

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

### **Proposed Amendment to Condition following resolution to grant planning permission subject to s106**

<b><u>APPLICATION NO:</u> P2016/0078</b>	<b><u>DATE:</u> 18/02/2016</b>
<b>PROPOSAL:</b>	Proposed alternative restoration and aftercare scheme in respect of the former Margam Surface Mine, comprising engineering and landscaping works including: Pumping, earthworks, soil relocation, installation of an overflow drainage channel, re-introduction of rights of way across the site, agricultural (rehabilitation) works to establish vegetation and drainage (amendment to the restoration and aftercare scheme approved under planning permission reference P2006/1727
<b>LOCATION:</b>	Former Margam Surface Mine, Fford Y Gyfraith, Cefn Cribwr CF32 0BS
<b>APPLICANT:</b>	Mr Robert Thompson – Celtic Energy Ltd.
<b>TYPE:</b>	Full Plans
<b>WARD:</b>	Margam

## **BACKGROUND INFORMATION**

Members will recall that a resolution was made at the Planning Committee on 3<sup>rd</sup> May 2016 that planning permission should be granted for the above development subject to the removal of the holding direction from the Welsh Government and subject to the listed Conditions and a revised Legal Agreement to secure an acceptable programme of prioritised works and the ring fencing of money within the restoration fund, to enable delivery of this programme and to secure its aftercare.

A copy of the officer's report and associated Committee Minute is provided at Appendix A to this report.

Subsequent to the above resolution, the Welsh Ministers confirmed by letter dated 18<sup>th</sup> May 2016 that the application "does not raise planning issues of more than local importance" and accordingly cancelled the holding Direction dated 27 April 2016, stating that "it is now for the Council to determine the application as it sees fit".

Since the resolution was made officers have been in regular liaison with the applicant to progress the required section 106 agreement, with a number of complex legal matters requiring resolution. These discussions have recently been concluded, such that the legal agreement is ready to be signed by all parties.

Members should note that condition 2 on the draft approval currently reads as follows: -

(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

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

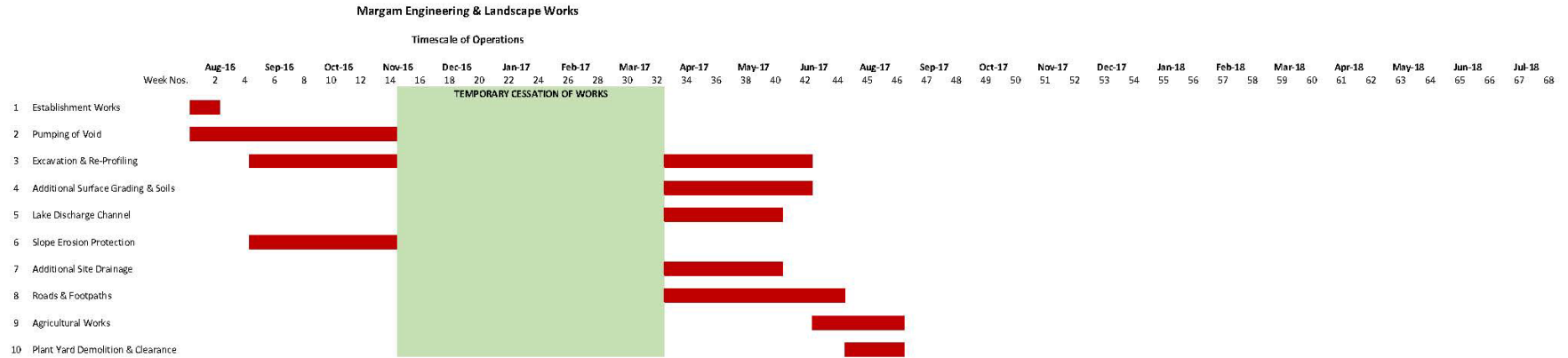
As result of the ongoing legal discussions, however, along with other complex ecological matters (referred to below), it has become evident that the previously-agreed tight timetable for implementation of the amended restoration scheme will not be met. The applicant has therefore formally requested that prior to issuing the planning permission that the Local Planning Authority amend the wording of condition 2 to extend the period of completion of the restoration works by a further one year, giving them until 31<sup>st</sup> July 2018. The applicants have cited the following reasons for the additional time request:

- For legal reasons the drafting of the section 106 agreement has experienced slippage and as such we are now 2 months behind the original programme and as such some of the originally programmed work cannot be undertaken due to seasonal restrictions.
- Following the completion of further surveys on site and following a meeting with a number of organisations including NRW, it is evident that Great Crested Newts are present across large areas of the site. These are a European Protected Species and it is necessary to obtain a License to Disturb from the Welsh Government. If this species is not dealt with correctly it can lead to a criminal

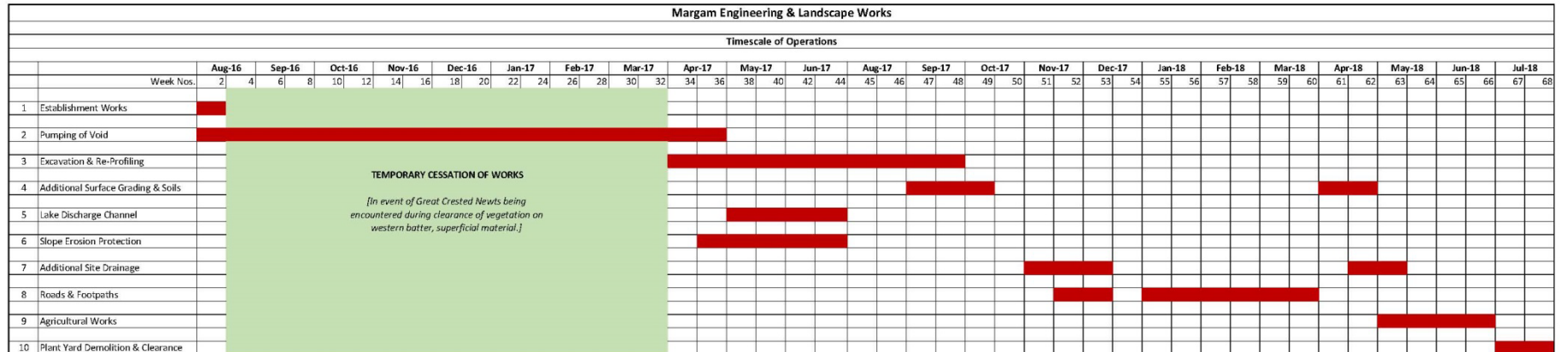
prosecution. As a consequence, the construction programme needs to be amended to reflect the restrictions on working now in place due to the larger than expected population of Great Crested Newts on site. It is anticipated that subject to agreement with NRW certain restricted works can be undertaken in relation to the construction of the buttress in the south west corner of the void together with re-profiling works on the surcharge mound. The remainder of the originally proposed works cannot be commenced until next year and such works must be completed in accordance with the above mentioned license, which they will apply for immediately.

