

SECTION A – MATTERS FOR DECISION

Planning Applications Recommended For Refusal

<u>APPLICATION NO:</u> P2013/0212	<u>DATE:</u> 06/03/2013
PROPOSAL:	Proposed surface coal mining (opencast coal development) and associated reclamation of abandoned opencast coal site
LOCATION:	Fforch Egel Farm , Gwrhyd Road, Swansea SA9 2SE
APPLICANT:	Ward Bros Plant Hire Ltd
TYPE:	Minerals
WARD:	Cwmllynfell

BACKGROUND

This application was reported to the Planning and Development Control Committee on 1st April 2014 when it was resolved that the application be approved subject to the conditions listed in the report and a Section 106 Agreement covering the following:

- a £30,000 contribution towards highway maintenance for the road from the site down to Cwmllynfell, and
- the contribution of 12p per tonne of coal produced for community benefits (although not a material planning consideration), and
- the extension of the aftercare period for woodland areas from 5 years to 10 years.

Officers have sought to engage with the applicants since that time in an attempt to progress the Section 106 Agreement. No progress has been made. In addition, there have been a number of significant material changes in circumstances since the previous Committee resolution. The application is therefore being reported back to the Committee with a revised recommendation.

SITE AND CONTEXT

The application site is situated on the upper reaches of the Gwrhyd mountain at a location approximately 1.5km south west of the village of Rhiwfawr 3km north west of Ystalyfera, 2.5km south west of Cwmllynfell and 5km north of Pontardawe.

The site consists of approximately 23 hectares of land with some 6.2 hectares currently being used as improved upland grazing as part of Fforch Egel Farm which is considered no better than grade 4, under the Agricultural Land Classification. A further 2.3 hectares is composed of a planted conifer plantation in commercial ownership for forestry, some 5 hectares of common land and some 9.1 hectares of derelict un-restored opencast development which has remained largely in the same condition since being abandoned in the mid 1960's. The site is commonly known as the former "Yates" opencast site.

Some 100 metres to the east is the recently restored Parc Level opencast which is in its final year of aftercare. Fforch Egel Farmhouse lies 170 metres to the south of the application boundary and Troed Rhiw Felen Farmhouse (formerly known as Brynmelyn Farm) some 430 metres to the east of the application boundary. Blaenegel Fawr lies some 750 metres to the southwest and Rhyd Yr Egel approximately 900 metres in the same direction.

Gwrhyd Chapel lies some 700 metres to the south east and adjacent to the Gwrhyd mountain road. Pen Y Waun and Pen Y Waun Uchaf are derelict and unoccupied farm houses to the North West. Footpath 67 lies approximately 80 metres to the south west of the site boundary at its closest point, footpaths 69 and 70 some 200 metres to the south of the site, and footpaths 69 and 68 160 metres to the east.

A 33kv power line crosses the southern part of the site and may need to be diverted subject to discussions with Western Power Distribution.

DESCRIPTION OF DEVELOPMENT

The proposal constitutes a phased development of opencast working for the extraction of the Rhondda No. 1 coal seam and at the same time undertaking earth works and back filling to restore an abandoned opencast area that has remained in a derelict condition for some 50 years.

Following a modification of the programme of works and method of working during the application process it is now anticipated that some 91,000 tonnes of coal could be extracted over a period of 4 years, with an output of some 620 tonnes per week.

Initial development would involve the creation of a site compound adjacent to the existing access road to Fforch Egel Farm along with the fencing of site boundaries where required. Surface water ditches and provisions for water treatment would be installed prior to an initial soil stripping exercise within the initial extraction area at the southernmost point of the coal extraction area. Soil and subsoil would be stripped and stored for restoration purposes and stored in separate storage mounds. Progressing in a north easterly direction the first phase would deposit the overburden that lies above the coal seam into the southernmost area of the un-restored opencast. Coaling and further overburden removal would continue for a period of some 18 months within this initial coal extraction area, with sequential soil and subsoil recovery undertaken and the resources conserved within specified storage areas. When sufficient void space has been created, backfilling of the working void would be undertaken from the progressing area of coal extraction.

Three distinct coaling areas have been identified as follows:

The southern coaling area (Initial box cut and cuts 1 to 5) will be coaling in a north easterly direction. The middle section (Cuts 6 to 8) will be coaling in an easterly direction. These phases would take approximately 30 months to complete coaling. The final northern phase (Cuts 13 to 9) will start coaling at cut 13 which is located at the eastern limit of the site and will be progressively coaling in a westerly direction forming a final void at cut 9. The final void is located at the closest position to the overburden that is required to restore it and this is sourced from a part of the old abandoned opencast development. This third phase would take a further 18 months to complete. The total project time is 48 months.

Coal will be screened on site through a dry screen grid to segregate larger sizes of coal. Coal would be stored temporarily on the purpose built site compound and at levels of approximately 3 metres above ground level and then transported from the site along the existing track that joins the Gwrhyd Mountain from Fforch Egel Farm.

Transportation of coal is proposed in 20 tonne capacity 8 wheeled lorries that would turn left at the access point with the public highway and travel northwards towards Cwmllynfell and the A4068 via Coedffaldau. On the basis of the anticipated output, up to 7 lorries would depart from the site on a normal working weekday.

The proposed hours of operation are 07.00 to 19.00 hours Monday to Fridays and 07.00 to 13.00 hours on Saturdays. No operations or transportation are proposed outside these days and hours. The site would not operate on Bank holidays.

The development would provide employment to some 19 people along with added employment to service industries and haulage contractors.

The operations include the progressive restoration of the opencast working and reclamation of the former Yates opencast area over the coaling period. It is anticipated, taking account of the method of working sequence and coaling output, that approximately 50% of the site will have been restored to restoration contour levels within 24 months of the commencement of the site. The progressive replacement of soils, subsoils and soil forming material would be dictated to some degree by weather conditions and the programmed distribution of such organic resources. Final restoration after the end of coaling could take some 4-12 months depending on climatic conditions for final soil distribution and other engineering and drainage works.

