts. However, the Court found that no offence had been committed.

Since late 2011, following the dismissal of the challenge in the Court of Appeal, officers from both Authorities have attended a number of meetings with the owner (Oak/Beech), the operator (Celtic Energy) and their agents at that time. At these meetings officers have expressed their deep concerns about the lack of restoration and have consistently stated that the site should be reinstated in accordance with the planning permission. The owner and operator have made it clear that they had insufficient funds available to restore the site in accordance with the approved restoration strategy and indicated that any enforcement action to secure compliance with the approved restoration strategy would likely result in them going into liquidation.

A number of alternative restoration proposals have been put forward by the agents, some of which involved further coaling, coaling with renewable energy as an after-use, and some involved no additional coaling but substantial residential development. All of these schemes were either dismissed by the owner/operator as being undeliverable for financial reasons or were dismissed by either Local Planning Authority as out of accord with the development plan and that they did not address the reasons for refusal associated with the refusal of planning permission under P/06/567/MIN and the subsequent failed Appeal/Court Challenge.

Whilst discussions were ongoing with the owner, operator and agents, external legal advice was sought by NPT and Bridgend Councils. The legal advice suggested that the Councils should:-

- serve a Planning Contravention Notice (PCN) to establish ownership and interests in the site and
- prepare a restoration scheme to append to any future enforcement notice that may be served.

PCNs were served in February 2013 seeking information in relation to land ownership, other interests, current or last use of the site and whether a restoration scheme had been prepared. Responses to the PCN were received and established ownership by Oak Regeneration and its subsidiary Beech Regeneration Inc. Celtic Energy held the Coal Authority License but did not own any of the land.

A restoration scheme was also jointly commissioned by NPTCBC and Bridgend CBC. The scheme was provided to the owner and operator in advance of any enforcement action. They once again confirmed that there were insufficient funds available to restore the site in accordance with the scheme. The only funds available were the £5.7 million in the restoration fund. Serving an enforcement notice requiring this scheme to be complied with would have forced the site owner into liquidation and restoration would not take place.

It is important to understand why there is a significant shortfall in the restoration fund. Margam (Parc Slip) was operated by British Coal up until

1994. British Coal was not required to provide financial guarantees or bonds because British Coal was a nationalised industry effectively underwritten by the Government. Margam (Parc Slip) was transferred to Celtic Energy following the Coal Industry Act 1994, together with a number of other sites in South Wales, and as part of that transfer Celtic Energy were exempt from having to provide bonds for transferred sites at privatisation and for a period of 10 years thereafter. As a result financial guarantees were only sought in relation to subsequent applications. Notwithstanding that exemption Celtic Energy entered into a Section 106 Agreement in relation to the 2001 planning permission (Ref: P/98/377/MIN) which included a restoration fund of £5.1 million. This Bond was subsequently transferred to the 2006 permission (P06/1478/RLX). The bond value has now risen to £5.7 million but is nowhere near enough to fund compliance with the approved restoration strategy.

Following concerns expressed by elected Members and the local communities in relation to the lack of progress in relation to restoration of the site a detailed report was presented to the Development Control Committee on 8th January 2015. That Report advised on the history of the site, the potential impacts, the enforcement constraints and the options going forward.

Five Options were put forward for Members consideration at the time

- Option 1 – Do nothing
- Option 2 – Serve an Enforcement Notice
- Option 3 - Alternative restoration scheme including extraction of further coal
- Option 4 – Alternative Restoration Scheme without further coaling
- Option 5 – Use of the Existing Restoration Fund

Members resolved that Options 4 and 5 be pursued by officers as well as a cross boundary public meeting to be held to advise all interested parties of the current position. A Public Meeting was held in the Talbot Institute, Kenfig Hill on the 24<sup>th</sup> March 2015.

An Updated Position Paper was reported to the Development Control Committee on the 2<sup>nd</sup> April and 15<sup>th</sup> October 2015 which advised Members of the action taken since January 2015 and outlined the potential options going forward having regard to legal and financial constraints.

The previous Committee reports may be accessed here:

<https://democratic.bridgend.gov.uk/mgChooseDocPack.aspx?ID=2138>

<https://democratic.bridgend.gov.uk/ieListDocuments.aspx?CId=164&MId=2179&Ver=4>

<https://democratic.bridgend.gov.uk/mgChooseDocPack.aspx?ID=2351>

Whilst it was acknowledged that the most acceptable outcome would be to secure the full restoration of the site in accordance with the approved restoration strategy such a position is not achievable. Pursuing enforcement

action would not address the short term concerns of Members and the local community, nor would it address the long term need to see this site appropriately restored.

### **Planning History:**

#### Bridgend

P/98/377/MIN – Proposed Extension of Existing Park Slip West Opencast Coal Site and Construction of a New Drift Mine – Approved – 2<sup>nd</sup> March 2001

P/00/685/RLX – Relaxation of Condition on Opencast Application Re Overburden Mound – Approved – 25<sup>th</sup> September 2000

P/04/1736/MIN – Opencast Mining with Environmental Statement – Withdrawn – 20<sup>th</sup> November 2006

P/06/1478/RLX – Vary Condition 2 of Permission P98/377 to extend period to Extract Coal and Associated Development until 1<sup>st</sup> January 2008 – Approved 19<sup>th</sup> December 2007

P/07/569/MIN – Extract Coal, Restoration and Aftercare - Refused – 18<sup>th</sup> January 2008 – Appeal Dismissed – 20<sup>th</sup> November 2009

P/15/755/ESO – Screening and Scoping Opinion for Site Restoration Plan – EIA not required – 18<sup>th</sup> December 2015

#### Neath Port Talbot

2/4/81/3806 – Excavation of tips at Bryndu – Approved – 8<sup>th</sup> March 1982

2/4/82/4090 – Excavation of tips at Bryndu – Approved - 30<sup>th</sup> - August 1982

2/4/82/4161 – Excavation of remaining part of tip at Bryndu – Approved - 12<sup>th</sup> November 1982

2/4/82/4248 – Excavation of tip near Crown Road – Refused - 4<sup>th</sup> February 1983

2/4/89/7389 – Extension to Opencast Parc Slip West OCCS – Approved - 7<sup>th</sup> March 1991

P98/0541 – Proposed opencast extension with offices and water treatment facilities, mine surface and infrastructure, area of underground extraction and reclamation of derelict (Aberbaidan) spoil tips– Approved - 2<sup>nd</sup> March 2001

P2001/0822 - Agree scheme for the lighting of all areas, buildings, plant and machinery under condition 44 of planning application P/98/0541 – Approved – 1<sup>st</sup> October 2001

P2001/0569 - Scheme under condition 19 of planning permission P/98/0541 - scheme for the management of areas not disturbed by opencast operation – Approved 12<sup>th</sup> October 2001

P2001/0867 - Scheme to maximise the foraging potential for badgers and maintaining their movement within undisturbed land around the opencast site – Approved – 12<sup>th</sup> October 2001

P2001/1063 - The proposed scheme for the setting up of a technical working party (condition 33 of P/98/541) – Approved – 19<sup>th</sup> October 2001

P2001/1069 - Proposed scheme for the setting up, operating and regular convening of a site liaison committee under condition 32 of planning approval no P/98/0541 – Approved – 22<sup>nd</sup> October 2001

P2001/0574 - Scheme under condition 15 of planning permission 98/541 - scheme for the protection and retention of mature hedgerows within south western corner of site – Approved – 3<sup>rd</sup> December 2001

P2002/0244 - Scheme under condition 67 of planning permission P/98/0541 – Approved – 12<sup>th</sup> November 2002

P2002/0246 - Scheme under condition 9 of planning permission P/98/0541 - blasting monitoring – Approved – 4<sup>th</sup> April 2002

P2002/1138 - Proposed chemical and biological monitoring of water courses - under condition 58 of planning approval no P/98/0541 – Approved – 4<sup>th</sup> November 2002

P2002/1153 - Provision of foul drainage facilities under condition 52 of P/98/541 – Approved – 12<sup>th</sup> November 2002

P2002/1164 - Drainage & lagoon system details under condition 54 of planning permission P/98/541 – Approved – 12<sup>th</sup> November 2002

P2002/1165 - Surface water regulation system under condition 61 of planning permission 98/541 – Approved – 4<sup>th</sup> November 2002

P2003/0487 - Variation of condition 2 of planning permission P/98/0541 to allow opencast operations until 1<sup>st</sup> January 2007, the variation of condition 24 of planning permission P/98/0541 to allow submission of details of buildings landscaping and car parking no later than 12 months prior to the commencement of the deep mine and variation of condition 25 of same to allow commencement of deep mine to be deferred until four years after commencement of opencast operations – Withdrawn – 13<sup>th</sup> February 2004

P2004/0023 - Request under condition 65 of planning approval P/98/0541 to export red ash from the site – Approved – 22<sup>nd</sup> March 2004

P2001/1243 – Proposed extension of extraction (coaling area) and the temporary enlargement of proposed surcharging mound - variation of conditions 3 & 12 of planning application P98/0541– Approved – 13<sup>th</sup> November 2006

P2004/1294 – Variation of condition 2 of planning permission no 98/0541 to extend timescale for coaling operations and associated development until 1<sup>st</sup> February 2007 at Margam OCCS – Approved - 13<sup>th</sup> November 2006

P2004/1832 – Proposed extension to existing opencast coal site followed by restoration and aftercare management (additional information and plans) – Withdrawn - 16<sup>th</sup> November 2006

P2006/1727 – To extend period of coal extraction operations and associated development with the exception of back filling, restoration and aftercare requirements to 1<sup>st</sup> January 2008 under condition 1 of planning application numbers P2001/1243 and P2004/1294– Approved – 19<sup>th</sup> December 2007

P2007/0905 - Proposed restoration contours and landscaping for Aberbaidan tips under condition 50 of planning application 01/1243 and 04/1294 – Approved – 3<sup>rd</sup> September 2007

P2007/0663 - Proposed extension to existing opencast coal site to include coal extraction, the screening of coal followed by restoration and aftercare management – Refused – 29<sup>th</sup> January 2008 – Appeal Dismissed – 20<sup>th</sup> November 2009

P2007/1728 – Extension of time under condition 1 of P2006/1727 for the completion of coaling until 31<sup>st</sup> August 2008 - Approved – 19<sup>th</sup> February 2008

P2008/0252 – To amend seed mix and treatment of land and extend completion of seeding under conditions 1 and 2 of planning permission 2007/0905 by the application of biosolids and extending time for completion until 30<sup>th</sup> September 2008 – Refused - 13<sup>th</sup> May 2008.