As a consequence of the above, Celtic have submitted two proposed timescales for the completion of the works, representing both the 'best' case and 'worse' case scenarios. These are presented as follows:

# BEST CASE SCENARIO



# WORST CASE SCENARIO



Celtic Energy has also stated that “whilst these delays are unavoidable due to the legal protection given to these animals it will not affect the overall integrity or deliverability of the scheme just the timing of certain elements of it. Celtic continue to be committed to the delivery of the restoration scheme which is considered critical to protecting the interests of local communities, but also need to be able to comply with all relevant pieces of legislation in addition to all of the proposed conditions on the planning permissions”.

Accordingly, this report seeks to gain a further resolution to amend condition 2 to allow for an additional year (until 31<sup>st</sup> July 2018) to complete the approved amended restoration scheme.

## **ASSESSMENT**

### *Main issues*

There has been no material change in Policy circumstances since the previous resolution in May 2016, such that the proposals consider to be assessed against the National and Local Policy framework identified in the previous report to Committee at Appendix A.

Within this Policy context, the main issue to consider under this report concerns whether allowing a further one year to complete the amended restoration scheme would be acceptable, having regard particularly to the need to secure a timely restoration of the site given the Council’s serious concerns in relation to rising water levels in the void and the need to avoid the off-site flooding consequences of water breaching at the lowest point of the adjoining land; having regard also to any consequent impacts on matters including biodiversity and impacts on local residents.

### *Reasoning behind previously-agreed timescales*

The previously-agreed timetable of operations requiring completion of the works by June 2017 was largely (but not solely) related to the fact that the applicant (Celtic Energy Ltd.) was only able to secure access rights to the site for a two year period which commenced in June 2015. The previous report advised that the programme of works associated with this alternative restoration scheme can be secured within this restricted timeframe on condition that works commence in May 2016.

In addition, it was concluded that the alternative restoration scheme “achieves the Councils 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”.

Accordingly the reason for condition 2 was “Since the alternative restoration scheme is only acceptable based on the strict time limits identified within the application submission and to minimise the duration of disturbance”.

### ***Reasoning behind request for extended period for completion of restoration***

As referred to above, there have been delays in completion of the required section 106 agreement, which means that the May 2016 start date could not be achieved. In addition, following the issue of planning permission, it is necessary for a number of conditions to be approved/ discharged prior to commencement.

It has also become evident in continued discussions with the applicant and Natural Resources Wales (NRW) that there are some complicated ecological issues – as referred to in the applicant’s letter - that will inevitably delay the carrying out of the works due to licensing issues / seasonal constraints.

In terms of ecological matters, Members will recall that it has always been clear that there were protected species on site in the form of Great Crested Newts and potentially dormice and, as a result, avoidance measures were designed to ensure that these species were not adversely affected by the development. Since that assessment took place it has become evident that the scale of the great crested newt population is significantly higher than first envisaged and in addition to having a resident ecologist on site, it will also be necessary to apply for a license to disturb the species from Natural Resources Wales. Discussions between Officers, the applicant and NRW are continuing on such matters.

The delays above will inevitably mean that certain tasks cannot be completed this year and will have to wait until 2017 before those works can commence due again to seasonal factors associated with the Great Crested Newts.

For the reasons set out above, the applicant has therefore formally requested an amendment to the proposed condition no. 2 to extend the 'completion date' to July 2018. This, they advise, would give ample time for the works to be completed while also allowing time to deal with any other unforeseen circumstances.

### ***Need for Unfettered Access to the Site***

As referred to above, one of the main driving forces for the July 2017 completion date was the restriction on access to the site from the owners of the site. As such both Celtic Energy and the Council were keen to see the development completed within that deadline.

As part of discussions on the legal agreement, the owners have now agreed to lift that restriction and they have also agreed to the inclusion of a new clause within the proposed new s106 giving Celtic access to the site for as long as is necessary to carry out the works associated with the planning permission along with works associated with aftercare and extended aftercare. Accordingly, on a legal basis, officers are satisfied that in the event Members agree to extend the period for completion, access to the site can be achieved and the restoration can be fully secured.

### ***Need to secure a timely restoration of the site having regard to rising water levels in the void***

The need to achieve a long-term and expeditious solution to the concerns in relation to rising water levels in the void was of primary importance in the previous officer's report.

Since the May 2016 resolution, pumping of the void has continued and the water level has now reduced to approximately 40.5m AOD (37m AOD is required to enable the works). The immediate risk is therefore reduced. Nevertheless, it remains of critical importance to the success of the restoration scheme for the buttress in the south western corner to be constructed at the earliest opportunity. As previously noted, the purpose of the buttress is to prevent water percolating from the void into the weaker glacial deposits which are located below the proposed discharge

channel. This will maintain the structural integrity of the discharge channel in the long term.

In order to achieve such early works, Officers are actively working with the developer and NRW to design a phased method of working to secure implementation of the revised restoration scheme without the need for a license in a limited area of the site. This would ensure that the Council's primary objective in terms of reducing the safety risks of flooding of the void and the potential flooding of surrounding areas at the earliest opportunity is met, while ensuring that there is no adverse impact upon European protected species.

