

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

### **CURRENT POSITION PAPER REGARDING MARGAM OPEN CAST COAL SITE (OCCS) ENFORCEMENT REFERENCE NUMBER: E2013/0028**

#### **Background**

As Members will be aware, Margam Open Cast Coal site ceased coaling in 2008 and since that time there has been no restoration of the site. Concerns have been raised by elected Members and residents within the local communities with regard to the lack of progress in relation to enforcing restoration.

Members will recall that a report was placed before this Committee on the 25<sup>th</sup> November 2014 which advised on the history of the site, the enforcement constraints and the options going forward. Five options were proposed at that time which were briefly as follows:

- Option 1 Serve an Enforcement notice to seek full restoration of the site.
- Option 2 Alternative restoration scheme including extraction of further coal.
- Option 3 Alternative restoration scheme without further coaling.
- Option 4 Serve an Enforcement Notice to seek phased restoration of the site.
- Option 5 Do Nothing

As a consequence of that detailed report, Members resolved that the Council arrange a cross boundary public meeting to advise all interested parties of the current position with regard to this site, and for Officers to pursue Options 1, 3 and 4 with updating reports to be brought back to Committee every three months. Members also decided that pursuance of Option 1 was to be a final resort.

The purpose of this report is therefore threefold; firstly to remind Members of the history associated with this site; secondly to advise Members on the actions taken since November 2014 and lastly, to outline the potential options going forward having regard to legal and financial constraints.

## **History**

Within two months of cessation of coaling in October 2008, the operators were required to commence backfilling of the void (under condition 60 of planning permission P2006/1727). They were also required to submit a restoration and aftercare scheme in accordance with conditions 54 and 55 of planning permission P2006/1727, which would then be implemented to secure full restoration of the site. However these works did not commence, nor were the above required schemes submitted by the operators or landowners, despite requests to do so from the Local Authority.

Prior to the cessation of work, the operators pursued an application for the extension of the extraction area to allow further coaling to take place (NPT App Ref: P2007/ 0663). This application was refused planning permission by this authority on the 29<sup>th</sup> January 2008. An identical application was also submitted direct to Bridgend County Borough Council which was also refused planning permission on the 17<sup>th</sup> January 2008. The reasons for refusal by this authority were as follows:

- (1) The development would create a visual intrusion into the landscape which would result in significant harm to the rural character of the area, prejudice the open character of the green wedge and cause demonstrable harm to the visual amenity of neighbouring residents, contrary to Policy ENV2(v) of the Deposit Draft Unitary Development Plan for Neath Port Talbot, Policies C1 and M6(iv) of the West Glamorgan Structure Plan (Review No.2) as amended and Policy DC3 of the Draft Minerals Local Plan for West Glamorgan.
- (2) The development will perpetuate opencast activities within the locality and on the existing site for a further minimum period of five and a half years resulting in an unreasonable level of disruption in terms of visual impact, noise and dust, thereby causing unacceptable detrimental cumulative impact on local residents and the surrounding area contrary to Policy M3 of the West Glamorgan Structure Plan (Review No. 2), Policy GC2 of the Deposit Draft Neath Port Talbot Unitary Development Plan and Policy DC25 of the Draft Minerals Local Plan for West Glamorgan.

The operator appealed against this decision, which was recovered by the Welsh Assembly. The appeal was dismissed in April 2009 but was subsequently challenged by Celtic. The challenge was also 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 authority pursued enforcement of the conditions, whilst the appeals process was ongoing.

During the appeals process, the operator transferred ownership of the site together with another three sites within South Wales to an off shore company registered within the British Virgin Islands. This company is known as 'Oak Regeneration'. Following this transaction, the operator refused to discuss any matters associated with the site with officers of this authority. At the same time, it was unclear who was representing the new owners of the site given that 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. They appointed planning consultants, SLR, to act on their behalf and a number of meetings have taken place with representatives from SLR, Celtic and Oak since late 2011.

As part of that process, officers from Neath Port Talbot and Bridgend County Borough Councils have consistently sought to secure restoration of the site. During these meetings both Local Planning Authorities (LPAs) have expressed deep concerns with regard to the lack of restoration to date, and the fact that an extension of the extraction area has previously been refused consent and dismissed at appeal, and it was not possible to see how these reasons could be addressed within a new submission. Nevertheless officers from both authorities have repeatedly stated that they would like to see full restoration of the site in accordance with the original planning permission.