P2008/1134 - Extension of time under condition 1 of planning permission P/2006/1727 for the completion of coaling until 11<sup>th</sup> October 2008 (amended application) – Approved – 21<sup>st</sup> October 2008

APP/Y6930/A/08/2089878 – Appeal against refusal of application to apply biosolids and extend time to complete works – Appeal Allowed - 11<sup>th</sup> March 2009.

P2009/0517 - Application to vary condition 6 of Appeal Ref: APP/Y6930/A/08/2089878 and extend period to complete the importation of biosolids and the seeding of all areas by 31<sup>st</sup> August 2009 – Approved – 23<sup>rd</sup> June 2009

P2009/0734 - Discharge of condition 3 of previous planning consent P2009/0517 (details and methods to prevent pollution during importation and spreading of biosolids) – Approved – 9<sup>th</sup> September 2009

P2009/0735 - Vary condition 6 of previous planning consent P2009/0517 to extend period to complete the importation of solids and the seeding of all areas by 2<sup>nd</sup> October 2009 – Withdrawn – 30<sup>th</sup> September 2009

P2015/1012 - Screening and Scoping Opinion for alternative restoration and aftercare scheme – EIA not required – 16<sup>th</sup> December 2015

### **Publicity and Responses:**

The application has been publicised by 688 neighbour consultation letters, the display of 6 Site Notices around the site boundary and by advertisement in the Glamorgan Gazette on 3<sup>rd</sup> March 2016. 197 responses have been received as a result - 21 individual letters/online comments and 173 signed standard letters of objection (in three different formats). An online petition containing 599 signatures has also been submitted as well as a petition of objection containing 20 names. A letter has been received from Madeleine Moon MP. Three standard letters of support have also been received. A copy of a letter and 1139 signature made up of letters and petitions sent to Welsh Government has been received.

Grounds of objection are summarised as follows

- The flooded void is an attraction to local youngsters and is an accident waiting to happen, the void should be drained and infilled with spoil from the site and the landscape returned to the way it was before the development
- Risk of flooding in surrounding areas
- The lake will be a dumping ground and will result in pollution
- The proposal does not reinstate the lost roads which are a vital community link and the proposed realigned roads would result in additional traffic movements in the area and anti-social behaviour
- Loss of footpath links
- Impact on the amenity, health and well-being of the residents of the area
- The approved restoration strategy or at least the Council produced restoration scheme should be enforced
- The plan does little to encourage biodiversity
- The proposal is not sustainable development
- Independent geotechnical and hydrological reports should be commissioned
- One resident expressed concern regarding the access to the site for heavy machinery.



## Statutory Consultees

**Natural Resources Wales** – has concerns regarding the lack of information submitted in order to make an assessment on the impacts of the development on European Protected Species. NRW consider that there is a reasonable likelihood of dormice and Great Crested Newts being present on the site and would advocate that comprehensive protected species surveys are undertaken for these species prior to determination of the application. In the event that further detailed assessment is not undertaken by the applicant and having considered the information available NRW advise that to overcome their concerns it should be assumed that dormice and Great Crested Newt are present and conditions must be included requiring comprehensive strategies for the protection of European Protected Species. A Test of Likely Significant Effects is required due to the connectivity of the site to the Kenfig SAC although adverse effects are unlikely given the distance from the source to the SAC. There is no objection to the proposals on the grounds of flood risk and the justification for the design of the overspill channel is accepted. Pollution prevention measures need to be incorporated within the works. Attention is also drawn to the Reservoirs Act 1975 and the responsibility of the developer to satisfy themselves that the body of water is not a raised reservoir.

### **Head of Street Scene (Drainage) –**

The information submitted has been independently assessed. It is considered that the proposed scheme is acceptable in principle in terms of flood risk, discharge rates and proposed drainage channel.

Following discussions between BCBC and NPT officers, the principle of the proposed channel and discharge point, which are both within the NPT boundary, are acceptable, however, a detailed design is required. I would request that the NPT be advised that suitable conditions be attached to their element of the scheme requiring submission, approval and implementation of the proposed drainage channel. It is requested that these details are also issued to BCBC for consideration.

**Destination & Countryside Management** – Endorse the comments and conditions supplied by NPT ecologist and NRW in relation to the scheme. In addition, requested a condition regarding the management of invasive species and considers that the proper operation of the water treatment ponds is essential to prevent pollution.

**Group Manager Public Protection** – No objections subject to conditions controlling noise and dust.

**Head of Street Scene (Highways)** – No highway objection subject to conditions.

**Footpaths** – No objections to the proposed re-instatement of the rights of way across the site providing standard specification are met.

**Bridgend & District Ramblers** – the area has a number of footpaths and a bridleway to be relocated. The surface should be suitable for walking/riding and to the same standard as the definitive statement on completion.

**The Coal Authority** – no comment

**Pyle Community Council** – objects to the proposal due to safety issues associated with the retention of the flooded void, stability issues associated with the excavated faces and the height of the overburden mounds, risk of flooding, the downgrading of the surfacing of Crown Road and Bedford Road. The Council considers that the void should preferably be drained and filled as originally proposed when planning permission was granted.

**Cefn Cribwr Community Council** – the flooded void is an immediate risk to local residents as it will be attractive to local youngsters and the void is unstable. If retained the void must be made secure to prevent access. Object most strongly to the downgrading of Crown Road and Bedford Road as the gravel surface will deteriorate quickly and be attractive to motorcyclists who are already a nuisance. In addition, Celtic Energy will only be responsible for management for 5 years so who is responsible thereafter. The Council accept that there are cost factors which have a significant bearing on what is achievable but the proposal is unacceptable in its current form.

**Llangynwyd Lower Community Council** – no observations received to date

**Neath Port Talbot County Borough Council** – no observations to make as the impacts are being considered in detail under the application made to that authority.

#### **Description of Site and its Surroundings:**

The Margam Opencast Coal Site covers an area of approximately 195 hectares (86 within Neath Port Talbot and 109 within Bridgend) and is located approximately 700m north of the village of Cefn Cribwr, 300m north east of Kenfig Hill and 700m south east of Pen-y-bryn. The nearest properties are The Oaks (35m) and Aberbaidan Farm (90m) to the north of the site. The nearest property along Crown Road to the south west of the site is approximately 110m from the site.

The site is bisected by the administrative boundary between Neath Port Talbot and Bridgend, which runs in a north south direction almost centrally through the site. The area within Neath Port Talbot lies in the western part of the site and contains the opencast void which is 100m in depth. The void is currently filling with water amounting to 11 million cubic metres of water. This is currently at a level of 42m AOD which is approximately 11m below the lowest part of the natural ground. A significant part of the overburden surcharge mound sits centrally within the site. The main overburden mound sits within the Bridgend area in the eastern part of the site, the majority of the soil mounds are also in the eastern part of the site together with the former administrative area, the majority of the water treatment facilities and the site

access. The Nant Craig yr Aber runs north to south through the site in a diverted channel between the overburden mound and the surcharge mound.

To the west of the site lies Hafodheulog Wood and the wooded banks of the Afon Cynffig which runs southwards under the railway via a culvert. Beyond that to the west the land is largely agricultural pasture. To the north are isolated properties along New Road, which runs east-west skirting the site boundary. To the east the site is bounded by Law Street with the Parc Slip Nature Reserve beyond. To the south the site is bounded by the railway line.

The access to the site has historically been from Fountain Road, through the Parc Slip Nature Reserve and crossing directly across Law Street. The truncated ends of Crown Road and Bedford Road are located on the southern boundary of the site and their former connection to New Road to the north.

The approved restoration strategy involved infilling the void with the overburden from the overburden mound and surcharge mound and restoring the land to a similar profile to that which existed prior to works being undertaken.

The sections of Bedford Road and Crown Road crossing the site were also to be reinstated. For the reasons outlined above this restoration strategy cannot be achieved as the owner and the operator do not have the funds available to deliver such a restoration. Furthermore, as outlined in previous reports to this Committee it is extremely unlikely that any funds will be made available from other sources to achieve the approved restoration strategy.

### **Brief description of proposal:**

The proposal seeks an alternative restoration and aftercare scheme for the Margam Opencast Coal Site which addresses safety and security concerns and can be achieved with the £5.7 million contained within the restoration fund.

The primary element is the construction of an overflow spillway to regulate the water level in the void. The spillway is proposed in the south west corner of the site and will maintain the water level in the void at no greater than 48m AOD. In order to construct the spillway the water level will need to be temporarily reduced to 37m AOD from its current level of approximately 42m AOD. This will also facilitate the stabilisation works to the western faces where the solid strata are overlain with superficial deposits of clay, stiff clays, sand, gravel and silts. It is estimated that the reduction in the water level will take approximately 28 weeks.

Pumping of the water to maintain the water level in the void has been underway for some time. This was originally undertaken to maintain the water level commensurate with the position of the Bryndu Engine Shaft and thus create a linkage between the void and the shaft to enable natural run-off. Unfortunately, the run-off hasn't been at the rate to maintain safe water levels within the void, and pumping as a consequence recently has been increased.

Pumping levels are limited by the existing discharge consents issued by Natural Resources Wales.

Some targeted re-profiling of the overburden mounds is to be undertaken, having regard to the biodiversity interests established on site. These re-profiled areas will be hydro-seeded to promote vegetation growth and aid slope stabilisation.

The application also proposes to reinstate the link along Crown Road and Bedford Road on a slightly altered alignment. The road surface will take the form of a forestry type road surfaced with secondary aggregate and graded to camber to aid drainage. In order to achieve this, the relevant orders will need to be made and this process is governed by a separate legal procedure and is outside the scope of the planning process. A small section of the re-aligned Bedford Road will be affected in Bridgend with the remainder of this road and Crown Road being within Neath Port Talbot.

The remaining site infrastructure is to be removed except for the access road and car parking area which are to be retained to facilitate future public access along a reinstated, but rationalised, public rights of way network following the original routes as closely as possible where practicable.

The timetable of operations requires completion of the works by June 2017, as the applicant has only been able to secure access rights to the site from the landowner for a two year period which commenced in June 2015. The programme of works associated with the alternative restoration scheme can be secured within the restricted timeframe provided that works commence in May 2016.

Works are proposed to be undertaken between 7am and 7pm Monday to Friday and 8am to 1pm on Saturday with no working on Sundays or Public Holidays except for essential maintenance. The machinery required to carry out the works will access the site through the Parc Slip Nature Reserve rather than along Law Street.