It is also noted that the s106 legal agreement incorporates a detailed breakdown on the expected timescale for completion of each phase of the works such that there can be a degree of confidence that such works will be undertaken expeditiously. Indeed, the 'best case' scenario above would still allow for completion of the works around September 2017.

Accordingly, it is concluded that the extended period for completion would not adversely impact upon the primary need to secure a timely restoration of the site concerns in relation to rising water levels in the void.

### *Ecological Impacts*

In respect of European Protected Species (EPS) the previous report to Committee noted as follows: -

"NRW has 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 appears to focus on dormice 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 dormice and Great Crested Newt are present and that conditions must be included requiring comprehensive strategies for the protection of European protected species.

The ecologists within the Council's Biodiversity Unit have confirmed that the proposed Reasonable Avoidance Measures could be applied to avoid adverse impacts. On that basis there does not seem to be any sense in



carrying out additional surveys when Reasonable Avoidance Measures are considered appropriate. In respect of dormice the applicants state that the site has low potential for supporting dormice due to the lack of suitable habitat. The Biodiversity Unit 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."

Conditions 24 to 35 (see Appendix A) address such matters, and it is noted particularly that condition 34 requires that 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.

The proposal to extend the period of time for completion of the aftercare relates to a large extent on the need to ensure that there would be no detrimental impact on European Protected Species at the site. Moreover, it has been noted above that the essential works to the SW corner to create the required buttress can be achieved without the need for a license. Accordingly, there are no objections to the time extension on ecological grounds.

### ***Impact on Residential Amenity***

In respect of the impact on residential amenity, the previous report to Committee noted as follows: -

"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."

The proposal to extend the completion date for a further 12 months (until 31<sup>st</sup> July 2018) will, therefore, mean that in the worst case scenario above, the benefits referred to from the reduced period will no longer apply. Nevertheless, the maximum 2 year period as defined within the 'worse' case scenario would be no greater a time period than that which would have been the case had the approved restoration been implemented. It also includes periods when, for reasons associated with seasonal restrictions, no activity will take place on site and therefore no disturbance to surrounding residents is caused. Moreover and as assessed within the original report considered by Members in May 2016, the originally approved restoration scheme required the removal of the overburden and surcharge mounds, a task which would have created disturbance to surrounding residents associated with noise and dust. It remains the case that the scheme no longer requires removal of the overburden and surcharge mounds into the void. Therefore, whilst the period of disturbance may well be similar to that originally envisaged for the originally approved restoration scheme, the level of disturbance remains significantly less so.

Notwithstanding the above it must also be borne in mind that the 'best' case scenario proposes that work will be completed by September 2017 which is only 2 months longer than considered and accepted by Members in May 2016.

It will not be possible to confirm at this stage whether the programme will proceed in line with the 'best' or 'worse' case scenario as it will be reliant upon the conditions attached to the License, should such a license be granted. Nevertheless it is considered that for the reasons specified above, neither scenario would result in significant adverse impacts on residential amenity, and would accord with Policies SP16 and EN8 of the LDP.

## **CONCLUSION**

Whilst it was always known that the delivery of this restoration scheme within the very tight timescales was going to be difficult to achieve, it is now clear that it cannot be achieved. The reasons are two-fold:

- The delays experienced in drawing up a complicated yet robust S106 agreement to secure the completion of the restoration scheme.
- The presence of a larger than expected population of Great Crested Newts over larger areas of the site has significantly

affected the ability to carry out critical tasks at the originally programmed times. Whilst these tasks can still be carried out the restrictions associated with Great Crested Newts means that the programme will slip beyond that originally anticipated.

Whilst it is unfortunate that the restoration scheme cannot be completed within the originally proposed timescales, it remains critical that this acceptable restoration scheme is completed and the site made safe and visually more acceptable as soon as is practicable. The best and worst case scenarios indicate that restoration work will either be completed in September 2017 or July 2018, neither of which will adversely affect the delivery of an acceptable restoration of the site. Its delivery is also secured via the robust S106 agreement which has been drafted and will be linked to this planning permission. As a result, the completion of the restoration scheme will not be compromised as a result of the programme changes.

It is also considered that whilst the delays to the restoration will prolong the period of time surrounding residents will be expected to live next door to an unrestored site, neither of the extended periods will prolong the restoration to an extent that would adversely affect the amenities of neighbouring residents.

Turning to the issue of ecology, an extended period for the completion of the works will ensure that the applicant does not adversely affect the large Great Crested Newt population present on site which has European Protected status. Thus the amended timescales associated with the restoration works will further safeguard interests of ecology in relation to this site.

For the above reasons it is considered that an extension of time for the completion of the restoration works until July 2018 complies with National Planning Policy and guidance contained within MTAN2 together with Policies SP2, SP16, SP20, SP21, EN2, EN6, EN8, I1, TR2 and M4 of the Neath Port Talbot Local Development Plan.

**Recommendation:**

That the wording of condition 2 is amended to read as follows, with all other conditions as shown within the report, attached as Appendix A, remaining unchanged:

(2) The approved restoration shall be completed by 31st July 2018. 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 scheme must be completed as quickly as possible but also in-accordance with a programme which does not adversely affect any European Protected Species on site, or the amenities of residents living adjacent to the site.

## APPENDIX A - REPORT TO COMMITTEE 3RD MAY 2016

### SECTION A – MATTERS FOR DECISION

#### Planning Applications Recommended for Approval Following members Site Visit

<b><u>APPLICATION NO:</u> P2016/0078</b>	<b><u>DATE:</u> 18/02/2016</b>
<b>PROPOSAL:</b>	Proposed alternative restoration and aftercare scheme in respect of the former Margam Surface Mine, comprising engineering and landscaping works including: Pumping, earthworks, soil relocation, installation of an overflow drainage channel, re-introduction of rights of way across the site, agricultural (rehabilitation) works to establish vegetation and drainage (amendment to the restoration and aftercare scheme approved under planning permission reference P2006/1727
<b>LOCATION:</b>	Former Margam Surface Mine, Fford Y Gyfraith, Cefn Cribwr CF32 0BS
<b>APPLICANT:</b>	Mr Robert Thompson – Celtic Energy Ltd.
<b>TYPE:</b>	Full Plans
<b>WARD:</b>	Margam

### BACKGROUND INFORMATION

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 eastern 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 in October 2008 the operators were required to commence backfilling of the void (Condition 60 of planning permission P2006/1727). They were also required to submit a restoration and aftercare scheme (Conditions 54 and 55 of planning permission P2006/1727). 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 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. The ownership transfer has been the subject of a Serious Fraud Office investigation and a case was put 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 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 also made it clear that they had insufficient funds available to restore the site in accordance with the approved restoration strategy. The owner also made it very clear that any enforcement action to secure compliance with the approved restoration strategy would force them into liquidation.