The proposed restoration strategy plans include the following features of after-use:

- Improved grassland for agricultural use combining the reclamation of previous improved grassland areas to the east of the access track to Fforch Egel Farm, and a further 4 hectares on the restored opencast area making a total of 13.3 hectares. The areas would be segregated into enclosures by hedgerow reconstruction and planting and farmed for the purposes of Fforch Egel Farm
- The creation of 3.1 hectares of marshy grassland, which would include purple moor grass and rush pastures
- The creation of 2.7 hectares of acidic grassland on common land
- The creation of some 1.3 hectares of gorse and scrub heathland
- Approximately 1.3 hectares of upland woodland composed mainly of oak
- An inland sandstone pavement and rock scree to aid biodiversity and ecological diversification covering some 1 hectares
- The creation of ponds and wetlands as part of the final drainage pattern of the restored site

The site would be the subject of aftercare for 5 years but an extended aftercare period of 10 years for woodland areas can be secured under a legal agreement.

All plans / documents submitted in respect of this application can be viewed on the [Council's online register](#).

PLANNING HISTORY

The application site has the following relevant planning history: -

- P77/05 Making of two entries on outcrop of coal seam part of Ordinance sheet SN7310 – Refused 4th June 1977
- P82/036 Backfilling of disused opencast mine – Withdrawn 8th September 1983
- P88/0253 Proposed site for local colliery waste rubble tipping to restore land to agricultural proposes – Approved 5th September 1988
- P91/0642 Proposed excavation followed by restoration to agricultural use – Approved 2nd March 1992.

CONSULTATIONS

Western Power Distribution – Identify a 33 kV overhead electricity line across the southern area of the site that will need to be temporarily diverted around the working area.

The Coal Authority – Have no objections to the proposals and encourages and support the proposals citing that the scheme is an environmentally, socially acceptable and sustainable operation and the general need for coal resources.

Air Quality Section – No objections and consider the provisions of the submitted dust action plan to be adequate.

HM Inspectorate of Mines and Quarries – No objections or comments to make.

Cwmllynfell Community Council – Object on highway grounds and ask that the planning authority takes into account and assesses planning permissions in force and those applications awaiting determination which have an impact on the highway particularly towards Bryn Road, Cwmllynfell.

Powys County Council – No formal response (however verbal comments received from Powys County Council Highways consider that level of output up to 7 lorries per day was acceptable).

Ystradgynlais Town Council – Have concerns regarding the proposed haul route onto the A4068 and the potential detrimental impact that could occur through the use of Rhiwfawr Road at Bridge Street/Heol Twrch/Bethel Road roundabout.

Head of Engineering and Transport (Highways) – on the understanding that a Transport Plan will be submitted and that a sum of money will be provided for highway maintenance and repairs has no objections subject to conditions

Head of Engineering and Transport (Drainage) – no objections subject to conditions

The Countryside Section – Confirms that there are no footpaths affected by the development but note that Footpaths 67 lies to the west, 68 to the east and 70 to the south of the site boundary.

Neath Port Talbot Badger Group – No response.

Welsh Government Department for Natural Resources and Food – Confirm that agricultural is an appropriate after-use for those areas identified in the application.

Glamorgan Gwent Archaeological Trust – No objections subject a scheme being required for a watching brief.

West Glamorgan Commoners Association – No response.

Natural Resources Wales – No objections subject to conditions

Biodiversity Unit – No objections subject to conditions (consider that the survey information is now out of date and should be updated)

Head of Business Strategy and Public Protection (Noise) – No objections subject to conditions

Abertawe Bro Morgannwg University Health Board – State that based on the information and details of the operation and mitigation measures there is no evidence to suggest that the proposed development will cause any significant health effects to isolated receptors or the local communities but recommend conditions are adopted and sufficient for suppression and monitoring of dust and monitoring of noise to prove projected levels.

REPRESENTATIONS

Four neighbouring properties were consulted on 7th March 2013

The application was first advertised in the press and site notices were placed at the site, the access point and along the route of the public highway through to Cwmllynfell in March 2013. Further information received in December 2013 and January 2014 was also subject to publicity and further consultations by press advertisement and the postings of notices on 15th February 2014 and 22nd January 2014 respectively.

In response one letter has been received from the adjacent landowner of commercial forestry indicating that the plantation should be protected. An online comment from an adjacent property also draws attention to the fact that the residential property previously unoccupied was being renovated and likely to be occupied prior to mining starting and that this should be taken into account in the assessment of the proposal with issues of noise, dust and water supplies being raised.

REPORT

Planning Policies

National Policy and Guidance

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 \(PPW\)](#) 9th Edition (November 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.

Paragraph 14.8.4 of PPW specifies requirements that all opencast development proposals should meet, otherwise they should not be approved. These are:

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

- Land will be restored to a high standard and to a beneficial and suitable after use.

The Environment (Wales) Act 2016 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 came 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 merely have regard to conserving biodiversity.

Overarching National Policy Statement for Energy EN-1 is part of an evolving national energy strategy in response to changing circumstances in domestic and global energy markets. They set out to address long term energy challenges of security of supply, whilst acknowledging the implications of climate change. Whilst emphasis is on the development of renewable supplies, the Government recognised that coal will play an important and continuing role in meeting national energy requirements. However, the Governments policy has changed since that time with the announcement that all coal fired power generating stations would close by 2025.

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.

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.

Technical Advice Note 23 Economic Development (February 2014): Provides guidance on planning economic development at a strategic level, working with neighbouring authorities and relevant stakeholders; identifying and assessing economic development proposals and establishing an evidence basis to help prepare economic development policies for LDP's, it also indicates that economic development should be given greater weight as a material planning consideration although this should not be at the expense of environmental and social impacts.

Local Policy

The Development Plan for the area comprises the Neath Port Talbot Local Development Plan which was adopted in January 2016, and within which the following policies are of relevance:

- **Policy SP1** Climate Change
- **Policy SP2** Health
- **Policy SP4** Infrastructure
- **Policy SP14** The Countryside and the Undeveloped Coast
- **Policy EN2** Special Landscape Areas
- **Policy SP15** Biodiversity and Geodiversity
- **Policy EN7** Important Natural Features

- **Policy SP16** Environmental Protection
- **Policy EN8** Pollution and Land Stability
- **Policy SP17** Minerals
- **Policy M2** Surface Coal Operations
- **Policy M4** Criteria for the Assessment of Mineral Development
- **Policy SP20** Transport Network
- **Policy TR2** Design and Access of New Development

Supplementary Planning Guidance:

The following SPG was approved in October 2016 and is of relevance to this application: -

- [Pollution](#)

Environmental Impact Assessment

The application is accompanied by an Environmental Statement. Environmental Impact Assessment applies to certain developments and is a means of drawing together in a systematic way an assessment of the likely significant environmental effects of the development. The Environmental Statement accompanied by the application is a series of documents describing the site and its surroundings, a description of the development, an assessment of the environmental effects, proposed mitigation and residual effects, along with chapters on health impacts planning policy and overall conclusions.