The aftercare programme will result in a primarily nature conservation after-use which entails the retention of an extensive area that has been naturally re-vegetated to UK BAP and NERC Section 42 habitat of principle importance such as open mosaic habitat on previously developed land and the corridor of the Nant Craig yr Aber. Water treatment features are to be retained for nature conservation purposes and the regraded areas are to be re-vegetated. The links along Crown Road and Bedford Road are to be reinstated on an alternative alignment surfaced with secondary aggregate and graded to a camber to aid drainage; and the footpath network is to be reinstated in a rationalised form so that public access is restored. The network in Bridgend will be marginally increased.

## **Environmental Impact Assessment**

The application has been 'screened' in accordance with the Town and Country Planning (Wales and England) Regulations 1999. In this instance the 'screening opinion' concluded that an Environmental Statement is not required to accompany the application.

### **Material Considerations:**

To consider whether the proposed restoration and aftercare scheme address the Council's serious concerns in relation to site safety and security; address the Council's concerns about rising water levels in the void and avoids the off-site flooding consequences of water breaching at the lowest point of the adjoining land; restores connectivity between the communities and has regard to biodiversity without significant adverse impacts on the local residents and the local environment having regard to national and local policies and guidance and having regard to the financial and legal constraints associated with securing a deliverable restoration of the site.

### **Policy Context:**

#### National Policy

The Well-being of Future Generations Act 2015 imposes a duty on public bodies to carry out sustainable development. Well-being goals identified in the Act are:

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

**A Resilient Wales:** is a nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

**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.

Planning Policy Wales (PPW) 8<sup>th</sup> Edition (January 2016) 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.

Chapter 14 of PPW sets out the Welsh Government's land use planning policies for mineral extraction and related development. Paragraph 14.1.1 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 working needs 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”

PPW 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.

PPW 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.

The Environment (Wales) Act 2016 received Royal Assent in March 2016 and has been designed to complement the Wellbeing of Future Generations (Wales) Act by applying the principles of sustainable development to the management of Wales' natural resources.

The Act puts the ecosystem approach into statute through a set of Sustainable Management of Natural Resources (SMNR) principles, which are based on the 12 principles (Ecosystem Approach principles) contained in the UN Convention on Biological Diversity (CBD).

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

This new duty under Section 6 of the Environment Act comes into force in May 2016 and replaces the biodiversity duty in the Natural Environment and

Rural Communities Act 2006 (referred to as the NERC Act) which required that public authorities must have regard to conserving biodiversity.

### National Guidance

MTAN (Wales) 2: Coal was published in January 2009 and 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. Following the Coal Summit in 2015 Welsh Government indicated that MTAN2 would be revised to reflect current circumstances but despite holding a consultation event no changes have as yet been forthcoming. In any event the changes to MTAN2 would only relate to future proposals and not to existing sites.

Technical Advice Note 5: Nature Conservation and Planning was published in September 2009. The TAN provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. The TAN brings together advice on sources of legislation relevant to various nature conservation topics which may be encountered by Local Planning Authorities. These include the key principles of planning for nature conservation; advice about the preparation and review of Local Development Plans; nature conservation in development control procedures; conservation of internationally and nationally designated sites and habitats as well as local sites; and conservation of protected and priority species.

### Local Development Plan (LDP)

The Bridgend Local Development Plan (2006-2021) was formally adopted in September 2013 and is the Development Plan for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004. Section 38(4) requires a planning application to be determined in accordance with the content of the development plan unless material considerations indicate otherwise. The Local Development Plan consists of a number of policies that relate directly or indirectly to the consideration of the proposals which have been summarised below.

Policy PLA9 - Development affecting Public Rights of Way- states that development proposals that do not cater for 'public rights of way' and/or do not protect the existing or proposed network for public use, will not be permitted. Proposals for alternative routes for a public right of way should provide a route of similar or improved quality to that of the existing route

Strategic Policy SP4 - Conservation and Enhancement of the Natural Environment states that development which will conserve and, wherever possible, enhance the natural environment of the County



Borough will be favoured. Development proposals will not be permitted where they will have an adverse impact upon: the integrity of the County Borough's countryside; the character of its landscape; its biodiversity and habitats; and the quality of its natural resources including water, air and soil.

Areas having a high and/or unique environmental quality such as SAC's, SSSI's, NNR's and the Glamorgan Heritage Coast will be protected from inappropriate development which directly or indirectly impacts upon them.

Policy ENV1- Development in the Countryside - states that development in the countryside of the County Borough will be strictly controlled. Development may be acceptable where it is necessary for specific purposes including the winning and working of minerals

Policy ENV4 - Local/Regional Nature Conservation Sites- states that development within or adjacent to a Local Nature Reserve (LNR); Site of Importance for Nature Conservation (SINC); or Regionally Important Geodiversity Site (RIGS) should be compatible with the nature conservation or scientific interest of the area, whilst promoting their educational role.

Developments which would have an adverse impact on these sites will not be permitted unless the benefits associated with the development can be demonstrated to outweigh the harm and/or the harm can be reduced or removed by appropriate mitigation and/or compensation measures

Policy ENV5- Green Infrastructure - Green infrastructure will be provided through the protection and enhancement of existing natural assets and the creation of new multi-functional areas of green space. Green infrastructure corridors will connect locations of natural heritage, green space, biodiversity or other environmental interest. They will be safeguarded through not permitting development that compromises their integrity and therefore that of the overall green infrastructure framework; using developer contributions to facilitate improvements to their quality and robustness; and investing in appropriate management, enhancement and restoration, and the creation of new resources

Policy ENV6- Nature Conservation – states that proposals for development or redevelopment will be required to;

In the first instance, retain, conserve, restore and enhance wherever possible existing natural features such as Woodland, Trees, Hedgerows, Wetlands, Watercourses, Ponds, Green Lanes/Wildlife Corridors, Geological Features and Other Natural Features or Habitats. Where this is demonstrated not to be possible, suitable mitigation or compensatory measures will be required to secure biodiversity including future management programmes.

Avoid or overcome harm to nature conservation assets and/or species of wildlife which may be either resident, in-situ or which can be demonstrated to have frequented habitats within the site on a migratory basis

Policy ENV7- Natural Resource Protection and Public Health – states that development proposals will only be permitted where it can be demonstrated

that they would not cause a new, or exacerbate an existing, unacceptable risk of harm to health, biodiversity and/or local amenity due to: Air pollution; Noise pollution; Light pollution; Contamination (including invasive species); Land instability; Water (including groundwater) pollution; any other identified risk to public health or safety. Development in areas currently subject to the above will need to demonstrate mitigation measures to reduce the risk of harm to public health, biodiversity and/or local amenity to an acceptable level

Strategic Policy SP6 – Minerals- states that a contribution to the national, regional and local demand for a continuous supply of minerals, in a sustainable manner, will be achieved by:

- 1) Maintaining a minimum 10 year supply of aggregates throughout the plan period;
- 2) Safeguarding identified areas of high quality finite resources of coal, sand and gravel, limestone and sandstone;
- 3) Promoting the efficient usage of aggregates, promoting the use of commercial and demolition waste and secondary aggregates, and maximising the use of these alternative materials before the use of virgin aggregate;
- 4) Ensuring that mineral development will not negatively impact on amenity and the environment;
- 5) Mitigate against the conflict between sensitive land uses, and mineral operations by defining buffer and exclusion zones around mineral sites and relevant settlement boundaries respectively

Policy ENV11 - Mineral Development – states that all mineral related developments, including underground gas extraction will be permitted only where all of the following criteria are satisfied:

- 1) Pollution of ground and surface waterbodies is avoided.
- 2) Measures will be taken to reduce, and where possible avoid, damage or disturbance to the environment to acceptable levels with specific reference to:
  - a) The impact on the landscape of the area;
  - b) The effect on nature conservation and wildlife interests of the site and adjoining land;
  - c) The effect on agricultural interests particularly on high quality agricultural land;
  - d) The effect on sites of archaeological importance;
  - e) The impact on the stability of adjoining land; and
  - f) The potential for mine gas emissions.
- 3) Measures will be taken to reduce damage or disturbance to neighbouring land uses to acceptable levels including:
  - a) The effects of excessive noise, dust or vibration arising from the methods of working set out in a health impact assessment; and
  - b) The impact of traffic generated to and from the site.
- 4) Proposals for the duration and phasing of operations, restoration, beneficial after-use and aftercare are acceptable and priority should be given to a nature conservation end use

Policy ENV13 - Unstable Land – states that where proposals affect land which has known instability/ landslip issues, any planning application must be accompanied by a stability report which:

- 1) Identifies and assesses the risk of instability in a report produced by a qualified professional in an appropriate discipline;
  - 2) Identifies the measures required to mitigate against any identified risk(s);
  - 3) Stipulates routine monitoring and assessment of any future works required;
- and
- 4) Assesses the need for formal environmental assessment for any identified stabilisation work

Strategic Policy SP14 – Infrastructure – states that applications for development should include material proposals which deal with the fair and reasonable infrastructural requirements of the development, and which help to mitigate any negative impacts that may arise as a consequence of the development. Where appropriate, such proposals will be secured by means of planning agreements/obligations.

The requirements for such agreements will include consideration of and appropriate provision for: Affordable housing; Educational facilities and/or their upgrades; Outdoor recreation; Renewable energy and low carbon technologies; Improvements to the highway network, including walking and cycling routes and public transport; Protection, enhancement and management of the natural, historic and built environment; Community facilities and/or their upgrades; Waste management and recycling facilities; Initiatives to manage and mitigate the impact of climate change; and Improvements to the public realm

Supplementary Planning Guidance Note (SPG) 19: Biodiversity & Development – A green Infrastructure Approach. Adopted July 2014.

The purpose of this Supplementary Planning Guidance (SPG) is to expand upon the Council's existing planning policies on biodiversity and green infrastructure contained within the adopted Local Development Plan (LDP). It outlines how the Council will expect habitats to be considered as part of development proposals within the County Borough of Bridgend. It also introduces the concept of adopting a *Green Infrastructure Approach* to development.

### **Appraisal and Assessment:**

#### Principle of Development

It is important to note that the principle of development has already been established. Planning permission has been granted and implemented for the extraction of coal and the reinstatement of the land albeit that the extraction of coal element has been completed but the site has not been reinstated in accordance with the approved restoration strategy. What the applicants are seeking is to carry out a restoration scheme which is different to the approved

restoration strategy. That is the proposal before Members which must be considered on its own merits and it is the acceptability or otherwise of the proposed scheme that is to be considered.