A number of alternative restoration proposals have been put forward by the agents, some of which involved further coaling, some involved less 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 the Local Planning Authority as they did not address the reasons for refusal associated with the refusal of planning permission and the subsequent failed Appeal/Court Challenge.

Whilst discussions were ongoing with the owner/operator/agents, external legal advice was sought by NPT and Bridgend Councils. The legal advice required the Council in the short term to:

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

Planning Contravention Notices were served on 6<sup>th</sup> 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. All 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. Notwithstanding that exemption Celtic Energy entered into a Section 106 Agreement in relation to the 2001 planning permission (Ref: P98/0541) which included a restoration fund of £5.1 million. This Bond was subsequently transferred to the 2006 permission (P2001/1243). 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 Planning Control Committee on 25<sup>th</sup> November 2014. That Report advised on the history of the site, the enforcement constraints and the options going forward.

Five Options were put forward for Members consideration at the time

- Option 1 Serve an Enforcement Notice to seek full restoration of the site in accordance with the approved restoration strategy
- 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

For the reasons outlined above Option 1 would result in the owner going into liquidation. The liquidator and the Crown would be likely to disclaim the property resulting in no-owner and no-one responsible for site safety and security in the short term and restoration in the long term. The cost of restoration would then fall upon the Local Authority who would have no funds available over and above the £5.7 million restoration fund. The liability of securing the approved restoration strategy would far exceed that fund and would therefore not be deliverable by the Local Authority. Members resolved that this option be pursued only as a last resort.



Option 2 was ruled out by Members due to the concerns associated with further coaling at this location. Option 5 was also ruled out as it would not address the Council's concerns which are primarily associated with site safety and security, rising water levels within the void, the risk of off-site flooding and lack of restoration. Members therefore resolved that Options 3 and 4 be pursued by officers. A cross boundary public meeting was also to be held to advise all interested parties of the current position. This meeting took place on the 24<sup>th</sup> March 2015.

An Updated Position Paper was reported to the Planning Committee on 29<sup>th</sup> September 2015 which advised Members of the action taken since November 2014 and outlined the potential options going forward having regard to legal and financial constraints.

A further series of options were put before the Committee together with an assessment of the advantages and disadvantages of each option.

Option 1 Serve an Enforcement Notice

Option 2 Serve an Enforcement Notice requiring an alternative restoration scheme (as per previous Option 4)

Option 3 Advise Celtic Energy and/or Oak Regeneration/Beech Regeneration to seek planning permission for an alternative restoration scheme which proposes a new Section 106 Agreement which would supersede the existing agreement.

Members resolved that officers pursue Option 3, in accordance with strict timescales which were detailed in the report. Should the timescales not be complied with by Celtic and Oak/Beech, Option 1 should be pursued with immediate effect.

Whilst it was acknowledged in the Report 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 to secure this outcome 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. Whilst it was acknowledged at the time that there were disbenefits associated with pursuing option 3, it was also evident that the benefits associated with addressing the issues of site safety and security and the rising water level in the void outweighed the disbenefits.

The application before Members is the result of Option 3 being pursued by officers. The owner/operator was invited to submit an alternative restoration scheme which addressed the immediate site safety and security concerns and addressed the rising water levels in the void and associated concerns about flooding/inundation from a breach of the high wall.

### **Planning History:**

#### 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  
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

## **Publicity and Responses:**

The application has been publicised by the display of 10 Site Notices around the site boundary and by advertisement in the Local Press in February 2016. 305 responses have been received as a result - 9 individual letters/online comments and 296 signed standard letters (in two different formats). An online petition containing 606 signatures has also been submitted.

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.
- 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.

## 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 Engineering & Transport (Drainage)** – no objection subject to conditions restricting surface water discharge to no greater than greenfield flows, a detailed design for the spillway, detailed protection works at the junction of the spillway with the Afon Cynffig, a management and maintenance strategy and measures to prevent pollution during construction.

**Biodiversity Unit** – welcome the general approach to the restoration of the site. Retention of large areas of existing established habitat and the principle of allowing further habitat to naturally regenerate is likely to result in an improvement of biodiversity value in the long term. The minimal intervention works are not likely to result in significant adverse impacts upon the habitats and species provided appropriate mitigation is implemented. Marshy grassland and bird habitat loss will be offset by creation of replacement marshy grassland and suitable bird habitat. Reasonable Avoidance Measures for Great Crested Newt is accepted. A Test of Likely Significant Effects (TLSE) has been undertaken in order to comply with the Conservation of Species and Habitats Regulations 2010. No likely significant effects were identified and therefore, an appropriate assessment is not considered necessary. The TLSE has been forwarded to NRW for their consideration. A number of conditions are requested to be attached to any grant of planning permission.

**Environmental Health and Trading Standards Manager** – agrees that the guidance in MTAN2: Coal is the most appropriate for the assessment of potential noise impact from the development and are satisfied that the correct methodologies have been applied for the monitoring and modelling. The worst case predicted noise levels will comply with the MTAN2 derived noise limits in all phases at the Oaks and in stages 2, 3, and 4 at Aberbaidan Farm. During stage 1 the MTAN2 derived noise limit is exceeded by 1dB but the application of the short-term operation exemption for up to 8 weeks in any year set out in MTAN2 is achieved. A

condition will be required to control noise limits and the use of the exemption.