As part of those discussions a scheme was proposed by SLR to restore the site back to original or similar ground levels and implement a regeneration scheme involving the creation of a 'Garden City'.

Both LPAs expressed concern with regard to such a proposal, given that it is located in a non-sustainable location, is outside settlement limits, will result in the construction of significant numbers of dwellings which go beyond the identified housing projections of both authorities and did not comply with the vision and objectives of the adopted and emerging Development Plans within both LPA areas. In response to

such concerns the Planning Consultants acting on behalf of both Celtic and Oak advised both LPAs that a strategic solution was required for this site which went beyond the objectives of the current Development Plan(s). Nevertheless concerns were maintained by both LPAs that the creation of a Garden City would not be supported by officers in either Council.

After some time all parties reconvened to discuss whether there was an alternative to the 'Garden City' proposal. At these meetings it was confirmed by Celtic, Oak and their consultants that for financial reasons, restoration of the site could only be delivered if further coaling and/or regeneration of the site was permitted.

Whilst these discussions were taking place, external legal advice was sought by both LPAs. The advice to this authority required us in the short term to undertake the following two actions:

- Serve a Planning Contravention Notice (PCN) to establish ownership and interests in the site.
- Complete a restoration scheme to append to a potential future enforcement notice. Such a scheme is required in the absence of a submission by the operator in accordance with the requirements of conditions 54 and 55 of planning permission P2006/1727 as stated above. This scheme would identify the extent of the work required to complete restoration of the site and the timescales within which such work must be completed.

In response to the above advice, PCNs were served on the 6<sup>th</sup> February 2013. The PCN was served to seek information as it related to land ownership, other interests, the current or last use of the site and, and if a restoration scheme had been prepared. All responses to the PCN were received within the prescribed deadline and confirmed that Oak Regeneration were the owners of the site and Celtic were the Coal Authority license holders.

After serving the PCNs, a restoration scheme was jointly commissioned by both LPAs from an independent consultant. The restoration scheme identified how the site could be restored in accordance with the originally approved restoration strategy, together with a restoration sequence plan which outlined timescales for the completion of the work.

As part of the discussion process referred to above, the completed restoration scheme was given to both Oak and Celtic to consider. It was confirmed by Celtic that there were insufficient funds available to restore the site in accordance with the originally approved restoration strategy and recently prepared restoration scheme. This was also confirmed by Oak, who also stated that should an Enforcement Notice be served to secure compliance with such a restoration scheme, due to insufficient funds being available it would force the company into liquidation, which would culminate in no restoration of the site.

Concerns were expressed by both LPAs with regard to the underlying threat within such a statement. However due to insufficient funds being available to either company, they both stood by their individual statements. They also requested regular meetings with both LPAs to discuss alternative restoration proposals. At the time they also confirmed that the only feasible way to secure restoration of the site, involved the winning and working of further coal reserves. As a consequence of this, the planning consultants working on behalf of both companies prepared a number of restoration proposals in relation to the site.

As part of this process a total of 18 potential schemes were presented to the LPAs together with a justification as to why each one could or could not be delivered. The schemes ranged in scale from those which involved additional coaling followed by restoration, to those that involved a lesser degree of coaling but with renewable energy as an after use, and those which involved pure residential regeneration of the site with no coaling. Most of the potential schemes were dismissed as being undeliverable by Celtic and Oak for financial reasons, while those which they proposed to pursue were dismissed by the LPAs as they did not address the original reasons for refusal as cited for the above mentioned planning application.

Since these options were presented and following the decision of the Planning Committee in November 2014, Celtic have confirmed in various meetings that they no longer intend to pursue additional coaling at the site although they are seeking to work with the LPAs to secure an alternative form of restoration at the site utilising the money held within the existing restoration fund.

Notwithstanding the above, it is clear that the restoration fund which currently stands at approximately £5.7million is wholly insufficient to secure any form of restoration of the site. In fact the sum is probably

insufficient to pay for the de-watering of the void which is currently filling up with water and stands at present at approximately 41.89 metres AOD.

Throughout the many meetings held with Celtic, Oak and SLR, Officers have repeatedly outlined our concerns regarding site security and safety, rising water levels, lack of pumping of the void and lack of restoration. In response to these concerns, the applicants have again indicated that the restoration of the site in accordance with the originally approved restoration strategy and recently prepared restoration scheme cannot be delivered for financial reasons. Effectively any restoration of the site would have to pay for itself although the limited money secured within the restoration fund would contribute towards such costs.