In April 2014 Welsh Government published Research into the failure to restore opencast coal sites in South Wales (Margam OCCS is listed as a case study). The research identified that the key risk, related to sites where the bond or surety held by the Local Planning Authority falls short of the level which might be required to restore the site in accordance with the planning permission should the site be abandoned or left unrestored. As a consequence one of the key recommendations of the research was that for sites at risk of not being restored in accordance with the planning permission (as is the case at Margam), 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 value. This alternative approach is what is being proposed at Margam by way of this application

The research document may be found here:

<http://gov.wales/topics/planning/planningresearch/publishedresearch/failure-to-restore-opencast-coal-sites-in-south-wales/?lang=en>

The complex background to this site has been set out in detail above and whilst it is acknowledged that the local community wants to see the site restored to a landform similar to its former condition prior to development taking place this is highly unlikely to be achievable given the financial and legal constraints that exist. The Council fully understands the sentiments of the local community and has accepted previously that the most acceptable restoration involves the draining and infilling of the void and the reinstatement of the land to its former profiles. Reference has been made to the Health Impact Assessment of the Proposed Extension to Margam Mine carried out by Cardiff Institute of Society, Health and Ethics and specifically to the strength of feeling expressed about the removal of their local amenity and their desperate need for it being returned and restored.

However, the Council has also had to accept that this is very unlikely to occur as the mechanisms available to the Council will not ensure full restoration. Committee has been advised in previous reports of the difficulties Bridgend would face in trying to take enforcement action. As explained in the Background Section of this report, any enforcement action by either Council even if successful, would be subject to appeal and could result in protracted legal action and potentially could lead to the site owner or the applicant going into liquidation ultimately resulting in the ceasing of pumping operations and seriously reducing the potential to deliver any other mitigation works including the essential water channel to secure water levels in the void.

As stated previously funding from the former operator of the site and the current owner is not available over and above the £5.7 million in the restoration guarantee fund. Furthermore, there is no indication that either the

UK or Welsh Governments will top up the fund and in any event the applicant has only limited access to the site.

It should also be noted that to achieve the approved restoration strategy, pumping of 11 million cubic metres of water within the void would take in excess of three years at a cost of more than £10m. This clearly exceeds the value of the bond and does not take into account measures necessary to prevent the void re-filling with water, nor does it allow for backfilling and the remaining restoration of the site as originally proposed.

The concerns in relation to site safety and security, the rising water level in the void and its potential to result in off-site flooding, together with the visual issues surrounding the unnatural engineered profiles of parts of the site need to be addressed. The submitted scheme seeks to address these concerns and must be considered on its own merits. Consideration must focus on whether the submitted scheme which is the subject of this application is acceptable and whether it addresses the environmental and amenity concerns that currently exist.

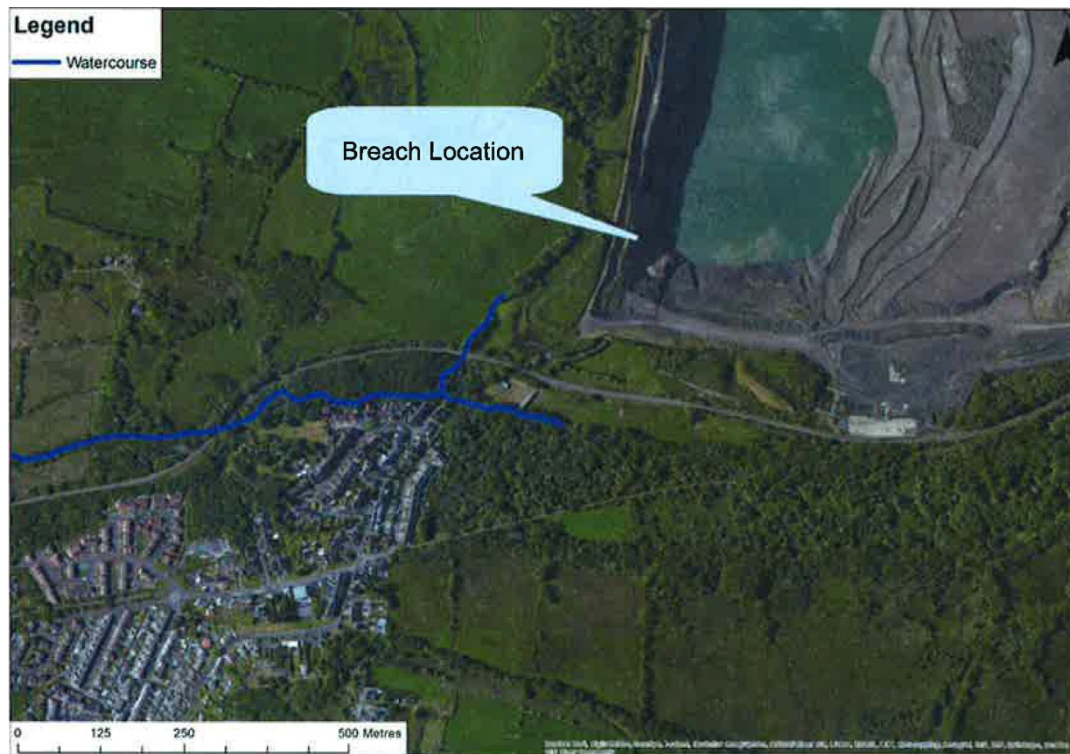
#### Hydrology and Hydrogeology

Concerns have been expressed by this Council, NPT CBC and the local community about the rising water level in the void and the possible implications of water rising and breaching the surrounding land at its lowest point.

Bridgend CBC commissioned JBA Consulting to model a possible breach of the opencast coal void and to model the impact of a potential breach of the void wall in regards flooding of properties downstream. To determine the worst case scenario with regards to flood risk, a scenario was simulated whereby the impounding landform fails whilst the water level is at its highest possible level.

The lowest point along the surrounding landform is approximately 53.4m AOD and two potential spill locations were identified in the south west corner of the site. Of these two locations, Location 1 in the western wall has been selected as the most likely breach location.

The location is shown on the following plan.



The worst case scenario is if a breach occurred at Location 1 approximately 1.75 million cubic metres of water would be released within approximately 2 hours. This would result in

- Flooding of property at the eastern end of Crown Road which would begin at approximately 2 hours and would be at a depth of 2m within approximately 2 hours and 5 minutes. Due to the speed of inundation and the nature of the property it would cause a risk to life.
- Flooding of properties at North Cornelly occurs at 2 hours and 10 minutes with maximum depths between 2m and 4m (four properties) and up to 2m (10-15 properties) achieved by 2 hours and 50 minutes
- Flooding of Kenfig Industrial Estate occurs at 2 hours and 45 minutes and depths of between 300mm and 1m would be reached within 3 hours and 35 minutes

These flooding scenarios exceed the extent of flooding in a 0.1% extreme fluvial event.

Although pumping has been ongoing since February 2015 and is currently maintaining the water level in the void and greatly reducing the risk, this is not a long term sustainable solution, hence the need for a permanent solution to be designed in the form of the proposed spillway. Whilst again the draining of the void and infilling with the overburden on site would be the most acceptable solution it is unlikely to happen for the reasons already explained. Therefore, a long term sustainable solution must be considered which significantly reduces the potentially catastrophic and life threatening risks associated with an unregulated water level within the void.

The applicant has submitted a Hydrological Assessment and a Hydrogeological Assessment in support of their application.

This proposal involves the construction of an overspill channel in the south western corner of the site within NPT at 48m AOD to regulate the height of the water within the void. This channel is an open channel which discharges at no greater than greenfield run-off rates into the Nant Cynffig in the south western corner of the site. In general terms a concrete canvas channel with a minimum gradient of approximately 1 in 200 and a channel width of 1m has been identified as being required. The channel will connect to the Afon Cynffig at approximately 500mm above the river bed so as to enable a free discharge under normal conditions. Future maintenance of the channel will be subject to the submission of a management and maintenance strategy funded from a residual element of the restoration fund.

When pumping in the final void ceases, groundwater levels will rise due to rainfall and inflow from the old opencast backfill areas to the east of the Nant Cynffig and mine workings of Bryndu and Mill Pit. Input from surrounding solid strata, due to the nature of the structural geology, is unlikely to be of any great significance. The strata have very poor vertical transmissivity and dip steeply towards the north. There will be slight seepage from the Bryndu Engine Shaft (40m AOD) but due to collapse the shaft is not capable of dealing with the likely recharge volumes. Hence there is a requirement for the overspill structure to control the water level. Discharges from the site are expected to have a neutral to slightly alkaline pH with low iron content and high alkalinity.

The catchment area of the Nant Cynffig will be no greater than it was prior to the development and will contain a large attenuation feature. The Nant Craig yr Aber will have a 5% reduction in its catchment as some water will drain to the void and be attenuated by the surface area of the water. This should marginally reduce the risk of flooding downstream.

The applicants submission has been independently assessed by JBA Consulting on behalf of Bridgend CBC. The independent assessment indicates that the applicant's submission is generally acceptable but some recommendations in relation to the detailed design of the overspill channel are proposed. These recommendations will be taken into account in the detailed design which will be secured by a planning condition secured by any consent issued by NPT.

It is therefore considered that the proposal will not have any significant downstream impact with respect of flooding and will not have a significant impact in respect of water quality and quantity. Moreover the proposal will improve the position regarding flooding of properties downstream.

Turning to the issue of the status of the body of water, NRW have indicated that it is the responsibility of the developer to establish whether the body of water is a raised reservoir under the Reservoirs Act. The JBA report which supports this application clearly indicates that the body of water is encompassed by natural ground which is at a higher level to the water.

Furthermore the proposed spillway which is proposed to be constructed at 48m AOD is also within natural ground levels and will itself not be designed to store water. As a result it can be concluded that the body of water does not constitute a raised reservoir.

On the basis of the above, the proposal achieves the Council's primary objective in terms of reducing the safety risks of flooding of the void and the potential flooding of surrounding areas. More importantly, it is not only technically feasible but it is also deliverable, and within a relatively short timescale so the risk is addressed as soon as possible. Addressing the risk to the environment and to the amenity and well-being of people downstream of the site is an essential component of the scheme and one which has been prioritised by the Council. It is also in line with Objective 2c of the Bridgend LDP which seeks to manage development in order to avoid or minimise the risk or fear of flooding.

For the reasons set out above the proposal is not considered to conflict with Policies ENV7 and SP6 (4) of the LDP.