In terms of air quality, the applicant is required to develop a dust management and monitoring plan which shall identify potential dust producing sources/activities and an assessment of the potential impact and control measures. This can be secured by condition.

In terms of contaminated land, there are no objections to the proposal subject to the imposition of conditions.

**Head of Engineering & Transport (Highways)** – No objection subject to conditions

**Dwr Cymru Welsh Water** – no objections

**Welsh Government Department for Natural Resources** – no observations received to date

**Footpaths Officer** – No comments to make in relation to the application. The applicant should note the need to apply directly to the Welsh Government for the legal orders for the rights of way and highway changes.

**GGAT** – no observations received to date.

**The Coal Authority** – no observations received to date

**Pyle Community Council** (Bridgend) – 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.

**Bridgend County Borough Council** – no observations to make as the impacts are being considered under the application made to the 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. This is currently at a level of 42m AOD which is approximately 11m below the lowest part of the top of the void. The top of the void is at natural ground level. 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 site lies within the Margam Special Landscape Area identified in the Local Development Plan although it is acknowledged in the Plan that the Special Landscape Area and the coal site overlap.

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.

## **Brief description of proposal:**

The originally approved restoration strategy involved infilling the void with the overburden from the overburden and surcharge mounds 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.

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 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 a rate to maintain safe water levels within the void, and pumping has as a consequence recently 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 applicants also propose 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 which is outside the scope of the planning process.

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 for a two year period which commenced in June 2015. The programme of works associated with this alternative restoration scheme can be secured within this restricted timeframe on condition 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.

## **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 Policy

### Local Development Plan (LDP)

The Neath Port Talbot Local Development Plan (2011-2026) was formally adopted on 27<sup>th</sup> January 2016 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 Neath Port Talbot 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 SP2 sets out the measures which will be taken in relation to the high level of poor long term health and sickness including where possible the reduction in peoples exposure to those elements that can have an adverse impact on health through consideration of environmental and safety impacts; encouraging healthier more active lifestyles and improving accessibility within and between communities.

Policy I1 seeks additional works or funding, in addition to infrastructure improvements necessary to make a development acceptable in health, safety and amenity terms. Those additional requirements will include appropriate provision for biodiversity, environmental and conservation interests as well as improving access to facilities and services including the provision of walking or cycling routes.

Policy EN2 identifies a Special Landscape Area for Margam (EN2/4). In such areas development will only be permitted where it is demonstrated



that there will be no significant adverse impacts on the features and characteristics for which it is designated. However, it is recognised on the LDP proposals map that there is an overlap with an operational coal site at Margam.

Policy EN 6 indicates that development proposals that would affect Regionally Important Geodiversity Sites (RIGS), Local Nature Reserves (LNRs), Sites of Interest for Nature Conservation (SINCs), sites meeting SINC criteria or sites supporting Local Biodiversity Action Plan (LBAP) or S42 habitats or species will only be permitted where they conserve and where possible enhance the natural heritage importance of the site; or the development could not reasonably be located elsewhere, and the benefits of the development outweigh the natural heritage importance of the site. Mitigation and/or compensation measures will need to be agreed where adverse effects are unavoidable.

Policy EN 7 seeks to protect ecologically or visually important natural features such as trees, woodlands, hedgerows / field boundaries, watercourses or ponds and indicates that development will only be permitted where full account has been taken of the relevant features in the design of the development, with measures put in place to ensure that they are retained and protected wherever possible; or the biodiversity value and role of the relevant feature has been taken into account and where removal is unavoidable, mitigation measures are agreed.

Policy SP 16 seeks to protect and where feasible improve the air, water and ground quality and the environment generally by ensuring that proposals have no significant adverse effects.

Policy EN 8 states that proposals which would be likely to have an unacceptable adverse effect on health, biodiversity and/or local amenity or would expose people to unacceptable risk due to air pollution; noise pollution; light pollution; contamination; land instability; and water (including groundwater) pollution will not be permitted.

Policy M 4 sets out the criteria for the assessment of mineral development. The relevant criteria in this case are that measures can be demonstrated to reduce, and where possible avoid, damage and disturbance to the environment and the amenity of neighbouring land-uses or individual properties to acceptable levels and appropriate and acceptable proposals are submitted for restoration and beneficial after-use and aftercare.

Policy SP20 indicates that the transport system and infrastructure will be developed in a safe, efficient and sustainable manner through the implementation of a number of measures.

Policy TR2 indicates that development proposals will only be permitted where the development does not compromise the safe, effective and efficient use of the highway network and does not have an adverse impact on highway safety or create unacceptable levels of traffic generation; appropriate levels of parking and cycling facilities are provided and the access arrangements for the site allow for the safe manoeuvring of any service vehicles associated with the planned use; the development is accessible by a range of travel means, including public transport and safe cycle and pedestrian routes; Transport Assessments and Travel Plans are provided for developments that are likely to create significant traffic generation.

## **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. 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 is exactly what is being proposed at Margam.

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 there is no mechanism available to the Council to ensure that it does occur. Members will recall that previous reports to this Committee in November 2014 and again in September 2015 identified all the potential options available to this Council which included enforcing against the original planning permission to secure the originally proposed and approved restoration of the site, as sought by some members of the local community. Members will also recall that for legal reasons such action is unlikely to secure the intended outcomes, moreover it may well result in further delays in any restoration of the site which will in turn place the surrounding communities at greater risk. As stated previously, funding from the former operator of the site or the current owner is not available over and above the £5.7 million in the restoration guarantee fund. Furthermore the UK Government and the Welsh Government are highly unlikely to top up the fund (or they would have done so by now). Enforcement action would also likely send the owners, Oak Regeneration, into liquidation, while Celtic Energy only has access to the site until June 2017 to carry out remedial works.

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 cost 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.

Therefore, to hold out for what the local community refers to as ‘full’ restoration and the most acceptable restoration would be unrealistic and potentially irresponsible given the ongoing concerns. It is also contrary to one of the key recommendations of research published by Welsh Government as referred to earlier in this report.