While restoration discussions have been ongoing with Celtic, Oak and SLR, discussions have also been held with other interested parties including Bridgend County Borough Council officers, together with representatives from Natural Resources Wales, the Coal Authority, Network Rail, and Her Majesty's Inspectorate of Mines and Quarries. Whilst these discussions are ongoing, the following is a synopsis of the powers available to each organisation:

**Bridgend County Borough Council:** Whilst a planning permission is in place in relation to the former mining activities at this site, externally secured legal advice has confirmed that the conditions of that planning permission cannot be enforced. As a consequence there would be reliance upon the ability of this Authority alone to enforce against the interested parties under the planning permission which was granted within Neath Port Talbot.

**Natural Resources Wales (NRW):** NRW is not in a position to intervene in relation to the increasing water level within the void, the responsibility remains with the operator/landowner. Celtic Energy retain four water discharge activity permits at the site, two of which may be used to discharge void water. Should an uncontrolled and unauthorised release of water from the void enter controlled waters, it is highly likely that it will result in a formal investigation which may lead to enforcement action being instigated by NRW.

Additional consents may also be required from NRW, for example, land drainage consents, and/or water discharge consents, however these applications, if required, could run concurrent with any planning applications required.

**The Coal Authority (CA):** Again discussions have taken place with the CA where they have confirmed that they are an interested party in this site given that they issued the license to the operators. They, as an organisation, also hold the ownership rights associated with the coal seams, albeit these have been transferred to the former operators via a lease, but they retain overall freehold responsibility for the coal seams outwith of the void. They have indicated that their hands are tied in terms of taking action in relation to non-compliance with the planning conditions and associated legal agreements relating to restoration, given that the lease associated with the site has not yet expired and the only sanction that they potentially could have would involve termination of the lease. This wouldn't be of assistance as the CA is not responsible for restoration of the void.

**Her Majesty's Inspectorate of Mines and Quarries:** Have confirmed that they only have responsibility for the operations undertaken on site when the site is operational and have no responsibility associated with the risk to the public following the cessation of an activity.

**Network Rail:** The Ogmere Valley Extension Line runs immediately adjacent to the application site. Although it is not a main line railway and as such is not used on a frequent basis, when works are taking place or there is an incident on the main railway line, it is used as an alternative route by both passenger and freight operators. If the line becomes unusable for any reason, Network Rail has concerns for the safe operation of the railway and passenger safety and can also be fined for the period that the line is unavailable.

Network Rail has expressed serious concerns in relation to the potential for flooding associated with the increasing water levels within the void created as part of the Margam Opencast Coal Site.

Notwithstanding these discussions, it remains to be the case that the former open cast coal site has not been restored and the void remains full of water. It is understood that an agreement is in place between the former operator and the owner of the site to pump water from the void to maintain a safe water level. It is also understood that this agreement will only last for two years (expiring in June 2017) after which Celtic will no longer be expected by the owners of the site to pump water from the void. The water levels are being regularly monitored by Celtic, and their recent reports to the LPA confirm that the water levels are currently standing at 41.89m AOD. It is important to note that the point at which

water can over top the void is 52m AOD. As a result of current pumping at the site there is no imminent danger of flooding from the site.

### **What has happened since November 2014?**

Since November 2014, arrangements were put in place to hold a cross boundary public meeting with officers from both Neath Port Talbot and Bridgend in attendance. That meeting was held on the evening of the 24<sup>th</sup> March 2015 and was well attended by members of the public as well as politicians from both sides of the County boundary. The objective of the meeting was to inform all interested parties of the constraints associated with taking enforcement action on this site and the intentions therefore to look at alternative solutions. Those present were asked to suggest alternative solutions to secure restoration of the site but apart from securing full restoration of the site in accordance with the original planning permission no viable alternatives were forthcoming.

Following the public meeting, discussions took place which suggested that it may be appropriate to set up a working group to discuss alternative restoration solutions. The working group would comprise of officers and elected Members from both Councils, together with representatives from the local community. This suggestion was put before Members of this Committee on the 16<sup>th</sup> June 2015 who resolved to support such a proposal and also agreed that Cllr Rob Jones in his capacity as ward Member for part of the site be responsible for chairing the group.

Since that date, the Minister for Natural Resources, Carl Sargeant AM was asked to impose a moratorium on further open cast development in Wales. He did not accept this proposal but instead indicated that he would organise an Open Cast Coal summit. This was held on the 9<sup>th</sup> July 2015 with the objective of discussing solutions to the legacy of un-restored sites and the need for revised planning policy and guidance relating to the mineral industry.