### Land Stability

The applicants have submitted a Geotechnical Assessment in support of the application. The Assessment identifies the west face within NPT as the most sensitive excavation face, with no significant instability identified in the east, south or north faces. Four locations along the western face are identified as demonstrating signs of instability, some more significant than others. Stabilisation works are identified as being required at the Mid Northern end, the southern section and in the south western corner.

The Mid Northern end is an area where an extensive area of approximately 60m x 20m has been affected whereby superficial material has slumped. Without address, the cliff face will continue to slowly degrade and migrate west but it is unlikely that it would reach the Nant Cynffig as it is located some 50m away. It is proposed to stabilise this face in the interests of safety by reducing the slope inclination to 1 in 2 with the provision of a 5m bench to be established on solid ground. An affected drainage ditch will also be realigned.

In the south western corner there is known to be a glacial deposit which overlays the coal measure strata. There have been stability problems within the Glacial Drift deposits, although the coal measures are found to be sound. The stability problems are due to low shear strength and high moisture content. The glacial deposits are estimated to have a depth of 16-20m in the southern corner although they are not evident further north along the western wall.

In order to protect the integrity of the western wall in the long term, it is proposed to construct a limited buttress which will sit on the solid coal measures and will be constructed in line with the proposed water level of 48m AOD. The purpose of the buttress is to prevent water percolating from the void into the weaker glacial deposits. Whilst the 'buttress' will have to extend



above the proposed rest water level of 48m AOD its exact design can only be finalised following further stability analysis, which is not possible until the water level is reduced to 37m AOD. However, the submission of additional detail can be covered by a suitably worded condition. The principle is clear at this stage as are the potential impacts.

At the same time as constructing the overspill channel geotechnical stability works will be undertaken in the vicinity. These works will remove superficial materials which are unstable as well as making the channel stable for the long term.

In addition, whilst there is no evidence of instability at present, the slopes of the steeper sections of the overburden mounds will also be slackened, treated with soils or soil forming materials and grassed in order to aid stabilisation in the long term.

Some objectors consider that the overburden mounds would be unstable due to the backfill material they are situated upon, although no evidence has been submitted to support that view. They also consider that an independent geotechnical assessment should be carried out on the backfill. One objector has referred to parallels with the Aberfan disaster in terms of the stability of the overburden mounds. However, unlike the situation at Aberfan, the overburden mounds are not constructed on sloping ground, the ground conditions are different, the material in them is different and in the unlikely event that the outer slopes of the overburden mound becoming unstable there are no residential properties or public places that could be significantly adversely affected by a slip. In view of this it is not considered necessary to carry out additional stability surveys.

It is considered that the proposals adequately address the identified instability issues and potential risks. The proposal does not therefore conflict with Policy ENV7, SP6 (4), ENV11 (e) and ENV13 of the LDP.

#### Safety of the Water Feature

A significant number of objectors have expressed deep concern about the retention of a 108m deep water feature in close proximity to communities. They consider that it is (and would continue to be) an attraction to local youngsters with potentially tragic consequences. However, there is no significant difference between the flooded void and any other open water feature across the country and in any event, regardless of whether the application is approved or not, the water body, which lies within NPT will remain. The reference made to Police divers being limited to 50m depths is of little relevance in terms of safety fears and not material to the determination of this application.

It is possible to exclude all but the most determined people by fencing off the void area and introducing planting which makes access difficult. Signage can also be erected explaining the dangers of open water as is the case for other

areas of open water. Any reason for refusal on the basis of the safety of the water feature cannot therefore be sustained.

### Ecology and Biodiversity

The applicants have submitted a biodiversity and ecological assessment in support of the application.

The assessment confirms that there are no statutorily protected habitats within the site. A component parcel of the Cefn Cribwr Grasslands SAC lies approximately 500m to the south. The Kenfig SAC is located approximately 5km to the west. The Cwm Risca Meadows SSSI is also within the 2km search area to the north east of the site.

Bridgend CBC has also designated SINCs which are locally extensive and abut the southern and eastern boundaries of the site. The Park Slip Nature Reserve to the east of the site and owned by the Wildlife Trust of South and West Wales is also a SINC. Neath Port Talbot CBC has not designated any SINCs.

The land to the east of the previously diverted and retained Nant Craig yr Aber comprises largely of a complex mosaic of patches of developing woodland, scrub, grassland and ephemeral/short perennial vegetation and habitats interspersed with ponds, flushes and seasonally wet areas developed on disturbed areas. It also contains items of redundant mine infrastructure including water treatment facilities, access roads, hardstandings and buildings.

The land to the west of the diverted Nant Craig yr Aber mainly comprises of the flooded void and a partially vegetated overburden surcharge mound. The margins of the site are developing a mosaic of scrub and grassland with a number of small ponds.

The eastern half of the site and parts of the western half of the site can be categorised as UK BAP Priority Habitats and Section 42 Habitat of Principle Importance to Nature Conservation as 'open mosaic habitats on previously developed land'. The reed-beds developed on top of the overburden surcharge mound in the western half of the site also qualify.

The assessment identifies European protected species using the site. There are records of otter and four species of bat along the riparian corridor of the Afon Cynffig to the west of the site. Otter and dormouse are also recorded along the Nant Iorwerth Goch and signs of otter along the Nant Craig yr Aber river corridor within the site. Whilst the buildings and vegetation on site are unlikely to provide suitable roosting opportunities, it is likely that bats will use the site to forage. There is a record of a dead Great Crested Newt in 2006, outside of the northern boundary and to the North of New Road. The nearest records of Great Crested Newt are within the Parc Slip Nature Reserve adjacent to the site.

There are records of four priority bird species (common bullfinch, hedge accentor, linnet and song thrush) within and surrounding the site. House sparrow and reed bunting have also been recorded around the site boundary. Slow worm has been recorded to the north of the site, hedgehog to the east and brown trout and eel have been recorded in the Afon Cynffig to the west. The Grayling Butterfly has also been recorded in the south east corner of the site.

NRW has previously expressed concerns regarding the lack of information submitted in order to make an assessment on the impacts of the development on European Protected Species. Their concern focuses on dormouse and Great Crested Newts and they consider that comprehensive protected species surveys should be submitted prior to determination of the application. However, they have indicated that in the event that further detailed assessment is not undertaken by the applicant and having considered the information available it must be assumed that otter, bats, dormice and Great Crested Newt are present and that conditions must be included requiring comprehensive strategies for the protection of European protected species.

The Destination and Countryside Management Team has indicated that the proposed Reasonable Avoidance Measures could be applied to avoid adverse impacts. On that basis it is not necessary to carry out additional surveys when Reasonable Avoidance Measures are considered appropriate. In respect of dormouse the applicants state that the site has low potential for supporting dormouse due to the lack of suitable habitat. The Team accepts that provided vegetation clearance is carried out under a watching brief by a suitably qualified ecologist between June and September, and works stop if evidence of dormouse is found a planning condition is suitable in this particular case. Therefore, conditions can reasonably be imposed in order to address NRW's concerns.

The objective of the scheme is to rehabilitate the site to a visually and environmentally acceptable landform utilising the already established flora and fauna, by limited re-contouring the engineered profiles of the overburden mounds, retention wherever possible of well-established vegetation or areas where there is significant biodiversity interest, whilst retaining the water body within the void and maintaining a 50m riparian buffer. It is proposed to re-profile and re-vegetate approximately 49 hectares of the site and not to disturb the other 146 hectares (including the water body of approximately 28 hectares). The remaining 118 hectares is largely naturally re-vegetated to important habitat. There is no apparent benefit in removing this vegetation and carrying out minor works when the available funding could be better utilised in addressing areas such as the stability of the void, the construction of the overspill channel and the re-vegetation of areas where natural regeneration has not occurred.

Re-profiling is largely limited to the northern, western and southern faces of the overburden surcharge mound, the north western face of the main overburden mound, the southern section of the western part of the site (within NPT) and the former administrative area and the haul road in the eastern part

of the site (Bridgend). Works are also proposed to create the overspill channel and the stabilisation of the western void wall. The overspill channel passes through largely disturbed land at the margin of the site and will enter the river corridor through a gap in the wooded riparian fringe.

The proposed works will have no direct effects upon the integrity of the SINC's within Bridgend nor on the potential SINC's within NPT and avoid disturbance of the UK BAP and Section 42 open mosaic and reed-bed habitats. There are also no predicted significant adverse impacts on protected species.

The restoration and aftercare scheme also aims to reduce the extent of invasive non-native species such as Japanese Knotweed, Himalayan Balsam and rhododendron within the site. This was a specific concern of the Destination and Countryside Management Team which can be addressed and controlled by condition.

The assessment concludes that there are no material adverse nature conservation issues as a result of the proposed scheme. It is claimed that the scheme will provide nature conservation and biodiversity benefits on at least a regional scale. It retains a significant area of existing habitat, creates additional habitat and is well located relative to other significant nature conservation sites such as the Park Slip Nature Reserve, Cefn Cribwr Grassland SAC and the Kenfig SAC. Nature conservation is therefore considered appropriate as a beneficial after-use.

A Test of Likely Significant Effects has been undertaken by NPTCBC and has concluded that no likely significant effects were identified for the considered elements of the Margam Mine Restoration proposals. Therefore, an appropriate assessment is not considered necessary. The Council supports that assessment.

For the reasons set out above the claims of some objectors that the plan does nothing to encourage biodiversity is not accepted. The proposals are not considered to conflict with Policies SP4, SP14, ENV4, ENV5, ENV6 and ENV11 of the LDP and will positively contribute to the promotion of green infrastructure as advocated in SPG 19 Biodiversity and Development.

### **Highways and Transportation:**

The approved restoration strategy shows Crown Road and Bedford Road restored as tarmacked highways. The applicant proposes to reinstate the link along Crown Road and Bedford Road along a slightly altered alignment to avoid the flooded void. This will take the form of a 4m wide forestry type road surfaced with suitably sized aggregate and graded to a camber to aid drainage. The majority of the respondents have objected to the downgrading of the roads and would like to see them restored to their previous tarmacked condition, however, some respondents do not wish to see the links reinstated at all.

The realigned roads are not to be tarmacked. Whilst this would lead to substantial additional costs that are not fundable from the available resources, priority has to be given to addressing public safety concerns whilst also reinstating connectivity across the site. Whilst the realigned highways will not be to the standard of the former adopted tarmacked highways, they are deliverable within the terms of this scheme and provide connectivity across the site. Only a very small section of the realigned Bedford Road will be located within Bridgend.