Issues

Having regard to the above, the main issues to consider in this application relate to the impact on the visual amenity of the area, the impact on ecology and biodiversity, the impact on the amenities of neighbouring residents and the impact on highway safety when balanced against the need for coal and socio-economic considerations.

Impact on Landscape Character and Visual Amenity

The methodology used within the assessment is based on the Landscape Institute of Environmental Management and Assessment provided under the “*Guidelines for Landscape and Visual Assessment*”

(2002) (GLVIA). Planning Policy Wales (PPW) notes the attention to landscape issues is a key part of planning sustainability.

The Landscape assessment has utilised LANDMAP, a study produced in 2004 by the Countryside Council for Wales and advocated by PPW. The site is located within LANDMAP Character Area 28 – Slopes of Cefn Gwrhyd and Cwm Egel. The five aspects of landscape are classified as visual and sensory, geological, habitat, historic and cultural.

The site is located on the western side of a number of hills that form part of the upland areas known as the Gwrhyd Mountain and is relatively remote from the settlements of the area. The site is composed of in part upland grazing areas, peripheral woodland and scattered trees within hedgerows and an unrestored opencast development. Common land forms part of the site area to the north and commercial woodland plantation to the west. Small peripheral water courses drain into the Fforch Egel Stream to the south and west. The site falls within the Mynydd Y Garth Special Landscape Area as defined in Policy EN2 of the LDP.

Identifying the five features of landscape under LANDMAP, the proposed operations and the mitigation proposed, the assessment has identified the significance of the impacts on the Geological, Historic and Cultural Landscapes as of a low scale, with a neutral level of significance although their value as landscapes are considered as high.

The impact on visual and sensory and landscape habitats which are also of a high value, is considered to be slight adverse but the adoption of progressive restoration, grass seeding of mounds and the restoration of an abandoned opencast mine brings the proposal to a neutral level of impact and significance. In respect of Landscape habitats, a slight adverse effect is mitigated by the introduction of biodiversity and the restoration of an un-restored opencast development.

The Zone of Visual Influence (ZVI) is the area from which views of the development are possible, however from distances greater than 2km from the development it will merely form a small component of the landscape and is unlikely to have a significant visual impact.

The ZVI has been defined on the basis of visibility of the main components of the site i.e. the storage mounds and the mining void and ZVI indicates a general area within which views of the site may be

possible but does not mean that it will be seen from all locations within it with topography and vegetation providing localised screening.

The ZVI identifies some limited residential properties to the south and west. Views from main settlements such as Rhiwfawr and Cwmllynfell are not possible because of topography that lies between the site and the villages. There will be some views on a partial and interrupted form from footpaths that lie to the south of the site. In terms of residential receptors there are no direct views of the site from Fforch Egel Farm (the landowner/occupiers residence) although views of the peripheral soils mounds may be possible on the horizon to the north of that property. Similarly there are no direct views from Bryn Melyn farm (Troed Rhiw Felen) to the east of the development due to topography. The Gwrhyd Chapel will have restricted views of part of the development although at distances of greater than 600 metres away.

There will be views of the site from the Gwrhyd Road again some 600 metres from the site and from isolated farmhouses to the south and west. These are at significant distances of at least 600 metres and more. There would be limited long range views from the Ystalyfera ridgeline to the east some 2km away although only limited range in the overall view.

Using criteria for the sensitivity of receptors and the magnitude of change and the significance of the visual impact, the ES considers the visual impact in relation to nearest settlements negligible and low in relation to other areas of the site. Only in relation to Gwrhyd Chapel and Gwrhyd Road does the magnitude and sensitivity impact approach a medium level of effect. Similarly the impact on the nearest footpaths are considered to be of a medium effect and sensitivity. Overall the significance of the impact is considered low because of the temporary nature and phasing of the proposals coupled with the limited views available.

Natural Resources Wales (NRW) have confirmed that they agree with the assessment and that the residual and cumulative impacts of the development are minimised by the site location and proposed methods of working and progressive restoration.

The area has been the subject of previous mining in the last 25 years with small mine development and the operation and restoration of the Parc Level Colliery to the east of the site. The proposed operations are limited in extent and significantly secluded from main settlements, albeit

views from the Gwrhyd Road and properties to the south and west will be marginally affected as will the view for users of public rights of way.

The site has a limited visual envelope with parts of it contained within the undulating landform and hillsides of the area and it is considered that the proposed operations will not inflict any adverse harm on landscape and visual amenity to an extent that would warrant a refusal, particularly on the basis of the short term and temporary nature of the operations and the scope to progressively restore areas of the site after an initial period of 30 months operation.

Having regard to the existing condition of the site, the temporary duration of the operations and progressive restoration (which is fundamental to the working capacity of the site) and the longer term benefits of restoring an unrestored opencast development to beneficial land use it is considered that the overall benefits outweigh the level of impact on landscape and visual interests to the extent that the proposal is not considered to be in conflict with Policy SP14, EN2, SP17 and M4 of the Local Development Plan.

Ecology and Biodiversity

The Environmental Statement includes an assessment on ecology and biodiversity of the site and its surroundings including Phase 1 habitat surveys, baseline surveys for protected species and an assessment of likely impacts and mitigation measures proposed. Surveys were updated in May 2013 but these are now out of date.

Part 1 Section 6(1) of the Environment(Wales) Act 2016 states that a public authority must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. When the previous resolution was made by the Committee the duty was merely to have regard to biodiversity. Therefore, the bar has been raised.

The results of the habitat surveys, surveys of individual species, and the assessment of any impacts on this ecological resource were considered in 2014. At that time the overall assessment concluded that the impacts on local habitats and species was limited and whilst there are habitats of local importance and species which are protected either on the site or adjacent to the site, there was no overriding reason to withhold consent

on ecological grounds, subject to a scheme for the translocation of reptiles and the provision of various habitats within the restoration. However, almost 3 years later that may no longer be the case. Without up to date surveys the Authority cannot be certain that the development will maintain and enhance biodiversity and promote the resilience of ecosystems as required by the Environment Act.