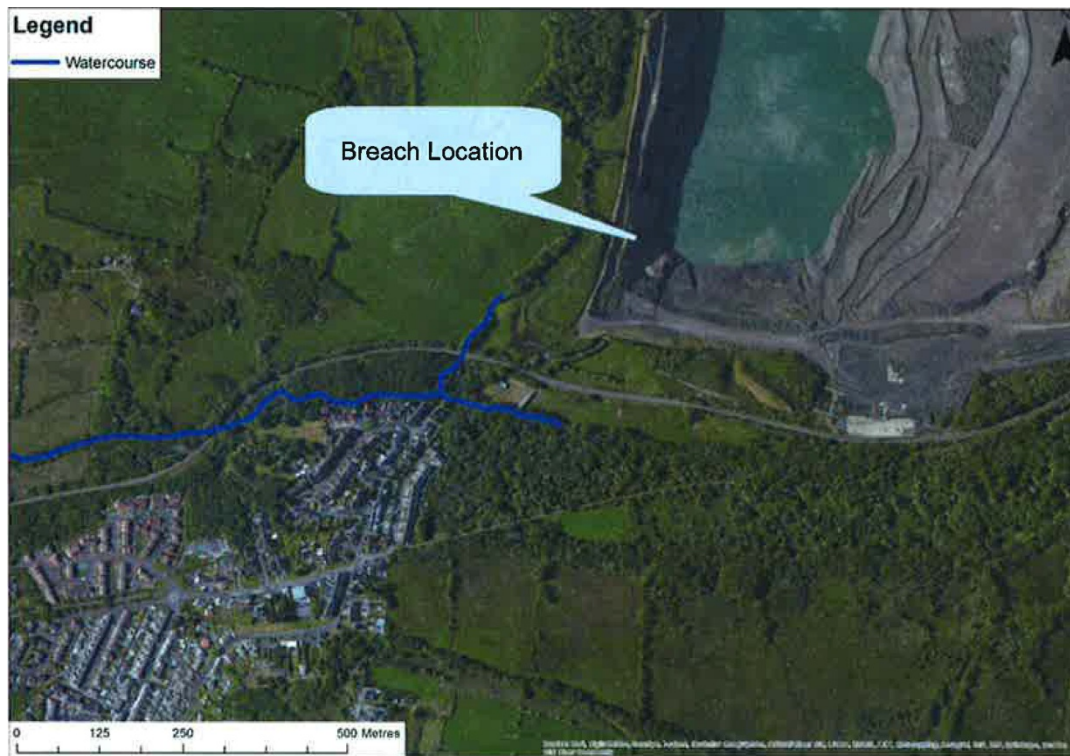
The Council’s concerns in relation to site safety and security, the rising water level in the void and its potential to result in off-site flooding, and concerns about the unnatural engineered profiles of parts of the site need to be addressed. The submitted scheme seeks to address these concerns and 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, together with Bridgend 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 applicants have 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 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. The detailed design of the channel will be the subject of further submission to this Authority under the terms of a planning condition but in general terms a concrete canvas channel with a gradient of approximately 1 in 200 and a channel width of 1m has been identified as being required. The channel will connect to the Nant 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 as requested by the Head of Engineering and Transport and 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. The independent assessment indicates that the applicants 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.

It is therefore fair to conclude 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 Councils 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.

For the reasons set out above the proposal is not considered to conflict with Policies SP2(2), EN8 and M4(3) of the LDP.

### Land Stability

The applicants have submitted a Geotechnical Assessment in support of the application. The Assessment identifies the west face 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 inconceivable that it would reach the Nant Cynffig 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 construct the spillway in the south western corner, and to protect its integrity 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 which are located below the spillway. This will maintain the structural integrity of the spillway in the long term.

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.

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 but such a course of action is not considered to be necessary.



References to parallels with Aberfan in terms of the stability of the overburden mounds are considered to be scaremongering and completely unfounded. There are no parallels, 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.

It is considered that the proposals adequately address the identified instability issues and potential risks. The proposal does not therefore conflict with Policy EN8 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. In addition, it is not the depth of the water that is the greatest risk but more the temperature of the water. Reference has been made to Police divers being limited to 50m but this appears to be of little relevance in terms of safety fears.

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.

A condition is recommended requiring full details of the fencing, planting and signage to the boundaries of the void, in the interests of safety.

### 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 have also designated SINC's which are locally extensive and about 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 SINC's but Policy EN6 of the LDP also covers sites meeting SINC criteria. The Nant Cynffig riparian corridor is a likely SINC candidate.

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 no European protected species within the site. There are records of otter and four species of bat along the riparian corridor of the Nant Cynffig to the west of the site. Otter and dormouse are also recorded along the Nant Iorwerth Goch to the south of the site and otter in the lower unaltered reaches of the Nant Craig yr Aber outside of the site. 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.

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 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 appears to focus on dormice 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 dormice and Great Crested Newt are present and that conditions must be included requiring comprehensive strategies for the protection of European protected species.

The ecologists within the Council's Biodiversity Unit have confirmed that the proposed Reasonable Avoidance Measures could be applied to avoid adverse impacts. On that basis there does not seem to be any sense in carrying out additional surveys when Reasonable Avoidance Measures are considered appropriate. In respect of dormice the applicants state that the site has low potential for supporting dormice due to the lack of suitable habitat. The Biodiversity Unit 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. 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 regrading 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.

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 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.

For the reasons set out above the proposals are considered to protect and safeguard interests ecological interests and as such the proposal complies with Policies I1, EN6, EN7 EN8 and M4(5) of the LDP.

## Highways and Transportation:

The approved restoration strategy shows Crown Road and Bedford Road restored as tarmacadam highways. The applicants propose to reinstate the link along Crown Road and Bedford Road along a slightly altered alignment, to avoid the void. This will take the form of a 4m wide forestry type road surfaced with suitably sized secondary aggregate and graded to a camber to aid drainage. In order to maximise accessibility of these routes conditions can be imposed to secure passing bays along their length. The road is not to be tarmaced as that would lead to substantial additional costs that are not fundable from the available resources. This is on the basis that the spending priorities relating to the restoration fund relate to site safety and security together with reinstating connectivity throughout the site. Whilst the realigned highways will not be to the standard of the former adopted tarmacked highways, they are deliverable and they will reinstate connectivity across the site, whilst also retaining funds to secure a safe site going forward.