It is also proposed that the Public Rights of Way network be reinstated in a rationalised form. The suspended rights of way are indicated on Figure 6 of the application and the proposed rights of way are shown on Figure 7. The change does result in a relatively minor loss of footpaths overall although the Bridgend network will be marginally increased to ensure the integrity of the system is maintained. The footpath through the void has to be removed. Objectors claim that this results in the loss of public access but this is not accepted as access though the site albeit in a reduced form will be reinstated.

The concerns of the objectors are understood but again consideration needs to be given to the financial and legal constraints that exist. The proposal whilst not being the most acceptable solution does reinstate the links across the site and accessibility between communities which is in compliance with Policy PLA9 of the LDP.

Concerns have also been expressed regarding the route to be used for the delivery of plant and machinery to carry out the works. The applicant has confirmed that access will be as it was previously, through the Parc Slip Nature Reserve and not directly from Law Street. A condition will require the submission and agreement of construction transport plan to ensure compliance. Highway safety will therefore not be derogated and the proposal does not conflict with policies SP6 (4) and ENV11 (3) (b) of the LDP.

### **Visual Amenity:**

It is acknowledged that the site is currently unrestored and that there is a large water filled void, large engineered overburden mounds which have to a large extent naturally re-vegetated together with former site infrastructure. The site is also clearly visible from Cefn Cribwr to the south as it is in a valley below the village. Given its location relative to the village it would be impossible to screen the site from Cefn Cribwr. It is also impossible to hide the open water feature within the void. What is possible is to plant the margins of the void to soften its appearance, re-profile the engineered slopes of the overburden mounds and to remove the site infrastructure. Such works will reinforce the natural re-vegetation that has taken place since operations ceased on the former mine workings and will also enhance the ecological interest on the site. It should be noted that whilst the body of water within the void area is significant in size, it is not unusual to see large bodies of water whether natural or man-made within rural and semi-rural areas. Indeed, the proposed planting within the site will over time soften the man-made features and thus the body of water will become further integrated into the surrounding

landscape. This will in time improve the character and appearance of this former open cast coal site and will ensure that its visual link to the features within the surrounding special landscape area is improved.

Objectors consider that the site is an eyesore and that the land should be restored in accordance with the approved restoration strategy. The reasons why this is not practicable or realistic have been covered at length above and it is the alternative restoration scheme that is under consideration in this application and which members must determine.

The proposals for the area of the site within Bridgend for a nature conservation after-use are compatible with the adjacent Parc Slip Nature Reserve and are a continuation of a series of restored opencast coal sites. In that respect the proposals are not considered to have an adverse impact on the integrity of the countryside within Bridgend County Borough. The proposal is therefore not considered to be contrary to Policy SP4 and ENV11 (2) (a) of the LDP or SPG 19.

### **Residential Amenity:**

The applicants have submitted an Air Quality Assessment in support of the application. IAQM Guidance on the assessment of dust from demolition and construction indicates that a dust assessment is required where there is a human receptor within 350m of the site, within 50m of a site access road or an ecological receptor within 50m of the site. In this case the nearest ecological receptor is the Cefn Cribwr Grasslands SAC which is located more than 50m away from the site. Therefore an assessment of dust on ecological receptors is not required. However there are a number of residential properties within 350m of the site, which has necessitated the need for an air quality assessment to ensure that the impact upon their amenities is properly considered.

The assessment identifies that dust sources will principally arise from earthworks associated with the excavation, movement and tipping of soils and overburden. The magnitude of dust emissions from such operations can be large with a medium risk of dust soiling predicted in this case based on the sensitivity of the surrounding area. Risks from all other types of operation are assessed as low in this case and the impact of all proposed activities on human health is also assessed as low.

There are no statutory or recommended dust deposit rates but a default guideline of 200 mg/m<sup>2</sup>/day is commonly accepted which is reduced to 80 mg/m<sup>2</sup>/day for high contrast dust such as coal. MTAN2 advises that the 80 mg/m<sup>2</sup>/day threshold should be utilised as a weekly average but it is not clear whether this is only the coal component of the dust.

Typically, planning permissions that involve the movement of soils, overburden and materials are subject to the requirement to submit a Dust Management and Mitigation Plan under the terms of a planning condition. A Draft Plan is submitted as part of the application but it is highly recommended

that a condition be imposed requiring a Dust Management and Mitigation Plan. This is echoed by the Group Manager Public Protection.

A noise assessment has also been submitted in support of the application. Noise monitoring locations are identified at The Oaks and Aberbaidan Farm (NPT) and at 37 Crown Road and 28 Bedford Road (Bridgend).

Background noise levels at these locations range between 34 dB LA<sub>90</sub> and 42 dBLA<sub>90</sub>. On the basis of the criteria set out in Paragraph 173 of MTAN2, setting noise limits at sensitive locations of background plus 10dB (or 55dB whichever is the lesser), the noise limits for the proposed activity would range between 44dBLA<sub>eq</sub> at 28 Bedford Road to 52dBLA<sub>eq</sub> at 37 Crown Road during normal daytime working hours (7am to 7pm Monday to Friday).

The predicted worst-case noise levels fall within the MTAN2 derived limits apart from at Aberbaidan Farm during Stage 1 operations (excavation of the northern batters of the overburden surcharge mounds and movement of material to the eastern slopes); and Bedford Road during Stage 2 operations (haulage of material to the southern slopes of the surcharge mound and grading the western slopes of the main overburden mound). The levels are exceeded by 1dB at Aberbaidan Farm and 3dB at Bedford Road.

Paragraph 174 of MTAN2 identifies short term operations such as soil stripping, the construction and removal of baffle mounds and soil storage mounds, construction of new permanent landforms and aspects of site road construction and maintenance that cannot easily meet normal daytime noise limits. In such cases increased noise limits of up to 67dB LA<sub>eq</sub> should be considered for periods of up to 8 weeks in a year between the hours of 10am and 4pm. The applicants have confirmed that the excavation at high levels on the overburden mounds, the removal of a soil mound and the drainage channel excavation, which give rise to the worst case noise predictions above normal daytime MTAN2 derived levels, will be completed within 8 weeks and well within the 67dB LA<sub>eq</sub> limit. In fact a limit of 48dBLA<sub>eq</sub> could be applied by condition at Aberbaidan Farm and a limit of 47 dBLA<sub>eq</sub> at 28 Bedford Road for a period of 8 weeks. MTAN2 derived levels could be applied by condition at all other times.

The Group Manager Public Protection requests that a noise condition is attached to the planning permission and accepts that short term operations will lead to increased noise levels for a period of up to 8 weeks. He also requests a Noise Management Plan be required as a condition of any planning permission.

Reference has been made by objectors to the Health Impact Assessment of the Proposed Extension to Margam Opencast Mine undertaken by Cardiff Institute of Society Health and Ethics. The Report gives an insight into how the people and area have been devastated by the removal of their local amenity and their desperate need for it being returned and restored. The Report considers that how severance and loss of amenity at the local area negatively affects Physical Activity. Whilst the Report serves to emphasise

how the local community feels about the loss of amenity from opencast mining this proposal actively seeks to address the loss of amenity by reinstating the community links in the form of Crown Road and Bedford Road in addition to a rationalised footpath network which would otherwise have to remain closed to the public for safety reasons.

It is also important to note that the proposed works would result in shorter term disturbance in terms of dust and noise than would be the case if the approved restoration strategy was implemented. The approved restoration strategy would have resulted in restoration works for a period of just over 2 years whereas this proposal will be completed in a just over 12 months. In addition, to the extended timeframe the complete removal of the overburden mounds into the void would have significantly prolonged one of the parts of the restoration with the greatest potential for disturbance.

On the basis of the above it is not considered that the proposal would result in significant adverse impacts on the amenity of the area and is therefore not contrary to policies SP4, ENV7, SP6(4) and ENV11(3)(a) of the LDP.

#### Cultural Heritage

The applicants have submitted a cultural heritage assessment in support of the application. The assessment confirms that there are no designated historic assets within the site itself, and no designated heritage assets would therefore be physically impacted by the proposed restoration.

Designated heritage assets within the wider landscape have been the subject of a settings assessment, in accordance with industry standard guidance, with particular reference given to the Grade II listed Aberbaidan Farm. In all cases it was identified that the proposed restoration works would not result in any harm to the significance of these assets, either because the site was not found to be within their setting or because their significance was found to derive from values and associations unrelated to their setting. The proposals are therefore considered to comply with Policy ENV11 (2) (d) of the LDP and national planning policy/legislation in relation to the historic environment and cultural heritage.

#### Programme and proposed after use and aftercare

The programme of works will prioritise enabling works and the construction of the spillway in order to maintain the proposed water level in the void at 48m AOD. This is the most important element of the scheme. Secondly, the links along Crown Road and Bedford Road will be re-established to the standard defined in the application. Thirdly, stabilisation works along the western high wall including drainage will be addressed. Fourthly, the excavation and re-profiling of the overburden mounds will be progressed in accordance with the submitted plan. Finally, the other minor restoration works and re-profiling will be progressed.



The works and the funding of the works will be secured by a legal agreement which will allow access to the restoration fund. The Coal Authority will be engaged to ensure best value for money is achieved and that only works necessary for the achievement of the Councils objectives are paid for out of the restoration fund. The release of funds will only take place in phases as specific restoration tasks are completed in the order of priority. Funds remaining following the completion of restoration will be utilised for aftercare.

Aftercare is to a primarily nature conservation after-use which entails the retention of an extensive area that has been naturally re-vegetated to UK BAP and NERC Section 42 habitat of principle importance such as open mosaic habitat on previously developed land and the corridor of the Nant Craig yr Aber. Water treatment features are to be retained for nature conservation purposes and the re-graded areas are to be re-vegetated. The links along Crown Road and Bedford Road are to be reinstated on an alternative alignment, surfaced with suitably sized aggregate and graded to a camber to aid drainage; and the footpath network is to be reinstated in a rationalised form so that public access is restored.

On completion of restoration the void area will remain fenced off to the public but the remainder of the land will be accessible via Crown Road, Bedford Road and the reinstated footpath network. The site access and the existing car park area will be retained to facilitate public access.

### **Conclusion:**

There is a clear conflict between the restoration as originally envisaged and supported by the local community and what is realistically achievable and deliverable within the financial and legal constraints outlined in this report.