The authority could request up to date surveys in order to seek to address the requirement of the Environment Act however as the applicants have not progressed the Section 106 Agreement since April 2014 and not responded to requests to discuss the Financial Bond required on this site it is considered unlikely that they will supply additional ecological survey information at this time.

As there is insufficient up to date information available to ensure compliance with the biodiversity duty in the Environment Act the Authority cannot adequately assess the proposal for compliance with Policies SP1, SP15, EN7, SP17, or M4 of the LDP or any other legislation or statute.

Impact on Residential Amenity

Buffer Zones

Paragraph 29 or MTAN2 states that coal working will generally not be acceptable within 500 metres of settlements or within International or National Designations of Environmental or Cultural importance. This is echoed in Policy M2 of the LDP.

The site boundary is not located within 500 metres of any settlement limit, the closest area being Rhiwfawr, some 1.5 km from the site. The proposal is also not within a designated environmental or cultural area and therefore does not conflict with MTAN2 or Policy M2 of the LDP

Noise

The noise assessment undertaken in the E.S. has established background levels for the nearest noise sensitive properties and made noise level predictions based on the proposed plant activity and methods of working.

Average ambient noise levels at the site and at Brynmelyn Farm (Troed Rhiw Felen) were 34.5dBA (LA90). Average ambient noise levels at Gwrhyd Road were 35dBA (LA90).

Paragraph 173 of MTAN2 requires that Mineral Planning Authorities (MPAs) establish a noise limit at sensitive locations of background [LA90] plus 10dB LAeq or 55dB LAeq 1 hr (free field), whichever is the lesser, during normal working hours (07.00-19.00 hrs Monday to Friday excluding Bank Holidays). For all other times MTAN2 states that operational noise should not exceed 42dB LAeq 1 hr (free field) at sensitive locations.

Other operations aside to normal mining such as soil stripping, storage water treatment construction and bund creation are normally associated with higher levels of noise and MTAN2 recognises this.

MTAN2 indicates that such short term operations should be limited normally to the hours 10.00 and 16.00 Mondays to Fridays excluding Public Holidays and the maximum limits to be no greater than 67dBA LAeq 1 hour free field at the nearest noise sensitive properties and that such operations are limited to 8 weeks of any calendar year.

Predictions for five locations have been made indicating that normal operations would result in the following worst case noise levels.

Fforch Egel Farm	-	48dBA (+14dB above background)
Bryn Melyn Farm (Troed Rhiw Felen)	-	45dBA (+10.5dB above background)
Gwrhyd Chapel	-	46dBA (+11dB above background)
Nearest footpath No 67	-	55dBA (+11dB above background)

Whilst predictions have been made for the nearest community in Rhiwfawr it is predicted that operations would be below ambient and unlikely to be perceptible. With regard to short term operations as defined above, it is considered that these would all be achievable within the limits recommended in MTAN 2 and therefore no conflict arises in this regard subject to restrictions on such working in line with MTAN 2 advice.

For normal operations, the noise assessment above identifies that Fforch Egel Farm could be subject to levels of +14dBA above background for normal operations although this would only occur for a limited period. It is also highly pertinent that the owner of the Farm is an interested party to the development and no representations having been received from the landowner. Within this context the noise levels are considered acceptable on that property as it is not regarded as a sensitive property.

Marginal predicted worst case exceedances at other locations of approximately 1dBA above the '10dBA above background levels' cannot be considered to be so significant as to warrant refusal in this case. Topography and site practice and limits on hours of working are capable of making operations acceptable in noise terms for normal operations. Specific measures can be implemented including control over overburden handling, the positioning of machinery behind bunds, and maintaining haul roads to a high standard which will minimise the noise. A Noise Action Plan submitted with the application sets out the mitigation measures and monitoring proposals for noise associated with the development and it is considered that this sets out a reasonable and acceptable structure to maintain control and review any noise impacts associated with the development

With regard to these predictions it should also be recognised that ambient background levels are particularly low and to achieve absolute MTAN 2 criteria is challenging. Fforch Egel Farm and the associated land for this development is in a fairly remote location from other sources of noise with exception of agricultural practices and relatively low levels of traffic along Gwrhyd mountain road. In respect to all site operations it is considered that the site can be controlled by conditions to protect the amenity of the area in terms of noise.

The level of noise generated by the coal traffic generated from the proposal is not considered to be significant given the number of lorries and hours of movements that can be controlled.

There are elevated levels for the footpaths that are located to the south and west of the site however these would be transient along a short section of the routes and are not considered to be significant.

Operations are limited to day time hours 07.00 to 19.00 hours and therefore the criteria of 42dBA does not need to be considered in terms of normal operations.

For the reasons set out above the proposal is not considered to be in conflict with Policies SP2, EN8, SP17 or M4 of the LDP.

Blasting

The application indicates that the overburden associated with the coal measures at this location does not require blasting to loosen the rock. Most of the Parc Level opencast nearby was worked without blasting although there were harder horizons encountered. Nevertheless, in the context of the proposal if blasting was required the developer would need to make a separate application to the Authority and demonstrate that blasting could be undertaken without adverse impacts on the environment and local amenity.

Nuisance Dust

Dust can be generated by a number of activities on mineral sites and opencast developments in particular have a potential to do so from soil stripping, overburden excavation and handling, vehicular movements and processing of coal.

The ES has considered the guidance in MTAN2 – Coal which notes that residents can be affected up to 1km from a source.

MTAN 2 states that “dust from opencast coal sites is mainly coarse and gravitational settling is appreciable, so dust concentrations decrease rapidly away from the source. Large particulate material (>30µm) returns to surface quite quickly; medium-size particles (10-30µm) will generally travel 100-250m from the source under normal conditions. In adverse weather conditions coarse dust travels 500m from the source. However, such events will be infrequent and continual or severe concerns about dust are most likely to be experienced near to dust sources (generally within 100m)”.

Finer particles, which constitute a small proportion of the dust emitted from most operations, are deposited more slowly, although their concentrations decrease rapidly from the source due to dispersion and dilution and PM₁₀ concentrations typically fall to background levels within 1km of a minerals extraction source. This aspect is considered separately below.