Prior to the summit, statements were made by various national politicians regarding the availability of funds at a national level to contribute towards addressing the legacy of un-restored sites. Despite such statements being made prior to the general election, no further statements regarding the availability of additional funds have been made. Furthermore both Welsh Government Officers and Carl Sargeant AM were silent on the issue at the Coal Summit, which was the

appropriate opportunity to raise the issue. Furthermore the availability of additional funds has not been raised again by any politicians since the general election.

It is therefore reasonable to assume at this time that no further resources will be allocated by Central Government to address the problem of unrestored/abandoned sites throughout the country. Notwithstanding the lack of additional funds being allocated to sites such as Margam, its unrestored status still remains to be a concern.

### **Where do we go from here?**

There are a number of local residents who are still expecting the Council to pursue enforcement action at this site. The previous report considered by Members in November 2014 outlined the problems with pursuing this course of action. For completeness these are reiterated as follows.

The serving of an enforcement notice is likely to result in Oak (the owner of the site) going into voluntary liquidation. Upon liquidation, the liquidator can disclaim property by submitting a prescribed form of Notice to the Land Registry. In that case, the freehold transfers to the Crown, however the Crown itself can decide to disclaim property at any time.

Given the liabilities that will come with ownership it is likely that this will be the case. As a result the land will have no owner and therefore no-one will be responsible for its security and safety in the short term and its restoration in the long term. Should pumping of the site cease and the water levels rise, there is potential for a flow or rush of water and consequential flooding to the surrounding areas. The cost of any remedial action associated with such an event would have to be picked up by the public purse within which there are insufficient funds.

For the reasons specified above it is not considered to be appropriate to pursue the serving of an enforcement notice with the objective of securing full restoration of the site in accordance with the original planning permission.

As specified earlier in this report, Members will recall that their resolution in November 2014 was to allow officers to pursue discussions regarding an alternative restoration of the site which did not involve additional coaling. If this was unsuccessful officers were

mandated to pursue enforcement to secure phased restoration and only if this failed were officers to pursue full enforcement.

Having regard to this resolution, the discussions which have since taken place, the lack of additional funds coming forward over and above those held within the restoration fund, and the fact that Celtic only have an agreement in place to access the site to undertake works until June 2017, a further set of options have been drawn up. Each option is supported by a list of benefits and dis-benefits. It should also be noted that due to the lack of both time and available funds, none of the options proposed include the establishment of the previously suggested working group.

### **Option One: Serve an Enforcement Notice**

An enforcement notice would be served, appended to which would be the restoration and aftercare scheme approved under planning permission ref. P2006/1727, which has been designed in accordance with the approved restoration strategy for the site. This seeks to dewater the void, remove the overburden and surcharge mounds and regrade them into the void in addition to reinstating all of the highways and bridleways.

Given the details earlier in this report, it is unlikely that the owners will comply with the enforcement notice, nor will they appeal against it. If this is the case then a 'trigger event' as specified within the Section 106 agreement is initiated which will allow the Council to access the funds in the escrow account.

Given that the funds are insufficient to cover the implementation of the approved restoration strategy the money would be used to undertake works in the following priority and as specified within the existing S106:

- "Making the site safe in terms of site security, filling of voids/adits removal of potentially dangerous structures, buildings or machinery.
- Completion of the removal of site infrastructure such as utilities, roads, water treatment areas, drainage channels, pipes etc.
- Completion of site restoration to wetland/reed bed/woodland use, this to be deemed as a high priority with agricultural restoration as a lower priority."

As stated earlier in this report there is approximately £5.7 million in the escrow account which is only sufficient to cover part of the first priority in addition to other works considered to be essential. E.g. construct a channel between the void and watercourse to maintain water levels at a safe level going forward, re-profile/plant around the perimeter of the void, hydro-seed the overburden and surcharge mounds and reintroduce a non-vehicular link between the north and the south together.

It is noted that, while Oak/Beech would be in breach of the Enforcement Notice if they fail to comply with the Notice (which is likely), under this option the Council would be seeking to secure works which fall short of the full restoration of the site but which are considered to represent a realistic and appropriate resolution to the current situation.