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.

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 amount to 18 individual footpaths and bridleways. The proposed rights of way are shown on Figure 7. The change does result in a relatively minor loss of footpaths whereby one of the original footpaths extended across the void area while the network of paths on the eastern side of the site area (within Bridgend) has been rationalised to avoid areas of land which have revegetated to create enhanced areas of nature conservation. Despite these minor alterations to the proposed footpath network the integrity of the system is maintained. Objectors claim that this results in the loss of public access but this is not accepted.

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 Policies SP2(4), I1 and SP20(3) 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 applicants have confirmed that access will be as it was previously, through the Parc Slip Nature Reserve and not directly from Law Street. Highway safety will therefore not be adversely affected and the proposal does not therefore conflict with policies M4(4) and TR2 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 site 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 possible have been covered at length above.

As stated above, the site is identified as falling within the Margam Special Landscape Area as defined by Policy EN2 of the LDP. Policy EN2 states that development within a Special Landscape Area will only be permitted where there is no significant adverse impact on the features and characteristics for which the SLA is designated, although it is recognised on the proposals map that there is an overlap with an operational coal site at Margam.

Paragraph 5.3.12 of the supporting justification of Policy EN2 does indicate that mineral workings will be expected to provide a restoration scheme which returns the landscape as far as practicable to its original form and appearance on completion of works. It became clear from October 2011 that the site was not going to be restored in accordance with the approved restoration strategy. At that time Policy EN2 was not in place. As the difficulties with restoration predate the Policy, it is considered that there are justifiable reasons to accept that the proposed solution in this case represents the most practicable solution. In any event for the reasons previously expressed the return of the landscape to its original form and appearance is not practicable, realistic or deliverable. It has to be accepted also that what is being proposed, whilst not returning the site to its original form, is an improvement on the current situation.

#### 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. Subject to the imposition of such a condition the Environmental Health and Trading Standards Manager has raised no concerns regarding this development

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 (within Bridgend boundaries)).

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 their prediction is that such works would be significantly less



than 67db. It is, however, considered appropriate to ensure that such short-term works do not exceed 55dB LAeq (based on the upper limit for long-term noise within MTAN2) at Aberbaidan Farm and 46db at The Oaks (the impact on Bedford Road being covered by BCBC) for a period of 8 weeks. MTAN2 derived levels could be applied by condition at all other times.

The Environmental Health and Trading Standards Manager has confirmed that use of the MTAN2 guidance is appropriate for the assessment of noise impacts and that the correct methodologies have been applied for the monitoring and modelling. Noise predictions at The Oaks are within MTAN 2 derived limits and noise predictions are within MTAN2 derived limits at Aberbaidan Farm apart from during Stage 1 where they are exceeded by 1dB. The use of the short-term exemption contained in MTAN2 for a 1dB increase for a period of no more than 8 weeks in any year is acceptable.

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 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 Bedford Road and Crown Road in addition to the re-instatement of the majority of public rights of way which formerly crossed the site but have since been stopped up. In the absence of this scheme these links 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.

It is important to note that none of the land within the site is classified as contaminated land however, it is recommended that a condition be attached to require remediation should any contamination be encountered during site operations.

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 SP16 or EN8 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 SP21 of the Neath Port Talbot LDP and national planning policy/legislation in relation to the historic environment and cultural heritage.

### Programme of works, proposed after use and aftercare

The programme of works will prioritise essential works required to deliver the restoration as follows: - 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 (including ring fencing funds for the above essential elements) 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 and, where possible, ongoing maintenance. Commissioning the Coal Authority will also ensure accountability and quality assurance.

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 and surfaced with suitably sized 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.

On completion of restoration the void area will remain fenced off, with planting also proposed to further deter access to the void area. 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 also be retained to facilitate public access.

## **Conclusion**

There is a clear conflict between the restoration that was originally approved and which the local community would like to see and what is realistically achievable and deliverable within the financial and legal constraints outlined in the 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.

The Authority is therefore fully justified 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 the void to an extent that it would pose a serious risk of flooding and a risk to life downstream of the site. The Section 106 Agreement signed in December 2007 in relation to the site sets out very clearly that the Councils priority is making the site safe in the first instance.

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 re-grading 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 would be to seek the comprehensive restoration of the site in accordance with the originally approved strategy, this is not deliverable. 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 is a material consideration in the determination of this application.

It must be considered whether such a risk should be accepted in order to pursue the filling of the void with material in the overburden mounds and surcharge mounds and the re-instatement of tarmacked roads instead of the realigned alternative as proposed under this scheme. It is considered that this is not a risk worth pursuing given that the current application will

result in the delivery of an acceptable alternative restoration of the site, which in time will sit more comfortably within the surrounding area.

The scheme proposed is both affordable and deliverable and it also addresses the key aims of the local authority 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. Furthermore the benefits of the proposal far outweigh the costs in this case and therefore the application is recommended for approval subject to conditions and a revised Legal Agreement.

In the event of the recommendation being supported Members should be aware that the Council will engage the Coal Authority to quantify operations to be undertaken and evaluate/ring fence 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:**

**Approval subject to Conditions and a revised Legal 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.**

### **CONDITIONS**

#### **Time Limit Conditions**

(1) 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**

Since the alternative restoration scheme 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

Since the alternative restoration scheme 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 commencing 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.

NOTE: Templates of the required Notice and Site Notice are available to download at [www.npt.gov.uk/planning](http://www.npt.gov.uk/planning)

(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 / schemes 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, 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

#### Safeguarding Adjacent Land

(7) At least one month prior to carrying out of any engineering operations along the western wall of the void, a detailed design for the stabilisation works along the western wall, in the areas identified on drawing no. 2 (Areas of Instability along the west wall), shall be submitted to the Local Planning Authority for its approval in writing. Engineering works shall not commence until such time as the design has been approved, and shall thereafter be carried out in accordance with the approved design.