The site is remote from main residential settlements such as Rhiwfawr and Cwmllynfell to the north although two occupied farm holdings are within 500 metres of the site boundary.

Fforch Egel lies to the south approximately 200 metres from the site boundary. This property is owned by an interested landowner in the proposed development. Troed Rhiw Felen Farm (formerly known as Brynmelyn Farm) lies approximately 470 metres east from the nearest point of coal extraction. The majority of the operation would be at least 500 metres from the dwelling although the access track heading to the Gwrhyd Mountain road would be approximately 55 metres from the property at one single point.

Further occupied properties lie some 900 metres to the south west and generally not in the direction of prevailing south westerly winds.

Larger dust particles settle relatively quickly from the source and normally within 100 metres. The nuisance effect of dust is difficult to quantify and is sometimes influenced by the observation of dust arising from operations whereas the actual effect outside the site boundary may be much less than is perceived. Nevertheless there is a need to reduce such effects to an absolute minimum.

It is recognised that climate and weather influences the nature and potential for dust emission to arise from mineral surface operations. Prevailing winds are generally south westerly and would direct dust emissions towards Rhiwfawr. However residential settlements are at least 1.5km from the site boundary and properties and the population are unlikely to be affected by operations even in the most extreme weather conditions.

In addition rainfall is a factor that is likely to influence the degree of deposition of dust outside the site boundary. The area is likely to have significant rainfall periods and events although there is always a requirement to prevent any impacts when weather conditions are drier. Soil stripping operations can be a potential source of complaint as these activities have to occur in dry periods of weather in order to avoid destroying the soil structure.

Dust can be a source of complaint as a visual impact on surfaces. There are no UK Statutory Standards recommended for dust deposition rates however MTAN 2 suggests that for high-contrast dust such as coal, conditions should be set at a maximum of 80mg/m²/day (as a

weekly average) or as a combination of 100% AAC (actual area coverage) across a single 45° sector over a 7 day period or the dust effect or discolouration is greater than 25% for a single sector within the same period. It is unclear if the limit of 80mg/m²/day relates to all dust or just the coal component.

In addition to any planning conditions and controls for the mitigation of dust and its monitoring, operations for coal extraction, processing and stocking will be regulated by an Environmental Permit. Paragraph 13.10.2 of PPW indicates that planning authorities should not seek to control matters that are the proper control of pollution control authorities and are covered by separate legislation. They must operate on the basis that these other regimes will be properly applied and enforced.

The ES recognises the need to undertake an adequate level of mitigation procedures to limit dust emissions from the site and these have been set out in a Dust Action Plan which includes site management and monitoring techniques, specified methods of working, the use of dust suppression equipment and spraying techniques and review and action should problems or complaints arise. These include controls on the access track to the public highway.

The Dust Action Plan provides an adequate document of controls that can be enforced through a condition and whilst there are likely to be a certain level of dust emissions, these are not likely to have an influence on the amenity of the nearest residents and such impacts can be adequately controlled and mitigated for to comply with modern standards and expectations and is therefore not in conflict with Policies SP2, SP16, EN8, SP17 and M4 of the Local Development Plan.

Fine Particulates

Fine particulates are tiny airborne particles that come from different sources including vehicles, industry and mining.

Air Quality Regulations prescribe National Air Quality Strategy (NAQS) – objectives to be achieved for a range of pollutants and pollutants such as PM₁₀ and PM_{2.5} particulates are relevant and NO₂ is relevant for HGV emissions.

PM₁₀ data from DEFRA show that the 2016 average PM₁₀ concentrations in the area occupied by the site are 11.77ug/m³, 29.25% of the annual average NAQS objective of 40ug/m³. The NAQS daily

mean objective is 50ug/m³ which should not be exceeded more than 35 times per year. The threshold value has been set at a level at which the risk of adverse health effects to any individual would be very small. Surface related mining operations are associated with very small increases in mean concentration of PM₁₀ particles (2ug/m³) and on that basis the concentration would still be well below half the mean threshold. It also needs to be recognised in this case that the level of plant use and associated activities are on a much smaller scale to the larger opencast coal developments of the area.

The mapped level for PM_{2.5} is 8.39ug/m³ (2016 data), 33.56% of the NAQS average annual objective of 25ug/m³. NO₂ levels are 6.24ug/m³, 15.6% of the annual mean NAQS objective of 40ug/m³ and 3.12% of the 1 hour mean of 200ug/m³, which should not be exceeded more than 18 times per year.

The ES suggests that it is improbable that site specific background levels would show breaches to the AQS standards however indicate that a suitable monitoring can be undertaken during the operational phase. This can be conditioned.

The Dust Action Plan submitted with the application includes a comprehensive set of mitigation methods using recognised suppression techniques and monitoring by way of deposit gauges and sticky pads. Whilst PM₁₀ levels are unlikely to be affected locally an initial period of monitoring and review would be appropriate under a scheme.

In overall terms the operations are unlikely to cause an unacceptable impact on the nearest residents or local population to warrant a refusal of the proposal and subject to conditions and the implementation of the Dust Action Plan it is considered that the proposal is not in conflict with Policies SP2, SP16, EN8, SP17 and M4 of the LDP.

Health Impact Assessment

Paragraph 121 of MTAN2 states in part

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

be properly informed and involved and people's views heard about the application."

Paragraph 122 goes on

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

According to MTAN2 the scale of the assessment will depend on the timescales, the resources available and the complexity of the project. Best practice guidance on the HIA process was published in 2004 – "Improving Health and Reducing Inequalities: A practical guide to health assessment (Welsh Health Impact Assessment Support Unit)."

The environment, income, employment, education, the organisation of transport design and condition of houses, crime, and the social and physical condition of local neighbourhoods all contribute to good or poor health. Health impact assessment considers how a proposal might affect these determinants in order to assess the likely impact on the health of different groups in the population.

A HIA has been included in the ES, and concentrates on the key issues that would relate to opencast development at Fforch Egel. The HIA identifies the potential impacts on air quality through fine particulates (PM₁₀'s) and nitrogen oxides (NO_x), other environmental impacts of the development both negative and positive with the proposed mitigation put forward within the environmental assessment.