### **Advantages to this option**

1. The process will be in line with the legislative framework in place
2. The public are expecting the Council to serve an enforcement notice
3. The serving of an enforcement notice could enable the Council(s) to access the escrow funds (if an appeal is not received)

### **Disadvantages to this option**

1. It is unlikely that the parties will comply with the enforcement notice as Oak/Beech have previously indicated that they do not have sufficient funds available and should an enforcement notice be served they would liquidate the company.
2. In the event that the parties fail to comply or appeal the enforcement notice, the Council will be seeking to secure works which fall short of the full restoration of the site. There will as a consequence be a perception that the Council are failing to pursue full restoration through the enforcement route.
3. Oak/ Beech may well appeal the enforcement notice which will result in significant costs to the council(s) and lengthy delays. Such action would also prevent the Council(s) gaining access to the escrow account as a trigger event will not have occurred until the appeal is dismissed (assuming the Council successfully defend the appeal).
4. Securing alternative works of restoration, despite being the only realistic enforcement option available, will result in negative reactions from some members of the public.

5. The Council at considerable expense will need to design the culvert linking the void to the watercourse and any other associated works, and planning permission will need to be obtained.
6. Who will undertake the works? The Council will need to go through a procurement exercise to secure a contractor to undertake the works on site. This will be time consuming and potentially more expensive than Celtic completing the works direct.
7. The enforcement process in general is likely to be a long drawn out exercise.
8. We can only enforce in relation to the land on our side of the County Borough Boundary and as such we cannot secure the revised restoration of the whole site.

### **Option Two: Serve an Enforcement Notice requiring an alternative restoration scheme ('under-enforcing')**

An alternative restoration scheme would be drawn up by the Council which would seek to secure site safety and landscape improvements at the site. Such works could include the construction of a channel between the void and watercourse to maintain water levels at a safe level going forward, re-profile/plant around the perimeter of the void, hydro-seed the overburden and surcharge mounds and reintroduce a non-vehicular link between the north and the south together. To ensure that the notice is sufficiently precise it would be necessary for such a scheme to be commissioned by the Council(s) and appended to the enforcement notice, together with an appropriate timescale for the completion of such works.

#### **Advantages to this Option:**

1. The process will be in line with the legislative framework in place.
2. The public are expecting the Council to serve an enforcement notice, albeit it is acknowledged that this enforcement notice would not be seeking full restoration of the site.
3. Following the serving of an enforcement notice Celtic and/or Oak/Beech could comply with the notice and implement the works which are identified as being necessary to secure site safety and visual enhancements. This will in turn result in the phased re-payment of the escrow account to Celtic and/or Oak/Beech.

4. If the notice is not complied with nor appealed against it will initiate a trigger event which will enable the council to access the escrow funds which will in turn enable the works to be undertaken in default.

### **Disadvantages to this option**

1. Following the anticipated failure of the parties to comply with the enforcement notice the Council will be under-enforcing by seeking only to secure site safety works and limited landscape improvements. However this is only on the basis that there are insufficient funds available to do any further work.
2. Oak/ Beech may well appeal the enforcement notice which will result in significant costs to the council(s) and lengthy delays. Such action would also prevent the Council(s) gaining access to the escrow account as a trigger event will not have occurred (unless the Council successfully defend the appeal).
3. Under-enforcement, despite being the only realistic enforcement option available, will result in negative reactions from some members of the public.
4. The Council at considerable expense will need to design the culvert linking the void to the watercourse and any other associated works, and planning permission will need to be obtained. Such costs would be incurred before the escrow funds become available to the Council(s) although legal advice would be sought on whether such costs are recoverable from the fund.
5. Who will undertake the works? The Council(s) will need to go through a procurement exercise to secure a contractor to undertake the works on site. This will be time consuming and potentially more expensive than Celtic completing the works direct.
6. The enforcement process in general is likely to be a long drawn out exercise.
7. We can only enforce in relation to the land on our side of the County Borough Boundary and as such we cannot secure the revised restoration of the whole site.

**Option Three: Advise Celtic and Oak/Beech to seek planning permission for an alternative restoration scheme which proposes a new S106 agreement which would supersede the existing S106 agreement.**

Celtic and/or Oak/Beech are encouraged to submit a planning application for an alternative restoration scheme. Such a scheme will aim to make the site safe in addition to undertake restoration works to the value of the balance within the escrow account. Such works are likely to be restricted to those outlined within option 1 (therefore including works to maintain water levels at a safe level going forward). Any surplus funds within the escrow account will be used for the ongoing maintenance of the site.