In cases where there is a risk of sites not being restored in accordance with planning conditions the Research into the failure to restore opencast coal sites in South Wales, published by Welsh Government in April 2014, advocates as a key recommendation, that other measures need to be considered. The Report goes on to state that these may involve major re-design of site restoration and that a review should be undertaken of restoration and aftercare proposals to test whether potentially alternative solutions could be employed to deliver restoration at less cost.

It is consideration that there is justification in seeking a solution which addresses the risk of restoration not being undertaken but also in this case the far more serious risk associated with the uncontrolled water level rising within in the void to an extent that it would pose a serious risk of flooding and a risk to life downstream of the site..

Planning Policy Wales states that Local Planning 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 benefits of the proposal are clear. In addition to seeking to control the water level in the void via an overspill channel to avoid potential catastrophic flooding downstream and the stabilisation of the western high wall the proposals also involve regrading and planting at the periphery of the engineered slopes to create more natural profiles. This will retain and enhance areas of biodiversity and nature conservation interest which relate well with existing nature conservation sites in the vicinity and also reinstate links between communities. The proposal is also achievable and deliverable within the budget set by the restoration fund.

Whilst it is acknowledged in some respects that the preferred solution from the Communities perspective would be to continue to seek the comprehensive restoration of the site in accordance with the original approved strategy, this is clearly undeliverable through the normal planning process for the reasons outlined above. If enforcement action is pursued to seek such an outcome, this is likely to result not only in expensive and potentially abortive litigation, but also the access rights to this site which are due to expire in June 2017 may prevent the former operator from constructing the spillway which is required to control the water levels. The absence of a method of controlling the water levels in the long term will place existing communities at serious risk from catastrophic flooding should a worst case scenario breach occur. This cannot be underestimated and must be taken into account in the determination of this application.

If planning permission is refused by either authority and the proposal does not go ahead, the void, and the overburden mounds will still remain, however, the control over the water level cannot be guaranteed in the medium to long term. Full restoration of the site will only occur if significant additional funding is made available. There is no indication at present of any realistic prospect of this taking place. The proposal will deliver acceptable safety and visual improvements via an alternative restoration, which in time will sit more comfortably within the surrounding area but will also not necessarily prejudice any future, further restoration in the unlikely event that significant funding is made available.

The proposed scheme if approved and implemented is both affordable and deliverable within planning legislation and will address the key aim of ensuring that the site is safe and poses no significant risk to the public. It also proposes a nature conservation focussed after-use which is considered to be acceptable at this location. The proposal does not raise any identified planning policy, residential amenity, visual impact, safety or ecological conflicts subject to a revised Section 106 agreement and conditions. . In the event of the recommendation being supported, Members should be aware that the Council in conjunction with NPT CBC engage the Coal Authority to quantify operations the operations to be undertaken and evaluate and ring fence the cost elements in a priority order starting with the spillway. Terms for such an engagement have already been negotiated and will ensure that the costs are independently assessed.

## **Recommendation:**

(A) The applicant enter into a Section 106 Agreement to:-

secure an acceptable programme of prioritised works and the ring fencing of money within the restoration fund to enable the delivery of this programme and to secure its aftercare

(B) The Corporate Director Communities be given plenary powers to issue a decision notice granting consent in respect of this proposal once the applicant has entered into the aforementioned Section 106 Agreement, and the Welsh Ministers' indicate that the application is not to be called in as follows:-

## **Conditions**

### Time limits

(1) Notwithstanding the provisions of Section 91 of the Town & Country Planning Act 1990, the development to which this permission relates shall be begun not later than the expiration of two months beginning with the date of this permission. Written notification of the date of commencement shall be sent to the Local Planning Authority at least 2 days prior to commencement.

### Reason

The alternative restoration is only acceptable based on the strict time limits identified within the application submission.

(2) The approved restoration shall be completed by 31st July 2017. For a period of five years from the date of completion of restoration the restored area shall be managed in accordance with the approved aftercare scheme. The planning permission shall expire following the complete restoration and aftercare of the site in accordance with the approved restoration and aftercare schemes.

### Reason

The alternative restoration is only acceptable based on the strict time limits identified within the application submission and to minimise the duration of disturbance.

### Working Programme, Phasing and Direction of Working

(3) The development shall be carried out strictly in accordance with the following plans and documents

- Figure 1 – Site Location Plan
- Figure 2 – Existing Site Layout
- Figure 3 – Proposed Alternative Restoration Strategy
- Figure 4-1 – Excavation and Re-profiling of Surcharge Mound
- Figure 4-2 – Re-profiling of Existing Batter Slopes
- Figure 4-3 – Additional Minor Re-grading

- Figure 4-4 – Proposed Alternative Restoration Strategy (Sections through surcharge and overburden mounds)
- Figure 5 – West Wall Stabilisation
- Figure 6 – Suspended Rights of Way
- Figure 7 – Indicative Proposed Rights of Way
- Figure 8 – Typical Roadway Construction
- Drawing No. – 07A04567/A – Planning Application Plan
- Drawing No. – 07A04559/A – Proposed Alternative Restoration Strategy
- Planning Application – Supporting Information Volume 1
- Planning Application – Supporting Information Volume 2 – Appendices 1 to 8
- Supplementary Mitigation Report (Wardell Armstrong) April 2016

**Reason**

To comply with Section 71ZA(2) of the Town and Country Planning Act 1990.

(4) Before beginning any development at the site, you must do the following: -

a) Notify the Local Planning Authority in writing that you intend to commence development by submitting a Formal Notice under Article 24B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) in the form set out in Schedule 5A (a newly inserted Schedule) of the DMPWO (or in a form substantially to the like effect); and

b) Display a Site Notice (as required by Section 71ZB of the 1990 Act) in the form set out in Schedule 5B (a newly inserted Schedule) of the DMPWO (or in a form substantially to the like effect), such Notice to be firmly affixed and displayed in a prominent place, be legible and easily visible, and be printed on durable material. Such Notice must thereafter be displayed at all times when development is being carried out.

**Reason**

To comply with procedural requirements in accordance with Article 24B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) and Section 71ZB of the Town and Country Planning Act 1990.

(5) From the date of commencement of operations at the site (as notified in accordance with Condition 1 above) until the completion of restoration, a copy of this permission including all documents hereby approved and any other documents subsequently approved in accordance with this permission shall be permanently maintained and be available for inspection at the site.

**Reason**

To ensure that the operators of the site and any site contractors are aware of the working programme and the conditions attached to carrying out the development.

## Hours of Working

(6) Except in an emergency, which shall be notified to the Local Planning Authority as soon as practicable or in any event within 24 hours, no operations within site (other than water pumping, servicing, environmental monitoring, maintenance and testing of plant) shall be carried out on the site except between the following times:

0700 to 1900 hours Mondays to Fridays.

0800 to 1300 hours Saturdays

There shall be no development or other activities other than those in relation to water pumping, servicing, environmental monitoring, maintenance and the testing of plant undertaken on Sundays, Bank or Public Holidays.

## Reason

In the interests of the amenity of local residents

## Access and Parking

(7) Prior to the delivery of any plant/machinery, portable buildings or materials to the site or any works of demolition/site clearance, a Construction Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide for:

- i. The routing of HGV construction traffic to/from the site in order to avoid Fountain Road.
- ii. the parking of vehicles of site operatives and visitors
- iii. loading and unloading of plant and materials
- iv. storage of plant and materials used in constructing the development
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction

Reason: In the interests of highway safety.

(8) Notwithstanding the submitted details, prior to works commencing on its construction a scheme shall be submitted to and approved in writing by the local planning authority detailing the route of the proposed Bedford Road Byeway at a scale of 1:500. The scheme should include the following:

- i. The road width shall be a minimum of 7.5 m across the surface made up of a 5.5m wide running surface with a 1m wide verge either side; OR the road remaining at its current width but including details of inter-visible passing bays, which shall be a minimum of 2.5m wide and 15m long; and
- ii. Details of drainage cut off points to prevent any surface water runoff from discharging onto the public maintained highway; and
- iii. Details of a management / maintenance plan.

The road and passing bays shall be undertaken and thereafter maintained in accordance with the approved details.

Reason

In the interests of highway safety

Rights of Way

(9) The rights of way shown on Figure 7 – Indicative Proposed Rights of Way shall be re-instated in a condition suitable for walking/riding prior to 31st July 2017 either as per those shown on Figure 7 – Indicative Proposed Right of Way or as indicated on a map attached to a confirmed Public Path Diversion Order’.

Reason

To ensure that public access to the site is available from completion of the development.

Dust

(10) Dust associated with operations at the site shall be controlled in accordance with the recommended mitigation measures in Table 8 of the Air Quality Report submitted as part of the application and in accordance with the Dust Management Action Plan – January 2016 DMAP). The DMAP must be kept under review by the developer and if notified by the local planning authority of concerns that the DMAP is not effective in managing dust from the site an amended DMAP shall be submitted to the local planning authority for its approval in writing within one month of such request being made in writing.

Reason

In the interests of the environment and local amenity

Noise

(11) Between 0700 and 1900 hours Monday to Friday and 0800 to 1300 hours on Saturday the noise levels arising from the development shall not exceed the following levels measured as dBLAeq (1 hour) freefield under the measurement criteria of BS4142:

37 Crown Road	– 52dB
28 Bedford Road	– 44dB

Reason

In the interests of the amenity of the area

(12) Notwithstanding the provisions of Condition 11 above, between the hours of 1000 and 1600 hours Monday to Friday and 1000 to 1300 hours on Saturday, and for a maximum period of 8 weeks in any year, the noise levels arising from the development shall not exceed the following levels measured as dBLAeq (1 hour) freefield under the measurement criteria of BS4142:

37 Crown Road	– 52dB
28 Bedford Road	– 47dB

The applicant shall advise the Local Planning Authority in advance of any operations likely to fall within the scope of this condition, detailing the nature and duration of the operations.

Reason

In the interests of the amenity of the area

(13) At all other times outside of the hours specified in condition 11 above the noise levels arising from the operations at the site shall not exceed 42 dBLAeq (1 hour) freefield under the measurement criteria of BS4142 and as measured at any noise sensitive property.

Reason

In the interest of the amenities of the area

(14) Unless otherwise agreed under the details required by condition 17, all reverse warning devices fitted to mobile plant and vehicles on site shall be of a white noise design or use best practicable measures to minimise noise.

Reason

In the interest of the amenities of the area.

(15) All vehicles, plant and machinery operated on the site shall be maintained in accordance with the manufacturer's specification at all times, and shall be fitted with and use effective silencers.