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

In commenting on the Newcastle study, the Committee on the Medical Effects of Air Pollutants (COMEAP), agreed with the findings of the report adding that “from what is known of the long-term effects of coal mining on the health of coal miners, it is most unlikely that open cast sites would have any long-term effects on the health of local communities”.

The impact of noise, nuisance dust and fine particulates is discussed above. The HIA does not consider that the operational activity would contribute or increase PM₁₀ levels to an extent that would be significant to the local population. Nuisance dust and noise can be controlled to acceptable levels. Taking account of the relative contribution made by far higher levels of traffic it is considered contribution to NOx levels are considered to be negligible. All other environmental impacts set out in the ES are also considered in the HIA which concludes no significant impact on the health and well-being of the local population, subject to the mitigation measures proposed being in place.

The Abertawe Bro Morgannwg University Health Board conclude that there is no evidence to suggest that the proposed development will cause any significant adverse health effects to isolated receptors or local communities although recommend appropriate conditions are adopted to confirm the level of impact in terms of dust, air quality and noise and that the site is subject to an appropriate Environmental Management System.

It is considered an appropriate level of assessment has been undertaken for health and taking account of all known criteria and issues it is considered that this small scale development and duration of operation does not justify refusing the application on matters in relation to health subject to conditions and therefore there is no conflict with Policies SP2 or EN8 of the LDP.

Parking and Access Requirements and Impact on Highway Safety

The site is located on a hilltop plateau served solely by an unclassified road that links Cwmllynfell and Rhiwfawr to the north and Rhydyfro to the south. There are no opportunities for alternative modes for the transportation of coal other than by HGV lorries. The proposal seeks to utilise this road for mineral transportation from the access point of the track with the public highway in a northerly direction towards Rhiwfawr, Coedffaldau and Cwmllynfell. Private individuals such as employees or

visitors are likely to utilise both routes although most are likely to utilise the route to Cwmllynfell. Following an amendment to the method of working at the site for the coaling project it is proposed to undertake up to 7 HGV trips (14 movements) per week day Monday to Friday carrying coal in 20 tonne capacity lorries. Further trips would be undertaken on Saturdays however that number is not defined in the application.

The number of cars/vehicles, service vehicles, and visitors could add up to some 24 trips per day, based on projected employment levels.

The access track to the site that leads from the public highway is also utilised as an access point for Fforch Egel Farm and has good visibility in both directions. Therefore the access junction with the public highway has no material constraints on what is a route that has a low level of traffic.

The proposed route chosen for coal transportation has a variable width of between 4 to 5 metres, and leads from the access point northwards towards Rhiwfawr, although not leading into the central part of the village. As it approaches Rhiwfawr the unclassified land descends down to Coedffaldau where it is relatively steep and in parts winding before meandering through Coedffaldau and onto Bryn Road in Cwmllynfell before accessing the A4068 opposite Cwmllynfell Library. The route passes the Cwmllynfell Primary School some 100 metres from this junction. This route is around 1.8 km in length and has some 8 passing places along the way, of differing size and suitability. The road is in a poor condition in parts.

Members should note that the authority refused Opencast Coal development at the former Parc Level Opencast coal site in 2000 and the Gwrhyd Building Stone Quarry in 1999 partly on highway grounds and the nature of the public highway along this route. Both refusals were granted on appeal by the Welsh Government although had restricted movements and timescales.

In the case of the Parc Level Colliery permission 9 loaded vehicles not exceeding 20 tonnes were permitted Mondays to Fridays and 5 such vehicles on Saturdays. Whilst the approval was for a relatively short period of 7 months subsequent approvals with the same level of coal transportation were granted in 2005 and 2007. Coaling at Parc Level substantially ceased in 2009.

The Gwrhyd Building Stone Quarry has also been granted a further consent in 2010 movements limited to the following:

Vehicles utilised for the haulage of quarried products from the site shall not exceed the following combination of carrying capacities and number of vehicular movements;

- a. No more than 7 heavy goods vehicles with a carrying capacity not exceeding 15 tonnes shall depart from the site in any working day.
- b. No more than 2 heavy goods vehicles with a carrying capacity not exceeding 21 tonnes shall depart from the site in any 7 day period.
- c. No more than 5 vehicles with a carrying capacity not exceeding 3 tonnes and carrying quarry products shall depart from the site in any one day and up to a maximum of 15 in any 7 day period.

Recognising that the route is limited in its capacity in terms of size and number of HGV's, the most restricted length of highway is concentrated in particular to an area known as "Tyle Roc", Coedffaldau, and the approach towards the western limits of the village of Rhiwfawr which are steep and winding. This is an approximate length of 500 metres although other lengths of the route are marginally constrained but with passing places.

The Head of Engineering and Transport (Highways) has taken account of the proposed level of output and the nature and level of existing use of the unclassified road down from the site to Coedffaldau, and Bryn Road through to Cwmllynfell. Consideration has also been given to the alternative route towards Rhydyfro but this is deemed to be unsuitable and inadequate. The developer is also willing to comply with a Coal Transport Plan to be submitted as a scheme which would identify methods of controlling the route of coal carrying vehicles and their management and conduct along the public highway before accessing the A4068 at Cwmllynfell.

The applicant, whilst claiming that the route is adequate for the level of transportation proposed, has agreed to provide a sum of money for the maintenance of the highway and improvements to passing places where practical. This amounts to £30,000 on the grant of any consent. Subject to this payment being made under the terms of a Legal Agreement the Head of Engineering and Transport (Highways) had no

objections subject to appropriate conditions. Even with highway improvements it was noted in the April 2014 Committee Report that it was a finely balanced issue.

However, the applicants have not progressed the Legal Agreement and there is no certainty that the contribution to the required highway maintenance will be made. Without highway improvements being made the nature and scale of the proposed HGV traffic is considered to be unacceptable in terms of highway safety. The proposal therefore conflicts with Policies SP4, M4, SP20 and TR2 of the LDP.

Water Supply, Water Quality and Quantity, Land Drainage and Flooding

Mineral workings will have the potential to affect the water environment by changes to the quantity and quality of surface or ground water resources.

The Environmental Statement has undertaken a water features survey and an assessment of the hydrology and hydrogeology of the site and surrounding area. The site occupies the western side of an isolated knoll which tilts to the south west and near to the head of the River Egel.