Should such an application be submitted and, following assessment by Officers and the Planning Committee, such an amended scheme would require the signing of a new S106 agreement which if signed by all interested parties will effectively supersede the original S106 and would be drafted such that it will enable the council to access the escrow monies. The works would need to be undertaken in accordance with a fully costed programme of tasks which would be drawn up in conjunction with an independent third party specialist. Celtic and/or Oak/Beech would be required to complete each of the tasks, the cost of which would be covered by the funds within the escrow account.

The whole process should be undertaken within a restricted timeframe to ensure that residents are given comfort that the potential long term flooding associated with the site is addressed before the agreement between Celtic and Oak/Beech expires after which pumping potentially ceases on site. Acceptable dates are considered to be as follows:

<b>Action</b>	<b>Date</b>
Commence pre-application discussions with all regulators	October 2015
Commence partial dewatering of the void	October 2015
Submit planning application to both LPAs	Beginning of January 2016
Submit all necessary consents to NRW	Beginning of January 2016
Determination of planning application (subject to all required information being submitted on time)	April 2016

Work on a new Section 106 to run in tandem with the planning application. Signing of the S106 by all interested parties	April 2016
Commence works on site	May 2016
Complete site safety and alternative restoration works	No later than May 2017

### **Advantages to this option**

1. It is a quick approach to enable long term site safety works to commence in addition to fast-tracking the natural re-vegetation of the site.
2. The proposal does not involve the serving of an enforcement notice, which can over complicate the Council's intended objective which is to secure site safety and restoration within the limitations of the funds available.
3. It will result in the delivery of a negotiated outcome which all parties can agree/sign up to.
4. We can secure a revised restoration of all of the site on both sides of the County Borough rather than works solely within NPT. This will however require Celtic and/or Oak/Beech to apply for planning permission to both Planning Authorities.
5. Officers within Bridgend County Borough Council are supportive in principle of this approach
6. Some members of the community are in favour of a quick, pragmatic and deliverable solution which makes the site safe and provides for a pedestrian access through the site. It is understood that residents living closest to the site on Bedford Road and Crown Road prefer the cul-de-sac arrangements currently in place and don't want to go back to a through road arrangement.

### **Disadvantages to this option**

1. Some residents will be opposed to an amended S106 agreement as they will consider that it is a 'dumbed down' approach from the outset rather than the most we can reasonably expect to achieve
2. The Council could be accused of colluding with Celtic and Oak/Beech despite completing this option-based assessment.
3. Oak/Beech will need to be signatories to an amended agreement but despite indicating that they are willing to sign up to an amended agreement this is not guaranteed.

4. The amended restoration scheme which is to be designed in accordance with the funds available may not be acceptable to all Members.

## **Conclusion**

This report gives a brief overview of the advantages and disadvantages associated with each of the options which could be pursued to secure a safe and secure site at the former Margam Open Cast Coal site in the long term. The landscaping works which could be undertaken with the funds available, whilst falling short of the previously approved restoration scheme, will enable the site to fit in with the surrounding landscape more so than is currently the case. Whilst it is acknowledged that the most acceptable outcome would be to secure the full restoration of the site in accordance with the original planning permission, such a position is considered to be unachievable.

Furthermore, as additional funds will not be forthcoming from either the former operator, or the owner of the site, nor are funds likely to be made available by Central Government, the Council will instead need to rely solely on the existing escrow fund of approximately £5.7 million to undertake the works. This fund is wholly insufficient to cover the cost of a full restoration scheme in accordance with the previous planning permission. The funds will however enable the site to be made safe in terms of water levels and access to the perimeter of the void in addition to creating a footpath link to reconnect the communities of Pen y Bryn and Kenfig Hill. The fund should also be sufficient to deliver a limited landscaping scheme which will boost the natural revegetation of the site overall.

The benefits associated with option 3 clearly outweigh the dis-benefits, as the Council will be able to secure an alternative restoration of the site which will protect the safety of those within the surrounding communities, in an efficient timescale whilst also following due process.

## **Recommendation:**

That authorisation is secured to pursue option 3 in accordance with the strict timescales as detailed within this report. If the timescales are not complied with by Celtic and Oak/Beech, option 1 is pursued with immediate effect.

Reason: To secure an alternative restoration of this abandoned opencast coal site with restricted funds, in the interests of the character and appearance of the surrounding countryside and to improve and safeguard the safety and amenities of residents within the adjacent communities, as required by Planning Policy Wales Minerals Technical Advice Note 2 – Coal (January 2009) and Policy M8 of the Neath Port Talbot Unitary Development Plan.