Reason

To ensure the stability of the western wall of the void

#### Access and Parking

(8) Prior to the delivery of any plant/machinery, portable buildings or materials to the site the developer shall submit for the approval of the Local Planning Authority a Transport Plan identifying the routes to be utilised for such deliveries. Deliveries shall be made in accordance with the approved plan.

Reason

In the interests of highway safety



(9) Notwithstanding the submitted details, prior to works commencing on their construction a scheme shall be submitted to and approved in writing by the local planning authority detailing the route of the proposed Crown Road and Bedford Road Bye-way 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

(10) The rights of way shown on Figure 7 – Indicative Proposed Rights of Way shall be re-instated prior to 31st July 2017 in accordance with a scheme which shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason

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

#### Dust

(11) 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 (DMAP) – January 2016. 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 LPA 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

(12) 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:

The Oaks – 46dB

Aberbaidan Farm – 47dB

Reason

In the interests of the amenity of the area

(13) Notwithstanding the provisions of Condition 12 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:

The Oaks – 46dB

Aberbaidan Farm – 55dB

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

(14) At all other times outside of the hours specified in condition 12 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

(15) The best practicable measures shall be used to minimise noise from reverse warning devices fitted to mobile plant and vehicles on site.

Reason

In the interest of the amenities of the area.

(16) 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

(17) 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

(18) Prior to commencement of engineering operations at the site, a Noise Management 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

(19) Prior to discharging water from the site into the Afon Cynffig full details of the construction of the overflow spillway shall be submitted to and approved in writing by the Local Planning Authority. The design shall ensure that

- (a) surface water discharge shall be no greater than Greenfield levels plus a climate change allowance; and
- (b) That protection is given to the Afon Cynffig at the overflow discharge point

The overflow spillway shall be constructed as approved.

## Reason

To ensure that the construction and operation of the spillway does not have significant adverse effects on the river channel and in the interests of flood prevention.

(20) 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, the overspill channel, culverts and surface water management features within the site. The scheme as approved shall thereafter be complied with.

## Reason

In the interests of flood prevention.

(21) Until they are no longer required for operational purposes all drainage ditches, attenuation ponds, settling ponds and lagoons shall be regularly de-silted and maintained in such a condition that they are able to perform effectively and efficiently for 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.

(22) 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

(23) Any lighting or floodlighting whether fixed or portable shall only be illuminated between the hours of 0700 and 1900 hours 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

(24) 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, removal or demolition shall not commence until mitigation measures have been submitted to and approved in writing by the Local Planning Authority. Mitigation measures shall be implemented as approved.

### Reason

In the interests of biodiversity and the protection of bats.

(25) 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 details of comprehensive mitigation has been submitted to and approved by the Local Planning Authority. The approved mitigation shall be undertaken in full accordance with the approved details.

### Reason

In the interest of nature conservation.

(26) 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.

(27) 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 Biodiversity

(28) 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, restoration work and outfall construction. If Great Crested Newt are found such works which may adversely affect this species must cease until such time as details of comprehensive mitigation have been submitted to 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.

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

Reason

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

(30) Prior to the commencement of any works in the adjacent to the Afon Cynffig, including vegetation clearance, an updated pre-commencement otter survey shall be undertaken by a suitably qualified ecologist. If evidence of otter is found works must cease until such time as appropriate mitigation is submitted and approved by the Local Planning Authority.

Reason

To ensure that otter is not adversely affected by the development

(31) 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.

(32) 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 biodiversity

(33) 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.

(34) 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

(35) 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

(36) Within 3 months of the date of this permission a scheme for supplementary planting of the Afon Cynffig shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved in the first planting season following such approval.

Reason

To diversify plant species, improve structural integrity and to provide additional habitat

(37) 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.

(38) 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

(39) 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

(40) 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.

(41) 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.

(42) 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

(43) 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.

(44) 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

(45) 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.

(46) Within 3 months of the date of this permission a scheme for the planting and fencing of all boundaries of the void, including details of the timetable for implementation and provision of warning signage to explain the dangers of open water, shall be submitted to the Local Planning Authority for its approval in writing. The approved scheme shall be implemented, and thereafter retained, in full accordance with the approved details.

Reason

To ensure reasonable measures are undertaken to prevent access to the water filled void.

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

Reason

In the interests of the amenity of the local area

#### Aftercare

(48) 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.

Reason

To ensure adequate treatment and management of the land to an appropriate timescale.

(49) 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 afteruse of the site

(50) Before 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

(51) Before 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 afteruse of the site

## PLANNING COMMITTEE

3<sup>rd</sup> MAY 2016

### AMENDMENT SHEET

#### ITEM 4

<b><u>APPLICATION NO:</u> P2016/0078</b>	<b><u>DATE:</u> 18/02/2016</b>
<b>PROPOSAL:</b> Proposed alternative restoration and aftercare scheme in respect of the former Margam Surface Mine, comprising engineering and landscaping works including: Pumping, earthworks, soil relocation, installation of an overflow drainage channel, re-introduction of rights of way across the site, agricultural (rehabilitation) works to establish vegetation and drainage (amendment to the restoration and aftercare scheme approved under planning permission reference P2006/1727	
<b>LOCATION:</b> Former Margam Surface Mine, Fford Y Gyfraith, Cefn Cribwr CF32 0BS	
<b>APPLICANT:</b> Mr Robert Thompson – Celtic Energy Ltd.	
<b>TYPE:</b> Full Plans	
<b>WARD:</b> Margam	

Members are advised that reference is made to the Nant Cynffig within the Committee report. This should in fact read the 'River Kenfig.'

Members are also advised that we have received a late letter from the Welsh Government which places a holding direction upon the Council under Article 18 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. As a consequence of this, the Council has been directed not to grant planning permission for this application without the prior authorisation of the Welsh Ministers. The Council can however continue to assess and debate the merits of the application and can also refuse the application without requiring further authorisation.

Having regard to the above, the recommendation associated with this application is amended to read as follows:

#### **Recommendation:**

**Approval subject to the removal of the holding direction from the Welsh Government and subject to the following Conditions and a revised Legal 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.**