To the north west and south west land rises towards Penllerfedwen and Mynydd Uchaf ridge. The ridge forms the watershed for flows to the River Egel from the west. To the south east the land rises towards Cefn Gwrhyd ridge and forms the water divide between the Cwm Du catchment to the east and the River Egel to the west.

Two separate tributaries form the headwaters of the river and drain high ground around the site area and surrounding land.

Water Supplies

The site would be developed within the Upper Coal measures and the Rhondda Bed mudstone which has intermittent and occasional sandstone beds and the target coal seam is the Rhondda No. 1. Whilst there are other properties at varying distances of more than 800 metres that obtain natural water supplies from the ground, two supplies at Ffordd Egel Farm and Troed Rhiw Felen Farm have required specific assessment. Site investigation demonstrates an absence of groundwater in the coal measure strata to the base of the target coal seam. It is considered unlikely that there will be a requirement to

dewater or obstruct groundwater during any of the operations proposed. On the basis of the investigation site excavations are therefore not expected to have any impact on the groundwater catchment or groundwater resource of the area. On the basis of the available evidence the proposed development will remain above the aquifer that provides water supply to the Fforch Egel Farm and Troed Rhiw Felen Farm and these should remain unaffected.

Nevertheless, monitoring and management of these supplies are proposed. In the unlikely event of an adverse impact occurring and demonstrated it is stated that there would be a potential to provide a replacement borehole supply.

Water Quality and Quantity, Land Drainage and Flooding

A Hydrogeological assessment has been undertaken and supplementary information submitted to support the design of a surface water management scheme. The scheme provides minimum design criteria for surface attenuation and treatment facilities to prevent any adverse impact on watercourses, flood risk and water quality.

Cut off drains, water attenuation ponds and settlement lagoons and the design requirements for these based on topography, rainfall events has been calculated. The results reasonably suggest that the site can be designed to prevent any adverse effect on the water environment in terms of quantity and quality subject to further submission of detailed design. Natural Resources Wales and the Authority's Drainage Officer are satisfied that adequate provisions can be provided to prevent any adverse impact during the operational phase and following restoration.

The proposal does not therefore conflict with Policies SP16, EN8, SP17 and M4 of the Local Development Plan.

Historic Environment

The supporting information submitted notes the potential for the discovery of unknown archaeological features and finds as well as detailing the known resource. GGAT advised that it is unlikely that any archaeological features of any major significance will be revealed but request that an archaeological watching brief is undertaken during ground disturbance. A condition can be included to that effect.

Land Stability and Ground Contamination

The site constitutes a relatively small opencast development, whereupon excavations will be undertaken in original grounds down to the Rhondda No.1 coal seam. Backfilling of the former opencast development provides a suitable location to dispose of an initial amount of overburden. There are no identifiable or significant issues in topographical terms that would suggest there are issues in terms of land stability or overburden storage that would pose any significant threat in terms of land stability or ground contamination.

Soils and Agricultural Land

The application has undertaken an assessment to quantify the amount of topsoil, subsoil and soil forming material that could be conserved and retained for the restoration of the site. This includes reasonable quality topsoil for the area found on the existing upland grazing areas associated with Fforch Egel Farm. Nonetheless, the agricultural land is no more than grade 4 Agricultural Land.

A comprehensive assessment has been undertaken on the likely resources, their planned redistribution and utilisation in the restoration strategy which includes in this case an additional area of the former opencast area being reclaimed for agricultural use. This is considered as an acceptable strategy given the need to reclaim and enhance the viability of Fforch Egel Farm following the completion of the scheme as an upland grazing farm and Welsh Government has indicated that agriculture is an appropriate after-use of part of the site.

Public Rights of Way

Footpaths 67, 68, 69 and 70 lie to the south, east and west of the application site. Footpath 68 lies some 160 metres from the eastern boundary and follows a course along the small valley of the River Egel. Footpaths 69 and 70 take a route close to the Fforch Egel Farmhouse. They join with Footpath 67 some 80 metres to the west of the site boundary at its closest point.

It is considered that whilst there would be some effect on the users of these routes, the overall impact would be localised and short lived and is not considered to be so significant as to warrant any refusal on the impacts on the use of public rights of way.

Restoration and Aftercare

The progressive restoration of the site and its reclamation to land uses has been set out in the restoration strategy and plan. The strategy has been amended during the course of the application, taking account of the natural resources available, the nature of the derelict land associated with part of the development area and other objectives in achieving some ecological biodiversity and the restoration of common land to grazing requirements. This results in an additional 4.6 hectares of agricultural land to add to the existing 6.3 hectares originally found at Fforch Egel.

Marshy grassland and acidic grassland on the common would be restored to the same area of 2.4 and 2.6 hectares respectively. Other areas of marshy grassland (0.7 hectares), oak woodland (1.3 hectares), heath scrub (1.3 hectares) and other marginal land would be restored to ecological biodiversity objectives such as a sandstone feature, new ponds/wetlands and ditches.

The potential of the site to deliver progressive restoration and its ultimate reclamation has been evaluated and following amendments to the method of working it is now considered that a structure can be put into place where the recovery of coal and the reclamation of an abandoned opencast site of some 9.1 hectares in area can be suitably restored to a beneficial use.

One of the very principles of MPPW is that all coal developments must be reclaimed to a sustainable and beneficial afteruse, and also by achieving a high standard of restoration. This is echoed in Policy M4 of the LDP.

Paragraph 282 of MTAN2 states in reinitiating land following opencast working the opportunity exists to improve the local environment, embrace landscape and biodiversity and make provision for public access. Following the reassessment of the restoration scheme it is considered that the reclamation of the site can be achieved with a balance struck in this case of enhancing and sustaining the farm holding of Fforch Egel Farm and also introducing biodiversity enhancement in certain areas. The Biodiversity Unit of the Authority has no objection to the proposal, subject to the biodiversity requirements being delivered within the scheme. This now appears reasonable and practical.

It is therefore considered that the restoration scheme set out as a strategy, but subject to the submission of further details under conditions, is appropriate and adequate for it not to be in conflict with national policy or Policy M4 of the Local Development Plan.