Reason

In the interest of the amenities of the area

(16) Noise shall be controlled in accordance with the mitigation measures specified in section 8 – 'Mitigation and Noise Control' of the Noise Assessment- Appendix 6

Reason

In the interest of the amenities of the area

(17) Prior to commencement of engineering operations at the site, a Noise Management and Action Plan shall be submitted to and agreed with by the Local Planning Authority. The scheme shall be implemented as agreed.

Reason

In the interests of the environment and local amenity

Water Environment and Drainage

(18) Within 3 months of the date of this permission the developer shall submit a scheme for the written approval of the Local Planning Authority outlining a management and maintenance strategy for all the proposed and retained

watercourses, culverts and surface water management features within the site.

Reason

In the interests of flood prevention.

(19) Until they are no longer required for operational purposes all drainage ditches, attenuation ponds, settling ponds and lagoons shall be regularly desilted and maintained in such a condition that they are able to perform effectively and efficiently the purpose for which they have been provided.

Reason

To ensure that these facilities continue to function effectively and efficiently throughout the operational, restoration and after care period.

(20) Any facilities for the storage of oils, fuel or chemicals shall be on impervious bases and surround by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vent, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All points and tank overflow pipes should be detailed to discharge downwards into the bund.

Reason

To prevent pollution of watercourses.

Lighting

(21) Any lighting or floodlighting whether fixed or portable shall only be illuminated between the operating hours of 0700 and 1900 Monday to Friday and 0800 to 1300 hours on Saturday, except for security lighting activated by unauthorised entry by persons or vehicles.

Reason

The use of lighting at this location would have an adverse impact on the amenity of the area and would be detrimental to the environment unless hours of use are controlled.

Ecology and Biodiversity

(22) Prior to commencement of development, a scheme demonstrating how ecological receptors (particularly protected species and their habitats) will be monitored throughout the restoration process, shall be submitted to and agreed in writing with the Local Planning Authority. The restoration shall be completed in accordance with the agreed scheme.



Reason

In the interests of the protection of habitat which contributes to biodiversity on the site.

(23) Prior to any building or tree being removed/demolished they shall be subject to an updated inspection survey to determine whether they are used by bats. If any evidence of bats is discovered appropriate mitigation measures shall be submitted for the written approval of the Local Planning Authority. Mitigation measures shall be implemented as approved.

Reason

In the interests of biodiversity and the protection of bats.

(24) Prior to any clearance of scrub/trees the vegetation shall be checked for dormouse nests by a suitably trained and licensed ecologist. Scrub/tree clearance shall then follow the phased approach set out in Section 3.3.8 of the Supplementary Mitigation Report, shall be supervised by a suitably trained ecologist and shall be limited to the period between June and September inclusive. If a nest is found works must cease until such time as appropriate mitigation is submitted and approved by the Local Planning Authority.

Reason

In the interest of nature conservation.

(25) The shrub/tree planting identified in 3.3.10 of the Supplementary Mitigation Report shall be implemented within the first planting season following the achievement of final contour levels in the planting location.

Reason

To minimise the fragmentation of potential dormouse habitat.

(26) The Great Crested Newt Reasonable Avoidance Measures as set out in section 3.3.24 and 3.3.25 of the Supplementary Mitigation Report shall be implemented during all vegetation clearance and restoration work. If Great Crested Newt is found works must cease until such time as appropriate mitigation is submitted and approved in writing by the Local Planning Authority. The approved mitigation shall be undertaken in full accordance with the approved details.

Reason

To protect against the possibility of Great Crested Newts being harmed,

(27) No works shall be carried out within a buffer zone 25m either side of the Nant Craig yr Aber.

Reason

In the interests of the protection of habitat which contributes to biodiversity on the site.

(28) Within 3 months of the date this permission a scheme shall to be submitted to and approved in writing by the Local Planning Authority for the eradication of all invasive species listed under Section 9 of the Wildlife and Countryside Act 1981 that are located on the site. The scheme shall be implemented as approved.

Reason

In the interests of amenity, and to ensure that the treatment is carried out in accordance with recognised good practice.

(29) Prior to the removal of any vegetation on the site the operator shall check that there are no breeding birds or protected species on that part of the site. The results of the checks (which must be undertaken by a suitably qualified ecologist) shall be submitted to the Local Planning Authority, together with any mitigation proposals for approval if species are recorded. Mitigation shall be implemented as approved.

Reason

In the interests of the biodiversity

(30) Where habitat suitable for reptiles is to be removed the clearance works shall follow the phased method set out in 3.4.5 and 3.4.6 of the Supplementary Mitigation Report and shall be supervised by a suitably qualified ecologist.

Reason

In the interests of the protection of reptiles.

(31) Where any species listed under Schedules 2 or 5 of the Conservation of Habitats and Species Regulations 2010 is present on the surface land and structures of the site in respect of which permission is hereby granted, such works adversely affecting this species shall cease unless a license to disturb any such species has been granted in accordance with the aforementioned Regulations and a copy provided to the Local Planning Authority.

Reason

In the interests of ecology and biodiversity

(32) All excavation trenches shall be covered overnight or a means of escape for wildlife shall be employed.

Reason

To prevent wildlife becoming trapped inside a trench.

Landscaping

(33) Unless shown as being removed as part of the development, all existing deciduous trees, bushes and hedgerows within and bounding the site or within the developer/operators control (including their root systems) shall be retained and protected and shall not be lopped, topped, removed or felled without the

prior written approval of the Local Planning Authority. Any requests for approval to remove, lop, top or fell deciduous trees, bushes or hedgerows must be supported by an Arboricultural Method Statement.

#### Reason

The protection of the environment and protected species such as bats, in the interests of visual amenity and to ensure the development is adequately screened by natural vegetation.

(34) All trees and shrubs planted in accordance with an approved scheme shall be maintained and any plants which within 5 years of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

#### Reason

In the interests of amenity, the environment and to ensure the site is adequately restored.

#### Potential Land Contamination

(35) 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. Following completion 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.

#### Soil Stripping, Handling & Storage

(36) All topsoil and subsoil shall be stripped from any undisturbed areas which are to be utilised for the approved operations. Wherever possible these resources shall be directly placed as part of the restoration; where this is not reasonably practicable, they should be stored separately in mounds within the site until required for restoration. Topsoil mounds shall not exceed 3m in height and subsoil mounds shall not exceed 4m in height as measured from adjoining ground.

Reason

To ensure satisfactory preservation, conservation and restoration of soil and peat resources.

(37) All topsoil, subsoil, and soil forming material shall remain on site for use in the restoration of the site.

Reason

To ensure satisfactory preservation, conservation and restoration of soils and peat resources.

(38) In any calendar year, soil stripping shall not commence until any standing crop of vegetation has been cut and removed

Reason

To avoid incorporation of concentrations of decaying vegetation in soil

(39) Topsoil, subsoil and soil making material shall only be stripped and/or used for restoration when they are in a dry and friable condition.

Reason

To ensure that the soils are not damaged during the process of their stripping and handling.

(40) All disturbed areas of the site and all topsoil and subsoil storage mounds shall be kept free of weeds.

Reason

To prevent a build-up of harmful weed seeds in soils

Restoration

(41) Prior to any seeding or hydro-seeding on the site the developer shall obtain the written agreement of the Local Planning Authority for the species mix to be used. The seeding shall be implemented as approved.

Reason

In the interests of biodiversity and visual amenity.

(42) All plant, structures and buildings shall be removed from the site on completion of restoration

Reasons

In the interests of the amenity of the local area

Aftercare

(43) Within 3 months of the date of this permission the developer shall submit an aftercare scheme for the nature conservation after-use of the site for a period of 5 years following the date of completion of restoration. The scheme

shall set out how the habitat is to be favourably managed during the aftercare period and shall be implemented as approved.

Reason

To ensure the beneficial after use of the site

(44) Before the 1st November of every year of the aftercare period the operator shall provide the Local Planning Authority with the following

- a) A record of the aftercare operations carried out on the land in the previous 12 months
- b) An assessment of losses and replacements to be provided in woodland areas
- c) Proposals for managing the land for the forthcoming 12 months including weed controls

Reason

To ensure the productive after-use of the site

(45) Before the 1st December of every year of the aftercare period, a site meeting shall be arranged by the developer, to which the Local Planning Authority and the landowner shall be invited, to monitor previous performance of aftercare requirements and to discuss future aftercare proposals. The meeting shall also be attended by the person(s) responsible for undertaking the aftercare steps.

Reason

To ensure the beneficial after use of the site

Notes

(1) The developer is advised to consider the implications of the Mining Waste Directive on their activities.

(2) Any culverting of a watercourse requires the prior written approval of the Local Authority under the terms of the Public Health Act 1936, and the prior written consent of the Natural Resources Wales under terms of the Land Drainage Act 1991/Water Resources Act 1991. Natural Resources Wales seeks to avoid culverting, and its consents for such works will not normally be granted except for access crossings.

(3) All trees to be felled during the course of development shall be checked for bats and nesting birds if felling is to take place during the period 1st January to 30th September inclusive. If bats are discovered in any trees or other structures the Natural Resources Wales shall be contacted and an appropriate licence for any works obtained before any works are undertaken.

(4) The term 'emergency' means any circumstance in which the site operator has reasonable cause to apprehend injury to persons or serious damage to property.

(5) This planning permission is the subject of an agreement under the terms of Section 106 of the Town and Country Planning Act 1990

(6) The developer's attention is drawn to the following in respect of rights of way network within Bridgend. The numbering of eight of the routes is incorrect and would appear to refer to the original numbering system that was in use prior to the publication of the updated Definitive Map and Statement for the Bridgend area on the 30th June 2005, which took into account Community Council boundary changes and which resulted in the paths being re-numbered. The updated Definitive Map of 2005 also showed changes to the alignments of a number of public rights of way throughout the County Borough where these had been affected prior to that date by confirmed Public Path Orders.

One of those routes was Bridleway 38 Cefn Cribwr, which is actually shown as Bridleways 31 and 25 on Figure 6 of the submitted plans. It appears the diversion, which was confirmed on the 13th December 1999 removed those sections of the bridleway which are shown within the site boundary at the eastern end of the site to a route that is adjacent to, but south of, the southern site boundary of the application site from the eastern site boundary to just east of Bedford Road. A copy of the current Definitive Map for the Bridgend side of the planning application site and a copy of the Diversion Order plan can be provided upon request from the Rights of Way Section.

**MARK SHEPHARD**  
**CORPORATE DIRECTOR COMMUNITIES**

**Background papers**  
None