Restoration and Aftercare Bonds and Financial Guarantees

The West Glamorgan County Council Act 1987 enables the Authority to attach a planning condition to any coal mining permission requiring the deposition of a financial bond to secure restoration and aftercare to any operator other than British Coal Corporation (and their successors Celtic Energy Limited for a limited period of 10 years from the date of privatisation).

The applicant readily acknowledges the need for a financial guarantee as part of this development and a condition enforceable under Section 51 of the West Glamorgan Act 1987 can be adopted to secure a restoration and aftercare bond before any commencement of development. However, despite repeated attempts to engage with the applicant to discuss the level of bond necessary in this case, the issue is no further forward than it was in April 2014. The final figure for this bond has not therefore been agreed but the approximate sum is likely to be in excess of £1 million. The applicants have not indicated that they are in a position to provide a Bond of that amount.

There are also question marks over the viability and deliverability of the scheme as discussed below making it absolutely essential that the Bond is in place prior to any commencement of development.

Cumulative Impact

The site is located in a fairly secluded and remote area of the countryside. However, the immediate area has not been without mineral activity. Some 20-30 years ago the immediate area had a few small mines on the same hillside which included the former Parc Level Colliery, some 500 metres to the east. All such small mines have been closed for at least 20 years.

More recently the Parc Level Opencast development was worked between 2002 until 2010 and has been restored and is in aftercare.

Approximately 1.0 km to the south east is the Gwrhyd Building stone quarry which has also been operating for some 12 years and has a further period of planning consent until 30 September 2025.

Approximately 2.5 km to the north of the site is the East Pit East Revised OCCS which is still operating, although this site and the building stone quarry are not inter-visible.

Coal transportation routes for the former Parc Level opencast site and the Gwrhyd Building stone quarry share the same route that leads to Coedffaldau (west of the main part of Rhiwfawr Village) and towards Cwmllynfell and the A4068. Further to the south is the major quarry at Cwm Nant Lleici Quarry which has a separate and dedicated access road that leads to Ystalyfera.

In local terms the general area the further development at Fforch Egel Farm would not have a demonstrable effect on the locality in terms of cumulative impact.

Socio-Economic Benefits

A Social Impact Assessment (SIA) was submitted as part of the Environmental Statement which has considered the negative and positive aspects of the development.

The site will be a relatively short lived operation which was, and still is to a degree, a traditional mining area. The economic wealth of the area has also historically been formed on coal mining activity that has reduced substantially in recent decades.

Negative aspects are some limited effects on the quality of life of the residential population given the remote nature of the site. Impacts on recreation use, the use of Gwrhyd Chapel and Gwrhyd Road is also considered to be low or negligible. Impacts from coal transport are significant. There would be some effect on amenity, visual impact and on local biodiversity.

Positive aspects include economic benefits from employing some 19 people for a minimum of four years with other set up and service industries being required. The former "Yates site", an old opencast development that has been in a poor and derelict and unrestored condition would be reclaimed to a positive and beneficial use.

Need for Coal

The coal produced at this site is intended for power generation, industrial and domestic markets. The coal demand in Wales over recent years has been dominated by two principal markets at Aberthaw and TATA Steel (Port Talbot) with some 70% utilised for power generation and 30% for blast furnace use. There is also a relatively small domestic coal market. However, the demand from Aberthaw for Welsh Coal has effectively ceased, resulting in significant changes to the coal industry in Wales. Celtic Energy Limited has cut production and other operators have also had to change their plans.

Therefore, 70% of the demand has disappeared since this application was first considered by the Committee. On top of that, world coal prices have been in the doldrums for some years, with no real prospect of recovery in the short term.

The recoverable ratio of coal to overburden is calculated to be in excess of 22:1 at this site. Such a ratio was only marginally economic in April 2014 but given the current market conditions surface mining is uneconomic at such a ratio. As an example, Celtic Energy have permanently closed Selar Opencast Coal site where similar ratios exist.

It is therefore considered that there is no need for the coal from this site in the short term

CONCLUSION

The decision to refuse planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the Neath Port Talbot Local Development Plan (2011–2026) adopted January 2016.

Paragraph 14.8.4 of PPW specifies requirements that all opencast development proposals should meet, otherwise they should not be approved. These are:

- The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage;

- If this cannot be achieved, it should provide local or community benefits which clearly outweigh the dis-benefits of likely impacts to justify the grant of planning permission;

There are tangible benefits in land use terms with the reclamation of a fairly large unrestored opencast site. However, the site is not especially visible within the local environment and does not have a significant visual impact. The applicants have taken so long to progress the Section 106 Agreement that the ecological surveys are now out dated and with the advent of the Environment (Wales) Act 2016 the bar has been raised in terms of the biodiversity duty. The Authority cannot therefore be certain of meeting that duty without updated information. In the absence of additional information the Authority must take the view that the impact on ecology and biodiversity is uncertain and therefore the proposal conflicts with policy in that regard. It cannot therefore be said that the proposal is environmentally acceptable.

That being the case, the Authority must consider whether there are local or community benefits that clearly outweigh the dis-benefits.

There are potential socio-economic benefits from employment at the site. However, this potential needs to be tempered by the very poor state of world coal prices, shrinking coal markets and the high coal to overburden ratio's at this site which call its viability into question.

Improvement and maintenance of the poor condition of the road from the site to the village of Cwmllynfell would have tipped the balance in terms of the acceptability of the road to cater for limited additional HGV traffic but would have also been a benefit to the local community. However, this has not been progressed within a reasonable time period. Without the improvements to the road the application is unacceptable in highway safety terms.

The benefits of the scheme do not outweigh the uncertain impact on biodiversity or the impact on highway safety and on balance the scheme is unacceptable in its current form.

RECOMMENDATION: Refusal

(1) In the absence of a legal agreement providing for a financial contribution for the maintenance of the highway and improvements to passing places on the unclassified road leading northwards from the site access road to the village of Cwmllynfell, the nature and scale of the HGV traffic generated by the development would have an unacceptable impact on highway safety. The proposal therefore conflicts with Policies SP4, M4, SP20 and TR2 of the LDP.

(2) In the absence of sufficient up-to-date biodiversity survey information, it is considered that the applicant has failed to demonstrate that the proposal maintains and enhances biodiversity and contributes to the resilience of eco-systems. The proposal is therefore contrary to Policies SP1, SP15, EN7, SP17 and M4 of the Neath Port Talbot County Borough Council Local Development Plan.